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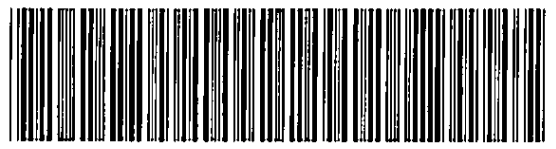
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CORPORATION SERVICE COMPANY
1201 Hays Street
Tallahassee, FL 32301
Phone: 850-558-1500

ACCOUNT NO. : I20000000195

REFERENCE : 314435 8142135

AUTHORIZATION :

COST LIMIT : \$ CHECK PROVIDED

ORDER DATE : July 20, 2018

ORDER TIME : 1:10 PM

ORDER NO. : 314435-025

CUSTOMER NO: 8142135

FOREIGN FILINGS

NAME: EXCHANGERIGHT NET LEASED
PORTFOLIO 23 DST

XXXX QUALIFICATION (TYPE: CO)

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

_____ CERTIFIED COPY
XX _____ PLAIN STAMPED COPY
_____ CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Roxanne Turner -- EXT# 62969

**AFFIDAVIT TO THE FLORIDA SECRETARY OF STATE
TO FILE OR QUALIFY**

ExchangeRight Net Leased Portfolio 23 DST

A Delaware Statutory TRUST

In accordance with Section 609.02 of the Florida Statutes, pertaining to Common Law Declarations of Trust, the undersigned, the Chairman of the Board of Trustees of ExchangeRight Net Leased Portfolio 23 DST, a

Delaware (Name of Trust)
Trust hereby affirms in order to file or qualify

(State)
ExchangeRight Net Leased Portfolio 23 DST, in the State of Florida.
(Name of Trust)

1. Two or more persons are named in the Trust.

2. The principal address is 1055 E. Colorado Blvd., Ste. 310 Pasadena, CA
91106

3. The registered agent and street address in the State of Florida is:
CORPORATION SERVICE COMPANY

1201 HAYS STREET, TALLAHASSEE, FL 32301

4. Acceptance by the registered agent: Having been named as registered agent to accept service of process for the above named Declaration of Trust at the place designated in this affidavit, I hereby accept the appointment as registered agent and agree to act in this capacity.

Roxanne Turner

**Roxanne Turner
Asst. Vice President**

(Signature of Registered Agent)

5. I certify that the attached is a true and correct copy of the Declaration of Trust under which the association proposes to conduct its business in Florida.

[Signature]

Name:
Chairman of the Board of Trustees

NOTARY

Filing Fee: \$350.00
Certified Copy: \$ 8.75 (optional)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles)

On August 1, 2018 before me, J. Chase, Notary Public
(insert name and title of the officer)

personally appeared Warren Thomas
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

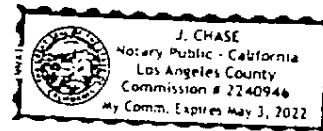
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

J. Chase

(Seal)



Delaware

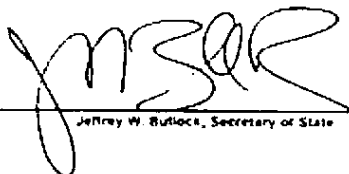
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The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "EXCHANGERIGHT NET LEASED PORTFOLIO 23 DST" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTIETH DAY OF JULY, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "EXCHANGERIGHT NET LEASED PORTFOLIO 23 DST" WAS FORMED ON THE TENTH DAY OF MAY, A.D. 2018.




Jeffrey W. Bullock, Secretary of State

6880633 8300

Authentication: 203103335

TRUST AGREEMENT
OF
EXCHANGERIGHT NET LEASED PORTFOLIO 23 DST
DATED AS OF
MAY 10, 2018
BY AND AMONG
EXCHANGERIGHT NET LEASED PORTFOLIO 23, LLC,
AS DEPOSITOR,
EXCHANGERIGHT ASSET MANAGEMENT, LLC,
AS MANAGER
AND
GREGORY HARRISON,
AS TRUSTEE

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**TRUST AGREEMENT
OF
EXCHANGERIGHT NET LEASED PORTFOLIO 23 DST,
A DELAWARE STATUTORY TRUST**

This Trust Agreement, dated as of May 10, 2018 (as the same may be amended or supplemented from time to time, this "**Trust Agreement**"), is made by and among ExchangeRight Net Leased Portfolio 23, LLC, an Iowa limited liability company (the "**Depositor**"), ExchangeRight Asset Management, LLC, a California limited liability company, as Manager (the "**Manager**"), and Gregory Harrison, as Trustee (the "**Trustee**").

RECITALS

A. The Depositor and Trustee have agreed to form a statutory trust in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. §§3801 *et seq.* (the "**Statutory Trust Act**").

B. The Depositor has agreed to acquire certain properties as more particularly described on Exhibit A (collectively, the "**Real Estate**") from various unaffiliated third party sellers (collectively, "**Sellers**").

C. The Depositor intends to assign the Real Estate and the Loan used to partially fund the purchase of the Real Estate (as hereinafter defined) obtained from Bank of America, N.A. (the "**Lender**"), and pay \$100 in cash to the Trust (as hereinafter defined) pursuant to this Trust Agreement in exchange for 100 newly-issued Class 2 Beneficial Interests (as hereinafter defined) in the Trust issued to Depositor.

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

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

F. The Real Estate is intended to be subject to certain Financing Documents (as hereinafter defined), the Master Lease Agreement and the underlying tenant leases.

G. Concurrently with the receipt of the Real Estate and assumption of the Loan, the Trust will enter into a Master Lease Agreement with ExchangeRight NLP 23 Master Lessee, LLC,

a Delaware limited liability company ("**Master Lessee**") an Affiliate of the Depositor, under which the Trust will assign to the Master Lessee all rights and obligations under the leases to which the Real Estate is currently subject and the Master Lessee will pay the Annual Base Rent (as hereinafter defined) to the Trust.

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

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

ARTICLE I DEFINITIONS AND INTERPRETATION

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

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

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

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

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

"Business Day" means any day other than a Saturday, Sunday or any other day on which national banks in New York, New York or Charlotte, North Carolina, or the place of business of the trustee under a Securitization (or, if no Securitization has occurred, Lender), or any servicer of the Loan or the financial institution that maintains any collection account for or on behalf of any servicer of the Loan or any Reserve Funds or the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business.

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

"Class 1 Beneficial Interests" means the Beneficial Interests held by the Investors.

"Class 2 Beneficial Interests" means the Beneficial Interests held by the Depositor.

"Class 1 Beneficial Owners" means the holders of Class 1 Beneficial Interests.

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

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

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

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

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

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

“Deposit Date” means the date of the transfer of the Real Estate to the Trust.

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

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

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

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

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

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

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

“Independent Director” means a trustee of the Trust, who shall be an individual with at least three (3) years of employment experience serving as an independent director at the time of appointment who is provided by, and is in good standing with, CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional independent directors, trustees or managers or, after a Securitization is not acceptable to the Rating Agencies (as defined in the Loan Agreement), another nationally-recognized company reasonably approved by Lender and if required by Lender after a Securitization, the Rating Agencies, in each case that is not an Affiliate of the Trust and that provides professional independent directors, trustees or managers and other corporate services in

the ordinary course of its business, and which individual is duly appointed as a trustee of the Trust and is not, and has never been, and will not while serving as independent director, trustee or manager be: (i) a member (other than an independent, non-economic "springing" member), partner, equityholder, beneficiary, manager, director, officer or employee of the Trust, or any of its respective equityholders, beneficiaries or Affiliates (other than as an independent director, trustee or manager of an Affiliate of the Trust that is not in the direct chain of ownership of the Trust and that is required by a creditor to be a single purpose bankruptcy remote entity, provided that such independent director, trustee or manager is employed by a company that routinely provides professional independent directors, trustees or managers in the ordinary course of business); (ii) a customer, creditor, supplier or service provider (including provider of professional services) to the Trust or any of its respective equityholders, beneficiaries or Affiliates (other than a nationally-recognized company that routinely provides professional independent directors, trustees or managers and other corporate services to the Trust or any of its respective equityholders, beneficiaries or Affiliates in the ordinary course of business); (iii) a family member of any such member, partner, equityholder, beneficiary, manager, director, officer, employee, creditor, supplier or service provider; or (iv) a Person that Controls or is under common Control with (whether directly, indirectly or otherwise) any of the Persons referred to in clauses (i), (ii) or (iii) above. A natural person who otherwise satisfies the foregoing definition other than subparagraph (i) by reason of being the independent director or trustee shall not be disqualified from serving as an independent director or trustee of the Trust, provided that the fees that such individual earns from serving as independent directors, trustees or managers of such Affiliates in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year.

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

"Investors" means purchasers of Class 1 Beneficial Interests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Property Manager” means NLP Management, LLC, an Iowa limited liability company or any successor property manager appointed pursuant to the terms of this Trust Agreement.

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

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

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

“Real Estate Agreement” means the purchase agreements relating to the Real Estate between Depositor and Sellers, and all amendments and supplements thereto, together with all other documents and agreements executed in connection therewith or contemplated thereby.

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

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

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

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

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

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

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

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

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

“Transaction Documents” means the Trust Agreement, the Purchase Agreement, the Master Lease Agreement and the Financing Documents, together with any other documents to be executed in furtherance of the investment activities of the Trust.

“Trust” means ExchangeRight Net Leased Portfolio 23 DST, a Delaware statutory trust formed by and in accordance with, and governed by, this Trust Agreement.

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

“Trust Estate” means all of the Trust’s right, title, and interest in and to (a) the real property,

consisting of all the Real Estate and improvements thereon, (b) the rights and remedies under the Master Lease Agreement, (iii) the specified payments required to be made under the tenant leases with respect to the Real Estate, (iv) amounts in or to be deposited in the Reserves, and (v) any proceeds of the foregoing.

