

**THIRD SUPPLEMENT TO  
PRIVATE PLACEMENT MEMORANDUM  
OF HAYWORTH TANGLEWOOD DST**

**Dated: February 2, 2024**

This Third Supplement (this “**Third Supplement**”) updates, through the date hereof, the information previously provided in the Amended and Restated Private Placement Memorandum dated July 26, 2022 (together with all exhibits thereto, the “**Original Memorandum**”), the Supplement to Private Placement Memorandum dated February 17, 2023 (together with all exhibits thereto, the “**First Supplement**”), and the Second Supplement to Private Placement Memorandum dated June 27, 2023 (together with all exhibits thereto, the “**Second Supplement**”), which together describe the offering of beneficial interests (the “**Interests**”) in Hayworth Tanglewood, DST, a Delaware statutory trust, which acquired and owns the Class A, mid-rise, multi-family residential community located in the prestigious Tanglewood area of Houston at 1414 Wood Hollow Drive, Houston, Texas 77057 (the “**Property**”). The Original Memorandum, First Supplement, Second Supplement and this Third Supplement are collectively referred to herein as the “**Memorandum**.” The Offering of the Interests is made exclusively by the Memorandum. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Original Memorandum.

This Third Supplement is being furnished for your information on a confidential basis so that you may consider your investment in the Interests. This Third Supplement is not to be reproduced or used for any other purpose. No person has been authorized to make any statement concerning the Offering other than as set forth in the Memorandum, and any such statement, if made, should not be relied upon.

**The Interests offered by the Memorandum have not been registered under the Securities Act of 1933, as amended (the “Securities Act”), or the securities laws of any state and are being offered and sold in reliance on exemptions from the registration requirements of the Securities Act and such laws. The Interests are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act and such laws pursuant to registration or exemption therefrom. In making an investment decision, prospective Investors must rely on their own examination of the person or entity creating the Interests and the terms of the Offering, including the merits and risks involved.**

**The Memorandum does not constitute an offer or solicitation by anyone in any jurisdiction in which such an offer or solicitation is not authorized, or in which the person making such an offer is not qualified to do so, or to any person to whom it is unlawful to make an offer or solicitation. The Memorandum has not been filed with the Securities and Exchange Commission, any securities administrator under state securities laws or any other governmental or self-regulatory authority. No governmental or self-regulatory authority has passed on the merits of the Offering or the adequacy of the Memorandum. Any representation to the contrary is unlawful.**

The Memorandum is hereby modified and supplemented as follows:

**EXTENSION OF OFFERING TERMINATION DATE**

The Offering Termination Date has been extended to January 31, 2025.

**SECOND SUPPLEMENT TO  
PRIVATE PLACEMENT MEMORANDUM  
OF HAYWORTH TANGLEWOOD, DST**

**Dated: June 27, 2023**

This Second Supplement (together with all exhibits hereto, this “**Supplement**”) updates, through the date hereof, the information previously provided in the Amended and Restated Private Placement Memorandum dated July 26, 2022 (together with all exhibits and supplements thereto, the “**Original Memorandum**”), and the Supplement to the Private Placement Memorandum dated February 17, 2023 (the “**First Supplement**”), which describes the offering of beneficial interests (the “**Interests**”) in Hayworth Tanglewood, DST, a Delaware statutory trust, which acquired and owns the Class A, mid-rise, multi-family residential community located in the prestigious Tanglewood area of Houston at 1414 Wood Hollow Drive, Houston, Texas 77057 (the “**Property**”). The Original Memorandum and this Supplement are collectively referred to herein as the “**Memorandum**.” The Offering of the Interests is made exclusively by the Memorandum. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Original Memorandum.

This Supplement is being furnished for your information on a confidential basis so that you may consider your investment in the Interests. This Supplement is not to be reproduced or used for any other purpose. No person has been authorized to make any statement concerning the Offering other than as set forth in the Memorandum, and any such statement, if made, should not be relied upon.

As set forth in the Original Memorandum, following receipt of this Supplement if an Investor determines, in his, her or its discretion, that the supplemental information contained herein is unacceptable, then the Investor will be entitled to terminate his, her or its agreement to acquire an Interest.

**The Interests offered by the Memorandum have not been registered under the Securities Act of 1933, as amended (the “Securities Act”), or the securities laws of any state and are being offered and sold in reliance on exemptions from the registration requirements of the Securities Act and such laws. The Interests are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act and such laws pursuant to registration or exemption therefrom. In making an investment decision, prospective Investors must rely on their own examination of the person or entity creating the Interests and the terms of the Offering, including the merits and risks involved.**

**The Memorandum does not constitute an offer or solicitation by anyone in any jurisdiction in which such an offer or solicitation is not authorized, or in which the person making such an offer is not qualified to do so, or to any person to whom it is unlawful to make an offer or solicitation. The Memorandum has not been filed with the Securities and Exchange Commission, any securities administrator under state securities laws or any other governmental or self-regulatory authority. No governmental or self-regulatory authority has passed on the merits of the Offering or the adequacy of the Memorandum. Any representation to the contrary is unlawful.**

The Original Memorandum is hereby modified and supplemented as follows:

**SPONSOR STATED RENT YIELD ENHANCEMENT**

The Sponsor has agreed to fund an Enhancement (“**Yield Enhancement**”) to The Annual Gross Stated Rent for two (2) calendar years, commencing with the date hereof. Yield Enhancement will increase Stated Rent from 4% cash-on-cash return on investor equity to 6.5%. To the extent the financial performance of the property does not meet the 6.5% Stated Rent during this period, the Sponsor will fund the difference.

**PROPERTY UPDATE**

According to census data released by the Greater Houston Partnership, the Houston region saw the second-largest population growth among major metros in the U.S., between the summers of 2021 and 2022. With over 200 people moving to Houston each day, The Hayworth offers an elevated home to those seeking a luxurious living experience. The attention to detail offered by the on-site team has the property leased to over 97%. Management has increased amenity fees and plans to cut spending in contracted services. An upcoming project includes enhancing the cabinets inside the homes.

## **CHANGES TO FINANCIAL FORECAST**

The Financial Forecast attached as Exhibit A to the Offering Memorandum is hereby deleted in its entirety and replaced with the financial forecast attached hereto as **Exhibit A.**

### **Exhibit A**

#### **Financial Forecast**

THE FINANCIAL PROJECTIONS CONTAINED HEREIN SHOULD NOT BE CONSTRUED AS PREDICTIONS OF THE ACTUAL OPERATING RESULTS OF THE PROPERTY OR THE ACTUAL RESULTS OF INVESTING IN THE INTERESTS. THE FINANCIAL PROJECTIONS ARE INTENDED MERELY TO ILLUSTRATE THE POTENTIAL RESULTS THAT THE PROPERTY MIGHT ACHIEVE IF THE ACCOMPANYING ASSUMPTIONS ARE ACHIEVED. WHILE THE COMPANY BELIEVES THAT THE ASSUMPTIONS ARE REASONABLE, THEY ARE NECESSARILY SPECULATIVE AND SUBJECT TO MANY UNCERTAINTIES AND RISKS. IT IS LIKELY THAT FUTURE EVENTS AND CONDITIONS WILL BE DIFFERENT FROM THOSE ASSUMED AND THAT ACTUAL RESULTS WILL BE DIFFERENT FROM THOSE ILLUSTRATED, AND THOSE DIFFERENCES MAY BE MATERIAL.

THE FORWARD-LOOKING STATEMENTS CONTAINED IN THE MEMORANDUM AND THIS ADDENDUM, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING FUTURE EVENTS, ACTIVITIES, OCCURRENCES OR PERFORMANCES, ARE INTENDED MERELY AS ESTIMATES, PROJECTIONS, PREDICTIONS OR BELIEFS REGARDING THESE FUTURE EVENTS, ACTIVITIES, OCCURRENCES OR PERFORMANCES, UNLESS EXPRESSLY STATED OTHERWISE. FOR VARIOUS REASONS, INCLUDING THOSE SET FORTH IN THE "RISK FACTORS" SECTION OF THE MEMORANDUM, THERE CAN BE NO ASSURANCE THAT THE ACTUAL EVENTS WILL CORRESPOND WITH THESE FORWARD-LOOKING STATEMENTS OR THAT FACTORS BEYOND THE CONTROL OF THE COMPANY WILL NOT AFFECT THE ASSUMPTIONS ON WHICH THE FORWARD-LOOKING STATEMENTS ARE BASED. THEREFORE, THE ILLUSTRATIVE VALUE OF THESE FORWARD-LOOKING STATEMENTS FOUND IN THE MEMORANDUM OR THE ADDENDUM SHOULD NOT, UNDER ANY CIRCUMSTANCES, BE CONSIDERED A GUARANTEE THAT SUCH FUTURE EVENTS, ACTIVITIES, OCCURRENCES OR PERFORMANCES WILL TAKE PLACE.

THE FINANCIAL PROJECTIONS WERE COMPILED BY THE SPONSOR AND REPRESENT THE SPONSOR'S BEST ESTIMATE OF THE EXPECTED PERFORMANCE OF THE PROPERTY. THE FINANCIAL PROJECTIONS WERE NOT EXAMINED OR OTHERWISE PASSED UPON BY THE COMPANY'S LEGAL COUNSEL.

PROSPECTIVE INVESTORS SHOULD SEEK THE ADVICE OF THEIR OWN INDEPENDENT LEGAL AND TAX ADVISERS WITH RESPECT TO AN INVESTMENT IN THE PROPERTY AND THE PROSPECTIVE RISKS AND REWARDS THEREFROM.

	<i>Fiscal Year&gt;</i>	<b>2022-23</b>	<b>2023-24</b>	<b>2024-25</b>	<b>2025-26</b>	<b>2026-27</b>	<b>2027-28</b>	<b>2028-29</b>
<i>Income/Unit/Month</i>		\$3,647	\$3,276	\$3,487	\$3,389	\$3,614	\$3,723	\$3,834
<b>Income:</b>								
Gross Potential Rental Income (1)		\$8,995,356	\$9,670,008	\$10,056,808	\$10,358,512	\$10,669,267	\$10,989,346	\$11,319,026
Other Income (2)		817,904	977,436	1,006,759	1,036,961	1,068,070	1,100,112	1,133,116
Economic Vacancy (3)		(593,693)	(734,921)	(764,317)	(787,247)	(810,864)	(835,190)	(860,246)
<b>Total Income</b>		<b>\$9,219,566</b>	<b>\$9,912,523</b>	<b>\$10,299,249</b>	<b>\$10,608,227</b>	<b>\$10,926,473</b>	<b>\$11,254,268</b>	<b>\$11,591,896</b>
<b>Expenses: (4)</b>								
Payroll Expenses		\$500,000	\$510,000	\$520,300	\$530,604	\$541,216	\$552,040	\$563,081
Utilities		237,790	242,546	247,397	252,345	257,392	262,540	267,791
Contract Services		192,015	195,855	199,772	203,768	207,843	212,000	216,240
Repair & Maintenance		80,000	81,600	83,232	84,897	86,595	88,326	90,093
Turnover Cost		69,229	70,614	72,026	73,466	74,936	76,434	77,963
General & Administrative		90,918	92,736	94,591	96,483	98,412	100,381	102,388
Marketing		101,800	103,836	105,913	108,031	110,192	112,395	114,643
Management Fees (5)		230,489	247,813	257,481	265,206	273,162	281,357	289,797
Property Taxes (6)		1,915,299	2,087,761	2,210,846	2,336,100	2,422,769	2,471,224	2,520,649
Texas Franchise Tax (7)		30,517	32,810	34,091	35,113	36,167	37,252	38,369
Insurance		360,849	368,066	375,427	382,936	390,594	398,406	406,374
CapEx Reserves (8)		61,500	61,500	61,500	61,500	61,500	61,500	61,500
<b>Total Expenses</b>		<b>\$3,878,406</b>	<b>\$4,095,137</b>	<b>\$4,262,476</b>	<b>\$4,430,448</b>	<b>\$4,560,777</b>	<b>\$4,653,856</b>	<b>\$4,748,889</b>
<i>Expense Ratio</i>		<i>42.0%</i>	<i>41.3%</i>	<i>41.4%</i>	<i>41.8%</i>	<i>41.7%</i>	<i>41.4%</i>	<i>41.0%</i>
<b>Net Operating Income</b>		<b>\$5,349,160</b>	<b>\$5,817,385</b>	<b>\$6,036,773</b>	<b>\$6,177,779</b>	<b>\$6,365,696</b>	<b>\$6,600,412</b>	<b>\$6,843,007</b>
Debt Service (9)		(2,109,600)	(2,529,600)	(2,529,600)	(2,529,600)	(3,190,226)	(3,190,087)	(3,189,940)
Asset Management Fee (10)		-	-	-	(108,082)	(109,263)	(112,543)	(115,919)
<b>Cash Flow After Debt Service</b>		<b>\$3,239,560</b>	<b>\$3,287,785</b>	<b>\$3,507,173</b>	<b>\$3,540,096</b>	<b>\$3,066,206</b>	<b>\$3,297,783</b>	<b>\$3,537,148</b>
Distribution Rate		4.20%	6.50%	6.30%	4.00%	3.75%	3.00%	3.00%
Distribution Amount		\$3,272,334	\$5,062,652	\$4,905,797	\$3,115,478	\$2,920,761	\$2,336,609	\$2,336,609
Cash Flow After Distribution		-	-	-	426,618	145,445	961,174	1,200,539
Sponsor Yield Enhancement		32,774	1,774,867	1,398,624	-	-	-	-
80% to Investors		-	-	-	341,295	116,356	768,939	960,431
<b>Total Estimated Distribution to Investors</b>		<b>\$3,272,334</b>	<b>\$5,062,652</b>	<b>\$4,905,797</b>	<b>\$3,456,773</b>	<b>\$3,037,117</b>	<b>\$3,105,548</b>	<b>\$3,297,040</b>
<b>Cash-on-Cash Return</b>		<b>4.20%</b>	<b>6.50%</b>	<b>6.30%</b>	<b>4.44%</b>	<b>3.90%</b>	<b>3.99%</b>	<b>4.23%</b>



**SUPPLEMENT TO  
PRIVATE PLACEMENT MEMORANDUM  
OF HAYWORTH TANGLEWOOD DST**

**Dated: February 17, 2023**

This Supplement (together with all exhibits hereto, this “**Supplement**”) updates, through the date hereof, the information previously provided in the Amended and Restated Private Placement Memorandum dated July 26, 2022 (together with all exhibits thereto, the “**Original Memorandum**”) which describes the offering of beneficial interests (the “**Interests**”) in Hayworth Tanglewood, DST, a Delaware statutory trust, which acquired and owns the Class A, mid-rise, multi-family residential community located in the prestigious Tanglewood area of Houston at 1414 Wood Hollow Drive, Houston, Texas 77057 (the “**Property**”). The Original Memorandum and this Supplement are collectively referred to herein as the “**Memorandum**.” The Offering of the Interests is made exclusively by the Memorandum. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Original Memorandum.

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As set forth in the Original Memorandum, following receipt of this Supplement if an Investor determines, in his, her or its discretion, that the supplemental information contained herein is unacceptable, then the Investor will be entitled to terminate his, her or its agreement to acquire an Interest.

**The Interests offered by the Memorandum have not been registered under the Securities Act of 1933, as amended (the “Securities Act”), or the securities laws of any state and are being offered and sold in reliance on exemptions from the registration requirements of the Securities Act and such laws. The Interests are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act and such laws pursuant to registration or exemption therefrom. In making an investment decision, prospective Investors must rely on their own examination of the person or entity creating the Interests and the terms of the Offering, including the merits and risks involved.**

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The Original Memorandum is hereby modified and supplemented as follows:

**CHANGES TO THE OFFERING**

The Offering is being made in reliance on Rule 506(c) of Regulation D under the Securities Act as well as state securities laws exemptions. The Maximum Offering Amount has increased to \$77,886,957.

	<b>Cash Price to Purchasers</b>	<b>Selling Commissions and Expenses<sup>(1)</sup></b>	<b>Proceeds to Trust<sup>(2)</sup></b>
Minimum Purchase <sup>(3)</sup> .....	\$50,000	\$4,648	\$45,352
Maximum Offering Amount.....	\$77,886,957	\$7,240,000	\$70,646,957

- (1) Offers and sales of Interests will be made on a “best efforts” basis by WealthForge Securities, LLC, a Virginia limited liability company (“**WealthForge**”), a member of the Financial Industry Regulatory Authority, Inc.(“**FINRA**”), as the exclusive Managing Broker-Dealer for this Offering, and any other participating broker-dealers which are members of FINRA that WealthForge agrees to include (each, a “**Selling Group Member**” and collectively, the “**Selling Group Members**”). The WealthForge privacy policy is attached as Exhibit D. WealthForge will receive: (i) selling commissions (“**Selling Commissions**”) equal to 6.0% of the gross equity proceeds of the Offering (the “**Offering Proceeds**”), which will

either be paid to affiliates of WealthForge, including employees and contractors of the Sponsor, or reallocated to participating Selling Group Members, (ii) a dealer management fee (“**Dealer Management Fee**”) equal to 0.65% of the Offering Proceeds, some of which may be reallocated to registered representatives affiliated with WealthForge, and (iii) a broker-dealer allowance (“**Broker-Dealer Allowance**”) equal to 1.0% of the Offering Proceeds in connection with its due diligence review of the Offering and facilitating regulatory compliance, which will either be retained by WealthForge or re-allowed to the Selling Group Members. In addition, a wholesaling fee (“**Wholesaling Fee**”) of 1.35% of the Offering Proceeds may be paid to wholesalers, including employees and contractors of the Sponsor. In addition, the Sponsor will be entitled to 0.30% of the Offering Proceeds as payment for organizational and offering expenses incurred in connection with the Offering (the “**O&O Expenses**”), including the costs of organizing the Trust, Signatory Trustee, Initial Beneficiary and Master Tenant, and marketing, legal, finance, accounting and printing fees and expenses. If the actual O&O Expenses are greater than 0.30% of the Offering Proceeds, the Sponsor will pay those costs and expenses. The total of commissions and expense reimbursements (collectively “**Selling Commissions and Expenses**”) will not exceed 9.30%. The Trust reserves the right to pay reduced selling commissions and expenses or waive such sums with respect to Interests purchased by certain affiliates and other persons. The Selling Commissions and Expenses, as well as other costs associated with the Offering, will be paid by the Trust out of the Offering Proceeds. See “*Revised Estimated Use of Proceeds*,” “*Compensation of the Sponsor and its Affiliates*” and “*Plan of Distribution*.”

- (2) The proceeds shown are after deducting the Selling Commissions and Expenses, but before deducting fees and expenses incurred in connection with the acquisition of the Property and the closing of the Loan, including those payable to the Sponsor and its affiliates. See “*Revised Estimated Use of Proceeds*,” “*Compensation of the Sponsor and its Affiliates*” and “*Plan of Distribution*.”
- (3) The minimum amount of Interests that a prospective Investor may purchase is \$50,000 unless the Trust waives this minimum purchase requirement.

### **COST SEGREGATION STUDY**

A cost segregation study will be prepared for the Property. It is anticipated that the study will be completed and made available to Investors in June 2023.

### **WAIVER OF ASSET MANAGEMENT FEE**

The Sponsor has agreed to waive the asset management fee for a period of three years from the date the Property was acquired by the Trust.

### **INCREASE IN RESERVES**

Reserves have been increased by \$1,000,000 to a total of \$5,969,148, which amount includes an increase in the working capital reserve to \$3,150,000. The purpose of this increase is to facilitate stabilizing leasing at increased rental rates. Higher rates have already been implemented at the Property and the Asset Manager is confident that the process will benefit the Property moving forward.

### **INCREASE IN PROJECTED BONUS RENT**

Bonus Rent paid to Investors has been increased to 80% of the amount by which the Total Operating Income generated by the Property for an applicable 12-month period exceeds the Annual Bonus Rent Threshold for that period. The corresponding amount earned by the Master Tenant under the Master Lease has been reduced to 20% of the amount by which the Total Operating Income generated by the Property for an applicable 12-month period exceeds the Annual Bonus Rent Threshold for that period. The following table sets forth the revised schedule of Rent for the initial term of the Master Lease. See “*Summary of the Master and Residential Leases – Master Lease – Rent*.”

**Revised Rent Amounts Pursuant to the Master Lease**

<b><u>Lease Year</u></b>	<b><u>Base Rent</u></b>	<b><u>Annual Gross Stated Rent*</u></b>	<b><u>Annual Bonus Rent Threshold**</u></b>	<b><u>Projected Annual Bonus Rent**</u></b>
Lease Year 1	The “Annual Note Payments”	\$3,115,478	\$9,095,484	\$99,265
Lease Year 2	The “Annual Note Payments”	\$3,115,478	\$9,740,216	\$137,846
Lease Year 3	The “Annual Note Payments”	\$3,115,478	\$9,907,554	\$313,356

Lease Year 4	The “Annual Note Payments”	\$3,115,478	\$10,181,609	\$341,295
Lease Year 5	The “Annual Note Payments”	\$2,920,761	\$10,781,028	\$116,356
Lease Year 6	The “Annual Note Payments”	\$2,336,609	\$10,293,094	\$768,939
Lease Year 7	The “Annual Note Payments”	\$2,336,609	\$10,391,357	\$960,431

\* Before distribution of Stated Rent, the Master Tenant will be permitted, in its discretion, to charge the Trust for Delaware trustee fees, bank fees, legal fees, tax return preparation charges and other expenses incurred by the Master Tenant currently estimated to be \$5,000 per year.

\*\* Annual Bonus Rent is an amount equal to 80% of the amount by which Total Operating Income generated by the Property for the applicable 12-month period exceeds the Annual Bonus Rent Threshold for such period. Total Operating Income is an amount equal to the sum of all rent and other income generated by the Property to the extent actually collected by the Master Tenant.

## CHANGES TO FORECASTED STATEMENT OF CASH FLOWS

The Forecasted Statement of Cash Flows attached as Exhibit C to the Original Memorandum is hereby deleted in its entirety and replaced with the financial forecast attached hereto as **Exhibit A**.

## REVISED ESTIMATED USE OF PROCEEDS

The following is an updated table setting forth the revised estimated sources and uses of the proceeds of the Offering, including an increase in total Property acquisition costs of approximately \$19,592. The Sponsor, Asset Manager and Property Manager and their respective affiliates will receive substantial compensation and fees in connection with the Offering and the acquisition of the Property, as described in the Memorandum. The figures below are based upon the sale of 100% of the Interests, equivalent to \$77,886,957.

	Total Proceeds (Offering Proceeds + Loan Proceeds)	Amount from Loan Proceeds	Amount from Offering Proceeds	Percentage of Maximum Offering Amount <sup>1</sup>
<b>Sources</b>				
Offering Proceeds	\$77,886,957	-	\$77,886,957	100.00%
Loan Proceeds	\$48,000,000	\$48,000,000	-	-
Total Sources	\$125,886,957	\$48,000,000	\$77,886,957	100.00%
<b>Application</b>				
<u><i>Selling Commissions and Expenses</i></u>				
Selling Commissions <sup>2, 3</sup>	\$4,673,217	-	\$4,673,217	6.00%
Dealer Management Fee <sup>2, 3</sup>	\$506,265	-	\$506,265	0.65%
Broker-Dealer Allowance <sup>2, 3</sup>	\$778,870	-	\$778,870	1.00%
Wholesaling Fee <sup>2, 3</sup>	\$1,051,474	-	\$1,051,474	1.35%
O&O Expenses <sup>2, 4</sup>	\$230,174	-	\$230,174	0.30%
Total <sup>5</sup>	\$7,240,000	-	\$7,240,000	9.30%
<u><i>Costs of Acquisition</i></u>				
Total Acquisition Cost <sup>2, 6</sup>	\$107,930,309	\$47,409,875	\$60,520,434	77.70%
Acquisition Fee <sup>7</sup>	\$4,747,500	-	\$4,747,500	6.09%
Reserves	\$5,969,148	\$590,125	\$5,379,023	6.91%
Total	\$118,646,957	\$48,000,000	\$70,646,957	90.70%
Total Application	\$125,886,957	\$48,000,000	\$77,886,957	100.00%

(1) Percentages have been rounded to the nearest hundredth of a percentage for purposes of this table.

(2) The Trust will pay or reimburse some or all of these amounts to affiliates of the Trust, as described in this Memorandum.

(3) Offers and sales of Interests will be made on a “best efforts” basis by WealthForge Securities, LLC, a Virginia limited liability company (“WealthForge”), a member of the Financial Industry Regulatory Authority, Inc. (“FINRA”), as the exclusive managing broker-dealer for

this Offering, and any other participating broker-dealers which are members of FINRA that WealthForge agrees to include (each, a “**Selling Group Member**” and collectively, the “**Selling Group Members**”). The WealthForge privacy policy is attached as Exhibit D WealthForge will receive: (i) selling commissions (“**Selling Commissions**”) equal to 6.0% of the gross equity proceeds of the Offering (the “**Offering Proceeds**”), which will either be paid to affiliates of WealthForge, including employees and contractors of the Sponsor, or reallocated to participating Selling Group Members, (ii) a dealer management fee (“**Dealer Management Fee**”) equal to 0.65% of the Offering Proceeds, some of which may be reallocated to registered representatives affiliated with WealthForge, and (iii) a broker-dealer allowance (“**Broker-Dealer Allowance**”) equal to 1.0% of the Offering Proceeds in connection with its due diligence review of the Offering and facilitating regulatory compliance, which will either be retained by WealthForge or re-allowed to the Selling Group Members. In addition, a wholesaling fee (“**Wholesaling Fee**”) of 1.35% of the Offering Proceeds may be paid to wholesalers, including employees and contractors of the Sponsor.

- (4) The Sponsor will be entitled to 0.30% of the Offering Proceeds as payment for organizational, offering and marketing expenses incurred in connection with the Offering (the “**O&O Expenses**”), including the costs of organizing the Trust, the Signatory Trustee, the Initial Beneficiary and the Master Tenant, and marketing, legal, finance, accounting, and printing fees and expenses. Certain of these costs have been estimated for purposes of this table. If the actual O&O Expenses are greater than 0.30% of the Offering Proceeds, the Sponsor will pay those costs and expenses. Conversely, if the estimates exceed the actual costs and expenses, the Sponsor will retain the difference as additional compensation.
- (5) The total commissions and expense reimbursements (collectively, “**Selling Commissions and Expenses**”) will not exceed 9.30%. The Trust reserves the right to pay reduced Selling Commissions and Expenses or waive such sums with respect to Interests purchased by certain affiliates and other persons. The Selling Commissions and Expenses, as well as other costs associated with the Offering, will be paid by the Trust out of the Offering Proceeds. See “*Compensation of the Sponsor and its Affiliates*” and “*Plan of Distribution*.”
- (6) The total acquisition cost of the Property is comprised of: (a) the purchase price of the Property; (b) estimated bridge financing fees and interest; (c) estimated acquisition closing costs, which include costs paid in connection with the acquisition of the Property including, but not limited to, title insurance, recording costs, document taxes, escrow costs, tax review fees, document preparation and fees; and (d) estimated financing closing costs, which include costs to be paid to the Lender and mortgage broker in connection with financing the Property relating to loan origination and processing, title insurance, recording costs, mortgage taxes, escrow costs, property reports obtained by the Lender, document preparation, the Lender’s legal expenses and first month’s interest, tax and insurance costs. The total financing and acquisition costs, fees and expenses are estimated to be \$2,430,309. If the actual financing and acquisition costs, fees and expenses exceed the estimates, the Sponsor will pay those costs, fees and expenses. Conversely, if the estimates exceed the actual costs, fees and expenses, the Sponsor will retain the difference as additional compensation.
- (7) The Trust will pay the Sponsor an acquisition fee of \$4,747,500 for its services in the identification, negotiation and acquisition of the Property.

## **Exhibit A**

### **Forecasted Statement of Cash Flows**

THE FINANCIAL PROJECTIONS CONTAINED HEREIN SHOULD NOT BE CONSTRUED AS PREDICTIONS OF THE ACTUAL OPERATING RESULTS OF THE PROPERTY OR THE ACTUAL RESULTS OF INVESTING IN THE INTERESTS. THE FINANCIAL PROJECTIONS ARE INTENDED MERELY TO ILLUSTRATE THE POTENTIAL RESULTS THAT THE PROPERTY MIGHT ACHIEVE IF THE ACCOMPANYING ASSUMPTIONS ARE ACHIEVED. WHILE THE COMPANY BELIEVES THAT THE ASSUMPTIONS ARE REASONABLE, THEY ARE NECESSARILY SPECULATIVE AND SUBJECT TO MANY UNCERTAINTIES AND RISKS. IT IS LIKELY THAT FUTURE EVENTS AND CONDITIONS WILL BE DIFFERENT FROM THOSE ASSUMED AND THAT ACTUAL RESULTS WILL BE DIFFERENT FROM THOSE ILLUSTRATED, AND THOSE DIFFERENCES MAY BE MATERIAL.

THE FORWARD-LOOKING STATEMENTS CONTAINED IN THE MEMORANDUM AND THIS SUPPLEMENT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING FUTURE EVENTS, ACTIVITIES, OCCURRENCES OR PERFORMANCES, ARE INTENDED MERELY AS ESTIMATES, PROJECTIONS, PREDICTIONS OR BELIEFS REGARDING THESE FUTURE EVENTS, ACTIVITIES, OCCURRENCES OR PERFORMANCES, UNLESS EXPRESSLY STATED OTHERWISE. FOR VARIOUS REASONS, INCLUDING THOSE SET FORTH IN THE "RISK FACTORS" SECTION OF THE MEMORANDUM, THERE CAN BE NO ASSURANCE THAT THE ACTUAL EVENTS WILL CORRESPOND WITH THESE FORWARD-LOOKING STATEMENTS OR THAT FACTORS BEYOND THE CONTROL OF THE COMPANY WILL NOT AFFECT THE ASSUMPTIONS ON WHICH THE FORWARD-LOOKING STATEMENTS ARE BASED. THEREFORE, THE ILLUSTRATIVE VALUE OF THESE FORWARD-LOOKING STATEMENTS FOUND IN THE MEMORANDUM OR THE ADDENDUM SHOULD NOT, UNDER ANY CIRCUMSTANCES, BE CONSIDERED A GUARANTEE THAT SUCH FUTURE EVENTS, ACTIVITIES, OCCURRENCES OR PERFORMANCES WILL TAKE PLACE.

THE FINANCIAL PROJECTIONS WERE COMPILED BY THE SPONSOR AND REPRESENT THE SPONSOR'S BEST ESTIMATE OF THE EXPECTED PERFORMANCE OF THE PROPERTY. THE FINANCIAL PROJECTIONS WERE NOT EXAMINED OR OTHERWISE PASSED UPON BY THE COMPANY'S LEGAL COUNSEL.

PROSPECTIVE INVESTORS SHOULD SEEK THE ADVICE OF THEIR OWN INDEPENDENT LEGAL AND TAX ADVISERS WITH RESPECT TO AN INVESTMENT IN THE PROPERTY AND THE PROSPECTIVE RISKS AND REWARDS THEREFROM.

**Pro Forma / Total Yield.**

### Tax Analysis.

[illegible]

## Loan/Reserve Account.

### Loan and Reserve Account Balances:

Forecasted Principal Amortization	Fiscal Year>	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
Beginning Loan Balance		\$48,000,000	\$48,000,000	\$48,000,000	\$48,000,000	\$48,000,000	\$47,323,175	\$46,609,948
Principal Amortization		-	-	-	-	(676,825)	(713,226)	(751,585)
Ending Loan Balance		\$48,000,000	\$48,000,000	\$48,000,000	\$48,000,000	\$47,323,175	\$46,609,948	\$45,858,363
Loan to Offering Price		38.1%	38.1%	38.1%	38.1%	37.6%	37.0%	36.4%
Yield		4.13%	4.18%	4.40%	4.44%	4.77%	4.90%	5.20%

Forecasted Lender Reserve Account								
Replacement Reserve Account		2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
Beginning Balance		\$0	\$61,500	\$123,000	\$184,500	\$246,000	\$307,500	\$369,000
Reserve Contribution		61,500	61,500	61,500	61,500	61,500	61,500	61,500
Capital Expenditures		-	-	-	-	-	-	-
Ending Balance		\$61,500	\$123,000	\$184,500	\$246,000	\$307,500	\$369,000	\$430,500

Forecasted Trust Reserve Account								
		2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
Beginning Balance		\$5,969,148	\$5,748,483	\$5,762,855	\$5,752,199	\$5,766,580	\$5,630,621	\$5,569,510
Seller Credit		-	-	-	-	-	-	-
Reserve Contribution / (Application)		-	-	-	-	-	-	-
Property Improvements		(235,000)	-	(25,000)	-	(150,000)	(75,000)	(75,000)
Capital Expenditures		-	-	-	-	-	-	-
Interest Income	0.25%	14,335	14,371	14,345	14,380	14,041	13,889	13,736
Ending Balance		\$5,748,483	\$5,762,855	\$5,752,199	\$5,766,580	\$5,630,621	\$5,569,510	\$5,508,247

## Key Assumptions.

1. *Gross Potential Rental Income.* Reflects potential rental income attributed to the 246 units (1 studio guest unit, 28 1x1 units, 69 1x1.5 units, 66 2x2 units, 58 2x2.5 units, 1 2x2.5 guest unit, 10 2x2.5 townhome units, 6 3x2.5 units, and 7 3x3 units).
2. *Other Income.* Includes income from sources such application fees, utility reimbursements, parking income, storage income, cable income, amenity fees, and other items.
3. *Economic Vacancy.* Reflects a 4.0% general vacancy rate in year 1 and 5.0% thereafter, non-revenue unit, employee discounts, concessions, and bad debt.
4. *Expenses.* Underwriting efforts have included the review of the Property's trailing 12 months of expenses and made appropriate adjustments based upon industry and local market operating standards. These expenses, unless otherwise noted, are escalated at 2% per annum over the period of the analysis.
5. *Management Fees.* Assumes 2.5% of Total Operating Income.
6. *Property Taxes.* As per a property tax consultant, taxes are estimated based upon the current assessed value and the contractual purchase price.
7. *Texas Franchise Tax.* Assumes 0.331% of Total Operating Income.
8. *CapEx Reserves.* Reflects a reserve of \$250 per unit per annum throughout the analysis period.
9. *Debt Service.* The forecast utilizes leverage at 45.5% loan-to-value at a 5.25% annual fixed rate, on a 7-year loan on an interest-only basis for 4 years.
10. *Asset Management Fee.* Equal to 1.0% of Total Operating Income beginning in year 4.
11. *Tax Analysis.* This tax analysis only applies to Investors not seeking a tax-deferred exchange. Investors who defer taxes by investing in this offering carry differing tax bases in their relinquished properties. Therefore, depreciation will vary for such Investors, producing different tax shelters and tax equivalent yields. Tax savings that result from the above-described tax shelter would be recaptured upon sale of the Property unless the Investor chooses to participate in a subsequent tax-deferred exchange. Each prospective Investor should consult with his or her own legal, tax, accounting and financial advisors.

The Tax Equivalent Yield represents the yield required to achieve an equivalent After Tax Cash Flow on an interest-bearing investment, which has no shelter from depreciation and would be taxed at the Effective Tax Rate. The Tax Equivalent Yield is equal to the After-Tax Return divided by one minus the Effective Tax Rate.

12. *Effective Tax Rate.* Assumed to be a combined federal and state income tax rate of 40%.



## AMENDED AND RESTATED PRIVATE PLACEMENT MEMORANDUM

# HAYWORTH TANGLEWOOD DST

\$76,767,365 of Delaware Statutory Trust Interests

Minimum Purchase: \$50,000

Hayworth Tanglewood, DST, a newly-formed Delaware statutory trust (the “**Trust**”) and affiliate of Varsity Invest, LLC, a Delaware limited liability company (“**Versity**” or the “**Sponsor**”), is hereby offering (the “**Offering**”) to sell to certain qualified, accredited investors (the “**Investors**”) pursuant to this Amended and Restated Private Placement Memorandum (as amended and supplemented from time to time and with all exhibits hereto, the “**Memorandum**”) 100% of the beneficial interests (the “**Interests**”) in the Trust. **You should read this Memorandum in its entirety before making an investment decision.**

The Trust is the owner of “The Hayworth,” a Class A, mid-rise, multi-family residential community located in the prestigious Tanglewood area of Houston at 1414 Wood Hollow Drive, Houston, Texas 77057 (the “**Property**”). The Property consists of a single parcel of land approximately 3.08 acres in size, upon which are situated one six-story apartment building built on top of a two-level parking garage, along with two three-story townhome buildings. The three buildings contain approximately 351,000 square feet of net rentable residential area across 246 units (the “**Units**”). Amenities include private balcony or patio area for all units, luxury swimming pool and social deck with cabanas and fire pit, outdoor grilling kitchen and terrace seating, indoor/outdoor social lounge with city views, resident business center and boardroom, private dining room, bike and storage room, pet washing and grooming station, craft and gift-wrapping room, access to private park with sand volleyball courts, tennis courts and picnic areas, and resident butler services including housekeeping and dog walking services. The gated, two-level parking garage contains 418 parking spaces, 11 of which are handicap accessible spaces. The townhome buildings contain an additional 20 attached garage spaces.

The Trust acquired the Property on June 30, 2022 for a purchase price of \$105,500,000 from TDC Tanglewood Real Estate Owner, L.L.C., a Delaware limited liability company not affiliated with the Sponsor (the “**Seller**”). The purchase price of the Property was funded, in part, with cash provided as a capital contribution from Hayworth Tanglewood IB, LLC, a Delaware limited liability company and an affiliate of the Sponsor (the “**Initial Beneficiary**”). The remaining portion of the purchase price was funded by a permanent loan secured by the Property in the principal amount of \$48,000,000 (the “**Loan**”) from TC Debt Opportunities, LLC, a Delaware limited liability company (the “**Lender**”). The Loan has a term of seven years, with a single one-year extension option. The availability of the extension option is subject to the Trust’s compliance with certain financial and other loan covenants and requires the payment of an extension fee in the amount of one percent (1.0%) of the outstanding principal balance of the Loan. The Trust has delegated to the Master Tenant the decision of whether or not to extend the term of the Loan. The interest rate on the Loan is fixed at 5.25% and the Loan Documents require monthly payments of interest only for the first four years of the Loan term, and monthly payments of principal and interest based on a 30-year amortization during years five through seven of the term of the Loan, along with the extension term if exercised. In addition to the fixed interest rate, the Loan requires the payment of a servicing fee of two basis points (0.02%) of the outstanding principal balance per year, paid monthly. Upon funding, an origination fee of one percent (1.0%) of the principal amount of the Loan was paid. Upon any repayment or prepayment, the terms of the Loan will require an exit fee of one half of one percent (0.50%) of the outstanding principal balance of the Loan. In addition to the exit fee, the terms of the Loan require a yield maintenance premium in connection with any prepayment of the Loan during the first four years of the Loan term, and a prepayment fee in connection with any prepayment of the Loan during year five of the Loan term, both as further described herein.

Concurrent with acquiring the Property, the Trust leased the Property to Hayworth Tanglewood LeaseCo, LLC, a newly formed Delaware limited liability company and affiliate of the Sponsor (the “**Master Tenant**”), pursuant to a master lease agreement (the “**Master Lease**”). The Master Tenant will sub-lease the Property to residential tenants (the “**Residents**”) who will occupy the Property pursuant to residential leases (such sub-leases, the “**Residential Leases**”). Upon acquiring the Property, the Master Tenant entered into a property management agreement (the “**Property Management Agreement**”) with Book and Ladder, LLC, a California limited liability company and affiliate of the Sponsor (the “**Property Manager**”), for the management of the Property. In addition, the Master Tenant entered into an asset management agreement (the “**Asset Management Agreement**”) with Varsity (in such capacity, the “**Asset Manager**”) to oversee, manage and provide direction to the Property Manager on behalf of the Master Tenant with respect to the operation and management of the Property.

The terms of the Trust are governed by the trust agreement of the Trust (the “**Trust Agreement**”). Hayworth Tanglewood ST, LLC, a Delaware limited liability company, serves as the signatory trustee of the Trust (in such capacity, the “**Signatory Trustee**”), and is responsible for the operation of the Trust. Prior to the sale of Interests to

Investors, the Initial Beneficiary and its affiliates will own 100% of the beneficial interests in the Trust and will be the beneficiaries of the Trust. If any Interests cannot be sold, the Initial Beneficiary and its affiliates will own the remaining Interests. For purposes of this Memorandum, whenever a reference is made to the Initial Beneficiary owning an Interest, this reference should also be construed as including the Initial Beneficiary's affiliates as referenced above. For purposes of this Memorandum, various fees have been calculated based on the sale of Interests in the amount of \$76,767,365 (the "**Maximum Offering Amount**").

**The Date of this Private Placement Memorandum is July 26, 2022**

## The Offering Terms

The minimum amount of Interests that a prospective Investor completing a tax-deferred exchange (a "**Section 1031 Exchange**") under Section 1031 ("**Section 1031**") of the Internal Revenue Code of 1986, as amended (the "**Code**"), may purchase is \$50,000, unless the Trust waives this minimum requirement. Unless otherwise indicated, all section references herein refer to the Code and the Treasury Regulations promulgated thereunder. The minimum amount of Interests that a prospective Investor making a cash investment without a Section 1031 Exchange may purchase is \$50,000, unless the Trust waives this minimum requirement. The Trust intends to continue the Offering until the earlier of the date on which all \$76,767,365 of the Interests offered hereby have been sold or the date that is 18 months from the date of this Memorandum, which date may be extended at the discretion of the Sponsor.

Acquisition of the Interests is designed for, but not limited to, prospective Investors seeking to defer the recognition of gain on the sale of other real property (the "**Relinquished Property**") under Section 1031. A Section 1031 Exchange generally allows the seller of investment and business property to defer federal and state capital gains taxation on the sale by exchanging the Relinquished Property for another property of like kind. 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 Investors for purposes of Section 1031. However, tax counsel to the Trust has provided a tax opinion which states that the acquisition of an Interest by an Investor should be treated as a direct acquisition of an interest in real property by an Investor for purposes of Section 1031. This opinion, however, is limited in scope and does not opine on all matters necessary for the prospective Investor's acquisition to qualify under Section 1031.

	<b>Cash Price to Purchasers</b>	<b>Selling Commissions and Expenses<sup>(1)</sup></b>	<b>Proceeds to Trust<sup>(2)</sup></b>
Minimum Purchase <sup>(3)</sup> .....	\$50,000	\$4,651	\$45,349
Maximum Offering Amount.....	\$76,767,365	\$7,140,000	\$69,627,365

- (1) Offers and sales of Interests will be made on a "best efforts" basis by WealthForge Securities, LLC, a Virginia limited liability company ("**WealthForge**"), a member of the Financial Industry Regulatory Authority, Inc. ("**FINRA**"), as the exclusive Managing Broker-Dealer for this Offering, and any other participating broker-dealers which are members of FINRA that WealthForge agrees to include (each, a "**Selling Group Member**" and collectively, the "**Selling Group Members**"). The WealthForge privacy policy is attached as Exhibit D. WealthForge will receive: (i) selling commissions ("**Selling Commissions**") equal to 6.0% of the gross equity proceeds of the Offering (the "**Offering Proceeds**"), which will either be paid to affiliates of WealthForge, including employees and contractors of the Sponsor, or reallocated to participating Selling Group Members, (ii) a dealer management fee ("**Dealer Management Fee**") equal to 0.65% of the Offering Proceeds, some of which may be reallocated to registered representatives affiliated with WealthForge, and (iii) a broker-dealer allowance ("**Broker-Dealer Allowance**") equal to 1.0% of the Offering Proceeds in connection with its due diligence review of the Offering and facilitating regulatory compliance, which will either be retained by WealthForge or re-allowed to the Selling Group Members. In addition, a wholesaling fee ("**Wholesaling Fee**") of 1.35% of the Offering Proceeds may be paid to wholesalers, including employees and contractors of the Sponsor. In addition, the Sponsor will be entitled to 0.30% of the Offering Proceeds as payment for organizational and offering expenses incurred in connection with the Offering (the "**O&O Expenses**"), including the costs of organizing the Trust, Signatory Trustee, Initial Beneficiary and Master Tenant, and marketing, legal, finance, accounting and printing fees and expenses. If the actual O&O Expenses are greater than 0.30% of the Offering Proceeds, the Sponsor will pay those costs and expenses. The total aggregate amount of commissions and expense reimbursements (collectively "**Selling Commissions and Expenses**") will not exceed 9.30%. The Trust reserves the right to pay reduced selling commissions and expenses or waive such sums with respect to Interests purchased by certain affiliates and other persons. The Selling Commissions and Expenses, as well as other costs associated with the Offering, will be paid by the Trust out of the Offering Proceeds. See "*Estimated Use of Proceeds*," "*Compensation of the Sponsor and its Affiliates*" and "*Plan of Distribution*."
- (2) The proceeds shown are after deducting the Selling Commissions and Expenses, but before deducting fees and expenses incurred in connection with the acquisition of the Property and the closing of the Loan, including those payable to the Sponsor and its affiliates. See "*Estimated Use of Proceeds*," "*Compensation of the Sponsor and its Affiliates*" and "*Plan of Distribution*."
- (3) The minimum amount of Interests that a prospective Investor may purchase is \$50,000 unless the Trust waives this minimum purchase requirement.

## **POTENTIAL INVESTORS SHOULD CAREFULLY CONSIDER THE FOLLOWING**

Each prospective Investor should consult with his, her, or its own tax advisor regarding an investment in the Interests and the qualification of his, her, or its transaction under Section 1031 for his, her, or its specific circumstances. Each prospective Investor's specific circumstances may differ and, as a result, no assurances can be given, and no legal opinion will be provided, that the purchase of the Interests by any prospective Investor will qualify as a Section 1031 Exchange.

An investment in Interests involves significant risk and is suitable only for Investors who have adequate financial means, desire a relatively long-term investment and who will not need immediate liquidity from their investment and can afford to lose their entire investment. The risks involved with an investment in Interests include, but are not limited to:

- The impact of the COVID-19 Pandemic.
- Investors have limited control over the Trust.
- The Trustees (as defined herein) have limited duties to Investors and limited authority.
- There are inherent risks with real estate investments.
- The Trust will depend on the Master Tenant for revenue and the Master Tenant will depend on the Residents under the Residential Leases, and any default by the Master Tenant or the Residents will adversely affect the Trust's operations.
- The costs of complying with environmental laws and other governmental laws and regulations may adversely affect the Trust.
- The Loan will reduce the funds available for distribution and increase the risk of loss.
- If the Trust is unable to sell or otherwise dispose of the Property before the maturity date of the Loan, it may be unable to repay the Loan and may have to cause a Transfer Distribution (as defined herein).
- The Loan Documents (as defined herein) contain various restrictive covenants, and if the Trust fails to satisfy or violates these covenants the Lender may declare the Loan in default.
- There is no public market for the Interests.
- The Interests are not registered with the Securities and Exchange Commission (the "SEC") or any state securities commissions.
- Investors may not realize a return on their investment for years, if at all.
- The Trust is not providing any prospective Investor with separate legal, accounting or business advice or representation.
- Various tax risks, including the risk that an acquisition of an Interest may not qualify as a Section 1031 Exchange.

Investors must read and carefully consider the discussion set forth below in the section captioned "*Risk Factors*," beginning on page 19 of this Memorandum.

The Interests have not been approved or disapproved by the SEC or the securities regulatory authority of any state, nor has the SEC or any securities regulatory authority of any state passed upon the accuracy or adequacy of this Memorandum. Any representation to the contrary is a criminal offense.

The Interests are being offered only to persons who are "accredited investors," as defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended (the "Securities Act") and any corresponding provisions of state securities laws.

The Interests have not been, and will not be, registered under the Securities Act or any state securities laws. 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. The Interests will not be offered or sold in any state in which such offers or sales are not qualified or otherwise exempt from registration. The Trust reserves the right to reject any offer to purchase the Interests. In addition, the Trust reserves the right to cancel any sale at any time prior to the receipt of funds for purchase, if that sale, in the opinion of the Trust and its counsel, may violate any federal or state securities law or regulation or is otherwise objectionable for whatever reason. The Interests will be subject to restrictions on transferability and resale and Investors 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. Investors must be prepared to bear the economic risk of an investment in the Interests for an indefinite period of time and be able to withstand a total loss of their investment.

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 Investors. Investors are encouraged to ask the Trust or the Sponsor questions concerning the terms and conditions of this Offering and the Property.

The Sponsor has prepared this Memorandum solely for the benefit of persons interested in acquiring Interests. The recipient of this Memorandum agrees to keep the contents of this Memorandum confidential and not to duplicate or furnish copies of this Memorandum to any person other than such recipient's advisors, and further agrees promptly to return this Memorandum to the Trust at the address below if: (1) the recipient decides not to purchase the Interests; (2) the recipient's purchase offer is rejected; or (3) the Offering is terminated prior to a purchase by the recipient.

This Memorandum contains summaries of certain agreements and other documents. Although the Sponsor believes these summaries are accurate, potential Investors should refer to the actual agreements and documents available in the Investor data room for more complete information about the rights, obligations and other matters in the agreements and documents. In addition, prospective Investors are strongly encouraged to have independent legal counsel closely review this Memorandum and all documents referenced herein and attached hereto, including, but not limited to, the Loan Documents (as defined herein).

The mailing address of the Trust is Hayworth Tanglewood DST, c/o Versity, 20 Enterprise, Suite 400, Aliso Viejo, California 92656, Attn: Investor Relations, email: [subscriptions@VersityInvest.com](mailto:subscriptions@VersityInvest.com).

#### **A WARNING ABOUT FORWARD-LOOKING STATEMENTS**

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

#### **MARKET DATA**

The market data and forecasts used in this Memorandum were obtained from independent industry sources as well as from research reports prepared for other purposes. Neither the Trust, the Sponsor, nor their affiliates have independently verified the data obtained from these sources and they cannot give any assurance 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.

## **LEGENDS**

### **NOTICE TO INVESTORS IN ALL U.S. STATES**

**IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THIS MEMORANDUM AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY UNITED STATES FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

**THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THE INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.**

### **ADDITIONAL NOTICE TO FLORIDA INVESTORS**

**IF SALES ARE MADE TO FIVE OR MORE PERSONS IN FLORIDA, AND YOU PURCHASE SECURITIES HEREUNDER, THEN YOU MAY VOID SUCH PURCHASE EITHER WITHIN THREE DAYS AFTER THE FIRST TENDER OF CONSIDERATION IS MADE BY YOU TO THE ISSUER, AN AGENT OF THE ISSUER, OR AN ESCROW AGENT OR WITHIN THREE DAYS AFTER THE AVAILABILITY OF THIS PRIVILEGE IS COMMUNICATED TO YOU, WHICHEVER OCCURS LATER.**

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## EXHIBITS

A	Form of Investor Questionnaire & Purchase Agreement
B	Opinion of Special Tax Counsel
C	Forecasted Statement of Cash Flows
D	Privacy Policy of WealthForge Securities, LLC

In an effort to minimize its environmental impact, the Sponsor is committed to implementing innovative and responsible environmental practices across the company. As part of its commitment, the Sponsor has made most of the additional information relating to the Offering available in an Investor data room, but paper copies are available upon request. To obtain them, please contact Investor Services at Hayworth Tanglewood DST, 20 Enterprise, Suite 400, Aliso Viejo, CA 92656. The following additional documents are available in the Investor data room:

- Appraisal
- Asset Management Agreement
- Deed
- Delaware Statutory Trust Agreement
- Demand Note
- Loan Term Sheet
- Loan Documents
- Master Lease Agreement
- Phase I Environmental Site Assessment
- Title Policy
- Property Condition Report
- Property Management Agreement
- Rent Roll
- Residential Lease (form)
- Survey
- Zoning Report

**THE DOCUMENTS THAT ARE AVAILABLE IN THE INVESTOR DATA ROOM ARE IMPORTANT FOR PURPOSES OF THE INVESTOR’S REVIEW. IF YOU ARE NOT ABLE TO ACCESS THE INVESTOR DATA ROOM, PLEASE CONTACT THE SPONSOR IMMEDIATELY.**

## SUMMARY OF THE OFFERING

The following summary provides selected information regarding the Trust, the Property, and this Offering. This summary should be read in conjunction with, and is qualified in its entirety by, the detailed information appearing elsewhere in this Memorandum, including the Exhibits hereto, and the documents available in the Investor data room. Each prospective Investor must carefully read the entire Memorandum before investing in the Interests.

