

Memorandum No. \_\_\_\_\_

# PACIFIC SOUTHWEST NOTE FUND LLC

*a Delaware limited liability company*

## PRIVATE PLACEMENT MEMORANDUM

5109 82<sup>nd</sup> Street, Suite #71135  
Lubbock, TX 79424

\$150,000,000

Minimum Investment Amount: \$50,000

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**Dated June 1, 2021**

**PACIFIC SOUTHWEST NOTE FUND LLC** (the “Fund”) is a Delaware limited liability company. The Fund is offering (“Offering”) by means of this Private Placement Memorandum (“Memorandum”) limited liability company membership interests (“Membership Interests”) on a “best efforts” basis to qualified investors who meet the Investor Suitability standards as set forth herein. (See “Investor Suitability” below). The Fund will be managed by Pacific Southwest Management Group LLC, a Delaware limited liability company (“Manager”).

As further described in the Memorandum, the Fund has been organized to conduct the following business: (1) to purchase, fund, acquire, sell, and/or otherwise invest in “seller carryback” loans secured by interests in real property; and from time to time, (2) to purchase, fund, modify, re-form, extend, sell, foreclose on, and/or otherwise invest in non-performing loans (“Non-Performing Loan” or “NPL”) secured by interests in real property. The Fund may also manage, remodel, repair, lease, and/or sell real properties acquired through the Fund’s lending activities, including but not limited, properties acquired through foreclosure and real estate owned (“REO”). These loans will be located throughout the United States, primarily in the southwest region of the United States, particularly in Texas, New Mexico, Arizona, Oklahoma, Colorado, Nevada, California and elsewhere as the Managers may determine.

Prospective investors (“Investors”) who execute a subscription agreement (“Subscription Agreement”) to invest in the Fund will become a member of the Fund (“Member”) once the Manager deposits the Investor’s investment into the Fund’s main operating bank account and subject to terms and conditions in the Memorandum and Subscription Agreement. An investment in the Fund is subject to restrictions on withdrawal (See “Summary of the Operating Agreement – Withdrawal” below). Subject to the terms and conditions provided herein, Members will have the option to either receive income distributions from the Fund or reinvest their distributable share of Fund earnings back into the Fund (See “Terms of the Offering” below). The Manager will receive compensation and income from the Fund and is subject to certain conflicts of interest. (See “Risk Factors,” “Manager’s Compensation” and “Conflicts of Interest” below). There are material income tax risks associated with investing in the Fund that prospective Investors should consider. (See “Income Tax Considerations” below).

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THIS OFFERING IS MADE IN RELIANCE ON AN EXEMPTION FROM REGISTRATION WITH THE SECURITIES AND EXCHANGE COMMISSION PROVIDED BY SECTION 4(2) OF THE SECURITIES ACT OF 1933, AS AMENDED (“ACT”), AND RULE 506(C) OF REGULATION D PROMULGATED THEREUNDER.

THIS INVESTMENT INVOLVES A DEGREE OF RISK THAT MAY NOT BE SUITABLE FOR ALL PERSONS. ONLY THOSE INVESTORS WHO HAVE NO NEED FOR LIQUIDITY AND CAN BEAR THE LOSS OF A SIGNIFICANT PORTION (OR ALL) OF THEIR INVESTMENT SHOULD PARTICIPATE IN THE INVESTMENT. (SEE “RISK FACTORS” BELOW).

### CERTAIN TERMS OF THE OFFERING

	Price to Investors <sup>1</sup>	Estimated Selling Commissions <sup>2</sup>	Estimated Fund Proceeds <sup>3</sup>
Amount to be Raised Per Membership Interest	\$1,000	\$0	\$1,000
Minimum Investment Amount <sup>4</sup>	\$50,000	\$0	\$50,000
Maximum Offering Amount <sup>5</sup>	\$150,000,000	\$0	\$150,000,000

1. The offering price to Investors was arbitrarily determined by the Manager.

2. Membership Interests will be offered and sold directly by the Fund, the Manager, and the Fund’s and Manager’s respective officers and employees. No commissions for selling Membership Interests will be paid to the Fund, Manager, or the Fund’s or Manager’s respective officers or employees. While most Membership Interests are expected to be offered and sold directly by the Fund, the Manager and their respective officers and employees, the Fund or Manager may also, in limited instances, offer and sell Membership Interests through the services of independent broker/dealers who are member firms of the Financial Industry Regulatory Authority (“FINRA”) and who will be entitled to receive customary and standard commissions based on the proceeds received for the sale of Membership Interests. These commissions will be paid by the Investor admitted to the Fund through such broker/dealer (and such payment may reduce the Capital Account of the Investor). The amount and nature of commissions payable to broker/dealers are expected to vary on a case-by-case basis as is agreed between the Investor and the broker/dealer. Notwithstanding the foregoing, the Manager may pay finders’ fees to finders who introduce and/or refer investors to the Fund, provided that, such compensation complies with applicable federal and/or state requirements and/or laws.

3. Net proceeds to the Fund are calculated before deducting organization and offering expenses. The expenses relating to this Offering include without limitation, legal, organizational, printing, binding, and miscellaneous expenses). The remaining Offering proceeds will be available for investment in assets pursuant to the business plan of the Fund. The Manager will receive its compensation from a variety of sources, including, without limitation, a portion of the Net Profits of the Fund. (See “Manager’s Compensation” below). The Manager may, in its sole and absolute discretion, elect to be responsible for some or all of the foregoing expenses related to the Offering, whether through direct payment of such expenses or reimbursement to the Fund of such expenses incurred.

4. Assumes the sale of the Minimum Investment Amount. Notwithstanding the foregoing, the Fund and Manager reserve the right, in its sole and absolute discretion, to at any time, and for any reason or no reason, accept subscriptions in a lesser amount or to require a higher amount or to reject any subscription(s). The Fund may, at its sole and absolute discretion, at any time during the period of the Offering, increase or decrease the Minimum Investment Amount.

5. Assumes sale or ownership of the Maximum Offering Amount. It is possible that the Fund will sell less than the Maximum Offering Amount. The Fund may, at its sole and absolute discretion, at any time during the period of the Offering, increase or decrease the Maximum Offering Amount.

THIS MEMORANDUM HAS BEEN PREPARED SOLELY FOR THE BENEFIT OF AUTHORIZED PERSONS INTERESTED IN THE OFFERING. IT CONTAINS CONFIDENTIAL INFORMATION AND MAY NOT BE DISCLOSED TO ANYONE OTHER THAN AUTHORIZED PERSONS SUCH AS ACCOUNTANTS, FINANCIAL PLANNERS OR ATTORNEYS RETAINED FOR THE PURPOSE OF RENDERING PROFESSIONAL ADVICE RELATED TO THE PURCHASE OF SECURITIES OFFERED HEREIN. IT MAY NOT BE REPRODUCED, DIVULGED OR USED FOR ANY OTHER PURPOSE UNLESS WRITTEN PERMISSION IS OBTAINED FROM THE FUND. THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER OR SOLICITATION TO ANY PERSON EXCEPT THOSE PARTICULAR PERSONS WHO SATISFY THE SUITABILITY STANDARDS DESCRIBED HEREIN.