“Trust Year” means (a) initially, the period of time commencing on the Deposit Date and ending on the date that is 12 months later and (b) subsequently, each successive 12-month period thereafter.

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

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

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

ARTICLE 2 GENERAL MATTERS

Section 2.1 Organizational Matters.

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

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

(c) The name of the Trust is “ExchangeRight Net Leased Portfolio 23 DST.” Any reference to the Trust shall be a reference to the statutory trust formed pursuant to the Certificate of Trust and this Trust Agreement and not to the Trustee or the Manager individually or to the officers, agents or employees of the Trust, the Trustee or the Manager or any agents or representatives thereof.

(d) The principal office of the Trust, and such additional offices as the Manager may determine to establish, shall be located at such places inside or outside of the State of Delaware as the Manager shall designate from time to time. As of the Effective Date, the principal office of the Trust is located c/o the Manager at 1055 E. Colorado Blvd., Suite 310, Pasadena, CA 91106.

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

Section 2.2 Declaration of Trust and Statement of Intent.

(a) The Trustee hereby declares that it shall hold the Trust Estate in trust for the

benefit of the Beneficial Owners upon the terms set forth in this Trust Agreement.

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

Section 2.3 Purposes. The purposes of the Trust are, subject to this Trust Agreement, to: (a) acquire the Real Estate and enter into the Master Lease Agreement and the Financing Documents; (b) preserve the capital investment of the Investors; (c) realize income through the ownership and eventual sale or disposition of the Real Estate; (d) make monthly distributions to the Investors from cash generated by ownership of the Real Estate; and (e) take only such other actions as the Manager deems necessary to carry out the foregoing.

ARTICLE 3 PROVISIONS RELATING TO THE LOAN AND TAX TREATMENT

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

Section 3.2 Provisions Relating to Loan.

(a) This Section 3.2 is intended to qualify the Trust as a special purpose bankruptcy remote entity for purposes of the Loan and pursuant to the Loan Agreement. So long as any portion of the Loan is outstanding the provisions of this Section 3.2 shall be in full force and effect; provided, however, that the provisions of this Section 3.2 shall cease to be of force or effect following the repayment or defeasance of the Loan in full, in each case in accordance with the terms and conditions of the Financing Documents. Without limiting the foregoing, all of the terms of this Trust Agreement are further limited by and subject to the provisions of the Financing Documents while the Loan or any portion thereof is outstanding.

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

(c) The Manager shall cause the Trust to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights and franchises. In furtherance of the foregoing, and notwithstanding any provision hereof to the contrary, so long as any obligations secured by the Note (as defined in the Loan Agreement) remain outstanding and

not discharged in full, the Manager covenants that the Trust has not and will not:

- (1) engage in any business or activity other than the ownership, operation and maintenance of the Real Estate, and activities incidental thereto;
- (2) acquire or own any assets other than such party's interest in (i) the Real Estate, and (ii) such incidental Personal Property (as defined in the Loan Agreement) as may be necessary for the ownership and operation of the Real Estate;
- (3) merge into or consolidate with any Person, or dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;
- (4) (i) fail to observe all organizational formalities necessary to maintain its separate existence, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Legal Requirements (as defined in the Loan Agreement) of the jurisdiction of its organization or formation, or (ii) amend, modify, terminate or fail to comply with the provisions of its organizational documents, in each case without the prior written consent of Lender;
- (5) own any subsidiary, or make any investment in, any Person;
- (6) commingle its assets with the assets of any other Person, or permit any Affiliate or constituent party independent access to its bank accounts;
- (7) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt (as defined in the Loan Agreement) and the Permitted Debt (as defined in the Loan Agreement);
- (8) fail to maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person; except that Trust's financial position, assets, liabilities, net worth and operating results may be included in the consolidated financial statements of an Affiliate, provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separate identity of Trust from such Affiliate and that Trust's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person, and (ii) Trust's assets, liabilities and net worth shall also be listed on Trust's own separate balance sheet;

- (9) except for capital contributions or capital distributions permitted under the terms and conditions of the Trust's organizational documents and properly reflected on its books and records, enter into any transaction, contract or agreement with any Beneficial Owner or guarantor of the obligations of Trust, or any Affiliate of the foregoing, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;
- (10) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
- (11) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets to secure the obligations of any other Person or hold out its credit or assets as being available to satisfy the obligations of any other Person;
- (12) make any loans or advances to any Person, or own any stock or securities of, any Person, or buy or hold evidence of indebtedness issued by any other Person;
- (13) fail to (i) file its own tax returns separate from those of any other Person, except to the extent that Trust is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable Legal Requirements, and (ii) pay any taxes required to be paid under applicable Legal Requirements; provided, however, that the Trust shall not have any obligation to reimburse its equityholders or their Affiliates for any taxes that such equityholders or their Affiliates may incur as a result of any profits or losses of the Trust;
- (14) fail to (i) hold itself out to the public as a legal entity separate and distinct from any other Person, (ii) conduct its business solely in its own name or (iii) correct any known misunderstanding regarding its separate identity;
- (15) fail to intend to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require the Beneficial Owners to make additional capital contributions to Trust;
- (16) without the unanimous written consent of all of its trustees or Beneficial Owners, and the written consent of all directors or managers of Trust or each SPE Component Entity (as defined in the

Loan Agreement), as applicable, including, without limitation, each Independent Director, take any Material Action or action that might cause such entity to become insolvent:

- (17) fail to fairly and reasonably allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an Affiliate) among the Persons sharing such expenses;
- (18) fail to intend to remain solvent or pay its own liabilities (including, without limitation, salaries of its own employees) only from its own funds; provided, however, that the foregoing shall not require Trust's Beneficial Owners to make additional capital contributions to Trust;
- (19) acquire obligations or securities of its Beneficial Owners or their affiliates, as applicable;
- (20) fail to maintain a sufficient number of employees in light of its contemplated business operations;
- (21) fail to maintain and use separate stationery, invoices and checks bearing its own name;
- (22) have any of its obligations guaranteed by an Affiliate, except as contemplated by the Loan Documents;
- (23) identify itself as a department or division of any other Person; or
- (24) violate or cause to be violated the assumptions made with respect to the Trust, Guarantor, Master Lessee or any SPE Component Entity in any Insolvency Opinion.

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

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

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

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

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

Section 3.3 Provisions Relating to Tax Treatment.

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

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

(c) It is the intention of the parties hereto that upon and at all times after the issuance of the Conversion Notice that the Trust shall constitute an investment trust pursuant to Regulation Section 301.7701-4(c) and each Beneficial Owner shall be treated as a "grantor" within the meaning of Code Section 671. As such, the parties further intend that each Beneficial Owner shall be treated for federal income tax purposes (but not for any other purposes) as if it holds a direct ownership interest in the Real Estate and all other assets comprising the Trust Estate. Each Beneficial Owner agrees to report its interest in the Trust in a manner consistent with the foregoing and otherwise not to take any action that would be inconsistent with the foregoing. Upon and after issuance of the Conversion Notice, none of the Trustee, the Manager, the Beneficial Owners and/or the Trust shall have any power and authority, or shall be authorized, and each of them is hereby expressly prohibited from taking, and none of them shall be allowed to take, any of the following actions:

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

(2) invest any cash held by the Trust (including Reserves) in anything

other than U.S. Treasury obligations or deposits in federally-insured institutions;

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

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

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

(6) renegotiate, alter or extend the terms of the Master Lease Agreement or enter into new leases, except in the case of the Master Lessee's bankruptcy or insolvency;

(7) make any modifications to the Real Estate other than minor non-structural modifications or repairs as necessary to maintain the Real Estate in as good as a state as it is on the date hereof, subject to wear and tear, or unless required by law;

(8) accept any capital contributions from a Beneficial Owner or other Person (other than capital from an Investor that will be distributed to the Depositor and reduce the Depositor's Percentage Share pursuant to this Trust Agreement); or

(9) take any other action which would cause the Trust to be treated as a business entity for federal income tax purposes if the effect would be that such action or actions would constitute a power under the Trust Agreement to "vary the investment of the certificate holders" under Regulations Section 301.7701-4(c)(1) and Rev. Rul. 2004-86.

The Trust shall hold the Trust Estate for investment purposes and only lease the Real Estate to the Master Lessee. Except in the case of the Master Lessee's bankruptcy or insolvency, the activities of the Trust with respect to the Trust Estate shall be limited to the activities which are customary services in connection with the maintenance and repair of the Real Estate or necessary to cause the Trust and/or the Real Estate to comply with all applicable law, and none of the Trustee, Beneficial Owners, the Manager and their agents shall provide non-customary services, as such term is defined in Code Sections 512 and 856 and Rev. Rul. 75-374, 1975-2 C.B. 261. The Trust shall conduct no business other than as specifically set forth in Section 2.3 and this Section 3.3. Without limiting the generality of the foregoing, upon and after issuance of the Conversion Notice, (1) none of the Trustee, the Manager, the Beneficial Owners and the Trust shall have any power or authority to undertake any actions that are not permitted to be undertaken by an entity that is treated as a "trust" within the meaning of Regulations Section 301.7701-4 and not treated as a "business entity" within the meaning of Regulations Section 301.7701-3, and (2) this Trust Agreement shall be interpreted and enforced so as to be in compliance with the requirements of Rev. Rul. 2004-86, 2004-33 I.R.B. 191.

For federal income tax purposes, after issuance of the Conversion Notice, the Trust is intended to be and shall constitute an investment trust pursuant to Regulations Section 301.7701-4(c) and shall not constitute a "business entity."

