

D23000000046

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

(Business Entity Name)

(Document Number)

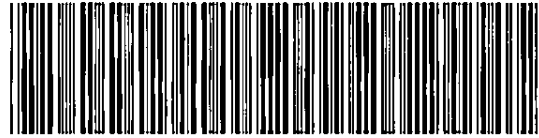
Certified Copies \_\_\_\_\_

Certificates of Status \_\_\_\_\_

Special Instructions to Filing Officer:

W23000141125

Office Use Only



300416973813

RECEIVED

2023 OCT 13 AM 11:37

RECEIVED OFFICE  
DIVISION OF CORPORATION  
& TALLAHASSEE, FLORIDA

2023 OCT 13 PM 7:36

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

ACCOUNT NO. : I20000000195

REFERENCE : 061600 8142135

AUTHORIZATION

COST LIMIT *350.00*

ORDER DATE : October 11, 2023

ORDER TIME : 9:05 AM

ORDER NO. : 061600-005

CUSTOMER NO: 8142135

FOREIGN FILINGS

NAME: EXCHANGERIGHT ALL-CASH 2 DST

XXXX QUALIFICATION (TYPE: BST)

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

       CERTIFIED COPY  
XX        PLAIN STAMPED COPY  
       CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Eyliena Baker -- EXT#

EXAMINER: \_\_\_\_\_



FLORIDA DEPARTMENT OF STATE  
Division of Corporations

October 13, 2023

CSC

SUBJECT: EXCHANGERIGHT ALL-CASH 2 DST  
Ref. Number: W23000141125

**RESUBMIT**

Please give original  
submission date as file date.

We have received your document for EXCHANGERIGHT ALL-CASH 2 DST. However, the document has not been filed and is being returned for the following:

The designation of the registered office and the registered agent, both at the same Florida street address, must be contained within the document pursuant to Florida Statutes. The registered agent must sign accepting the designation as required by Florida Statutes.

If you have any further questions concerning your document, please call (850) 245-6052.

**KAIN COSTELLO**  
Regulatory Specialist II  
New Filing Section

Letter Number: 223A00023802

RECEIVED  
2023 OCT 16 PM 3:34  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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

ExchangeRight All-Cash 2 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 All-Cash 2 DST, a

(Name of Trust)

Delaware

Trust hereby affirms in order to file or qualify

(State)

ExchangeRight All-Cash 2 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

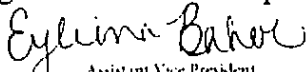
Pasadena, CA 91106

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

CORPORATION SERVICE COMPANY

1201 HAYS STREET, TALLAHASSEE, FL 32301

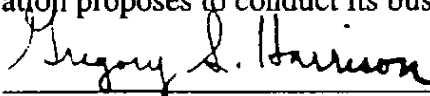
4. Acceptance by the registered agent: Having been named as registered  
agent to accept service of process for the above named Declaration of Trust  
at the place designated in this affidavit, I hereby accept the appointment as  
registered agent and agree to act in this capacity.



Assistant 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.



Name: Gregory Harrison

Chairman of the Board of Trustees

NOTARY

**Filing Fee: \$350.00**

**Certified Copy: \$ 8.75 (optional)**

CR2E063(3/00)

2006 OCT 13 PM 7:36

ACKNOWLEDGEMENT  
STATE OF DELAWARE  
NEW CASTLE COUNTY

On October 6, 2023, before me, Elizabeth Ann Beachell, Notary Public, Gregory S. Harrison, who I personally know, acknowledged to be the person whose name is subscribed to the within instrument and acknowledged to me that he authorized the execution of the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal

Elizabeth Ann Beachell

Notary Public

ELIZABETH ANN BEACHELL  
NOTARY PUBLIC  
STATE OF DELAWARE  
My Commission Expires April 20, 2024

2023 OCT 13 PM 7:37

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "EXCHANGERIGHT ALL-CASH 2 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 ELEVENTH DAY OF OCTOBER, A.D. 2023.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "EXCHANGERIGHT ALL-CASH 2 DST" WAS FORMED ON THE THIRTY-FIRST DAY OF AUGUST, A.D. 2023.