THE SALE OF MEMBERSHIP INTERESTS COVERED BY THIS MEMORANDUM HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON THE EXEMPTIONS FROM SUCH REGISTRATION REQUIREMENTS SET FORTH IN SECTION 4(2) OF THE ACT AND RULE 506(C) OF REGULATION D THEREUNDER. THESE SECURITIES HAVE NOT BEEN QUALIFIED OR REGISTERED IN ANY STATE IN RELIANCE UPON THE EXEMPTIONS FROM SUCH QUALIFICATION OR REGISTRATION UNDER STATE LAW. THESE SECURITIES ARE “RESTRICTED SECURITIES” AND MAY NOT BE RESOLD OR OTHERWISE DISPOSED OF UNLESS A REGISTRATION STATEMENT COVERING DISPOSITION OF SUCH MEMBERSHIP INTERESTS IS THEN IN EFFECT OR AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

THERE IS NO PUBLIC MARKET FOR THE MEMBERSHIP INTERESTS AND NONE IS EXPECTED TO DEVELOP IN THE FUTURE. ANY SUMS INVESTED IN THE FUND ARE ALSO SUBJECT TO SUBSTANTIAL RESTRICTIONS UPON WITHDRAWAL AND TRANSFER. THE MEMBERSHIP INTERESTS OFFERED HEREBY SHOULD BE PURCHASED ONLY BY INVESTORS WHO HAVE NO NEED FOR LIQUIDITY IN THEIR INVESTMENT.

NO PERSON HAS BEEN AUTHORIZED IN CONNECTION WITH THIS OFFERING TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS OTHER THAN THAT INFORMATION AND THOSE REPRESENTATIONS SPECIFICALLY CONTAINED IN THIS MEMORANDUM; ANY OTHER INFORMATION OR REPRESENTATIONS SHOULD NOT BE RELIED UPON. ANY PROSPECTIVE PURCHASER OF THE MEMBERSHIP INTERESTS WHO RECEIVES ANY OTHER INFORMATION OR REPRESENTATIONS SHOULD CONTACT THE FUND IMMEDIATELY TO DETERMINE THE ACCURACY OF SUCH INFORMATION AND REPRESENTATIONS. NEITHER THE DELIVERY OF THIS MEMORANDUM NOR ANY SALES HEREUNDER SHALL, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE FUND OR IN THE INFORMATION SET FORTH HEREIN SINCE THE DATE OF THIS MEMORANDUM SET FORTH ABOVE.

PROSPECTIVE INVESTORS SHOULD NOT REGARD THE CONTENTS OF THIS MEMORANDUM OR ANY OTHER COMMUNICATION FROM THE FUND AS A SUBSTITUTE FOR CAREFUL AND INDEPENDENT TAX AND FINANCIAL PLANNING. EACH POTENTIAL INVESTOR IS ENCOURAGED TO CONSULT WITH HIS, HER OR ITS OWN INDEPENDENT LEGAL COUNSEL, ACCOUNTANT AND OTHER PROFESSIONALS WITH RESPECT TO THE LEGAL AND TAX ASPECTS OF THIS INVESTMENT AND WITH SPECIFIC REFERENCE TO HIS, HER OR ITS OWN TAX SITUATION, PRIOR TO SUBSCRIBING FOR THE MEMBERSHIP INTERESTS.

THE PURCHASE OF MEMBERSHIP INTERESTS BY AN INDIVIDUAL RETIREMENT ACCOUNT (IRA), KEOGH PLAN OR OTHER QUALIFIED RETIREMENT PLAN INVOLVES SPECIAL TAX

RISKS AND OTHER CONSIDERATIONS THAT SHOULD BE CAREFULLY CONSIDERED. INCOME EARNED BY QUALIFIED PLANS AS A RESULT OF AN INVESTMENT IN THE FUND MAY BE SUBJECT TO FEDERAL INCOME TAXES, EVEN THOUGH SUCH PLANS ARE OTHERWISE TAX EXEMPT. (SEE "INCOME TAX CONSIDERATIONS" AND "ERISA CONSIDERATIONS BELOW".)

THE MEMBERSHIP INTERESTS ARE OFFERED SUBJECT TO WITHDRAWAL OR CANCELLATION OF THE OFFERING AT ANY TIME FOR ANY REASON (OR NO REASON) AND WITHOUT ANY NOTICE THEREOF TO PROSPECTIVE INVESTORS. THE FUND RESERVES THE RIGHT, AT ITS SOLE AND ABSOLUTE DISCRETION, TO REJECT ANY SUBSCRIPTIONS IN WHOLE OR IN PART FOR ANY REASON (OR NO REASON) AT ANY TIME.

THE FUND WILL MAKE AVAILABLE TO ANY PROSPECTIVE INVESTOR AND HIS, HER OR ITS ADVISORS THE OPPORTUNITY TO ASK QUESTIONS AND RECEIVE ANSWERS CONCERNING THE TERMS AND CONDITIONS OF THE OFFERING, THE FUND, THE MANAGER OR ANY OTHER RELEVANT MATTERS, AND TO OBTAIN ANY ADDITIONAL INFORMATION TO THE EXTENT THAT THE FUND POSSESSES SUCH INFORMATION.

THIS OFFERING INVOLVES SIGNIFICANT RISKS WHICH ARE DESCRIBED IN DETAIL HEREIN. FEES WILL BE PAID TO THE MANAGER AND ITS AFFILIATES, WHO ARE SUBJECT TO CERTAIN CONFLICTS OF INTEREST. PROSPECTIVE PURCHASERS OF MEMBERSHIP INTERESTS SHOULD READ THIS MEMORANDUM CAREFULLY AND IN ITS ENTIRETY.

THE INFORMATION CONTAINED IN THIS MEMORANDUM HAS BEEN SUPPLIED BY THE MANAGER AND THE FUND. THIS MEMORANDUM CONTAINS SUMMARIES OF CERTAIN DOCUMENTS NOT CONTAINED IN THIS MEMORANDUM, WHICH ARE BELIEVED BY THE MANAGER AND FUND TO BE ACCURATE. HOWEVER, ALL SUCH SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCES TO THE ACTUAL DOCUMENTS. COPIES OF DOCUMENTS REFERRED TO IN THIS MEMORANDUM, BUT NOT INCLUDED HEREIN AS AN EXHIBIT, WILL BE MADE AVAILABLE TO QUALIFIED PROSPECTIVE INVESTORS UPON REQUEST.

**FOR RESIDENTS OF ALL STATES.** THE PRESENCE OF A LEGEND FOR ANY GIVEN STATE REFLECTS ONLY THAT A LEGEND MAY BE REQUIRED BY THAT STATE AND SHOULD NOT BE CONSTRUED TO MEAN AN OFFER OR SALE MAY BE MADE IN ANY PARTICULAR STATE. THIS MEMORANDUM MAY BE SUPPLEMENTED BY ADDITIONAL STATE LEGENDS. IF YOU ARE UNCERTAIN AS TO WHETHER OR NOT OFFERS OR SALES MAY BE LAWFULLY MADE IN ANY GIVEN STATE, YOU ARE ADVISED TO CONTACT THE FUND FOR A CURRENT LIST OF STATES IN WHICH OFFERS OR SALES MAY BE LAWFULLY MADE. AN INVESTMENT IN THIS OFFERING IS SPECULATIVE AND INVOLVES A HIGH DEGREE OF FINANCIAL RISK. ACCORDINGLY, PROSPECTIVE INVESTORS SHOULD CONSIDER ALL OF THE RISK FACTORS DESCRIBED BELOW.