### Terms of the Offering

The Trust is offering to Investors up to \$76,767,365 in Interests of the Trust. The minimum amount of Interests that a prospective Investor may purchase is \$50,000, unless the Trust waives this minimum requirement. The Offering is designed for, but is not limited to, Investors seeking to participate in a proposed Section 1031 Exchange. Because each prospective Investor's situation will be different, there can be no assurances that an Investor's purchase of Interests will qualify under Section 1031.

Prior to the sale of Interests to Investors, the Initial Beneficiary and its affiliates will own 100% of the beneficial interests in the Trust and will be the beneficiaries of the Trust. The proceeds of the Offering will be used, in part, to return to the Initial Beneficiary its capital contributions and to reduce the Interests held by the Initial Beneficiary, provided that, in all cases, if any Interests in the Trust cannot be sold, the Initial Beneficiary and its affiliates will own the remaining Interests.

The Trust intends to continue the Offering until the earlier of the date on which all \$76,767,365 of the Interests offered hereby have been sold or the date that is 18 months from the date of this Memorandum, which date may be extended at the discretion of the Sponsor.

### Business Objectives and Discussion

The principal objectives of the Trust are to: (1) lease the Property to the Master Tenant with the intent that the Master Tenant manage the Property to realize its maximum operating performance; (2) pay regular distributions to Investors out of net cash flow as described on Exhibit C, the Forecasted Statement of Cash Flows; (3) preserve the intrinsic value of the Property; and (4) complete a sale or other conveyance of the Property prior to the maturity date of the Loan that maximizes Investors' return of capital. NO ASSURANCE CAN BE GIVEN THAT THESE OBJECTIVES WILL BE ACHIEVED. Investors must read and carefully consider the discussion set forth below in the section captioned "*Risk Factors*," beginning on page 19 of this Memorandum.

The Signatory Trustee believes that an investment in the Trust offers the following benefits:

- **Prime Location** – The Property is located in the prestigious Tanglewood area of Houston with easy access to major employment centers, premier shopping, nightlife and entertainment, top-ranked schools and private and public parks and recreation venues.
- **Experienced Management** – Versity's management team has experience in all aspects of acquiring, financing, owning and managing multi-family residential properties. As of July 1, 2022, the management team of Versity was responsible for approximately 4,750 multi-family and student-housing units and over 10,000 beds.
- **Fixed Rate Loan** – The interest rate on the Loan is fixed at 5.25%. The Loan has a term of seven years, with a single, one-year extension option. The Loan requires monthly, interest-only payments for the first four years of the Loan term. For years five through seven of the Loan term, along with any extension term, the Trust will be required to make monthly payments of principal and interest, with principal amortizing on a 30-year schedule. For

purposes of determining liabilities assumed with respect to the Property in connection with an Investor's Section 1031 Exchange (as defined herein), each Investor will be allocated a pro rata percentage of the Loan (approximately \$31,263 of Loan balance per \$50,000 Interest). See "*Financing Terms*."

- **Master Lease Structure** – The Master Lease structure will allow the Master Tenant, an affiliate of the Sponsor, to operate the Property on behalf of the Trust and to enable actions to be taken with respect to the Property that the Trust would be unable to take due to tax law-related restrictions, including, but not limited to, a restriction against re-leasing the Property. See "*Summary of the Master and Residential Leases – Master Lease*."

#### **The Property – Description**

The Property is a Class A, mid-rise, multi-family community located in the prestigious Tanglewood area of Houston at 1414 Wood Hollow Drive, Houston, Texas 77057 known as "The Hayworth." The Property consists of a single parcel of land approximately 3.08 acres in size, upon which are situated one six-story apartment building built on top of a two-level parking garage, along with two three-story townhome buildings. The three buildings contain approximately 351,000 square feet of net rentable residential area across 246 Units. Amenities include private balcony or patio area for all units, luxury swimming pool and social deck with fire pit, outdoor grilling kitchen and terrace seating, indoor/outdoor social lounge with city views, resident business center and boardroom, private dining room, bike and storage room, pet washing and grooming station, craft and gift-wrapping room, access to private park with sand volleyball courts, tennis courts and picnic areas, and resident butler services including housekeeping and dog walking services. The gated, two-level parking garage contains 418 parking spaces, 11 of which are handicap accessible spaces. The townhome buildings contain an additional 20 attached garage spaces. As of June 27, 2022, the Property was approximately 92% occupied by Residents. See "*The Property*" for more information regarding the Property.

#### **The Property – Acquisition**

The Trust acquired the Property from the Seller on June 30, 2022, for a purchase price of \$105,500,000. The purchase price of the Property was funded, in part, with cash provided as a capital contribution from the Initial Beneficiary. The remaining portion of the purchase price was funded with the proceeds of the Loan.

#### **Financing Terms**

The Trust obtained the Loan from the Lender, secured by the Property, in the principal amount of \$48,000,000. The Loan is evidenced by a loan agreement (the "**Loan Agreement**") and promissory notes (collective, the "**Note**") and is secured by a first priority mortgage recorded against the Property (the "**Mortgage**"), and an assignment of the leases and rents (the "**Assignment of Leases and Rents**" and, collectively with the Loan Agreement, Note, Mortgage and all related documents, the "**Loan Documents**").

The Loan has a term of seven years, with a single one-year extension option. The availability of the extension option is subject to the Trust's compliance with certain financial and other loan covenants and requires the payment of an extension fee in the amount of one percent (1.0%) of the outstanding principal balance of the Loan. The Trust has delegated to the Master Tenant the decision of whether or not to extend the term of the Loan. The interest rate on the Loan is fixed at 5.25% and the Loan Documents require monthly payments of interest only for the first four years of the Loan term, and monthly payments of principal and interest based on a 30-year amortization during years five through seven of the term of the Loan, along with the extension term if exercised. In addition to the fixed interest rate, the Loan requires the payment of a servicing fee of two basis points (0.02%) of the outstanding principal balance per year, paid monthly. Upon funding, an origination fee of one percent (1.0%) of the principal amount of the Loan was paid. Upon any



repayment or prepayment, the terms of the Loan will require an exit fee of one half of one percent (0.50%) of the outstanding principal balance of the Loan.

In addition to the exit fee, the terms of the Loan require a yield maintenance premium in connection with any prepayment of the Loan during the first four years of the Loan term, and a prepayment fee in connection with any prepayment of the Loan during year five of the Loan term. For any prepayment prior to the end of the fourth year of the term of the Loan, a yield maintenance premium equal to the greater of one percent (1.0%) of the Loan amount and amount of interest that that would accrue on the Loan through the end of such four-year period if the Loan was not prepaid will be required. Thereafter, any Loan prepayment will require a prepayment fee equal to one percent (1.0%) of the outstanding principal balance of the Loan for a prepayment during year five. Thereafter, the Loan may be prepaid at any time without payment of a yield maintenance premium or a prepayment fee. Any prepayment of the Loan must be in full and not in part.

The Loan is nonrecourse to Investors. Accordingly, Investors will have no personal liability in connection with the Loan. However, upon an uncured event of default under the Loan, the Lender will have the right to foreclose on the Property. If this were to occur, Investors would likely lose part of their investment and may lose their entire investment in the Trust.

For purposes of determining liabilities assumed with respect to the Property in connection with an Investor's Section 1031 Exchange, each Investor will be allocated a pro rata percentage of the Loan (approximately \$31,263 of Loan balance per \$50,000 Interest).

See "*Financing Terms*" and "*Risk Factors – Risks Related to the Anticipated Financing*" for additional details regarding the Loan.

## **Bridge Equity**

In order to close the acquisition of the Property prior to sufficient Interests being sold to raise the minimum required closing equity, a wholly-owned subsidiary of the Sponsor, Versity EquityCo II, LLC, a Delaware limited liability company ("**EquityCo**"), contributed \$50,089,148.27 of capital to the Trust (the "**Bridge Equity**") through Hayworth Tanglewood IB, LLC, a Delaware limited liability company and the initial beneficiary of the Trust (the "**Initial Beneficiary**"), which capital was used to close the acquisition.

To obtain the Bridge Equity to contribute to the Trust, EquityCo borrowed funds (the "**Bridge Equity Loan**") from a bridge equity lender (the "**Bridge Equity Lender**") through a revolving back-end credit facility (the "**Bridge Credit Facility**"). EquityCo contributed the capital borrowed from the Bridge Equity Lender to the Initial Beneficiary, which in turn contributed the capital to the Trust to fund the acquisition of the Property. The Trust will pay certain fees and interest (currently estimated to total approximately \$1,110,716) to EquityCo for the contribution of the Bridge Equity. Some of these fees may be used to repay the Bridge Equity Loan and some of these fees may be used to reimburse the Sponsor or its affiliates for costs associated with obtaining the Bridge Equity Loan.

Upon the sale of Interests in the Trust, the net proceeds (gross proceeds less commissions and fees paid to broker-dealers and their representatives) will be used to return capital provided by EquityCo plus an amount equal to all fees and interest paid by EquityCo and the Sponsor to obtain the Bridge Equity Loan. Subject to limited exceptions, only after the Bridge Equity is returned to EquityCo, together with fees and interest incurred by EquityCo and the Sponsor to obtain the Bridge Equity Loan, will net proceeds from the sale of Interests be used to establish the Reserve Accounts (as defined below) and pay the fees and other expense items that were not established or paid at the closing of the acquisition of the Property,

including fees and commissions due to the Sponsor and its affiliates. In the event of a default under the Bridge Credit Facility, including a default in connection with a loan unrelated to the Property, the Bridge Credit Lender may require that net proceeds from the sale of Interests be used to pay amounts due under the Bridge Credit Facility unrelated to the Property.

The diagram on page 13 shows the indirect interest in the Trust held by EquityCo, which is the owner of the Initial Beneficiary, which in turn is the owner of all unsold Interests in the Trust. When Interests are sold, net proceeds will be distributed to EquityCo until its entire investment of capital is returned, together with an amount equal to the fees and interest paid by EquityCo and the Sponsor to obtain the Bridge Equity Loan. EquityCo will use the distribution of net proceeds from the sale of Interests to repay the Bridge Equity Loan and other amounts due under the Bridge Credit Facility.

## **Master Lease**

Concurrent with acquiring the Property, the Trust entered into the Master Lease with the Master Tenant for use of the entire Property. In addition, the existing Residential Leases were assigned to the Master Tenant. The Master Lease is available in the Investor data room.

The initial term of the Master Lease is seven years and three months, unless terminated earlier in accordance with the terms of the Master Lease. Provided that the Master Tenant is not in default under the Master Lease, the term will be automatically renewed for three additional five-year terms. The term of the Master Lease will automatically terminate upon the sale of the Property. However, as long as any obligation remains outstanding under any of the Loan Documents, the term of the Master Lease will automatically extend and continue in full force until all such obligations have been fully performed and satisfied.

Under the Master Lease the Master Tenant is responsible for the operation, repair, maintenance and management obligations of the Property. The Trust is financially responsible for all capital expenses at the Property, which means any and all costs and expenses incurred in connection with major repairs, replacements, and improvements relating to the structural elements of the Property which would be capitalized under generally accepted accounting principles, including, but not limited to (i) the replacement of roofs, chimneys, gutters, downspouts, paving, curbs, ramps, driveways, balconies, porches, patios, foundations, exterior walls and all load bearing walls, exterior doors and doorways, windows, elevators, fences and gates, and (ii) exterior painting (the “**Capital Expenses**”). The Trust is not otherwise required to provide any services, facilities, repairs or alterations to the Property. For so long as the Trust is a Delaware statutory trust (“**DST**”), the Trust will not have the right, power or ability to make more than minor, non-structural modifications to the Property. See “*Summary of the Master and Residential Leases – Master Lease.*”

## **Rent under the Master Lease**

The rent payable under the Master Lease consists of: (1) the anticipated amount of the annual debt service due to the Lender pursuant to the terms of the Loan Documents other than, for the avoidance of doubt, any balloon payments of principal on the Loan (collectively, the “**Base Rent**”); (2) additional rent as stated in the Master Lease (the “**Stated Rent**”); provided, however, that if Impositions (defined below) and insurance costs increase beyond the levels projected by the Trust and disclosed to the Master Tenant prior to the date of the Master Lease, then Stated Rent will be decreased by the amount of such unprojected increases; and (3) bonus rent in an amount equal to 50% of the amount by which the Total Operating Income (as defined in the Master Lease) generated by the Property for an applicable 12-month period exceeds the Annual Bonus Rent Threshold (as set forth in the Master Lease) for that period (the “**Bonus Rent**” and, collectively with the Base Rent and the Stated Rent, the “**Rent**”). See “*Risk*

*Factors – Risks Related to the Master Lease and the Management of the Property – Actual results may differ from those forecasted in this Memorandum.”*

The Trust Reserve (as defined below) may be used to pay distributions to Investors, although there is no requirement that it be used for such purpose. The estimated distributions to Investors shown on the Forecasted Statement of Cash Flows attached as Exhibit C do not include the application of funds from the Trust Reserve. Under the Master Lease, the Master Tenant will earn 50% of the amount Total Operating Income for the Property exceeds the Annual Bonus Rent Threshold for the applicable 12-month period. See “*Risk Factors – Risks Related to the Master Lease and the Management of the Property – Actual results may differ from those forecasted in this Memorandum.*”

The Master Tenant is required to pay the Base Rent to the Lender in accordance with the terms of the Loan Documents. Stated Rent will be paid to the Trust on a monthly basis. Estimated monthly payments of Bonus Rent will initially be paid based upon projected annual Bonus Rent. On or before October 31<sup>st</sup> of each year, actual Bonus Rent for the 12-month period ending on or about the prior July 31<sup>st</sup> will be calculated and if insufficient estimated Bonus Rent payments were made by the Master Tenant for such period, then the Master Tenant will pay the Trust the amount of the deficiency, and if estimated Bonus Rent payments exceeded actual Bonus Rent for such period, then the Master Tenant will receive a credit in the amount of the excess against future Stated and/or Bonus Rent payments.

Before distribution of Stated Rent to Investors, the Trust will incur fees of the Trustees, bank fees, legal fees, tax return preparation charges and other expenses currently estimated to be \$5,000 per year. The following table sets forth the schedule of Rent for the initial term of the Master Lease. See “*Summary of the Master and Residential Leases – Master Lease – Rent.*”

#### **Rent Amounts Pursuant to the Master Lease**

<b><u>Lease Year</u></b>	<b><u>Base Rent</u></b>	<b><u>Annual Gross Stated Rent*</u></b>	<b><u>Annual Bonus Rent Threshold**</u></b>	<b><u>Projected Annual Bonus Rent**</u></b>
Lease Year 1	The “Annual Note Payments”	\$3,070,695	\$9,142,896	\$38,335
Lease Year 2	The “Annual Note Payments”	\$3,070,695	\$9,794,557	\$58,983
Lease Year 3	The “Annual Note Payments”	\$3,070,695	\$9,965,763	\$166,743
Lease Year 4	The “Annual Note Payments”	\$3,070,695	\$10,136,825	\$235,701
Lease Year 5	The “Annual Note Payments”	\$2,878,776	\$10,739,043	\$93,715
Lease Year 6	The “Annual Note Payments”	\$2,303,021	\$10,259,506	\$497,381
Lease Year 7	The “Annual Note Payments”	\$2,303,021	\$10,357,769	\$617,063

\* Before distribution of Stated Rent, the Master Tenant will be permitted, in its discretion, to charge the Trust for Delaware trustee fees, bank fees, legal fees, tax return preparation charges and other expenses incurred by the Master Tenant currently estimated to be \$5,000 per year.

\*\* Annual Bonus Rent is an amount equal to 50% of the amount by which Total Operating Income generated by the Property for the applicable 12-month period exceeds the Annual Bonus Rent Threshold for such period. Total Operating Income is an amount equal to the sum of all rent and other income generated by the Property to the extent actually collected by the Master Tenant.

#### **Additional Fees under the Master Lease**

If the Springing LLC (as defined below) refinances the Property in connection with a Transfer Distribution (as defined below), the Master Tenant, or an affiliate thereof, will receive from the Trust a fee equal to one percent (1.0%) of the principal amount of the new loan, plus reimbursement of any out-of-pocket expenses incurred by the Asset Manager in connection with the refinancing,

including but not limited to: expenses incurred in connection with third-party reports; legal fees; application fees; and mortgage brokerage fees to mortgage brokers. See “*Summary of the Offering – the Trust and the Trust Agreement.*”

Upon the sale of the Property, the Master Tenant, or an affiliate thereof, will be entitled to receive a disposition fee equal to market real estate sales commission rates at the time of sale (the “**Disposition Fee**”). Any sales commissions due to third-party brokers shall not be paid from this amount. The Master Tenant or its affiliate will not be entitled to any Disposition Fee in the event that the gross sales price of the Property, reduced by any amounts used or incurred by the Trust to pay off or cause the buyer to assume the debt on the Property, is less than the Maximum Offering Amount.

The Master Tenant will also receive a design and construction management fee for its services in supervising any future renovations to the Property equal to 5.0% of construction costs up to \$25,000, 4.0% of construction costs over \$25,000 but less than \$50,000 or 3.0% of construction costs over \$50,000.

**Financial Services  
Costs**

The Master Tenant will reimburse the Sponsor from revenue generated by the Property for costs associated with accounting, tax preparation, preparation of monthly financials and banking statements, quarterly reports, deliverables to Lender and compliance with Loan covenants.

**Master Tenant  
Capitalization**

The Master Tenant is a newly formed Delaware limited liability company wholly-owned by the Sponsor. The Master Tenant has been capitalized by Versity through a demand note to the Master Tenant in the amount of \$375,000 (the “**Demand Note**”). A copy of the Demand Note is available in the Investor data room.

**The Asset Management  
Agreement and Fees**

The Master Tenant entered into an Asset Management Agreement with the Sponsor which will also act as the Asset Manager. The Asset Management Agreement will remain in effect and automatically renew for successive one-year periods until otherwise terminated.

In its capacity as an asset manager, the Asset Manager is responsible for managing the Trust’s day-to-day operations, including, but not limited to: reviewing all performance and financial information related to the Property; conducting relations with, and supervising services performed by, lenders, consultants, accountants, brokers, third-party asset managers, attorneys, underwriters, appraisers, insurers, corporate fiduciaries, banks, builders and developers, sellers and buyers of assets, among others; providing loan payment services in connection with the Loan; preparing financial reports for the Lender; managing the Reserve Accounts (as defined below); providing bookkeeping and accounting services and maintaining the Trust’s books and records; administering monthly cash distributions; communicating with investors, brokers, dealers, financial advisors and custodians; and undertaking and performing all services or other activities necessary and proper to carry out the Trust’s investment objectives, including providing secretarial, clerical and administrative assistance for the Trust. If the Trust requests any additional services not specified in the Asset Management Agreement, the Asset Manager may agree to provide the requested services upon terms that are mutually agreeable to the Trust and the Asset Manager.

The Asset Management Agreement may be terminated by either party upon ten days prior written notice to the other party in the event of a material breach by the other party. The Master Tenant may immediately terminate the Asset Management Agreement (i) in the event of gross negligence or willful misconduct in the discharge of the Asset Manager’s duties under the agreement, or (ii) if a petition in bankruptcy is filed by or against the Asset Manager or if the Asset Manager makes an assignment for the benefit of creditors or takes advantage of any insolvency

statute or proceeding. The Master Tenant may also terminate the Asset Management Agreement, for any reason whatsoever, upon thirty days prior written notice in its sole and absolute discretion.

The Master Tenant will pay the Asset Manager an asset management fee, as provided in the Asset Management Agreement, on a monthly basis in an amount equal to one percent (1.0%) of the gross revenue received by the Master Tenant for use and occupancy of the Property.

The Asset Manager may decide, in its sole discretion, to be paid an amount less than the total amounts to which it is entitled under the Asset Management Agreement, and any excess amount that is not paid may, in the Asset Manager's sole discretion, be waived permanently or, as applicable, deferred or accrued, without interest, to be paid at a later point in time.

The compensation arrangements described above, and in more detail throughout this Memorandum, are not the result of arm's-length negotiations. The Asset Management Agreement is available in the Investor data room. See "*Risk Factors – Risks Related to the Master Lease and the Management of the Property*," "*Management*," "*Compensation of the Sponsor and its Affiliates*" and "*Conflicts of Interest*" for additional discussion.

#### **The Property Management Agreement and Fees**

The Master Tenant entered into the Property Management Agreement with the Property Manager for the management of the Property. The Property Manager is an affiliate of the Sponsor.

Pursuant to the Property Management Agreement, the Property Manager is responsible for managing, operating and maintaining the Property, which includes, among other things: collecting all rents and assessments from the Property; paying all expenses of the Property from a custodial account established for the Property; preparing an annual budget; hiring and supervising employees, including, but not limited to managers, assistant managers, leasing consultants, engineers, janitors and maintenance supervisors; rendering reports for the Property; making or causing to be made all ordinary or emergency repairs and replacements necessary to preserve the Property; leasing the Property; and overseeing construction management, upon request. If the Master Tenant requests any additional services not specified in the Property Management Agreement, the Property Manager may agree to provide the requested services upon mutually agreeable terms.

The Property Management Agreement has an initial term of one year and will automatically renew for successive one-year periods thereafter unless either party provides notice of non-renewal at least 60 days prior to the end of the then-current term. The Property Management Agreement is terminable: (1) by either party immediately upon the occurrence of any of the following events: (a) the other party breaches its obligations under the Property Management Agreement and the breach has not been cured within 30 days after receipt of notice from the non-breaching party; (b) the other party files bankruptcy, makes an assignment for the benefit of its creditors, seeks relief under any debtor relief law, or has a receiver appointed over its assets or affairs; (c) a material portion of the Property is destroyed by casualty; or (d) a material portion of the Property is condemned; (2) by the Master Tenant if the Property Manager or any of its officers, employees or agents misappropriates funds or is guilty of gross negligence, willful misconduct, fraud, malfeasance or a breach of fiduciary duty; (3) by the Master Tenant in the event the Property is sold to a third party, provided that if such termination occurs within the initial twelve months of the term, the Master Tenant shall pay the Property Manager a termination fee equal to two months of the estimated management fee; (4) by the Master Tenant without cause upon 30 days' prior written notice, provided that the Master Tenant shall pay the Property Manager a termination fee as set forth in the

Property Management Agreement; (5) by the Property Manager in the event the Master Tenant breaches certain monetary obligations and the breach has not been cured within 10 business days after receipt of notice from the Property Manager; or (6) by the Property Manager without cause upon 60 days' prior written notice.

The Property Management Agreement provides that the Property Manager is entitled to a monthly management fee of two and one-half percent (2.50%) of the gross revenues from the Property for the month for which the payment is made. Additionally, the Property Manager is entitled to be reimbursed for all expenses paid or incurred by the Property Manager under the Property Management Agreement, including all expenses and the costs of salaries and benefits of persons employed by the Property Manager or its affiliates and performing services for the Property.

The compensation arrangements described above, and in more detail throughout this Memorandum, are not the result of arm's-length negotiations. The Property Management Agreement is available in the Investor data room. See "Management," "Risk Factors – Risks Related to the Master Lease and the Management of the Property," "Management," "Compensation of the Sponsor and its Affiliates" and "Conflicts of Interest" for additional discussion.

## **Reserve Accounts**

To make funds available for Capital Expenses and unanticipated costs in relation to the Property, the Trust and the Master Tenant will establish Trust and operating reserve accounts. The Trust reserve is an expense reserve to be funded from the proceeds of the Loan and the Offering in the amount of \$4,969,148 (the "**Trust Reserve**"). The Trust Reserve includes amounts required by the Lender to be deposited into reserve accounts at the time the Loan is funded. The Trust Reserve may also be used to pay distributions to Investors, although there is no requirement that it be used for such purpose. The Trust Reserve will belong to the Trust and any funds remaining in the Trust Reserve when the Property is sold will be distributed to Investors pro rata in accordance with their Interests.

The Loan Documents require monthly deposits into escrow for (i) replacement reserves of \$5,125 per Unit per month, which amount is equal to \$250 per Unit per year, and (ii) taxes and insurance premiums (the "**Operating Reserves**" and together with the Trust Reserve, the "**Reserve Accounts**"). Deposits into the Operating Reserve will be made by and belong to the Master Tenant, and any funds remaining in the Operating Reserves when the Loan is repaid will be returned to the Master Tenant. See "Summary of the Master and Residential Leases – Master Lease – Reserve Accounts" and "Risk Factors – The Reserve Accounts may not be sufficient to cover the Property's costs and the Master Tenant may not be able to cover any excess costs."

## **The Trust and the Trust Agreement**

The Trust is governed by the trust agreement, which sets forth the rights and duties of the Investors and Trustees with respect to the Property. Sorenson Entity Services LLC, a Delaware limited liability company, will serve as the Delaware trustee of the Trust (the "**Delaware Trustee**"), and Hayworth Tanglewood ST, LLC, a Delaware limited liability company and an affiliate of the Sponsor, will serve as the Signatory Trustee. The Delaware Trustee and Signatory Trustee are collectively referred to herein as the "**Trustees**." The Signatory Trustee has the power and authority to manage the activities and affairs of the Trust and has the power to determine when it is appropriate to sell, convey or otherwise dispose of the Property, including by means of a 721 UPREIT transaction. The form of Trust Agreement is available in the Investor data room.

In connection with each Investor's purchase of Interests, the Investor will be required to enter into the Trust Agreement and the Trust will convey the Interests to each Investor. However, pursuant to the Trust Agreement, which was designed

to meet the parameters of Revenue Ruling 2004-86, 2004-33 I.R.B. 191, issued by the IRS, Investors who own the Interests in the Trust are not permitted to have any voting rights with respect to the operation and ownership of the Property.

Under the Trust Agreement, if: (1) the Trust Property (as defined in the Trust Agreement) is in jeopardy of being foreclosed upon due to a default on the Loan; (2) the Trust Property is subject to a casualty, condemnation or similar event, that is not adequately compensated for through insurance or otherwise sufficient to permit restoration of the Trust Property to the same condition as previously existed; or (3) the Signatory Trustee determines that the Investors are at risk of losing all or a substantial portion of their investment in the Interests, and the Signatory Trustee is prohibited from taking actions to cure or mitigate such events because such action would “vary the investment” of the Investors, the Signatory Trustee may terminate the Trust by converting it into a limited liability company (the “**Springing LLC**”). If the Trust is converted to the Springing LLC (such conversion referred to herein as a “**Transfer Distribution**”): (a) the Investors would become members of the Springing LLC, owning an interest in the Springing LLC in proportion to their Interests in the Trust; (b) the Signatory Trustee would become the manager of the Springing LLC; and (c) the Trust Property would remain subject to the terms of the Loan Documents and the Master Lease. As a result of any of the foregoing transactions, actions could be taken to conserve and protect the Property that could not have been taken otherwise.

See “*Summary of the Trust Agreement.*”

## **Exit Strategies**

The anticipated holding period of the Property is approximately seven years, subject to adjustment based on market conditions. Any sale of the Property with an assumption of the Loan would be subject to Lender approval. As one alternative, the Signatory Trustee may elect to facilitate an exchange transaction pursuant to Section 721 of the Code (a “**721 UPREIT Exchange**”), wherein the Signatory Trustee would provide Investors with the option of (i) exchanging their Interests for an equivalent value of operating partnership units of a real estate investment trust (which real estate investment trust may be affiliated with the Sponsor), or (ii) receiving a cash buy-out of their Interests at fair market value. The fair market value of the Interests at the time of the 721 UPREIT Exchange would be determined by an independent third-party appraisal obtained by the Signatory Trustee. Investors who elect to receive a cash buy-out of their Interests will be free to (a) structure a Section 1031 Exchange (to the extent permitted by applicable law at that time and provided that they comply with all Section 1031 Exchange requirements), or (b) cash out on a taxable basis. Investors will not be entitled to approve a sale or other disposition of the Property, including a 721 UPREIT Exchange. However, before the Signatory Trustee directs the Trust to enter into a binding contract to sell or convey the Property or to facilitate a 721 UPREIT Exchange, the Signatory Trustee will canvass Investors regarding their views of the potential transaction. The Signatory Trustee will consider the Investors’ views and opinions in good faith but will not be bound by these views and opinions, and the decision to sell or otherwise convey the Property, including pursuant to a 721 UPREIT Exchange, will rest solely with the Signatory Trustee. See “*Risk Factors – Risks Related to the Delaware Statutory Trust Structure – There are tax risks associated with a sale or other disposition of the Property.*”

## **Investor Suitability**

Investing 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 and who can afford to lose their entire investment. The Trust will only accept a subscription from an “accredited investor,” as defined in Regulation D under the Securities Act. Each Investor (and any subsequent transferee) must also represent that either:

- (a) The Interests are not being purchased by or on behalf of Benefit Plan Investors (as defined below); or
- (b) The Interests are being purchased by or on behalf of (1) an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), whether or not it is subject to Title I of ERISA, (2) a plan described in Code Section 4975 (including but not limited to an individual retirement account or a Keogh plan), or (3) an entity whose underlying assets include “plan assets” as defined in Department of Labor Regulation Section 2510.3-101 (the “**Plan Asset Rules**”) by reason of a plan’s investment in such entity (including but not limited to an insurance company general account) (all such investors, “**Benefit Plan Investors**”). Additionally, all or part of the assets to be used to purchase the Interests constitute assets of one or more Benefit Plan Investors. The Trust will attempt to limit overall investment by Benefit Plan Investors in the Interests to less than 25% (not including Interests held by the Sponsor in the overall amount).

#### **Purchase of an Interest**

To purchase an Interest, a prospective Investor must deliver to the Trust an executed copy of a complete and accurate Investor Questionnaire and Purchase Agreement (the “**Investor Questionnaire & Purchase Agreement**”), the form of which is attached hereto as Exhibit A. A prospective Investor may be accepted or rejected by the Trust at any time and for any reason after delivering the Investor Questionnaire & Purchase Agreement. If rejected, a prospective Investor’s funds will be returned to the prospective Investor or his, her, or its qualified intermediary. See “*The Offering – How to Purchase the Interests*” for a more detailed discussion of the steps required to purchase Interests.

#### **Sale or Transfer of Interests**

The Interests are being offered and sold pursuant to exemptions from the registration provisions of federal and state law. Accordingly, the Interests are subject to restrictions on transfer. In addition, no proposed assignment, pledge, encumbrance, or transfer of an Interest (or any portion thereof) is effective or binding at law, or in equity upon the Trust or the Trustees without the prior written consent of the Signatory Trustee. The Signatory Trustee’s consent to each proposed interest transfer is subject to the satisfaction of the following as determined by the Signatory Trustee in its sole discretion: (a) the proposed transfer’s compliance with all applicable securities laws, (b) the proposed transfer’s compliance with all transfer restrictions and requirements stated in the Loan Documents, including that the transfer does not constitute an event of default under the Loan Documents, (c) a determination that the proposed transfer would not result in the Trust having to register as an investment advisor or require the Trust or any Trustee to register as an investment advisor under the Investment Company Act of 1940, (d) determination that the proposed transfer would not cause the Trust Property to become “plan assets” (as defined in the Trust Agreement), (e) the execution by the proposed transferor and transferee(s) of documents to effectuate the transfer that are satisfactory to the Signatory Trustee, and (f) the payment of all expenses related to the proposed transfer by the transferor.

The Trust Agreement and Loan Documents contain additional restrictions on transfer. See “*Summary of the Trust Agreement – Restrictions on Transfer of Interests*” and “*Financing Terms*.” If an Investor is able to sell his, her, or its Interests, the Investor and his, her, or its purchaser(s) will bear the costs, if any, of the sale or transfer.

#### **Tax Considerations**

In connection with the Offering, the Trust obtained a legal opinion from its special tax counsel, Irvine Venture Law Firm, LLP (“**Special Tax Counsel**”), which states that:

- the Trust should be treated as an “investment trust” described in Treasury Regulation Section 301.7701-4(c)



- the Trust should be classified as a “trust” under Treasury Regulation Section 301.7701-4(a);
- the Investors, as beneficial owners in the Trust (the “**Beneficial Owners**”), should be treated as “grantors” of the Trust; as “grantors,” the Beneficial Owners should be treated as owning an undivided fractional interest in the Property for federal income tax purposes;
- the Interests should not be treated as securities for purposes of Section 1031;
- the Master Lease should be treated as a true lease and not a financing for federal income tax purposes;
- the Master Lease should be treated as a true lease and not deemed a partnership for federal income tax purposes; and
- the discussions of the federal income tax consequences contained in this Memorandum are correct in all material respects.

The tax opinion is included as Exhibit B to this Memorandum.

The opinion of Special Tax Counsel is limited only to the issues listed above and does not cover all issues that may arise with respect to particular Investors. Each Investor should seek advice, based on his, her, or its particular circumstances, from an independent tax advisor.

Each Beneficial Owner must report his, her, or its allocable 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 prospective Investor must consult with his, her, or its tax advisor concerning the identification requirements under Section 1031 and other requirements for successfully completing a qualifying Section 1031 Exchange.

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

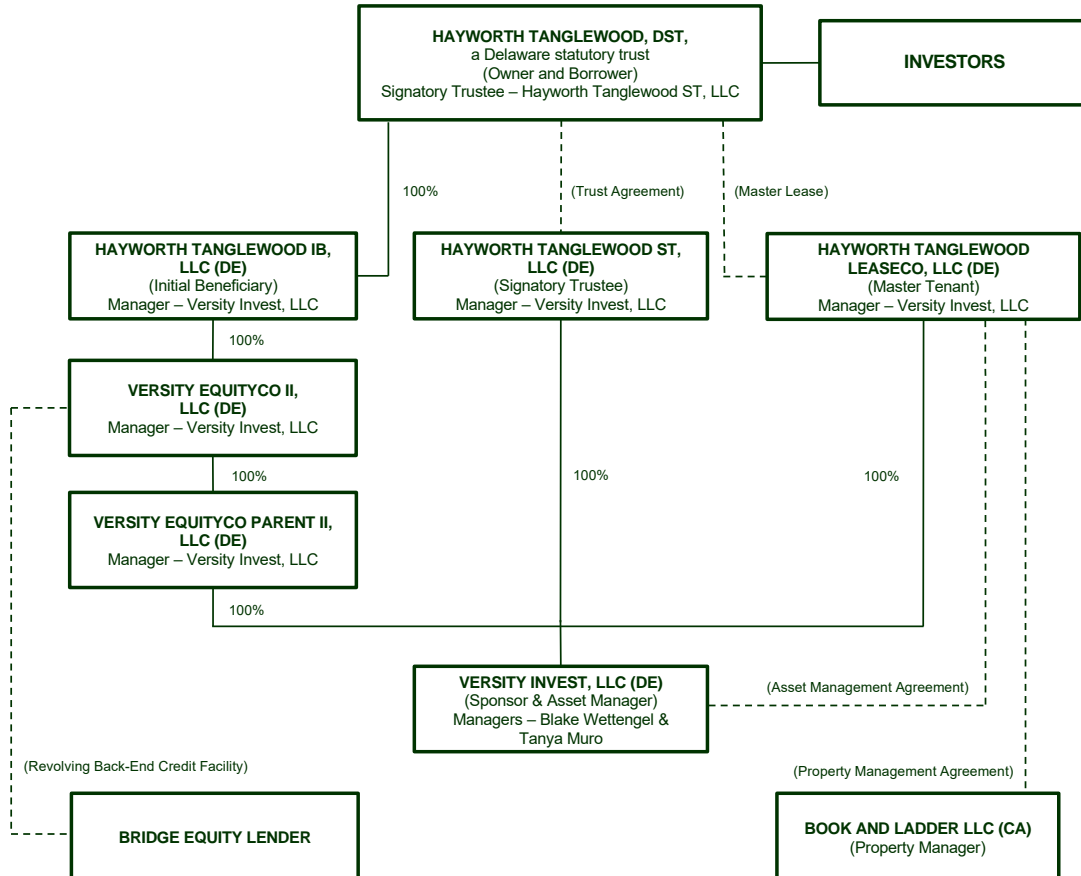
**There are risks associated with the federal taxation of the purchase of an Interest, particularly where the purchase is intended to be part of a Section 1031 Exchange. Accordingly, all prospective Investors must consult their own independent legal, tax, accounting, and financial advisors and must represent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

### **Limitation of Offering**

This Offering is being made in reliance on Rule 506(b) of Regulation D promulgated under the Securities Act as well as state securities laws exemptions. Accordingly, distribution of this Memorandum has been strictly limited to persons satisfying the Investor suitability requirements described herein, and this Memorandum does not constitute an offer to sell or a solicitation of an offer to buy with respect to any person not satisfying those requirements.

Interests may be purchased using assets of various benefit plans, including employee benefit plans subject to Title I of ERISA, retirement plans subject to Section 4975 of the Code, such as plans intended to qualify under Code Section 401(a) (including plans covering only self-employed individuals) and individual retirement accounts (collectively “**Plans**”). Neither the Trust nor the trustees of the Trust make any representation with respect to whether Interests are a suitable investment for any such Plan. Additionally, the Sponsor and the Signatory Trustee will limit the availability of Interests for purchase by or transfer to such Plans to less than 25% of all interests to prevent the assets of the Trust from characterization as “plan assets” (as defined in 29 Code of Federal Regulations § 2510.3-101) subject to the fiduciary standards of Part 4 of Subtitle B of Title I of ERISA and Code Section 4975.

A diagram summarizing the ongoing relationship among the Trust, the Sponsor, the Lender, the Asset Manager, the Bridge Equity Lender and other parties involved in the transactions discussed herein is set forth below.



## FREQUENTLY ASKED QUESTIONS

### What is Versity Invest, LLC?

In 2018, the principals of Versity helped form NB Private Capital, LLC, a Delaware limited liability company (“NBPC”) to provide replacement properties for investors wishing to complete a tax-deferred exchange under Section 1031. In October 2020, NBPC’s name was changed to Versity Investments, LLC (“**Versity Investments**”). Then, in March 2022, Versity Investments was replaced as the sponsor by the new entity Versity Invest, LLC (“**Versity**”). Versity focuses on acquiring and operating multi-family and student-housing real estate investments. The programs sponsored by Versity offer securities to “accredited investors” on a private placement basis. Prior to forming Versity, its principals have sponsored over 50 private placement programs, which have offered over \$1 billion in equity to over 3,000 investors. The portfolio currently managed by the Versity team includes 35 student and multi-family housing facilities throughout the United States with approximately 4,750 units and over 10,000 beds.

### What competitive advantages does Versity have?

Versity, headquartered in Aliso Viejo, California, is the continuation of one of the nation’s largest real estate businesses focused on student and multi-family housing.

Expertise in acquiring, financing and managing quality properties is a key component to the value-added service that Versity offers. Because Versity is first and foremost a real estate company, it is in a position to capitalize on its expertise to cut operating costs through economies of scale and to effectively and efficiently manage properties which should translate to higher operating margins and capital appreciation. Transparency and communication are also critical components of the services Versity provides. Our management believes that transparency requires action that discloses information and processes, carrying out business in a way that is clear, and being accountable. Communication methods include methods include, but are not limited to, written correspondence, financial reports, scheduled conference calls, and one-on-one dialog with Investors and their registered representatives.

### What is the Master Tenant?

The Master Tenant, Hayworth Tanglewood LeaseCo, LLC, is a Delaware limited liability company managed by Versity. The Master Tenant has been capitalized by Versity through the Demand Note to the Master Tenant in the amount of \$375,000. A copy of the Demand Note is available in the Investor data room.

The purpose of the Master Lease is to permit the Master Tenant to operate the Property and to enable actions to be taken with respect to the Property that the Trust would be unable to take due to tax law-related restrictions, including, but not limited to, a restriction against re-leasing the Property. The existing Residential Leases were assigned to the Master Tenant concurrent with the Trust’s execution of the Master Lease. See “*Summary of the Master and Residential Leases – Master Lease.*”

### What exactly am I purchasing?

You are purchasing an Interest in the Trust which owns the Property. For 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 Section 1031.

### Why is the Property being held in a Delaware statutory trust?

The Delaware statutory trust structure, rather than a tenant-in-common structure, has been utilized for the ownership of the Property based on the following:

- more favorable loan terms for Investors, including, but not limited to, simplified underwriting procedures;
- lower annual administrative costs for Investors since no single-member limited liability company is required to be formed for each investor;
- no personal liability for beneficiaries under the Loan with regard to the Property;
- lower transaction costs since Investors will not assume the Loan, nor will they obtain direct title to the Property; and

- Ease of administration for the trustees.

There are certain risks related to the DST structure, including that Investors have limited control over the Trust. See “*Risk Factors – Risks Related to the Delaware Statutory Trust Structure*” for a discussion of the risks related to the DST structure.

### **How do I identify the Property for my Section 1031 Exchange?**

You must contact your qualified intermediary and tax advisor for the appropriate identification procedure.

### **Have the Interests been registered with the SEC and States?**

No. The sale of the Interests has not been, and will not be, registered under the Securities Act or any state securities laws. 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. In the event that the Trust fails to comply with the requirements of this exemption or fails to comply with the state securities laws, an Investor may have the right, if he, she or it so desires, to rescind his, her, or its purchase of the Interests.

### **Will any taxable income from the Property be considered passive source income?**

To the extent this investment generates taxable income or loss, such income or loss is expected to be passive income or loss. Generally, an Investor’s passive income, if any, from an investment in the Interests may be offset by the Investor’s other passive losses, and an Investor’s passive losses, if any, from an investment in the Interests may be used to offset the Investor’s other passive income. However, the rules regarding the deductibility of passive losses (whether from an investment in an Interest or from another passive activity that potentially could be used to offset income from an investment in an Interest) are complex and vary with the facts and circumstances particular to each Investor. In addition, the income may be subject to the 3.8% Net Investment Income Tax (the “**Medicare Contributions Tax**”) imposed on rent and other types of investment income.

Prospective Investors should consult with their own legal, tax, accounting and financial advisors regarding these and other tax issues relating to an investment in the Interests.

### **How long is the closing process for my purchase of an Interest?**

It is anticipated, but not assured, that your purchase of an Interest will be closed within 15 to 30 days after the Trust receives your completed Investor Questionnaire & Purchase Agreement. Accordingly, if you are acquiring an Interest as replacement property in a Section 1031 Exchange, you must have sufficient time remaining in your 180-day period for acquiring your replacement property to accommodate this 15- to 30-day period necessary for the closing to occur.

### **Is there debt on the Property?**

Yes. Many Investors’ Relinquished Properties are encumbered by debt, and, therefore, for federal income tax purposes, to prevent an Investor from having to use more cash to acquire a replacement property than is available from the sale of his, her, or its Relinquished Property, there must be equal or greater debt on the replacement property. In addition, the placement of debt may enhance the returns to the Investors.

The amount of debt secured by the Property is \$48,000,000, which debt is secured by the Mortgage and the other Loan Documents. In connection with the acquisition of an Interest, each investor will be treated, for tax purposes, as the borrower of his, her, or its pro rata share of the Loan (approximately \$31,263 of Loan balance per \$50,000 Interest). See “*Financing Terms*” and “*Risk Factors – Risks Related to the Anticipated Financing*” for additional discussion regarding the Loan.

### **Will the Lender have to approve me as an Investor?**

Generally, other than searches required under the USA PATRIOT Act, the International Emergency Economic Powers Act, the Trading with the Enemy Act, and the Office of Foreign Assets Control (“**OFAC**”) and other

inquiries as set forth in the Investor Questionnaire & Purchase Agreement attached hereto as Exhibit A, the Lender will not require any underwriting with regard to prospective Investors. However, in the event that any purchase would result in the prospective Investor owning 20% or more of a direct or indirect beneficial interest in the Trust (10% or more if a foreign entity), the Trust will be required to provide advance written notice to the Lender of such transfer and provide the Lender with information as necessary to allow the Lender to determine that the transferee is not a “prohibited person.” See “*Financing Terms – Restrictions on Transfer of Interests*.”

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

Yes. Each prospective Investor is responsible for all costs associated with his, her, or its independent accountant, tax advisor, financial advisor and attorney. Please note that these costs may not be funded from the Section 1031 Exchange escrow held by your qualified intermediary, if applicable.

**How does a prospective Investor find a qualified intermediary?**

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

**Can an investor keep some of the proceeds from the sale of the Relinquished Property, or do all of the proceeds have to be reinvested?**

If you choose to keep some of the proceeds, you will generally be taxed on what you keep. The cash retained is known as “boot” in a Section 1031 Exchange. The Trust cannot advise you on the particular tax treatment to which you will be subject. You should consult with your own tax professional regarding the proper tax treatment of any such amounts.

**Can retirement or other tax-exempt funds invest in the Trust?**

The Trust may, in its sole and absolute discretion, accept subscriptions from, or made on behalf of, tax-exempt entities, including, but not limited to, qualified employee pension and profit-sharing trusts, individual retirement accounts, Simple 401(k) plans, Keogh plans, annuities and charitable remainder trusts.

**What should I do if I want to sell my Interest in the Trust before the Property is sold?**

The Interests are being offered and sold pursuant to exemptions from the registration provisions of federal and state law. Accordingly, the Interests are subject to restrictions on transfer. Each Investor will be required to represent that he, she or it is acquiring the Interests for investment and not with a view to distribution or resale, that such Investor understands the Interests are not freely transferable and, in any event, that such Investor must bear the economic risk of investment in the Interest for an indefinite period of time because the Interests have not been registered under the Securities Act or certain applicable state “blue sky” or securities laws, and that the Interests cannot be sold unless they are subsequently registered (which is not expected) or an exemption from such registration is available and unless the Investor complies with the other applicable provisions of the Trust Agreement and the Loan Documents. If an Investor is able to sell his, her, or its Interests in accordance with the Trust Agreement, the Loan Documents and applicable securities laws, the Investor and/or his, her, or its purchaser(s) will bear the costs, if any, of the sale or transfer. See “*Risk Factors – Risks Related to the Offering – There is no public market for the Interests*” and “*Financing Terms*” for additional discussion related to the restrictions on transfer.

**How often will distributions be made to the Investor?**

The Signatory Trustee intends to make monthly distributions, payable on or about the 15<sup>th</sup> day of the following month. Actual distributions may vary from those projected in Exhibit C, the Forecasted Statement of Cash Flows.

**Will I be receiving any updates regarding the performance of the Property, and if so, how often?**

Yes, the Asset Manager intends to provide all Investors with an Investor Report, which includes a financial update as well as updates regarding the performance of the Property, on a quarterly basis.

**What kind of audit will be performed on the operations of the Property?**

The Trust intends to obtain an audit of the Property's cash flow (income and expenses) from a qualified CPA firm starting with the acquisition of the Property through the end of calendar year 2022. Thereafter, the Trust will use good faith efforts to obtain such a cash flow audit on an annual basis, provided the cost does not exceed \$5,000 per year. If the cost of such audit exceeds \$5,000 per year, the Signatory Trustee may poll Investors and will have the right, in its sole discretion, to obtain or not obtain such an audit. This is intended to be an audit of the cash flow from the Property (income and expenses) and will not be prepared in accordance with GAAP or address Property valuation issues.

**What kind of tax and financial reporting do I receive at the end of the year? When can I expect it?**

The Asset Manager will provide a statement of each Investor's income and expenses to be utilized in completing IRS Schedule E or other pertinent tax documents.

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

Although some states have income thresholds that must be exceeded to be subject to income tax, each state has its own filing requirements and tax code. The Property is located in Texas. In addition, your own state of residence may impose income tax on income and gain that you derive from the Property. You should consult with your own tax professional regarding individual state filings.

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

Yes. The IRS requires that you file Form 8824 with your annual federal income tax return for the year that you transfer the property. Additional filings may be required with state and/or local tax returns. You should consult with your own tax professional regarding such filings.

**Do I need to be an "accredited investor" to invest?**

Yes. The Trust will only accept a subscription from an "accredited investor," as defined in Regulation D under the Securities Act. Generally, a natural person who satisfies one of the following will qualify as an accredited investor: (1) an individual net worth, or joint net worth with his or her spouse, of more than \$1,000,000, subject to certain criteria for calculating net worth; or (2) an individual income in excess of \$200,000, or joint income with his or her spouse in excess of \$300,000, in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year. See "*The Offering – Investor Suitability Requirements*" for additional discussion regarding the definition of "accredited investor."

**How do I purchase the Interests?**

Each Investor must complete and send to his, her, or its investment representative the Investor Questionnaire & Purchase Agreement, including the name, phone number and address of his, her, or its qualified intermediary (if applicable). The investment representative must then send this to his, her, or its broker/dealer (or registered investment advisor) for review, and the broker/dealer (or registered investment advisor) must forward the paperwork to:

Hayworth Tanglewood DST  
c/o Versity Invest, LLC  
20 Enterprise, Suite 400  
Aliso Viejo, CA 92656  
Attn: Investor Relations

Upon receipt of acceptable documentation, the Trust will coordinate with the qualified intermediary (if applicable) to receive the funds and issue the assignment of the Interests in the Trust to the Investor. Coordination with the qualified intermediary also includes providing a closing statement for the purchase and may include completing any other required documentation. See "*The Offering – How to Purchase the Interests*" for a more detailed discussion on the steps you must take to purchase Interests.

**Should I engage an attorney to close my purchase of the Interests?**

You are strongly encouraged to engage independent legal counsel in connection with the purchase of the Interests, including reviewing the documents related to the acquisition of the Interests.



## **RISK FACTORS**

The Interests are speculative and involve a high degree of risk. A prospective Investor should be able to bear a complete loss of his, her, or its investment. Prospective Investors should carefully read this Memorandum before purchasing an Interest.

*A PROSPECTIVE INVESTOR SHOULD CONSIDER CAREFULLY, AMONG OTHER RISKS, THE FOLLOWING RISKS, AND SHOULD HAVE HIS, HER, OR ITS OWN INDEPENDENT LEGAL, TAX, ACCOUNTING AND FINANCIAL ADVISORS CLOSELY REVIEW THIS MEMORANDUM AND ALL DOCUMENTS REFERENCED HEREIN AND ATTACHED HERETO BEFORE INVESTING IN THE INTERESTS. THESE RISK FACTORS, OR OTHER EVENTS, COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THOSE CONTAINED IN THIS MEMORANDUM. FURTHERMORE, THESE RISK FACTORS RELATE TO A SOPHISTICATED TRANSACTION AND ALTHOUGH THE TRUST HAS ENDEAVORED TO ANALYZE THIS TRANSACTION AND THE RISKS ATTENDANT TO THIS TRANSACTION TO THE BEST OF ITS ABILITY, THE FOLLOWING RISKS MAY NOT ENCOMPASS EVERY POSSIBLE RISK WITH REGARD TO THIS TRANSACTION. ONLY AFTER A PROSPECTIVE INVESTOR AND HIS, HER, OR ITS INDEPENDENT ADVISORS HAVE ANALYZED THE UNDERLYING DOCUMENTS CAN HE, SHE OR IT FULLY UNDERSTAND THE TRANSACTION.*

### **COVID-19**

***The COVID-19 pandemic has disrupted economies and financial markets.***

The outbreak of the COVID-19 virus and the resulting social distancing and stay-at-home orders have disrupted global economies, including the economy of the United States. This global pandemic has adversely impacted employment, financial and real estate markets, lending, supply chains and businesses throughout the world, and may continue to do so through 2022 or longer. Residential tenants across the United States have experienced unemployment, illness and other hardships which are causing some tenants to be unable or unwilling to make their rental payments. In the event that these delinquent rental payments continue, property owners including the Trust may not be able to make distributions to investors. In addition, property owners including the Trust may be unable to evict tenants due to federal, state and/or local laws or regulations or lender requirements. Due to these factors and the uncertainty of economic markets as a result of the COVID-19 pandemic, there is no assurance that the value of the Property as described in the Offering has not declined and will not decline further in the future. In addition, there can be no assurance that the financial projections described in this Memorandum can be achieved. The occurrence of the COVID-19 pandemic and the resulting disruption of global economies could adversely affect the financial performance and value of the Property. In such event, the Trust may not be able to sell the Property or make distributions to Investors, and Investors could lose all or a portion of their investment in the Trust.