ARTICLE 4
CONCERNING THE TRUSTEE

Section 4.1 Power and Authority. The Trustee shall have full power and authority, and is hereby authorized and empowered, to (a) accept legal process served on the Trust in the State of Delaware; and (b) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State, and take such action or refrain from taking such action under this Trust Agreement as may be directed in a writing delivered to the Trustee by the Manager; provided, however, that the Trustee shall not be required to take or refrain from taking any such action if the Trustee shall believe, or shall have been advised by counsel, that such action or lack of action is (1) reasonably likely to involve the Trustee in personal liability, (2) contrary to the terms of this Trust Agreement, the Financing Documents or of any document contemplated hereby to which the Trust or the Trustee is or becomes a party, or (3) otherwise contrary to applicable law. The Manager agrees not to instruct the Trustee to do any of the foregoing actions or take any action that is contrary to the terms of this Trust Agreement, the Financing Documents, or of any document contemplated hereby to which the Trust or the Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided in this Trust Agreement, the Trustee shall have no duty to take any action for or on behalf of the Trust.

Section 4.2 Trustee May Request Direction. If at any time the Trustee determines that it requires or desires guidance regarding the application of any provision of this Trust Agreement or any other document, any action that must or may be taken in connection herewith or therewith, or compliance with any direction it received hereunder, then the Trustee may deliver a notice to a court of applicable jurisdiction requesting written instructions as to the desired course of action. Such instructions as received from the court shall constitute full and complete authorization and protection for actions taken and other performance by the Trustee in reliance thereon. After delivering such notice, and until it has received such instructions, the Trustee shall be fully protected in refraining from taking any action with respect to the matters described in such notice.

Section 4.3 Trustee's Capacity. In accepting the trust hereby created, the Person acting as Trustee hereunder acts solely in such capacity and not in its individual capacity, and all Persons having any claim against the Trustee by reason of the transactions contemplated by this Trust Agreement, the Transaction Documents or any other document shall look only to the Trust Estate for payment or satisfaction thereof. Notwithstanding any provision of this Trust Agreement or any other document to the contrary, under no circumstances shall the Trustee, in its individual capacity or in its capacity as Trustee, (a) have any duty to choose or supervise, nor shall it have any liability for the actions or inactions of, the Manager or any officer, manager, employee, or other Person (other than itself and its own employees), or (b) be liable or responsible for, or obligated to perform, any contract, representation, warranty, obligation or liability of the Trust, the Manager or any officer, manager, employee or other Person (other than itself and its own employees); provided, however, that this limitation shall not protect the Trustee against any liability to the Beneficial Owners to which it would otherwise be subject by reason of its willful misconduct, bad faith, fraud or gross negligence in the performance of its duties as Trustee under this Trust Agreement.

Section 4.4 Duties. The Trustee has primary responsibility for performing the actions set forth in Section 4.1. None of the Trustee or any successor trustee, in its individual capacity and as Trustee, shall have any duty or obligation under or in connection with this Trust Agreement, the Trust or any transaction or document contemplated hereby except as expressly provided by the terms of this Trust Agreement, and no implied duties or obligations shall be read into this Trust Agreement against the Trustee or any successor trustee. The right of the Trustee to perform any discretionary act enumerated herein shall not be construed as a duty. To the fullest extent permitted by applicable law, including without limitation Section 3806 of the Statutory Trust Act, the Trustee's or any successor trustee's duties (including fiduciary duties, if any) and liabilities relating thereto to the Trust and the Beneficial Owners shall be restricted to those duties (including fiduciary duties, if any) expressly set forth in this Trust Agreement and liabilities relating thereto.

Section 4.5 Indemnification. The Manager hereby agrees to (a) reimburse the Trustee or any successor trustee, in its individual capacity and as Trustee, for all reasonable expenses (including reasonable fees and expenses of counsel and other professionals) incurred in connection with the negotiation, execution, delivery, or performance of, or exercise of rights or powers under, this Trust Agreement, (b) indemnify, defend and hold harmless, to the fullest extent permitted by applicable law, the Trustee or any successor trustee, in its individual capacity and as Trustee, and the officers, directors, employees and agents of the Trustee or any successor trustee, in its individual capacity and as Trustee, (collectively, the "Trustee Indemnified Persons") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including reasonable fees and expenses of counsel and other professionals), taxes and penalties of any kind and nature whatsoever arising out of or imposed upon or asserted at any time against such Trustee Indemnified Persons, including, without limitation, on the basis of ordinary negligence on the part of any such Trustee Indemnified Persons, with respect to or in connection with this Trust Agreement, the Trust, or any transaction or document contemplated hereby (collectively, "Trustee Covered Expenses"); provided, however, that the Manager shall not be required to indemnify a Trustee Indemnified Person for Trustee Covered Expenses to the extent such Trustee Covered Expenses result from the willful misconduct, bad faith, fraud or gross negligence of such Trustee Indemnified Person, and (c) advance to each such Trustee Indemnified Person, to the fullest extent permitted by applicable law, Trustee Covered Expenses incurred by such Trustee Indemnified Person in defending any claim, demand, action, suit or proceeding in connection with this Trust Agreement, the Trust or any transaction or document contemplated hereby prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Manager of an undertaking, by or on behalf of such Trustee Indemnified Person, to repay such amount if a court of competent jurisdiction renders a final, nonappealable judgment that includes a specific finding of fact that such Trustee Indemnified Person is not entitled to be indemnified therefor under this Section 4.5. The obligations of the Manager under this Section 4.5 shall survive the resignation or removal of the Trustee, the dissolution and termination of the Trust, and the termination, amendment, supplement and/or restatement of this Trust Agreement. The obligations of the Manager under this Section 4.5 shall be obligations irrespective of the sufficiency or insufficiency of the Trust Estate to satisfy any such obligations (but the foregoing reference to the Trust Estate shall not be construed to create any obligation on the part of the Trust for the indemnification obligations of the Manager hereunder; it being agreed that, so long as the Loan or any portion thereof is outstanding, except for funds that are permitted to be distributed to the Manager or Beneficial Owners pursuant to the Financing Documents, the Trustee may not look to the Trust Estate for satisfaction of any indemnification obligations of the Manager hereunder).

Section 4.6 Removal; Resignation; Succession.

(a) The Trustee may resign at any time by giving at least 60 days' prior written notice to the Manager and the Lender.

(b) The Manager may at any time remove the Trustee for cause by written notice to the Trustee. For purposes of this Section 4.6, "cause" shall only result from the willful misconduct, bad faith, fraud or gross negligence of the Trustee.

(c) Such resignation or removal as set forth above shall be effective upon the acceptance of appointment by a successor trustee as hereinafter provided. In case of the removal or resignation of the Trustee, the Manager may appoint a successor trustee by written instrument, provided that, if the Loan or any portion thereof is outstanding, a Lender Consent has been obtained. In case of the resignation of the Trustee, if a successor trustee shall not have been appointed within 60 days after the Trustee gives notice of its resignation, the Trustee or any of the Beneficial Owners may apply to any court of competent jurisdiction in the United States to appoint an interim successor trustee to act until such time, if any, as a successor trustee shall have been appointed as provided above and provided a Lender Consent is obtained if the Loan or any portion thereof is outstanding. Any successor trustee so appointed by such court shall immediately and without further act be superseded by any successor trustee appointed as provided above within one year from the date of the appointment by such court. Any successor trustee, however appointed, shall execute and deliver to its predecessor trustee an instrument accepting such appointment, and thereupon such successor trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor trustee in the trusts under this Trust Agreement with like effect as if originally named the Trustee herein. Notwithstanding the foregoing, upon the written request of such successor trustee, such predecessor shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, duties and trusts of such predecessor trustee, and such predecessor trustee shall duly assign, transfer, deliver and pay over to such successor trustee all monies or other property then held by such predecessor trustee upon the trusts herein expressed. Any rights of the Beneficial Owners against a predecessor trustee in its individual capacity shall survive the resignation or removal of such predecessor trustee, shall survive the dissolution and termination of the Trust and shall survive the termination, amendment, supplement and/or restatement of this Trust Agreement.

(d) Any successor trustee, however appointed, shall be a bank or trust company satisfying the requirements of Section 3807(a) of the Statutory Trust Act. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Trustee may be transferred, shall, subject to the preceding sentence, be the Trustee under this Trust Agreement without further act.

Section 4.7 Fees and Expenses. The Trustee shall receive as compensation for its services hereunder (i) an annual fee of \$750 payable upon the execution of this Trust Agreement, and (ii) an annual fee of \$750 payable on each anniversary of the Effective Date, which \$750 fees shall be payable by the Trust along with its annual accounting fees of the Trust which shall be payable out of the \$25,000 being annually reserved for Bank Fees, Tax Preparation, and Filing Costs. The Trustee shall not have any obligation by virtue of this Trust Agreement to spend any of its own funds or to take any action that could result in its incurring any cost or expense.