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE COMPANY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD

EXCEPT AS PERMITTED UNDER THE ACT, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

**UNITED STATES TERRITORIES AND POSSESSIONS.** THESE SECURITIES ARE NOT AUTHORIZED FOR OFFERING OR SALE IN ANY TERRITORY OR POSSESSION OF THE UNITED STATES IN LIEU OF APPLICABLE SECURITIES LAWS TO THE CONTRARY. SECURITIES AND/OR CAPITAL GUARDIANSHIPS ARE NOT AUTHORIZED FOR SALE IN SUCH TERRITORIES OR POSSESSIONS.

**IRS CIRCULAR 230 NOTICE.**

PURSUANT TO U.S. INTERNAL REVENUE SERVICE CIRCULAR 230, THE STATEMENTS SET FORTH HEREIN WITH RESPECT TO FEDERAL TAX ISSUES, AS DEFINED BELOW, WERE NOT INTENDED NOR WRITTEN TO BE USED, AND SUCH STATEMENTS CANNOT BE USED BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING ANY PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER UNDER THE U.S. INTERNAL REVENUE CODE. SUCH STATEMENTS WERE WRITTEN TO SUPPORT THE MARKETING OF THE MEMBERSHIP INTERESTS OR MATTERS ADDRESSED HEREIN. IT IS POSSIBLE THAT ADDITIONAL ISSUES MAY EXIST THAT WOULD AFFECT THE FEDERAL TAX TREATMENT OF AN INVESTMENT IN THE FUND AND THE STATEMENTS CONTAINED HEREIN DO NOT CONSIDER OR PROVIDE ANY CONCLUSIONS WITH RESPECT TO SUCH ADDITIONAL ISSUES. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR. A "FEDERAL TAX ISSUE" IS A QUESTION CONCERNING THE FEDERAL TAX TREATMENT OF ANY ITEM OF INCOME, GAIN, LOSS, DEDUCTION OR CREDIT, THE EXISTENCE OR ABSENCE OF A TAXABLE TRANSFER OF PROPERTY, OR THE VALUE OF PROPERTY FOR PURPOSES OF ANY TAX IMPOSED BY OR PURSUANT TO THE U.S. INTERNAL REVENUE CODE. (SEE "INCOME TAX CONSIDERATIONS" BELOW).

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**EXHIBITS**

<b>EXHIBIT A-1</b>	<b>ARTICLES OF ORGANIZATION</b>
<b>EXHIBIT A-2</b>	<b>LIMITED LIABILITY COMPANY OPERATING AGREEMENT</b>
<b>EXHIBIT B</b>	<b>SUBSCRIPTION AGREEMENT</b>

## FORWARD-LOOKING STATEMENTS

Investors should not rely on forward-looking statements because forward-looking statements are inherently uncertain. Investors should not rely on forward-looking statements in this Memorandum. This Memorandum contains forward-looking statements that involve risks and uncertainties. We use words such as “anticipated,” “projected,” “forecasted,” “estimated,” “prospective,” “believes,” “expects,” “plans,” “future,” “intends,” “should,” “can,” “could,” “might,” “potential,” “continue,” “may,” “will,” and similar expressions to identify these forward-looking statements. Investors should not place undue reliance on these forward-looking statements, which may apply only as of the date of this Memorandum.

## SUMMARY OF THE OFFERING

The following information is only a brief summary of, and is qualified in its entirety by, the detailed information appearing elsewhere in this Memorandum. This Memorandum, together with the exhibits attached including, but not limited to, the limited liability company Operating Agreement of the Fund (“Operating Agreement”), a copy of which is attached hereto as Exhibit A-2, should be carefully read in its entirety before any investment decision is made. If there is a conflict between the terms contained in this Memorandum and the Operating Agreement, the Operating Agreement shall prevail and control.

<p><b>THE FUND AND ITS OBJECTIVES</b></p>	<p>Pacific Southwest Note Fund LLC is a Delaware limited liability company. The Fund will raise money through this Offering of Membership Interests to conduct the following business: (1) to purchase, fund, acquire, sell, and/or otherwise invest in “seller carryback” loans secured by interests in real property; and from time to time, (2) to purchase, fund, modify, re-form, extend, sell, foreclose on, and/or otherwise invest in NPLs (non-performing loans) secured by interests in real property.</p> <p>The Fund may also manage, remodel, repair, lease, and/or sell real properties acquired through the Fund’s lending activities, including but not limited, properties acquired through foreclosure and REOs. These loans will be located throughout the United States, primarily in the southwest region of the United States, particularly in Texas, New Mexico, Arizona, Oklahoma, Colorado, Nevada, California and elsewhere as the Managers may determine .</p>
<p><b>THE OFFERING</b></p>	<p>The Fund is offering Investors an opportunity to purchase Membership Interests in the Fund in the maximum aggregate amount of One Hundred Fifty Million Dollars (\$150,000,000). The minimum investment amount per Investor is Fifty Thousand Dollars (\$50,000) (“<u>Minimum Investment Amount</u>”); provided, however, that the Manager reserves the right to accept subscriptions in lower or higher amount.</p>
<p><b>FIXED RETURN</b></p>	<p>Members will generally be entitled to receive a non-cumulative annualized fixed return (“<u>Fixed Return</u>”) on their capital account balance, payable monthly, (and prorated as applicable for the amount of time that a Member was a member of the Fund). This Fixed Return will be payable prior to Fund expenses and any profit participation by the Manager.</p> <p>Effective <b>June 1, 2021</b>, the Fixed Return for any Member shall be equal to a non-cumulative annualized rate of <b>Seven and one-half Percent (7.5%)</b>,</p>

	<p>calculated and payable on a monthly basis. (See “Summary of the Offering – Distribution of Profits” below).</p> <p>Prospective Investors should understand that earnings, cash flow and distributions of the Fund may necessarily fluctuate in accordance with the business and operations of the Fund. At the end of the fiscal year, the Fund may review all distributions paid or payable to Members in order to ensure that Members receive accurate Fixed Return distributions for the annual year in accordance with the intent and provisions of the Operating Agreement in the Memorandum.</p> <p>DISTRIBUTIONS OF THE FIXED RETURN ARE NOT A GUARANTEED DISTRIBUTION AND ARE SUBJECT TO THE CASH AVAILABILITY OF THE FUND. THE MANAGER AND THE FUND MAKE NO GUARANTEES, ASSURANCES OR COMMITMENTS TO THE DISTRIBUTION OF ANY RETURNS. THE MANAGER WILL ONLY MAKE DISTRIBUTIONS TO THE EXTENT CASH IS AVAILABLE AND, IN THE SOLE AND ABSOLUTE DISCRETION OF THE MANAGER, AND TO THE EXTENT THAT ANY DISTRIBUTIONS WILL NOT IMPACT THE CONTINUING OPERATIONS OF THE FUND.</p>
<b>DISTRIBUTION OF PROFITS</b>	<p>Net Profits in excess of the Fixed Return shall be distributed as follows: One Hundred Percent (100%) of the Net Profits shall be distributed to the Manager.</p> <p>“<u>Net Profits</u>” means the Fund’s monthly gross revenue less (1) payment of the Fixed Return to the Members, (2) the Fund’s monthly operating expenses (including payment of outstanding debt (if any), administrative costs, legal expenses, and accounting fees), and (3) at the discretion of the Manager, an allocation of income for a loan loss reserve.</p> <p>All distributions of Net Profits will be made on a monthly basis, in arrears.</p>
<b>FUND ADMINISTRATION</b>	<p>The Fund intends to retain the services of a thirty party fund administrator (“<u>Fund Administrator</u>”) to perform back-office accounting and administrative services for the Fund. The Manager will oversee the activities and performance of the Fund Administrator, including, deployment of funds into loans and/or properties. Notwithstanding the foregoing, the Manager reserves the right, to serve as the Fund Administrator or appoint an Affiliate to serve as Fund Administrator, at its sole and absolute discretion. Any fees payable to the Fund Administrator shall be considered an expense to the Fund.</p>
<b>THE MANAGER</b>	<p>The Fund will be managed by Pacific Southwest Management Group LLC, a Delaware limited liability company. The Manager is also located at 5109 82<sup>nd</sup> Street, Suite #71135, Lubbock, TX 79424.</p>
<b>COMPENSATION TO MANAGER</b>	<p>The Manager shall receive no fees for managing the Fund, other than its share of Net Profits.</p>