### **Risks Related to the Delaware Statutory Trust Structure**

***Investors will have no control over the management of the Trust.***

The Trustees (and in particular the Signatory Trustee) are solely responsible for the operation and management of the Trust. The Investors will have no right to participate in the management of the Trust or in the decisions made by the Trustees. Generally, the Trustees and the Asset Manager will not consult with the Investors when making decisions with respect to the Trust and the Property. Before the Signatory Trustee directs the Trust to enter into a binding contract to sell or convey the Property or to facilitate a 721 UPREIT Exchange, the Signatory Trustee will canvass Investors regarding their views of the potential transaction. The Signatory Trustee will consider the views and opinions of Investors in good faith but will not be bound by the opinions or views of the Investors. The Signatory Trustee will be under no obligation to make its decision with respect to any prospective sale in accordance with the wishes of Investors.

***The Trustees have limited duties to Investors and may take actions that are not in the best interests of the Investors.***

The Trustees do not owe any duties to the Investors other than those provided for in the Trust Agreement. Specifically, the Trustees do not have a fiduciary duty to any Investors as would be applicable to a limited liability company or partnership and, therefore, may take actions that would not be in the best interests of one or more of the Investors. The Trust Agreement provides that the Trustees are individually answerable for their actions to the Investors only if, among other things, the trustees engage in willful misconduct or gross negligence or any “prohibited action”

under the Trust Agreement, or they fail to use ordinary care in disbursing monies to Investors pursuant to the terms of the Trust Agreement.

***The Trustees have limited authority, and the Trust may face increased termination risk.***

To comply with the tax law regarding exchanges under Section 1031, the Trust structure prevents the Trustees from engaging in numerous actions, including: (1) disposing of the Property and acquiring new real estate or reinvesting any monies of the Trust, except as permitted under the Trust Agreement; (2) renegotiating the terms of the Loan or taking advantage of favorable market conditions, by entering into new financing, or entering into new leases except in the event of a tenant's bankruptcy or insolvency; (3) making other than minor non-structural modifications to the Property other than as required by law; (4) after the formation and capitalization of the Trust, accepting any additional capital contributions from any Investor, or any contributions from any prospective new investor; and (5) taking any other action that would in the opinion of tax counsel cause the Trust to be treated as a "business entity" for federal income tax purposes.

Accordingly, in order to be able to take the actions necessary to avoid defaults under the Loan and loss of the Property, the Trust may be converted into the Springing LLC, in which case such converted entity would be governed by the terms of the Springing LLC operating agreement attached to the Trust Agreement (a "**Springing LLC Operating Agreement**"). The Property would remain subject to the Loan Documents and Master Lease after such a Transfer Distribution (unless otherwise terminated or renegotiated). The ownership interest of each Investor in the Springing LLC resulting from the Trust would be identical to such Investor's Interest in the Trust (subject to the impact of additional capital requirements in that Springing LLC). As a result of such Transfer Distribution, the Investors would at such time no longer be considered to own, for federal income tax purposes, a direct ownership interest in the Property. Because the Springing LLC (from the Trust) would be treated as a partnership for tax purposes, it may not be possible for the individual Investors to do a tax-free exchange when the Property is ultimately sold.

***Investors will not have legal title to the Property.***

Investors will not have legal title to the Property. The Investors will not have the right to seek an in-kind distribution of the Property or divide or partition the Property. The Investors will not have the right to sell the Property.

***There are tax risks associated with a sale or other disposition of the Property.***

The Trust will sell or otherwise dispose of the Property at any time upon receipt of a notice from the Signatory Trustee that the Signatory Trustee has determined, in its sole discretion, that a sale or other disposition of the Property is appropriate. This sale will occur without regard to the tax position, preferences or desires of any of Investors, and Investors will have no right to approve or disapprove of the sale or disposition of the Property. Investors will not have the right to sell the Property. An Investor may or may not be able to defer the recognition of gain for federal, state or local income tax purposes when this sale occurs. Under current law, Interests in the Trust should constitute interests in real estate and, therefore, a sale of the Property should qualify for nonrecognition of gain under a Section 1031 Exchange provided that the requirements of a Section 1031 Exchange are met.

It is possible, however, that current law will change before the Trust disposes of the Property, and Investors might not have the option to pursue a Section 1031 Exchange at that time. Code Section 1031 has been the subject of Congressional scrutiny in recent years. In 2017, the House Ways & Means Committee proposed the complete elimination of Code Section 1031. Ultimately, the Tax Cuts & Jobs Act of 2017 eliminated all personal property exchanges, retaining real estate for tax-deferred treatment under Code Section 1031. Recently, President Biden threatened to repeal Code Section 1031 as part of his tax plan, heightening the risk that the option to pursue a Section 1031 Exchange will not be available to Investors at the time of the Property's disposition.

To give Investors the option to continue their tax deferral, the Signatory Trustee may elect to facilitate a 721 UPREIT Exchange, pursuant to which the Signatory Trustee would provide each Investor with the option of either (i) exchanging its Interests for an equivalent value of operating partnership units of a real estate investment trust (which real estate investment trust may be affiliated with the Sponsor), or (ii) receiving a fair market value cash buy-out of its Interests. The fair market value of the Interests at the time of the 721 UPREIT Exchange would be determined by an independent third-party appraisal obtained by the Signatory Trustee. Investors who elect to receive a cash buy-out of their Interests would be free to (a) structure a Section 1031 Exchange (to the extent permitted by applicable law at that time and provided that they comply with all Section 1031 Exchange requirements), or (b) cash out on a taxable basis.

A 721 UPREIT Exchange would aim to provide Investors with (a) access to a diversified portfolio of institutional-quality real estate, (b) further deferral of capital gains taxes, (c) realization of the economic benefits of the real estate investment trust's entire portfolio, including potential capital appreciation and distributions of operating income, (d) convertibility of the operating partnership units into shares of the real estate investment trust (at each Investor's discretion at the time of exit or needing liquidity), (e) management of tax gain through partial conversion and liquidation of the operating partnership units over time, (f) full divisibility of the operating partnership units, and (g) upon death, receipt by each Investor's heirs of a stepped-up basis in the operating partnership units. However, there can be no assurance that such a 721 UPREIT Exchange will be available or successful, especially due to possible changes in current tax law, and there can be no guaranty that Investors will be able to achieve any of these targeted benefits. In addition, Investors who choose to participate in a 721 UPREIT Exchange will likely lose their ability to continue any future Section 1031 Exchange once they exchange their Interests into operating partnership units. In the event the Signatory Trustee elects to facilitate a 721 UPREIT Exchange, Investors are encouraged to consult with their own individual counsel and advisors about the potential tax and other ramifications of such an exchange prior to making their election.

Unfavorable economic conditions, changes to the current law and/or other unforeseen conditions or events may prevent the Trust from conducting any of the exit strategies contemplated by this Memorandum and the Trust Agreement, which could cause an Investor's investment to remain illiquid for longer than anticipated and adversely affect returns.

***The Trustees will receive compensation, regardless of whether Investors have received distributions.***

The Trustees are entitled to receive significant fees and other compensation and payments regardless of whether the Trust is profitable. These fees will be paid prior to any distributions to the Investors.

**Risks Related to the Property**

***There are inherent risks with real estate investments.***

The investments by the Investors in the Trust will be subject to the risks generally incident to the ownership of real property. Real property investments are subject to varying degrees of risk and are relatively illiquid. Several factors may adversely affect the economic performance and value of the Property. These factors include:

- changes in the national, regional and local economic climate;
- local conditions such as an oversupply of similar residential properties or a reduction in demand for the Property;
- the attractiveness of the Property to potential Residents;
- the ability to collect rent from the Residents;
- changes in availability and costs of financing, which may affect the sale of the Property;
- eminent domain or condemnation actions against the Property;
- covenants, conditions, restrictions and easements relating to the Property;
- governmental regulations, including financing, environmental usage and tax laws, regulations and insurance;
- the ability of the Master Tenant to pay for adequate maintenance, insurance and other operating costs, including real estate taxes, which could increase over time; and
- acts of nature, such as earthquakes, hurricanes, tornadoes and floods that may damage the Property and acts of nature such as a drought that could affect the value of real estate in the affected area including the Property.

Any negative change in the factors listed above could adversely affect the financial condition and operating results of the Property and, in turn, the Trust. The profitability of an investment in the Trust will depend on factors such as these.

***Volatile financial markets may adversely affect the Trust's income.***

U.S. and international financial markets have been volatile, particularly over the last 14 years. The effects of this volatility may persist particularly as financial institutions respond to new, or enhanced, regulatory requirements and other national and international events affecting financial markets, all of which could impact the availability of credit and overall economic activity as a whole. Further, the fluctuation in market conditions makes judging the future performance of real estate assets difficult.

***The financial performance of the Property will be dependent upon the Residents under the Residential Leases.***

The financial performance of the Property, and in turn the ability of the Master Tenant to meet its obligations under the Master Lease, will depend on the performance of the Residents and their payment of rent under the Residential Leases. If a large number of Residents become unable to make rental payments when due, decide not to renew their Residential Leases, or decide to terminate their Residential Leases, this could result in a significant reduction in rental revenues, which could require the Trust (following conversion to the Springing LLC) to contribute additional capital or obtain alternative financing to meet its obligations under the Loan. In addition, the costs and time involved in enforcing rights under a Residential Lease, including eviction and re-leasing costs, may be substantial and could be greater than the value of such lease. There can be no assurance that the Master Tenant, the Asset Manager, or the Springing LLC 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.

The ability of the Master Tenant and the Asset Manager to retain current tenants, and the ability of the Master Tenant and the Asset Manager to attract new Residents, if necessary, and for the Master Tenant and the Asset Manager to increase rental rates as necessary, will depend on factors both within and beyond the control of the Master Tenant and the Asset Manager. These factors include changing demographic trends and traffic patterns, the availability and rental rates of competing residential space, general and local economic conditions, and the financial viability of the Residents. The loss of a Resident and the inability to maintain favorable rental rates with respect to the Property would adversely affect the viability of the Trust and the value of the Property. Although insurance will be obtained with respect to the Property to cover certain casualty losses and general liability and business interruption, no other insurance will be available to cover losses from ongoing operations. See “*Financing Terms.*” The occurrence of a casualty resulting in damage to the Property could decrease or interrupt the payment of Residents’ rent. 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 could be required to implement one or more Transfer Distributions. If, after a Transfer Distribution, additional funds are not available from any source, the Springing LLC would be forced to dispose of all or a portion of the Property on terms that may not be favorable to the Investors. A Transfer Distribution may have adverse tax consequences for the Investors. See “*Federal Income Tax Consequences.*”

***The operation of the Property will depend, in part, on the availability of public utilities and services, especially for water and electric power. Any reduction, interruption or cancellation of these services may adversely affect the Trust and the Master Tenant.***

Public utilities, especially those that provide water and electric power, are fundamental for the sound operation of the Property. The delayed delivery or any material reduction or prolonged interruption of these services could allow the Residents to terminate their leases or result in an increase in the Master Tenant’s costs.

***An increase in real estate taxes may affect the operating results of the Property and the Trust.***

The projected income from the Property is based on certain assumptions, including an increase in real estate taxes. However, from time to time the real estate taxes may increase further as property values or assessment rates change or for other reasons deemed relevant by the assessors. Real estate taxes may increase even if the value of the Property declines. An increase in the assessed valuation of the Property for real estate tax purposes will result in an increase in the related real estate taxes on the Property. In the event that real estate taxes increase beyond the levels

projected by the Trust and disclosed to the Master Tenant prior to the date of the Master Lease, then Stated Rent will be decreased by the amount of such un-projected increases which could adversely affect the financial condition and operating results of the Trust. See “*Summary of the Master and Residential Leases – Master Lease – Rent.*”

***The purchase price of the Interests includes fees and other charges.***

The Sponsor increased the aggregate purchase price of the Interests above the acquisition cost of the Property to cover selling commissions, loan fees, transfer taxes, legal and accounting expenses and other costs associated with the acquisition and the Offering. See “*Estimated Use of Proceeds.*” These additional costs will cause the cost of your investment in an Interest to exceed the *pro rata* share of the market value of the Property. In order to make a profit on a sale of the Property or any Interest, the Investors will need to receive sufficient proceeds to recover the added acquisition costs included in the original purchase price, as well as: (1) the costs associated with their own attorneys and tax advisors; and (2) any costs related to the disposition of the Property or Interest.

***The Reserve Accounts may not be sufficient to cover the Property’s costs and the Master Tenant may not be able to cover any excess costs.***

The Reserve Accounts will be maintained to make funds available for Capital Expenses and unanticipated costs in relation to the Property. In addition, the Reserve Accounts may be used to pay distributions to Investors, although there is no requirement that they be used for such purpose. The Trust will fund the Trust Reserve from the proceeds of the Loan and the Offering, and the Master Tenant will make monthly contributions to the Operating Reserves as required by the Loan. See “*Summary of the Master and Residential Leases – Master Lease.*” In the event that additional reserves are needed, the Master Tenant may withhold distributions from the Trust and, thus, to the Investors, thereby reducing projected returns. See “*Summary of the Offering – Reserve Accounts.*” Nevertheless, if necessary repairs are not made, the Property could fall into disrepair or if the Master Tenant fails to compensate any workmen, the Property could become subject to liens that the Trust would be obligated to pay. Any such failure by the Master Tenant may require a Transfer Distribution of the Trust to occur. If after a Transfer Distribution, additional funds are not available from any source, the resulting Springing LLC would be forced to dispose of the Property it holds on terms that may not be favorable to the Investors or, in the case of the Loan, the Lender may foreclose on the Property and the Investors could lose their entire investment as it relates to the Property. In addition, a Transfer Distribution may have adverse tax consequences for Beneficial Owners. See “*Federal Income Tax Consequences.*”

***The Investors will have limited recourse under the Investor Questionnaire & Purchase Agreement and Master Lease.***

The Trust has acquired and leased the Property in an “as is” condition on a “where is” basis and “with all faults,” subject to certain representations and warranties, but without any warranties of merchantability or fitness for a particular use or purpose. In addition, the Investor Questionnaire & Purchase Agreement contains only limited warranties and representations that will only survive for a limited period after the closing. See “*Summary of the Investor Questionnaire & Purchase Agreement.*” A copy of the Investor Questionnaire & Purchase Agreement is included as Exhibit A to this Memorandum, and the Master Lease is available in the Investor data room.

***Compliance with various laws could affect the operation of 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, re-construction or sale of the Property. These laws, rules, regulations or ordinances may adversely affect the ability of the Trust to operate or sell the Property.

***A cybersecurity incident and other technology disruptions could negatively impact the Trust’s business and the Master Tenant’s relationship with the Residents.***

The Trust and the Master Tenant use computers in substantially all aspects of their business operations. The Property Manager also may use mobile devices, social networking and other online activities to connect with the Residents. Such uses give rise to cybersecurity risks, including security breach, espionage, system disruption, theft and inadvertent release of information. The businesses of the Trust, the Master Tenant and the Property Manager

involve the storage and transmission of numerous classes of sensitive and/or confidential information and intellectual property, including Residents' personal information. If the Trust, the Master Tenant or the Property Manager fails to assess and identify cybersecurity risks associated with their operations, they may become increasingly vulnerable to such risks. Additionally, any measures already implemented to prevent security breaches and cyber incidents may not be effective. The theft, destruction, loss, misappropriation or release of sensitive and/or confidential information or intellectual property or interference with the information technology systems of the Trust, Master Tenant or Property Manager, or the technology systems of third-parties on which such parties rely, could result in business disruption, negative publicity, brand damage, violation of privacy laws, loss of Residents, potential liability and competitive disadvantage, any of which could result in a material adverse effect on the Trust's financial condition or results of operations.

**Hurricanes, floods, tornados or other natural disasters or events may cause losses not covered by insurance.**

Based on a review of the Wind Zone Map, published by the Federal Emergency Management Agency, the Property appears to be located in a hurricane-susceptible region and also in Wind Zone III, an area with wind design speeds up to 200 miles per hour. However, even if the Trust obtains wind insurance, or any other insurance covering hurricane, flood, tornado or earthquake damage, there can be no assurance that such insurance would be sufficient to cover any specific loss. Accordingly, the Property may be damaged in the future by natural disasters or other events or hazards resulting in a partial or total loss of the Property. Even with insurance, there can be no assurances that the Trust would be fully reimbursed for any damage incurred. In such event, Investors could lose their entire investment in the Property.

***Uninsured losses may adversely affect returns.***

Under the Master Lease, the Master Tenant is required to maintain all risk builder's insurance during any periods of alterations, comprehensive general liability, and such other types of insurance as set forth in the Master Lease, as well as any other insurance required by the Loan Documents or the Trust. See "*Summary of the Master and Residential Leases – Master Lease – Insurance, Casualty and Condemnation*" and "*Financing Terms*." However, particular risks that are currently insurable may not continue to be insurable on an economical basis, or current levels of coverage may not continue to be available. In the event of a casualty or condemnation, the Trust (or the Master Tenant on the Trust's behalf) will, to the extent permitted by law and the Loan Documents, restore the Property using the insurance proceeds or award, as applicable. If the insurance proceeds or award, as applicable, received by the Trust are insufficient to pay the cost of the restoration, the Trust will be required to use the Reserve Accounts to make up the deficiency, subject to any required approvals of the Lender. In the event the Reserve Accounts are insufficient to make up the deficiency, the Trust is required to make up any remaining deficiency. If the insurance proceeds or award, as applicable, exceed the cost of the restoration the Trust will retain the excess.

There is no guarantee that the Trust will have sufficient funds to restore the Property in the event insurance proceeds or any condemnation awards are insufficient. In the event the Master Lease is terminated as a result of a condemnation, there can be no assurance any condemnation award received will be equal to the value of the real estate taken. The Trust's failure to rebuild the Property after a casualty or condemnation may result in a default by the Trust under the Loan Documents, which may permit the Lender to exercise its remedies under the Loan Documents.

***The Trust does not guarantee the condition of, or title to, the Property.***

The Trust does not make any warranties or representations to the Investors regarding the condition of the Property. A prospective Investor is investing in the Property in an "as is" condition, on a "where is" basis and "with all faults," without any warranties of merchantability or fitness for a particular use or purpose.

The Trust has obtained a Property Condition Report which provides a general assessment of the current condition of the Property. Although the Property Condition Report addresses the overall condition of the Property, no destructive or other testing of the repairs was or will be undertaken and there can be no guaranty that structural or other construction issues do not exist. The Property Condition Report is available in the Investor data room.

In addition, the Property is subject to various matters affecting title, including, but not limited to, zoning ordinances, building codes and matters set forth on the owner's title insurance policy, zoning report and survey, which are or will be available in the Investor data room. These matters may include, for example, easements, declarations,

restrictions and other limitations on the right of the Trust to construct, develop and use the Property. In addition, other issues that are not disclosed by the policies or the survey may affect title. In connection with the acquisition of the Property, the Trust obtained title insurance; however, the title is insured only in an amount equal to the purchase price of the Property, and not the full amount of the total costs of acquisition. In the event that a known or new matter arises with respect to the Property, however, there is no guarantee that the title insurance will sufficiently protect the Trust against all title issues affecting the Property, that the title company will pay any claim, that the title insurance is sufficient to cover any damages, or that the Trust will not incur costs in making a title insurance claim.

***The existence of any environmental issues with the Property may adversely affect the Trust.***

Federal, state and local laws may impose liability on a landowner for releases of or the presence on the premises of hazardous substances (which by definition does not include petroleum), without regard to fault or knowledge of the presence of such substances. A landowner may be held liable for the presence of hazardous substances that occurred before it acquired title and/or that occur during ownership of, but are not discovered until after it sells, a property. If hazardous substances are found at any time on the Property, the Trust may be held liable for all cleanup costs, fines, penalties and other costs regardless of whether the Trust owned the Property when the releases occurred or the hazardous substances were discovered. Under the Federal Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”), as well as many state laws, a purchaser of property may qualify for affirmative defenses to, and exemptions from liability under, CERCLA and state laws. One of the factors critical to a purchaser’s defense is obtaining, within 180 days before acquiring the property, a Phase I Environmental Site Assessment (a “**Phase I**”) that qualifies as “All Appropriate Inquiry.”

The Trust obtained a Phase I of the Property from Partner Engineering and Science, Inc. (“**Partner Engineering**”) dated March 28, 2022 (the “**Phase I Assessment**”). The Phase I Assessment was performed in compliance with the standards of ASTM Practice E 1527-13 and E1527-21 Standard Practice for Environmental Site Assessments, which is recognized by the United States Environmental Protection Agency and many states as adequate to demonstrate compliance with “All Appropriate Inquiry.” The objective of the Phase I Assessment was to identify any Recognized Environmental Conditions (“**RECs**”), Controlled Recognized Environmental Conditions (“**CRECs**”), Historical RECs (“**Historical RECs**”), and/or business environmental risks (“**BERs**”) in connection with the Property. The Phase I Assessment found no evidence of RECs, CRECs, Historical RECs or BERs, and recommends no further investigation of the Property at this time. The Phase I Assessment is available to prospective Investors in the Investor data room.

A Phase I does not involve any invasive testing. A Phase I is limited to a physical walk through or inspection of the Property and a review of the related governmental records. Consequently, there are no assurances that any actual environmental problems with or conditions on the Property would be exposed by a Phase I.

In the event that environmental contamination consisting of hazardous substances (but not petroleum) exist with respect to the Property when the Trust acquires the Property, but which are not disclosed in the Phase I Assessment, and the contamination is subsequently discovered on the Property, the Trust may be able to avail itself of the defenses to, and the exemptions from, liability that are available under CERCLA and state laws, since the Trust expects to acquire the Property within 180 days of the effective date of the Phase I Assessment.

It is possible that an environmental claim may be raised in such a manner that the claim could become enforceable against the Trust. The existence of any environmental issues with the Property may make it more difficult and more expensive, and perhaps impossible, to sell the Property. If losses arise from environmental matters, the financial viability of the environmentally impacted Property may be substantially affected. In an extreme case, the impacted Property may be rendered worthless, or the Trust may be obligated to pay cleanup and other costs in excess of the value of the impacted Property.

***The Property may contain or develop harmful mold, which could lead to liability for adverse health effects and costs of remediating the problem.***

The presence of mold at the Property could require the Trust to undertake a costly program to remediate, contain or remove the mold. Mold growth may occur when moisture accumulates in buildings or on building materials. Some molds may produce airborne toxins or irritants. Concern about indoor exposure to mold has been increasing because exposure to mold may cause a variety of adverse health effects and symptoms, including allergic or other

reactions. The presence of mold could expose the Trust to liability from the Residents and others if property damage or health concerns arise. See “*The Property – Physical Condition of the Property.*”

***The Master Tenant may incur costs related to zoning regulations.***

The Trust obtained a zoning report which concludes that the Property has a zoning designation which permits its use for multifamily residence purposes. In the event of damage by fire or other casualty, there can be no assurance that insurance coverage will be sufficient to rebuild according to then-existing zoning requirements or that such insurance coverage will be available at reasonable rates in the future. If a loss occurs that is partially or completely uninsured on the Property, the Master Tenant may not be able to fulfill its obligations to rebuild the Property in accordance with the Master Lease or the Loan, and the Investors may as a result lose all of their investment. See “*Summary of the Master and Residential Leases – Master Lease.*”

***Terrorist attacks and other acts of violence or war may affect the Trust’s operations and profitability.***

Any terrorist attack, other act of violence or war, including armed conflicts, could result in increased volatility in, or damage to, the United States and the worldwide financial markets and economy. Increased economic volatility could adversely affect the Residents’ ability to pay their rents, which could affect the ability of the Property to generate operating income and, therefore, the Trust’s ability to pay distributions.

**Risks Related to the Financing**

*The following disclosures address the risks associated with the terms of the Loan.*

***The Loan will reduce the funds available for distribution and increase the risk of loss.***

The Trust owns the Property subject to the Loan. If there is a shortfall between the cash flow from the Property and the cash flow needed to service the Loan, then the amount of cash flow from operations available for distributions will be reduced. In addition, mortgage debt increases the risk of loss since any default under the Loan may result in the Lender initiating a foreclosure action. In such a case, the Trust could lose the Property, and the Investors could lose their investment in the Trust.

***If the Trust is unable to sell or otherwise dispose of the Property before the maturity date of the Loan, it may be unable to repay the Loan and may have to cause a Transfer Distribution.***

The ability of the Trust to repay the Loan will depend in part upon the sale or other disposition of the Property. There can be no assurance that a sale can be accomplished at a time or on terms and conditions that 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. If the Property cannot be sold by the maturity date of the Loan, then the Signatory Trustee of the Trust would likely determine that the Trust is in danger of losing the Property due to a payment default under the Loan and would cause a Transfer Distribution to the Springing LLC. The Springing LLC structure would allow the Signatory Trustee of the Trust, which would then become the sole manager of the Springing LLC, to take actions that the Signatory Trustee in the DST structure could not, such as refinancing the Loan. However, no assurances can be made that the Springing LLC would be able to refinance the Loan, or that the terms of any new loan would be competitive with or better than the terms of the Loan. Similarly, no assurances can be made that the Property could be sold, or that the sale of the Property would not result in a loss for the Trust that owned the Property. In addition, a Transfer Distribution may have adverse tax consequences for the Investors. See also “*Federal Income Tax Consequences.*”

***The Loan Documents contain various restrictive covenants, and if the Trust fails to satisfy or violate these covenants, the Lender may declare the Loan in default.***

The Loan Documents contain customary restrictive covenants, representations and warranties. If the Trust fails to satisfy or violates the covenants and agreements in the Loan Documents, then the Lender may declare the Loan in default. If the Trust fails to cure a default within the time periods set forth in the Loan Documents, the Lender will likely have several remedies available, including foreclosing on the Property or declaring all amounts due and payable. If the Lender were to foreclose on the Property or to declare the Loan due, the Investors could lose a portion of their investment in the Trust. See “*Financing Terms.*”



***In certain events, the Lender may require that the insurance or condemnation proceeds be used to repay the Loan rather than repair or restore the Property.***

The Loan Documents require the Trust to maintain (or cause the Master Tenant to maintain) specific types and amounts of insurance with respect to the Property. Under the Loan Documents, in the event of a condemnation or casualty of the Property, the Lender has agreed to allow the insurance or condemnation proceeds to be used by the Trust to repair and restore the Property only under certain specified circumstances and subject to certain conditions. If these circumstances and conditions are not satisfied, the Lender may require that the insurance or condemnation proceeds be used to repay the Loan. Consequently, the Investors could lose all or substantially all of their investment in the Property.

***A failure to comply with reporting obligations of the Loan Documents may result in a default.***

The Loan Documents contain several covenants requiring the Trust and/or Master Tenant to prepare various financial and operating reports and statements. These reports and statements are to be prepared by the Asset Manager or the Property Manager. If the Asset Manager or Property Manager fail to prepare these reports or statements, that failure will result in a default under the Loan Documents, which may ultimately result in a foreclosure under the Loan.

### **Risks Related to the Master Lease and the Management of the Property**

***The Master Tenant has limited capital.***

The Master Tenant's capitalization consists solely of the Demand Note from Versity, and Versity will be under no obligation to contribute capital to the Master Tenant other than the amount of the Demand Note. If the Master Tenant needs funds to pay its Rent under the Master Lease or satisfy its other obligations under the Master Lease, it will need to call upon Versity to contribute the amount of the Demand Note. However, no assurance can be given that the amount of the Demand Note will be sufficient to enable the Master Tenant to pay its Rent or to fund its obligations under the Master Lease, or that Versity 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 its Rent or satisfy its obligations under the Master Lease, the Master Tenant would be in default on the Master Lease and the Trust would likely terminate the Master Lease, subject to terms of the Loan Documents. In such event, the Trust (or the Springing LLC, if applicable) may not be able to enter into a master lease for the Property on terms similar to the Master Lease.

***Versity may not be able to fund the Demand Note.***

The Master Tenant has been capitalized with the Demand Note from Versity. Versity has capitalized other master tenants in a like manner in connection with other sponsored offerings. Versity has in the past, and anticipates that in the future it will, through affiliates, master lease additional properties in transactions structured similarly to this Offering. Versity was formed in March 2022 and has not been required to meet any demand note funding obligations. There can be no assurance that Versity will be able to satisfy the Demand Note to the Master Tenant. In the event the Master Tenant is unable to pay Rent or satisfy its obligations under the Master Lease, the Trust may experience loss of income.

***The Master Tenant is an affiliate of Versity and may face certain conflicts of interest in its roles as master tenant and as borrower under the Demand Note.***

If the Master Tenant needs funds to pay its Rent under the Master Lease or satisfy its other obligations under the Master Lease, it may need to call upon Versity to contribute the amount of its Demand Note. However, the Master Tenant is an affiliate of Versity and may face certain conflicts of interest in its roles as master tenant and as borrower under the Demand Note, and neither the Master Lease nor the Demand Note was negotiated at arm's length. See also "*Conflicts of Interest – The Trust will not have arm's length arrangements with the Property Manager, the Asset Manager or the Master Tenant*" and "*Conflicts of Interest – The landlord-tenant relationship between the Signatory Trustee and the Master Tenant may lead to a conflict of interest*" for further discussion. Specifically, there are no provisions preventing the Master Tenant from canceling the Demand Note. If the Property is generating insufficient income and the Master Tenant decides to cancel the Demand Note, the Master Tenant could be unable to pay its Rent or satisfy its obligations under the Master Lease, resulting in a default on the Master Lease and the likely

termination of the Master Lease. In such event, the Trust (or a Springing LLC, if applicable) may not be able to enter into a master lease for the Property on terms similar to the Master Lease.

***The Master Tenant is a newly formed entity.***

The Master Tenant is a newly formed entity and has no operating history. Although the Property is managed by the Property Manager, which has experience in managing other similar properties, no assurances can be given that the Property will be operated properly or successfully. In addition, no person or entity will guarantee payment of the Rent or the performance of the obligations of the Master Tenant under the Master Lease. A significant financial problem with the Property could adversely affect the Master Tenant's ability to satisfy its financial obligations under the Master Lease. Under the Master Lease, the Master Tenant is obligated to pay Rent and the operating expenditures of the underlying Property (see "*Summary of the Master and Residential Leases – Master Lease*" for a discussion of the Rent under the Master Lease) regardless of whether the Property is profitable. If the Property is performing poorly, for any reason, the Master Tenant may not be able to pay the Rent. Furthermore, if the Master Tenant is unable to pay the operating expenditures with respect to the Property, the Property may fall into disrepair, or in the event of a failure to pay property or real estate taxes or assessments, may be subject to foreclosure or seizure by the taxing authority. Such inability to act could require the Signatory Trustee to cause a Transfer Distribution to the Springing LLC in order to address these deficiencies. Additionally, such inability to act could result in an event of default under the Loan Documents. See "*Financing Terms*."

***Bankruptcy of the Master Tenant would adversely affect the Trust.***

The Trust would be adversely affected if a bankruptcy or similar insolvency proceeding were initiated with respect to the Master Tenant. For example, a bankruptcy trustee appointed for the Master Tenant might attempt to reject one or more Residential Leases for the Property. Further, as a result of the automatic stay provided for under the applicable bankruptcy laws, the Trust might not be able to enforce the Master Tenant's obligations under the Master Lease, or reach rental payments being made by the Residents to the Master Tenant, which could negatively impact the Trust's ability to receive rent with respect to the Property. Any such bankruptcy or similar insolvency proceeding could also result in an event of default under the Loan Documents. See "*Financing Terms*."

***There is no assurance that the Base Rent, Stated Rent or Bonus Rent will be paid.***

There can be no assurance that payments of Base Rent, Stated Rent, or Bonus Rent by the Master Tenant will be made as such payments are contingent upon the successful operation of the Property. See "*Risk Factors – Risks Related to the Property*."

***The Master Tenant will rely on the Asset Manager to manage its assets and day-to-day operations.***

Concurrent with entering into the Master Lease, the Master Tenant entered into the Asset Management Agreement with the Asset Manager. In its capacity as the asset manager, the Asset Manager is responsible for managing the Master Tenant's day-to-day operations, including, but not limited to: reviewing all performance and financial information related to the Property; conducting relations with, and supervising services performed by, lenders, consultants, accountants, brokers, third-party managers, attorneys, underwriters, appraisers, insurers, corporate fiduciaries, banks, builders and developers, sellers and buyers of assets, among others; providing loan payment services in connection with the Loan; preparing financial reports for the Lender; managing the Reserve Accounts; providing bookkeeping and accounting services and maintaining the Master Tenant's books and records; administering monthly cash distributions; communicating with investors, brokers, dealers, financial advisors and custodians; and undertaking and performing all services or other activities necessary and proper to carry out the Master Tenant's objectives, including providing secretarial, clerical and administrative assistance for the Master Tenant. As a result, a prospective Investor should not purchase the Interests unless the prospective Investor is willing to entrust all the aspects of the assets and finances of the Property to the Asset Manager. If the Asset Manager fails to properly manage the assets or finances or other aspects of the Master Tenant, then an Investor's investment may be adversely impacted, and the Investor may not achieve the expected return, if any, on its Interest.

***The Master Tenant will rely on the Property Manager to manage the Property.***

Concurrent with entering into the Master Lease, the Master Tenant entered into the Property Management Agreement with the Property Manager for the management of the Property. The Property Management Agreement

has an initial term expiring one year from the closing date and will automatically renew for successive one-year periods thereafter. During the term of the Property Management Agreement, the Property Manager will have the exclusive right to manage and operate the Property. The Property Manager may also retain independent contractors, which may be affiliates, to provide services. Accordingly, a prospective Investor should not purchase the Interests unless he, she or it is willing to entrust all such aspects of management and operation of the Property to the discretion of the Property Manager. A prospective Investor must carefully evaluate the personal experience and business performance of the principals of the Property Manager. If the Property Manager is not successful in operating and managing the Property, then an Investor's Interest may be adversely impacted, and the Investor may not achieve the expected return, if any, on its Interest.

***The Sponsor, the Asset Manager, the Property Manager and the Master Tenant will be subject to various conflicts of interest.***

The Sponsor, the Asset Manager, the Property Manager and the Master Tenant, and their respective affiliates will be 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 management arrangements or agreements is the result of arm's-length negotiations. See "*Conflicts of Interest*" for additional discussion.

***Actual results may differ from those forecasted in this Memorandum.***

The anticipated results of operations set forth in this Memorandum, and in Exhibit C, the Forecasted Statement of Cash Flows, are based upon current estimates of income and expenses relating to the operation of the Property. Any return to the Investors on their investment will depend on the ability of the Asset Manager 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. A variety of factors, including, without limitation, any of the following, may cause actual results to differ:

- (1) actual rental income could be below projected rental income;
- (2) actual expenses may exceed projected expenses;
- (3) Capital Expenses and unanticipated costs may exceed the amount placed in the Reserve Accounts;  
or
- (4) rent may be collected later than projected, due to failure of the Master Tenant or any Residents to make such payments when due.

Due to these and other factors, 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 Investors may be lower than that projected.

***Investors may not recover all or any portion of their investment in a sale of the Property.***

Any proceeds realized from the sale of the Property will be distributed to the Investors in accordance with their respective Interests, but only after payment of any loan then-outstanding on the Property (and any other loans), expenses of the transaction, including a broker's fee and a disposition fee to the Master Tenant or an affiliate and satisfaction of the claims of other third-party creditors. Since the Asset Manager will have the exclusive right to retain the listing broker, this may prevent the Investors from retaining their own listing broker. The ability of the Investor to recover all or any portion of his, her, or its investment through a sale will therefore depend on the amount of net proceeds realized from such sale and the claims to be satisfied therefrom. There can be no assurance that the Investors will receive any proceeds from the sale of the Property.

***Investors will not receive audited financial statements for the Property.***

There will not be any standard audited financial reports available to the Investors with respect to the Property. Instead, the Trust will use good faith efforts to obtain a cash flow audit on an annual basis. Given the lack of audited financial reports, it may be costly and difficult to verify the accuracy of certain financial reports detailing the

operations of the Property. See “*Frequently Asked Questions – What kind of audit will be performed on the operations of the Property?*” for additional discussion regarding the cash flow audit.

## **Risks Related to the Offering**

### ***There is no public market for the Interests.***

An Investor will be required to represent that he, she or it is acquiring the Interests for investment purposes and not with a view to distribution or resale, and he, she or it can bear the economic risk of investment in the Property for an indefinite period of time. The Interests are being offered and sold pursuant to exemptions from the registration provisions of federal and state law. Accordingly, the Interests will be subject to restrictions on transfer. Even if these transfer restrictions expire or are not applicable to a particular Investor, there is no public market for the Interests, and neither the Sponsor nor the Trust will take any steps to develop a market. Investors should expect to hold their Interests for a significant period of time.

### ***The Interests are not registered with the SEC or any state securities commission.***

The offer and sale of the Interests have not been, and will not be, registered with the SEC or any state securities commission. The Interests are being offered in reliance upon an exemption from the registration provisions of the Securities Act and state securities laws applicable only to offers and sales to a prospective Investor meeting the suitability requirements set forth herein. Since this is a nonpublic offering and, as such, is not registered under federal or state securities laws, a prospective Investor will not have the benefit of review or comment by the SEC or any state securities commission. The terms and conditions of the Offering may not comply with the guidelines and regulations established for real estate programs that are required to be registered and qualified with those agencies.

### ***If the Trust fails to comply with the requirements of the exemptions related to the Interests, the Trust could suffer material adverse effects.***

The Interests are being offered in reliance upon an exemption from the registration provisions of the Securities Act and state securities laws applicable only to offers and sales to a prospective Investor meeting the suitability requirements set forth herein. If the Trust should fail to comply with the requirements of such exemption, Investors may have the right, if they so desired, to rescind their purchase of an Interest. This might also occur under the applicable state securities laws and regulations in states where an Interest will be offered without registration or qualification pursuant to a private offering or other exemption. If this were the case and a number of Investors were successful in seeking rescission, the Trust would face severe financial demands that would adversely affect the Trust as a whole and, thus, the investment in Interests by the remaining Investors.

### ***An Investment in the Interests is not a diversified investment.***

An Investor will acquire the Interests in the Trust, the assets of which consist solely of the Property and the Master Lease. The Property is a multi-family property leased to the Master Tenant. Accordingly, an investment in the Interests will not be diversified as to the type of asset, type of tenant, or geographic location.

### ***Investors may not realize a return on their investment for years, if at all.***

An Investor may not realize a return on his, her, or its investment and could lose the entire investment. For this reason, a prospective Investor should carefully read this Memorandum and should consult with his, her, or its attorney, tax advisor, and business advisor prior to making the investment.

### ***The Trust is not providing the prospective Investor with separate legal, accounting, or business advice or representation.***

The Trust, the Signatory Trustee, and their respective affiliates are not represented by separate counsel. Further, the Trust’s and the Signatory Trustee’s counsel and accountants have not been retained, and will not be available, to provide legal counsel, tax advice or accounting advice to a prospective Investor.

***If all of the Interests are not sold, the Initial Beneficiary or its affiliates will own the unsold Interests which could result in potential conflicts of interest.***

There is no minimum amount of Offering proceeds that must be raised or minimum number of Investors required in connection with this Offering. Accordingly, if the Managing Broker-Dealer is unable to sell all of the Interests, the Initial Beneficiary and its affiliates will own any unsold Interests. The ownership of the Interests by these entities involves certain risks that potential Investors should consider, including, but not limited to, the fact that there may be conflicts of interest between the objectives of the Investors and that of the Initial Beneficiary and its affiliates, or, if the Offering is not fully subscribed, that a significant amount of the Interests will not have been acquired by disinterested investors after an assessment of the merits of the Offering.

***The Purchase Agreement contains an exclusive jurisdiction provision.***

The Purchase Agreement requires Investors 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 Orange County, California. As such, in the event of a dispute, Investors will not be able to select any other jurisdiction in which to resolve it.

## **Tax Risks**

*There are substantial risks associated with the federal income tax aspects of a purchase of an Interest, especially if the purchase is part of a Section 1031 Exchange. The following risk factors summarize some of the tax risks to an Investor. 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 the Offering are complex and certain of the tax considerations may differ depending on individual tax circumstances, each prospective Investor is strongly encouraged to consult with and rely on his, her, or its own tax advisor about this Offering’s tax aspects in light of that Investor’s individual situation. No representation or warranty of any kind is made with respect to the IRS’ acceptance of the treatment of any item by an Investor.*

EACH PROSPECTIVE INVESTOR SHOULD SEEK ADVICE BASED ON HIS, HER, OR ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR CONCERNING THE INCOME AND OTHER TAX CONSEQUENCES OF PARTICIPATION IN THIS INVESTMENT.

***Acquisition of the Interests may not qualify as a Section 1031 Exchange.***

The Interests may not qualify under Section 1031 for tax-deferred exchange treatment for reasons other than those discussed above and in Special Tax Counsel’s opinion, with the result that a portion of the proceeds from an Investor’s sale of his, her, or its Relinquished Property could constitute taxable gain or “boot” (as defined herein). Whether any particular acquisition of Interests will qualify as a Section 1031 Exchange 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. Neither the Trust nor its affiliates or agents is examining or analyzing any prospective Investor’s circumstances to determine whether it qualifies under Section 1031. Moreover, no opinion or assurance is being provided to the effect that any prospective Investor’s transaction will qualify under Section 1031. Such examinations or analyses are the sole responsibility of each prospective Investor, who should consult with his, her, or its own legal, tax, accounting and financial advisors before purchasing an Interest. If the factors surrounding a prospective Investor’s disposition of the Relinquished Property and his, her, or its acquisition of the Interests do not meet the requirements of Section 1031, the disposition of the Relinquished Property will be taxed as a sale and the IRS will assess interest and possibly penalties for failure to timely pay such taxes. See the tax opinion attached hereto as Exhibit B. Also, merely designating an Interest in connection with an Investor’s tax-deferred exchange does not assure the Investor that there will be Interests available to purchase when the Investor executes the Investor Questionnaire & Purchase Agreement and actually causes his, her, or its qualified intermediary to transfer funds to complete the purchase of the Interests.

Revenue Ruling 2004-86, 2004-2 C.B. 191, holds that, assuming the other requirements of Section 1031 are satisfied, a taxpayer’s exchange of real property for an interest in a Delaware statutory trust (the “DST”) holding real estate as described in the ruling satisfies the requirements of Section 1031. The IRS based its holding on the following conclusions: (1) the DST was treated as an entity separate from its owners (and not as a co-ownership or agency

arrangement); (2) the DST was an “investment” trust and not a “business entity” for federal income tax purposes; (3) the DST was 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 were treated as directly owning Interests in real property held by the DST. 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 cannot be complete assurance that the Interests will satisfy the requirements of Section 1031. For example, the facts in the ruling neither expressly permit nor prohibit: (a) the possibility of conversion of the DST to a limited liability company; (b) the fact that the Signatory Trustee is related to the Initial Beneficiary; (c) any Interest retained by the Sponsor or its affiliates; or (d) the leasing of the Property by the Trust pursuant to the Master Lease to the Master Tenant, which is a special purpose entity affiliated with the Sponsor, including the mechanism set forth in the Master Lease for the calculation of rent payable by the Master Tenant to the Trust.

***Improperly identifying replacement properties could adversely affect the qualification of such an exchange under Section 1031.***

Section 1031 generally permits taxpayers to identify alternative and multiple replacement properties within 45 days after disposing of their relinquished property. Taxpayers are permitted to identify up to three replacement properties (the “**three-property rule**”), without regard to the fair market value of those properties. In addition, taxpayers may identify any number of properties so long as their aggregate fair market value at the end of the identification period does not exceed 200% of the value of the relinquished property on the date it was transferred (the “**200% rule**”). A taxpayer also will be treated as properly identifying any number of replacement properties if the fair market value of the replacement property actually acquired is at least 95% of the aggregate fair market value of all identified replacement property (the “**95% rule**”). In general, the identification requirement can also be satisfied if replacement property is actually acquired by the last day of the identification period. You should seek the advice of your tax advisor before subscribing for Interests or identifying the Property.

***A delayed closing on the acquisition of an Interest could adversely affect the qualification of an exchange under Section 1031.***

Investors who are completing a Section 1031 Exchange should be aware that closing on their replacement property must occur before the earlier of: (1) the day which is 180 days after the date on which the taxpayer transferred the property relinquished in the exchange; or (2) 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 “*Frequently Asked Questions – How long is the closing process for my purchase of an Interest?*” No extensions will be granted or other relief afforded 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 Section 1031.

***Funds from a Section 1031 Exchange may not be used for certain costs associated with the Property.***

Under certain conditions, closing and carrying costs, loan fees and costs, leasing reserves and other reserves, may not constitute property that is like-kind to real property for purposes of Section 1031. The Sponsor has attempted to structure the offering of the Interests so that such costs will be incurred by the Sponsor in connection with its syndication and offering of the Interests. You should consult your own tax advisor regarding the proper tax treatment of these costs.

***Classification for purposes of Section 1031.***

The Sponsor has attempted to structure the Offering to allow each Investor to be treated as acquiring an undivided interest in real property as opposed to an interest in a partnership or corporation for federal income tax purposes. However, the Trust will not obtain a private letter ruling from the IRS to that effect. In the absence of a ruling, there cannot be complete assurance that the IRS will treat the Interests as interests in real property for federal income tax purposes. If you intend to acquire an Interest pursuant to a Section 1031 Exchange, you should be aware that the Interest must be treated as an interest in real property and not as an interest in a partnership or corporation in order for you to be eligible to use the Interest as part of a Section 1031 Exchange. Consequently, if you are acquiring an Interest as part of a Section 1031 Exchange, you should consult your own tax advisor about the tax consequences of any Section 1031 Exchange and its potential risks.

Special Tax Counsel has issued an opinion that: (1) the Trust should be treated as an “investment trust” described in Treasury Regulation Section 301.7701-4(c)(1) that is classified as a “trust” under Treasury Regulation Section 301.7701-4(a); (2) the Investors, as Beneficial Owners, should be treated as “grantors” of the Trust; (3) as “grantors,” the Beneficial Owners should be treated as owning an undivided fractional interest in the Property for federal income tax purposes; (4) the Interests should not be treated as securities for purposes of Section 1031; (5) the Master Lease should be treated as a true lease and not a financing for federal income tax purposes; (6) the Master Lease should be treated as a true lease and not deemed partnerships for federal income tax purposes; and (7) the discussions of the federal income tax consequences contained in this Memorandum are correct in all material respects. The issues that are the subject of such opinions have not been definitively resolved by statutory, administrative or case law. This opinion is based on the facts and circumstances set forth in the opinion and will not constitute 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 conclusions in the opinion. If any of such facts or circumstances were to change, the tax consequences to Investors described in the opinion and this Memorandum could change. See “*Federal Income Tax Consequences.*”

***The use of certain exchange proceeds may result in taxable “boot.”***

Amounts attributable to personal property, amounts used to establish reserves and impositions or other items that are not attributable to the purchase of real property, such as costs of organizing and offering interests in the Trust, will not be treated as an interest in real property and would be treated as “boot,” potentially triggering gain recognition for Investors. It is possible that amounts attributable to reserves, if sufficient additional funds are borrowed by the Investors in excess of the indebtedness of an Investor’s prior investment, will not 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 Investor’s debt on its Relinquished Property, such difference will constitute “boot” and may be taxable depending on the Investor’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 Sponsor or their affiliates or Special Tax Counsel with respect to the amount of “boot” in the transaction. Prospective Investors must consult their own independent tax advisors regarding these items as the amount of potential boot is dependent on each Investor’s tax basis in the property relinquished.

***Potential significant tax costs could result if Interests are deemed to be interests in a partnership.***

If the Investors were treated for tax purposes as purchasing interests in a partnership, the Investors who are purchasing their Interests as part of a Section 1031 Exchange would not qualify for deferral of gain under Section 1031, and each Investor who had relied on deferral of such Investor’s 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 Investor had purchased his, her, or its Interest, such Investor may have no cash from the disposition of his, her, or its original parcel of 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 circumstances, an Investor would have to use funds from other sources to satisfy this tax liability. See “*Federal Income Tax Consequences.*”

***721 UPREIT Exchange***

As one possible exit strategy, the Signatory Trustee may elect to facilitate a 721 UPREIT Exchange. Investors who choose to participate in a 721 UPREIT Exchange will likely lose their ability to continue any future Section 1031 Exchanges once their Interests are exchanged for operating partnership units. **IN THE EVENT THE SIGNATORY TRUSTEE ELECTS TO FACILITATE A 721 UPREIT EXCHANGE, INVESTORS ARE ENCOURAGED TO CONSULT WITH THEIR OWN INDIVIDUAL COUNSEL AND ADVISORS ABOUT THE POTENTIAL TAX AND OTHER CONSEQUENCES OF A 721 UPREIT EXCHANGE PRIOR TO MAKING AN ELECTION.**

***State laws may differ.***

Some states adopt 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 Investor must consult his, her, or its own tax advisor as to the qualification of a transaction for deferral of gain under state law, both the law of an Investor’s residence and the law in which the relinquished property was located.

***The conversion of the Trust to the Springing LLC may have adverse tax consequences to Investors.***

If the Trust were to convert to the Springing LLC, the Trust Property would be transferred from the Trust to the Springing LLC and the membership interests in the Springing LLC will be held by the Investors. In such an event the Signatory Trustee would serve as the manager of the Springing LLC. Under current law, such a transfer generally would not be subject to federal income tax pursuant to Section 721. The Transfer Distribution could be subject, however, to state or local income, transfer or other taxes. In addition, there can be no assurances that the transfer will not be taxable under the federal income or other tax laws in effect at the time the transfer occurs. Because the conversion of the Trust to the Springing LLC could occur in several situations, it is not possible to determine all of the potential tax consequences to the Investors. **INVESTORS SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE POTENTIAL TAX CONSEQUENCES OF A TRANSFER DISTRIBUTION AND THE EFFECT OF THE PROPERTY BEING HELD BY THE SPRINGING LLC RATHER THAN THE TRUST.** It is not anticipated that the Trust will have to convert to a Springing LLC.

***Passive activity, “at risk” and excess business losses are subject to limitations.***

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 passive activities, including interest deductions attributable to passive activities, generally may only be used to offset passive income. Passive activities include: (1) most trade or business activities in which the taxpayer does not “materially participate” (a statutorily defined test); and (2) rental activities (subject to an exception for taxpayers who qualify as real property operators under certain statutory tests). Subject to satisfaction of the real property operator test and the material participation test, an Investor’s income and loss from an investment in an Interest, if any, will constitute income and loss from passive activities. However, the rules regarding the deductibility of passive losses (whether from an investment in an Interest or from another passive activity that potentially could be used to offset income from an investment in an Interest) are complex and vary with the facts and circumstances particular to each Investor. Prospective Investors should consult their tax advisors with respect to the tax consequences to them of the rules described above.

In addition, an Investor 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 the Investor is considered “at risk” under the Code. Losses not allowed under the at-risk provisions may be carried forward to subsequent tax years and used when the Investor’s amount “at risk” increases or when the Investor generates gain on the disposition of the activity. However, the rules regarding the applicability of the at-risk rules to a particular Investor are complex and vary with the facts and circumstances particular to each Investor. Prospective Investors should consult their tax advisors with respect to the tax consequences to them of the rules described above.

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, has been set at \$262,000 (\$524,000, 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.

***Income and gain from passive activities may be subject to the Medicare Contributions Tax.***

Certain Investors who are U.S. individuals are subject to the Medicare Contributions Tax, which imposes a 3.8% tax on the “net investment income” of certain U.S. individuals and on the undistributed “net investment income” of certain estates and trusts. 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 Investors should consult their tax advisors with respect to the tax consequences to them of the rules described above.

***An Investor may be required to make an election if the Investor wishes to avoid the limit on business interest deductions.***

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 taxable



income, subject to certain adjustments. 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 Investors 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 an Investor’s specific circumstances. Investors should consult their own tax advisors as to the applicability of the limitations on business interest deductions rules to them and as to their ability to make such election. See “*Limit on Business Interest Deductions*” in “*Federal Income Tax Consequences*.”

***An Investor should expect to use funds from other sources to satisfy tax liabilities.***

An Investor should expect to have taxable income even in the absence of any distribution of cash from the Trust. This will occur because cash flow from the Property may be used to fund nondeductible operating or capital expenses of the Property, including reserves and payments of principal on the Loan, that are not offset by depreciation or other deductions. 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 an Investor 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 Investors, 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, an Investor would have to use funds from other sources to satisfy his, her, or its tax liability.

***Future legislative or regulatory action could significantly change the tax aspects of an investment in an Interest.***

The discussion of tax aspects contained in this Memorandum is based on law presently in effect and certain proposed Treasury Regulations. Nonetheless, Investors should be aware that new administrative, legislative or judicial action could significantly change the tax aspects of an investment in an Interest. Any such change may 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 the tax consequences of an investment in an Interest.