Section 4.8 Independent Director Provisions. During the term of this Trust Agreement (i) at all times there shall be, and the Trust shall cause there to be, at least one Independent Director, and the Trustee shall be an Independent Director; (ii) the Trustee shall not take any Material Action which, under the terms of the Certificate of Trust or Trust Agreement requires unanimous vote of the trustees or managers of the Trust, unless at the time of such action there shall be at least one trustee who is an Independent Director; (iii) the Trust shall not, without the unanimous written consent of its Trustee or Manager, including the Independent Director, on behalf of itself, take any Material Action or any action that might cause the Trust to become insolvent, and when voting with respect to such matters, the Trustee shall, to the fullest extent permitted by law, including Section 18-1101(c) of Chapter 18 of Title 6 of the Delaware Code, as amended from time to time (the "Act"), and notwithstanding any duty otherwise existing at law or in equity, consider only the interests of the Trust (including its respective creditors), and except for its duties to the Trust with respect to voting on matters as set forth immediately above (which duties shall extend to the constituent equity owners and/or beneficiaries of the Trust solely to the extent of their respective economic interests in the Trust, but shall exclude (A) all other interests of such constituent equity owners and/or beneficiaries, (B) the interests of other Affiliates of the Trust, and (C) the interests of any group of Affiliates of which the Trust is a part), the Trustee shall not have any fiduciary duties to such constituent equity owners or beneficiaries, any officer or any other Person; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing; and (iv) no Trustee of the Trust may be removed or replaced other than as a result of an Independent Director Event, and any such removal or replacement shall not occur unless the Trust provides Lender with not less than five (5) Business Days' prior written notice of (a) any proposed removal of Trustee, together with a statement as to the reasons for such removal, and (b) the identity of the proposed replacement Trustee, together with a certification that such replacement satisfies the requirements set forth in the organizational documents (including, without limitation, this Trust Agreement) for a Trustee; provided, however, no resignation or removal of the Trustee shall be effective until a successor Trustee is appointed and has accepted his or her appointment.

ARTICLE 5 CONCERNING THE MANAGER

Section 5.1 Power and Authority. The activities and affairs of the Trust shall be managed exclusively by or under the direction of the Manager. Except where this Trust Agreement requires the joint action of the Manager and the Trustee, the Manager shall have full power and authority, and is hereby authorized and empowered, to manage the Trust Estate and the activities and affairs of the Trust, execute and deliver all documents (including, without limitation, the Transaction Documents) for or on behalf of the Trust, and cause the Trust to sue or be sued under its name, subject to and in accordance with the terms and provisions of this Trust Agreement; provided, however, that the Manager shall have no power to engage on behalf of the Trust in any

activities that the Trust could not engage in directly; further provided, however, that the Manager shall at all times be subject to the control and authority of the Trust. The Manager shall have the power and authority, and is hereby authorized, empowered and directed by the Trust, to enter into, execute and deliver, and to cause the Trust to perform its obligations under, each of the Transaction Documents to which the Trust is or becomes a party or signatory and, in furtherance thereof, the Class 2 Beneficial Owner, at any time prior to the issuance of the Conversion Notice, may confirm such authorization, empowerment and direction and otherwise direct the Manager in connection with the management of the activities and affairs of the Trust. The Manager may, in its sole discretion, employ such Persons (on its own behalf, or on behalf of the Trust, as the case may be), including Affiliates of the Manager, as it deems necessary for the efficient operation of the Trust.

Section 5.2 Manager's Capacity. The Manager acts solely as an agent of the Trust and not in its individual capacity, and all Persons having any claim against the Manager by reason of the transactions contemplated by this Trust Agreement, the Transaction Documents or any other document shall look only to the Trust Estate for payment or satisfaction thereof. Notwithstanding any provision of this Trust Agreement to the contrary, the Manager shall not have any liability to any Person except for (i) its own willful misconduct, bad faith, fraud or gross negligence in the performance of its duties as Manager under this Trust Agreement and (ii) the obligations set forth in Section 4.5.

Section 5.3 Duties.

(a) The Manager has primary responsibility for performing the administrative actions set forth in this Section 5.3. In addition, the Manager shall have the obligations with respect to a Conversion and a potential Disposition of the Trust Estate as set forth in Article 9. The Manager shall not have any duty or obligation under or in connection with this Trust Agreement, the Trust or any transaction or document contemplated hereby, except as expressly provided by the terms of this Trust Agreement, and no implied duties or obligations shall be read into this Trust Agreement against the Manager. The right of the Manager to perform any discretionary act enumerated herein shall not be construed as a duty. To the fullest extent permitted by applicable law, including without limitation Section 3806 of the Statutory Trust Act, the Manager's duties (including fiduciary duties, if any) and liabilities relating thereto to the Trust and the Beneficial Owners shall be restricted to those duties (including fiduciary duties, if any) expressly set forth in this Trust Agreement and liabilities relating thereto. The Manager expressly reserves the right to invest in, pursue, develop, own, manage, operate or otherwise participate in (including, without limitation, as an investor in, lender to or consultant or advisor to, or director, officer or manager of, any other entity) all business opportunities of any nature for its own account, including opportunities that may directly or indirectly compete with the Trust or the Real Estate. The Manager shall not have any obligation to first present such business opportunities to the Trust or allow the Trust or any Beneficial Owners to share or participate in such other investments or activities or to the income or proceeds derived therefrom.

(b) Without limiting the generality of Section 5.3(a), upon and after the issuance of the Conversion Notice, the Manager is hereby authorized and directed, as agent of the Trust, to take each of the following actions necessary to conserve and protect the Trust Estate:

- (1) acquire title to the Real Estate subject to the tenant leases;

- (2) enter into and comply with the terms of the Financing Documents;
- (3) enter into the Master Lease Agreement with the Master Lessee;
- (4) collect rents and make distributions in accordance with Article 7;
- (5) enter into any agreement for purposes of enabling one or more of the Beneficial Owners to complete exchanges of real property with a Qualified Intermediary as defined in Code Section 1031 (provided that in no event shall the Trust acquire title to any real property other than the Real Estate);
- (6) notify the relevant parties of any default by them under the Transaction Documents; and
- (7) solely to the extent necessitated by the bankruptcy or insolvency of the Master Lessee, if the Trust has not terminated under Section 9.2, enter into a new Master Lease Agreement or other arrangement with respect to the Real Estate or renegotiate or refinance any debt secured by the Real Estate (including, without limitation, the Loan).

(c) The Manager shall keep customary and appropriate books and records relating to the Trust and the Trust Estate and shall certify reports regarding same to the Lender (if required by the Financing Documents). The Manager will keep customary and appropriate books and records of account for the Trust at the Manager's principal place of business. The Owners (or their duly authorized representatives) may inspect, examine and copy the Trust's books and records at any time during normal business hours. The Manager shall maintain appropriate books and records in order to provide reports of income and expenses to each Beneficial Owner as necessary for such Beneficial Owner to prepare their income tax returns.

(d) The Manager shall promptly furnish (1) to the Beneficial Owners copies of all reports, notices, requests, demands, certificates, financial statements and any other writings required to be distributed to them pursuant to the Transaction Documents (unless the Manager reasonably believes the same to have been sent directly to the Beneficial Owners) and (2) to the Lender all documents required by the Financing Documents.

(e) The Manager shall not be required to act or refrain from acting under this Trust Agreement or the Financing Documents if the Manager reasonably determines, or has been advised by counsel, that such actions or lack of action may result in personal liability, unless the Manager is indemnified by the Trust and the Beneficial Owners against any liability and costs (including reasonable legal fees and expenses) in a manner and form reasonably satisfactory to the Manager.

(f) The Manager shall not, on its own behalf (as opposed to actions that the Manager is required to perform on behalf of the Trust), have any duty to (1) (i) file, record or deposit any document, (ii) maintain any such filing, recording or deposit or (iii) refile, rerecord or redeposit any such document, (2) obtain or maintain any insurance on the Real Estate, (3) maintain the Real Estate, (4) pay or discharge any tax levied against any part of the Trust Estate, (5) confirm, verify, investigate or inquire into the failure to receive any reports or financial statements from any party obligated under the Financing Documents to provide such reports or financial statements,

(6) inspect the Real Estate at any time, or (7) ascertain or inquire as to the performance or observance of any of the covenants of any Person under the Financing Documents.

(g) The Manager shall manage, control, dispose of or otherwise deal with the Trust Estate consistent with its duties to conserve and protect the Trust Estate, subject to any restrictions required by the Financing Documents, the Master Lease Agreement or otherwise as provided in this Trust Agreement.

(h) The Manager shall provide to each Person who becomes a Beneficial Owner a copy of this Trust Agreement at or before the time, in the sole discretion of the Manager, such Person becomes a Beneficial Owner.

(i) The Manager shall provide to the Trustee a copy of the Ownership Records contemporaneously with each revision thereto.

(j) All payments to be made by the Manager under this Trust Agreement shall be made from the Trust Estate.

Section 5.4 Fees and Expenses. For services rendered in connection with the management of the Properties pursuant to a separate Property Management Agreement between the Depositor and Property Manager and assigned to the Trust, the Property Manager shall receive an annual fee ranging from 2.85% - 2.90% of the gross rental income of the Properties ("Management Fee"); provided, however, a fee ranging from 0.35% - 0.40% of the Management Fee paid hereunder shall be assigned and paid to the Manager for its asset management services with respect to the Trust, as well as the fee set forth in Section 9.5. The Property Manager and the Manager shall have no obligation by virtue of this Trust Agreement to spend any of their own funds or take any action that could result in incurring any other costs. The Management Fees paid hereunder are subordinate to Lender pursuant to the Financing Documents.

Section 5.5 Disposition of Trust Estate by Manager Is Binding. Subject to the terms of the Master Lease Agreement, any Disposition or other conveyance of the Trust Estate or any part thereof by the Manager pursuant to the terms of this Trust Agreement shall bind the Trust and the Beneficial Owners and be effective to transfer or convey all rights, title and interest of the Trust and the Beneficial Owners in and to that portion of the Trust Estate sold or otherwise conveyed.

Section 5.6 Removal/ Resignation; Succession.

(a) The Manager may resign at any time by giving at least 60 days' prior written notice to the Trustee and the Lender.

(b) The Trustee may at any time remove the Manager for cause by written notice to the Manager. For purposes of this Section 5.7, "cause" shall only result from the willful misconduct, bad faith, fraud or gross negligence of the Manager.