<b>PRIOR EXPERIENCE</b>	The principals of the Manager have prior experience in fund management, real estate finance and lending industries. (See “The Manager” below).
<b>SUITABILITY STANDARDS</b>	Membership Interests are offered exclusively to certain individuals, Keogh plans, individual retirement accounts (“IRAs”), and other qualified Investors who meet certain minimum standards of income and/or net worth. Each Investor must execute a Subscription Agreement and an Investor Questionnaire making certain representations and warranties to the Fund, including, but not limited to, such purchaser’s qualifications as an “Accredited Investor” as defined by the Securities and Exchange Commission in Rule 501(a) of Regulation D. (See “Investor Suitability” below).
<b>CAPITALIZATION</b>	The Fund will be funded with equity of a maximum of One Hundred Fifty Million Dollars (\$150,000,000) (“ <u>Maximum Offering Amount</u> ”). The Fund may, at its sole and absolute discretion, at any time during the period of the Offering, increase or decrease the Minimum Investment Amount and/or the Maximum Offering Amount.
<b>NO LIQUIDITY</b>	There is no public market for the Membership Interests and none is expected to develop. Additionally, there are substantial restrictions on transferability of Membership Interests. (See “Risk Factors” below).
<b>VALUATION</b>	At the end of each quarterly period (or such other period as determined by the Manager, in its sole and absolute discretion), the Manager will calculate the net asset value (“NAV”) per Membership Interest using the process that reflects the current status of the Fund. As it pertains to the seller carryback loans, the Manager will value such assets at book value and any discount will be amortized over the life of the loan until paid in full. As it pertains to NPLs, the Manager will value them at their purchase price, which may be adjusted over time based on modification, re-performance, or write-off.
<b>LOAN SERVICER</b>	The Manager intends to retain the services of a third-party loan servicer to service the loans. The servicer, whether a third party or the Manager or its Affiliate, shall be herein referred to as the “Servicer.” The Servicer will be compensated by the Fund and/or borrowers for these loan servicing activities, as is agreed upon by the Manager and Servicer (See “Manager’s Compensation” below). To the extent applicable, the Manager will oversee the activities and performance of the Servicer. At any time, at the sole and absolute discretion of the Manager, the Manager may decide to service the Fund loans itself, appoint an Affiliate, or elect to retain a different third-party servicer at any time for any or no reason.
<b>LEVERAGING THE PORTFOLIO</b>	The Fund may borrow funds from third-party lenders, investors, and/or financial institutions to fund the Fund’s investments. These loans would be secured by the assets held by the Fund; <i>provided, however</i> , that the debt-to-equity ratio on these loans would generally be 0.25:1. Notwithstanding the foregoing, the Manager may increase or decrease the leverage if it in the best interest of the Fund. Leveraging involves additional risks that are

	<p>detailed later in this Memorandum. (See “Risk Factors – Business Risks – Risks of Leveraging the Fund” below).</p>
<b>REINVESTMENT</b>	<p>Members have the option of receiving cash or having their share of cash credited to their capital accounts and reinvested in the Fund, at the then current price of Membership Interests, for any monthly income distributions of the Fund’s earnings, as further described below. (See “Terms of the Offering – Fixed Return; Cash Distributions; Election to Reinvest” below). However, the Manager reserves the right to commence making cash distributions at any time to any Member(s) in order for the Fund to remain exempt from the ERISA plan asset regulations. (See “ERISA Considerations” and “Summary of the Operating Agreement” below).</p>
<b>RETURN OF CAPITAL</b>	<p>The Manager reserves the right to return part or all of the Member’s capital investment to the Member at any time during the investment and to expel any Member for cause. (See “Summary of the Operating Agreement – Redemption Policy and Other Events of Disassociation” below).</p>
<b>LOSS RESERVE</b>	<p>A loan loss reserve may be maintained by the Fund. The loan loss reserve will be evaluated and established on a case-by-case basis at the sole and absolute discretion of the Manager. This loss reserve is intended to temporarily protect Members from potential unrecoverable losses from the Fund’s business and operating activities. Although the loss reserve will help reduce the impact of defaults temporarily, ultimate repayment/resale of the loans will be jeopardized to the extent that any loans are in default and are not eventually repaid or resold, whether by the applicable borrower or by the Fund, to protect available collateral. Reserve amounts may be reduced, eliminated, or increased accordingly in the sole and absolute discretion of the Manager. The loss reserve may initially be funded from the proceeds of the Offering, and thereafter may be funded from Offering proceeds or cash flow and/or profits of the Fund (as is determined by the Manager in its sole discretion).</p>
<b>WITHDRAWAL</b>	<p>Members who invest in the Fund may not withdraw their capital until they have been members of the Fund for at least Twelve (12) months. Members who have been members of the Fund for a period longer than Twelve (12) months may request withdrawal from the Fund in writing and give the Fund at least Thirty (30) days’ notice prior to expecting to be withdrawn from the Fund. The withdrawal date shall be effective upon the date of receipt of the Member’s withdrawal request. The Fund will use its best efforts to return capital subject to, among other things, the Fund’s then cash flow, financial condition, and prospective transactions in assets.</p> <p>The Fund and the Manager are not under any circumstances obligated to liquidate any assets, properties, or loans in any efforts to accommodate or facilitate any Member(s)’ request for withdrawal or redemption from the Fund. Based upon the Manager’s discretion, taking into account the liquidity of the Fund, a request for a return of capital may be limited to Fifty Percent (50%) of such Member’s capital account balance such that it</p>