Specifically, 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. At the time of this Memorandum, Congress is in fact considering one or more proposals to repeal or limit Section 1031 in order to greatly limit or end Section 1031 Exchanges.

Beginning on or after January 1, 2018 (subject to certain exceptions), the Code reflects many significant changes to the U.S. federal income tax laws (including Section 1031). 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. There can be no assurance 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 changes effective in 2018. 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, Investors 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, future repeal or amendment of Section 1031 or the Treasury Regulations promulgated thereunder could negatively impact the use of a Section 1031 Exchange in connection with an Investor’s exit strategy.

***An audit of an Investor’s tax returns could affect such Investor’s intended Section 1031 Exchange.***

An audit of the tax returns of an Investor could result in the challenge to, and disallowance of, some of the deductions claimed in such returns. An audit could also address the validity 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 validity of a Section 1031 Exchange, in the event of either an audit or any litigation resulting from an audit. An audit could arise as

a result of an examination by the IRS or any state or local taxing authority of tax returns filed by the Sponsor, its affiliates, or the Investor or any information returns filed by the Trust.

***State and local taxes may also impact an investment in the Trust.***

In addition to the federal income tax consequences, a prospective Investor should consider the state and local tax consequences of an investment in an Interest. Such taxes may include, without limitation, income, franchise and excise taxes, as well as the Secondary Transfer Tax. Prospective Investors must consult with their own tax advisors concerning the applicability and impact of any state and local tax laws.

***An Investor could become subject to accuracy-related penalties and interest.***

In the event of an audit that disallows an Investor's deductions, Investors 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 underpayment to which the penalty applies. The penalty applies to any portion of any understatement that is attributable to: (1) negligence or disregard of rules or regulations; (2) any substantial understatement of income tax; or (3) any substantial valuation misstatement in which the value of any property (or the adjusted basis) is 150% or more of the amount determined to be the proper valuation or adjusted basis. The penalty is increased to 40% in the case of an underpayment which is attributable to one or more "non-disclosed noneconomic substance" transactions or to a Gross Valuation Misstatement (as defined herein). Similarly, 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 may be applicable.***

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 Investors should consult with their own tax advisors concerning the applicability of the alternative minimum tax.

***Recharacterization of the Master Lease as a financing or other arrangement for federal income tax purposes would have significant negative tax consequences.***

Transactions structured as leases may be recharacterized for federal income tax purposes to reflect their economic substance. For example, in appropriate circumstances a purported lease may be recharacterized as a conditional sales contract. Recharacterization of the Master Lease as a financing or other arrangement for federal income tax purposes would have significant negative tax consequences. For example, if the Master Lease were recharacterized as a financing, the Master Tenant would be treated as the owner of the underlying Property for federal income tax purposes. As a result, Investors attempting to participate in Section 1031 Exchanges would not be treated as having received qualified replacement property when they acquired their Interests because the Investor would be treated as having made loans 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 Investors and would not be deductible by the Master Tenant. All of these consequences could have a significant impact on the tax consequences of an investment in the Property.

## **ERISA Risks**

ERISA and Code Section 4975 impose certain fiduciary restrictions, including prohibited transaction restrictions, on funds that hold "plan assets."

The Plan Asset Rules provide that, subject to certain exceptions outlined in the rules, the assets of an entity (such as the Trust) in which a Benefit Plan Investor holds an ownership interest may be treated as assets of an investing plan, in which event the assets of the Trust (and transactions involving such assets, such as a sale of the Property) would be subject to ERISA's fiduciary provisions, including any prohibited transaction provisions under ERISA or Code Section 4975. One of the exceptions in the Plan Asset Rules will apply if ownership in the Trust is limited so that at all times less than 25% of the outstanding Interests may be owned by Benefit Plan Investors. The Sponsor and the Signatory Trustee will use reasonable best efforts to qualify the Trust for this exception to the Plan Asset Rules. If, nevertheless,

Benefit Plan Investors acquire 25% or more of the Interests and the Plan Asset Rules apply to the Trust, ERISA's fiduciary standards and prohibited transaction rules would apply to the operation of the Trust, compliance with which would likely impose substantial additional compliance expenses upon the Trust, thereby potentially reducing amounts distributable by the Trust to the Investors. Finally, if the Trust is subject to the Plan Asset Rules and is not able to comply with ERISA or Code Section 4975, Benefit Plan Investors may be at risk of breaching fiduciary duties owed to their sponsoring plan.

Employee benefit plans such as governmental and non-United States plans, while not subject to ERISA, may be subject to laws regulating employee benefit plans that contain rules substantially similar to ERISA and may contain other rules relating to permissible investments. Such plans should conclude that an investment in the Interests would satisfy all such laws before making such an investment (and, as indicated above, may be required to make certain assurances to the Trust).

## ESTIMATED USE OF PROCEEDS

The following table sets forth the estimated sources and uses of the proceeds of the Offering. The Sponsor, the Asset Manager, the Property Manager, and their respective affiliates will receive substantial compensation and fees in connection with the Offering and the acquisition of the Property, as described in this Memorandum. The figures below are based upon the sale of 100% of the Interests, equivalent to \$76,767,365.

<b>Sources</b>	<b>Total Proceeds (Offering Proceeds + Loan Proceeds)</b>	<b>Amount from Loan Proceeds</b>	<b>Amount from Offering Proceeds</b>	<b>Percentage of Maximum Offering Amount<sup>1</sup></b>
Offering Proceeds		-	\$76,767,365	100.00%
Loan Proceeds		\$48,000,000	-	-
<b>Total Sources</b>	<b>\$124,767,365</b>	<b>\$48,000,000</b>	<b>\$76,767,365</b>	<b>-</b>
<b><u>Application</u></b>				
<b><u>Selling Commissions and Expenses</u></b>				
Selling Commissions <sup>2, 3</sup>	\$4,606,042	-	\$4,606,042	6.00%
Dealer Management Fee <sup>2, 3</sup>	\$498,988	-	\$498,988	0.65%
Broker-Dealer Allowance <sup>2, 3</sup>	\$767,674	-	\$767,674	1.00%
Wholesaling Fee <sup>2, 3</sup>	\$1,036,359	-	\$1,036,359	1.35%
O&O Expenses <sup>2, 4</sup>	\$230,937	-	\$230,937	0.30%
<b>Total<sup>5</sup></b>	<b>\$7,140,000</b>	<b>-</b>	<b>\$7,140,000</b>	<b>9.30%</b>
<b><u>Costs of Acquisition</u></b>				
Total Acquisition Cost <sup>2, 6</sup>	\$107,910,717	\$47,409,875	\$60,500,842	78.81%
Acquisition Fee <sup>7</sup>	\$4,747,500	-	\$4,747,500	6.19%
Reserves	\$4,969,148	\$590,125-	\$4,379,023	5.70%
<b>Total</b>	<b>\$117,627,365</b>	<b>\$48,000,000</b>	<b>\$69,627,365</b>	<b>90.70%</b>
<b>Total Application</b>	<b>\$124,767,365</b>	<b>\$48,000,000</b>	<b>\$76,767,365</b>	<b>100.00%</b>

- (1) Percentages have been rounded to the nearest hundredth of a percentage for purposes of this table.
- (2) The Trust will pay or reimburse some or all of these amounts to affiliates of the Trust, as described in this Memorandum.
- (3) Offers and sales of Interests will be made on a “best efforts” basis by WealthForge Securities, LLC, a Virginia limited liability company (“**WealthForge**”), a member of the Financial Industry Regulatory Authority, Inc. (“**FINRA**”), as the exclusive managing broker-dealer for this Offering, and any other participating broker-dealers which are members of FINRA that WealthForge agrees to include (each, a “**Selling Group Member**” and collectively, the “**Selling Group Members**”). The WealthForge privacy policy is attached as Exhibit D. WealthForge will receive: (i) selling commissions (“**Selling Commissions**”) equal to 6.0% of the gross equity proceeds of the Offering (the “**Offering Proceeds**”), which will either be paid to affiliates of WealthForge, including employees and contractors of the Sponsor, or reallocated to participating Selling Group Members, (ii) a dealer management fee (“**Dealer Management Fee**”) equal to 0.65% of the Offering Proceeds, some of which may be reallocated to registered representatives affiliated with WealthForge, and (iii) a broker-dealer allowance (“**Broker-Dealer Allowance**”) equal to 1.0% of the Offering Proceeds in connection with its due diligence review of the Offering and facilitating regulatory compliance, which will either be retained by WealthForge or re-allowed to the Selling Group Members. In addition, a wholesaling fee (“**Wholesaling Fee**”) of 1.35% of the Offering Proceeds may be paid to wholesalers, including employees and contractors of the Sponsor.
- (4) The Sponsor will be entitled to 0.30% of the Offering Proceeds as payment for organizational, offering and marketing expenses incurred in connection with the Offering (the “**O&O Expenses**”), including the costs of organizing the Trust, the Signatory Trustee, the Initial Beneficiary and the Master Tenant, and marketing, legal, finance, accounting, and printing fees and expenses. Certain of these costs have been estimated for purposes of this table. If the actual O&O Expenses are greater than 0.30% of the Offering Proceeds, the Sponsor will pay those costs and expenses. Conversely, if the estimates exceed the actual costs and expenses, the Sponsor will retain the difference as additional compensation.
- (5) The total aggregate amount of commissions and expense reimbursements (collectively, “**Selling Commissions and Expenses**”) will not exceed 9.30%. The Trust reserves the right to pay reduced Selling Commissions and Expenses or waive such sums with respect to Interests purchased by certain affiliates and other persons. The Selling Commissions and Expenses, as well as other costs associated with the Offering, will be paid by the Trust out of the Offering Proceeds. See “*Compensation of the Sponsor and its Affiliates*” and “*Plan of Distribution*.”
- (6) The total acquisition cost of the Property is comprised of: (a) the purchase price of the Property; (b) estimated bridge financing fees and interest; (c) estimated acquisition closing costs, which include costs paid in connection with the acquisition of the Property

including, but not limited to, title insurance, recording costs, document taxes, escrow costs, tax review fees, document preparation and fees; and (d) estimated financing closing costs, which include costs to be paid to the Lender and mortgage broker in connection with financing the Property relating to loan origination and processing, title insurance, recording costs, mortgage taxes, escrow costs, property reports obtained by the Lender, document preparation, the Lender's legal expenses and first month's interest, tax and insurance costs. The total financing and acquisition costs, fees and expenses are estimated to be \$2,410,717. If the actual financing and acquisition costs, fees and expenses exceed the estimates, the Sponsor will pay those costs, fees and expenses. Conversely, if the estimates exceed the actual costs, fees and expenses, the Sponsor will retain the difference as additional compensation.

- (7) The Trust will pay the Sponsor an acquisition fee of \$4,747,500 for its services in the identification, negotiation and acquisition of the Land.

## COMPENSATION OF THE SPONSOR AND ITS AFFILIATES

The following is a description of compensation that may be paid to the Sponsor, the Asset Manager, the Property Manager, the Master Tenant, or their affiliates during the period of the Trust's ownership of the Property or in connection with the Offering. These compensation arrangements are not the result of arm's-length negotiations.

Because of the nature of a Section 1031 Exchange and applicable IRS requirements, it is difficult, if not impossible, to charge Investors for any shortfall in costs and expenses related to the Offering that are paid out of the gross Offering proceeds. If the actual costs and expenses exceed the estimates, the Sponsor will pay those costs. Conversely, if the estimates exceed the actual costs and expenses, the Sponsor will retain the difference as additional compensation.

For purposes of this table, the amount of the commissions and fees set forth below are calculated based on 100% of the Interests, equivalent to \$76,767,365.

<b><u>Type of Compensation</u></b>	<b><u>Method of Compensation</u></b>	<b><u>Estimated Maximum Amount of Compensation</u></b>
<b>Acquisition Fee</b>	The Trust will pay the Sponsor an acquisition fee for its services in the identification, negotiation and acquisition of the Property.	\$4,747,500
<b>Selling Commissions and Fees</b>	Certain employees of the Sponsor are registered representatives of WealthForge and receive Selling Commissions and fees in connection with the sale of Units to Investors for whom such employees are the registered representatives.	Not determinable at this time.
<b>Reimbursement of O&amp;O Expenses</b>	The Trust will reimburse the Sponsor, its affiliates and certain third parties for offering and organizational expenses in an amount equal to approximately 0.30% of the Offering Proceeds.	\$230,937
<b>Financing Fees</b>	In the event that fees and costs paid to the Lender and mortgage broker in connection with obtaining the Loan (estimated at approximately 1.60% of the Loan amount) are less than anticipated, the Sponsor will retain the difference as additional compensation.	Not determinable at this time.
<b>Bridge Financing Costs</b>	In the event that interest, fees and costs paid to the Bridge Equity Lender in connection with obtaining the Bridge Equity Loan (estimated at approximately \$1,110,716) are less than anticipated, the Sponsor will retain the difference as additional compensation.	Not determinable at this time.
<b>Legal Fees and Due Diligence Costs</b>	The Trust will reimburse the Sponsor and its affiliates reasonable charges for services provided by Sponsor's internal legal staff.	Not determinable at this time.
<b>Reimbursement of Financial Services Costs</b>	The Master Tenant will reimburse the Sponsor from revenue generated by the Property for costs associated with accounting, tax preparation, preparation of monthly financials and banking statements, quarterly reports, deliverables to Lender and compliance with Loan covenants.	Not determinable at this time.

<b><u>Type of Compensation</u></b>	<b><u>Method of Compensation</u></b>	<b><u>Estimated Maximum Amount of Compensation</u></b>
<b>Property Management Fees</b>	The Property Manager will be entitled to a monthly management fee in an amount equal to approximately two and one-half percent (2.5%) of the gross revenues from the Property for the month for which the payment is made.	Estimated to be \$230,489 for the initial year of ownership of the Property; however, it is not possible to determine the actual amount at this time.
<b>Asset Management Fees</b>	<p>The Master Tenant will pay the Asset Manager an asset management fee, as provided in the Asset Management Agreement, on a monthly basis in an amount equal to 1.0% of the gross revenue received by the Master Tenant for use and occupancy of the Property.</p> <p>If the Master Tenant requests any additional services not specified in the Asset Management Agreement, the Asset Manager may agree to provide the requested services upon terms mutually agreeable to the Master Tenant and the Asset Manager.</p> <p>The Asset Manager may decide, in its sole discretion, to be paid an amount less than the total amounts to which it is entitled under the Asset Management Agreement, and any excess amount that is not paid may, in the Asset Manager's sole discretion, be waived permanently or, as applicable, deferred or accrued, without interest, to be paid at a later point in time.</p>	Estimated to be \$92,196 for the initial year of ownership of the Property; however, it is not possible to determine the actual amount at this time.
<b>Master Tenant Income</b>	Under the Master Lease, the Master Tenant will earn 50% of the amount Total Operating Income (as defined in the Master Lease) for the Property exceeds the Annual Bonus Rent Threshold (as set forth in the Master Lease) for the applicable 12-month period.	Estimated to be \$38,335 for the first year of ownership of the Property; however, it is not possible to determine the actual amount at this time.
<b>Refinancing Fee</b>	If the Springing LLC refinances the Property in connection with a Transfer Distribution (as defined herein), the Master Tenant will receive from the Trust a fee equal to 1.0% of the principal amount of the new loan, plus reimbursement of any out-of-pocket expenses incurred by the Master Tenant in connection with the refinancing, including but not limited to: expenses incurred in connection with third-party reports; legal fees; application fees; and mortgage brokerage fees to both non-affiliate and affiliate mortgage brokers.	Not possible to determine at this time.
<b>Construction Management Fee</b>	The Master Tenant will receive a design and construction management fee for its services in supervising any future renovations to the Property equal to 5.0% of construction costs up to \$25,000, 4.0% of construction costs over \$25,000 but less than \$50,000 or 3.0% of construction costs over \$50,000.	It is not possible to determine amounts payable in connection with future renovations that have not yet been contemplated.

<b><u>Type of Compensation</u></b>	<b><u>Method of Compensation</u></b>	<b><u>Estimated Maximum Amount of Compensation</u></b>
<b>Disposition Fee</b>	Upon the sale of the Property, the Master Tenant, or an affiliate thereof, will be entitled to receive a disposition fee equal to market real estate sales commission rates at the time of sale (the “ <b>Disposition Fee</b> ”). Any sales commissions due to third-party brokers shall not be paid from this amount. The Master Tenant or its affiliate will not be entitled to any Disposition Fee in the event that the gross sales price of the Property, reduced by any amounts used or incurred by the Trust to pay off or cause the buyer to assume the debt on the Property, is less than the Maximum Offering Amount.	Not possible to determine at this time.



## THE PROPERTY

### Ownership of the Property

The Trust acquired title to the Property from TDC Tanglewood Real Estate Owner, L.L.C., a Delaware limited liability company, on June 30, 2022.

### Location and Description of the Property

The Property is a Class A, mid-rise, multi-family community located in the prestigious Tanglewood area of Houston at 1414 Wood Hollow Drive, Houston, Texas 77057 known as “The Hayworth.” The Property consists of a single parcel of land approximately 3.08 acres in size, upon which are situated one six-story apartment building built on top of a two-level parking garage, along with two three-story townhome buildings. The three buildings contain approximately 351,000 square feet of net rentable residential area across 246 Units. Amenities include private balcony or patio area for all units, luxury swimming pool and social deck with fire pit, outdoor grilling kitchen and terrace seating, indoor/outdoor social lounge with city views, resident business center and boardroom, private dining room, bike and storage room, pet washing and grooming station, craft and gift-wrapping room, access to private park with sand volleyball courts, tennis courts and picnic areas, and resident butler services including housekeeping and dog walking services. The gated, two-level parking garage contains 418 parking spaces, 11 of which are handicap accessible spaces. The townhome buildings contain an additional 20 attached garage spaces.

The Property contains 246 Units in the following configurations:

UNIT MIX					
Unit Mix/Type	Comments	No. Units	Percent of Total	Unit Size (SF)	NRA (SF)
1BR/1BA	A1	24	9.8%	934	22,416
1BR/1BA	A2	27	11.0%	1,077	29,079
1BR/1BA	A3	24	9.8%	1,248	29,952
1BR/1BA	A3A	12	4.9%	1,292	15,504
1BR/1BA	A4	4	1.6%	1,097	4,388
1BR/1BA	A5	6	2.4%	1,542	9,252
2BR/2BA	B1	5	2.0%	1,320	6,600
2BR/2BA	B2	6	2.4%	1,398	8,388
2BR/2BA	B3	12	4.9%	1,408	16,896
2BR/2BA	B4	2	0.8%	1,423	2,846
2BR/2BA	B5	6	2.4%	1,436	8,616
2BR/2BA	B6	21	8.5%	1,453	30,513
2BR/2BA	B7	6	2.4%	1,466	8,796
2BR/2BA	B8	2	0.8%	1,484	2,968
2BR/2BA	B9	6	2.4%	1,562	9,372
2BR/2BA	BB1	6	2.4%	1,574	9,444
2BR/2BA	BB2	1	0.4%	1,589	1,589
2BR/2BA	BB3	6	2.4%	1,590	9,540
2BR/2BA	BB4	23	9.3%	1,657	38,111
2BR/2BA	BB5	23	9.3%	1,671	38,433
3BR/3BA	C1	6	2.4%	1,912	11,472
3BR/3BA	C2	1	0.4%	2,046	2,046
3BR/3BA	C3	6	2.4%	2,324	13,944
Efficiency	Guest	1	0.4%	441	441
2BR/2.5BA - TH	T1	2	0.8%	1,986	3,972
2BR/2.5BA - TH	T2	8	3.3%	2,053	16,424
Total/Average:		246	100.0%	1,427	351,002
Source: Various sources compiled by CBRE					

As of June 27, 2022, the Property was approximately 92% occupied by Residents.

### **Physical Condition of the Property**

Information regarding the Property is available in the Property Condition Report, dated March 28, 2022 (the “**Property Condition Report**”), prepared by Partner Engineering and Science, Inc. (the “**Partner Engineering**”), a copy of which is available in the Investor data room. Certain general information concerning the Property is summarized below.

The Property Condition Report indicates that the Property appears to be in good to fair condition. As discussed below, the Property Condition Report recommends certain additional investigations and provides estimates of (i) immediate repairs and deferred maintenance, and (ii) long-term capital replacement costs. The long-term capital replacement costs described below are based on an inflation rate of 2.5% and a 12-year evaluation period.

#### ***Immediate Repairs and Deferred Maintenance***

The Property Condition Report assigns a cost of \$8,000 for immediate repairs and deferred maintenance costs covering repair work to remove a fire code violation, repair work to certain fire sprinklers, and inspection and repair of cracking concrete on the underside of the balcony of one unit. See “*Summary of the Master and Residential Leases – Reserve Accounts.*”

#### ***Physical Needs Over Time***

Physical needs over time are items needing repair or replacement that are beyond the scope of regular maintenance but, in the opinion of Partner Engineering, are necessary to maintain the overall condition of the Property for 12 years from the date of the Property Condition Report.

The Property Condition Report estimates the cost of the capital replacement needs of the Property over the 12-year period to total \$2,042,226. With 2.5% inflation this amount is \$2,436,974. The physical needs over time provided for in the Property Condition Report include: striping of concrete paving; exterior cleaning, painting and sealing; replacement of elevator cab interiors; replacement of common area carpeting and furniture, fixtures and equipment; replacement of Unit water heaters; replacement of Unit carpeting, appliances and laundry equipment.

### **Flood Zone**

According to the Property Condition Report, based on the Flood Insurance Rate Map maintained by the Federal Emergency Management Agency, Community Panel Number 48201C0665M, dated June 9, 2014, the Property appears to be located in Flood Zone X (unshaded), which is defined as minimal risk areas outside the 1-percent and 0.2-percent-annual-chance floodplains.

### **Seismic Zone**

According to the Property Condition Report, based on the seismic zone map published in the Uniform Building Code 1997, Volume 2, Table 16.2, the Property appears to be located in Seismic Zone 0, an area with very low probability of damaging ground motion.

### **Hurricane Zone**

Based on a review of the Wind Zone Map, published by the Federal Emergency Management Agency, the Property appears to be located in an hurricane-susceptible region, and in Wind Zone III, an area with wind design speeds up to 200 miles per hour.

### **Environmental**

Federal, state and local laws may impose liability on a landowner for releases of or the presence on the premises of hazardous substances (which by definition does not include petroleum), without regard to fault or knowledge of the presence of such substances. A landowner may be held liable for the presence of hazardous

substances that occurred before it acquired title and/or that occur during ownership of, but are not discovered until after it sells, a property. If hazardous substances are found at any time on the Property, the Trust may be held liable for all cleanup costs, fines, penalties and other costs regardless of whether the Trust owned the Property when the releases occurred or the hazardous substances were discovered. Under the Federal Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”), as well as many state laws, a purchaser of property may qualify for affirmative defenses to, and exemptions from liability under, CERCLA and state laws. One of the factors critical to a purchaser’s defense is obtaining, within 180 days before acquiring the property, a Phase I Environmental Site Assessment (a “**Phase I**”) that qualifies as “All Appropriate Inquiry.”

The Trust obtained a Phase I of the Property from Partner Engineering and Science, Inc. (“**Partner Engineering**”) dated March 28, 2022 (the “**Phase I Assessment**”). The Phase I Assessment was performed in compliance with the standards of ASTM Practice E 1527-13 and E1527-21 Standard Practice for Environmental Site Assessments, which is recognized by the United States Environmental Protection Agency and many states as adequate to demonstrate compliance with “All Appropriate Inquiry.” The objective of the Phase I Assessment was to identify any Recognized Environmental Conditions (“**RECs**”), Controlled Recognized Environmental Conditions (“**CRECs**”), Historical RECs (“**Historical RECs**”), and/or business environmental risks (“**BERs**”) in connection with the Property. The Phase I Assessment found no evidence of RECs, CRECs, Historical RECs or BERs, and recommends no further investigation of the Property at this time. The Phase I Assessment is available to prospective Investors in the Investor data room.

The Phase I Assessment did not involve any invasive testing and was limited to a physical walk through or inspection of the Property and a review of the related governmental records. Consequently, there are no assurances that any actual environmental problems with or conditions on the Property would be exposed by the Phase I Assessment.

In the event that environmental contamination consisting of hazardous substances (but not petroleum) exist with respect to the Property when the Trust acquires the Property, but which are not disclosed in the Phase I Assessment, and the contamination is subsequently discovered on the Property, the Trust may be able to avail itself of the defenses to, and the exemptions from, liability that are available under CERCLA and state laws, since the Trust expects to acquire the Property within 180 days of the effective date of the Phase I Assessment.

It is possible that an environmental claim may be raised in such a manner that the claim could become enforceable against the Trust. The existence of any environmental issues with the Property may make it more difficult and more expensive, and perhaps impossible, to sell the Property. If losses arise from environmental matters, the financial viability of the environmentally impacted Property may be substantially affected. In an extreme case, the impacted Property may be rendered worthless, or the Trust may be obligated to pay cleanup and other costs in excess of the value of the impacted Property.

## **Radon**

The Phase I Assessment notes that a review of the EPA Map of Radon Zones places the Property in Zone 3, where average predicted radon levels are less than 2.0 picoCuries per Liter, which levels are below the EPA’s action level of 4.0 picoCuries per Liter. The Phase I Assessment concludes that based upon the radon zone classification, radon is not considered a significant environmental concern for the Property.

## **Agreements and Other Matters Affecting the Property**

The Property is subject to various easements, declarations, restrictions and other agreements of record as described in the Title Report which is available in the Investor data room.

## SUMMARY OF THE MASTER AND RESIDENTAL LEASES

### General

Concurrent with acquiring the Property, the Trust entered into the Master Lease with the Master Tenant for use of the entire Property. The Master Tenant will sub-lease the Property to Residents who occupy the Property pursuant to Residential Leases. The existing Residential Leases were assigned to the Master Tenant concurrent with the Trust's entry into the Master Lease. The Master Lease is available in the Investor Data Room.

The Master Lease is a net lease incorporating all expenses and debt service associated with the operation of the Property. The Master Tenant is responsible for operating the Property for its own benefit and is entitled to retain certain positive differences between the Property's operating cash flow and Master Lease payments due to the Trust and the Lender, as described in greater detail below. Likewise, the Master Tenant will be liable for the cash shortfalls between the operating cash flow of the Property and Master Lease payments due to the Trust and the Lender.

As of June 27, 2022, the Property was approximately 92% occupied by Residents.

### Master Lease

THE MASTER LEASE IS AVAILABLE IN THE INVESTOR DATA ROOM. EACH PROSPECTIVE INVESTOR SHOULD REVIEW THE MASTER LEASE IN ITS ENTIRETY BEFORE INVESTING. THE FOLLOWING IS A SUMMARY OF SOME OF THE SIGNIFICANT PROVISIONS OF THE MASTER LEASE. IT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT THEREOF.

#### *Term of the Master Lease*

The initial term of the Master Lease is seven years and three months, unless terminated earlier in accordance with the terms of the Master Lease. Provided that the Master Tenant is not in default under the Master Lease, the term will be automatically renewed for three additional five-year terms. The term of the Master Lease will automatically terminate upon the sale of the Property. However, as long as any obligation remains outstanding under any of the Loan Documents, the term of the Master Lease will automatically extend and continue in full force until all such obligations have been fully performed and satisfied.

#### *Rent*

During the initial term of the Master Lease, the Master Tenant is required to pay rents as described below and as set forth in more detail in the Master Lease. During any renewal term, the Master Tenant will be required to pay rents as set forth in the Master Lease.

#### *Base Rent*

Base Rent consists of the amount of the annual debt service due to the Lender pursuant to the terms of the Loan Documents other than, for the avoidance of doubt, any balloon payments of principal on the Loan (collectively, the "**Base Rent**"). Base Rent will be paid in monthly installments by the Master Tenant to the Lender, as required, in accordance with the terms of the Loan Documents. Base Rent will be equitably adjusted to take into account any modifications in the payments due to the Lender under the Loan Documents.

#### *Stated Rent*

In addition to Base Rent, the Master Lease requires the Master Tenant to pay annual stated rent amounts as set forth in the Master Lease (the "**Stated Rent**"); provided, however, that if Impositions (defined below) and insurance costs increase beyond the levels projected by the Trust and disclosed to the Master Tenant prior to the date of the Master Lease, then Stated Rent will be decreased by the amount of such unprojected increases. Stated Rent will be paid in arrears to the Trust monthly. Before distribution of Stated Rent to Investors, the Trust will incur fees of the Trustees, bank fees, legal fees, tax return preparation charges and other expenses currently estimated to be \$5,000 per year.

### ***Bonus Rent***

The Master Tenant is required to pay to the Trust as Bonus Rent an amount equal to 50% of the amount by which the Total Operating Income (as defined in the Master Lease) generated by the Property for an applicable 12-month period exceeds the Annual Bonus Rent Threshold for such period set forth in the Master Lease (the “**Bonus Rent**”). For purposes of the Master Lease, Total Operating Income equals total rent and other income generated by the Property to the extent actually collected by the Master Tenant. The Trust Reserve (as defined below) may be used to pay distributions to Investors, although there is no requirement that it be used for such purpose. The estimated distributions to Investors shown on the Forecasted Statement of Cash Flows attached as Exhibit C do not include the application of funds from the Trust Reserve. Under the Master Lease, the Master Tenant will earn 50% of the amount Total Operating Income for the Property exceeds the Annual Bonus Rent Threshold for the applicable 12-month period. See “*Risk Factors – Risks Related to the Master Lease and the Management of the Property – Actual results may differ from those forecasted in this Memorandum.*”

Estimated monthly payments of Bonus Rent will initially be paid based upon projected annual Bonus Rent. On or before October 31<sup>st</sup> of each year, actual Bonus Rent for the 12-month period ending on or about the prior July 31<sup>st</sup> will be calculated and if insufficient estimated Bonus Rent payments were made by the Master Tenant for such period, then the Master Tenant will pay the Trust the amount of the deficiency, and if estimated Bonus Rent payments exceeded actual Bonus Rent for such period, then the Master Tenant will receive a credit in the amount of the excess against future Stated and/or Bonus Rent payments. Further, if the Master Tenant reasonably determines at any time that the amount of estimated monthly Bonus Rent payments then being paid are in excess of the reasonably expected monthly Bonus Rent being generated by the Property, then the Master Tenant may reduce the estimated monthly Bonus Rent payments to an amount estimated by the Master Tenant to yield the actual estimated Bonus Rent for such year. If any partial 12-month period occurs for the payment of Bonus Rent at the beginning or end of the term of the Master Lease, then actual Bonus Rent for the partial period will be prorated. See “*Risk Factors – Risks Related to the Master Lease and the Management of the Property – Actual results may differ from those forecasted in this Memorandum.*”

### ***Schedule of Rent***

The schedule of Rent for the initial term of the Master Lease is as follows:

<b><u>Lease Year</u></b>	<b><u>Base Rent</u></b>	<b><u>Annual Gross Stated Rent*</u></b>	<b><u>Annual Bonus Rent Threshold**</u></b>	<b><u>Projected Annual Bonus Rent**</u></b>
Lease Year 1	The “Annual Note Payments”	\$3,070,695	\$9,142,896	\$38,335
Lease Year 2	The “Annual Note Payments”	\$3,070,695	\$9,794,557	\$58,983
Lease Year 3	The “Annual Note Payments”	\$3,070,695	\$9,965,763	\$166,743
Lease Year 4	The “Annual Note Payments”	\$3,070,695	\$10,136,825	\$235,701
Lease Year 5	The “Annual Note Payments”	\$2,878,776	\$10,739,043	\$93,715
Lease Year 6	The “Annual Note Payments”	\$2,303,021	\$10,259,506	\$497,381
Lease Year 7	The “Annual Note Payments”	\$2,303,021	\$10,357,769	\$617,063

\* Before distribution of Stated Rent, the Master Tenant will be permitted, in its discretion, to charge the Trust for Delaware trustee fees, bank fees, legal fees, tax return preparation charges and other expenses incurred by the Master Tenant currently estimated to be \$5,000 per year.

\*\* Annual Bonus Rent is an amount equal to 50% of the amount by which Total Operating Income generated by the Property for the applicable 12-month period exceeds the Annual Bonus Rent Threshold for such period. Total Operating Income is an amount equal to the sum of all rent and other income generated by the Property to the extent actually collected by the Master Tenant.

### ***Deferral of Stated Rent and Bonus Rent***

The Master Tenant may defer payment of all or any portion of Stated Rent and/or Bonus Rent as long as Base Rent and all other Operating Costs and Impositions (both as defined below) for the Property are timely paid by the Master Tenant, and all other Master Tenant Net Cash Flow (as defined below) is paid to the Trust (such Net Cash Flow being a partial payment of Stated Rent), with any unpaid portion of Stated Rent or Bonus to accrue and be payable out of future Net Cash Flow and to accrue interest at the rate of 2% per annum until repaid. “Net Cash Flow” means, for

each month of the Term, the positive difference between (a) gross revenue from the Property, reduced by (b)(i) Base Rent and (ii) all Operating Costs and Impositions paid by the Master Tenant during such month. For the avoidance of doubt, the Master Tenant is obligated under the Master Lease to pay all Base Rent, Operating Costs and Impositions regardless of Net Cash Flow. If the Master Tenant is in default of the Master Lease, any accrued and unpaid Stated Rent and Bonus Rent would become immediately due and payable without regard to any Net Cash Flow limitation. Any deferred Stated Rent and Bonus Rent that is not paid prior to the expiration or earlier termination of the Master Lease would be payable in full (subject to the terms of the Loan Documents) no later than 91 days after (a) the applicable loan is repaid in full, or (b) the Property is sold or exchanged by the Trust.

#### ***Additional Fees Under the Master Lease***

If the Springing LLC (as defined below) refinances the Property in connection with a Transfer Distribution (as defined below), the Master Tenant, or an affiliate thereof, will receive from the Trust a fee equal to one percent (1.0%) of the principal amount of the new loan, plus reimbursement of any out-of-pocket expenses incurred by the Asset Manager in connection with the refinancing, including but not limited to: expenses incurred in connection with third-party reports; legal fees; application fees; and mortgage brokerage fees to mortgage brokers. See “*Summary of the Offering – the Trust and the Trust Agreement.*”

Upon the sale of the Property, the Master Tenant, or an affiliate thereof, will be entitled to receive a disposition fee equal to market real estate sales commission rates at the time of sale (the “**Disposition Fee**”). Any sales commissions due to third-party brokers shall not be paid from this amount. The Master Tenant or its affiliate will not be entitled to any Disposition Fee in the event that the gross sales price of the Property, reduced by any amounts used or incurred by the Trust to pay off or cause the buyer to assume the debt on the Property, is less than the Maximum Offering Amount.

The Master Tenant will also receive a design and construction management fee for its services in supervising any future renovations to the Property equal to 5.0% of construction costs up to \$25,000, 4.0% of construction costs over \$25,000 but less than \$50,000 or 3.0% of construction costs over \$50,000.

#### ***Capital Expenses***

The Master Lease requires the Master Tenant to be responsible for the operation, repair, maintenance and management obligations of the Property. The Trust is financially responsible for all capital expenses at the Property, which means any and all costs and expenses incurred in connection with major repairs, replacements, and improvements relating to the structural elements of the Property which would be capitalized under generally accepted accounting principles, including, but not limited to, (i) the replacement of roofs, chimneys, gutters, downspouts, paving, curbs, ramps, driveways, balconies, porches, patios, foundations, exterior walls and all load bearing walls, exterior doors and doorways, windows, elevators, fences and gates, and (ii) exterior painting (the “**Capital Expenses**”). The Trust will not otherwise be required to provide any services, facilities, repairs or alterations to the Property. For so long as the Trust is a DST, the Trust will not have the right, power or ability to make more than minor, non-structural modifications to the Property.

#### ***Operating Costs and Impositions***

The Master Tenant is financially responsible for all costs and expenses incurred in connection with the Property that are not Capital Expenses, including (a) maintenance and nonstructural repair of alleyways, passageways, sidewalks, curbs and vaults, (b) all personal property replacements and repairs, including, but not limited to, (i) water heater replacements, (ii) floor covering replacements, (iii) replacement of window coverings, (iv) replacement of appliances, (v) HVAC compressor and condenser replacements, (vi) plumbing fixture replacements, (vii) electrical fixture replacements, and (viii) interior painting, (c) all repairs necessary to avoid any structural damage or injury to the Property, and (d) fuel and utilities, property management fees and employment costs for persons providing services to the Property, collection costs, reasonable attorneys’ fees, overhead and service agreements relating to the Property (the “**Operating Costs**”), and real estate taxes, assessments, water and sewer rents, charges for public utilities, excises, levies, license and permit fees and other similar charges defined as “**Impositions**” in the Master Lease (the “**Impositions**”), except in each case to the extent such amounts are borne by and actually paid by the Property Tenants. Although the Trust is responsible for paying Capital Expenses, the Master Tenant is fully responsible for performing all maintenance, repairs and replacements to the Property and the Trust shall not be required to actually perform any maintenance of the Property. Notwithstanding the foregoing, if Impositions and insurance costs increase beyond the

levels projected by the Trust and disclosed to the Master Tenant prior to the date of the Master Lease, then Stated Rent shall be decreased by the amount of such unprojected increases.

### ***Financial Services Costs***

The Master Tenant will reimburse the Sponsor from revenue generated by the Property for costs associated with accounting, tax preparation, preparation of monthly financials and banking statements, quarterly reports, deliverables to Lender and compliance with Loan covenants.

### ***Insurance***

Pursuant to the Master Lease, the Master Tenant is required to obtain, at its sole cost, all insurance required under the Loan Documents, including, without limitation, comprehensive, replacement-cost casualty insurance with not less than 12 months of loss of rent coverage and personal liability and property damage insurance. The Trust will be named as an additional insured or loss payee, as the case may be, on the insurance policies obtained by the Master Tenant. Notwithstanding the foregoing, if insurance costs (as set forth in the Master Lease) increase beyond the levels projected by the Trust and disclosed to the Master Tenant prior to the date of the Master Lease, then Stated Rent shall be decreased by the amount of such unprojected increases.

### ***Reserve Accounts***

To make funds available for Capital Expenses and unanticipated costs in relation to the Property, the Trust and the Master Tenant will establish Trust and operating reserve accounts. The Trust reserve is an expense reserve to be funded from the proceeds of the Loan and the Offering in the amount of \$4,969,148 (the “**Trust Reserve**”). The Trust Reserve includes amounts required by the Lender to be deposited into reserve accounts at the time the Loan is funded. The Trust Reserve may also be used to pay distributions to Investors, although there is no requirement that they be used for such purpose. The Trust Reserve belongs to the Trust and any funds remaining in the Trust Reserve when the Property is sold will be distributed to Investors pro rata in accordance with their Interests.

The Loan Documents require deposits into escrow for (i) replacement reserves of \$5,125 per month, which amount is equal to \$250 per Unit per year, and (ii) taxes and insurance premiums (the “**Operating Reserves**” and together with the Trust Reserve, the “**Reserve Accounts**”). Deposits into the Operating Reserve will be made by and belong to the Master Tenant, and any funds remaining in the Operating Reserves when the Loan is repaid will be returned to the Master Tenant.

To the extent the Master Tenant uses the Trust Reserve to pay expenses that are not the responsibility of the Trust, the amount used will be treated as a non-interest-bearing loan from the Trust to the Master Tenant that is to be repaid by the Master Tenant on or before the sale or exchange of the Property. If the Master Tenant expends funds for payment of Capital Expenses (which are the obligation of the Trust) from the Operating Reserves, then the amount expended will be treated as a non-interest-bearing loan from the Master Tenant to the Trust, and the Master Tenant will be entitled to reduce Stated Rent in order to be reimbursed for such expenditures, and will be entitled to be fully repaid for any such expenditures on or before the Trust’s sale or exchange of the Property and to recover such advances out of the sales proceeds for the Property if not repaid prior to such date. See “*Risk Factors – The Reserve Accounts may not be sufficient to cover the Property’s costs and the Master Tenant may not be able to cover any excess costs.*”

### ***Casualty and Condemnation***

In the event of a casualty or condemnation, the Trust (or the Master Tenant on the Trust’s behalf) will, to the extent permitted by law and the Loan Documents, restore the Property using the insurance proceeds or award, as applicable. If the insurance proceeds or award, as applicable, received by the Trust are insufficient to pay the cost of the restoration, the Trust is required to use the Reserve Accounts to make up the deficiency, subject to any required approvals of the Lender. In the event the Reserve Accounts are insufficient to make up the deficiency, the Trust is required to make up any remaining deficiency. If the insurance proceeds or award, as applicable, exceed the cost of the restoration the Trust shall retain the excess. Under certain circumstances, including if the Lender elects not to make insurance proceeds available to the Trust and the Trust elects not to restore the Property, the Master Lease will automatically terminate.

### ***Assignment and Subletting***

Except in certain circumstances as set forth in the Master Lease, the Master Tenant may sell, assign, sublet, pledge, transfer or otherwise dispose of its interests in the Master Lease only with the prior consent of the Trust and the Lender, each of which may be withheld for any reason or no reason. Subject to the terms and conditions of the Loan Documents, the Master Tenant shall have the right to enter into individual Residential Leases at the Property or to modify, amend, cancel, terminate, extend or renew any Residential Leases.

### ***Termination Rights***

The Trust may terminate the Master Lease upon prepayment of the Loan. The Master Lease will automatically terminate in the event that the Property is sold. Upon the termination of the Master Lease, the Master Tenant's rights and obligations in and under all current Residential Leases will automatically vest in the Trust and the Trust will be deemed, without further action required, to have assumed all of the Master Tenant's obligations under the Residential Leases from and after the effective date of the termination.

### **Residential Leases**

Each of the Residents has entered into a Residential Lease. In addition, each new Resident will be required to enter into a Residential Lease moving forward. A Resident may not assign or sublet a Unit without the Master Tenant's prior written consent. As of June 27, 2022, the Property was approximately 92% occupied by Residents.

A form of the Residential Lease to be used for new Residents following the Trust's acquisition of the Property is available in the Investor Data Room. EACH PROSPECTIVE INVESTOR SHOULD REVIEW THE SAMPLE RESIDENTIAL LEASE IN ITS ENTIRETY BEFORE INVESTING. THE FOLLOWING IS A SUMMARY OF SOME OF THE SIGNIFICANT PROVISIONS OF THE RESIDENTIAL LEASE. IT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT THEREOF.

### ***Security Deposits***

Each Resident must provide a security deposit in an amount determined by the Master Tenant, as landlord under the Residential Leases.

### ***Repair, Maintenance and Alterations***

Each Resident will agree to customary lease terms regarding conduct, including covenants to maintain and not damage the Units or the common areas. Residents are generally prohibited from performing any repairs, painting, wallpapering, carpeting, making electrical changes or otherwise altering the Property. Generally, each Resident will agree to reimburse the Master Tenant for any loss, damage, government fines, or cost of repairs or service at the Property incurred by the Master Tenant due to a violation of a Residential Lease or rules, improper use, or negligence by the Resident or his or her guests or occupants.

### ***Fire and Casualty***

The Master Tenant will not be liable to any Resident, guest, or occupant for personal injury or damage or loss of personal property from any cause, including but not limited to fire, smoke, rain, flood, water and pipe leaks, mold, hail, ice, snow, lightning, wind, explosions, earthquake, interruption of utilities, theft, or vandalism unless otherwise required by law.

### ***Insurance***

The Master Tenant will not maintain insurance to cover the personal property or personal injury of Residents. Residents are responsible for maintaining their own personal liability policies.



## **SUMMARY OF THE TRUST AGREEMENT**

The terms of the Trust are governed by the trust agreement of the Trust. The Trust Agreement is available in the Investor Data Room.

The initial beneficiary of the Trust is the Initial Beneficiary, Hayworth Tanglewood IB, LLC, a Delaware limited liability company, which will own 100% of the beneficial interests in the Trust prior to the sale of Interests to Investors. Sorensen Entity Services LLC, a Delaware limited liability company, will serve as the Delaware Trustee, and Hayworth Tanglewood ST, LLC, a Delaware limited liability company and an affiliate of the Sponsor will serve as the Signatory Trustee.

The following is a summary of some of the significant provisions of the Trust Agreement and is qualified in its entirety by reference to the full Trust Agreement. EACH PROSPECTIVE INVESTOR SHOULD REVIEW THE ENTIRE TRUST AGREEMENT, WHICH IS AVAILABLE IN THE INVESTOR DATA ROOM, BEFORE INVESTING. THE SUMMARY BELOW IS A SUMMARY OF SOME OF THE SIGNIFICANT PROVISIONS OF THE TRUST AGREEMENT. IT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT THEREOF.

### **Purposes of the Trust**

The purposes of the Trust are to: (1) hold ownership of the Property; (2) comply with the terms of the Trust Agreement, the Loan Documents, and the Master Lease; (3) conserve, protect, manage and dispose of the Property; and (4) take such other actions as the trustees of the Trust deem necessary or advisable to carry out such purposes.

### **Term of the Trust Agreement**

The Trust Agreement will terminate on the earlier of December 31, 2072, or the sale or other disposition of the Property, provided that the Loan has been repaid in full. Also, in the event the Property is at risk of being lost, such as, for example, due to a default on the Loan, and the Signatory Trustee is prohibited from taking action to mitigate the risk, then the Signatory Trustee may cause, or may be required by the Lender to cause, a Transfer Distribution to the Springing LLC.

### **Authority and Duties of the Trustees**

The Trustees has the sole authority to manage, control, dispose of or otherwise deal with the Property in a manner that is consistent with their duty to conserve and protect the Property. The Trustees will not owe any fiduciary duties to the Investors, and the Trustees will not be individually liable for their actions except (a) in the event of their own willful misconduct or gross negligence, (b) for the inaccuracy of their representation that the Trust Agreement has been authorized, executed and delivered by each of the Trustees, (c) for engaging in any Prohibited Action (as defined in "Limitation on Authority of Trustees" below), (d) for their failure to use ordinary care in disbursing monies to Investors pursuant to the terms of the Trust Agreement, and (e) for their own income taxes based on fees, commissions or compensation received in the capacity of Trustee. The Trustees will be indemnified by the Trust from any damages and liability they incur in connection with the Property, except if such damage or liability results from actions described in clauses (a) through (e) above. To the maximum extent allowed by law, the Trustees will be entitled to advancement of expenses incurred in defending a claim prior to its final disposition, subject to repayment if a court renders a final, non-appealable judgment that the applicable Trustee is not entitled to indemnification.

The duties of the Delaware Trustee are limited to acting as Trustee in the State of Delaware to satisfy the requirement of the Delaware Statutory Trust Act that the Trust have at least one Trustee with a principal place of business in Delaware. All other duties under the Trust Agreement will reside with the Signatory Trustee, including, but not limited to: (a) acquiring, owning, conserving, protecting and disposing of the Property; (b) entering into or assuming and complying with the terms of the Loan Documents, the Master Lease and any other transaction documents; (c) conserving and maintaining the Property in a manner consistent with the Trust's obligations under the Master Lease; (d) collecting rent payments from the Master Tenant and distributing such payments (less expenses and reserves) to Investors; (e) entering into agreements to enable Investors to complete Section 1031 Exchanges; (f) notifying relevant parties of any default by them under the transaction documents; and (g) solely in the event of a default by the Master Tenant (or any subsequent tenant), entering into a new lease of the Property (or a new Master Lease) or renegotiating or refinancing the Loan.

## Compensation of the Trustees

The Trust will pay the Delaware Trustee an initial fee, monthly fees, and document execution fees for its services. The Signatory Trustee will serve in such capacity without compensation. The Trustees will be entitled to be reimbursed for their reasonable expenses related to the performance of their duties.

## Limitation on Authority of the Trustees

To protect the tax-free exchange status for the Investors under Section 1031, the Trust Agreement prohibits the Trustees from taking any action to the extent that the effect of taking such action would constitute a power to “vary the investment” of the Investors under Treasury Regulation Section 301.7701-4(c)(1) and Revenue Ruling 2004-86 (any such action a “**Prohibited Action**”). Specifically, the Trustees may not: (1) dispose of the Property and acquire new real property or reinvest any of the monies of the Trust except as provided in the Trust Agreement; (2) renegotiate the terms of the Loan, enter into new financing or enter into a new lease or leases except in the event of a tenant’s bankruptcy or insolvency; (3) make other than minor non-structural modifications to the Property, other than as required by law; (4) after the formation and capitalization of the Trust, accept any additional capital contributions from any Investor, or any contributions from any prospective new investor; or (5) take any other action that in the reasoned opinion of tax counsel to the Trust should be expected to cause the Trust to be treated as a “business entity” under Treasury Regulation Section 301.7701-3 for federal income tax purposes.

## Authority of Investors

Because the Trust Agreement was designed with the intent to meet the parameters of Revenue Ruling 2004-86 issued by the IRS and other relevant regulatory and judicial requirements with respect to the Delaware statutory trust, Investors are not permitted to have any vote over the operation and ownership of the Property.

## Distributions

The Investors will be entitled, based on their respective Interests, to monthly cash distributions, net of amounts required to pay and reimburse the Trustees, pay debt service on the Loan and related expenses and retain amounts necessary to pay anticipated ordinary current and future expenses of the Trust. Such cash flow, if available, will be distributed on a monthly basis. Cash flow for Interests that have not yet been sold to Investors is paid to Hayworth Tanglewood IB, which is the initial holder of the Interests. Amounts retained by the Trust may be invested only in certain short-term government obligations or certificates of deposit in banks or trust companies having a minimum stated capital and surplus of \$50,000,000.

## Restrictions on Transfer of Interests

No Interest, or any portion thereof, may be assigned, pledged, encumbered or transferred without the prior consent of the Signatory Trustee. The Signatory Trustee’s consent to each proposed transfer is subject to the sole discretion of the Signatory Trustee, including without limitation, the satisfaction of the following, as determined by the Signatory Trustee in its sole discretion: (1) the proposed transfer’s compliance with all applicable securities laws; (2) the proposed transfer’s compliance with all transfer restrictions and requirements stated in the Loan Documents, including that the transfer does not constitute an event of default under the Loan Documents; (3) a determination that the proposed transfer would not result in the Trust having to register as an investment company under the Investment Company Act of 1940, as amended (the “**Investment Company Act**”), or require the Trust or any Trustee to register as an investment adviser under the Investment Advisers Act of 1940, as amended (the “**Advisers Act**”); (4) a determination that the proposed transfer would not cause the Trust Property to become “plan assets” (as defined in the Trust Agreement); (5) the execution by the proposed transferor and transferee(s) of documents to effectuate the transfer that are satisfactory to the Signatory Trustee; and (6) the payment of all expenses related to the proposed transfer by the transferor. See “*Risk Factors – Risks Related to the Offering – There is no public market for the Interests*” for additional discussion related to the restrictions on transfer.

## Property Rights

The Trust, and not the Investors, will hold legal title to the Property. Investors will not be entitled to share in the use of the Property or in any in-kind distribution of the Property.

## **Transfer Distributions and the Springing LLC**

Under the Trust Agreement, if: (1) the Property is in jeopardy of being foreclosed upon due to a default on the Loan; (2) the Property or any portion thereof is subject to a casualty, condemnation or similar event, that is not adequately compensated for through insurance or otherwise sufficient to permit restoration of the Property to the same condition as previously existed; or (3) the Signatory Trustee determines that the Investors are at risk of losing all or a substantial portion of their investment in the Interests, and the Signatory Trustee is prohibited from taking actions to cure or mitigate such events because such action would “vary the investment” of the Investors, the Signatory Trustee may terminate the Trust by converting it into the Springing LLC. If the Trust is converted to the Springing LLC: (i) the Investors would become members of the Springing LLC, owning an interest in the Springing LLC in proportion to their Interests in the Trust; (ii) the Springing LLC would continue to own the Property subject to the terms of the Master Lease and the Loan Documents; and (iii) the Signatory Trustee would become the manager of the Springing LLC. As a result of any of the foregoing transactions, actions could be taken to conserve and protect the Property that could not have been taken otherwise.

## **Investor Liability and Bankruptcy**

Investors will not have liability for the debts or obligations of the Trust or any other Investor, whether with respect to the Property or otherwise, and the Trust Agreement will not be terminated by reason of the bankruptcy or insolvency of any Investor.

## **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 Investor should be treated as owning a direct interest in the Property for purposes of Section 1031. See “*Federal Income Tax Consequences.*” Each Investor will be required to report his, her, or its Interests in the Trust in a manner that is consistent with the foregoing.