(c) Such resignation or removal as set forth above shall be effective upon the acceptance of appointment by a successor manager as hereinafter provided. In case of the removal or resignation of the Manager, with the prior written consent of the Lender while the Loan is outstanding, the Trustee may appoint a successor manager by written instrument provided that if

the Loan or any portion thereof is outstanding a Lender Consent has been obtained. In case of the resignation of the Manager, if a successor Manager shall not have been appointed within 60 days after the Manager gives notice of its resignation, the Trustee or any of the Beneficial Owners may apply to any court of competent jurisdiction in the United States to appoint an interim successor manager to act until such time, if any, as a successor manager shall have been appointed as provided above and provided that a Lender Consent to such appointment has been obtained if the Loan or any portion thereof is outstanding. Any successor manager so appointed by such court shall immediately and without further act be superseded by a successor manager appointed as provided above within one year from the date of the appointment by such court. Any successor manager, however appointed, shall execute and deliver to its predecessor Manager an instrument accepting such appointment, and thereupon such successor, without further act, shall become vested with all the rights, powers and duties of the predecessor Manager in the trusts hereunder with like effect as if originally named the Manager herein. Notwithstanding the foregoing, upon the written request of such successor manager, such predecessor manager shall execute and deliver an instrument transferring to such successor, upon the trusts herein expressed, all the rights, powers and duties of such predecessor manager and such predecessor manager shall duly assign, transfer, deliver and pay over to such successor manager all monies or other property then held by such predecessor trustee upon the trusts herein expressed. Any right of the Beneficial Owners against a predecessor manager in its individual capacity shall survive the resignation or removal of such predecessor manager, the dissolution and termination of the Trust and the termination, amendment, supplement and/or restatement of this Trust Agreement. Notwithstanding anything to the contrary contained in this Trust Agreement, so long as the Loan or any portion thereof is outstanding, the initial Manager and any successor Manager shall, at all times be a special purpose bankruptcy remote entity.

ARTICLE 6 BENEFICIAL INTERESTS

Section 6.1 Issuance of Class 1 and Class 2 Beneficial Ownership Certificates.

(a) The Trust shall not be required to issue certificates to represent the Class 1 and Class 2 Beneficial Interests. The Percentage Share of the Class 2 Beneficial Owner prior to the issuance of any Class 1 Beneficial Interests (pursuant to Sections 6.1(b)) shall be 100%.

(b) Promptly after the issuance of the Conversion Notice pursuant to Section 6.3, the Ownership Records shall be updated with respect to each Investor who has executed a Purchase Agreement and contributed all cash required by it to be contributed to the Trust. No portion of the cash contributed by the Investors to the Trust will be placed into any Reserves with respect to the Real Estate. The amount of cash contributed by, and the Percentage Share of, each Investor shall be determined by the Manager and shall be set forth in the Purchase Agreement for each Investor. Notwithstanding the foregoing, no Class 1 Beneficial Owner (together with its Affiliates), and no assignee or transferee of a Class 1 Beneficial Interest (together with its Affiliates), may own more than a 19.99% Percentage Share of the aggregate Class 1 Beneficial Interests so long as the Loan is outstanding unless consented to in writing by the Lender, and any purported issuance of a Class 1 Beneficial Interest in violation of the foregoing, to the fullest extent permitted by applicable law, shall be null, void and of no effect whatsoever.

Section 6.2 Certain Rights and Powers of Class 2 Beneficial Owner Prior to Conversion Notice. Prior to the issuance of the Conversion Notice, the Class 2 Beneficial Owner shall have the right and power, at its sole discretion (but subject to the restrictions in Article 3), to:

- (a) Contribute additional assets to the Trust;
- (b) Cause the Trust to negotiate or re-negotiate loans or leases; and
- (c) Cause the Trust to sell all or any portion of its assets and re-invest the proceeds of such sale or sales.

It is expressly understood by the Class 2 Beneficial Owner that these powers are inconsistent with the ability to classify the Trust as an "investment trust" under Regulations Section 301.7701-4(c), and the Trust shall not be so classified prior to the issuance of the Conversion Notice.

Section 6.3 Issuance of Conversion Notice. The Class 2 Beneficial Owner may, at any time in its sole discretion as long as any Class 2 Beneficial Interests are outstanding, issue the Conversion Notice to the Manager, with a copy to the Trustee; provided, however, that the Conversion Notice must be issued no later than three days before the Closing Date. Upon issuance of the Conversion Notice, the Class 2 Beneficial Owner shall no longer have any of the rights or powers set forth in Section 6.2. Instead, the Class 2 Beneficial Owner shall have the same rights and powers as apply to a Class 1 Beneficial Owner (as set forth in Section 6.4). In no event may any Class 1 Beneficial Interests be issued to Investors until at least three days after the issuance of the Conversion Notice.

Section 6.4 Rights and Powers of Class 1 Beneficial Owners. The sole right of the Class 1 Beneficial Owners shall be to receive distributions from the Trust if, as and when made as a result of the Trust's ownership or Disposition of the Real Estate. The Class 1 Beneficial Owners shall not have the right or power to direct in any manner the actions of the Trust, the Master Lessee, the Depositor or the Manager in connection with the management or operation of the Trust or the Real Estate. The Class 1 Beneficial Owners shall have no voting rights, including as to whether or not the Real Estate is sold pursuant to this Trust Agreement. In addition, the Class 1 Beneficial Owners shall not have the right or power to:

- (a) Contribute additional assets to the Trust;
- (b) Cause the Trust to negotiate or re-negotiate loans or leases; or
- (c) Cause the Trust to sell all or any portion of its assets and re-invest the proceeds of such sale or sales.

Section 6.5 Cash Contributed by Investors. The cash contributed by the Investors in exchange for Class 1 Beneficial Interests shall be used by the Trust to (a) acquire the Real Estate and pay all such costs, fees and expenses associated therewith (including any of those incurred by the Depositor and the Manager in the discretion of the Manager and any closing costs incurred in connection with the Loan), (b) pay commissions, costs and other expenses of the Trust's offering of Class 1 Beneficial Interest (as the Manager deems appropriate in its sole discretion) and (c) redeem the Depositor's Class 2 Beneficial Interests on a proportionate basis to such contributions.

with each Class 2 Beneficial Interest being redeemed for (i) approximately \$1,000 to be paid directly to the Depositor, or such other amounts as determined by the Manager in its sole discretion. Upon the sale of all 100 of the Class 1 Beneficial Interests, the Depositor will no longer have any Beneficial Interest in the Trust and no Class 2 Beneficial Interests will remain outstanding.

In the event not all Class 2 Beneficial Interests are redeemed pursuant to this Section 6.5 by 12 months after the Closing Date, the Class 2 Beneficial Owner shall surrender to the Trust for no additional consideration its remaining Class 2 Beneficial Interests.

Section 6.6 Agreement to be Bound. Any Beneficial Owner shall be deemed, by virtue of execution of the Purchase Agreement and the acceptance of such Beneficial Ownership Interest to have agreed, accepted and become bound by, and subject to, the provisions of this Trust Agreement.

Section 6.7 Ownership Records. The Manager shall at all times be the Person at whose office a Beneficial Interest may be presented or surrendered for registration of transfer or for exchange and where notices and demands to or upon the Trust in respect of a Beneficial Interest may be served. The Manager shall keep Ownership Records, which shall include records of the transfer and exchange of Beneficial Interests. Notwithstanding any provision of this Trust Agreement to the contrary, transfer of a Beneficial Interest in the Trust, or of any right, title or interest therein, shall occur only upon and by virtue of the entry of such transfer in the Ownership Records. In the event of any transfer permitted under the terms of this Trust Agreement, (a) the Manager shall issue new Ownership Records setting forth the current Percentage Share in the Trust held by such new Beneficial Owner, (b) the transferring Beneficial Owner shall surrender its Beneficial Interest for cancellation and (c) if applicable, the Manager shall issue new Ownership Records setting forth the Beneficial Interest retained by any transferring Beneficial Owner. Beneficial Interests shall be non-transferable and may not be negotiated, endorsed or otherwise transferred.

Section 6.8 Intentionally Omitted.

Section 6.9 Restrictions on Transfer. Subject to compliance with applicable federal and state securities laws, Section 6.10 and Section 6.11 of this Trust Agreement and any notice requirements in the Financing Documents, all or any portion of the Beneficial Interest of any Beneficial Owner may be assigned or transferred without the prior consent of any of the Trust, the Trustee, the Depositor, the Manager or the other Beneficial Owners. All expenses of any such transfer shall be paid by the assigning or transferring Beneficial Owner. Notwithstanding the foregoing, no Class 1 Beneficial Owner (together with its Affiliates), and no assignee or transferee of a Class 1 Beneficial Interest (together with its Affiliates), may own more than a 19.99% Percentage Share of the aggregate Class 1 Beneficial Interests so long as the Loan is outstanding unless consented to in writing by the Lender, and any purported issuance of a Class 1 Beneficial Interest in violation of the foregoing shall be null, void and of no effect whatsoever.

Section 6.10 Conditions to Admission of New Beneficial Owners. Any assignee or transferee of the Beneficial Interest of a Beneficial Owner shall only become a Beneficial Owner upon such assignee's or transferee's written acceptance and adoption of this Trust Agreement, as manifested by its execution and delivery to the Manager of a counterpart signature page substantially in the form of Exhibit D, copies of which will be provided by the Manager to the Trustee.

Section 6.11 Limit on Number of Beneficial Owners. Notwithstanding anything to the contrary in this Trust Agreement, at no time shall the number of Beneficial Owners exceed 99 Persons. Any transfer that results in a violation of this Section 6.11 shall, to the fullest extent permitted by applicable law, be null, void and of no effect whatsoever.