7652668 8300

SR# 20233708182

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature in black ink, appearing to read "JB", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Authentication: 204352044

Date: 10-11-23

**TRUST AGREEMENT**  
**OF**  
**EXCHANGERIGHT ALL-CASH 2 DST**  
**DATED AS OF**  
**AUGUST 31, 2023**  
**BY AND AMONG**  
**EXCHANGERIGHT REAL ESTATE, LLC,**  
**AS DEPOSITOR,**  
**EXCHANGERIGHT ASSET MANAGEMENT, LLC,**  
**AS MANAGER**  
**AND**  
**GREGORY HARRISON,**  
**AS TRUSTEE**

## TABLE OF CONTENTS

ARTICLE 1	DEFINITIONS AND INTERPRETATION .....	2
Section 1.1	Definitions.....	2
ARTICLE 2	GENERAL MATTERS .....	6
Section 2.1	Organizational Matters.....	6
Section 2.2	Declaration of Trust and Statement of Intent.....	6
Section 2.3	Purposes .....	7
ARTICLE 3	PROVISIONS RELATING TO TAX TREATMENT .....	7
Section 3.1	Article 3 Supersedes All Other Provisions of this Trust Agreement.....	7
Section 3.2	Intentionally Omitted .....	7
Section 3.3	Provisions Relating to Tax Treatment .....	7
ARTICLE 4	CONCERNING THE TRUSTEE.....	9
Section 4.1	Power and Authority .....	9
Section 4.2	Trustee May Request Direction .....	9
Section 4.3	Trustee's Capacity .....	9
Section 4.4	Duties .....	10
Section 4.5	Indemnification .....	10
Section 4.6	Removal: Resignation; Succession .....	11
Section 4.7	Fees and Expenses .....	12
Section 4.	Independent Director Provisions.....	12
ARTICLE 5	CONCERNING THE MANAGER .....	12
Section 5.1	Power and Authority .....	12
Section 5.2	Manager's Capacity .....	13
Section 5.3	Duties .....	13
Section 5.4	Fees and Expenses .....	15
Section 5.5	Disposition of Trust Estate by Manager Is Binding.....	15
Section 5.6	Removal/ Resignation; Succession .....	15
ARTICLE 6	BENEFICIAL INTERESTS .....	16
Section 6.1	Issuance of Class 1 and Class 2 Beneficial Ownership Certificates.....	16
Section 6.2	Certain Rights and Powers of Class 2 Beneficial Owner Prior to Conversion Notice .....	16
Section 6.3	Issuance of Conversion Notice .....	16



Section 6.4	Rights and Powers of Class 1 Beneficial Owners.....	17
Section 6.5	Cash Contributed by Investors.....	17
Section 6.6	Agreement to be Bound .....	17
Section 6.7	Ownership Records.....	17
Section 6.8	Intentionally Omitted.....	18
Section 6.9	Restrictions on Transfer.....	18
Section 6.10	Conditions to Admission of New Beneficial Owners.....	18
Section 6.11	Limit on Number of Beneficial Owners .....	18
Section 6.12	Representations, Warranties, Acknowledgements and Agreements of Beneficial Owners .....	18
Section 6.13	Status of Relationship .....	20
Section 6.14	Beneficial Owners and the Trust.....	20
ARTICLE 7	DISTRIBUTIONS AND REPORTS .....	21
Section 7.1	Distributions in General.....	21
Section 7.2	Distributions upon Dissolution .....	21
Section 7.3	Cash and other Accounts: Reports by the Manager.....	21
ARTICLE 8	RELIANCE; REPRESENTATIONS; COVENANTS .....	21
Section 8.1	Good Faith Reliance .....	21
Section 8.2	No Representations or Warranties as to Certain Matters.....	22
ARTICLE 9	TERMINATION.....	22
Section 9.1	Termination in General.....	22
Section 9.2	Conversion to LLC .....	23
Section 9.3	Disposition of the Real Estate.....	23
Section 9.4	Liability of Manager .....	24
Section 9.5	Manager's Fee on Disposition .....	24
Section 9.6	Certificate of Cancellation .....	24
ARTICLE 10	MISCELLANEOUS .....	24
Section 10.1	Limitations on Rights of Other Persons.....	24
Section 10.2	Successors and Assigns.....	24
Section 10.3	Usage of Terms.....	24
Section 10.4	Headings. ....	25
Section 10.5	Side Letters .....	25
Section 10.6	Amendments .....	25