## MARKET ANALYSIS AND OVERVIEW

The following marketing information is excerpted from market data obtained by the Sponsor (the “**Market Data**”) and from an appraisal prepared by CBRE, Inc., a copy of which is included in the Investor data room (the “**Appraisal**”). The Market Data and Appraisal were compiled using data and information obtained from various third-party services. Market Data and Appraisals, the data used to compile them, and the results that they predict, are by definition somewhat subjective and may be subject to various interpretations.

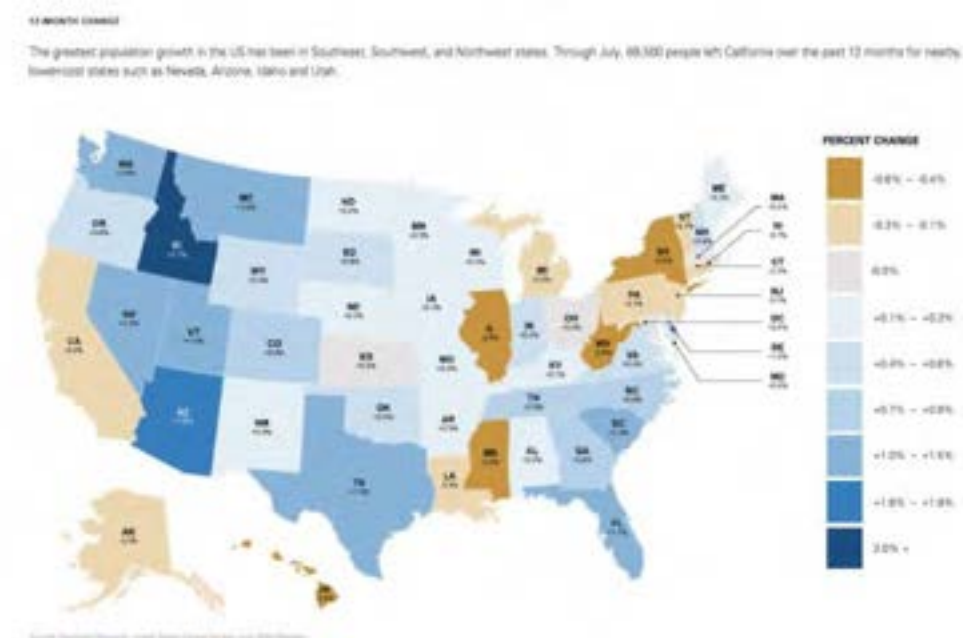
Based upon the foregoing, this information may not accurately reflect or predict all information relevant to the market area or the Property. In addition, the Trust and the Sponsor have not independently verified any of the data included in the Market Data and Appraisal. However, the Trust has revised portions of the Market Data and Appraisal included in this “*Market Analysis and Overview*” section to eliminate typographical errors, to eliminate duplicative language and to conform to the definitions contained in the Memorandum.

The following market analysis and overview for the Property includes:

- a Multi-Family Market Overview, which provides a brief description of the U.S. multi-family market;
- an Area Analysis, which provides an overview regarding the region in which the Property is located;
- a Neighborhood Analysis, which describes the neighborhood in which the Property is located; and
- a Market Analysis.

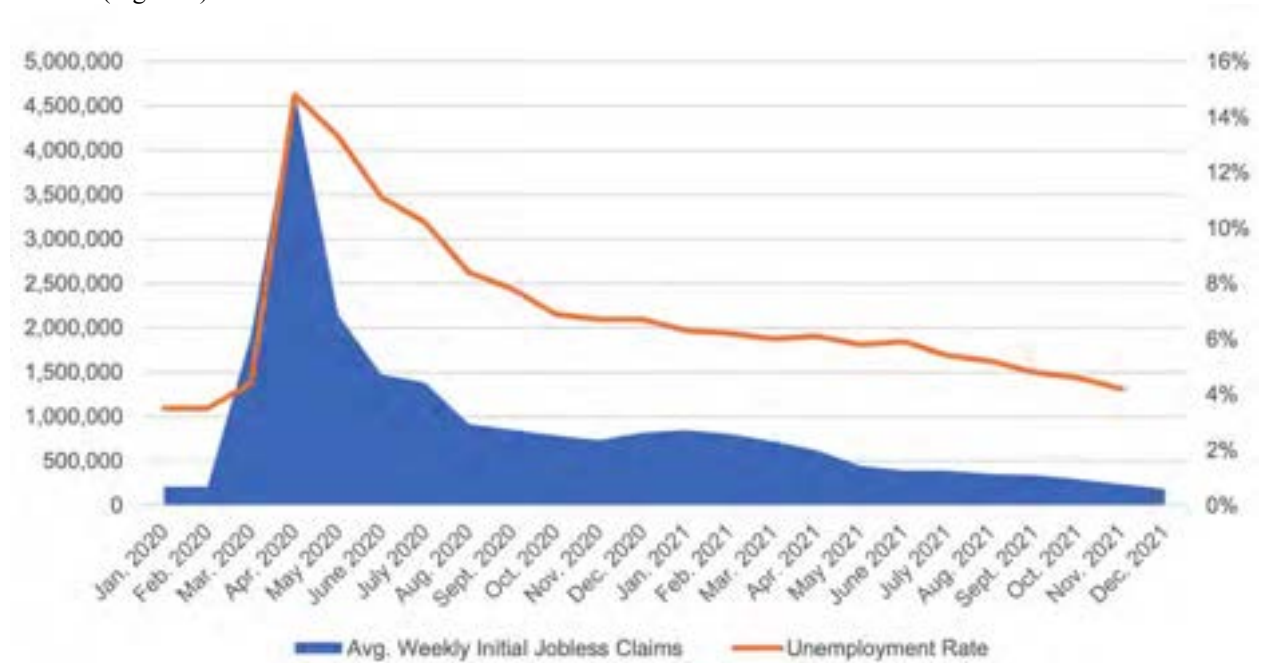
## Multi-Family Market Overview

Real estate is the third largest asset class in the U.S. investment markets (behind stocks and bonds and ahead of cash) making up approximately 17% of invested capital. Historically, conventional multi-family housing has been a favored asset class for investors due largely to the belief that consumers place a premium on ensuring they have housing before any discretionary spending. Data collected from Mountain Dell Consulting for 2021 indicated that 50% of 1031 exchanges ended in a multi-family property purchase. After struggling during the COVID-19 pandemic, the US economy sprang back in 2021 due, in large part, to historically low interest rates and consumers flush with cash from direct stimulus payments. This led to an incredibly tight US housing market that was 3.8MM housing units short of meeting demand. As a result, many sought housing in multi-family properties. Another side effect of the pandemic was a population shift toward less strict (lockdown) states (Figure 1) with more favorable tax rates.



**Figure 1 – Source US Census**

*Demand Drivers for the Category.* According to Freddie Mac, demand for multi-family housing during the second half of 2021 was at the highest levels ever reported. Rent growth was trending towards 10% for the year and vacancy rates were nearing 4.8% nationally. Going forward, Freddie Mac expects continued investment activity driven by rental rate growth, albeit at a more subdued rate, higher borrowing costs and the continued strength of employment markets (Figure 2).



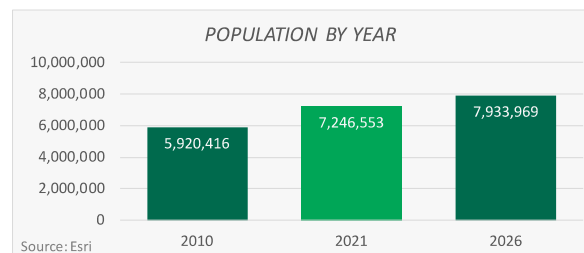
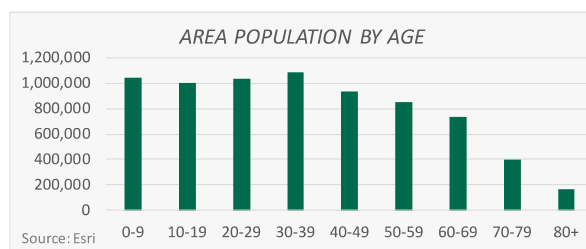
**Figure 2** – Average Weekly Initial Jobless Claims and Unemployment Rates

*Future Trends.* The Sponsor believes that the primary future drivers of demand will be interest rates and inflation. The Federal Open Market Committee’s inflation fighting toolbox leans heavily on the federal funds rate which has already begun floating upward to cool the economy. As rate increases trickle through the market, we believe the housing market will cool and renters will opt to renew leases at a higher rate or seek out newer properties with more modern amenities. Further, we believe properties developed prior to the spike in raw material prices in 2021 and 2022 should benefit from higher NOI as rental rates will be pushed upward by newer development.

## Area Analysis

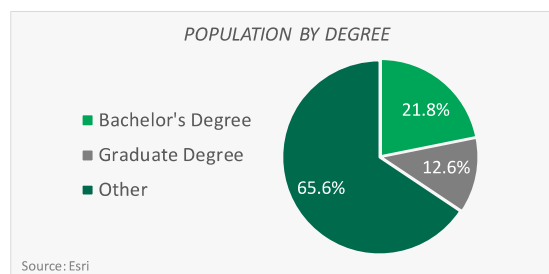
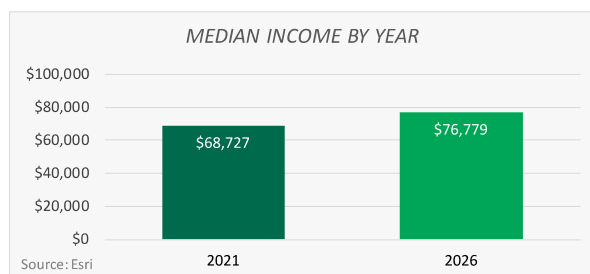
The Property is located in the Houston-The Woodlands-Sugar Land, TX Metropolitan Statistical Area.

*Population.* The area has a population of 7,246,553 and a median age of 35, with the largest population group in the 30-39 age range and the smallest population in the 80+ age range. The area’s population has increased by 1,326,137 since 2010, reflecting an annual increase of 1.9%. Population is expected to increase by an additional 687,416 by 2026, reflecting 1.8% annual population growth.

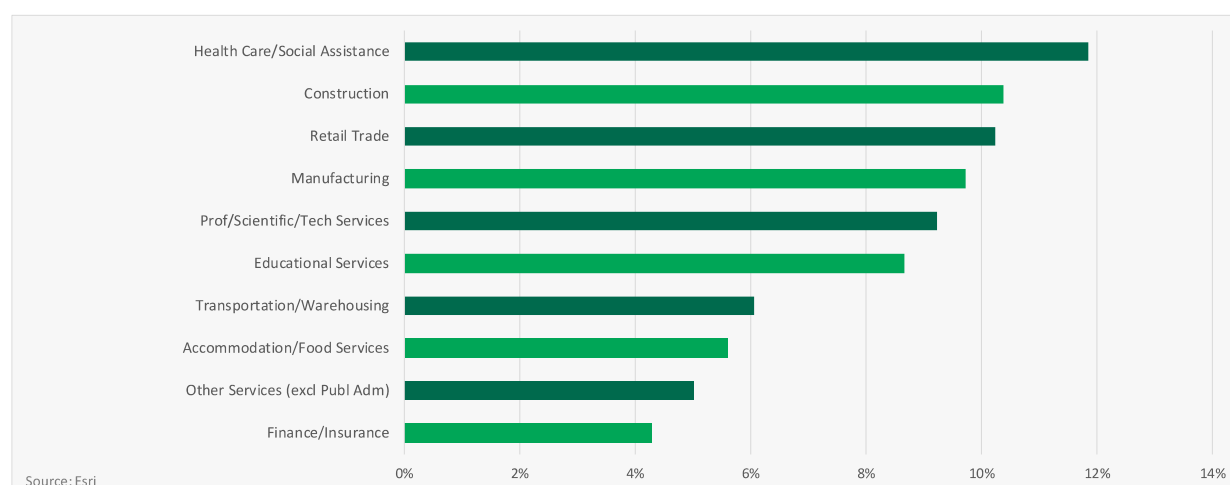


*Income.* The area has an average household income of \$99,741 and a median household income of \$68,727. Over the next five years, median household income is expected to increase by 11.7%, or \$1,610 per year.

**Education.** A total of 43.4% of individuals over the age of 24 in the area have a college degree, with 21.8% holding a bachelor's degree and 12.6% holding a graduate degree.



**Employment.** The area includes a total of 3,423,064 employees and has a 5.5% unemployment rate. The top three industries within the area are Health Care/Social Assistance, Construction and Retail Trade, which represent a combined total of 32% of the population.



**Outlook.** The Appraisal concludes that the area is forecasted to experience an increase in population and an increase in household income.

## Neighborhood Analysis

**Location Overview.** The Property is located in the Tanglewood area of Houston and is considered an urban location. The Property is located in Harris County, approximately 8 miles west of the Houston central business district. Existing developments in proximity to the Property consist primarily of single-family residential with commercial uses located along major arteries. A number of Houston's most prestigious residential developments are located in near proximity providing a superior demographic base as compared to other submarkets in the Houston area. Developments within the immediate area include the coveted residential developments of Tanglewood, Afton Oaks and The Villages.

**Land Use.** Land uses in the immediate area consist of a mixture of commercial and residential development, including both newer and older properties. Residential development has remained reasonably consistent in the past and continued positive increases are projected within both a one- and three-mile radius surrounding the Property. The majority of single-family residential development within a one-mile radius of the Property are homes in the \$400k to \$1MM price range. According to information from ESRI, approximately 73% of homes within a three-mile radius of the Property were constructed after 1970.

**Market Position.** Houston's exclusive Tanglewood neighborhood is a coveted suburb of Houston due to its upscale residential market values, schools, proximity to shopping, commerce and parks and recreation. The average home price within a 2-mile radius of The Hayworth is \$1.3MM. Within a 2-mile radius of the Property, there are two A+ schools (Kincaid and Second Baptist) and two B schools (Tanglewood Elementary and Briargrove Elementary).

The Houston Galleria, approximately 10 minutes by car, is the #1 shopping destination in the Southern U.S. and draws 30 million annual visitors to its 700 retailers encompassing 2.4 million square feet of retail generating \$1.4 billion in annual sales. The Uptown Business District, approximately 10 minutes by car, is the 17<sup>th</sup> largest business district in the U.S. and contains 11% of Houston's total office space (26 million square feet) and 2,000 companies. The Memorial Business District, approximately 5 miles from the Property, boasts another 3 million square feet of office space as well as the 2<sup>nd</sup> largest medical campus in Houston.

Memorial Park, approximately 4 miles from the Property, has been dubbed "the largest urban park in Texas" is a 1,500-acre park that includes one of the top municipal golf courses in the nation. Memorial Park attracts 4 million visitors annually and has undergone a recent \$200 million renovation.

*Access.* Primary access to the Property's neighborhood is provided by Loop 610. Major thoroughfares include Post Oak Boulevard, San Felipe, Westheimer and Richmond Avenue. The commute to the Houston central business district is approximately ten to fifteen minutes. The drive to George Bush Intercontinental Airport is approximately thirty minutes.

*Demographics.* The neighborhood has a population of over 500k, including over 210K households, within a five-mile radius of the Property. The average household income within a one-mile radius of the Property is \$135,253. Within a three- and five-mile radius the average household income is \$114,197 and \$113,949 respectively. Select neighborhood demographics in one-, three-, and five-mile radius from the Property are shown in the table below.

SELECTED NEIGHBORHOOD DEMOGRAPHICS				
1414 Wood Hollow Drive Houston, TX 77057	1 Mile Radius	3 Mile Radius	5 Mile Radius	Houston-The Woodlands- Sugar Land, TX Metropolitan Statistical Area
<b>Population</b>				
2026 Total Population	22,948	215,235	543,424	7,933,969
2021 Total Population	21,727	199,916	508,299	7,246,553
2010 Total Population	20,015	171,913	448,599	5,920,416
2000 Total Population	18,130	157,855	432,303	4,693,161
Annual Growth 2021 - 2026	1.10%	1.49%	1.35%	1.83%
Annual Growth 2010 - 2021	0.75%	1.38%	1.14%	1.85%
Annual Growth 2000 - 2010	0.99%	0.86%	0.37%	2.35%
<b>Households</b>				
2026 Total Households	11,791	97,003	225,968	2,745,649
2021 Total Households	11,204	89,980	210,770	2,511,058
2010 Total Households	10,506	78,603	186,761	2,062,529
2000 Total Households	9,964	75,144	182,240	1,648,148
Annual Growth 2021 - 2026	1.03%	1.51%	1.40%	1.80%
Annual Growth 2010 - 2021	0.59%	1.24%	1.11%	1.80%
Annual Growth 2000 - 2010	0.53%	0.45%	0.25%	2.27%
<b>Income</b>				
2021 Median Household Income	\$80,019	\$61,452	\$61,577	\$68,727
2021 Average Household Income	\$135,253	\$114,197	\$113,949	\$99,741
2021 Per Capita Income	\$70,238	\$51,495	\$47,282	\$34,613
2021 Pop 25+ College Graduates	11,470	76,164	172,890	1,629,378
Age 25+ Percent College Graduates - 2021	69.2%	54.3%	50.1%	34.4%
Source: ESRI				

*Income Levels.* Median and average household income levels for the Property’s neighborhood is shown in the following table:

HOUSEHOLD INCOME LEVELS				
	1 Mile Radius	3 Mile Radius	5 Mile Radius	Houston-The Woodlands-Sugar Land, TX Metropolitan Statistical Area
Income				
2021 Median Household Income	\$80,019	\$61,452	\$61,577	\$68,727
2021 Average Household Income	\$135,253	\$114,197	\$113,949	\$99,741
2021 Per Capita Income	\$70,238	\$51,495	\$47,282	\$34,613
Source: ESRI				

*Income Distribution.* Household income distribution information for the Property’s neighborhood is shown in the following table:

HOUSEHOLD INCOME DISTRIBUTION				
	1 Mile Radius	3 Mile Radius	5 Mile Radius	Houston-The Woodlands-Sugar Land, TX Metropolitan Statistical Area
Households by Income Distribution (2021)				
<\$15,000	7.60%	10.16%	10.03%	8.14%
\$15,000 - \$24,999	7.11%	10.33%	10.24%	7.99%
\$25,000 - \$34,999	6.10%	9.18%	9.33%	8.33%
\$35,000 - \$49,999	9.56%	12.01%	11.89%	11.61%
\$50,000 - \$74,999	16.34%	15.24%	15.42%	17.18%
\$75,000 - \$99,999	13.15%	10.37%	10.19%	12.15%
\$100,000 - \$149,999	13.93%	11.59%	11.27%	15.84%
\$150,000 - \$199,999	6.69%	5.31%	6.07%	8.20%
\$200,000+	19.52%	15.81%	15.55%	10.55%
Source: ESRI				

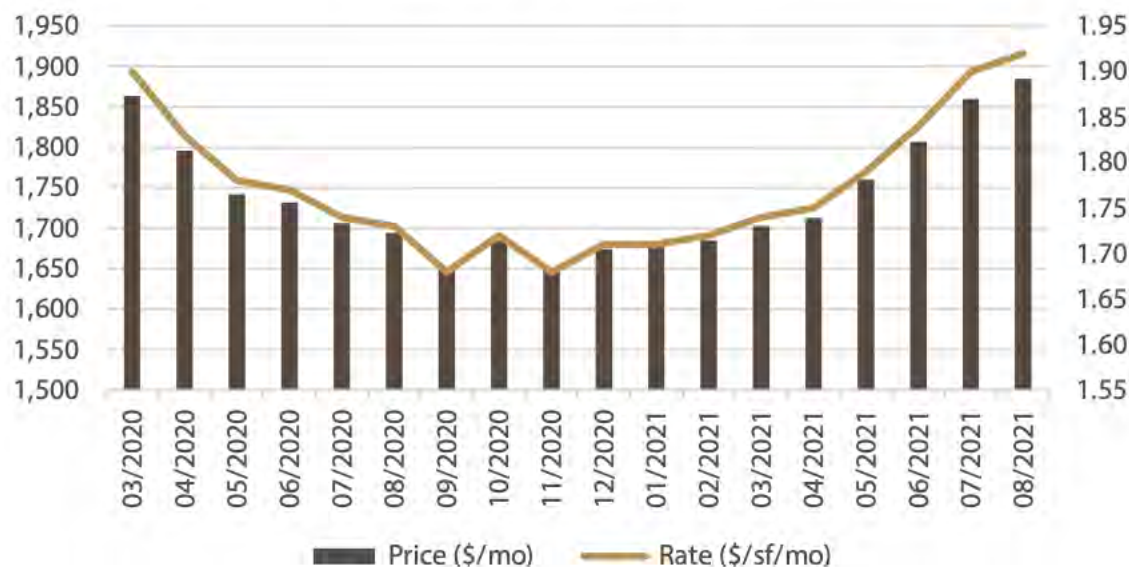
*Neighborhood Conclusion.* The Appraisal notes that the population within the subject neighborhood has shown positive growth over the past 21 years within 1-, 3- and 5-mile radius areas surrounding the Property, and continued growth is projected for the next five years. The neighborhood currently has an upper income demographic profile, and the outlook for the neighborhood is for continued positive increases in household income. As a result, the Appraisal concludes that the demand for existing developments is expected to be good for properties that are adequately maintained and well managed with strong ownership.

## Market Analysis

The submarket surrounding the Property has seen significant growth in recent months, with Apartment Data Services, LLC (“ADS”) reporting 15.5% rent growth in the second quarter of 2022 and 19.4% over the trailing 12-months. The following chart prepared by ADS shows rent trends for Class A properties in the submarket from March of 2020 through August of 2021.



## Class A Rent Trend



Source: Apartment Data Services, LLC

*Competitive Properties.* Comparable properties were surveyed in order to identify the current occupancy within the competitive market. The comparable properties surveyed indicated an average occupancy of 92.4%. The competitive property data is summarized in the following table:

SUMMARY OF COMPARABLE MULTIFAMILY RENTALS				
Comp. No.	Name	Location	Distance from Subject	Occupancy
1	1900 Yorktown	1900 Yorktown Street, Houston, TX	1.7 Miles	94%
2	Hanover Post Oak	1750 Sky Lark Lane, Houston, TX	2.1 Miles	93%
3	Gables Tanglewood	5740 San Felipe, Houston, TX	1.2 Miles	93%
4	7 Riverway	7 Riverway, Houston, TX	2.4 Miles	89%
5	The McAdams Memorial City	12000 Barryknoll Lane, Houston, TX	2.9 Miles	92%
6	Alexan 5151	5151 Hidalgo, Houston, TX	2.4 Miles	92%
Subject	The Hayworth	1414 Wood Hollow Drive, Houston, Texas		91.9%
Compiled by CBRE				

*Competitive Market Conclusion.* The Appraisal notes that according to ADS, as of March 2022 the greater Houston area had 77 communities (20,783 units) opened within the 12 months ending March 2022, 54 communities (13,710 units) under construction and 110 communities (33,006 units) proposed. Rents have increased by 14.7% in the overall Houston area over the 12-month period ending March 2022, while the Property's submarket has experienced an increase of 16.8% during this same time period. Occupancy levels during the 12-month period ending March 2022 increased 3.5% for the overall Houston area and 1.6% for the Property's submarket. The Appraisal concludes that the

Property is well located for a luxury apartment community and is in reasonable proximity to both employment centers and major roadways, and the surrounding apartment developments are experiencing above average levels of demand.

*Comparable Sales.* The following table summarizes comparable multi-family sales data used in the valuation of the Property.

SUMMARY OF COMPARABLE MULTIFAMILY SALES														
No.	Property Name	Transaction Type	Date	Interest Transferred	YOC / Reno'd	Property Subtype	No. Units	Avg. Unit Size	Distance from Subj	Actual Sale Price	Adjusted Sale Price <sup>1</sup>	Price Per Unit <sup>1</sup>	Occ.	NOI Per Unit OAR
1	Arrive Upper Kirby fka Residences at Kirby Collection, 3333 Lake Street Houston, TX 77098	Sale	Oct-21	Leased Fee	2017	Multi-unit Mid / High Rise	199	1,461	4.9 Miles	\$96,515,000	\$96,515,000	\$485,000	89%	\$19,409 4.00%
2	Vantage Med Center, 1911 Holcombe Boulevard Houston, TX 77030	Sale	Jan-22	Leased Fee	2017	Multi-unit Mid / High Rise	375	942	7.3 Miles	\$134,000,000	\$134,000,000	\$357,333	92%	\$12,516 3.50%
3	The Montrose at Buffalo Bayou, 1320 Montrose Boulevard Houston, TX 77019	Sale	Oct-21	Leased Fee	2020	Multi-unit Mid / High Rise	224	907	6.4 Miles	\$76,000,000	\$76,304,000	\$340,643	75%	\$14,497 4.26%
4	The Whitley, 301 Brazos Street Austin, TX 78701	Sale	May-21	Leased Fee	2013	Multi-unit Mid / High Rise	266	836	139 Miles	\$112,000,000	\$112,000,000	\$421,053	95%	\$14,737 3.50%
5	The Beverly, 901 Red River Street 612 East 9th Street Austin, TX 78701	Sale	Dec-21	Leased Fee	2008	Multi-unit Garden	120	953	139 Miles	\$50,000,000	\$50,000,000	\$416,667	95%	\$14,288 3.43%
Subj. Pro Forma	The Hayworth, 1414 Wood Hollow Drive Houston, TX 77057	--	---	---	2017	Multi-family Mid/High Rise	246	1,427	---	---	---	---	92.00%	\$16,116 ---
<sup>1</sup> Adjusted sale price for cash equivalency, lease-up and/or deferred maintenance (where applicable) Compiled by CBRE														

## **ACQUISITION OF THE PROPERTY**

The Trust acquired the Property from the Seller on June 30, 2022 for a purchase price of \$105,500,000. The Trust funded the purchase price of the Property, in part, with cash provided as a capital contribution by the Initial Beneficiary. The remaining portion of the purchase price was funded by the Loan, secured by the Property, in the principal amount of \$48,000,000.

## **FINANCING TERMS**

### **Basic Terms of the Loan**

EACH PROSPECTIVE INVESTOR SHOULD REVIEW THE LOAN DOCUMENTS BEFORE INVESTING. THE FOLLOWING IS A SUMMARY OF SOME OF THE SIGNIFICANT PROVISIONS OF THE LOAN DOCUMENTS. THIS SUMMARY IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE LOAN DOCUMENTS.

The principal amount of the Loan is \$48,000,000. The Loan has a term of seven years, with a single one-year extension option. The availability of the extension option is subject to the Trust's compliance with certain financial and other loan covenants and requires the payment of an extension fee in the amount of one percent (1.0%) of the outstanding principal balance of the Loan. The Trust has delegated to the Master Tenant the decision of whether or not to extend the term of the Loan. The interest rate on the Loan is fixed at 5.25% and the Loan Documents require monthly payments of interest only for the first four years of the Loan term, and monthly payments of principal and interest based on a 30-year amortization during years five through seven of the term of the Loan, along with the extension term if exercised. In addition to the fixed interest rate, the Loan requires the payment of a servicing fee of two basis points (0.02%) of the outstanding principal balance per year, paid monthly. Upon funding, an origination fee of one percent (1.0%) of the principal amount of the Loan was paid. Upon any repayment or prepayment, the terms of the Loan will require an exit fee of one half of one percent (0.50%) of the outstanding principal balance of the Loan.

In addition to the exit fee, the terms of the Loan require a yield maintenance premium in connection with any prepayment of the Loan during the first four years of the Loan term, and a prepayment fee in connection with any prepayment of the Loan during year five of the Loan term. For any prepayment prior to the end of the fourth year of the term of the Loan, a yield maintenance premium equal to the greater of one percent (1.0%) of the Loan amount and amount of interest that that would accrue on the Loan through the end of such four-year period if the Loan was not prepaid will be required. Thereafter, any Loan prepayment will require a prepayment fee equal to one percent (1.0%) of the outstanding principal balance of the Loan for a prepayment during year five. Thereafter, the Loan may be prepaid at any time without payment of a yield maintenance premium or a prepayment fee. Any prepayment of the Loan must be in full and not in part.

The Loan is nonrecourse to Investors. Accordingly, Investors will have no personal liability in connection with the Loan. However, upon an uncured event of default under the Loan, the Lender will have the right to foreclose on the Property. If this were to occur, Investors would likely lose part of their investment and may lose their entire investment in the Trust.

For purposes of determining liabilities assumed with respect to the Property in connection with an Investor's Section 1031 Exchange (as defined herein), each Investor will be allocated a pro rata percentage of the Loan (approximately \$31,263 of Loan balance per \$50,000 Interest).

### **Covenants, Representations and Warranties**

The Loan Documents contain customary covenants, representations and warranties. Specifically, the Loan Documents require the Trust to obtain the Lender's prior written approval before taking various actions, including, without limitation, incurring additional debt, making certain modifications to the Property, altering, modifying, amending or changing the terms of any of the "Leases," defined under the Loan Documents, or terminating or surrendering the Master Lease, Asset Management Agreement or Property Management Agreement, in each case except as otherwise set forth in the Loan Documents.

The Loan Documents also prohibit the Trust, without the Lender's prior written consent and except as otherwise set forth in the Loan Documents, from: (1) selling, conveying, assigning, mortgaging, granting, pledging,

granting options with respect to, transferring or otherwise disposing of its interests in the Property or any part thereof; (2) incurring indebtedness (other than the indebtedness permitted pursuant to the terms of the Loan); or (3) mortgaging, hypothecating or otherwise encumbering or granting a security interest in the Property or any part thereof.

### **Insurance, Casualty and Condemnation**

The Loan Documents require the Trust (or, for so long as the Master Lease is in place, the Master Tenant) to obtain and maintain certain levels of insurance for the Property. Such insurance includes:

- (1) coverage against loss by fire and certain other perils;
- (2) commercial general liability insurance, umbrella liability insurance, workmen's compensation insurance, and such other liability, errors and omissions, and fidelity insurance coverage; and
- (3) builder's risk and public liability insurance, and other insurance in connection with completing repair or replacements on the Property as applicable.

All such insurance is required to be in a form, content and amounts approved by the Lender and written by an insurance company or companies approved by the Lender.

In the event of any damage to or destruction of the Property, the Trust will be required to give prompt notice to the Lender of such damage or destruction and to promptly commence and prosecute the completion of the restoration of the Property. The Trust will be responsible for paying all costs of such restoration, even if not covered by insurance. It is anticipated that if the costs and expenses to repair the damage or destruction are less than approximately \$600,000, the proceeds will be paid to the Trust so long as there is no then existing event of default under the Loan and certain other conditions under the Loan Agreement are met. If the costs and expenses to repair the damage or destruction to the Property are equal to or greater than approximately \$600,000, the proceeds will be required to be paid to the Lender, and the Lender will make the net proceeds available for the restoration, provided there is no existing event of default under the Loan and certain other conditions under the Loan Agreement are met.

Any amounts of proceeds paid to the Lender as discussed above may be applied by the Lender against the Loan indebtedness, in accordance with the terms of the mortgage against the Property, after deducting any reasonable expenses incurred by the Lender in collecting such amounts. If the Trust is to be reimbursed out of any insurance proceeds held by the Lender for repairs or restoration, the Lender will be required to make such proceeds available to the Trust so long as, among other things, the following conditions are met: (1) there is no then continuing event of default under the Loan; (2) the restoration will be completed before six (6) months before the maturity date of the Loan; and (3) the Lender determines the combination of insurance proceeds and amounts provided by the Trust will be sufficient to complete the restoration.

### **Lender Required Reserves**

The Loan Documents provide for a replacement reserve and an operating reserve. The Loan Documents require the Trust to make deposits into an escrow for replacement reserves of \$5,125 per month, which amount is equal to \$250 per Unit per year. Finally, the Loan Documents also require monthly deposits into an escrow for taxes and insurance premiums.

### **Restrictions on Transfer of Interests**

The Loan Documents provide that a direct or indirect transfer of interests in the Trust to one or more investors is permitted, provided that the following conditions are satisfied: (1) no event of default (as described in the Loan Agreement), or any event that would constitute an event of default, has occurred and is continuing; (2) the transferee is an "accredited investor" (as defined in Rule 501 of Regulation D under the Securities Act of 1933, as amended), (3) the Trust and the entity currently named as the Signatory Trustee of the Trust maintains the same ability to manage and "Control" (as defined in the Loan Agreement) the Trust as it did on the closing date; (4) the Guarantors (Blake Wettengel and Tanya Muro) continue to be managers, either directly or indirectly, of the entity currently named as the Signatory Trustee of the Trust and the Master Tenant and maintains the same ability to manage and "Control" (as defined in the Loan Agreement) such entity as it did on the closing date; (5) the Guarantors continue to own, directly or indirectly, 51% of the Signatory Trustee and the Master Tenant and approximately 1.95% of the

Interests in the Trust, and (6) in the event that any transfer would result in the transferee owning 20% or more of a direct or indirect beneficial interest in the Trust (10% or more if a foreign entity), the Trust will be required to provide advance written notice to the Lender of such transfer and provide the Lender with such information as necessary to allow the Lender to determine that the transferee is not a “prohibited person.”

### **Events of Default**

The following, among other things, constitute an event of default under the Loan Agreement:

- (1) any failure to pay or deposit when due any amount required by the Note, the Loan Agreement or any other Loan Document;
- (2) any failure to maintain the insurance coverage required by the Loan Documents;
- (3) any failure by the Trust or the Master Tenant to comply with the provisions of the Loan Agreement relating to its single asset status;
- (4) if any warranty, representation, certification or statement in the Loan Documents is false, inaccurate or misleading in any material respect when made;
- (5) fraud, gross negligence, willful misconduct or material misrepresentation or material omission in connection with the Loan application or the Master Lease; any financial statement or other information provided to the Lender; or any request for the Lender’s consent to any proposed action under the Loan Documents;
- (6) the occurrence of any Transfer (as defined in the Loan Agreement) not permitted by the Loan Documents;
- (7) the occurrence of a Bankruptcy Action (as defined in the Loan Agreement);
- (8) the commencement of a forfeiture action or proceeding which in the Lender’s reasonable judgment could result in forfeiture of the Property or materially impair the Lender’s lien or interest in the Property;
- (9) any transfer due to the revocation of the Trust or the revocation or termination of the Trust, except as set forth in the Loan Agreement;
- (10) any exercise by the holder of any other debt instrument secured by a mortgage, deed of trust, or deed to secure debt on the Property or any interest therein of a right to declare all amounts due under that debt instrument immediately due and payable;
- (11) any failure to complete any Required Repairs (as defined in the Loan Agreement) in accordance with the terms of the Loan Agreement;
- (12) a termination, amendment or modification of the Master Lease document not permitted by the Loan Documents; or
- (13) a default by either the Trust or the Master Tenant which continues beyond any cure period under the Master Lease documents.

Upon any uncured event of default under the Loan Agreement, the Lender will have the right, at its option, to exercise any of the rights and remedies available to it under the Loan Documents, at law or in equity, without notice or demand, including declaring the entire indebtedness immediately due and payable.

### **Securitization of the Loan**

The Lender has the right to participate, syndicate, or securitize all or any portion of its interest in the Loan.

## **Nonrecourse Loan**

The Loan is secured by the Mortgage and the other Loan Documents. Although the Loan is nonrecourse to the Investors, Blake Wettengel and Tanya Muro (in such capacity, the “**Guarantors**”), who are principals of the Sponsor, which owns and controls the Signatory Trustee and the Master Tenant, have guaranteed certain non-recourse carve-outs under the Loan Documents. Accordingly, the Investors have no personal liability in connection with the Loan. However, upon an uncured event of default under the Loan, the Lender will have the right to foreclose on the Property. If this were to occur, Investors would likely lose part of their investment and may lose their entire investment in the Trust.

## **Environmental Indemnities**

The Lender required the Borrower, the Guarantors and the Master Tenant to indemnify the Lender from any loss, cost, damage or expenses (including attorneys’ fees) in connection with any environmental liability related to the Property. The Investors will not be required to provide the Lender an environmental indemnity due to the limited nature of the Investor’s involvement with the Property as passive investors.

## ASSET MANAGEMENT

### The Asset Manager and the Asset Management Agreement

Versity will serve as the Asset Manager. Versity is the successor to Versity Investments, LLC (“**Versity Investments**”), a real estate investment company founded in 2018 by members of Versity’s management team to focus on acquiring and operating multi-family and student-housing real estate investments. Prior to founding Versity, Blake Wettengel and Tanya Muro, the owners of Versity, were co-founders of Versity Investments.

In its capacity as the Asset Manager, Versity is responsible for managing the Master Tenant’s day-to-day operations, including, but not limited to: reviewing all performance and financial information related to the Property; conducting relations with, and supervising services performed by, lenders, consultants, accountants, brokers, third-party asset managers, attorneys, underwriters, appraisers, insurers, corporate fiduciaries, banks, builders and developers, sellers and buyers of assets, among others; providing loan payment services in connection with the Loan; preparing financial reports for the Lender; managing the Reserve Accounts; providing bookkeeping and accounting services and maintaining the Master Tenant’s books and records; administering monthly cash distributions; communicating with investors, brokers, dealers, financial advisors and custodians; and undertaking and performing all services or other activities necessary and proper to carry out the Master Tenant’s objectives, including providing secretarial, clerical and administrative assistance for the Master Tenant.

The Asset management Agreement will remain in effect and automatically renew for successive one-year periods until otherwise terminated. The Asset Management Agreement may be terminated by either party upon ten days prior written notice to the other party in the event of a material breach by the other party. The Master Tenant may immediately terminate the Asset Management Agreement (i) in the event of gross negligence or willful misconduct in the discharge of the Asset Manager’s duties under the agreement, or (ii) if a petition in bankruptcy is filed by or against the Asset Manager or if the Asset Manager makes an assignment for the benefit of creditors or takes advantage of any insolvency statute or proceeding. The Master Tenant may also terminate the Asset Management Agreement, for any reason whatsoever, upon thirty days prior written notice in its sole and absolute discretion.

The Master Tenant is responsible for paying the Asset Manager certain compensation, as described under “*Compensation of the Sponsor and its Affiliates – Asset Management Fees.*” If the Master Tenant requests any additional services not specified in the Asset Management Agreement, the Asset Manager may agree to provide the requested services upon terms mutually agreeable to the Master Tenant and the Asset Manager.

### The Asset Management Team

**Blake Wettengel (Chief Executive Officer).** Blake Wettengel is Chief Executive Officer and Co-Founder of Versity Invest, LLC and its related entities. Mr. Wettengel is responsible for the creation of a firm that is now recognized nationally as a leading real estate operating company that has acquired, managed, and/or developed real estate investments valued in excess of \$500 million with properties across the country. During Mr. Wettengel’s tenure in the student housing industry, he has overseen the acquisition and management of over 15,000 beds of multi-family properties, securing nearly \$1.5 billion in debt and equity. His firms have received multiple awards including a ranking in the Inc. 500, recognizing the fastest growing companies in the country.

Mr. Wettengel holds a Juris Doctorate degree from the University of California, Los Angeles (UCLA). He practiced law from 2005 to 2015, specializing in real estate and corporate transactions and related tax and securities matters. He also holds a Bachelor of Arts Degree with honors from Brigham Young University.

**Tanya Muro (Chief Operating Officer).** Tanya Muro is Chief Operating Officer and Co-Founder of Versity and its related entities. As Chief Operating Officer, Mrs. Muro is responsible for the global operations of the company. With over 20 years of experience in the commercial real estate industry, Mrs. Muro has closed more than \$2 billion in real estate equity, beneficial interests, LLC/LP interests, land development and oil and gas transactions, including the country’s first tenant in common acquisition. Her leadership focuses on high performance areas while providing outstanding client service and driving profitable revenue growth.

Mrs. Muro has managed over 3,500 investors while heading Business Development at multiple firms, including Nelson Brothers Professional Real Estate, which was ranked in the Inc. 500 as one of the fastest growing real estate

companies in the country. Mrs. Muro has broad knowledge of regulatory bodies, including NASD, FINRA and the SEC and holds a B.A. from Loyola Marymount University.

**Frank Muhlon (Chief Investment Officer).** Frank J. Muhlon is an accomplished commercial real estate executive with over 20 years of transactional (acquisitions, sales, equity/debt), asset management, and advisory experience involving over \$15 billion of asset value, covering traditional property asset classes (multifamily, office, retail, industrial, hospitality) and alternative assets (e.g. healthcare/medical, self-storage, data centers, homebuilding, infrastructure, specialty).

As Chief Investment Officer at Versity, Frank originates, executes, and manages multi-family and student housing investments nationally. Previously, he has held senior positions with equity syndicate CrowdStreet, real estate trading platform Ten-X, middle market investment banking firm Orix USA/Houlihan Lokey, and New York-based owner/developer Silverstein Properties. Frank holds a M.S. Real Estate Finance from New York University and a B.S. Finance from Rutgers University.

**Jennifer Welker (Chief Financial Officer).** Jennifer Welker is the Chief Financial Officer of Versity. She oversees all financial aspects of the company including acquisitions, accounting, financial reporting, cash management, budget/forecasting, and investor financial reporting.

Mrs. Welker previously served as Vice President and Corporate Controller of the Picerne Group where she was responsible for finance, accounting and financial reporting for the company's investment, management and development activities. She graduated from San Jose State University in 1996 with a B.S. degree in Business and an emphasis in accounting. She is a Certified Public Accountant.

**Jason Kjellson (Executive Vice President, Capital Markets).** Mr. Kjellson is our Executive Vice President and also the Chief Capital Markets Officer of Versity REIT. Mr. Kjellson's capital markets career spans over 25 years of sales, sales management, investment banking raising over \$2 billion of investor equity, including traditional equity markets (i.e., stocks, bonds, mutual funds, guaranteed investment contracts, separately managed accounts) and alternative asset classes with a real estate focus (LLC's, Delaware Statutory Trusts, Tennant in Common, REIT, mutual fund). In the real estate category, he has substantial experience with traditional and non-traditional asset classes (i.e., multifamily, office, homebuilding, land banking, senior housing, student housing). In his early 20's Mr. Kjellson made his first investment banking deal negotiating a multi-million transaction of his family business. As Executive Vice President of Versity, he assists underwriting, market selection, and asset identification of the firm's portfolio and manages sales and business development teams nationwide. Prior to joining Versity, Mr. Kjellson held senior positions with NB Private Capital, Nelson Brothers Professional Real Estate, head of investment banking at Arque Capital and as national sales manager at New York's Time Equities. Prior to his career in finance Mr. Kjellson served 7 years in the United States Army earning numerous awards before being honorably discharged. Mr. Kjellson studied at the University of South Carolina, DePaul University and the University of Colorado and has a B.S. in Finance as well as FINRA 7, 22 and 63 securities licenses.



## PROPERTY MANAGEMENT

Book and Ladder, LLC, a California limited liability company and affiliate of the Sponsor (the “Property Manager”), will serve as the Property Manager of the Property in accordance with the Property Management Agreement. The Property Manager was founded in 2020 by key members of Versity’s management team as a fully-integrated property management company handling all aspects of multifamily and student housing property management. As of July 1, 2022, the Property Manager managed over 7,750 student housing beds across eighteen properties located in twelve states with a combined market value in excess of \$800 million. The Property Manager’s goal is to provide an atmosphere that inspires the imagination and intellect of every resident, and where delivering that experience is a passion.

Pursuant to the Property Management Agreement, the Property Manager is responsible for managing, operating and maintaining the Property, which includes, among other things: collecting all rents and assessments from the Property; paying all expenses of the Property from a custodial account established for the Property; preparing an annual budget; hiring and supervising employees, including, but not limited to managers, assistant managers, leasing consultants, engineers, janitors and maintenance supervisors; rendering reports for the Property; making or causing to be made all ordinary or emergency repairs and replacements necessary to preserve the Property; leasing the Property; and overseeing construction management, upon request. If the Master Tenant requests any additional services not specified in the Property Management Agreement, the Property Manager may agree to provide the requested services upon mutually agreeable terms.

The Property Management Agreement has an initial term of one year and will automatically renew for successive one-year periods thereafter unless either party provides notice of non-renewal at least 60 days prior to the end of the then-current term. The Property Management Agreement is terminable as follows: (1) by either party immediately upon the occurrence of any of the following events: (a) the other party breaches its obligations under the Property Management Agreement and the breach has not been cured within 30 days after receipt of notice from the non-breaching party; (b) the other party files bankruptcy, makes an assignment for the benefit of its creditors, seeks relief under any debtor relief law, or has a receiver appointed over its assets or affairs; (c) a material portion of the Property is destroyed casualty; or (d) a material portion of the Property is condemned; (2) by the Master Tenant if the Property Manager or any of its officers, employees or agents misappropriates funds or is guilty of gross negligence, willful misconduct, fraud, malfeasance or a breach of fiduciary duty; (3) by the Master Tenant in the event the Property is sold to a third party, provided that if such termination occurs within the initial twelve months of the term, the Master Tenant shall pay the Property Manager a termination fee equal to two months of the estimated management fee; (4) by the Master Tenant without cause upon 30 days’ prior written notice, provided that the Master Tenant shall pay the Property Manager a termination fee as set forth in the Property Management Agreement; (5) by the Property Manager in the event the Master Tenant breaches certain monetary obligations and the breach has not been cured within 10 business days after receipt of notice from the Property Manager; or (6) by the Property Manager without cause upon 60 days’ prior written notice.

The Master Tenant is responsible for paying the Property Manager certain fees as discussed in “*Compensation of the Sponsor and its Affiliates – Property Management Fees.*”

## CONFLICTS OF INTEREST

### Conflicts of Interest

The Sponsor, the Asset Manager, the Property Manager, and their respective principals and affiliates, will act as the manager, advisor, controlling party or sponsor of other Delaware statutory trusts, limited liability companies, partnerships, and other entities from time to time. These other entities may presently own or operate properties similar to the Property, which may compete with the Property, and may acquire or operate additional properties in the future that may also compete with the Property. The Sponsor, the Asset Manager, the Property Manager, and their respective principals and affiliates, also have existing responsibilities and, in the future, may have additional responsibilities, to provide management and services to a number of other entities. The principal areas in which conflicts are anticipated to occur are as follows.

***The Property may compete with other properties owned by the Sponsor or its affiliates.***

The Sponsor or its affiliates may own or operate additional properties that compete with the Property.

***The efforts and time of the Sponsor, the Asset Manager, the Master Tenant, and the Property Manager will not be solely dedicated to the Trust.***

The Sponsor, the Asset Manager, the Master Tenant, and the Property Manager, and their respective principals and affiliates, may engage for their own account, or for the account of others, in other business ventures. The interest in such other activities will not necessarily be directed to or consistent with the Trust.

***The landlord-tenant relationship between the Signatory Trustee and the Master Tenant may lead to a conflict of interest.***

The Master Tenant and the Signatory Trustee are affiliates of the Sponsor. This may lead to a conflict of interest between their roles under the Master Lease. For example, there would be a conflict of interest if the Master Tenant was in breach of the Master Lease because only the Signatory Trustee would have authority on behalf of the Trust to enforce the Master Lease against the Master Tenant. In such a situation, the interests of the Signatory Trustee may not be aligned with the interests of the Investors. See also “*Risk Factors – Risks Related to the Master Lease and Management of the Property – The Trust cannot require the Master Tenant to call on Versity to contribute funds under the Demand Note, nor does the Demand Note include any triggering events mandating such funding.*”

***Principals of the Sponsor, the Asset Manager, the Master Tenant, and the Property Manager may have conflicts of interest in allocating management time, services and functions among the various entities with which they are engaged.***

Principals of the Sponsor, the Asset Manager, the Master Tenant, the Property Manager, and their respective affiliates, may have obligations to other entities. Therefore, the Sponsor, the Asset Manager, the Master Tenant, the Property Manager, and their respective affiliates, may have conflicts of interest in allocating management time, services and functions among the various entities with which they are engaged and others that may be organized in the future. The Sponsor, the Asset Manager, the Master Tenant, the Property Manager, and their executive officers will devote as much time as they, in their sole discretion, deem to be reasonably required for the proper management of the Sponsor, the Asset Manager, the Master Tenant, the Property Manager, and the Property. Such parties believe they have the capacity to discharge their responsibilities to the Trust and the Property, notwithstanding participation in other present and future investment programs and projects.

***The Trust does not have arm’s length arrangements with the Property Manager, the Asset Manager or the Master Tenant.***

The agreements and arrangements among the Trust, the Property Manager, the Asset Manager and the Master Tenant were not negotiated at arm’s-length. These agreements may contain terms and conditions that are not in the Trust’s best interest or would not be present if the Trust had entered into arm’s length agreements with third parties.

***The Sponsor, the Asset Manager and the Property Manager will face conflicts of interest caused by their compensation arrangements.***

The Sponsor, the Asset Manager and the Property Manager will receive compensation for certain services rendered by them regardless of whether distributions are paid to Investors.

***The Sponsor may benefit from and have conflicts of interest in connection with a 721 UPREIT Exchange.***

The Signatory Trustee may elect to facilitate a 721 UPREIT Exchange, pursuant to which the Signatory Trustee would provide each Investor with the option of either (i) exchanging its Interests for an equivalent value of operating partnership units of a real estate investment trust (which real estate investment trust may be affiliated with the Sponsor), or (ii) receiving a fair market value cash buy-out of its Interests. A 721 UPREIT Exchange could benefit the Sponsor and its Affiliates if the exchange were to involve a Sponsor-affiliated real estate investment trust by allowing such trust to create a diversified portfolio of institutional quality real estate without having to negotiate the sales prices for such real estate with third-party sellers. In order to ensure that the price paid to Investors for the Property reflects the fair market value at that time, the Signatory Trustee will obtain an independent third-party appraisal of the Property.

***The Trust, the Sponsor, the Asset Manager, the Property Manager and the Master Tenant share legal representation.***

Counsel to the Trust, the Sponsor, the Asset Manager, the Property Manager and the Master Tenant in connection with this Offering is the same, and it is anticipated that such representation will continue in the future. As a result, conflicts may arise in the future.

#### **Resolution of Conflicts of Interest**

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

## PRIOR PERFORMANCE

Prior to founding the Sponsor (“**Versity**”), Blake Wettengel and Tanya Muro and other members of the Sponsor’s management team were involved in the founding and management of Varsity Investments, LLC (“**Versity Investments**”). In addition, Mr. Wettengel and Ms. Muro were previously involved in the management of Nelson Brothers Professional Real Estate, LLC (“**NBPRE**”) since 2015 and 2008, respectively. **The information presented in this section represents the historical experience of real estate properties and funds sponsored by the Sponsor and by Varsity Investments and its predecessor NBPRE. The Sponsor was formed in March 2022 and was not involved in the acquisition, formation or management of any property or fund prior to that time. Investors should not assume that they will experience returns, if any, comparable to those experienced by investors in such prior real estate properties and funds. You will not receive an ownership interest in any of the entities to which the following information relates.**

The following three tables represent properties and funds operating as of the date of this Memorandum. The tables reflect the date on which the described property was offered to investors, along with the total equity offered. As used in the table, “**Offering Price**” represents that price paid for the property, plus all estimated costs and expenses related to the acquisition and financing, all estimated costs and expenses related to the offering and any initial contribution to reserve accounts, if applicable. “**Loan to Offering Price**” reflects the original loan-to-offering price as reflected in the private placement memorandum for that property. “**Cash-on-Cash**” returns have been calculated by annualizing the returns obtained by dividing the amounts distributed or to be distributed to investors for the month of June 2022 by the total equity invested in the property. The “**Cash on Cash**” return calculation includes both stated and bonus rents paid or to be paid to investors for the month of June 2022 in accordance with the terms of the master lease for each property. “**Total Yield**” is calculated by adding the annualized amortization percentage for the corresponding period, if any, to the Cash-on-Cash return. The “**Projected Cash-on-Cash Proforma**” reflects the original return forecasts made in the respective private placement memorandum for the current academic school year, typically the period from September through August, or for the current fiscal year for the property, as the case may be.