Section 6.12 Representations, Warranties, Acknowledgements and Agreements of Beneficial Owners.

(a) Each Beneficial Owner hereby represents and warrants that (1) it is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act, (2) it is not acquiring its Beneficial Interest with a view to any distribution thereof in a transaction that would violate the Securities Act or the securities laws of any state of the United States, (3) it is aware (i) of the restrictions on transfer that are applicable to the Beneficial Interests, (ii) that no Beneficial Interest has been or is expected to be registered under the Securities Act, and accordingly, all Beneficial Interests are subject to restrictions on transfer, and (iii) that no Beneficial Interest may be offered, sold, pledged, hypothecated or otherwise transferred or disposed of unless it is registered under the Securities Act and all other applicable laws of any applicable jurisdiction or an exemption therefrom is available in accordance with such laws, (4) it is aware that an investment in Beneficial Interests involves a high degree of risk of loss by the Beneficial Owner of its entire investment, and it has full cognizance of and understands all of the risk related to a purchase of Beneficial Interests, (5) it is able to bear the economic and financial risk of an investment in the Trust for an indefinite period of time, as well as the complete loss of the entire investment, (6) to the extent applicable, the execution, delivery and performance of this Trust Agreement has been duly authorized by such Beneficial Owner and do not require such Beneficial Owner to obtain any consent or approval that has not been obtained and do not contravene or result in a default under any provision of any law or regulation applicable to such Beneficial Owner or other governing documents or any agreement or instrument to which such Beneficial Owner is a party or by which such Beneficial Owner is bound, (7) this Trust Agreement is valid, binding and enforceable against such Beneficial Owner in accordance with its terms, and (8) it is (i) a citizen or resident of the U.S. (including certain former citizens and former long-term residents), (ii) a corporation (or other entity taxable as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the U.S. or of any political subdivision thereof, (iii) an estate, the income of which is subject to U.S. federal income taxation regardless of the source of such income, or (iv) a trust, if (A) the administration of the trust is subject to the primary supervision of a U.S. court and the trust has one or more U.S. persons with authority to control all substantial decisions or (B) the trust has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

(b) Each Class 1 Beneficial Owner hereby represents and warrants that it (1) understands and is aware that there are uncertainties regarding the treatment of its Class 1

Beneficial Interest as real estate for federal income tax purposes, (2) fully understands that there is risk that its Class 1 Beneficial Interest will not be treated as real estate for federal income tax purposes, (3) has independently obtained advice from its legal counsel and/or accountant regarding any like-kind exchange under Code Section 1031, including, without limitation, whether the acquisition of its Class 1 Beneficial Interest may qualify as part of a like-kind exchange, and is relying on such advice regarding the tax treatment of the Class 1 Beneficial Interests and any like-kind exchange, (4) is aware that the Internal Revenue Service ("IRS") has issued Rev. Rul. 2004-86 (the "Revenue Ruling") specifically addressing Delaware Statutory Trusts, the Revenue Ruling is merely guidance and is not a "safe-harbor" for taxpayers or sponsors, and, without the issuance of a private letter ruling on a specific offering, there is no assurance that its Class 1 Beneficial Interest will not be treated as a partnership interest for federal income tax purposes, (5) understands that Trust has not obtained a private letter ruling from the IRS that its Class 1 Beneficial Interest will be treated as an undivided interest in real estate as opposed to an interest in a partnership, (6) understands that the tax consequences of an investment in its Class 1 Beneficial Interest, especially the treatment of the transaction described herein under Code Section 1031 and the related "Section 1031 Exchange" rules, are complex and vary with the facts and circumstances of each individual purchaser; (7) shall, for federal income tax purposes, report the purchase of its Class 1 Beneficial Interest as a purchase by it of a direct ownership interest in the Real Estate.

(c) The Manager may, in its sole discretion, determine to issue certificates to the Beneficial Owners representing the Beneficial Interests held by each Beneficial Owner. In the event that certificates representing Beneficial Interests are issued, such certificates will bear the following legends:

THE SECURITIES REPRESENTED BY THIS BENEFICIAL OWNERSHIP CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. WITHOUT SUCH REGISTRATION, SUCH SECURITIES MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR DISPOSED OF AT ANY TIME WHATSOEVER, EXCEPT UPON DELIVERY TO THE MANAGER OF THE TRUST OF AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGER OF THE TRUST THAT REGISTRATION IS NOT REQUIRED FOR SUCH TRANSFER AND/OR THE SUBMISSION TO THE MANAGER OF THE TRUST OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO THE MANAGER OF THE TRUST TO THE EFFECT THAT ANY SUCH TRANSFER SHALL NOT BE IN VIOLATION OF THE SECURITIES ACT AND/OR APPLICABLE STATE SECURITIES LAWS AND/OR ANY RULE OR REGULATION PROMULGATED THEREUNDER. THE SECURITIES REPRESENTED BY THIS BENEFICIAL OWNERSHIP CERTIFICATE ARE SUBJECT TO THE TERMS OF THE TRUST AGREEMENT. ANY TRANSFER OF A BENEFICIAL INTEREST IN THE TRUST, OR OF ANY RIGHT, TITLE OR INTEREST THEREIN, SHALL OCCUR IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE TRUST AGREEMENT AND ONLY UPON AND BY VIRTUE OF THE ENTRY OF SUCH TRANSFER IN THE OWNERSHIP RECORDS OF THE TRUST. THIS BENEFICIAL OWNERSHIP CERTIFICATE IS NON-TRANSFERABLE AND MAY NOT BE NEGOTIATED, ENDORSED OR OTHERWISE TRANSFERRED.

(d) Each Beneficial Owner hereby acknowledges and agrees that, in its capacity as a Beneficial Owner, it has no ability to (1) seek partition of the Trust Estate or petition for a portion of the assets of the Trust, (2) file a petition in bankruptcy on behalf of the Trust, or (3) take any action that consents to, aids, supports, solicits or otherwise cooperates in the filing of an

involuntary bankruptcy proceeding involving the Trust.

(e) Each Beneficial Owner hereby acknowledges and agrees that it or any Person who Controls such Beneficial Owner is not currently identified by the Office of Foreign Assets Control, Department of the Treasury (“OFAC”) nor otherwise qualifies as an Embargoed Person.

Section 6.13 Status of Relationship. This Trust Agreement shall not be interpreted to impose a partnership or joint venture relationship on the Beneficial Owners either at law or in equity. Accordingly, no Beneficial Owner shall have any liability for the debts or obligations incurred by any other Beneficial Owner with respect to the Trust Estate or otherwise, and no Beneficial Owner shall have any authority, other than as specifically provided herein, to act on behalf of any other Beneficial Owner or to impose any obligation with respect to the Trust Estate. Neither the power to provide direction to the Trustee, the Manager or any other Person nor the exercise thereof by any Beneficial Owner shall cause such Beneficial Owner to have duties (including fiduciary duties) or liabilities relating thereto to the Trust or to any Beneficial Owner.

Section 6.14 Beneficial Owners and the Trust. The Beneficial Owners shall not have legal title to the Trust Estate. The death, incapacity, dissolution, termination or bankruptcy of any Beneficial Owner shall not result in the termination or dissolution of the Trust. Except as expressly provided herein, no Beneficial Owner has (a) an interest in specific Trust property, or (b) any right to demand and receive from the Trust an in-kind distribution of the Trust Estate or any portion thereof. In addition, each Beneficial Owner expressly waives any right, if any, under the Statutory Trust Act to seek a judicial dissolution of the Trust, to terminate the Trust or, to the fullest extent permit by applicable law, to partition the Trust Estate.

ARTICLE 7 DISTRIBUTIONS AND REPORTS

Section 7.1 Distributions in General. The Manager shall distribute the Trust’s net cash flow to the Beneficial Owners in accordance with their Percentage Share on a monthly basis (beginning with the second month after acquiring the Real Estate), after (a) paying or reimbursing the Manager for any fees or expenses incurred by the Manager on behalf of the Trust (including fees of the Trustee and the Manager), (b) retaining such additional amounts as the Manager determines are necessary to pay anticipated ordinary current and future Trust expenses and taxes (“Reserves”) and (c) to satisfy debt service and related expenses on the Loan and any other requirements imposed under the Financing Documents or the Master Lease Agreement. It is anticipated that the cash generated from the operations of the Trust shall generally consist of the rent paid under the Master Lease Agreement. Reserves and any other cash retained pursuant to this Section 7.1 shall be invested by the Manager only in short-term obligations of (or guaranteed by) the United States or any agency or instrumentality thereof and in certificates of deposit or interest-bearing bank accounts of any bank or trust companies having a minimum stated capital and surplus of \$100,000,000.00 (collectively, a “Permitted Investment”). All such obligations must mature prior to the next distribution date, and be held to maturity. All amounts distributable to the Beneficial Owners pursuant to this Trust Agreement shall be paid by check or in immediately available funds by transfer to a banking institution with bank wire transfer facilities for the account of such Beneficial Owner, as instructed from time to time by such Beneficial Owner on the last

Business Day of each calendar month.

Section 7.2 Distributions upon Dissolution. In the event of the Trust's dissolution in accordance with Article 9, all of the Trust Estate as may then exist after the winding up of its affairs in accordance with the Statutory Trust Act (including, without limitation, subsections (d) and (e) of Section 3808 of the Statutory Trust Act and providing for all costs and expenses, including any income or transfer taxes which may be assessed against the Trust, whether or not by reason of the dissolution of the Trust) shall, subject to Section 9.2, be distributed to those Persons who are then Beneficial Owners in their respective Percentage Shares.