	<p>will take at least Two (2) quarters for a Member to withdraw his, her, or its total investment in the Fund. Withdrawal requests will be processed by the Fund on a first-come, first-served basis. Notwithstanding the foregoing, the Manager may, in its sole and absolute discretion, waive or modify such withdrawal requirements.</p> <p>The Manager may at any time suspend the withdrawal of funds from the Fund, upon the occurrence of any of the following circumstances: (i) whenever, as a result of events, conditions or circumstances beyond the control or responsibility of the Manager or the Fund, disposal of the assets of the Fund is not reasonably practicable without being detrimental to the interests of the Fund or its Members, determined in the sole and absolute discretion of the Manager; (ii) it is not reasonably practicable to determine the net asset value of the Fund on an accurate and timely basis; or (iii) if the Manager has determined to dissolve the Fund. Notice of any suspension will be given within Ten (10) business days from the time the decision was made to suspend distributions to any Member who has submitted a withdrawal request and to whom full payment of the redemption proceeds has not yet been remitted. If a redemption request is not rescinded by a Member following notification of a suspension, the redemption will be effected as of the last day of the calendar month in which the suspension is lifted, on the basis of the net asset value of the Fund at that time and in the order determined by the Manager in its sole and absolute discretion.</p> <p>All prospective Investors should understand that the average term of loans is expected to range from Five (5) years to Thirty (30) years, and accordingly, the cash flow and access to cash availability of the Fund is likely to be limited on an ongoing basis (i.e. most of the Fund's available resources will be committed as invested in loans for significant periods of time). Further, prospective Investors should understand the loans are illiquid and the ability to sell loans or its assets (even if the Fund was inclined to do so) may be limited, and accordingly, any investment made in or through this Offering should be considered highly illiquid.</p>
<b>EARLY WITHDRAWAL</b>	There will be no penalties enforced for early withdrawal.
<b>COMMISSIONS FOR SELLING MEMBERSHIP INTERESTS</b>	<p>Membership Interests will be offered and sold directly by the Fund, the Manager, and the Fund's and Manager's respective officers and employees. No commissions for selling Membership Interests will be paid to the Fund, Manager, or the Fund's or Manager's respective officers or employees. While most Membership Interests are expected to be offered and sold directly by the Fund, the Manager and their respective officers and employees, the Fund or Manager may also, in limited instances, offer and sell Membership Interests through the services of independent broker/dealers who are member firms of the FINRA and who will be entitled to receive customary and standard commissions. These commissions will be paid by the Investor admitted to the Fund through such broker/dealer (and such payment may reduce the Capital Account of the Investor). Notwithstanding the foregoing, the Manager may pay</p>

	finders' fees to finders who introduce and/or refer investors to the Fund, provided that, such compensation complies with applicable federal and/or state requirements and/or laws.
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## FREQUENTLY ASKED QUESTIONS

### ***What is the Fund's business objective?***

The Fund's primary focus is to purchase, fund, acquire, sell, and/or otherwise invest in "seller carryback" loans secured by interests in real property. The Fund's investment intentions are to purchase primarily first-position loans that are performing, versus non-performing (NPL's).

The Fund's investment objective is to preserve principal, provide current income, and achieve consistent returns by investing in seller carryback loans primarily secured by first-lien deeds of trust or mortgages, with a smaller percentage secured by junior-lien deeds of trust or mortgages. (See "Lending Standards and Policies" below). These loans (and the underlying properties) will be located throughout the United States, primarily in the southwest region of the United States, particularly in Texas, New Mexico, Arizona, and Oklahoma. The Fund is designed to provide attractive risk-adjusted returns for its Members, with such returns paid monthly or reinvested at the Member's option.

From time to time, the Fund may also purchase, fund, modify, re-form, extend, sell, foreclose on, and/or otherwise invest in NPLs secured by interests in real property. In addition, during the regular course of business (i.e., lending activities), the Fund may foreclose on and/or recoup the underlying collateral as REOs. The Fund may manage, remodel, repair, lease, and/or sell such real properties acquired through the Fund's activities.

### ***What is a Seller Carryback Loan?***

A "seller carryback" or "seller financing" loan is a loan in which the seller agrees to finance a portion or all of the debt to the buyer to purchase a real property. In a seller carryback transaction, the seller is the lender and the buyer is the debtor. Generally, the seller/lender does not provide the actual cash to the buyer/debtor, but, instead, the seller/lender extends or provides credit to the buyer/borrower to cover the purchase price of the home (excluding any down payment). The buyer/borrower signs a promissory note to the seller/lender, which is secured in the form of a mortgage or deed of trust. The buyer/borrower makes his or her periodic payments under the note until paid in full.

A seller financing loan is generally not through a conventional lender (i.e., bank), but occurs in a private setting between the buyer/borrower and seller/lender. However, in certain instances, the seller/lender may provide financing to the buyer/borrower to cover the remaining portion of the debt and takes a junior lien position behind a third-party lender or bank financing.

### ***What Market Opportunities Exist on these Seller Carryback Loans?***

The Manager believes that there is a substantial opportunity and market to purchase these seller carryback loans at significant discounts from the unpaid principal balance ("UPB"). These loans are secured by the underlying real property and are generally performing (i.e., borrower is making payments). Purchasing these notes at a discount creates a boosted internal rate of return above the nominal note interest rate. The

Fund's business model is to purchase or acquire these seller carryback loans at substantial discount, resulting in the Fund becoming the holder of the note and increasing profit.

A seller/lender may face life circumstances or opportunities that result in finding him or herself in need of cash. Such life circumstances may include, without limitation, death, divorce, incapacity, bankruptcy, business opportunity ventures, among others. Of course, not all note holders agree to the discounted offers presented to them. The Fund intends to form a guideline and processes to create a steady flow of responses that result in purchase opportunities that is suitable to the Fund's overall investment strategy.

### ***How does the Fund Generate Leads to Purchase these Seller Carryback Loans?***

To identify investment opportunities, the Fund will be supported by Enhance Mortgage Corporation, a Texas corporation ("EMC") and Pacific Private Money Inc., a California corporation ("PPM"). Both EMC and PPM have historically demonstrated sufficient proprietary flow of investment opportunities and management skills to meet the needs of the Fund.

The Fund will leverage EMC's proprietary marketing software and its extensive network of contacts and relationships to source sellers of real estate secured notes. The selection and screening process of the Fund's investments will rely on (i) selecting opportunities from a large pool of investment opportunities, (ii) rigorous evaluation of the borrower's payment history and (iii) evaluation of the real estate assets that will be subject to the loan.

### ***What is the Fund's Loan Guideline?***

The Fund's loan guideline is set more fully in "Lending Standards and Policies" below. Nevertheless, the below is a brief summary of the loan parameters:

- Asset Class: primarily single-family residential properties. May include multi-family residential, mixed-use and commercial properties.
- Purchase Ratio: Target of 60-70% of the principal balance; 80% maximum
- Loan Size: Between \$5,000 and \$2,000,000
- Loan Terms: generally between two (2) and forty (40) years (amortized)
- Loan Interest Rates: 0-12%
- Loan Type: may be both consumer purpose and business purpose loans.

These guidelines are flexible, and the Manager has the sole and absolute discretion to increase or decrease any of the above guidelines and profile.

### ***What is the Fund's exit plan for these Loans?***

Upon acquisition, the Fund may take variety of actions to maximize the profit from the seller carryback loans, including, without limitation, sell the loan at par or near-par value (i.e., original principal balance), hold until maturity, foreclose on (as applicable), or modify and/or extend the loan. Such exit plans will be determined by the Manager in its sole and absolute discretion.

## **TERMS OF THE OFFERING**

This Offering is made to qualified Investors to purchase Membership Interests in the Fund. The Minimum Investment Amount is Fifty Thousand Dollars (\$50,000). (See "Investor Suitability" below). While the Offering is still open, Members that have subscribed for at least the Minimum Investment Amount may

purchase additional Membership Interests in increments of One Thousand Dollars (\$1,000). The Manager reserves the sole right, but has no obligation, to adjust the purchase price per Membership Interest at any time and for any reason (or no reason) and thereby require either a higher or lesser amount.

The Offering will continue until it (1) is terminated by the Fund or, (2) the Fund has raised the Maximum Offering Amount. At such time, the Offering will be deemed closed. The Fund may, at its sole and absolute discretion, at any time during the period of the Offering, increase or decrease the Minimum Investment Amount or the Maximum Offering Amount.

Notwithstanding the foregoing in “Terms of the Offering,” the Fund reserves the right, in its sole and absolute discretion to, at any time, and for any reason or no reason, accept subscriptions in a lesser amount or to require a higher amount or to reject any subscription(s) in whole or in part.