Previously Syndicated Student Housing Assets Master Lease Properties (Active)										
Property	School/City	Offering Date	Total Equity	Loan To Offering Price	Offering Price	Pre-Covid Yield*	Current Yield**	Actual Cash-on-Cash	PPM Projected Cash-on-Cash Proforma	Notes
The Walk, DST	University of Alabama	4/29/22	\$ 27,834,000	52.99%	\$ 52,528,414	n/a	4.26%	4.26%	4.26%	See note (1)
Vintage, DST	Winter Garden, Florida	4/12/22	\$ 87,963,540	37.30%	\$ 140,309,540	n/a	4.22%	4.22%	4.22%	See note (2)
4th and J, DST	San Diego, CA	10/28/21	\$ 49,590,628	40.68%	\$ 83,590,628	n/a	4.00%	4.00%	4.00%	See note (3)
Oakbrook, DST	Loisiana State University	09/30/21	\$ 18,900,569	52.42%	\$ 39,720,569	n/a	5.68%	5.68%	5.68%	See note (4)
Shadowglen, DST	Austin, Texas	06/31/21	\$ 26,893,742	45.00%	\$ 48,893,742	n/a	4.51%	4.51%	4.51%	See note (5)
Inspire on 22nd, DST	University of Texas at Austin	06/14/21	\$ 41,886,885	48.25%	\$ 80,936,885	n/a	5.34%	5.34%	5.34%	See note (6)
Astoria, DST	Celebration, Florida	05/28/21	\$ 45,309,583	49.27%	\$ 89,309,583	n/a	5.18%	5.18%	5.18%	See note (7)
Wolf Run, DST	University of Nevada Reno	03/15/21	\$ 28,403,007	51.86%	\$ 59,003,007	n/a	6.05%	6.05%	6.05%	See note (8)
Campus Walk, DST	Chico State University	12/20/19	\$ 10,672,053	51.32%	\$ 21,922,053	5.25%	4.00%	4.00%	5.25%	See note (9)
Rockland, DST	University of Kansas	10/09/19	\$ 20,129,750	49.50%	\$ 40,182,750	6.20%	1.00%	1.00%	6.20%	See note (10)
The Nine, DST	University of Memphis	06/16/19	\$ 14,376,532	55.28%	\$ 32,146,532	6.25%	0.00%	0.00%	6.25%	See note (11)
Tailor Lofts, DST	University of Illinois-Chicago	02/22/19	\$ 32,014,541	54.27%	\$ 70,014,541	5.50%	2.00%	2.00%	5.50%	See note (12)
345 Flats, DST	Kent State University	11/30/18	\$ 19,395,880	39.66%	\$ 32,145,880	6.15%	3.60%	3.60%	6.15%	See note (13)
The Buckingham, DST	Various	11/02/18	\$ 44,326,195	50.54%	\$ 89,626,195	6.25%	0.00%	0.00%	6.25%	See note (14)
CP Cincy, DST	University of Cincinnati	12/28/17	\$ 13,253,255	55.13%	\$ 30,653,255	6.25%	0.00%	0.00%	6.25%	See note (15)
Element, DST	Sacramento State University	10/19/17	\$ 38,575,350	65.34%	\$ 81,885,000	6.10%	5.45%	5.45%	6.10%	See note (16)
Grant Street, DST	Purdue University	04/20/17	\$ 19,208,883	64.40%	\$ 40,592,500	6.60%	4.00%	4.00%	6.60%	See note (17)
Molly Barr, DST	University of Mississippi	09/23/16	\$ 11,299,699	65.00%	\$ 22,273,751	4.00%	4.00%	0.00%	6.85%	See note (18)
Park Plaza Provo, DST	Brigham Young University	05/06/16	\$ 3,267,847	75.00%	\$ 7,054,000	8.60%	2.50%	0.00%	7.15%	See note (19)
Red Mountain, DST	Dixie State University	09/17/15	\$ 3,642,944	75.18%	\$ 8,446,000	9.45%	2.25%	0.00%	7.75%	See note (20)
Tuscany Place, DST	Brigham Young University - Idaho	07/24/15	\$ 4,978,400	75.00%	\$ 10,350,000	6.20%	8.37%	5.00%	7.50%	See note (21)
The Plaza, DST	University of Colorado - Boulder	05/05/15	\$ 8,530,000	76.30%	\$ 24,771,500	10.65%	10.65%	7.75%	7.50%	See note (22)
Darby Row, DST	Notre Dame University	02/25/14	\$ 2,076,000	73.54%	\$ 5,408,500	7.20%	3.20%	0.00%	8.00%	See note (23)

(\*) Pre-COVID yield rates reflect the respective property's ability to fund distributions prior to April 2020 and reflect the strength of such property prior to the COVID pandemic. Annualized calculations are based on distributions made in March 2020 and include loan amortization, if any, for the same period. See "Notes to Currently Active Properties" for greater detail.

- (\*\*) Current yield rates reflect the impact of the COVID pandemic on the respective property's ability to fund distributions paid or to be paid for June 2022. Annualized calculations are based on distributions made or to be made for June 2022 and include loan amortization, if any, for the same period. See "Notes to Currently Active Properties" for greater detail.

Previously Syndicated Student Housing Assets Non-Master Lease and Value-Add Properties (Active)										
Property	School	Offering Date	Total Equity	Loan To Offering Price	Offering Price	Pre-Covid Yield*	Current Yield**	Actual Cash-on-Cash	PPM Projected Cash-on-Cash Proforma	Notes
University Park (LLC)	University of California Berkeley	02/28/20	\$ 20,161,880	56.79%	\$ 46,661,880	-	-	-	-	See note (24)
The Ruckus (LLC)	Washington State University	06/20/19	\$ 4,550,000	0.00%	\$ 4,550,000	-	-	-	-	See note (25)
The Ridge (TIC)	West Virginia University	07/11/18	\$ 9,483,792	68.67%	\$ 19,783,792	6.25%	0.00%	0.00%	6.25%	See note (26)
9 and 9 (TIC)	Brigham Young University	12/26/13	\$ 1,522,750	67.23%	\$ 3,745,250	1.30%	1.30%	0.00%	8.00%	See note (27)

- (\*) Pre-COVID yield rates reflect the respective property's ability to fund distributions prior to April 2020 and reflect the strength of such property prior to the COVID pandemic. Annualized calculations are based on distributions made in March 2020 and include loan amortization, if any, for the same period. See "Notes to Currently Active Properties" for greater detail.
- (\*\*) Current yield rates reflect the impact of the COVID pandemic on the respective property's ability to fund distributions paid or to be paid for June 2022. Annualized calculations are based on distributions made or to be made for June 2022 and include loan amortization, if any, for the same period. See "Notes to Currently Active Properties" for greater detail.

### **Notes to Currently Active Properties**

- (1) The Walk (DST). The Walk is a student-housing property adjacent to the University of Alabama in Tuscaloosa. The property is 95% pre-leased for the 2022/23 academic year.
- (2) Vintage (DST). Vintage is a multi-family property in Winter Garden, Florida near the Walt Disney World theme parks. The property is fully leased.
- (3) 4<sup>th</sup> & J (DST). 4<sup>th</sup> & J is a mid-rise Class A conventional multi-family property located in the Marina District of San Diego. The property is 96% occupied.
- (4) Oakbrook (DST). Oakbrook is a multi-family residential community located in Baton Rouge, Louisiana near Louisiana State University. The property contains 244 units and 466 beds and is 95% pre-leased for the 2022/23 academic year.
- (5) Shadowglen (DST). The Flats at Shadowglen is Class A conventional multi-family property consisting of 248 units in 11 two- and three-story buildings on 12.17 acres. The property finished construction in 2020 and is 98% occupied.
- (6) Inspire on 22<sup>nd</sup> (DST). Inspire on 22<sup>nd</sup> is an 18-story student housing property located two blocks from the University of Texas at Austin. Inspire on 22<sup>nd</sup> was completed in 2019 and maintained 95% occupancy throughout the 2020/21 (COVID) academic year. The property is 85% pre-leased for the 2022/23 academic year.

- (7) Astoria (DST). Astoria is a multi-family property in Celebration, Florida near the Walt Disney World theme parks. The property maintains full occupancy with a waitlist pending lease expirations.
- (8) Wolf Run (DST). Wolf Run is a student-housing property adjacent to the University of Nevada, Reno in Reno, Nevada. The property is 77% pre-leased for the 2022/23 academic year.
- (9) Campus Walk (DST). Due to the property's proximity to campus and the fact that it is the newest off campus property, Campus Walk lead the market in occupancy throughout the 2020/21 academic year. The property is 75% pre-leased for the 2022/23 academic year (8% ahead of market).
- (10) Rockland (DST). The property is 82% pre-leased for the 2022/23 academic year.
- (11) The Nine (DST). In April 2020 the asset manager adjusted the cash-on-cash return in advance of the unknown financial impact of the COVID-19 virus. After having suspended on-campus activities for the 2020/21 academic year, the University of Memphis returned to in-person classes and activities for the 2021/22 academic year. Despite this market disruption, The Nine was the market leader in occupancy throughout the 2020/21 academic year. The asset manager expects the property to be leased at the top of the market for the 2022/23 academic year.
- (12) Tailor Lofts (DST). In April 2020 the asset manager adjusted the cash-on-cash return in advance of the unknown financial impact of the COVID-19 virus. After having suspended on-campus activities for the 2020/21 academic year, the University of Illinois-Chicago returned to in-person classes and activities for the 2021/22 academic year. In February of 2022, distributions were restored to a rate of 2.0% cash-on-cash. The asset manager currently anticipates that the property will reach 100% occupancy for the 2022/23 academic year.
- (13) 345 Flats (DST). In April 2020 the asset manager adjusted the cash-on-cash return in advance of the unknown financial impact of the COVID-19 virus. In Q1 of 2021, cash flows began an upward climb due to the property's strong performance. After having suspended on-campus activities for the 2020/21 academic year, Kent State returned to in-person classes and activities for the 2021/22 academic year. On November 17, 2020, Book & Ladder Collegiate Experiences assumed on-site management of the property and began an aggressive campaign to ensure successful post-pandemic operations. The property is 100% leased for the 2021/22 academic year and 100% pre-leased for the 2022/23 academic year. In September 2021, the asset manager announced an increase in cash-on-cash distributions from 3.08% to 3.66% as a result of the property's leasing status for the 2021/22 academic year.
- (14) The Buckingham (DST). In April 2020 the asset manager adjusted the cash-on-cash return in advance of the unknown financial impact of the COVID-19 virus. After having suspended on-campus activities for the 2020/21 academic year, most of the neighboring academic institutions returned to in-person classes and activities for the 2021/22 academic year. The asset manager currently anticipates that the property will reach 100% occupancy for the 2022/23 academic year.
- (15) CP Cincy (DST). CP Cincy is a 2007-vintage 440-bed student housing property located steps from the University of Cincinnati and the broader downtown Cincinnati market. In April 2020 the asset manager adjusted the cash-on-cash return in advance of the unknown financial impact of COVID-19. The asset manager currently anticipates that the property will reach 100% occupancy for the 2022/23 academic year with a substantial master lease with the University of Cincinnati.
- (16) Element (DST). In April 2020 the asset manager adjusted the cash-on-cash return in advance of the unknown financial impact of the COVID-19 virus. After having suspended on-campus activities for the 2020/21 academic year, the University of California system returned to in-person classes and activities for the 2021/22 academic year. On September 15, 2020, Book & Ladder Collegiate Experiences assumed on-site management of the property and began an aggressive campaign

to ensure successful post-pandemic operations. The asset manager currently anticipates that the property will reach 100% occupancy for the 2022/23 academic year.

- (17) Grant Street (DST). In April 2020 the asset manager adjusted the cash-on-cash return in advance of the unknown financial impact of the COVID-19 virus. After having suspended on-campus activities for the 2020/21 academic year, Purdue University returned to in-person classes and activities for the 2021/22 academic year. In September 2021, the asset manager announced an increase in cash-on-cash distributions from 3.33% to 4% as a result of the property's leasing status for the 2021/22 school year. The asset manager currently anticipates that the property will reach 100% occupancy for the 2022/23 academic year. The sale of the property is expected in the 3<sup>rd</sup> quarter of 2022.
- (18) Molly Barr (DST). Molly Barr Ridge is a 53-unit, 169-bed apartment complex located one and a half miles from the University of Mississippi ("Ole Miss"). Molly Barr Trails is a 72-unit, 144-bed apartment complex the same distance from campus. The two properties comprise Molly Barr, DST and were purchased in September of 2016. Ole Miss experienced positive year-over-year enrollment growth for the majority of the 2010's, attracting a substantial amount of development and ultimately competition for Molly Barr, DST. During 2017, 2018, and 2019, Ole Miss experienced negative enrollment growth right as this new competition came online. The asset manager currently anticipates that the property will reach 80% to 85% occupancy for the 2022/23 academic year. Book and Ladder Collegiate Experiences recently assumed on-site management of the property.
- (19) Park Plaza Provo (DST). The sale of Park Plaza is anticipated in 2022.
- (20) Red Mountain (DST). In April 2020 the asset manager adjusted the cash-on-cash return in advance of the unknown financial impact of COVID-19. The asset manager currently anticipates that the property will reach 100% occupancy for the 2022/23 academic year.
- (21) Tuscany Place (DST). Tuscany Place Apartments is a 48-unit, 284-bed student-housing property located less than a quarter mile from Brigham Young University - Idaho. The asset manager currently anticipates that the property will reach 100% occupancy for the 2022/23 academic year.
- (22) The Plaza (DST). The property is 86% leased for the 2021/22 academic year and 92% pre-leased for the 2022/23 academic year. It is anticipated that the property will be sold in 2022.
- (23) Darby Row (DST). Darby Row is comprised of two properties, Darby Row and Belfry, featuring a total of 23-units and 71-beds located less than one-half mile from Notre Dame University. After having suspended on-campus activities for the 2020/21 academic year, Notre Dame returned to in-person classes and activities for the 2021/22 academic year. Granite Residential was installed as the on-sight property manager in the first quarter of 2022. The asset manager currently anticipates that the property will reach 100% occupancy for the 2022/23 academic year.
- (24) University Park (LLC). University Park is a 97-unit, 112-bed student-housing property located 0.2 miles from the University of California at Berkeley. University Park is a value-add investment not paying a cash-on-cash return to investors during the property ownership period.
- (25) Ruckus (LLC). The Ruckus is a 334-Unit, 976-bed student-housing property located less than 0.25 miles from Washington State University. The LLC was formed to fund capital improvements and does not pay a cash-on-cash return. The asset manager currently anticipates that the property will reach 100% occupancy for the 2022/23 academic year.
- (26) Ridge (TIC). In April 2020 the asset manager adjusted the cash-on-cash return in advance of the unknown financial impact of the COVID-19 virus. After having suspended on-campus activities for the 2020/21 academic year, West Virginia University returned to in-person classes and activities for the 2021/22 academic



year. On November 17, 2020, Book & Ladder Collegiate Experiences assumed on-site management of the property and began an aggressive campaign to ensure successful post-pandemic operations. The asset manager currently anticipates that the property will reach 100% occupancy for the 2022/23 academic year. The sale of the property is expected in the 3<sup>rd</sup> quarter of 2022.

(27) 9 & 9 (TIC). A sale of 9&9 is anticipated in 2022.

## Funds

The Sponsor is affiliated with two funds that provide loans to the Sponsor, Versity Investments and their affiliates. The chart below is an overview of the status of the investment funds as of June 15, 2022.

Funds							
Property	School	Offering Date	Total Equity	Pre-Covid Cash on Cash*	Current Cash on Cash**	PPM Projected Cash-on-Cash Proforma	Notes
NB Private Capital Income Fund I, LLC	n/a	11/1/20	\$1,199,357	n/a	7.00%	7.00%	See note (1)
Versity Investments Income Fund II, LLC	n/a	11/18/21	\$3,345,000	n/a	10.00%	7.00%	See note (2)

(\*) Pre-COVID cash on cash rates are based on distributions made in March 2020.

(\*\*) Current cash on cash rates are based on distributions made in June 2022. See “Notes to Funds” for greater detail.

## Notes to Funds

(1) NB Private Capital Income Fund I, LLC. NB Private Capital Income Fund I, LLC is a short-term income producing fund that provides growth capital to Versity Investments in a historic time of growth potential. Fund distributions have not been impacted by COVID.

(2) Versity Investments Income Fund II, LLC. Versity Investments Income Fund II, LLC is a short-term, income producing fund that provides growth capital to the Sponsor and Versity Investments in a historic time of potential growth. Fund distributions have not been impacted by COVID.

## Completed Prior Programs

The following table presents the completed programs sponsored by Versity Investments and its predecessor through June 15, 2022. The table reflects the date on which the property was originally purchased and the date it was sold, as well as the purchase and sales price. The table also shows the internal rate of return and the total return.

Previously Syndicated (Exits)							
Property	Purchase Date	Property sale Date	Hold (Yrs)	Offering Price	Property Sales Price	IRR	Total Return
Chateau Sera, TIC	January 2012	July 2015	3.29	\$7,496,000	\$10,403,000	22.87%	87.68%
Aggie Flats, TIC	March 2013	June 2017	4.31	\$4,274,000	\$7,210,000	13.19%	58.83%
Meadowview, LLC	October 2012	June 2017	4.70	\$23,300,000	\$36,500,000	12.12%	45.69%
University Gardens, TIC	January 2013	February 2017	3.80	\$8,063,000	\$13,905,000	17.17%	76.77%
Venice ALF Fund, LLC	May 2011	February 2018	6.92	\$9,900,000	\$9,169,000	10.75%	100.65%
Chateau Sera DST	July 2015	March 2019	3.73	\$11,794,000	\$13,500,000	10.11%	38.44%
University Downs	November 2013	January 2019	5.32	\$4,843,000	\$10,500,000	12.72%	87.47%
Duck Flats, TIC	01/05/12	04/29/22	10.50	\$3,274,000	\$4,000,000	5.69%	58.82%
Duck Lofts, TIC	11/20/10	04/29/22	11.50	\$3,878,900	\$4,650,000	7.33%	76.16%
Sawmill, TIC	08/01/16	05/11/22	5.80	\$43,672,474	\$61,250,000	15.64%	91.30%
The Stretch, TIC	06/25/19	06/01/22	3.00	\$19,395,583	\$23,100,000	10.43%	33.85%

## FEDERAL INCOME TAX CONSEQUENCES

The following discussion applies only if an Investor buys an Interest directly from the Trust. You should not view the following analysis as a substitute for careful tax planning, particularly because the income tax consequences of an investment in an Interest are uncertain and complex. Also, the tax consequences will not be the same for all taxpayers. You should be aware that the following discussion necessarily condenses or eliminates many details that might adversely affect you significantly and does not address the tax issues that may be important to you if you are subject to special tax treatment (e.g., if you are a non-resident alien). Except where otherwise noted, this discussion does not discuss aspects of state and local taxation relating to an investment. Each prospective Investor should consult his, her, or its own tax advisor about the specific tax consequences to him, her or it before investing.

The following discussion of federal income tax consequences is based on laws and regulations presently in effect and, except where noted, does not address state, local 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 Tax Cut and Jobs Act of 2017 (the “TCJA”) has recently revised certain provisions of the federal income tax law that affect the tax consequences of real estate investments. Many of these provisions are complex and their scope and interpretations are presently uncertain.

Accordingly, there is uncertainty concerning certain tax aspects discussed herein, and there can be no assurance that the IRS 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. Should the IRS challenge the tax treatment of an investment in an Interest, even if the challenge were 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 net losses to reduce taxable income from other sources. An investment in Interests is unlikely to provide any such tax shelter.

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

- (1) have independently obtained advice from your legal counsel and/or accountant about any Section 1031 Exchange and applicable state laws, including, without limitation, whether the acquisition of an Interest may qualify as part of a tax-deferred exchange, and you are relying on such advice;
- (2) understand that the Trust has not obtained a ruling from the IRS that an Interest will be treated as an undivided interest in real property as opposed to an interest in a partnership or corporation;
- (3) understand that the tax consequences of an investment in an Interest, especially the treatment of the transaction under Section 1031 and the related Section 1031 Exchange rules, are complex and vary with the facts and circumstances of each individual purchaser; and
- (4) understand that the opinion of Special Tax Counsel is only Special Tax Counsel’s view of the anticipated tax treatment, and there cannot be complete assurance that the IRS will agree with such opinion.

### **Nature of Interests**

#### ***Classification of the Trust***

The Sponsor has attempted to structure the Offering so that Investors purchasing Interests will be treated for federal income tax purposes as acquiring interests in real estate and not as interests in a partnership or corporation. If the Interests were to be treated by the IRS or a court as interests in a partnership or corporation, then no Investor would be able to use its acquisition of Interests as part of a transaction to defer gain under Section 1031.

The Trust obtained an opinion from Special Tax Counsel that: (1) the Trust should be treated as an “investment trust” described in Treasury Regulation Section 301.7701-4(c) that is classified as a “trust” under Treasury Regulation Section 301.7701-4(a); (2) the Investors, as the Beneficial Owners, should be treated as “grantors” of the Trust; (3) as “grantors,” the Beneficial Owners should be treated as owning an undivided fractional interest in the Property for federal income tax purposes; (4) the Interests should not be treated as securities for purposes of Section 1031; (5) the Master Lease should be treated as a true lease and not a financing for federal income tax purposes; (6) the Master Lease

should be treated as a true lease and not deemed a partnership for federal income tax purposes; and (7) the discussions of the federal income tax consequences contained in this Memorandum are correct in all material respects. An Investor who is acquiring an Interest pursuant to a Section 1031 Exchange must be aware that in order to qualify under Section 1031 the Interest must be treated as an interest in real property.

Special Tax Counsel's opinion is based upon existing cases and rulings, and in particular the analysis in Revenue Ruling 2004-86, 2004-2 C.B. 191. Revenue Ruling 2004-86 sets forth the limited circumstances under which a state-law trust may be classified as an "investment trust" for federal income tax purposes rather than as a business entity taxable as a corporation or partnership. Revenue Ruling 2004-86 concludes that, because the beneficial owners of interests in an "investment trust" are "grantors" that are treated as directly owning an undivided fractional interest in the property held by the trust, the exchange of real property by such beneficial holders for an interest in the "investment trust" is treated as an exchange of real property for an interest in the "investment trust's" property rather than for a certificate of trust or beneficial interest for purposes of Section 1031.

Special Tax Counsel's opinion that the Beneficial Owners should be treated as grantors of the Trust means that a Beneficial Owner is required to take into account, in computing his, her, or its income tax liability, his, her, or its proportionate share of all items of income, gain, loss, deduction and credit attributable to the Trust. In addition, all property owned by the Trust will be deemed for federal income tax purposes to be owned by the grantors of the Trust in proportion to their ownership interests in the Trust. Thus, 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, her, or its proportionate share of the income of the Trust. Therefore, the Beneficial Owners should be treated, for federal income tax purposes, as if they own their respective shares of the Property that is held by the Trust. Tax legislation passed in 2017 (the "TCJA") eliminated the specific provisions under Section 1031 allowing for exchanges of personal property and intangible assets. Although the specific language providing for exchanges of personal property and intangible assets has been eliminated, Special Tax Counsel believes that an analysis of these terms remains relevant and has concluded that the Interests should not be treated as securities for purposes of Section 1031. Recently released guidance from the IRS describes the interests that may qualify as real property for purposes of the like kind exchange rules of Section 1031. That guidance, Treasury Decision 9935 (Nov. 30, 2020), promulgated a regulation that expressly excludes interests in a trust from being like kind property with real estate. (Treasury Regulation 1.1031(a)-3(a)(5)(i)(D).) However, the explanation that the Treasury Department provided with the issuance of that new regulation states: "With regard to Rev. Rul. 2004-86, nothing in the proposed regulations or the TCJA is contrary to the view that a transfer of an interest in a DST, if a grantor trust, is treated as the transfer of the underlying property held by the DST. The Treasury Department and the IRS, however, will continue to review existing guidance concerning Section 1031 like-kind exchanges to determine the effect of the TCJA on that guidance." (Treas. Dec. 9935, part IV(C).) As a result of that discussion, we conclude that the holding of Revenue Ruling 2004-86 remains in effect. However, as the Treasury noted it is possible that the IRS could take a contrary position on these issues in future administrative guidance, which may not necessarily be prospective in effect.

The Trust and the Sponsor have not requested and will not receive a private letter ruling from the IRS regarding the federal income tax classification of the Trust. After examining the relevant cases and rulings, however, Special 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, the Asset Manager, the 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. Special Tax Counsel has also concluded that the Beneficial Owners should be treated as grantors of the Trust. Special Tax Counsel further believes that these conclusions are consistent with the underlying cases and rulings that govern whether a state-law trust is classified for federal income tax purposes as an "investment trust" rather than as a business entity taxable as a corporation or partnership.

There is always a risk that the IRS may not agree with such opinion. The opinion of Special Tax Counsel will be predicated on all the facts and conditions set forth in the opinion and will not constitute 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 has been structured to be substantially similar to the trust described in Revenue Ruling 2004-86. There are several possible distinctions, however, including: (1) the ongoing role of the Asset Manager (but with powers limited to those permitted to be exercised by the Trust); (2) the potential termination of the Trust and/or the Trust as a

result of a Transfer Distribution; and (3) providing the Asset Manager with discretion to cause a sale of the Property. In addition, while the Trust will have the option to extend the term of the Loan by one year if the Trust is otherwise in compliance with the requirements of the Loan, the Trust has, concurrent with its entering into the Loan and with notice to the Lender, delegated the right to extend the Loan to the Master Tenant. Special 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 SPECIAL TAX COUNSEL. THE OPINION IS ATTACHED AS EXHIBIT B. PURCHASERS SHOULD REVIEW THE OPINION IN ITS ENTIRETY.**

## **Section 1031 Non-Recognition Treatment**

### ***Potential Significant Tax Costs if Interests were Deemed to Be Interests in a Partnership, Securities or Certificates of Trust or Beneficial Interests***

If the Investors were to be treated for tax purposes as purchasing interests in a partnership, securities or certificates of trust or beneficial interests in a non-grantor trust, the Investors who are purchasing their Interests as part of a Section 1031 Exchange would not qualify for deferral of gain under Section 1031, and each Investor who had relied on deferral of his, her, or its gain from disposition of other interests in real property would immediately recognize such gain and be subject to federal income tax thereon. Moreover, since such determination would of necessity come after such Investor had purchased his, her, or its Interest, such Investor would have no cash from the disposition of his, her, or its original interests in real estate with which to pay the tax. Given the illiquid and long-term nature of his, her, or its investment in the Interests, there would be no practical means of generating cash from an investment in the Interests to pay the tax. In such a case, an Investor would have to use funds from other sources to satisfy his, her, or its tax liabilities.

### ***Identification***

The Treasury Regulations under 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 45<sup>th</sup> 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 (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**”). A taxpayer also may identify any number of properties if it acquires at least 95% of the identified properties (the “**95% rule**”). For purposes of both the 200% rule and 95% rule, “fair market value” means the fair market value of the applicable property without regard to any liabilities secured by the property.

### ***Other Requirements of Section 1031***

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 Section 1031. For instance, prospective Investors seeking to engage in a “deferred” exchange (within the meaning of Treasury Regulation Section 1.1031(k)-1) must properly identify one or more potential replacement properties within the 45-day identification period and complete the exchange within the 180-day exchange period. Such prospective Investors also should consider whether their arrangement falls within the “qualified intermediary” and/or “qualified escrow account” safe harbors of Treasury Regulation Section 1.1031(k)-1(g). Prospective Investors wishing to engage in a “reverse” or “parking” exchange should consult Rev. Proc. 2000-37, 2002-2 C.B. 308, which establishes a safe harbor for such exchanges. Each prospective Investor will have to determine with such Investor’s own tax advisors whether an exchange to be engaged in by the prospective Investor satisfies the requirements of Section 1031.

The applicable regulation (Treasury Regulation Section 1.1031(k)-1(g)(7)(iii)(B)) generally permits up to 15% of the purchase price to be allocated to the value of personal property acquired as part of a real property acquisition while still qualifying as real property for the like kind exchange rules. Any portion of the purchase price of the Property in excess of that safe harbor amount that would have to be allocated to personal property will not qualify as replacement property and could result in boot for an Investor.

An Investor engaged in a like kind exchange of real property is reminded to file an IRS Form 8824 with his or her federal income tax return.

### ***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.

### ***Treatment as an Interest in a Partnership or a Security***

Section 1031 excludes an interest in a partnership or security from the categories of property that may qualify for non-recognition. Thus, if the IRS were to classify the Interests as securities for federal income tax purposes, the Interests would not qualify as replacement property for a Section 1031 Exchange. The term "securities" is not defined in Section 1031 or the Treasury Regulations promulgated thereunder.

Based on an analysis of relevant authorities, however, Special Tax Counsel has concluded that an Interest should not be considered an interest in a partnership or security for purposes of Section 1031 even though an Interest may be a security under applicable federal or state securities laws.

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

The Biden Administration has announced a number of tax changes that it will propose, including, most significantly, a partial or complete repeal of Section 1031, as well as an increase in the tax rate on long-term capital gains from the current 20% or even the elimination of the difference in taxation between net long term capital gains and ordinary income, an increase of the top income tax rate to 39.6%, a reduction in the lifetime estate and gift tax exemption, an elimination of the step-up in tax basis on death. A prospective repeal of Section 1031 could make continual deferral of the gain on the sale of real property impossible. The repeal of the rule permitting a step up in the tax basis of a decedent's assets would make the ultimate recognition of deferred gain inevitable. It is impossible to predict whether any of those proposals will become law.

### ***20% Passthrough Deduction***

The Code 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 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. Section 199A includes the rental of real estate as a qualified trade or business. However, the rental real estate trade or business safe harbor is not available where the property used by the taxpayer is subject to a triple net lease. The definition of a triple net lease for the purpose of Section 199A may overlap significantly with common lease provisions of master leases utilized in many DST structures, potentially including the Master Lease of the Property. As a result, there is no assurance that the Section 199A qualified business income deduction of 20% will be available to an investor in the Trust.

### ***Treatment of the Master Lease as True Lease Rather Than Financings***

Transactions structured as leases may be recharacterized for federal income tax purposes to reflect their economic substance. For example, in appropriate circumstances a purported lease may be recharacterized as a conditional sales contract. Recharacterization of the Master Lease as a financing or other arrangement for federal income tax purposes would have significant tax consequences. For example, if the Master Lease were recharacterized as a financing, the Master Tenant would be treated as the owner of the corresponding Property for federal income tax purposes. As a result, an Investor attempting to participate in a Section 1031 Exchange would not be treated as having received qualified replacement property in relation to the underlying Property when he, she or it acquired his, her or its Interest because the Investor 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 Investors and would not be deductible by the Master Tenant. All of these consequences could have a significant impact on the tax consequences of an investment in the Property.

Revenue Procedure 2001-28, 2001-1 C.B. 1156, sets forth the requirements for the IRS to issue a private letter ruling that an arrangement constitutes a “true lease” for federal income tax purposes. These ruling guidelines provide certain criteria that the IRS will require to be satisfied in order to issue a private letter ruling that a lease is a “true lease” for federal income tax purposes. The Sponsor has not sought, and does not expect to request, a ruling from the IRS under Revenue Procedure 2001-28. In the event of an examination by the IRS, the IRS and, ultimately, the courts of applicable jurisdiction, would consider existing cases and rulings, for purposes of determining whether a lease qualifies as a true lease for federal income tax purposes. However, Special Tax Counsel does not believe that strict compliance with Revenue Procedure 2001-28 is required to conclude that the Master Lease should be characterized as a true lease for federal income tax purposes. In fact, Revenue Procedure 2001-28 so states. Rather, Special Tax Counsel believes that satisfying most of the material ruling guidelines should be sufficient for purposes of determining the characterization of the Master Lease at issue for federal income tax purposes. Special Tax Counsel believes the Master Lease at issue satisfies most of the pertinent material conditions set forth in Revenue Procedure 2001-28 and has concluded that the Master Lease should be treated as a true lease rather than a financing for federal income tax purposes. Although the Master Lease varies from the guidelines provided in Revenue Procedure 2001-28, Special Tax Counsel believes that this will not affect the status of the Master Lease.

### ***Future 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 an Investor’s exit strategy. The Biden Administration has announced a number of tax changes that it will propose, including, most significantly, a partial or complete repeal of Section 1031.

To date, the IRS has issued only limited guidance with respect to certain of the changes to Section 1031 enacted in 2017, and there are numerous interpretive issues that will require guidance. An investment in an Interest involving solely real property was not impacted by the 2017 amendments. 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. Under regulations interpreting the changes implemented by the 2017 tax act, personal property that accounts for 15% or less of the purchase price of replacement property, by value, will be ignored if the conveyance of the personal property with such real property is typical in standard commercial transactions. Thus, Investors 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, future repeal or amendment of Section 1031 or the Treasury Regulations promulgated thereunder could negatively impact the use of a Section 1031 Exchange in connection with an Investor’s exit strategy.

## **Other Tax Consequences**

### ***Taxation of the Trust***

Special 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 will not be subject to federal income tax, and each Investor will be subject to federal income taxation as if it owned directly the portion of the Property allocable to the Interests owned by the Investor and as if it paid directly its share of expenses paid by the Trust.

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

### ***Code Section 467 Rent Allocation.***

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

### ***Depreciation and Cost Recovery***

Current federal income tax law allows an owner of improved real property to take depreciation deductions based on the entire cost of the depreciable improvements, even though such improvements are financed in part with borrowed funds. If, however, the purchase price of an Interest, including the liabilities to which the Property is subject, is in excess of its fair market value, an Investor 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. The Code subjects qualified improvement property to the 27.5-year recovery period that generally applies to residential real property. Due to the limitation on expenditures for improvements imposed upon the Trust, the Signatory Trustee does not anticipate that the Trust will make significant expenditures for “qualified improvement property.”

The amount of depreciation an Investor will be entitled to claim with respect to the Property will depend on the Investor’s adjusted basis in depreciable assets that are part of the Property. An Investor who acquires an Interest as part of a Section 1031 Exchange generally will have a “carryover” basis equal to such Investor’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 Section 1031, and increased by the amount of gain (e.g., taxable boot) and decreased by the amount of loss recognized by the Investor in such Section 1031 Exchange. In addition, the Investor’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 Investor 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 an Investor is buying an Interest in the Trust in order to take advantage of the rules deferring the recognition of gain on real property under Section 1031, when computing depreciation allowed with respect to the Property.

### ***Allocation of Liabilities***

Any liabilities incurred by the Trust will be allocated, for federal income tax purposes, to the Beneficial Owners in proportion to their Interests. For purposes of determining the purchase price of replacement property in a Section 1031 Exchange, each Investor will be able to include its proportionate share of the liabilities that encumber the Property at the time of the acquisition of an Interest.



### ***Payments to the Sponsor and its Affiliates***

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

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

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

### ***Possible Adverse Tax Treatment for Closing Costs and Reserves***

A portion of the proceeds of the Offering will be used to pay each Investor's *pro rata* share of closing costs, organization and offering expenses, the marketing and due diligence reallocation, managing broker-dealer fees, commissions and other costs of the Offering. In addition, reserves of about \$4.969 million will be established using a portion of the proceeds of the Offering or the Loan. When reserves are established from Offering proceeds, such portion of the Offering proceeds may be treated as having been used to purchase an interest in reserves established by the Sponsor rather than the real property. Because the tax treatment of certain expenses of the Offering, closing costs, financing costs or reserves is unclear and may vary depending upon the circumstances, no advice or opinion of Special 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 Investor should seek the advice of a qualified tax advisor as to the proper treatment of such items.

### ***Receipt of Boot***

In a Section 1031 Exchange, money received or deemed received in addition to the like-kind property is referred to as "boot." Gain realized on the relinquished property transaction is recognized up to the amount of "boot" received or deemed received. Generally, personal property, amounts used to establish reserves and impounds or other similar items, as well as seller credits, funded out of relinquished property proceeds may not be treated as an interest in real estate in connection with acquiring replacement property and may be treated as "boot." Prospective investors 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, the offering of beneficial interests in the Trust and purchase of replacement property may be deemed "boot" and be taxable income to the investor. However, the IRS has provided guidance in Revenue Ruling 72-456, 1972-2 CB 468, regarding transactional costs paid by the taxpayer with exchange proceeds. In that ruling the IRS indicated that transactional costs paid by the investor, such as brokerage commissions, can be deducted against boot received in computing the amount of gain recognized on 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 Special 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 an Investor to the extent of such Investor'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 investor. Prospective Investors should seek the advice of a qualified tax advisor as to the proper treatment of such items.

### ***Deductibility of the Trust's Fees and Expenses***

In computing his, her, or its federal income tax liability, an Investor will be entitled to deduct, consistent with his, her, or its method of accounting, the Investor'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, which may be subject to the limitations applicable to miscellaneous itemized deductions. The 2017 legislation suspended all miscellaneous itemized deductions for taxable years between 2018 and 2025. As such, a Beneficial Owner may 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. Prospective Investors should seek the advice of a qualified tax advisor as to the proper treatment of such items.

### ***Transfer to the Springing LLC***

If a Transfer Distribution occurs, the Property will be transferred from the Trust to the Springing LLC, and the interests in the Springing LLC will be held by the Beneficial Owners. Under current law, such a transfer would not be subject to federal income tax pursuant to Section 721. The transfer could be subject, however, to state or local income, transfer or other taxes. In addition, there can be no assurances that such transfer will not be taxable under the federal income or other tax laws existing at the time the transfer occurs. Because a Transfer Distribution could occur in several situations, it is not possible to determine all of the tax consequences to the Beneficial Owners in the event of a Transfer Distribution of the Trust. **PURCHASERS SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES OF A TRANSFER DISTRIBUTION AND THE EFFECT OF THE PROPERTY OR THE TRUST BEING HELD BY A SPRINGING LLC RATHER THAN THE TRUST.**

### ***Deferral of Tax upon Sale of LLC Units***

Unlike interests in the Trust, interests in the Springing LLC will not be treated as interests in real property for federal income tax purposes, including for purposes of the like-kind exchange provisions of Section 1031. **THUS, IF THE PROPERTY IS TRANSFERRED TO THE SPRINGING LLC IN A TRANSFER DISTRIBUTION, IT IS UNLIKELY THAT ANY OF THE BENEFICIAL OWNERS WHO RECEIVE INTERESTS IN SUCH SPRINGING LLC WILL THEREAFTER BE ABLE TO DEFER THE RECOGNITION OF GAIN UNDER SECTION 1031.**

### ***Limitations on Losses and Credits from Passive Activities***

Losses from passive trade or business activities generally may not be used to offset “portfolio income,” i.e., interest, dividends and royalties, or salary or other active business income. Losses from passive activities may generally be used only to offset income from passive activities. Interest deductions attributable to passive activities are treated as a component of passive activity losses and not as investment interest. Thus, such interest deductions are subject to limitation under the passive activity loss rule and not under the investment interest limitation. Credits from passive activities generally are limited to the tax attributable to the income from passive activities. Passive activities include: (1) trade or business activities in which the taxpayer does not materially participate; and (2) rental activities. Thus, an Investor’s share of the Property’s income and loss will likely 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,” Investors will not 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 an Investor actively participates in rental real estate activities, there is a phase out of the \$25,000 allowable loss equal to 50% of the amount by which an Investor’s adjusted gross income exceeds \$100,000. Therefore, if an Investor’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: (1) 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; (2) 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 (3) 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. Investors should consult with their own tax advisors to determine if this rule applies to them.

### ***Limitation on Excess Business Loss Deduction***

Excess business losses of a taxpayer other than a corporation are not allowed for the taxable year. Such losses are carried forward and treated as part of the taxpayer's net operating loss carryforward in subsequent taxable years. An excess business loss for the taxable year is the excess of aggregate deductions of the taxpayer attributable to trades or businesses of the taxpayer over the sum of aggregate gross income or gain of the taxpayer plus a threshold amount. The threshold amount, which is indexed for inflation, has been set at \$262,000 (\$524,000, 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.

### ***Net Income and Loss of Each Investor***

Each Investor will be required to determine his, her, or its own net income or loss from the Property and the Trust for income tax purposes. Each Investor will be required to pay his, her, or its share of expenses of the Property and the Trust, and will be entitled to his, her, or its share of income therefrom. Certain expenses, such as depreciation, will be different for different Investors. The Asset Manager will keep records and provide information about expenses and income of the Property, the Trust for each Investor. An Investor, however, will be required to keep separate records to separately report his, her, or its income.

Any gain or loss recognized on the sale or exchange of an Interest will generally be treated as a gain or loss from the sale of a capital asset or an asset described in Section 1231 (a "**Section 1231 Asset**"), provided the seller is not deemed a "dealer" with respect to his, her, or its Interest. As a general rule, the holding of parcels of real property for investment is not the type of activity that would cause a person or entity to be considered a "dealer" in such 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 an Investor was deemed a "dealer" and the Property is not considered a capital asset or a Section 1231 Asset, any gain or loss on the sale or other disposition would be treated as ordinary income or loss. In general, if an Interest is a capital asset, any gain or loss realized on its sale or exchange will be treated as capital gain or loss under the Code. Any such capital gain attributable to an asset held for more than 12 months will generally be taxed to individuals at the highest applicable long-term capital gain tax rate. If an Interest constitutes a Section 1231 Asset, any gain or loss on sale would be combined with any other Section 1231 gains or losses realized by the Investor in that year, and the resulting net 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 Section 1231 property over several years. In general, net Section 1231 gains are recaptured as ordinary income to the extent of net Section 1231 losses in the five preceding taxable years.

In determining the amount realized on the sale or exchange of an Interest or the Property, an Investor must include, among other things, the Investor's share of allocated indebtedness on the Property. Therefore, it is possible that the gain realized upon the sale of an Interest may exceed the cash proceeds from the sale, and, in some cases, the income taxes payable with respect to the gain realized on the sale may exceed such cash proceeds.

In addition to other income tax imposed by the Code, the Medicare Contribution Tax may be applicable on the "net investment income" of certain U.S. individuals and on the undistributed "net investment income" of certain estates and trusts. Among other items, "net investment income" generally includes rent and net gain from the disposition of investment property, less certain deductions.

### ***Tax Impact of Sale of the Property***

If the Property is sold or otherwise disposed of in a taxable transaction, the Investors will likely recognize taxable income. An Investor will have taxable income to the extent that the amount realized by such Investor exceeds his, her, or its tax basis in his, her, or its Interests. In addition, as noted above in “Net Income and Loss of Each Investor,” the Medicare Contributions Tax is likely to apply to any net gain realized on a taxable disposition of the Property.

### ***Taxable Income***

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

### ***Treatment of Gifts of Interests***

Generally, no gain or loss is recognized for federal income tax purposes as a result of a gift of property. However, if a gift (including a charitable contribution) of an Interest is made at a time when the Investor’s share of the Property’s indebtedness exceeds the adjusted basis of the Investor in his, her, or its Interest, the Investor will recognize gain for income tax purposes upon the transfer in the amount of the excess. Such gain, if any, will generally be treated as a capital gain or a gain from the sale of a Section 1231 Asset. Gifts of Interests may also be subject to a gift tax imposed under the rules generally applicable to all gifts of property.

### ***Foreclosure***

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

### ***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 Investors will be required to make any applicable tax elections. However, if the Investors 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***

An Investor will be required to report income under the Investor’s applicable accounting method.

### ***Alternative Minimum Tax***

Taxpayers may be subject to the alternative minimum tax in lieu of the regular income tax. In general, the alternative minimum tax base equals taxable income increased by designated tax preferences. Each Investor should consult with his, her, or its tax advisor concerning the impact on him, her or it, if any, of the alternative minimum tax.

### ***Activities Not Engaged in for Profit***

Under 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. Section 183 has a presumption that an activity is

engaged in for profit if income exceeds deductions in at least three out of five consecutive years. Although it is reasonable for an Investor to conclude that the Investor 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 an Investor will be found to be engaged in an activity for profit because the applicable test is based on the facts and circumstances existing from time to time.

### ***Limitation on Losses under the At-Risk Rules***

An Investor 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 Investor is “at risk” with respect to the activity. An Investor’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 Investor to acquire its Interest; and (3) the amount of any qualified non-recourse indebtedness encumbering the Property. An Investor who acquires his, her, or its Interest as part of a Section 1031 Exchange will be “at risk” for his, her, or its adjusted basis for the Interest, not the amount of cash paid therefor. An Investor’s amount at risk will be reduced by the amount of any cash flow received by such Investor and the amount of the Investor’s losses and will be increased by the amount of the Investor’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. Because it is uncertain whether the Loan encumbering the Property will constitute qualified non-recourse indebtedness, Special Tax Counsel will not issue an 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***

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 Section 265(a)(2) turns on each Investor’s purpose for acquiring an Interest. Thus, Section 265(a)(2) might be applied to an Investor whose purpose for investing in an Interest rather than in a non-leveraged investment is to enable such Investor to continue to carry tax-exempt obligations. It should be noted that 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 Section 265(a)(2) may be applied to an Investor if the Investor 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 Investor.

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

### ***Limit on Business Interest Deductions***

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 motor vehicle floor plan financing interest of the taxpayer). Business interest in excess of the allowed current deduction may be carried forward indefinitely. The adjusted taxable income of a taxpayer means taxable income computed without regard to any item not properly allocable to a trade or business, any business interest income or expense, any net operating loss deduction, for taxable years beginning prior to 2022 any depreciation amortization or depletion deduction, and certain other items.

Certain small businesses (in general, where the average annual gross receipts of the taxpayer for the three-year period ending with the prior taxable year do not exceed \$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 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 Section 163(j) and forego or limit certain other tax benefits. An electing real property trade or business is required to use the longer depreciable life alternative depreciation system for any nonresidential real property (which would then be depreciable by the straight line method over 40 years) or residential rental property (which would then be depreciable by the straight line method over 30 years), or for certain improvements to an interior portion of a building which is nonresidential real property (which would then be depreciable by the straight line method over 20 years). Each prospective Investor should consult with his, her, or its tax advisor concerning the possible application of Section 163(j) to his, her, or its particular circumstances.

The regulations under Code Section 163(j) provide some guidance on certain open issues under Code Section 163(j). For example, the definition of “interest” has been expanded to include income and deductions from many items that have time-value components not previously treated as interest with respect to domestic taxpayers (such as swaps). (Treasury Regulation 1.163(j)-1(b)(22).) 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. (Treasury Regulation 1.163(j)-6(a).) Finally, the regulations include 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 regulations define terms such as “real property” 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). (Treasury Regulation 1.469-9) The Treasury Decision adopting the 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. (Treas. Dec. 9943 (2021).)

#### ***Accuracy-Related Penalties and Penalties for the Failure to Disclose***

The American Jobs Creation Act of 2004 consolidated all penalties relating to the accuracy of tax returns into a single accuracy-related penalty equal to 20% of the portion of the underpayment to which the penalty applies. The penalty applies to any portion of any underpayment that is attributable to: (1) negligence or disregard of rules or regulations; (2) any substantial understatement of income tax; or (3) any substantial valuation misstatement. The penalty is increased to 40% in the case of an underpayment which is attributable to one or more “nondisclosed noneconomic substance” transactions or a misstatement in the value of any property (or its adjusted basis) of 200% or more (a “**Gross Valuation Misstatement**”). The risk of the valuation misstatement penalty being imposed may be mitigated by reasonable reliance on an expert appraisal. Special Tax Counsel is not able to opine as to whether the Appraisal would be respected as a qualified appraisal on which investors may reasonably rely. Investors are urged to examine the Appraisal before investing. Reasonable cause and good faith ordinarily are not indicated by the mere fact that there is an appraisal of the value of property. According to the applicable regulation, other factors to consider include the methodology and assumptions underlying the appraisal, the appraised value, the relationship between appraised value and purchase price, the circumstances under which the appraisal was obtained, and the appraiser’s relationship to the taxpayer or to the activity in which the property is used.

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: (1) 10% of the tax required to be shown on the return for the taxable year; or (2) \$5,000. For a C corporation, a substantial understatement generally occurs if the amount of the understatement exceeds the lesser of: (1) 10% of the tax required to be shown on the return for that tax year (or \$10,000, if that is greater); or (2) \$10,000,000. The 10% threshold is reduced to 5% for taxpayers claiming the deduction for “qualified business income” under 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).

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. In addition, an accuracy-related penalty will not be imposed on a reportable transaction or a listed transaction if it is shown that: (1) there is reasonable cause for the position, (2) the taxpayer acted in good faith, (3) the relevant facts of the transaction are adequately disclosed in accordance with the regulations prescribed under Section 6011, (4) there is or was substantial authority for such treatment, and (5) the taxpayer reasonably believed that such treatment was more likely than not correct. The reasonable cause exception does not apply to any portion of an underpayment that is attributable to one or more transactions that lack “economic substance.” Economic substance is deemed to exist where a transaction changes in a meaningful way (apart from federal income tax effects) a taxpayer’s economic position, and the taxpayer has a substantial purpose (apart from federal income tax effects) for entering into such transaction.

### **Taxation of Tax-Exempt Investors**

Tax-exempt entities, including qualified employee pension and profit-sharing trusts, individual retirement accounts, Simple 401k plans, Keogh plans, annuities, and charitable remainder trusts, are subject to taxation on their unrelated business taxable income (“UBTI”). Generally, a tax-exempt entity that incurs UBTI is taxed on such income at the regular trust, or in the case of some entities, corporate federal income tax rates. Because Interests in the Trust are treated for tax purposes as direct interests in the Property, tax-exempt investors will be deemed to be carrying on the activities of the Trust for purposes of determining whether the tax-exempt investors’ income is UBTI.

UBTI is income that is derived by a tax-exempt entity from an unrelated trade or business that it regularly carries on, less the deductions directly connected with that trade or business. UBTI generally includes a percentage of rental income (less applicable deductions) and gains from the sale or other disposition of real property if the property is debt-financed.

The percentage of rental income that will be UBTI (less the same percentage of applicable deductions) for debt-financed property is the ratio of the investor’s pro-rata share of the average outstanding principal balance of the debt to the investor’s individual **average** tax basis in the property. Depreciation with respect to a tax-exempt investor’s interest in debt-financed property must be computed using the straight-line method.

Upon the sale or other disposition of debt-financed property, the percentage of the gain that will be UBTI is the ratio of the of the investor’s individual average outstanding principal balance of the debt during the 12-month period ending with the sale to the investor’s pro-rata share of the **average** tax basis in the Property during the applicable sale year.

Because the Property is debt-financed, a portion of certain tax-exempt investors’ rental income and gains from the sale of the Property will generate UBTI. However, it is anticipated that depreciation deductions will offset a portion of the UBTI from rental income. If such a tax-exempt investor incurs additional debt in connection with its investment in the Trust, it may give rise to UBTI. Therefore, each prospective investor should consult its own advisors regarding the use of debt to invest in the Trust.

**TAX-EXEMPT ENTITIES SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE TAX CONSEQUENCES OF AN INVESTMENT IN THE TRUST. TAX-EXEMPT INVESTORS MAY INCUR SIGNIFICANT AMOUNTS OF UBTI AS A RESULT OF INVESTING IN THE TRUST.**

### **State and Local Taxes**

In addition to the federal income tax consequences described above, each prospective Investor should consider the state and local tax consequences of an investment in an Interest, including, without limitation, any local income, excise or franchise taxes, as well as Texas property taxes. An Investor’s share of income or loss generally will be required to be included in determining its reportable income for state and local tax purposes. 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 could count towards the \$10,000 limitation. A prospective Investor must seek the advice of its own independent tax advisor as to state and local tax issues.

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

The opinion has been issued solely for your information and assistance with respect to the sale of Interests. Each prospective Investor is encouraged to consult with his, her, or its tax advisor in determining whether to purchase an Interest. Other than as set forth therein, the opinion of Special Tax Counsel 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 be delivered to any other person without our prior written consent.

The opinion of Special Tax Counsel has been written to support the promotion or marketing of the Offering, and each Investor should seek advice based on the Investor's particular circumstances from an independent tax advisor. The opinion does not address any tax consequences of the acquisition of an Interest other than those specifically addressed and will not be applicable as to any individual tax consequences of a Beneficial Owner of an Interest or the individual application of the Section 1031 rules to such purchaser or Investor. Each prospective Investor of an Interest must consult with his, her, or its own tax advisor in determining whether to purchase an Interest. Special Tax Counsel's willingness to render the opinions set forth neither implies, nor should be viewed as implying, any approval or recommendation of an investment in the Property.



## ERISA CONSIDERATIONS

The following is a summary of certain considerations associated with an investment in us by Benefit Plan Investors. The following is merely a summary of such considerations. A complete discussion of the considerations associated is beyond the scope of this summary.