Section 10.7	Notices .....	25
Section 10.8	Governing Law .....	26
Section 10.9	Counterparts .....	26
Section 10.10	Severability .....	26
Section 10.11	Signature of Class 1 Beneficial Owners .....	26
EXHIBIT A: REAL ESTATE .....		
EXHIBIT B: CERTIFICATE OF TRUST OF EXCHANGERIGHT ALL-CASH 2 DST .....		
EXHIBIT C: OWNERSHIP RECORDS FOR EXCHANGERIGHT ALL-CASH 2 DST .....		
EXHIBIT D: FORM OF LIMITED LIABILITY COMPANY AGREEMENT .....		
EXHIBIT E: FORM OF CONVERSION NOTICE .....		

**TRUST AGREEMENT  
OF  
EXCHANGERIGHT ALL-CASH 2 DST,  
A DELAWARE STATUTORY TRUST**

This Trust Agreement, dated as of August 31, 2023 (as the same may be amended or supplemented from time to time, this "**Trust Agreement**"), is made by and among ExchangeRight Real Estate, LLC, a California 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 ExchangeRight All-Cash 2 DST, a Delaware statutory trust (the "**Trust**") formed by and in accordance with, and governed by, this Trust Agreement in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. §§3801 *et seq.* (the "**Statutory Trust Act**").

B. The Trust shall directly acquire the properties as more particularly described on Exhibit A (the "**Real Estate**") from unaffiliated third party sellers (collectively, "**Sellers**").

C. The Depositor intends to pay \$100 in cash to the Trust 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.

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 the Master Lease Agreement and the underlying tenant's lease.

G. Concurrently with the acquisition of the Real Estate, the Trust will enter into a Master Lease Agreement with ExchangeRight All-Cash 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 1 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 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.

"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.

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

"Conversion Notice" means the notice, in substantially the form of Exhibit E, issued by the Depositor to the Trustee and the Manager.

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

"Disposition" has the meaning given to such term in Section 9.3.

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

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

"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, 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.

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

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

“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.

“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.

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

"Real Estate Agreement" means the purchase agreement relating to the Real Estate between the Trust 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.

"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.

"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 and the Master Lease Agreement, together with any other documents to be executed in furtherance of the investment activities of the Trust.

"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 Closing 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 All-Cash 2 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; (b) make monthly distributions to the Investors from cash generated by the Real Estate; (c) execute a Disposition via an exchange roll-up transaction pursuant to Section 721 of the Code to ExchangeRight Income Fund doing business as the ExchangeRight Essential Income REIT, a Maryland statutory trust, structured as a real estate investment trust (a "**REIT**") or another REIT managed and controlled by ExchangeRight (collectively, an "**ExchangeRight REIT**") and thereby providing individual Investors with the following exit options: (1) complete an exchange pursuant to Section 721 of the Code into the acquiring ExchangeRight REIT; (2) participate in a tax-deferred cash out refinance of a portion of the Owners' capital investment; (3) complete a tax-deferred exchange under Section 1031 of the Code (a "**Section 1031 Exchange**"); (4) cash out (not tax-deferred); or (5) any combination of the above exit options; and (iv) take only such other actions as the Manager deems necessary to carry out the foregoing.