### **Subscription Agreements; Admission to the Fund**

To subscribe with the Fund and purchase any Membership Interests, an Investor must meet certain eligibility and suitability standards, some of which are set forth below (see “Investor Suitability” below). Additionally, an Investor who wishes to become a Member of the Fund must sign and execute a Subscription Agreement in the form attached hereto as Exhibit B (together with payment in the amount of the capital contribution payable to the Fund), which shall be accepted or rejected by the Manager in its sole and absolute discretion. By executing the Subscription Agreement, an Investor makes certain representations and warranties upon which the Manager will rely on in accepting the Investor’s subscription funds. INVESTORS SHOULD CAREFULLY READ AND COMPLETE THE SUBSCRIPTION AGREEMENT (WITH POWER OF ATTORNEY) AND INVESTOR QUESTIONNAIRE.

The Manager may reject an Investor’s Subscription Agreement for any reason or no reason at all. If accepted by the Manager, the Investor’s capital contribution will be temporarily deposited into a call account (“Subscription Account”). While an Investor’s contribution is held in the Subscription Account, the Investor will not be considered a Member of the Fund, and the Investor’s contribution will not accrue any interest from the Fund. An Investor shall become a Member of the Fund when the Investor’s contribution is deposited into the Fund’s operating account (“Operating Account”) from the Subscription Account. In the event interest accrues on an Investor’s capital contribution while being held in the Subscription Account, such interest shall be payable to the Investor. The Manager will transfer the Investor’s contribution from the Subscription Account into the Fund’s main Operating Account on a first in, first out basis when capital is needed by the Fund (in the Manager’s sole and absolute discretion) to make or purchase loans.

Notwithstanding the previous paragraph, should the process from depositing an Investor’s funds into the Subscription Account and admission as a Member take longer than Sixty (60) days, the Investor may request in writing to recover his, her or its investment funds. If, upon receipt of such request in writing, the Manager has not yet admitted the Investor as a Member, then Manager may, in its sole and absolute discretion, return the Investor’s funds to the Investor and revoke the Subscription Agreement within Ten (10) business days of receipt of such request from the Investor.

Subscription Agreements are non-cancelable and irrevocable by the Investor and subscription funds are non-refundable for any reason, except with the express written consent of the Manager or as expressly set forth herein or in the Subscription Agreement.

AN INVESTOR SHALL OWN MEMBERSHIP INTERESTS IN THE FUND IF AND ONLY IF THE INVESTOR’S SUBSCRIPTION FUNDS ARE TRANSFERRED INTO THE FUND’S MAIN OPERATING ACCOUNT.

***Reinvestment Election***

Each Member must elect to (a) receive cash distributions for his, her or its share distributions of the Fund that is payable to the Member, or (b) having such amount(s) credited to his, her or its capital accounts and reinvested in the Fund to purchase additional Membership Interests. Notwithstanding the foregoing, the Manager reserves the right to commence making cash distributions at any time to any Member(s) in order for the Fund to remain exempt from the ERISA plan asset regulations. Members must elect to receive cash or reinvest all of their monthly income distributions. No partial reinvestment is permitted. (See “ERISA Considerations” and “Summary of the Operating Agreement” below).

An election to reinvest the monthly income distribution and Preferred Return is revocable at any time upon a written request to revoke such election. If no election is made, then the monthly income distribution and Preferred Return will be a cash disbursement. Members may change their election at any time upon Thirty (30) days written notice to the Fund. Upon receipt and after the Thirty (30) day notice has occurred, the Member’s election shall be changed and reflected on the following first day of the month in which the Member is entitled to receive a distribution. Notwithstanding the preceding sentences, the Manager may at any time immediately commence with income distributions in cash only (hence, suspending the reinvestment option for such Member(s)) to any Member(s) in order for the Fund to remain exempt from the ERISA plan asset regulations. No partial reinvestment is permitted. (See “ERISA Considerations” and “Summary of the Operating Agreement” below).

**Maximum Offering**

The Maximum Offering Amount of this Memorandum is One Hundred Fifty Million Dollars (\$150,000,000). The Fund may, at its sole and absolute discretion, at any time during the period of the Offering, increase or decrease the Maximum Offering Amount or the Minimum Investment Amount.

The maximum gross proceeds will be the Maximum Offering Amount which will comprise, subject to adjustments as described elsewhere in this Memorandum, the total equity capitalization of the Fund. This Offering may, however, be terminated at the sole option of the Manager at any time and for any reason (or no reason) before the Maximum Offering Amount is received.

**Restrictions on Transfer**

As a condition to this Offering, restrictions have been placed upon the ability of Members to resell or otherwise transfer any Membership Interests purchased hereunder. Specifically, no Member may resell or otherwise transfer any Membership Interests without the satisfaction of certain conditions designed to ensure compliance with applicable tax and securities laws including, without limitation, the requirement that certain legal opinions be provided to the Fund with respect to such matters and the requirement that any transfer of Membership Interests to a transferee does not violate any state or federal securities laws. Notwithstanding the foregoing, no Member may resell or otherwise transfer any Membership Interests without the prior written consent of the Manager, whose consent may be withheld in its sole and absolute discretion. (See “Summary of the Operating Agreement — Transfer Restrictions” below).

To the extent required by applicable law or in the sole and absolute discretion of the Manager, legends shall be placed on all instruments or certificates evidencing ownership of Membership Interests in the Fund stating that the Membership Interests have not been registered under the federal securities laws and setting forth limitations on resale, and notations regarding these limitations shall be made in the appropriate records of the Fund with respect to all Membership Interests offered through this Offering.

Any Member who transfers, upon the Manager's consent, any Membership Interests to another person shall pay the Manager, subject to the sole and absolute discretion of the Manager, a transfer fee of at least Five Hundred Dollars (\$500) to cover administrative costs related thereto.

### INVESTOR SUITABILITY

This investment is appropriate only for Investors who have no need for immediate liquidity in their investments and who have adequate means of providing for their current financial needs, obligations, and contingencies, even if such investment results in a total loss. Investment in the Membership Interests involves a high degree of risk and is suitable only for an Investor whose business and investment experience, either alone or together with a purchaser representative, renders the Investor capable of evaluating each and every risk of the proposed investment. CAREFULLY READ THE ENTIRE "RISK FACTORS" SECTION OF THIS MEMORANDUM.

Each Investor seeking to acquire Membership Interests will be required to represent that he, she or it is purchasing for his, her or its own account for investment purposes and not with a view to resale or distribution. The Fund will sell the Membership Interests to an unlimited number of "Accredited Investors" only.