Section 7.3 Cash and other Accounts; Reports by the Manager. Subject to the Financing Documents, the Manager shall be responsible for receiving all cash from the Master Lessee and placing such cash into one or more accounts as required under the distribution and investment obligations of the Trust under Section 7.1. The Manager shall furnish annual reports to each of the Beneficial Owners as to the amounts of cash received from the Master Lessee, the expenses incurred by the Trust with respect to the Real Estate (if any), the amount of any Reserves and other amount applied to meet requirements under the Financing Documents, and the amount of the cash distributed by the Trust to the Beneficial Owners.

ARTICLE 8 RELIANCE; REPRESENTATIONS; COVENANTS

Section 8.1 Good Faith Reliance. Neither the Trustee nor the Manager shall incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably and in good faith believed by such the Trustee or the Manager, as applicable, to be genuine and signed by the proper party or parties thereto. As to any fact or matter, the manner of ascertainment of which is not specifically described herein, the Trustee and the Manager may for all purposes hereof rely on a certificate, signed by or on behalf of the Person executing such certificate, as to such fact or matter and such certificate shall constitute full protection of the Trustee and/or the Manager for any action taken or omitted to be taken by them in good faith in reliance thereon. The Trustee and the Manager may conclusively rely upon any certificate furnished to such Person that on its face conforms to the requirements of this Trust Agreement. Each of the Trustee and the Manager may (a) exercise its powers and perform its duties by or through such attorneys and agents as it shall appoint with due care, and it shall not be liable for the acts or omissions of such attorneys and agents; and (b) consult with counsel, accountants and other experts, and shall be entitled to rely upon the advice of counsel, accountants and other experts, selected by it in good faith and shall be protected by the advice of such counsel, accountants and other experts in anything done or omitted to be done by it in accordance with such advice. In particular, no provision of this Trust Agreement shall be deemed to impose any duty on the Trustee or the Manager to take any action if such Person shall have been advised by counsel, accountants or other experts that such action may involve it in personal liability or is contrary to the terms hereof or to applicable law. For all purposes of this Trust Agreement, the Trustee shall be fully protected in relying upon the most recent Ownership Records delivered to it by the Manager.

Section 8.2 No Representations or Warranties as to Certain Matters.

(a) NEITHER THE TRUSTEE NOR THE MANAGER, EITHER WHEN ACTING HEREUNDER IN ITS CAPACITY AS TRUSTEE OR MANAGER OR IN ITS INDIVIDUAL CAPACITY, MAKES OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED, WITH REGARD TO THE TRUST ESTATE OR ANY PART THEREOF, AS TO (1) TITLE, LOCATION, VALUE, CONDITION, WORKMANSHIP, DESIGN, COMPLIANCE WITH SPECIFICATIONS, CONSTRUCTION, OPERATION, MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE, (2) ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, (3) ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, (4) ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, OR (5) ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.

(b) NEITHER THE TRUSTEE NOR THE MANAGER, EITHER WHEN ACTING HEREUNDER AS TRUSTEE OR MANAGER OR IN ITS INDIVIDUAL CAPACITY, MAKES ANY REPRESENTATION, WARRANTY OR COVENANT AS TO THE VALIDITY OR ENFORCEABILITY OF TRANSACTION DOCUMENTS OR AS TO THE CORRECTNESS OF ANY STATEMENT CONTAINED IN ANY THEREOF, EXCEPT AS EXPRESSLY MADE BY THE TRUSTEE OR THE MANAGER IN ITS INDIVIDUAL CAPACITY. EACH OF THE TRUSTEE AND THE MANAGER REPRESENTS AND WARRANTS TO THE BENEFICIAL OWNERS THAT IT HAS AUTHORIZED, EXECUTED AND DELIVERED THIS TRUST AGREEMENT.

ARTICLE 9 TERMINATION

Section 9.1 Termination in General. The Trust shall not have perpetual existence and instead shall be dissolved and wound up in accordance with Section 3808 of the Statutory Trust Act, after the issuance of the Conversion Notice, upon the first to occur of (a) the expiration of 15 calendar years following the Closing Date; (b) a Conversion pursuant to Section 9.2; or (c) the Disposition of the Real Estate pursuant to Section 9.3, at which time each Beneficial Owner's Percentage Share of the Trust Estate shall be distributed to such Beneficial Owner in accordance with Section 7.2 in full and complete satisfaction and redemption of its Beneficial Interests; provided, however, that in connection with clauses (a) and (c) above, the Loan shall have been fully defeased or repaid, in each case in accordance with the terms of the Financing Documents.

Section 9.2 Conversion to LLC.

(a) Subject to the terms and conditions of the Financing Documents, the Manager shall be authorized, and shall take all actions necessary, to convert the Trust into a LLC in compliance with the Statutory Trust Act that has a limited liability company agreement substantially the same as that set forth in Exhibit E with such modifications thereto as may be approved by Lender in writing or required to comply with the terms and conditions of the Financing Documents (the "LLC Agreement") and, if the Loan or any portion thereof is then outstanding, is a special purpose bankruptcy remote entity (that satisfies the conditions of Section 3.2(c)) upon the first to occur of the following:

(1) the Manager determines, in its sole discretion, that (A) the Master Lessee has failed to timely pay rent due under the Master Lease Agreement and any applicable notice and cure provisions in the Master Lease Agreement, if any, have expired, (B) the Trust Estate is in jeopardy of being lost due to a default or imminent default on the Loan (and in the case of either foregoing clause (A) and/or (B), the Manager is prohibited pursuant to Section 3.3 hereof from taking action that it believes necessary or appropriate to address such situation), (C) the Master Lessee files for bankruptcy, seeks appointment of a receiver, makes an assignment for the benefit of its creditors or there occurs any similar event, (D) the Loan will commence hyper-amortization within 90 days under which all cash flow from the Real Estate will need to be utilized to pay down the principal and interest on the Loan, or (E) the Trust is otherwise in violation of Section 3.2(c), and the Manager determines, in its sole discretion, that dissolution of the Trust is necessary and appropriate to preserve and protect the Trust Estate for the benefit of the Beneficial Owners:

(2) if the Manager determines, in its sole discretion, that the Loan, including all interest, principal and other amounts payable to the Lender in connection with the Loan, if any, has been paid in full and the Trust Estate has not been sold pursuant to Section 9.3 within a reasonable period as determined by the Manager in its sole discretion:

(3) upon termination of the Trust under Section 9.1(a):

(4) upon an Event of Default:

(5) if an executed commitment from an institutional lender to refinance the Loan (which commitment shall have a loan amount at closing at least equal to the outstanding principal balance of the Loan) is not delivered to Lender within ninety (90) days prior to the Maturity Date:

(6) so long as the Loan remains outstanding, any event occurs that causes the Manager to cease to be the manager of the Trust unless a replacement manager acceptable to the Lender has been appointed; or

(7) if Lender determines, in good faith, that an Event of Default is imminent, Lender shall have the right, upon written notice (a "Lender Conversion Notice") to direct the Trustee to cause a Conversion.

(b) In connection with the conversion contemplated under Section 9.2(a), the

Manager shall (i) cause the Beneficial Interests of the Beneficial Owners to be exchanged or converted to Class A Units in the LLC (as defined in the LLC Agreement) in proportion to their Percentage Shares (such exchange or conversion, the "Conversion"); (ii) be designated as the manager of the LLC formed as referenced herein and shall execute all necessary documents, including, without limitation, the LLC Agreement on behalf of the new members of the LLC; (iii) cause the LLC to acquire, by operation of law, contract or otherwise, the Trust Estate subject to the then outstanding obligations of the Trust under the Financing Documents and the Master Lease Agreement; (iv) cause the LLC to assume, by operation of law, contract or otherwise, the Trust's obligations under the Financing Documents and Master Lease Agreement, which assumption shall be evidenced by documents approved in writing by Lender; and (v) take all other actions necessary to complete the termination and winding up of the Trust, the formation of the LLC and the Conversion in accordance with applicable Delaware laws relating to the Trust and the Delaware Limited Liability Company Act.

(c) If any portion of the Loan remains outstanding and the Manager fails to dissolve the Trust when required to do so pursuant to this Section 9.2 (or if, pursuant to the Financing Documents, the Trustee is required to terminate the Trust Agreement), the duties of the Manager described in this Section 9.2 shall become solely the duties of the Trustee upon written notice from Lender, and the Trustee shall dissolve the Trust and distribute the Trust Property to the Beneficial Owners in the manner provided in Section 9.3 below. At no time shall the Trustee be responsible to fulfill the obligations set forth in this Section 9.2 unless it shall have received proper written notice.

It is the express intent of this Trust Agreement that no Conversion be made under this Section 9.2 except in the circumstances enumerated above in Section 9.2(a) which the parties hereto agree constitute rare and unexpected situations in which such conversion and distribution is necessary to prevent the loss of the Trust Estate due to such circumstances. In addition, simultaneously with any Conversion, the Manager, on behalf of the Trust, shall cause such LLC to satisfy all requirements for such transaction as set forth in the Financing Documents (including without limitation an assumption of the Financing Documents by such LLC).