### ARTICLE 3 PROVISIONS RELATING TO TAX TREATMENT

Section 3.1 Article 3 Supersedes All Other Provisions of this Trust Agreement. This Article 3 contains certain provisions 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 supersede and be controlling; and the requirements of this Article 3 shall be enforceable to the maximum extent permissible under the Statutory Trust Act.

Section 3.2 Intentionally Omitted.

Section 3.3 Provisions Relating to Tax Treatment.

(a) Prior to the issuance of the Conversion Notice, the sole Beneficial Owner of the Trust shall be the Depositor. The rights of the Depositor (as the Class 2 Beneficial Owner) with respect to the assets and property held by the Trust, as 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, re-invest the proceeds of such Disposition;

(5) intentionally omitted;

(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 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, 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).

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.

(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. 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. 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 \$5,000 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; 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 the Master Lease Agreement with the Master Lessee;
- (3) collect rents and make distributions in accordance with Article 7;
- (4) 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 Section 1031 of the Code (provided that in no event shall the Trust acquire title to any real property other than the Real Estate);
- (5) notify the relevant parties of any default by them under the Transaction Documents; and
- (6) 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.

(c) The Manager shall keep customary and appropriate books and records relating to the Trust and the Trust Estate. 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 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).

(e) The Manager shall not be required to act or refrain from acting under this Trust Agreement 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, or (5) inspect the Real Estate at any time.

(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 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 Real Estate 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 of 2.90% of the gross rental income of the Real Estate ("Management Fee"); provided, however, 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.

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.

(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, the Trustee may appoint a successor manager by written instrument. 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. 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.

## **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.

**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), (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, 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.

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/or adoption of this Trust Agreement, as manifested by its execution and delivery to the Manager of this Trust Agreement or any subscription agreement for Interests provided by the Manager.

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 Section 1031 of the Code, 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 Section 1031 of the Code and the related "Section 1031 of the Code" 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, and (8) shall not make any claim against the Trust or any of its Affiliates regarding (A) the determination or potential determination that the Beneficial Interests are not eligible replacement property for a tax-deferred exchange of property under Sections 1031 or 721 of the Code; or (B) the tax consequences resulting from the dissolution or conversion of the Trust.

(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").

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 any other requirements imposed under 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. 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), 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.

Section 9.2 Conversion to LLC.

(a) The Manager shall be authorized, and shall take all actions necessary, to convert the Trust into an LLC in compliance with the Statutory Trust Act that has a limited liability company agreement substantially the same as that set forth in Exhibit D (the "LLC Agreement") upon termination of the Trust under Section 9.1(a).

(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 Master Lease Agreement; (iv) cause the LLC to assume, by operation of law, contract or otherwise, the Trust's obligations under the Master Lease Agreement; 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) Intentionally Omitted.

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.

Section 9.3 Disposition of the Real Estate. Subject to the terms of the Master Lease Agreement, the Trust shall sell, transfer, merge or exchange pursuant to an exchange roll-up transaction pursuant to Section 721 of the Code or Section 1031 of the Code with respect to 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 or Section 1031 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 (provided that the Manager will obtain a third party valuation of the Real Estate if such Disposition is being made through an Affiliated aggregation or acquisition and any such Disposition would result in less than a 100% return of the Beneficial Owners' original capital contributions), (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 any amounts necessary to pay any loans, expenses, or obligations of the Trust. The Manager intends to take reasonable actions to provide the Beneficial Owners with the option to (1) complete an exchange pursuant to Section 721 of the Code into the acquiring ExchangeRight REIT; (2) participate in a tax-deferred cash out refinance of a portion of the Owners' capital investment; (3) complete an exchange under Section 1031 of the Code; (4) cash out (not tax-deferred); or (5) any combination of the above exit options. There is no guarantee that these options will be available to the Beneficial Owners upon Disposition. 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 the Manager provides services in connection with any Disposition of the Real Estate under Section 9.3 and if upon such Disposition of the Real Estate the gross proceeds, including the return of any reserves, are in excess of \$6,310,000 (in cash or in kind), the Manager will be entitled to receive a fee equal to 2.0% of the gross proceeds of any such Disposition of the Real Estate pursuant to the Trust Agreement, 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 and any payments to buyer's brokers.