To qualify as an "Accredited Investor" an Investor must meet ONE of the following conditions:

1. Any natural person who had an individual income in excess of Two Hundred Thousand Dollars (\$200,000) in each of the two most recent years or joint income with that person's spouse in excess of Three Hundred Thousand Dollars (\$300,000) in each of those years and who has a reasonable expectation of reaching the same income level in the current year;

2. Any natural person whose individual net worth or joint net worth, with that person's spouse, at the time of their purchase exceeds One Million Dollars (\$1,000,000) (excluding the value of such person's primary residence);

3. Any bank as defined in Section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act, whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to Section 15 of the Securities and Exchange Act of 1934 ("Exchange Act"); any insurance company as defined in Section 2(13) of the Exchange Act; any investment company registered under the Investment Fund Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; any Small Business Investment Fund ("SBIC") licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a State, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of Five Million Dollars (\$5,000,000); any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of Five Million Dollars (\$5,000,000) or, if a self-directed plan, with investment decisions made solely by persons who are Accredited Investors;

4. Any private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;

5. Any organization described in Section 501(c)(3)(d) of the Internal Revenue Code of 1986, as amended ("Code"), corporation, Massachusetts or similar business trust, or partnership, not formed for

the specific purpose of acquiring the securities offered, with total assets in excess of Five Million Dollars (\$5,000,000);

6. Any director or executive officer, or Fund of the issuer of the securities being sold, or any director, executive officer, or Fund of a Fund of that issuer;

7. Any trust, with total assets in excess of Five Million Dollars (\$5,000,000), not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Section 506(B)(b)(2)(ii) of the Code; or

8. Any entity in which all the equity owners are accredited investors as defined above.

## Verification

The Fund will require that the Investor verify the Investor's status as an Accredited Investor through any reasonable means and steps deemed necessary or suitable by the Fund. A non-exhaustive list of verification steps that the Fund may use for, or require from, an Investor is noted in the Subscription Agreement. Every Investor is required to cooperate in the Fund's verification steps and methods before being permitted to invest in the Offering. The Fund may use differing or varied verification steps or methods for each Investor as the facts and circumstances surrounding any particular Investor's financial situation would likely be different from any other Investor.

## USE OF PROCEEDS

	<u>Maximum Offering Amount</u>	<u>Percentage of Gross Offering Proceeds</u>
Gross Offering Proceeds	\$150,000,000	100%
Commissions Payable by the Fund <sup>(1)</sup>	\$0	0%
<b>Deployable Proceeds <sup>(2)</sup></b>	<b>\$150,000,000</b>	<b>100%</b>

<sup>(1)</sup>Membership Interests will be offered and sold directly by the Fund, the Manager, and the Fund's and Manager's respective officers and employees. No commissions for selling Membership Interests will be paid to the Fund, Manager, or the Fund's or Manager's respective officers or employees. While most Membership Interests are expected to be offered and sold directly by the Fund, the Manager and their respective officers and employees, the Fund or Manager may also, in limited instances, offer and sell Membership Interests through the services of independent broker/dealers who are member firms of the FINRA and who will be entitled to receive customary and standard commissions based on the proceeds received for the sale of Membership Interests. These commissions will be paid by the Investor admitted to the Fund through such broker/dealer (and such payment may reduce the Capital Account of the Investor). The amount and nature of commissions payable to broker/dealers is expected to vary on a case-by-case basis as is agreed between the Investor and the broker/dealer. Notwithstanding the foregoing, the Manager may pay finders' fees to finders who introduce and/or refer investors to the Fund, provided that, such compensation complies with applicable federal and/or state requirements and/or laws.

<sup>(2)</sup> Gross Offering proceeds to the Fund are calculated before deducting organization and offering expenses. The expenses relating to this Offering include, without limitation, legal, organizational, printing, binding, and miscellaneous expenses. The remaining Offering proceeds will be available for investment in assets pursuant to the business plan of the Fund. The Manager will receive its compensation from a variety of sources, including, without limitation, a portion of the Net Profits. (See "Manager's Compensation" below). The Manager may, in its sole and absolute discretion, elect to be responsible for some or all of the foregoing expenses related to the Offering, whether through direct payment of such expenses or reimbursement to the Fund of such expenses incurred.

## LENDING STANDARDS AND POLICIES

### General Standards for Loans

The Fund will primarily purchase, fund, acquire, sell, and/or otherwise invest in “seller carryback” loans secured by interests in real property. These loans will be located throughout the United States, primarily in the southwest region of the United States, particularly in Texas, New Mexico, Arizona, Oklahoma, Colorado, Nevada, California and elsewhere as the Managers may determine. The Fund’s loans will not be guaranteed by any governmental agency or private entity, but may be guaranteed by members, shareholders, affiliates, and/or associates of the underlying borrowers. The Fund will select loans according to the standards provided below.

**1. Lien Priority.** Loans will primarily be secured by senior deeds of trust or mortgages that are first lien positions. The Fund may also fund loans secured by (a) second, junior, deeds of trust or mortgages, (b) a pledge of the ownership interest in the borrowing entity (“Mezzanine Loans”), (c) preferred equity interest in the borrowing entity (“Preferred Equity”) provided that, the aggregate ratios in Section 3 below are met.

**2. Location of Real Property Securing Loans.** Most deeds of trust and mortgages will be secured by real property located in the southwest region of the United States, particularly in Texas, New Mexico, Arizona, Oklahoma, Colorado, Nevada, California and elsewhere as the Managers may determine.

**3. Consumer Purpose Loans.** The Fund may acquire loans that are consumer purpose loans. Consumer loans are loans primarily used for personal, family or household use that are secured by the borrower’s primary residence. The Fund shall pursue these endeavors in accordance with and pursuant to applicable state lending licensing regulations. (See “Risk Factors – Business Risks”).

**4. Ratio.** A loan from the Fund will generally not exceed the percentage ratios set forth below. The ratio is calculated by taking the purchase price of the loan and the principal amount. The principal balance may, without limitation, the actual principal amount, accrued interests, fees, and/or other costs, among others. Notwithstanding the foregoing, the Fund may exceed the below stated ratios if the Manager determines, in its sole and absolute discretion, that it is in the best interest of the Fund

Type of Real Property Securing Loan	Target and Maximum Ratios <sup>1</sup>
Single Family Residential and 1-4 Units	Target: 60 to 70%; Maximum: 80%
Multi-Family Properties <sup>2</sup>	Target: 60% to 70%; Maximum: 80%
Commercial <sup>3</sup>	Target: 60% to 70%; Maximum: 80%

1. The ratio set forth herein is determined from the purchase price of the loan divided by the UPB of the loan.

2. Multi-family includes apartments, manufactured housing (aka mobile home parks), student housing, senior apartments and non-owner-occupied single-family homes.

3. Commercial includes retail, office, industrial, self-storage, and specialized commercial properties (e.g. churches, synagogues, etc., if alternative use is viable).

From time to time, the Manager may re-evaluate the portfolio and ratio maximums set by the Fund and may revise the ratio maximums at that time if it considers it to be in the best interests of the Fund. The Manager will inform Members of the new ratios when and if the Manager re-evaluates them.

In general, the Fund will seek to maintain a weighted ratio for the Fund of approximately Sixty Percent (60%) and Seventy Percent (70%); provided that the maximum ratio for the Fund shall not exceed Eighty Percent (80%), unless the Manager determines in its sole discretion that it is in the best interests of the Fund to exceed such ratio in any single or multiple instances.

**5. Terms of Fund Loans.** The terms of the Fund loans will vary and may have terms as short as Two (2) years and as long as Forty (40) years. A loan may, however, be shorter in term or exceed the foregoing terms if the Manager believes, in its sole and absolute discretion, that the loan is in the best interests of the Fund. Many loans that the Fund will acquire may be amortized loans or in certain instances, interest-only payments followed by a balloon payment at the end of the term. At the end of the term, the Fund will require the borrower to pay the loan in full, to refinance the loan, or to sell the real property to pay back the loan. The Fund may allow extensions for a fee paid by Fund borrowers. Finally, the Fund may also charge exit fees on loans based on the existing loan balance at maturity. These exit fees may range from Zero Percent (0%) to Ten Percent (10%) of the remaining loan balance at maturity.

**6. Loan Size.** The outstanding principal balance of the loans will range from Five Thousand Dollars (\$5,000) to Two Million Dollars (\$2,000,000). Notwithstanding the foregoing, the Manager reserves the right to alter such amounts for purchase, if it's in the best interest of the Fund.