Each Benefit Plan Investor considering investing the assets of an IRA, or a pension, profit sharing, 401(k), Keogh or other employee benefit plan in the Trust should satisfy himself that such investment is consistent with his fiduciary obligations under ERISA and other applicable law, is made in accordance with the documents and instruments governing the plan or IRA, including the plan's investment policy, and satisfies the prudence and diversifications requirements of Sections 404(a)(1)(B) and 404(a)(1)(C) of ERISA. Each Benefit Plan Investor should also determine that an investment in the Trust will not impair the liquidity of the plan or IRA and that, even though it is expected that the Interests will produce unrelated business taxable income for the Benefit Plan Investor, the purchase and holding of an Interest is still consistent with the fiduciary obligations of the Benefit Plan Investor. See *"Federal Income Tax Consequences – Taxation of Tax-Exempt Investors"* for a discussion of the unrelated business taxable income issues applicable to tax exempt investors such as Benefit Plan Investors. The fiduciary for each Benefit Plan Investor should also satisfy himself that he will be able to value the assets of the plan annually in accordance with ERISA requirements.

### **Treatment of the Trust under ERISA**

ERISA and the Code do not define "plan assets." However, the Department of Labor has issued the Plan Asset Rules concerning the definition of what constitutes the assets of an employee benefit plan. The Plan Asset Rules provide that, as a general rule, the underlying assets and properties of corporations, partnerships, trusts and certain other entities in which a plan purchases an "equity interest" will be deemed, for purposes of ERISA, to be assets of the investing plan unless certain exceptions apply. The Plan Asset Rules define an "equity interest" as any interest in an entity other than an instrument that is treated as indebtedness under applicable local law and which has no substantial equity features. Interests in the Trust offered hereby should be treated as "equity interests" for purposes of the Plan Asset Rules.

One exception to the look-through rule under the Plan Asset Rules provides that an investing plan's assets will not include any of the underlying assets of an entity if at all times less than 25% of each class of "equity" interests in the entity are held by Benefit Plan Investors. The Trust and the Signatory Trustee intend to take such steps as may be necessary to limit the ownership of Interests in the Trust by Benefit Plan Investors to less than 25% of the total amount of Interests, and thereby qualify for the 25% exemption. If, however, neither this nor any other exemption under the Plan Asset Rules were available and the Trust were deemed to hold plan assets by reason of a Benefit Plan Investor's investment in the Interests, such investor's indirect interest in the Property would be considered a plan asset. In such event, the Property, transactions involving the Property and the persons with authority or control over and otherwise providing services with respect to the Property would be subject to the fiduciary responsibility provisions of Title I of ERISA and the prohibited transaction provisions of ERISA and Code Section 4975. See *"Risk Factors – ERISA Risks"* for a discussion of certain consequences if the prohibited transaction provisions of ERISA and Code Section 4975 apply to the Trust.

Each Benefit Plan Investor that is a prospective Investor in an Interest in the Trust should consult with its counsel with respect to the potential applicability of ERISA and Code Section 4975 to such investment and determine on its own whether any exceptions or exemptions are applicable and whether all conditions of any such exceptions or exemptions have been satisfied. Moreover, each Benefit Plan Investor should determine whether, under the general fiduciary standards of investment prudence and diversification, an investment in an Interest is appropriate for the Benefit Plan Investor, taking into account the overall investment policy of such investor and the composition of such investor's investment portfolio. The sale of Interests in the Trust is in no respect a representation by the Sponsor, the Trust, their Affiliates or any other person that such an investment meets all relevant legal requirements with respect to investments by plans generally or that such an investment is appropriate for any particular plan.

## THE OFFERING

### Who May Invest

The offer and sale of the Interests is being made in reliance on an exemption from the registration requirements of the Securities Act, and the Interests have not been, and will not be, registered under the Securities Act. Accordingly, distribution of this Memorandum has been strictly limited to persons who meet the requirements and make the representations set forth in the Investor Questionnaire & Purchase Agreement, the form of which is attached hereto as Exhibit A. The Trust reserves the right, in its sole discretion, to declare any person ineligible to purchase the Interests and to reject any offer to purchase the Interests. In addition, the Trust reserves the right to cancel any sale at any time prior to the receipt of funds for purchase, if that sale, in the opinion of the Trust and its counsel, may violate any federal, state or foreign securities laws or regulations or is otherwise objectionable for any reason. The Interests may not be transferred or resold except as permitted under the Trust Agreement, the Securities Act and any applicable state or other securities laws, pursuant to registration or an exemption therefrom. Prospective Investors should be aware that they will be required to bear the financial risks of this investment for an indefinite period of time.

### Investor Suitability Requirements

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 and who can afford to lose their entire investment. This investment will be sold only to persons who subscribe for at least a \$50,000 investment subject to the indebtedness in the Property and who meet the requirements set forth below. The Trust may permit persons to make a smaller investment.

The Trust will only accept a subscription from an “accredited investor,” as defined in Regulation D under the Securities Act. In addition to certain institutional investors, a person who meets one of the following tests will qualify as an accredited investor:

- Natural person that has an individual net worth, or joint net worth with his or her spouse, of more than \$1,000,000, provided that for purposes of calculating such net worth: (1) the investor’s primary residence will not be included as an asset; (2) indebtedness that is secured by the investor’s primary residence, up to the estimated fair market value of the primary residence at the time of the closing of the investor’s acquisition of an Interest, will not be included as a liability; *provided, however*, that if the amount of such indebtedness outstanding at the time of the closing of the investor’s acquisition of an Interest exceeds the amount of indebtedness outstanding 60 days before such time, other than as a result of the acquisition of the primary residence (such as, for example, if the investor takes out a home equity loan that is not used to acquire a primary residence during such 60-day time frame), the amount of such new indebtedness will be included as a liability; and (3) indebtedness that is secured by the investor’s primary residence in excess of the estimated fair market value of the primary residence will be included as a liability;
- Natural person that has an individual income in excess of \$200,000, or joint income with his or her spouse in excess of \$300,000, in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year;
- Natural person holding in good standing one or more professional certifications or designations or credentials from an accredited educational institution that the SEC has designated as qualifying an individual for accredited investor status; or
- If not a natural person, one of the following:
  - Corporation, Massachusetts or similar business trust or partnership, not formed for the specific purpose of acquiring Interests, with total assets in excess of \$5,000,000;
  - Trust, with total assets over \$5,000,000, not formed for the specific purpose of acquiring Interests and whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he, she or it is capable of evaluating the merits and risks of an investment in an Interest;

- Broker-dealer registered under Section 15 of the Securities Exchange Act of 1934, as amended;
- Investment company registered under the Investment Company Act or a “business development company” (as defined in Section 2(a)(48) of the Investment Company Act);
- Small business investment company licensed by the Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958, as amended;
- “Private business development company” (as defined in Section 202(a)(22) of the Advisers Act);
- Rural Business Investment Company as defined in Section 384A of the Consolidated Farm and Rural Development Act;
- 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;
- Investment adviser registered pursuant to Section 203 of the Investment Advisers Act or registered pursuant to the laws of a state or an investment adviser relying on the exemption from registering with the SEC under Section 203(l) or (m) of the Investment Advisers Act;
- One of the following (a) a family office, as defined in Rule 202(a)(11)(G)-1 of the Investment Advisers Act, with assets under management in excess of \$5,000,000, that is not formed for the specific purpose of acquiring an Interest, and whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of an investment in an Interest, or (b) a family client, as defined in Rule 202(a)(11)(G)-1 of the Investment Advisers Act, of a family office meeting the requirements described in the preceding clause (a) and whose purchase is directed by such family office; or
- Entity in which all of the equity owners are accredited investors as defined in *Investor Suitability Requirements* above.

Each Investor and each subsequent transferee must represent that either:

- (a) The Interests are not being purchased by or on behalf of Benefit Plan Investors (as defined below); or
- (b) The Interests are being purchased by or on behalf of (1) an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), whether or not it is subject to Title I of ERISA, (2) a plan described in Code Section 4975 (including but not limited to an individual retirement account or a Keogh plan), or (3) an entity whose underlying assets include “plan assets” as defined in Department of Labor Regulation Section 2510.3-101 (the “**Plan Asset Rules**”) by reason of a plan’s investment in such entity (including but not limited to an insurance company general account) (all such investors, “**Benefit Plan Investors**”). Additionally, all or part of the assets to be used to purchase the Interests constitute assets of one or more Benefit Plan Investors.

In addition, each Investor must represent in writing that:

**The Investor understands that the tax consequences of an investment in the Interests, especially the qualification of the transaction under Section 1031 and the related rules, are complex and vary with the facts and circumstances particular to the Investor. Therefore, the Investor represents and warrants that he, she, or it (1) has consulted with his, her, or its own independent tax advisor regarding the investment in the Interests and the qualification of the transaction under Section 1031, (2) except to the extent of the tax opinion of Special Tax Counsel, is not relying on the Trust, any of its affiliates or agents, including its counsel and**

accountants, for any tax advice regarding the qualification of the transaction under Section 1031 or any other matter, and (3) is not relying on any statements made in this Memorandum regarding the qualification of his, her, or its purchase of the Interests under Section 1031.

### How to Purchase the Interests

A prospective Investor who would like to purchase the Interests must carefully read this Memorandum. To purchase the Interests, a prospective Investor must:

1. Complete and sign an Investor Questionnaire & Purchase Agreement, and, **on the last page, sign the acknowledgment of the representations and warranties contained therein.** Deliver the Investor Questionnaire & Purchase Agreement to your investment representative.
2. Your investment representative will forward the documents to his or her broker/dealer. The broker/dealer will then forward the documents to **Versity, 20 Enterprise, Suite 400, Aliso Viejo, California 92656, Attention: Investor Relations**, or via e-mail to [subscriptions@VersityInvest.com](mailto:subscriptions@VersityInvest.com).
3. Follow the instructions below:
  - a) If your investment is part of a Section 1031 Exchange – The Trust and the qualified intermediary (the holder of the exchange proceeds from your Relinquished Property) will coordinate the payment for the purchase of the Interests. Upon receiving the Investor Questionnaire & Purchase Agreement, and the necessary escrow instructions from the Trust, the qualified intermediary will either wire the funds from the qualified escrow account to the Trust or deliver to Versity, in person or by mail, a certified check **made payable to Hayworth Tanglewood DST**.
  - b) If your investment is a direct investment – Payment for the purchase of Interests may be made by either wiring the funds directly to the Trust (the preferred method), or by delivering to Versity, in person or by mail, a check **made payable to Hayworth Tanglewood DST**. If you choose to wire the funds directly, please contact Versity Investor Relations at (949) 540-9164 for the necessary escrow instructions.

Closing of the purchase will take place at 20 Enterprise, Suite 400, Aliso Viejo, CA 92656 and the executed documents will be forwarded to the Investor.

## SUMMARY OF THE INVESTOR QUESTIONNAIRE & PURCHASE AGREEMENT

### General

Each Investor will be required to execute an Investor Questionnaire & Purchase Agreement in the form attached hereto as Exhibit A. Prospective Investors should review the entire Investor Questionnaire & Purchase Agreement with their own independent legal counsel before submitting an offer to purchase an Interest. The execution of the Investor Questionnaire & Purchase Agreement and tender of the requisite amount of money will constitute an irrevocable offer to purchase the Interest, except as set forth below under “*Termination of the Investor Questionnaire & Purchase Agreement*.”

The Trust reserves the right to reject any offer, in which case the Trust will promptly return the tendered funds to the escrow held by the qualified intermediary in the case of a Section 1031 Exchange or to a prospective Investor in the case of a cash investment. The following is merely a summary of some of the significant provisions of the Investor Questionnaire & Purchase Agreement and is qualified in its entirety by reference thereto.

Each prospective Investor will be required to acknowledge and represent in the Investor Questionnaire & Purchase Agreement that he, she or it is acquiring Interests for investment purposes and not with a view for resale or distribution. Further, each prospective Investor must acknowledge and represent that he, she or it is aware of the risks inherent in an investment such as the Interest, including, without limitation, the risks set forth in this Memorandum.

### Submission of Offer to Purchase

A summary of the procedures for the offer and purchase of an Interest is set forth in the section captioned “*The Offering – How to Purchase the Interests*” of this Memorandum. Investors should read that section in its entirety.

### Closing

At the closing of a purchase, the Investor will receive an Interest in the Trust. The Investor will deliver at closing to the Trust: (1) the Investor Questionnaire & Purchase Agreement; (2) an executed signature page for the Trust Agreement; and (3) any other documents as may reasonably be requested by the Trust. The initial closings of purchases will take place at such time that the Trust is contractually able to begin accepting investments in the Interests under the terms of the Investor Questionnaire & Purchase Agreement.

### No Tax Advice

Other than the tax opinion issued by the Trust’s Special Tax Counsel (attached hereto as Exhibit B), the Investors will acquire its Interests without any representations from the Trust regarding the tax implications of the transaction. Each Investor should consult his, her, or its own independent attorneys and other tax advisors regarding the tax implications of the Investor’s acquisition of the Interests, including whether such acquisition will qualify as part of a proposed Section 1031 Exchange, if one is contemplated. See “*Federal Income Tax Consequences*.”

### Termination of the Investor Questionnaire & Purchase Agreement

In general, a purchase of Interests is irrevocable and may not be canceled, terminated or revoked. However, an Investor’s purchase will be terminated and his, her or its purchase price will be fully refunded by the Trust if either the terms and conditions of the Offering or the financing arrangements with respect to the Offering differ materially and adversely from the description of the Offering or Loan set forth herein and the Investor elects on that basis not to complete the purchase of the Interest.

If an offer to purchase is rejected in whole or in part, or if the Trust terminates the Offering for any reason, the Trust will promptly return the applicable portion of the purchase price, and the prospective Investor will have no right to acquire an Interest in the Trust and will have no claims against the Trust for damages, expenses, lost profits or otherwise.

**Indemnity**

The Investor Questionnaire & Purchase Agreement contains an indemnity provision whereby each Investor will be required to indemnify, defend and hold harmless the Trust, the Signatory Trustee and certain other parties from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) that they may incur by reason of the Investor's failure to fulfill all of the terms and conditions of the Investor Questionnaire & Purchase Agreement or untruth or inaccuracy of any of the representations, warranties, covenants or agreements contained therein.

## PLAN OF DISTRIBUTION

The Offering is for a maximum of \$76,767,365, which comprises 100% of the Interests in the Trust. If any Interests in the Trust cannot be sold, the Initial Beneficiary or its affiliates will own the remaining Interests. For purposes of this Memorandum, various fees have been calculated based on the Maximum Offering Amount.

All proceeds from a potential Investor will be promptly returned if the offer to purchase is not accepted by the Trust. The Trust reserves the right to refuse to sell the Interests to any person, in its sole discretion, and may terminate the Offering at any time.

The offer and sale of the Interests are made in reliance upon exemptions from the Securities Act and state securities laws. Accordingly, distribution of this Memorandum has been strictly limited to persons satisfying the suitability requirements described in the section entitled “*The Offering – Who May Invest*” herein. This Memorandum does not constitute an offer to sell or a solicitation of an offer to buy with respect to any person not satisfying those qualifications.

### Fees

The Trust will pay WealthForge Securities, LLC, a Virginia limited liability company (“**WealthForge**”), a member of the Financial Industry Regulatory Authority, Inc. (“**FINRA**”), as the exclusive managing broker-dealer for the Offering, and any other participating broker-dealers which are members of FINRA that WealthForge agrees to include (each, a “**Selling Group Member**” and collectively, the “**Selling Group Members**”), the following commissions and expenses: (i) selling commissions (“**Selling Commissions**”) equal to 6.0% of the gross equity proceeds of the Offering (the “**Offering Proceeds**”), which will either be paid to affiliates of WealthForge, including employees and contractors of the Sponsor, or reallocated to participating Selling Group Members, (ii) a dealer management fee (“**Dealer Management Fee**”) equal to 0.65% of the Offering Proceeds, some of which may be reallocated to registered representatives affiliated with WealthForge, and (iii) a broker-dealer allowance (“**Broker-Dealer Allowance**”) equal to 1.0% of the Offering Proceeds in connection with its due diligence review of the Offering and facilitating regulatory compliance, which will either be retained by WealthForge or re-allowed to the Selling Group Members. In addition, a wholesaling fee (“**Wholesaling Fee**”) of 1.35% of the Offering Proceeds may be paid to wholesalers, including employees and contractors of the Sponsor. In addition, the Sponsor will be entitled to 0.30% of the Offering Proceeds as payment for organizational and offering expenses incurred in connection with the Offering (the “**O&O Expenses**”), including the costs of organizing the Trust, the Signatory Trustee, the Initial Beneficiary and the Master Tenant, and marketing, legal, finance, accounting, and printing fees and expenses. If the actual O&O Expenses are greater than 0.30% of the Offering Proceeds, the Sponsor will pay those costs and expenses. Conversely, if the estimates exceed the actual costs and expenses, the Sponsor will retain the difference as additional compensation. The total aggregate amount of commissions and expense reimbursements (collectively, “**Selling Commissions and Expenses**”) will not exceed 9.30%. The Trust reserves the right to pay reduced selling commissions and expenses or waive such sums with respect to Interests purchased by certain affiliates and other persons. The Selling Commissions and Expenses, as well as other costs associated with the Offering, will be paid by the Trust out of the Offering Proceeds. The WealthForge privacy policy is attached as Exhibit D. See “*Estimated Use of Proceeds*” and “*Compensation of the Sponsor and its Affiliates*.”

### Fee Waivers, Special Sales

Each Investor may agree with his, her or its respective investment representatives or broker/dealer to reduce or eliminate any Selling Commissions payable with respect to his, her, or its purchase of Interests. In this case, the Trust will not pay any Selling Commissions in respect of the Interests for which the broker/dealer or investment representative has agreed to waive the fees, which will have the effect of increasing the amount of Interests purchased by the particular Investor. The proceeds to the Trust will not be affected by any waiver of Selling Commissions.

In addition, on a case-by-case basis, WealthForge and/or the Sponsor may, in their sole discretion, decide to reduce or waive certain fees or reimbursements to which they are entitled in connection with a particular sale of Interests. Specifically, WealthForge may decide, in its sole discretion, to reduce or waive the Dealer Management Fee payable with respect to a particular purchase of Interests, and the Sponsor may decide, in its sole discretion, to reduce or waive the O&O Expenses reimbursable with respect to a particular purchase of Interests and/or to reduce or waive the acquisition fee payable with respect to a particular purchase of Interests. Any such waiver or reduction will have the effect of increasing the amount of Interests purchased by the particular Investor. The proceeds to the Trust will not be affected by any waiver of these fees or reimbursements. Moreover, in certain circumstances, in addition to the

waivers and reductions described in the preceding paragraph, the Trust may elect to further discount the price at which it sells Interests.

Further, in no event will any Selling Commissions or other fees be paid in connection with any “Special Sale” or with the sale of Interests directly by the Trust. “Special Sales” include sales to the Sponsor, officers, directors and employees of the Sponsor, WealthForge, or any of their direct or indirect wholly owned subsidiaries, as well as the family members (including spouses, parents, grandparents, children and siblings) of these persons. The elimination of such fees in connection with a “Special Sale” will have the effect of increasing the amount of Interests purchased by the particular Investor.

### **Registered Investment Advisors**

In the event an Investor independently uses the services of a registered investment advisor and not a broker/dealer in connection with the purchase of Interests, the Investor may elect to waive the Selling Commissions and Broker-Dealer Allowance such that no Selling Commissions or Broker-Dealer Allowance will be payable to the investment advisor with respect to the Investor’s purchase of those Interests, which will have the effect of increasing the amount of Interests purchased by the particular Investor. In such event, the payment of any fees or similar compensation to such investment advisor will be the sole responsibility of the Investor, and the Trust will have no liability for that compensation. The proceeds to the Trust will not be affected by the waiver of Selling Commissions or Broker-Dealer Allowance.

### **Ownership by the Sponsor or Affiliates**

The Sponsor or its Affiliates, including investment funds managed by the Sponsor, may acquire and hold Interests for investment purposes, to satisfy requirements of the Lender, or if the Trust does not sell all the Interests during the Offering period. The amount of Interests acquired and held by Sponsor and its Affiliates is not limited, and ownership by these entities involves certain risks that potential Investors should consider, including, but not limited to, the following:

- (1) there may be conflicts of interest between the objectives of the Investors and those of the Sponsor and its Affiliates - for example, the Sponsor and its Affiliates may have an interest in disposing of the Property at an earlier date than other Investors so as to recover their investments in the Interests; and
- (2) if the Offering is not fully subscribed, a significant amount of the Interests will not have been acquired by disinterested investors after an assessment of the merits of the Offering.

*See “Risk Factors – Risks Related to the Offering – If all of the Interests are not sold, the Initial Beneficiary or its affiliate will own the unsold Interests which could result in potential conflicts of interest.”*

### **Bridge Equity**

In order to close the acquisition of the Property prior to sufficient Interests being sold to raise the minimum required closing equity, a wholly-owned subsidiary of the Sponsor, Versity EquityCo II, LLC, a Delaware limited liability company (“**EquityCo**”), contributed \$50,089,148.27 of capital to the Trust (the “**Bridge Equity**”), through Hayworth Tanglewood IB, LLC, a Delaware limited liability company and the initial beneficiary of the Trust (the “**Initial Beneficiary**”), which capital was used to close the acquisition.

To obtain the Bridge Equity to contribute to the Trust, EquityCo borrowed funds (the “**Bridge Equity Loan**”) from a bridge equity lender (the “**Bridge Equity Lender**”) through a revolving back-end credit facility (the “**Bridge Credit Facility**”). EquityCo contributed the capital borrowed from the Bridge Equity Lender to the Initial Beneficiary, which in turn contributed the capital to the Trust to fund the acquisition of the Property. The Trust will pay certain fees and interest (currently estimated to total approximately \$1,110,716) to EquityCo for the contribution of the Bridge Equity. Some of these fees may be used to repay the Bridge Equity Loan and some of these fees may be used to reimburse the Sponsor or its affiliates for costs associated with obtaining the Bridge Equity Loan.

Upon the sale of Interests in the Trust, the net proceeds (gross proceeds less commissions and fees paid to broker-dealers and their representatives) will be used to return capital provided by EquityCo plus an amount equal to all fees and interest paid by EquityCo and the Sponsor to obtain the Bridge Equity Loan. Subject to limited exceptions, only



after the Bridge Equity is returned to EquityCo, together with fees and interest incurred by EquityCo and the Sponsor to obtain the Bridge Equity Loan, will net proceeds from the sale of Interests be used to establish the Reserve Accounts and pay the fees and other expense items that were not established or paid at the closing of the acquisition of the Property, including fees and commissions due to the Sponsor and its affiliates. In the event of a default under the Bridge Credit Facility, including a default in connection with a loan unrelated to the Property, the Bridge Credit Lender may require that net proceeds from the sale of Interests be used to pay amounts due under the Bridge Credit Facility unrelated to the Property.

The diagram on page 13 shows the indirect interest in the Trust to be held by EquityCo, which is the owner of the Initial Beneficiary, which is in turn the owner of all unsold Interests in the Trust. When Interests are sold, net proceeds will be distributed to EquityCo until its entire investment of capital is returned, together with an amount equal to the fees and interest paid by EquityCo and the Sponsor to obtain the Bridge Equity Loan. EquityCo will use the distribution of net proceeds from the sale of Interests to repay the Bridge Equity Loan and other amounts due under the Bridge Credit Facility.

## **ADDITIONAL INFORMATION**

### **Books and Records**

During the term of the Asset Management Agreement, the Asset Manager will keep proper and complete records and books of account for the Property. These books and records will be kept at the Asset Manager's principal place of business at 20 Enterprise, Suite 400, Aliso Viejo, CA, 92656 and will be available to the Investors during reasonable business hours.

### **Tax Information**

The Asset Manager or the Signatory Trustee will provide to the Investors, in time for each Investor to file his, her, or its tax returns, all tax information concerning the Trust that is necessary for preparing the Investor's income tax returns for that year.

### **Additional Information**

The Trust will answer inquiries concerning the Interests and other matters relating to the Offering. Also, the Trust will afford prospective Investors the opportunity to obtain any additional information (to the extent the Trust possesses such information or can acquire such information without unreasonable effort or expense) that is necessary to verify the information in this Memorandum.

**EXHIBIT B**

**OPINION OF SPECIAL TAX COUNSEL**

*IRVINE VENTURE LAW FIRM, LLP*  
*ATTORNEYS AT LAW*  
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July 7, 2022

Hayworth Tanglewood DST  
c/o Versity Invest LLC  
20 Enterprise, Suite 400  
Aliso Viejo, CA 92656

Ladies and Gentlemen:

You have requested our opinion (the "Opinion") as to whether, for federal income tax purposes, an investor's acquisition of a beneficial interest (an "Interest") in Hayworth Tanglewood DST, a Delaware statutory trust described in Chapter 38 of Title 12 of the Delaware Code (the "Trust"), will be treated as an acquisition of a direct interest in the Real Estate (as defined herein) for purposes of Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"). Capitalized terms not otherwise defined in this Opinion shall have the meanings ascribed to them in the Private Placement Memorandum dated July 7, 2022 (the "Private Placement Memorandum").

Based on the relevant facts and applicable law and subject to the qualifications discussed below, we conclude that, for federal income tax purposes, the acquisition by an investor (an "Investor") of substantially all of a beneficial interest in the Trust should be treated as a direct acquisition of an interest in the Real Estate by the Investor for purposes of Code Section 1031. A tax opinion rendered at a "should" level of confidence such as this Opinion involves a greater degree of certainty than a "more likely than not" opinion, but it is not a "will" opinion nor any guarantee of tax consequences. There cannot be complete assurance that the Internal Revenue Service (the "IRS") (a) will agree with our conclusions, (b) will not challenge our conclusions upon audit, and (b) will not prevail in such a challenge if litigated.

In addition, qualification of a transaction pursuant to Code Section 1031 for an Investor involves issues based on numerous specific facts which are not and cannot be known to us; therefore, we give no opinion as to the ability of any Investor to effectuate a tax-deferred exchange of like-kind property under Code Section 1031. This Opinion addresses only one aspect of qualifying under Code Section 1031, *i.e.*, whether the acquisition of an Interest can be treated as a direct acquisition of an interest in the Real Estate for purposes of Code Section 1031. We are not opining as to whether some portion of the Real Estate may be "personal property" as opposed to "real property" for purposes of Code Section 1031, or as

to whether any amounts paid by, or deemed paid by, the Investors with respect to certain costs or expenses of the offering, financing costs and amounts paid to fund the reserve for capital expenses will be deemed to constitute other consideration received in the exchange or the acquisition of real estate or to the sponsor of the Trust for organizing and syndicating interests in the Trust. Finally, this Opinion does not address any state, local or non-United States income tax consequences, or any non-income tax consequences, of the transactions described herein.

In giving this Opinion, we have reviewed the following:

- (i) the form of Trust Agreement of the Trust (the "Trust Agreement"), entered into between Sorensen Entity Services, LLC, as Delaware Trustee (the "Delaware Trustee"), up to two unrelated third parties, each as Independent Trustee (collectively the "Independent Trustee"), Hayworth Tanglewood ST, LLC, as Signatory Trustee (the "Signatory Trustee," and together with the Delaware Trustee and the Independent Trustee, the "Trustees"), NB Hayworth Tanglewood IB, LLC, a Delaware limited liability company, as the initial beneficiary of the Trust (the "Initial Beneficiary") and the Investors;
- (ii) the Trust acquired the Property from TDC Tanglewood Real Estate Owner, L.L.C., a Delaware limited liability company not affiliated with the Sponsor (the "Seller"), for a purchase price of \$105,500,000, plus closing and related transactional costs for the residential buildings located at 1414 Wood Hollow Drive, Houston, Texas 77057 known as "The Hayworth" (the "**Property**"). The Property consists of a single parcel of land approximately 3.08 acres in size, upon which are situated one six-story apartment building built on top of a two-level parking garage, along with two three-story townhome buildings. The three buildings contain approximately 351,000 square feet of net rentable residential area across 246 units (the "**Units**"). Amenities include private balcony or patio area for all units, luxury swimming pool and social deck with cabanas and fire pit, outdoor grilling kitchen and terrace seating, indoor/outdoor social lounge with city views, resident business center and boardroom, private dining room, bike and storage room, pet washing and grooming station, craft and gift-wrapping room, access to private park with sand volleyball courts, tennis courts and picnic areas, and resident butler services including housekeeping and dog walking services. The gated, two-level parking garage contains 418 parking spaces, 11 of which are handicap accessible spaces. The townhome buildings contain an additional 20 attached garage spaces;
- (iii) the loan documents (the "Loan Documents") with respect to the loan (the "Loan") in the principal amount of \$48,000,000 entered into with TC Debt Opportunities, LLC, a Delaware limited liability company (the "Lender");
- (iv) the Master Lease (the "Master Lease") entered into between the Trust and Hayworth Tanglewood LeaseCo. LLC, a Delaware limited liability company (the

"Master Tenant") and an affiliate of Versity Invest, LLC, the sponsor of the offering of the Interests (the "Sponsor");

(v) the Private Placement Memorandum with respect to the Interests, including all supplements thereto through the date of this Opinion (items (i) through (iv) are collectively referred to as the "Transaction Documents");

(vi) applicable provisions of the Code, final, temporary and proposed Treasury Regulations promulgated thereunder, judicial decisions, Revenue Rulings and other interpretative releases of the IRS; and

(vii) such other materials and documents as we considered relevant.

Our Opinion is expressly based upon certain assumptions, factual information and representations that have been provided to us, including the following: (i) the Interests will be acquired by the Investors directly from the Trust and the Initial Beneficiary's interests in the Trust will be reduced in proportion to the amount of such acquisitions; (ii) neither the Initial Beneficiary, any Trustee, nor any Investor has made or will make an election, or has taken or will take any other action, that would cause the Trust to be classified as an association taxable as a corporation or a partnership for federal income tax purposes; (iii) the Investors intend to use the proceeds from their sale or exchange of other real estate to acquire the Interests as part of transactions intended to qualify under Code Section 1031; (iv) all parties to the Transaction Documents and their affiliates will comply with all provisions of the Transaction Documents, and will take no action otherwise inconsistent with the Transaction Documents or any terms of this Opinion, including amending any Transaction Documents; (v) there are no other Transaction Documents or other written or oral agreements or understandings inconsistent with or significant to the transactions contemplated herein, and any final Transaction Documents that were not final as of the date of our review will conform with the Transaction Document drafts we have reviewed in all material respects; (vi) there are no other Transaction Documents or other written or oral agreements or understandings inconsistent with or significant to the transactions contemplated herein, and any final Transaction Documents that were not final as of the date of our review will conform with the Transaction Document drafts we have reviewed in all material respects; (vii) all payments made to the Trust, the Trustees and their affiliates will be at fair market value; (viii) the Lender is not related to any Investor or Trustee; (ix) if the Trust acquires the Property through an agent, the Trust and the agent will enter into a written agency agreement fairly compensating the agent for entering into the arrangement; and (x) the Master Tenant reasonably expects to realize a commercially reasonable profit from its participation in the subject transaction. We have assumed the accuracy and completeness of all documents and records that we have reviewed, the genuineness of all signatures, the authenticity of the documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as pro forma or reproduced copies.

## RELEVANT PROVISIONS IN THE TRUST AGREEMENT AND MASTER LEASE

### *(A) Trust Agreement*

Article I provides in the definition of the term "Interest" that all Interests in the Trust shall be of a single class.

Section 2.03 provides that the purposes of the Trust are: (i) to acquire and own the Real Estate and all related personal property; (ii) to enter into or assume and comply with the terms of the Transaction Documents (as defined in the Trust Agreement); (iii) to conserve, protect, manage and dispose of the Real Estate; and (iv) to take such other actions as the Trustees deem necessary and advisable to carry out the foregoing. Section 2.03 also provides that the Trust shall hold the Trust Property solely for investment purposes (and not for the active conduct of a trade or business), that neither the Trustees, the Investors or their agents shall provide non-customary services with respect to the Real Estate pursuant to Revenue Ruling 75-374, and that the Trust shall conduct no activities other than as specifically provided in Section 2.03.

Section 2.04 states that the Trustees hold the Trust Property for the benefit of the Investors, subject to the obligations of the Trust under the Master Lease, the Loan Documents and other relevant agreements. Section 2.04 further states that it is the intention of the parties to the Trust Agreement that the Trust constitute a "statutory trust" within the meaning of Sections 3801 through 3826 of Chapter 38, Title 12 of the Delaware Code (the "Act"), and that the Trust not constitute an agency, partnership, association or business trust for federal income tax purposes. Instead, each Investor shall be treated for federal income tax purposes as owning a direct interest in the Real Estate and other Trust assets and shall be obligated to report the Interest consistent with such characterization.

Section 2.05, by incorporating through the definition of "Single Purpose Entity" the terms of Exhibit C to the Trust, prohibits the Trustees and the Investors from causing the Trust to perform any act in contravention of, or constituting an event of default under, the Loan Documents. Exhibit C requires the Trustees and the Investors to maintain the separateness of the Trust by maintaining separate books, records, and bank accounts for the Trust, and holding the Trust out to third parties as a distinct legal entity, in order to prevent a substantive consolidation of the Trust with the bankruptcy of any other person, including any Investor or any affiliate of the Trust. Exhibit C also prohibits the Trustees and the Investors from taking (or consenting to) certain bankruptcy-related actions with respect to the Trust and the Real Estate. Exhibit C requires the Trust to comply with Loan covenants.

Section 3.01 provides that any proposed transfer or assignment by an Investor of part or all of its Interest is subject to the prior written consent of the Signatory Trustee and satisfaction of certain preconditions set forth in the Trust Agreement.

Article IV directs the Signatory Trustee to distribute all available cash to the Investors in accordance with their "Percentages" (as such term is defined in the Trust Agreement), only retaining funds as required for a reasonable reserve as necessary to pay anticipated current and future ordinary Trust expenses and liabilities. Undistributed cash may be invested only in short-term government obligations and in certificates of deposit or interest-bearing bank accounts with a bank or trust company having a minimum stated capital. All such obligations must be held until maturity and must mature prior to any distribution to Investors.

Section 5.01(a) states that the Trust Agreement shall not impose a partnership or joint venture relationship on the Investors, and no Investor shall have any liability for debts or obligations of any other Investor, nor have authority to act on behalf of any other Investor with respect to the Trust Property. Section 5.01(c) provides that, from and after the time there is more than one Investor (including the Initial Beneficiary) in the Trust, the Trust "shall not constitute a business entity for federal tax purposes but shall instead constitute an investment trust pursuant to Regulation 301.7701-4(c)" and a "grantor trust" within the meaning of Subpart E of Part 1, Subchapter J of the Code (Code Sections 671 *et seq.*).

Section 5.02 provides that the Trust and not the Investors shall have legal title to Trust Property, and the Trust Agreement shall not be terminated by reason of the bankruptcy, death or other incapacity of any Investor, or the transfer by any Investor of any interest in Trust Property. In addition, Section 5.02 also provides that the Investors shall not be liable for any liabilities or obligations of the Trust or the Trustees or for the performance of the Trust Agreement.

Section 5.04 provides that Investors do not have the right to demand or receive an in-kind distribution or partition of Trust Property from the Trust.

Section 5.05 provides for the avoidance of doubt that, except solely with respect to choosing a successor Trustee, the Investors have no right to make decisions for or to operate or manage the Trust.

Section 6.04 provides that the Trustees shall manage, control, dispose of or otherwise deal with the Trust Property, subject to the restrictions set forth in the Trust Agreement.

Section 7.02 authorizes the Signatory Trustee to take all actions necessary to conserve and protect the Trust Property, including: (a) receive the contribution of the purchase agreement for the Real Estate and to acquire, own, conserve, protect and sell the Real Estate; (b) to enter into or assume and comply with the Master Lease, the Loan Documents and the other Transaction Documents; (c) to conserve and protect the Real Estate in a manner consistent with the Trust's obligations under the Master Lease; (d) to collect rents and make distributions to the Investors; (e) to enter into agreements for purposes of completing tax-free exchanges of real property with a qualified intermediary as defined in the Treasury Regulations under Section 1031 of the Code; (f) to notify the parties of any default in the Transaction Documents; (g) to enter into a management agreement and engage an affiliated or unaffiliated asset manager; (h) to enter into new leases with respect to the Real Estate or to refinance any debt secured by the Real Estate.

but solely to the extent necessitated by the bankruptcy or insolvency of a tenant; (i) notifying the Lender of any default under this Trust Agreement; (j) taking all actions required under Section 9.02 of the Trust Agreement; and (k) taking any action, which in the reasoned opinion of tax counsel to the Trust, should not have an adverse effect on either the treatment of the Trust as an "investment trust" within the meaning of Regulations Section 301.7701-4(c) or the Beneficiary as a "grantor" within the meaning of Code Section 671.

Section 7.03 prohibits the Trustees from taking the following actions if the effect would be that such actions would constitute the exercise of a power under the Trust Agreement to "vary the investment of the certificate holders" under Treasury Regulation Section 301.7701-4(c)(1): (a) reinvest any monies except as provided in Section 4.02 of the Trust Agreement; (b) renegotiate the Loan, enter into new financing, renegotiate the Master Lease or enter into new leases except in the case of a tenant's bankruptcy or insolvency; (c) make other than minor non-structural modifications to the Real Estate, other than as required by law; (d) accept any capital from the Investors or any new investor in the Trust except as provided for in connection with the initial capitalization pursuant to the Private Placement Memorandum; or (e) take any other action which in the reasoned opinion of tax counsel to the Trust should be expected to cause the Trust to be treated as a "business entity" for federal income tax purposes.

Sections 9.01 and 9.04 provide that the Trust will dissolve in accordance with Section 3808 of the Act, and that each Investor's share of the Trust Property shall be distributed to the Investors pro rata in proportion to each Investor's percentage interest in the Trust, at the earlier of (a) December 31, 2071, or (b) the sale or other disposition of the Real Estate.

Sections 9.02 and 9.03 provide that, notwithstanding Section 9.01, if (a)(i) the Real Estate or any portion of it is at risk of foreclosure or if there is otherwise an event of default under the Loan Documents beyond any applicable notice and cure period, (ii) the Real Estate or any portion thereof is subject to a casualty, condemnation or similar event that is not adequately compensated through insurance or otherwise, (iii) the Signatory Trustee determines that the Investors are at risk of losing all or a substantial part of their investment, and (b) the Trustees are prohibited by reason of Section 7.03 of the Trust Agreement from taking action to conserve or protect the value of the Real Estate with respect to such items, then the Signatory Trustee (or the Independent Trustee) shall take actions that include terminating the Trust by converting it into (or otherwise effecting the transfer of the Trust Property to) a Delaware limited liability company (the "LLC") and converting or exchanging the interests with the Investors for equivalent membership interests in the LLC. Section 9.03(c) clarifies that any such conversion shall be characterized as (i) a distribution of the Trust Property to the Investors in termination of the Trust, followed by (ii) the contribution by the Investors of the Trust Property to the LLC in exchange for interests in the LLC.

#### *B. Master Lease*

Section 2.01 provides that the initial term of the Master Lease is seven years and three months, and that the Master Tenant has the option to renew the Master Lease (upon the terms and



conditions set forth in the Master Lease and the Loan Documents) for up to three additional consecutive terms of five years each.

Rent consists of: (i) an amount equal to the then annual debt service due to the Lender pursuant to the terms of the Loan Documents, other than, for the avoidance of doubt, any balloon payments of principal on the Loan (the "**Base Rent**"). (ii) an additional amount specified in the Master Lease (the "**Stated Rent**"). and (iii) the sum of (x) 100% of the amount by which Total Operating Income (as defined below) generated by the Property for an applicable 12-month period exceeds the Annual Bonus Rent Threshold for such period shown in the chart below, until Bonus Rent is equal to the Projected Annual Bonus Rent amount shown in the chart below, and (y) thereafter, fifty percent (50%) of all additional Total Operating Income generated by the Property (the "**Bonus Rent**" and, together with the Base Rent and the Stated Rent, the "**Rent**"). For purposes of the Master Lease, Total Operating Income shall equal total rent and other income generated by the Property to the extent actually collected by the Master Tenant.

The Master Tenant will pay the Base Rent by making monthly Debt Service payments to the Lender on behalf of the Trust. The Stated Rent will be paid in arrears to the Trust monthly. Estimated monthly payments of Bonus Rent will initially be paid based upon Projected Annual Bonus Rent. On or before October 31<sup>st</sup> of each year, actual Bonus Rent for the 12-month period ending on or about the prior July 31<sup>st</sup> will be calculated and if insufficient estimated Bonus Rent payments were made by the Master Tenant for such period, then the Master Tenant will pay the Trust the amount of the deficiency, and if estimated Bonus Rent payments exceeded actual Bonus Rent for such period, then the Master Tenant will receive a credit in the amount of the excess against future Stated and/or Bonus Rent payments. Further, if the Master Tenant reasonably determines at any time that the amount of estimated monthly Bonus Rent payments then being paid are in excess of the reasonably expected monthly Bonus Rent being generated by the Property, then the Master Tenant may reduce the estimated monthly Bonus Rent payments to an amount estimated by the Master Tenant to yield the actual estimated Bonus Rent for such year. If any partial 12-month period occurs for the payment of Bonus Rent at the beginning or end of the term of the Master Lease, then actual Bonus Rent for the partial period will be prorated.

Notwithstanding the foregoing, if Impositions and Insurance Costs (as defined in the Master Lease) increase beyond the levels projected by the Trust and disclosed to the Master Tenant prior to the date of the Master Lease, then Stated Rent shall be decreased by the amount of such unprojected increases.

Section 3.07(b) provides that the Master Tenant may defer (but not eliminate) its obligation to pay Stated Rent so long as the Master Tenant pays all Base Rent and all Operating Costs and impositions relating to the Real Estate. Any such deferred Stated Rent will bear interest at a rate of 2% per year and is required to be paid no later than 91 days after the Loan is repaid or the Real Estate is sold or exchanged by the Trust.

Section 3.08 sets forth the agreement of the Trustee and the Master Tenant that the Master Lease is a true lease and not a financing arrangement, partnership, joint venture, management or other

arrangement, and that all record keeping and reporting with respect to the Master Lease will be consistent therewith.

Section 4.02 provides that the Master Tenant is required, at its own cost, to acquire and maintain insurance in respect of the Real Estate in the amounts and against the risks described in the Master Lease for the duration of the Master Lease.

Section 7.01 provides that the Master Tenant is responsible for all "Operating Costs" (as such term is defined in the Master Lease), and is also responsible taking good care, including paying all costs and expenses required therefor, of the premises, alleyways and passageways and the sidewalks, curbs and vaults adjoining the premises, and keep the same (or cause the same to be kept) in good order and condition, ordinary wear and tear and obsolescence excepted, and make necessary nonstructural repairs thereto, interior and exterior.

Section 7.02 provides that the Trust is responsible for all "Capital Expenses" (as such term is defined in the Master Lease).

Section 7.05 provides that if the Master Tenant uses any "Reserve Funds" (as such term is defined in the Master Lease) established for the benefit of the Trust to pay any obligations of the Master Tenant, then the Master Tenant must reimburse such amounts on or before the expiration or termination of the Master Lease. Section 7.05 further provides that if Master Tenant bears an expense that is an obligation of the Trust under the Master Lease, the Master Tenant may reduce Stated Rent in order to recover such advances and that any unreimbursed advances are required to be repaid to the Master Tenant out of the proceeds of the sale or exchange of the Real Estate (if not fully reimbursed by the time of such sale).

Section 8.01 provides that the Master Tenant may make alterations to (but not additions to, removals of or substitutions for) the Real Estate with the Landlord's prior written consent, provided that certain other conditions are met.

Section 13.01 provides that the Master Tenant may enter into subleases of the Real Estate with subtenants but may not assign its rights and obligations under the Master Lease to any other person without the consent of the Trust and the Lender.

Section 13.02 provides that the Master Tenant may not mortgage or otherwise pledge its interest in the Master Lease or in the amounts it receives from subtenants, except as required by the Lender in connection with its Loan to the Trust secured by the Real Estate.

Section 16.01 provides that if any "Event of Default" occurs, the Trust can give notice of such default and terminate the Master Lease after giving notice. Pursuant to Section 16.01, an "Event of Default" includes, but is not limited to: (a) the failure by the Master Tenant to pay Rent (subject to the provisions of Section 3.07(b) of the Master Lease); (b) the filing by the Master Tenant of a voluntary bankruptcy petition or the adjudication of the Master Tenant as a bankrupt or insolvent; (c) the mortgage or pledge by the Master Tenant of its interest in the Master Lease;

(d) the termination by the Master Tenant of its business; or (c) any act or omission of the Master Tenant that results in the breach of any indenture, deed of trust, mortgage or similar instrument to which the Trust is a party or to which the Real Estate is bound or may be affected.

The Bridge Equity Lender will lend funds to Hayworth Tanglewood IB, LLC, a Delaware limited liability company, which in turn will invest those funds in the Trust and be the owner of all unsold Interests in the Trust. When Interests are sold, net proceeds will be distributed to Hayworth Tanglewood IB and then to the Bridge Equity Lender until its entire loan is repaid.

#### TAX ANALYSIS

It is our opinion that, for federal income tax purposes, the acquisition by the Investors of the Interests should be treated as the direct acquisition by the Investors of the Real Estate for purposes of Code Section 1031.

The principal authority governing the treatment of interests in Delaware statutory trusts for purposes of Code Section 1031 is Revenue Ruling 2004-86, 2004-2 C.B. 191. As more fully described below, our conclusion as to the treatment of the Interests under Code Section 1031 is based largely on the similarity between the facts described in Revenue Ruling 2004-86 and the facts surrounding the Trust, and the Treasury Regulations and case law that form the basis for the revenue ruling.

#### *Treatment of the Interests as Qualified Property for Purposes of Code Section 1031*

Code Section 1031 provides that no gain or loss is recognized on the exchange of real property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for the productive use in a trade or business or for investment ("Qualified Property"). In determining whether personal property must be treated separately, meaning that a portion of the Property's purchase price would be ineligible for like kind tax deferral, if the acquisition of the personal property is a standard commercial transaction and the value of the personal property does not exceed 15% of the real property's purchase price, the personal property will be treated as incidental to the real property and will not have to be separately accounted for in determining whether the entire purchase price qualifies for like kind exchange treatment. (Treas. Reg. §1.1031(k)-1(g)(8)(example 6).)

Code Section 1031 does not apply to certain types of property, including personal property, both tangible and intangible, as well as stocks, bonds, notes, other securities or evidences of indebtedness or interest, partnership interests and certain trust interests. However, even though these types of interests do not qualify for like-kind exchange treatment, an exchange of such interests may still qualify under Code Section 1031 if the tax law disregards or looks through the legal form of ownership and treats the owner of the interests as directly owning the Qualified Property underlying such interests.

The IRS has issued Revenue Ruling 2004-86, which holds that, assuming other requirements of Code Section 1031 are satisfied, a taxpayer may exchange real property for a beneficial interest in a Delaware statutory trust such as the trust described in the ruling (the "DST") in a tax-free exchange under Code Section 1031. The holding of Revenue Ruling 2004-86 is based on certain factual assumptions regarding the provisions of the trust agreement of the DST, although not all the facts described in the ruling are crucial to its holding. The facts in the Ruling are as follows:

On January 1, 2005, A, an individual, borrows money from BK, a bank, and signs a 10-year note bearing adequate stated interest, within the meaning of Code Section 483. On January 1, 2005, A uses the proceeds of the loan to purchase Blackacre, rental real property. The note is secured by Blackacre and is nonrecourse to A.

Immediately following A's purchase of Blackacre, A enters into a net lease with Z for a term of 10 years. Under the terms of the lease, Z is to pay all taxes, assessments, fees, or other charges imposed on Blackacre by federal, state, or local authorities. In addition, Z is to pay all insurance, maintenance, ordinary repairs, and utilities relating to Blackacre. Z may sublease Blackacre. Z's rent is a fixed amount that may be adjusted by a formula described in the lease agreement that is based upon a fixed rate or an objective index, such as an escalator clause based upon the Consumer Price Index, but adjustments to the rate or index are not within the control of any of the parties to the lease. Z's rent is not contingent on Z's ability to lease the property or on Z's gross sales or net profits derived from the property.

Also on January 1, 2005, A forms DST, a Delaware statutory trust described in the Delaware Statutory Trust Act, Del. Code Ann. title 12, Section 3801 - 3824, to hold property for investment. A contributes Blackacre to DST. Upon contribution, DST assumes A's rights and obligations under the note with BK and the lease with Z. In accordance with the terms of the note, neither DST nor any of its beneficial owners are personally liable to BK on the note, which continues to be secured by Blackacre.

The trust agreement provides that interests in DST are freely transferable. However, DST interests are not publicly traded on an established securities market. DST will terminate on the earlier of 10 years from the date of its creation or the disposition of Blackacre, but will not terminate on the bankruptcy, death, or incapacity of any owner or on the transfer of any right, title, or interest of the owners. The trust agreement further provides that interests in DST will be of a single class, representing undivided beneficial interests in the assets of DST.

Under the trust agreement, the trustee is authorized to establish a reasonable reserve for expenses associated with holding Blackacre that may be payable out of trust funds. The trustee is required to distribute all available cash less reserves quarterly to each beneficial owner in proportion to their respective interests in DST. The trustee is required to invest cash received from Blackacre between each quarterly distribution and all cash held in reserve in short-term obligations 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 is permitted to invest only in obligations maturing prior to the next distribution date and is required to hold such obligations until maturity. In addition to the right to a quarterly distribution of cash, each beneficial owner has the right to an in-kind distribution of its proportionate share of trust property.

The trust agreement provides that the trustee's activities are limited to the collection and distribution of income. The trustee may not exchange Blackacre for other property, purchase assets other than the short-term investments described above, or accept additional contributions of assets (including money) to DST. The trustee may not renegotiate the terms of the debt used to acquire Blackacre and may not renegotiate the lease with Z or enter into leases with tenants other than Z, except in the case of Z's bankruptcy or insolvency. In addition, the trustee may make only minor non-structural modifications to Blackacre, unless otherwise required by law. The trust agreement further provides that the trustee may engage in ministerial activities to the extent required to maintain and operate DST under local law.

On January 3, 2005, B and C exchange Whiteacre and Greenacre, respectively, for all of A's interests in DST through a qualified intermediary, within the meaning of Treasury Regulation 1.1031(k)-1(g). A does not engage in a Code Section 1031 exchange. Whiteacre and Greenacre were held for investment and are of like kind to Blackacre, within the meaning of Code Section 1031.

Neither DST nor its trustee enters into a written agreement with A, B, or C, creating an agency relationship. In dealings with third parties, neither DST nor its trustee is represented as an agent of A, B, or C.

BK is not related to A, B, C, DST's trustee or Z within the meaning of Code Section 267(b) or Code Section 707(h). Z is not related to B, C, or DST's trustee within the meaning of Code Section 267(b) or Code Section 707(b).

The IRS's conclusions in Revenue Ruling 2004-86 were as follows:

- (1) The Delaware statutory trust described above is an investment trust, under Treasury Regulations §301.7701-4(c), that will be classified as a trust for federal tax purposes.
- (2) A taxpayer may exchange real property for an interest in the Delaware statutory trust described above without recognition of gain or loss under Code Section 1031, if the other requirements of Code Section 1031 are satisfied.

The IRS noted that, under the facts of the ruling, if the DST's trustee had the power to do one or more of the following acts, it would be classified as a partnership or other business entity: (i) dispose of Blackacre and acquire new property; (ii) renegotiate the lease with Z or enter into leases with tenants other than Z; (iii) renegotiate or refinance the obligation used to purchase Blackacre; (iv) invest cash received to profit from market fluctuations; or (v) make more than minor nonstructural modifications to Blackacre not required by law.

In addition, the DST would not have qualified as an "investment" trust had it been able to (a) accept additional contributions of new cash or assets from existing or new owners, or (b) invest reserves and cash in investments other than short term government obligations, certificates of deposit or interest bearing accounts that are held to maturity and that mature prior to the distribution of cash to the DST's owners.

Other facts in Revenue Ruling 2004-86 in our view are not determinative of the outcome, including (a) that Blackacre was subject to the note and lease prior to being contributed to the DST, (b) that each owner-beneficiary had a right to an in-kind distribution of the DST's property, (c) that the persons who acquired interests in the DST pursuant to exchanges under Code Section 1031 acquired their interests indirectly from the original owner of the DST, rather than the DST itself and (d) that the loan the DST was nonrecourse and not recourse to the DST in that the DST's only substantial asset was its real property.