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 Side Letters. The Manager reserves the right, in its sole and absolute discretion, to agree with a Beneficial Owner to waive or modify the application of any provision of the Trust Agreement relating exclusively to fees and expenses or any fee or expense in connection with the offering with respect to such Beneficial Owner without obtaining the consent of any other Beneficial Owner. Accordingly, the Trust and the Manager may enter into side letters or other writings with one or more Beneficial Owners that have the effect of establishing rights under, or altering or supplementing the terms of, the Trust Agreement or any subscription agreement for Interests (including with any of its Affiliates that may invest in the Trust). Notwithstanding the foregoing, in no event shall (i) any waiver or modification of any provision of the Trust Agreement, or (ii) any side letter or other writings, be permitted to the extent the tax treatment of the Trust or the Investors would be impacted.

Section 10.6 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.

Section 10.7 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 Real Estate, 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 All-Cash 2 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 10.8 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 10.9 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 10.10 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 10.11 Signature of Class I Beneficial Owners. Each Investor will accept and/or adopt this Trust Agreement, as manifested by its execution and delivery to the Manager of this Trust Agreement or any subscription agreement for Interests provided by the Manager. 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.

**[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 Real Estate, LLC

By:   
Warren Thomas, Manager

**THE MANAGER:**

ExchangeRight Asset Management, LLC

By: ExchangeRight Real Estate, LLC; its sole member

By:   
Warren Thomas, Manager

**THE TRUSTEE:**

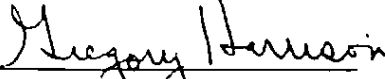
  
Gregory Harrison, Trustee

EXHIBIT A  
REAL ESTATE

2-20-13 14:37

**EXHIBIT B**

**CERTIFICATE OF TRUST**

2006.7.13 AM 7:37

**EXHIBIT C**

**OWNERSHIP RECORDS  
FOR  
ExchangeRight All-Cash 2 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, LLC, not in its  
individual capacity, but solely as Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

2010.07.13 4:17:37



**EXHIBIT D**

**FORM OF LIMITED LIABILITY COMPANY AGREEMENT**

**[Refer to Exhibit E of the Memorandum]**

2013 OCT 13 PM 7:38

**EXHIBIT E**

**FORM OF CONVERSION NOTICE**

ExchangeRight Real Estate, LLC (the "Depositor"), as the sole Class 2 Beneficial Owner and the sole holder of Class 2 Beneficial Interests in ExchangeRight All-Cash 2 DST, hereby provides a Conversion Notice pursuant to Section 6.3 of the Trust Agreement dated as of August 31, 2023 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: \_\_\_\_\_

2023-13 11:17:38

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

ExchangeRight All-Cash 2 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 All-Cash 2 DST, a

(Name of Trust)

Delaware

Trust hereby affirms in order to file or qualify

(State)

ExchangeRight All-Cash 2 DST

, in the State of Florida.

(Name of Trust)

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

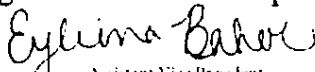
2. The principal address is 1055 E. Colorado Blvd. Ste. 310

Pasadena, CA 91106

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

1201 HAYS STREET, TALLAHASSEE, FL 32301

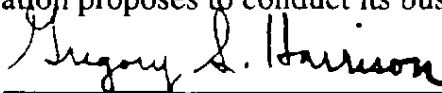
4. Acceptance by the registered agent: Having been named as registered  
agent to accept service of process for the above named Declaration of Trust  
at the place designated in this affidavit, I hereby accept the appointment as  
registered agent and agree to act in this capacity.



Assistant 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.



Name: Gregory Harrison

Chairman of the Board of Trustees

NOTARY

**Filing Fee: \$350.00**

**Certified Copy: \$ 8.75 (optional)**

2008 JUN 13 PM 7:38