Section 9.3 Disposition of the Real Estate. Subject to the terms of the Master Lease Agreement and the Financing Documents, the Trust shall sell, transfer, merge or exchange pursuant to Section 721 of the Code the Real Estate at any time after the Manager determines, in its sole discretion, that any such sale, disposition, transfer, merger or exchange roll-up transaction pursuant to Section 721 of the Code with respect to the Real Estate (collectively, a "**Disposition**") would be reasonable using its commercially reasonable business judgment. Any such Disposition of the Real Estate shall occur as soon as practicable after the Manager has made such determination. In connection with any Disposition of the Real Estate under this Section 9.3, the Manager shall be responsible for (a) determining the fair market value of the Real Estate, (b) conducting the Disposition of the Real Estate, (c) providing services to facilitate the marketing and Disposition of the Real Estate in connection with the Disposition of the Real Estate, and (d) distributing the balance of the Trust Estate (net of any fee due to the Manager) to the Beneficial Owners after payment of all amounts necessary to pay or defease, as applicable, the Loan in full in accordance with the Financing Documents and any other expenses or obligations of the Trust. The Manager is expressly instructed to take all reasonable action that would enable the Disposition to qualify with respect to each Beneficial Owner as a like-kind exchange within the meaning of

Section 1031 of the Code. Any Disposition of the Real Estate shall be on an "as is, where is" basis and subject to customary seller representations or warranties by the Trust, the Trustee or the Manager.

Section 9.4 Liability of Manager. To the fullest extent permitted by applicable law, the Manager shall be fully protected in any such determination made in good faith pursuant to Sections 9.2 and 9.3 and shall have no liability to any Person, including without limitation the Beneficial Owners, Trust or the Trustee, with respect thereto.

Section 9.5 Manager's Fee on Disposition. If (i) the Manager provides services in connection with any Disposition of the Real Estate under Section 9.3 and (ii) the total consideration returned to the Beneficial Owners upon exit is in excess of the \$39,450,000 (in cash or in kind), the Manager will be entitled to receive a fee equal to 2% of the gross proceeds of any Disposition of the Real Estate, with such amount to be in addition to any payments to unrelated third-party real estate brokers that the Trust hires to sell the Real Estate or pays to buyer's brokers.. The Manager will not be entitled to such fee in the event the gross sales price of the Real Estate after repaying the Loan on the Real Estate would result in a figure less than \$39,450,000.

Section 9.6 Certificate of Cancellation. Upon the completion of the dissolution and winding up of the Trust, the Trustee shall cancel the Certificate of Trust by executing and causing a certificate of cancellation to be filed in the office of the Secretary of State (as well as undertaking any other means then required under applicable law).

ARTICLE 10 MISCELLANEOUS

Section 10.1 Limitations on Rights of Other Persons. Nothing in this Trust Agreement, whether express or implied, shall provide to any Person, other than the Depositor, the Trustee, the Manager, the Beneficial Owners and the Trust, any legal or equitable right, remedy or claim hereunder.

Section 10.2 Successors and Assigns. All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Depositor, the Trustee, in its individual capacity and as Trustee, the Manager, the Beneficial Owners, the Trust and their successors and assigns, all as herein provided. Any request, notice, direction, consent, waiver or other writing or action by any such Person shall bind its successors and assigns.

Section 10.3 Usage of Terms. With respect to all terms in this Trust Agreement: (a) the singular includes the plural and the plural includes the singular; (b) words importing any gender include the other gender; references to "writing" include printing, typing, lithography and other means of reproducing words in a visible form; (c) references to agreements and other contractual instruments include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms and not prohibited by this Trust Agreement; (d) references to Persons include their successors and permitted assigns; and (e) the term "including" means "including without limitation."

Section 10.4 Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 10.5 Amendments. To the fullest extent permitted by applicable law, this Trust Agreement may not be supplemented or amended, and no term or provision hereof may be waived, discharged or terminated orally, but only by a signed writing executed by and among the Manager and the parties adversely affected, if any. In addition, so long as the Loan or any portion thereof is outstanding, no supplement, amendment, waiver, discharge or termination of this Trust Agreement or any provision hereof shall be effective unless a Lender Consent has been obtained with respect thereto. Notwithstanding anything to the contrary contained in the foregoing or elsewhere in this Trust Agreement, Manager shall have the right, acting alone, to amend this Trust Agreement pursuant to a request of Lender, if Lender has determined that such amendment is necessary in order to satisfy the requirements of any Rating Agencies, provided that no such amendment shall increase Trustee's obligations or decrease Trustee's rights under this Trust Agreement.

Section 10.6 Notices. All notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof shall be in writing, and given by (i) overnight courier, or (ii) hand delivery and shall be deemed to have been duly given when received. Notices shall be provided to the parties at the addresses specified below.

If to the Depositor:	ExchangeRight Net Leased Portfolio 23, LLC 1055 E. Colorado Blvd., Suite 310 Pasadena, CA 91106 Attention: Investor Relations
If to the Manager:	ExchangeRight Asset Management, LLC 1055 E. Colorado Blvd., Suite 310 Pasadena, CA 91106 Attention: Investor Relations
If to the Trust:	ExchangeRight Net Leased Portfolio 23 DST Care of ExchangeRight Asset Management, LLC 1055 E. Colorado Blvd., Suite 310 Pasadena, CA 91106 Attention: Investor Relations
If to the Trustee:	Gregory Harrison c/o Stewart Management Company Farmers Bank Building, Suite 1410 301 North Market Street Wilmington, Delaware 19801

If to a Beneficial Owner, at such Person's address as specified in the most recent Ownership Records.

From time to time the Depositor, the Trustee, the Trust or the Manager may designate a new address for purposes of notice hereunder by notice to the others and any Beneficial Owner may designate a new address for purposes of notice hereunder by notice to the Manager.

Section 10.7 Governing Law. This Trust Agreement shall be governed by and construed and enforced in accordance with the laws of the state of Delaware (without regard to conflict of law principles). The laws of the state of Delaware pertaining to trusts (other than the Statutory Trust Act) shall not apply to this Trust Agreement.

Section 10.8 Counterparts. This Trust Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 10.9 Severability. Any provision of this Trust Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, each of the parties hereby waives any provision of applicable law that renders any such provision prohibited or unenforceable in any respect.

Section 10.10 Signature of Class 1 Beneficial Owners. Each Investor will execute the Signature Page for Beneficial Owners of the Trust in substantially the form set forth in Exhibit D hereto in connection with its acquisition of Class 1 Beneficial Interests. By executing such signature page, each Investor hereby acknowledges and agrees to be bound by the terms of this Trust Agreement and the LLC Agreement when and if the LLC is formed and pursuant to Section 19.19 of the LLC Agreement. In addition, in light of their agreement to be bound by the LLC Agreement pursuant to this Section 10.10, each Investor hereby acknowledges and agrees that as of the Conversion Date (as defined in the LLC Agreement) (i) each Investor shall be deemed to have executed the LLC Agreement and (ii) the LLC Agreement shall be fully enforceable against each Investor, notwithstanding the lack of such Investor's actual signature thereon.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, each of the parties has caused this Trust Agreement to be duly executed as of the day and year first above written.

THE DEPOSITOR:

ExchangeRight Net Leased Portfolio 23, LLC

By: ExchangeRight Real Estate, LLC; its sole member

By: Warren Thomas
Warren Thomas, Manager

THE MANAGER:

ExchangeRight Asset Management, LLC

By: ExchangeRight Real Estate, LLC; its sole member

By: Warren Thomas
Warren Thomas, Manager

THE TRUSTEE:

Gregory L. Harrison
Gregory Harrison, Trustee

State of Delaware)
County of New Castle) ss.

On this 13th day of July, 2018 before me Jean Marie Wagner the undersigned trustee, personally appeared Gregory Harrison known personally to me to be the Trustee of the above named Trust and acknowledged that she, as a trustee being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Trust by herself as trustee.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

Jean Marie Wagner
Notary Public/Commissioner of Oath
My Commission Expires October 31, 2019

(SEAL)

JEAN MARIE WAGNER
NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

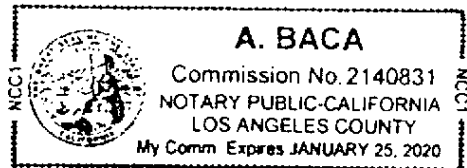
On July 16, 2018 before me, A. Baca, Notary Public
(insert name and title of the officer)

personally appeared Wayne Thomas
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature A. Baca (Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

On July 16, 2018 before me, A. Baca, Notary Public
(insert name and title of the officer)

personally appeared Wayne Thomas
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature A. Baca (Seal)

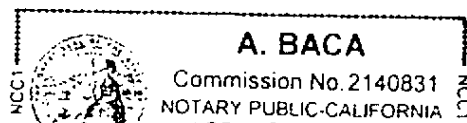


EXHIBIT A

REAL ESTATE

EXHIBIT B

CERTIFICATE OF TRUST

EXHIBIT C

**OWNERSHIP RECORDS
FOR
ExchangeRight Net Leased Portfolio 23 DST**

Last Revised _____, 20__.

<u>Name</u>	<u>Mailing Address</u>	<u>Class of Beneficial Interests</u>	<u>Percentage (%) Share of Beneficial Interests</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The undersigned hereby certifies that the foregoing Ownership Records are complete and accurate as of the date set forth above.

ExchangeRight Asset Management, L.L.C. not in its individual capacity, but solely as Manager

By: _____
Name: _____
Title: _____

EXHIBIT E

FORM OF LIMITED LIABILITY COMPANY AGREEMENT

[To be attached]

EXHIBIT F

FORM OF CONVERSION NOTICE

ExchangeRight Net Leased Portfolio 23, LLC (the "Depositor"), as the sole Class 2 Beneficial Owner and the sole holder of Class 2 Beneficial Interests in ExchangeRight Net Leased Portfolio 23 DST, hereby provides a Conversion Notice pursuant to Section 6.3 of the Trust Agreement dated as of May 10, 2018 by and among the Depositor, ExchangeRight Asset Management, LLC, a California limited liability company, as Manager, and Gregory Harrison, as Trustee (or any of their successors). The requirements of Section 3.3(c) of the Trust Agreement shall become effective upon receipt of this notice by the Trustee.

Date: _____

By: _____

Name: _____

Title: _____

18 JUL 23 AM 9:42
ATT: _____