The Treasury Department strongly supported the continued vitality of Revenue Ruling 2004-86 in Treasury Decision 9935 (Dec. 2, 2020) ("With regard to Rev. Rul. 2004-86, nothing in the proposed regulations or the TCJA is contrary to the view that a transfer of an interest in a DST, if a grantor trust, is treated as the transfer of the underlying property held by the DST.")

In determining whether an Investor's acquisition of an Interest should be treated as the direct acquisition of the Real Estate, we analyze below in light of all relevant authorities: (i) the Trust's classification as an entity (and not as an agency or other co-ownership arrangement) for federal income tax purposes; (ii) the Trust's classification as an "investment" trust (and not as a business entity) for federal income tax purposes; (iii) whether the relationship between the Trust and the Master Tenant constitutes for federal income tax purposes either (A) a partnership, or (B) an agency arrangement or management contract; (iv) the Trust's classification as a "grantor trust" for federal income tax purposes; and (v) the treatment of the Investors as holding a direct interest in Trust Property for federal income tax purposes.

*1. Classification of the Trust as an Entity Separate from the Investors for Federal Income Tax Purposes*

Whether the Trust is treated as an entity separate from the Investors for federal income tax purposes depends upon its treatment under local law and the nature of the relationships created among the parties to the Trust pursuant to the Trust Agreement.

Section 3801(g) of the Act provides that a Delaware statutory trust is an unincorporated association which is created by a governing instrument for the purpose of holding property for business or investment. This section further provides that "any such association ... shall be a statutory trust and a separate legal entity." Section 3803 of the Act provides that owners of a trust are "entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the general corporation law ...." Section 3804 of the Act provides that a statutory trust may sue or be sued, and that its property is subject to attachment and execution as if it were a corporation. Section 3805(a) of the Act provides that, except as otherwise provided in the trust agreement, a beneficial owner of an interest in a trust shall have an undivided beneficial interest in the property of the trust and shall share in the profits and losses of the trust pro rata in proportion to the owner's percentage interest in the trust. Section 3805 further provides that no creditor of the trustee or a beneficial owner has any right to obtain possession of trust property, and that, except to the extent otherwise provided in the trust agreement, interests in a trust are freely transferable. Section 3815 of the Act provides that a trust may merge into or consolidate with other trusts or other business entities.

In Revenue Ruling 2004-86, after describing certain relevant provisions of the Act (including those described above), and after observing that the DST was "formed for investment purposes," the IRS concluded that the DST was an entity for federal income tax purposes. We believe that the Trust is substantially similar to the DST described in Revenue Ruling 2004-86. First, and most importantly, both the DST and the Trust are Delaware statutory trusts, subject to the provisions of the Act set forth above. Second, Section 2.03 of the Trust Agreement provides that the purposes of the Trust are to acquire, conserve, protect, hold and manage the Real Estate for investment purposes, and to dispose of the Real Estate, which is consistent with the purpose of the DST in Revenue Ruling 2004-86 (*i.e.*, "to hold property for investment"). Third, Sections 5.01(a) and 5.02 of the Trust Agreement provide that the Trust Agreement does not purport to create an agency relationship between the Investors, on the one hand, and the Trust or the Trustees, on the other, and that the Investors are not liable for any liabilities or obligations of the Trust or the Trustees or for the performance of the Trust Agreement; this provision is similar to provisions in the DST's trust agreement in Revenue Ruling 2004-86.

*2. Classification of the Trust as an "Investment" Trust Rather than as a Business Entity for Federal Income Tax Purposes*

Under Treasury Regulation Section 301.7701-4(b), a trust may be classified as a business entity if it is an arrangement for profit-making activity with such activity being conducted either by the trustees (when the trust agreement expressly authorizes the trustee to engage in such activity) or by the beneficiary (when the trustee is merely an agent of the beneficiary and the beneficiary directs the trustee to engage in such activity).

Treasury Regulation Section 301.7701-4(c)(1) provides on the other hand that a trust will be treated as an "investment" trust and not as a business entity if it has "a single class of ownership interests, representing undivided beneficial interests in the assets of the trust," and "there is no power to vary the investment of the certificate holders." The DST in Revenue Ruling 2004-86 was held to be an "investment" trust and not a business entity. The courts and the IRS have considered the distinctions between an "investment" trust and a business entity on several other occasions.

In *Commissioner v. Chase National Bank*, 122 F.2d 540 (2d Cir. 1941), a depositor transferred "units" consisting of the common stock of a number of corporations to a trust, and then sold those trust certificates 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 IRS argued that the trust was taxable as a corporation for federal income tax purposes. The court rejected the IRS's argument, holding that because the trust agreement required the trust property "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," the trust was prevented from becoming more than a "strict investment" trust. (*Id.* at 543.)

In *Commissioner v. North American Bond Trust*, 122 F.2d 545 (2d Cir. 1941), *cert. denied*, 314 U.S. 701 (1942), an opinion issued by the Second Circuit on the same day that it issued the *Chase National Bank* opinion, the court reached a different conclusion regarding the treatment of a trust for federal income tax purposes. In contrast to the terms of the trust instrument in the *Chase National Bank* case, the terms of the trust instrument in *North American Bond Trust* accorded the depositor with the power "to take advantage of market variations to improve the investments of even the first investors." (*Id.* at 546.) This power arose in two ways. First, in making up new units, the depositor was not confined to the same bonds he had selected for the previous units. Second, the bonds of all units constituted a single pool in which each certificate holder shared according to his proportion of all the certificates issued. As a result, the money from new investors could be used to purchase new bond issues which would in turn reduce the existing certificate holders' interests in the old bond issues. 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..." (*Id.*), and accordingly that the trust was an association taxable as corporation.



Revenue Ruling 75-192, 1975-1 C.B. 384, concerned a trust agreement that required the trustee to invest cash on hand between quarterly distribution dates in short term government obligations or in certificates of deposit issued by banks with minimum stated surplus and capital that mature prior to the following distribution date. The IRS concluded that, because the trust agreement restricted the trustee to a fixed return similar to that earned on a bank account, there was no opportunity to profit from market fluctuations. Accordingly, the power to invest in short term instruments described in Revenue Ruling 75-192 is not a power to vary the trust's investment.

In Revenue Ruling 79-77, 1979-1 C.B. 448, the IRS ruled that a trust formed to hold real property was an ordinary trust under Treasury Regulation Section 301.7701-4(a) and a "grantor trust" within the meaning of Subpart E of Subchapter J, Chapter 1 of the Code (*i.e.*, Code Section 671 *et seq.*), and not a "business entity" within the meaning of Treasury Regulation Section 301.7701-4(b) (*e.g.*, a partnership or an association taxable as a corporation), where the trustee's duties were limited to the following: (i) holding title to real estate; (ii) at the direction of the beneficiaries, signing a 20-year "triple net" lease (with renewal options) for the real estate; (iii) enforcing the lease; (iv) signing such other agreements as are approved by the beneficiaries; (v) approving minor alterations to the real estate; and (vi) distributing net income of the trust to the beneficiaries on a quarterly basis.

In other situations, however, the IRS has determined that an arrangement formed to hold real estate was properly classified as a business entity. For example, in Revenue Ruling 78-371, 1978-2 C.B. 344, the heirs to certain real estate established a trust and transferred to the trust real estate subject to a net lease. The trust agreement expressly authorized the trustees to acquire additional real estate, to sell assets of the trust, to invest such sales proceeds in certain types of financial products, to borrow money, to mortgage and lease the trust property, and to build or remove improvements from the trust property without the knowledge or consent of the owners of the trust. The IRS concluded that the trustee's power to engage in extensive real estate operations and to invest the sales proceeds in financial products indicated that that the trust was not formed merely to protect and conserve the trust's property and ruled that the trust was taxable as a corporation.

Revenue Ruling 78-371 should be contrasted, however, with Revenue Ruling 75-374, 1975-2 C.B. 261. In the 1975 ruling, the IRS addressed the level of joint business activity that would cause co-owners of real estate to be viewed as partners for tax purposes. The co-owners of an apartment project hired an unrelated management company to manage the apartment project; the management company negotiated and executed the leases for the apartment units, collected rents and other customary services in connection with the maintenance and repair of the project. Section 2.03 of the Trust Agreement confines the Trustee to customary services within the meaning of Revenue Ruling 75-374.

See also Private Letter Ruling 9352008 (September 29, 1993), in which the IRS ruled that an ownership interest in real estate was merely an ownership interest in the real estate and not a partnership interest where the real estate was subject to a triple net lease: "mere co-ownership of an interest in real property without providing more than the customary services of

maintenance and repair and collecting of rents will not render a co-ownership a partnership. [The real estate] is already subject to a net lease, under which the lessee is responsible to pay all insurance premiums, general real estate taxes and special assessments, most of the utility expenses and a significant portion of the repair costs. Therefore, co-ownership of [the real estate] is not, in and of itself, a partnership. Payments from tenants, and paid taxes, assessments and insurance premiums relating to the project. The management company performed (i) all services customarily performed in connection with the maintenance and repair of the apartment project (such as providing heat, air conditioning, hot and cold water, unattended parking, normal repairs, trash removal and cleaning of service areas), and (ii) certain additional services such as attended parking, gas, electricity and other utilities. Customary tenant services were furnished by the management company to the tenants at no additional charge above the basic rental payments. The management company paid the costs incurred in providing the additional services and retained the charges paid by the tenants. The ruling concluded that the co-owners were not partners for tax purposes because the furnishing of customary services in connection with the maintenance and repair did not render the co-ownership a partnership. The IRS also found that the management company was not an agent of the co-owners because the co-owners did not share any of the profits realized from the rendition of the non-customary additional services by the management company. Based on IRS's conclusions in Revenue Ruling 75-374, Revenue Ruling 78-371 should not be applicable to situations in which owners of real estate (whether direct or indirect) share only in the proceeds from customary services provided to tenants.

We believe that the arrangements provided for under the Trust Agreement and the Master Lease are similar to the arrangements described in *Chase National Bank* and Revenue Rulings 2004-86, 79-77 and 75-192, and are distinguishable from the arrangements discussed in *North American Bond Trust* and Revenue Ruling 78-371. The Trust satisfies the "one class of interests" requirement because Article I of the Trust Agreement expressly states that the Interests are all of one class.

Section 2.03 of the Trust Agreement provides that the Real Estate is held for investment purposes only and not for the active conduct of a trade or business, and that the Trust will only engage in activities that constitute customary services in connection with the maintenance and repair of the Real Estate. Section 2.04 of the Trust Agreement provides that (i) the Real Estate is held for the benefit of the Investors, (ii) it is the intention of the Trustees and the Investors that the Trust not constitute a business entity for tax purposes, and (iii) each Trustee and Investor agrees not to take any action inconsistent with the foregoing. Section 4.02 of the Trust Agreement requires the Trustees to distribute available cash monthly, and permits the Trustees only to invest cash in instruments described in Revenue Rulings 75-192 and 2004-86. Section 5.01(c) of the Trust Agreement provides that, from and after the admission of the first Investor to the Trust, the Trust "shall not constitute a business entity for federal tax purposes, but shall instead constitute an investment trust pursuant to Regulation 301.7701-4(c)." Section 7.03 of the Trust Agreement provides that, notwithstanding any other provision of the Trust Agreement, the Trustees shall not take certain specified actions, on their own behalf or on the instruction of the Investors, if

the effect of such action would be to "vary the investment" of the Investors under Treasury Regulation Section 301.7701-4(c)(1).

We have concluded in the discussion below under the heading "*characterization of the Master Lease between the Trust and the Master Tenant*" that the Master Lease should be regarded as a net lease. Pursuant to the Master Lease, the Master Tenant is responsible for all insurance (other than insurance that relates to Capital Expense items for which the Trust is responsible under the Master Lease), maintenance, ordinary repairs and utilities, and the Master Lease may not be renegotiated unless the tenant becomes bankrupt or insolvent. There are three material differences between the facts with respect to the Trust and the facts set forth in Revenue Ruling 2004-86. First, Sections 9.02 and 9.03 of the Trust Agreement direct the Signatory Trustee, if the Investors are at risk of losing all or a substantial part of their investment, to terminate the Trust by converting it into an LLC, and to convert the Interests into membership interests in the LLC. Second, the Master Tenant and the Signatory Trustee are indirectly related to each other through common ownership. Third, the Master Lease provides for Annual Bonus Rent. However, the Master Lease also provides that if Impositions and Insurance costs increase beyond levels projected as of the date of the Master Lease, the Trust will bear the economic risk of such increases in excess of the agreed projections. The cap on Impositions and Insurance Costs along with the annual cap on Annual Bonus Rent may have the effect of shifting the cost of certain operating expenses to the trust under circumstances that are by definition not foreseen at the time that the Master Lease is entered into. These three differences, however, should not affect the classification of the Trust as an "investment" trust under Treasury Regulation Section 301.7701-4(c)(1) because they do not cause the Trust to have more than a single class of ownership interests and do not create a power to vary the investment of the Investors since they do not enable the Trust or any person on behalf of the Trust to take advantage of market fluctuations to improve the investment of the Investors.

If the Trust were considered to be in an active trade or business, the Trust would not qualify as an investment trust. Certain rules have been developed regarding whether the activities of a taxpayer will be sufficient to be considered engaging in a trade or business when the taxpayer merely receives income from rental property. The majority of the case law regarding whether or not the ownership of real estate will be considered to be a trade or business is based on the activities of the taxpayer. For example, in Revenue Ruling 79-394, the IRS found that a corporation was considered to be engaged in an active trade or business if its conduct of its rental activities "demonstrates considerable day to day management and operational activity sufficient for purposes of distinguishing such conduct from passive investment in real estate." Furthermore, objective criteria such as [the corporation's] acquiring, renovating, refurbishing, maintaining, leasing and servicing its rental property and its payment of salaries and expenses support this conclusion.

The IRS has treated "escalation rent" that is subordinated to the mortgage payments as consistent with a net lease. (Priv. Ltr. Rul. 8133051 (May 19, 1981).) In that private letter ruling the IRS concluded, "The lease is a 'net lease' as to all other costs and risks, and [the Master Tenant] assumes full responsibility for the payment of all costs and performance of all

covenants related to the land and/or building during the term of the leases." Other than the Trust's contingent disability of the Trust for unanticipated increases in Impositions and Insurance Costs, the Master Lease likewise allocates full responsibility for the payment of all costs and performance of all covenants to the Master Tenant.

Further, in Private Letter Ruling 7904019 (June 21 24, 1978), an individual owned and leased property under a lease that required the landlord to pay for taxes, insurance and for certain operational expenses related to the property. The IRS indicated that, although the landlord was required to pay for certain expenses related to the property, the landlord did not supervise or participate in the operation or management of the property. Thus, the landlord was not engaged in a trade or business.

Under Code Section 512(b)(3)(B)(ii), courts have held that a landlord's payment of a number of expenses related to property subject to a crop-sharing lease would not prevent the rent paid to the landlord from qualifying as "passive rent". When looking at the sharecrop leases, the courts focused on the fact that the lease terms were customary in the applicable market when finding that the leases were true leases for Federal income tax purposes. Treasury Regulations Section 1.856-4(b)(3) (made applicable to leases by charitable organizations by Treasury Regulations Section 1.512(b)-1(c)(2)(iii)(b)) provides that "an amount will not qualify as 'rents from real property' if, considering the lease and all the surrounding circumstances, the arrangement does not conform with normal business practice but is in reality used as a means of basing the rent on income or profits." However, in AOD 1994-001, the IRS stated that it did not agree with the cases that had held the sharecrop leases to be true leases. but, in view of its lack of success in the courts, it announced that it had decided that it would no longer litigate these issues with regard to the "typical cropsharing agreement." We have relied on a representation from the Signature Trustee that the terms of the Master Lease are consistent with market terms of similar leases and is not an effort to share in income or profits.

In separate authority under the Subchapter S rules, the determination of whether the ownership of real estate will result in "passive investment income" looks at both the activities and the amount of funds expended by the owner of the real estate. A Subchapter S election will be terminated if a corporation (i) has accumulated earnings and profits at the close of each of 3 consecutive taxable years and (ii) has gross receipts for each of such taxable years more than 25% of which are "passive investment income," which includes for this purpose "rents". Treasury Regulation Section 1.1362-2(c)(5)(ii)(B)(2) provides, however, that "rents" do not include rents derived in the active trade or business of renting property, and states that rents received by a corporation are derived in the active trade or business of renting property only if the corporation provides significant services or incurs substantial costs in the rental business. There is limited authority interpreting the above definition of "substantial costs" for this purpose. In Private Letter Ruling 200808004 (February 2, 2008), the only private letter ruling that appears to interpret this phrase, the IRS indicated that the standard to be applied when making this determination is based "upon all the facts and circumstances, including, but not limited to, the number of persons employed to provide the services and the types and amounts of costs and expenses incurred (excluding depreciation)." In Private Letter Ruling 200808004,

the IRS determined that a corporation's payment of real property taxes in respect of leased property did not constitute engaging in an active trade or business. The Master Lease provides that the Trust must pay the cost of Insurance and Impositions that exceed projected, agreed amounts and is responsible for certain capital replacements at the Project.

The Trust is merely leasing property to the Master Tenant and the Master Tenant, and not the Trust, has the obligation to operate the Property and provide the day-to-day maintenance of the Property. The Trust has no employees and is merely paying for certain unanticipated expenses associated with the Property, rather than actively providing services to the Master Tenant or to the Property. The Master Tenant, and not the Trust, is responsible for engaging contractors to perform the services for the maintenance and repair of the Property. As a result, the Trust should not be viewed as engaging in an active trade or business that would prevent it from being treated as an investment trust.

### *3. Characterization of the Master Lease between the Trust and the Master Tenant*

#### *A. The Master Lease should not Constitute a Partnership for Income Tax Purposes*

Rent under the Master Lease is comprised of these elements: (a) Base Rent, which is a nonadjustable, fixed annual payment; and (b) Stated Rent, the amount of which is specifically scheduled and provided for in the Master Lease, but which may be deferred (but not reduced) by the Master Tenant in certain limited circumstances, so long as Base Rent and Real Estate operating expenses are fully paid by the Master Tenant and (c) Annual Bonus Rent.

As discussed below, we believe that the Master Lease should not constitute a partnership between the Trust and the Master Tenant for income tax purposes. The definition of "partnership" for federal income tax purposes is broad and embraces unincorporated jointly-owned arrangements that are not partnerships under local law. Code Sections 761(a) and 7701(a)(2) define the term "partnership" as including a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of the Code, a corporation or trust or estate. Whether or not a joint enterprise, such as the one between the Master Tenant and the Trust, is a partnership under state law is not determinative of its status for federal income tax purposes. Thus, a joint enterprise may be classified as a partnership for income tax purposes even though it is not a partnership under state law.

There is no specific factor or set of factors to determine when an arrangement (including a lease) constitutes a partnership for federal income tax purposes. However, courts have indicated that the most important factor is evidence that the participants in an arrangement intended to join together to carry on a business or venture and divide the profits therefrom. (*See, e.g., Commissioner v. Culbertson*, 337 U.S. 733 (1949).) As discussed in greater detail below, additional factors that courts have taken into account are sharing of net profits, losses, joint ownership of capital, joint participation in management and filing partnership tax returns. While it is reasonably clear what types of factors are likely to be considered by the courts and the IRS

in determining whether a partnership exists for tax purposes, such factors are generally subjective and difficult to apply.

Ever since *Commissioner v. Culbertson*, in which the Supreme Court said a partnership exists when "considering all the facts the parties intended to join together in the conduct of [a joint] enterprise," the parties' intent is a primary indication of the existence of a partnership. The Master Tenant and the Trust have manifested no intent to form a partnership. Section 3.08 of the Master Lease clearly reflects the intent of the parties that the Master Lease is a "true lease," and is not a partnership or joint venture or management arrangement, and the Master Tenant and the Trust will report the arrangement consistent with such characterization. This lack of intent to form a partnership is a strong indication that the Master Tenant and the Trust are not in a partnership.

As the Tax Court in *Federal Bulk Carriers, Inc., v. Commissioner*, 66 T.C. 283 (1976), *aff'd mem.*, 558 F.2d 128 (2d Cir. 1977), stated, another "central feature" of a partnership is that the parties have "a proprietary interest in the net profits of the enterprise coupled with an obligation to share its losses." Generally speaking, partners share net profits and losses, whereas non-partnership relationships do not provide for such sharing (although they may provide for a sharing of gross revenues). (See, e.g., *White's Iowa Manual Labor Institute v. Commissioner*, TC Memo 1993-364; *Harlan E. Moore Charitable Trust v. United States*, 9 F.3d 623 (7<sup>th</sup> Cir. 1993) *acq.* Action on Decision 1994-001 (March 28, 1994) (IRS will no longer litigate the status of leases providing for gross revenue sharing along with a sharing of certain expenses between tenant and landlord in the context of certain agricultural leases); *but see, Univ. Hill Foundation v. Commissioner*, 51 T.C. 548, 569 (1969), *rev'd on other grounds*, 446 F.2d 701 (9<sup>th</sup> Cir. 1971), *cert. denied*, 405 US 965 (1972) (lease providing for sharing of net profits between landlord and tenant respected as a lease and not recharacterized as a partnership).)

In this case, the economic relationships between the Trust and the Master Tenant should be viewed as consistent with the characterization of the Master Lease as a lease and not as a partnership or joint venture. First, Base Rent is an absolute and fixed obligation of the Master Tenant and is payable without regard to the cash flow generated by the Real Estate. Second, Stated Rent is also an absolute and fixed obligation of the Master Tenant. Third, with the exception of the limitation on the amount of the Annual Bonus Rent, the Master Tenant is responsible for the operating costs and Impositions with respect to the Real Estate, and bears all of the risk associated with them. Accordingly, the Trust does not share in the losses, if any, incurred by the Master Tenant in its operation of the Real Estate, and with the exception of unanticipated Insurance Costs and Impositions, the Master Tenant is at risk for and obligated to pay the operating expenses of the Real Estate without recourse to the Trust.

This determination is not impacted by the fact that the Master Tenant may defer its obligation to pay Stated Rent in certain circumstances. The right of the Master Tenant to exercise this deferral only arises if (a) Base Rent and all Real Estate operating expenses are paid by the Master Tenant as provided in the Master Lease, (b) all cash flow from the Real Estate over and above the sum of the items described in clause (a) are used to pay Stated Rent (including any past due Stated

Rent); and (c) any Stated Rent that is not currently paid accrues interest and must be paid within 91 days of the sale of the Real Estate or the repayment of the Loan. This is because the Master Tenant's ultimate economic obligation to pay rent is not changed by this deferral right, and the right only arises if the cash flow from the Real Estate is not sufficient to pay the full amount of Stated Rent in any period.

This determination is also not impacted by the fact that if the debt service requirements under the Loan change during the term of the Master Lease, the relative amounts of Base Rent and Stated Rent may be adjusted, or (under certain circumstances where the debt service requirements under the Loan increase during the term of the Master Lease) the Master Tenant may pay Stated Rent over to the Lender in satisfaction of the Trust's obligations under the Loan Documents. That is because the Master Tenant's obligation to pay Base Rent does not constitute an assumption by the Master Tenant of the Trust's obligations under the Loan Documents. Rather, Base Rent is paid by the Master Tenant directly to the Lender as a matter of convenience, and thus if the Trust's obligations under the Loan Documents change, the aggregate cash flow obligation of the Master Tenant under the Master Lease will not change. Rather what will change is the amount of overall Rent that is paid over to the Lender for the benefit of the Trust, with the remainder being paid over to the Trust. Accordingly, to the extent a change in the debt service requirements results in a change in the total Rent paid in cash to the Trust (versus being paid for the benefit of the Trust to the Lender), such change does not amount to a sharing of losses between the Master Tenant and the Trust because such a change is a product solely of the Trust's varying obligations under the Loan Documents.

Other elements of the relationship further indicate that the Master Tenant and the Trust are not in a partnership for tax purposes.

If parties combine their capital and services so that they are required to deal with each other to realize the economic benefits from the enterprise, the relationship could be characterized as a partnership. (*See, e.g., Bussing v. Commissioner*, 88 T.C. 449 (1987).) However, the Trust and the Master Tenant do not intend to pool their capital or their services. The Master Tenant did not contribute capital to the Trust's acquisition of the Real Estate and there is no provision in the Master Lease that suggests that it is being used by the Master Tenant to obtain an interest in the Real Estate. On the contrary, the Master Tenant at no time obtains an interest in the Real Estate, and any proceeds of the sale of the Real Estate, subject to market rate sales commissions payable to the Master Tenant or an affiliate which are calculated as a percentage of the gross sales price for the Real Estate, will be for the account of the Trust.

Another factor that courts have cited to demonstrate that parties are in a partnership is joint participation in management. (*Arthur Venneri Co. v. United States*, 340 F.2d 337 (Cl. Ct. 1965).) The Master Tenant is solely responsible for operation and management of the Real Estate, and does not jointly manage the Real Estate with the Trust. The Trust's powers over the Real Estate are substantially limited, not only by the terms of the Master Lease (pursuant to which responsibility for day-to-day management of the Real Estate is vested in the Master Tenant), but also by the terms of the Trust Agreement, which impose strict limits on the actions

that may be undertaken by the Trust with respect to the Real Estate. Because the Master Tenant and the Trust are not sharing in the management of the Real Estate, the "joint management" of Hayworth Tanglewood is not present.

Finally, pursuant to Section 3.08 of the Master Lease, the Trust and the Master Tenant will not take other actions that courts have held to be indicative of a partnership, such as holding themselves out as partners, maintaining joint books or filing a partnership tax return. (*See, e.g., Luna v. Commissioner*, 42 T.C. 1067 (1964).)

*B. The Master Lease should not Constitute an Agency Arrangement or Management Contract for Income Tax Purposes*

The Master Lease should not be treated as an agency arrangement or management contract between the Trust and the Master Tenant for federal income tax purposes. Courts have consistently held that the underlying substance of the transaction, and not the form of the contract itself, dictates whether a contract will be treated as agency arrangement or lessor-lessee relationship for federal income tax purposes. (*See e.g., Amerco v. Commissioner*, 82 T.C. 654 (1984).) In determining whether an arrangement should be treated as a lessor-lessee relationship or agency agreement, the IRS and the courts have established two key factors: (1) control over the use of the property; and (2) who bears the risk of loss over the use of such property. (*See, e.g., McNabb v. United States*, 47 AFTR 2d 81-513, 81-1 USTC ¶9143 (W.D. Wash. 1980); *Meagher v. Commissioner*, T.C. Memo 1977-270.) Consistent with this case law, Code Section 7701(c) provides certain rules for the mirror image issue of when a service contract should be recharacterized as a lease. This Code section specifically provides that a contract that purports to be a service contract is to be construed as a lease if the contract is properly treated as a lease, taking into account all relevant factors including whether or not (a) the service recipient is in physical possession of the property, (b) the service recipient controls the property, (c) the service recipient has a significant economic or possessory interest in the property, (d) the service provider does not bear any risk of substantially diminished receipts or increased expenditures if there is nonperformance under the contract, (e) the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient, and (f) the total contract price does not substantially exceed the rental value of the property for the contract period.

If a property owner retains control over the use of property and does not sufficiently transfer control to a lessee, the relationship could be characterized as an agency agreement. The issue of whether a lessee has sufficient control over the use of property is a fact-intensive inquiry, but factors such as day-to-day management activities, the ability to set the terms of a sublease, and control over funds tend to indicate the existence of a true lease. Mere retention of supervisory functions that are necessary to protect an owner's position as a lessor-owner of property should not, without more, result in characterization of a lease as an agency agreement. (*Freesen v. Commissioner*, 84 T.C. 920 (1985).)



In *Amerco v. Commissioner*, 82 T.C. 654 (1984), the Tax Court held that contracts between U-Haul and individuals who owned the trailers used in U-Haul's business were properly treated as true leases and not management agreements. Concerning the control factor, the court relied on the fact that U-Haul managed the day-to-day operations of the trailers, set the terms of leasing the trailers to the public, and had exclusive control over operating expenses. (*Id.* at 675.) The owners of the trailers retained the right check on their property periodically and receive periodic reports from U-Haul, but such oversight did not amount to a level of control that would suggest a management contract. (*Id.*)

The arrangements provided in the Master Lease with respect to control of the Real Estate are consistent with its characterization under the foregoing authority as a lease and not as an agency or management arrangement. As previously discussed, the Master Tenant is in physical possession of the Real Estate and is solely responsible for the operation and management of the Real Estate.

Pursuant to the Master Lease, the Master Tenant is responsible for the day-to-day management of the Real Estate. To the extent that there are limits on the nature of the subleases that the Master Tenant may enter into, they are either consistent with the Trust's prudent management of its properties or mandated by the Lender (or both). These factors taken together are a strong indication that the Master Lease should not be treated as an agency or management arrangement.

In addition, the arrangements provided in the Master Lease with respect to the allocation of the risk of loss are consistent with its characterization as a lease and not as an agency or management arrangement. Arrangements in which the tenant bears the risk of loss, as opposed to the landlord, are likely to be respected as a true lease. Agreements which provide for rent payments only where there the tenant has a net profit tend to be indicative of an agency agreement. (*Meagher v. Commissioner*, TC Memo 1977-270 (noting "if this contract were held to be a lease it would be a strange one, for the 'lessee' would be required to pay 'rent' only if its use of the property resulted in net profit.")) However, agreements that provide for variable rent, as opposed to fixed rent, do not preclude an agreement from being treated as a true lease. (*McNabb*, 47 AFTR 2d 81-513.) In *McNabb*, the tenant's rent payments were set at thirty-five percent of the gross rentals from the property. (*Id.*) However, the tenant was responsible for paying all operating expenses out of its remaining percent share of the gross rentals and had no recourse against the landlord in the event that the operating expenses exceeded the tenant's share of gross rentals. (*Id.*) Thus, a lease which provides for variable rent based on gross revenue should not, by reason of the variable rent, be treated as an agency or management arrangement.

An obligation on the part of the landlord to indemnify a tenant for damages, losses or liabilities with respect to the property is also indicative of an agency relationship. In *Meagher*, the Tax Court determined that the owner retained the risk of loss with respect to the property because the property owner had agreed to defend, indemnify, and hold the tenant harmless from and against any and all loss, damage, or liability. (T.C. Memo 1977-270.) Under the terms of the contract, the tenant was authorized to deduct a portion of the rent payable to the landlord and reserve that amount to cover expenses associated with the use of the property. (*Id.*) The contract went one step further, however,

providing that the owners of the property agreed to reimburse the tenant for any expenses incurred in excess of the amount held in the cash reserve allowance. (*Id.*)

Here, the Master Tenant has an unavoidable obligation to pay Base Rent, and although it may defer the payment of Stated Rent in certain circumstances, it also has the unavoidable obligation to pay all Stated Rent prior to the expiration or termination of the Master Lease or the repayment of the Loan. In addition, the Trust has no obligation to reimburse the Master Tenant for any losses incurred related to the operation of the Real Estate. Unlike the facts in *Meagher*, the Stated Rent, although it may be deferred in certain circumstances, is payable regardless of the actual expenses incurred by the Master Tenant in operating the Real Estate and does not create in form or in substance any indemnification obligation on the part of the Trust in favor of the Master Tenant.

*C. Summary --- Characterization of the Master Lease between the Trust and the Master Tenant*

As described above, the Master Lease should not constitute a partnership or an agency/management arrangement for income tax purposes between the Trust and the Master Tenant. While it is true that the Rent structure of the Master Lease may result in some irregularity in the amount of Rent that is paid year to year (if, for example, the Master Tenant is required and permitted to defer payment of Stated Rent), we have identified no authority under the fixed investment trust rules or otherwise that implies that an asset held by a fixed investment trust is required to generate predictable cash flow. The Master Lease, including its rent structure, presents the inherent prospect of the investment being acquired by Investors when they acquire an Interest in the Trust, and consistent with Revenue Ruling 2004-86 the Master Lease (including its provisions regarding Rent payment obligations) may not be amended except in the case of a Master Tenant bankruptcy or insolvency. Accordingly, the Master Lease should not affect the classification of the Trust as an "investment" trust under Treasury Regulation Section 301.7701-4(c)(1).

*4. Classification of the Trust as a "Grantor Trust" for Federal Income Tax Purposes*

Code Sections 671 through 678 describe certain circumstances in which the grantor of a trust or another person will be considered the owner of all or a portion of the trust's assets and income for federal income tax purposes. Code Section 677(a) provides that a grantor is treated as the owner of any portion of a trust whose income without the approval or consent of any adverse party or, in the discretion of the grantor or a nonadverse party (or both), may be distributed, held, or accumulated for future distribution to the grantor or his or her spouse. In Revenue Ruling 2004-86, the IRS held that the DST was a grantor trust.

Like the DST in Revenue Ruling 2004-86, the Trust satisfies the Code requirements for qualification as a grantor trust. Section 2.04 of the Trust provides that each Investor is to be treated for federal income tax purposes as owning a direct interest in the Trust Property. Section 4.02 of the Trust Agreement provides that all available cash of the Trust is required to be distributed to the Investors pro rata in proportion to their percentage interests in the Trust.

Section 5.01(c) of the Trust Agreement provides that, from and after the admission of the first Investor (other than the Initial Beneficiary) to the Trust, the Trust shall constitute a grantor trust.

Hayworth Tanglewood IB, LLC, a Delaware limited liability company ("Hayworth Tanglewood IB") will be the owner of all unsold Interests in the Trust. Hayworth Tanglewood IB will borrow funds that it in turn will contribute to the Trust. When Interests are sold, net proceeds will be distributed to Hayworth Tanglewood IB to repay its lender. Use of Hayworth Tanglewood IB, a separate limited liability company, to provide the necessary funding should be recognized as careful tax compliance and not as an attempt to garner otherwise unattainable tax benefits. (*United Parcel Service, Inc. v. Commissioner*, 254 F.3d 1014 (11<sup>th</sup> Cir. 2001).) In that case, the court stated that a transaction has a "business purpose," as long as it figures in a bona fide, profit-seeking business. \* \* \* This concept of "business purpose" is a necessary corollary to the venerable axiom that tax-planning is permissible. The Code treats a number of categories of economically similar behavior differently. For instance, two ways to infuse capital into a corporation, borrowing and sale of equity, have different tax consequences: interest is usually deductible and distributions to equityholders are not. There may be no tax-independent reason for a taxpayer to choose between these different ways of financing the business, but that does not mean that the taxpayer lacks a "business purpose." To conclude otherwise would prohibit tax-planning. (*Id.* at 1019.) Based on the *United Parcel Service* case and others like it we conclude that the separate existence of Hayworth Tanglewood IB should be respected for federal income tax purposes.

#### *5. Treatment of the Investors as Directly Holding Trust Property for Federal Income Tax Purposes*

In Revenue Ruling 2004-86, the IRS, citing prior Revenue Rulings and a Treasury Regulation, held that a person who is treated as the grantor of a grantor trust is considered to own its proportionate share of the assets of the trust for federal income tax purposes. Revenue Ruling 2004-86 went on to hold that an owner of a grantor trust that holds real property is considered to be the owner of an undivided interest in the real property and that, accordingly, real property can be exchanged for an interest in such a grantor trust without the recognition of gain or loss so long as the other requirements of Section 1031 are satisfied. It should be noted that the holding of Revenue Ruling 2004-86 expressly assumed that "the other requirements of Section 1031 are satisfied." This assumption is also being made for purposes of this Opinion.

#### *6. The Real Estate as Qualified Property*

The Trust will acquire a leasehold of about 81 years in the Real Estate. The Trust's leasehold interest in the Real Estate should qualify as like kind to a fee simple interest in real property for purposes of Code Section 1031. (Treas. Reg. §1.1031(a)-1(c).) The relevant portion of that regulation provides in relevant part: "No gain or loss is recognized ... if a taxpayer who is not a dealer in real estate exchanges city real estate for a ranch or farm, or exchanges a leasehold of a fee with 30 years or more to run for real estate, or exchanges improved real estate for unimproved real estate..." The ground lease of the real property under the Property has about 81 years left in

its term. As a result, the Property will be treated as like kind to real property that had been held in fee.

Nevertheless, the opinion applies only to the portion of the Property properly allocated to the Real Estate. It must be noted that the Appraisal Reports for the Property conclude that the fair market value of the Property as of the date of acquisition was \$105,700,000, which is in excess of the purchase price of \$105,500,000. The appraised value of the Property exceeds the purchase price that the Trust paid. Despite that, there is a risk that a portion of the amount that an Investor pays for an Interest would not be eligible for treatment as replacement property for purposes of Code Section 1031 to the extent that such portion were properly allocated to personal property or to organizational and offering expenses. For that reason, we have concluded that substantially all, but not all, of the purchase price of an Interest should be treated as an interest in real property eligible for treatment as replacement property for purposes of Code Section 1031.

## CONCLUSION

Based on the facts and the authorities discussed above, we conclude that the acquisition of the Interests by the Investors should be treated as a direct acquisition of the Real Estate for purposes of Code Section 1031.

This Opinion is given in reliance upon the accuracy and completeness of the documents, facts, assumptions and representations described herein. Any misstatement or change of a material fact referred to or omission of any material fact may require an adverse modification of all or a part of our Opinion.

Qualification of a transaction pursuant to Code Section 1031 for an Investor involves issues based on numerous specific facts which are not and cannot be known to us; therefore, we give no opinion as to the ability of any Investor to effectuate a tax-deferred exchange of like-kind property under Code Section 1031. This Opinion addresses only one aspect of qualifying under Code Section 1031, *i.e.*, whether the acquisition of an Interest can be treated as a direct acquisition of the Real Estate for purposes of Code Section 1031. We are not opining as to whether some portion of the Real Estate may be "personal property" as opposed to "real property" for purposes of Code Section 1031 or whether the Trust's purchase of any such personal property would constitute a standard commercial transaction, or as to whether any amounts paid by, or deemed paid by, the Investors with respect to certain costs or expenses of the offering, financing costs, and amounts paid to fund the reserve for capital expenses will be deemed to constitute other consideration received in the exchange or the acquisition of real estate. Finally, this Opinion does not address any state, local or non-United States income tax consequences, or any non-income tax consequences, of the transactions described herein.

We are admitted to practice law in California and this Opinion is based on existing federal law, including judicial decisions, applicable current and proposed Treasury Regulations, and current published administrative positions of the IRS, all of which are subject to change either


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prospectively or retroactively. We assume no responsibility to inform the addressee or any Investor of any future change in the law.

Although this Opinion represents our best legal judgment, it has no binding effect and, therefore, there can be no assurance that the IRS will not be able to successfully challenge the conclusions reached herein. This Opinion is delivered subject to this understanding and agreement.

Finally, this Opinion is intended solely for the use of the Investors in accordance with the terms of this letter and may not be shown to or relied upon by any other party without our express written approval.

IRVINE VENTURE LAW FIRM, LLP

A handwritten signature in cursive script that reads "Michael E. Shaff".

Michael E. Shaff

**EXHIBIT C**

**FORECASTED STATEMENT OF CASH FLOWS**



## Loan/Reserve Account.

### Loan and Reserve Account Balances:

Forecasted Principal Amortization	Fiscal Year→	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
Beginning Loan Balance		\$48,000,000	\$48,000,000	\$48,000,000	\$48,000,000	\$48,000,000	\$47,323,175	\$46,609,948
Principal Amortization		-	-	-	-	(676,825)	(713,226)	(751,585)
Ending Loan Balance		\$48,000,000	\$48,000,000	\$48,000,000	\$48,000,000	\$47,323,175	\$46,609,948	\$45,858,363
Loan to Offering Price		38.5%	38.5%	38.5%	38.5%	37.9%	37.4%	36.8%
Yield		4.05%	4.08%	4.22%	4.31%	4.75%	4.58%	4.78%

Forecasted Lender Reserve Account								
Replacement Reserve Account		2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
Beginning Balance		\$0	\$61,500	\$123,000	\$184,500	\$246,000	\$307,500	\$369,000
Reserve Contribution		61,500	61,500	61,500	61,500	61,500	61,500	61,500
Capital Expenditures		-	-	-	-	-	-	-
Ending Balance		\$61,500	\$123,000	\$184,500	\$246,000	\$307,500	\$369,000	\$430,500

Forecasted Trust Reserve Account								
		2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
Beginning Balance		\$4,969,148	\$4,745,983	\$4,757,848	\$4,744,681	\$4,756,542	\$4,618,059	\$4,554,416
Seller Credit		-	-	-	-	-	-	-
Reserve Contribution / (Application)		-	-	-	-	-	-	-
Property Improvements		(235,000)	-	(25,000)	-	(130,000)	(75,000)	(75,000)
Capital Expenditures		-	-	-	-	-	-	-
Interest Income		0.25%	11,835	11,865	11,832	11,516	11,358	11,199
Ending Balance		\$4,745,983	\$4,757,848	\$4,744,681	\$4,756,542	\$4,618,059	\$4,554,416	\$4,490,615

## Key Assumptions.

1. *Gross Potential Rental Income.* Reflects potential rental income attributed to the 246 units (1 studio guest unit, 28 1x1 units, 69 1x1.5 units, 66 2x2 units, 58 2x2.5 units, 1 2x2.5 guest unit, 10 2x2.5 townhome units, 6 3x2.5 units, and 7 3x3 units).
2. *Other Income.* Includes income from sources such application fees, utility reimbursements, parking income, storage income, cable income, amenity fees, and other items.
3. *Economic Vacancy.* Reflects a 4.0% general vacancy rate in year 1 and 5.0% thereafter, non-revenue unit, employee discounts, concessions, and bad debt.
4. *Expenses.* Underwriting efforts have included the review of the Property's trailing 12 months of expenses and made appropriate adjustments based upon industry and local market operating standards. These expenses, unless otherwise noted, are escalated at 2% per annum over the period of the analysis.
5. *Management Fees.* Assumes 2.5% of Total Operating Income.
6. *Property Taxes.* As per a property tax consultant, taxes are estimated based upon the current assessed value and the contractual purchase price.
7. *Texas Franchise Tax.* Assumes 0.331% of Total Operating Income.
8. *CapEx Reserves.* Reflects a reserve of \$250 per unit per annum throughout the analysis period.
9. *Debt Service.* The forecast utilizes leverage at 45.5% loan-to-value at a 5.25% annual fixed rate, on a 7-year loan on an interest-only basis for 4 years.
10. *Asset Management Fee.* Equal to 1.0% of Total Operating Income.
11. *Tax Analysis.* This tax analysis only applies to Investors not seeking a tax-deferred exchange. Investors who defer taxes by investing in this offering carry differing tax bases in their relinquished properties. Therefore, depreciation will vary for such Investors, producing different tax shelters and tax equivalent yields. Tax savings that result from the above-described tax shelter would be recaptured upon sale of the Property unless the Investor chooses to participate in a subsequent tax-deferred exchange. Each prospective Investor should consult with his or her own legal, tax, accounting and financial advisors.



The Tax Equivalent Yield represents the yield required to achieve an equivalent After Tax Cash Flow on an interest-bearing investment, which has no shelter from depreciation and would be taxed at the Effective Tax Rate. The Tax Equivalent Yield is equal to the After-Tax Return divided by one minus the Effective Tax Rate.

12. *Effective Tax Rate.* Assumed to be a combined federal and state income tax rate of 40%.

**EXHIBIT D**

**PRIVACY POLICY OF WEALTHFORGE SECURITIES, LLC**

# PRIVACY POLICY

*Updated as of January 2022*

This Privacy Statement covers: WealthForge Securities, LLC (the “Company”). We do not disclose information to non-affiliated companies except as described below.

## 1. Acknowledgement and Acceptance of Terms

The Company is committed to protecting your privacy. This Privacy Statement sets forth our current privacy practices regarding the information we collect from you.

## 2. Third-party Policies

You may have received this privacy notice through a website or an email from a website or other third party, but this Privacy Statement does not apply to any third parties, and we are not responsible for their content. If you visit external websites, we recommend that you review their privacy policies.

The collection, further use, or disclosure of your information by issuers, unaffiliated service providers or by other third parties is not the responsibility of the Company. Such collection, use, or disclosure is governed by the third parties’ privacy policies.

## 3. Personal Information We Collect From You

To complete your transactions, we will ask you or your financial professional to provide personal information such as name, address, email, telephone number or facsimile number, bank account number, social security number, driver’s license, passport, or other government issued identification number, income or net worth information, and other information relevant to your request for participation in a transaction. You may also be asked to disclose personal information to us so that we can provide assistance and information to you. We will not disclose personally identifiable information we collect from you to non-affiliated parties without your permission, except to the extent necessary to provide the products and services, as described below.

## 4. How We Use, Share, and Protect Personal Information

The Personal information you provide is used to provide services to you and to inform you of products, services, or opportunities that may be available through the Company. Information and data you provide will also be used to administer our business, and our products and services in a manner consistent with this Privacy Statement and all applicable laws, rules, regulations, or other legal obligations. If you provide us with your name, address, telephone number, or email address, or have done so in the past, the Company may contact you by telephone, mail, or email. Email or other electronic communications sent to us will be maintained in a manner consistent with our legal and regulatory requirements regarding client and public communications.

We do not rent, sell, or share your personal information to unaffiliated organizations except to provide products or services you have requested, when we have your permission, or under certain limited

circumstances. For example, we provide such information to companies who work on behalf of or with the Company, subject to confidentiality agreements. These companies may use your personal information to help the Company communicate with you about the Company's products and services or to assist the Company in the provision of its products and services. The Company may compile and use aggregated, anonymized data that does not directly or indirectly identify you or compromise your personal information in violation of this policy.

The Company may share information that you provide with the issuer and sponsor of the offering in which you have expressed an interest, the other broker-dealers providing services for that issuer and sponsor, as well as other companies providing services in connection with the offering, such as escrow agents and banks, credential-checking services, the issuer's special purpose vehicle(s) for that offering, and other financial intermediaries such as transfer agents, investment advisors, etc.

Social security numbers are only shared with the following and only as applicable to a particular transaction or activity that you initiate: personnel for third-party intermediaries processing the transaction for the issuer and sponsor; other parties that use the social security numbers for the limited purpose of providing services for the offering and that have agreed to maintain the confidentiality of your information; other financial intermediaries involved in the transaction; and the issuer and sponsor of the securities.

The Company maintains reasonable physical, electronic, and procedural safeguards that comply with applicable laws and regulations to protect personal information about you and works with vendors and partners to protect the security and privacy of user information. The Company maintains the information collected on servers located within the United States and does not transfer your data to other countries.

## 5. Other Reasons We Share Personal Information

We also use information you provide to respond to subpoenas, court orders, or other similar legal obligations and processes, comply with regulatory requests and audits, or to establish or exercise our legal rights or defend against legal claims. In addition, we will share such information if we believe it is required by law or it is necessary to investigate, prevent, or take action regarding illegal activities or suspected fraud or the rights or property of the Company or third parties.

Finally, we may transfer information about you to any acquirer or successor of the Company if and to the extent that the Company is acquired by or merged with another company.

## 6. Changes to this Statement

The Company has the discretion to update this Privacy Statement at any time.

## 7. Notice of Residents of California and Nevada

The Company has the discretion to update this Privacy Statement at any time. When we do, we will also revise the "updated" date at the top of this page. We encourage you to review this Privacy Statement each time you receive it to stay informed about our use of your information.

### **California Residents:**

California law requires that we obtain your affirmative consent before we share your nonpublic personal information with non-affiliated third-party companies.

The California Consumer Privacy Act requires that Company inform you of your rights, provide a list of the categories of personal information it has collected about consumers in the past twelve (12) months and detail what categories of personal information it sells or discloses.

### Rights of California Residents

#### 1. Right of access

California residents have the right to request that a business that collects a resident's personal information disclose to that resident the categories and specific pieces of personal information the business has collected.

California residents have the right to request that a business that collects personal information about the resident disclose to the resident the following:

- (1) The categories of personal information it has collected about that resident.
- (2) The categories of sources from which the personal information is collected.
- (3) The business or commercial purpose for collecting or selling personal information.
- (4) The categories of third parties with whom the business shares personal information.
- (5) The specific pieces of personal information it has collected about that consumer.

#### 2. Right to know what we sell or disclose

California residents have the right to request that a business that sells the resident's personal information, or that discloses it for a business purpose, disclose to that resident:

- (1) The categories of personal information that the business collected about the resident.
- (2) The categories of personal information that the business sold about the resident and the categories of third parties to whom the personal information was sold, by category or categories of personal information for each third party to whom the personal information was sold.
- (3) The categories of personal information that the business disclosed about the resident for a business purpose.

Company does not sell personal information

#### 3. Right to opt out

California residents shall have the right, at any time, to direct a business that sells personal information about the resident to third parties not to sell the resident's personal information.

#### 4. Right to deletion

In some cases, California residents shall have the right to request that a business delete any personal information about the resident which the business has collected from the resident.

## 5. Right to equal service and price

A business may not discriminate against a California resident because the resident exercised any of the resident's rights, including, but not limited to, by:

(A) Denying goods or services to the consumer.

(B) Charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties.

(C) Providing a different level or quality of goods or services to the resident, if the resident exercises the consumer's rights under this title.

(D) Suggesting that the resident will receive a different price or rate for goods or services or a different level or quality of goods or services.

### How to request your information

To request the personal information in Company's possession please contact Company via either <https://www.wealthforge.com/contactus> or 866.603.4082.

To request what personal information Company has disclosed to a third party please contact Company via either <https://www.wealthforge.com/contactus> or 866.603.4082.

To request your personal information be deleted email the following address [admin@wealthforge.com](mailto:admin@wealthforge.com) or call 866.603.4082.

### Categories of Personal Information Company collects

Section 3 above details the categories of personal information Company collects from investors or their financial professional.

### Categories of Personal Information Company has sold in the past twelve (12) months.

Company acts solely as a service provider and does not sell personal information.

### Categories of Personal Information Company has disclosed in the past twelve (12) months

Section 4 above details how Company uses your personal information. Information provided by you in the investment documents may also be shared with the issuer of the offering in which you have expressed an interest, third-party intermediaries providing services for that issuer, as well as other companies providing services in connection with the offering, such as, escrow agents and banks, credential-checking services, the issuer's special purpose vehicle(s) for that offering, and other financial intermediaries. In each case, disclosure is subject to applicable privacy law and is limited to the extent the third party needs the information.

Company has disclosed the following types of personal information to third-parties in the past twelve (12) months:

- To issuers of securities: name, date of birth, accreditation status, SSN, bank account information, suitability information (including income or net worth estimates).
- To broker-dealers or advisors: name, date of birth, accreditation status, SSN, bank account information, suitability information (including income or net worth estimates) of their subscribers.
- To regulators: name, date of birth, accreditation status, SSN, bank account information, suitability information (including income or net worth estimates).
- To third-party service providers: name, date of birth, SSN, bank account information.

Any information provided to Company will be used for the purpose of completing the transaction.

In addition, if you are a California resident, California Civil Code Section 1798.83 permits you to request information regarding the disclosure of your personal information by the Company to its affiliates and/or third parties for their direct marketing purposes.

To make such a request, please send an email with your first name, last name, mailing address, email address, and telephone number to [admin@wealthforge.com](mailto:admin@wealthforge.com). Please include "California Privacy Rights" in the subject line of your email. You may also make such a request by writing to us at the address set forth in the Contacting Us section.

### **Nevada Residents**

Nevada law requires us to disclose that you may elect to be placed on our internal do-not-call list by calling us at 804-308-0431. For further information, contact the Nevada Attorney General's office at 555 E. Washington Ave., Suite 3900, Las Vegas, NV 89101; by phone at 702-486-3132; or by email at [BCPINFO@ag.state.nv.us](mailto:BCPINFO@ag.state.nv.us).

## **8. Notice to European Union Members**

Data subjects in the European Union have the following principal rights under data protection law:

1. the right to withdraw consent;
2. the right to access;
3. the right to rectification;
4. the right to erasure;
5. the right to restrict processing;
6. the right to data portability;
7. the right to object to processing;
8. the right not to be subject to decisions made solely on automated processing; and
9. the right to complain to a supervisory authority.

To limit our collection, storage, or sharing please contact our Data Protection Officer, Chris Rohde, as provided below.

## **9. Contacting Us**

If you have questions regarding our Privacy Statement, its implementation, or failure to adhere to this Privacy Statement and/or our general practices, please contact us at: [admin@wealthforge.com](mailto:admin@wealthforge.com) or send your comments to:

WealthForge Attention: Privacy Statement Representative and Data Protection Officer  
3015 W. Moore St., Suite 102  
Richmond, VA 23230