**7. Title Insurance.** Satisfactory title insurance coverage will be obtained for all loans and will usually be paid by the borrower. The title insurance policy will name the Fund as the insured and provide title insurance in an amount not less than the principal amount of the loan unless there are multiple forms of security for the loan, in which case the Manager shall use its sole business judgment in determining whether and to what extent title insurance shall be required. Title insurance insures only the validity and priority of the Fund's deed of trust or mortgage, and does not insure the Fund against loss from other causes, such as diminution in the value of the secured property, loan defaults, and other such losses.

**8. Fire and Casualty Insurance.** Satisfactory fire and casualty insurance will be obtained for all improved real property loans which insurance will name the Fund as its loss payee in the amount equal to the improvements on the real property. (See "Business Risks – Uninsured Losses" below).

**9. Mortgage Insurance.** The Manager does not intend to, but may if the property otherwise qualifies, arrange for mortgage insurance, which would afford some protection against loss if the Fund foreclosed on a loan and there existed insufficient equity in the security property to repay all sums owed.

**10. Fractionalized Interests.** The Fund may also invest in fractionalized interests in promissory notes secured by real property with other lenders (including other entities organized by the Manager), by providing funds for or by purchasing a fractional undivided interest in a first position loan that meets the requirements set forth above.

**11. Equity Participation and Mezzanine Positions.** The Fund may fund Mezzanine loans as an alternative to loans secured by real property. Generally, a Mezzanine loan is a type of subordinate real estate financing that is secured by a pledge of One Hundred Percent (100%) of the equity ownership interests in the entity that owns the real property. The Fund may also make loans where it agrees to participate in the equity of the property securing the loan made by the Fund. Such equity participation may include, but is not limited to, sharing in the proceeds from the sale price of the property or properties securing the loan, or including additional exit fees upon loan repayment.

**12. Sale of Loans.** The Fund may invest in loans for the purpose of reselling such loans in the course of business. The Fund may sell loans, or fractional interests in such loans, when the Manager determines (in its sole and absolute discretion) that it appears to be advantageous for the Fund to do so,

based upon the current interest rates, the length of time that the loan has been held by the Fund and the overall investment objectives of the Fund. (See “Risk Factors – Investment Risks” below).

**13. Diversification of the Fund’s Capital in Loans.** After the Fund has Twenty Million Dollars (\$20,000,000) in capital, no loan originated or acquired by the Fund shall exceed Twenty Percent (20%) of the total Fund capital at the time of the loan. A loan may exceed the foregoing percentage if, the Manager’s believes, in its sole and absolute discretion, that the loan is in the best interests of the Fund.

**14. Property Acquisition.** Properties acquired by the Fund will be acquired through the Fund’s lending activities, including but not limited to, properties acquired as a result of a borrower defaulting on a loan. The Fund may establish limited liability companies that are wholly owned subsidiaries of the Fund to own and hold title of a property that the Fund has acquired and intends to improve, rent, and/or sell. These wholly-owned subsidiaries will be single-purpose entities (“SPE”) created solely for the purpose of owning, improving, renting, and/or selling the properties the Fund acquires. The Manager (or an Affiliate) shall serve as the sole manager of these SPEs.

### Non-Performing Notes

The Fund may, from time to time, acquire, modify, reinstate, re-form, foreclose on, extend, sell, or purchase NPLs. These NPLs will be located throughout the United States with a primary focus in the southwest region, particularly in Texas, New Mexico, Arizona, Oklahoma, Colorado, Nevada, California and elsewhere as the Managers may determine.

Nonperforming Loans are typically loans that are in default, behind in payments, or are secured by properties that have little to no equity remaining due to devaluation or excessive leverage. The Fund’s primary intent, as it pertains to Nonperforming Loans is to acquire the Nonperforming Loans at a discount and subsequently refinance, modify or otherwise reform them to become a performing note. Alternatively, the Fund may also foreclose and/or acquire the properties securing the Nonperforming Loans. The Fund intends to use the general standards and criteria set forth below, wherever applicable.

Non-Performing Notes are generally loans that are in default, behind in payments, or are secured by properties that have little to no equity remaining due to devaluation or excessive leverage. As it pertains to Non-Performing Notes, the Fund may acquire these Non-Performing Notes (i) to refinance, modify or otherwise reform the Non-Performing Note to become a re-performing Note (ii) to foreclose on the real property securing the Non-Performing Note and generate profit from the sale of the property; (iii) to accept a deed in lieu of foreclosure on the property; or (iv) to negotiate different terms with the borrower so the borrower is able to make monthly payments on the reformed note. These notes may be transferred, assigned, sold, or otherwise held by the Fund.

Most non-performing loans for purchase will be based on UPB ratio, which will range between Sixty Percent (60%) and Eighty Percent (80%) of the UPB, but may be lower or higher if it is in the best interests of the Fund. The terms of the NPLs will generally be the same as that of the “seller-finance” fund, such that the term may be as short as Fifteen (15) years or as high as Thirty (30) years. To the extent applicable, the Fund may use similar or same standards as that of the standards stated above.

### Credit Evaluations

The Manager will consider the income level and general creditworthiness of a borrower to determine his, her, or its ability to repay the loan according to its terms in addition to considering the ratios described above and secondary sources of security for repayment. The Fund may acquire loans made to borrowers who are in default under other obligations (e.g., to consolidate their debts) or who do not have sources of

income that would be sufficient to qualify for loans from other lenders such as banks or savings and loan associations.

### **Loan Servicing**

It is presently anticipated that all Fund loans will be serviced (i.e., loan payments collected and other services relating to the loan) by a third-party loan servicer. Notwithstanding the foregoing, at its sole election, the Manager may choose to service the Fund loans itself, appoint an Affiliate, or retain the services of a different third-party loan servicer, at any time for any reason (or no reason). The servicer, whether a third party or the Manager or its Affiliate, shall be herein referred to as the “**Servicer**.” The Servicer will be compensated by the borrowers and/or Fund for such loan servicing activities, as is agreed upon by the Manager and Servicer. To the extent applicable, the Manager will oversee the activities and performance of the Servicer. (See “The Manager” below).

Borrowers will make loan payments in arrears (i.e. with respect to the preceding month) and will be instructed to send their loan payments either to the Manager or to the Servicer (as applicable) for deposit in the respective party’s trust account.

### **Leveraging the Fund / Borrowing / Note Hypothecation**

The Fund may borrow funds for the purpose of making and purchasing loans and may assign all or a portion of its loans as security for such loans. The Fund anticipates engaging in this type of transaction when the interest rate at which the Fund can borrow funds is significantly less than the rate that can be earned by the Fund when using those funds to make or acquire loans, giving the Fund the opportunity to earn a profit as a “spread.” These transactions will typically be loans secured by one or a series of loans belonging to the Fund. Such a transaction involves certain elements of risk and also entails possible adverse tax consequences. (See herein “Risk Factors,” “Income Tax Considerations,” and “ERISA Considerations” below).

The Fund may also in its sole discretion elect to employ leverage and borrow funds from third party lenders, investors, and/or financial institutions to finance the Fund's investments in loans; *provided, however*, that the debt-to-equity ratio on these loans would generally be 0.25:1. Notwithstanding the foregoing, the Manager may increase or decrease the leverage if it is in the best interest of the Fund. Leverage usually involves a third-party loan in which the Fund’s entire asset portfolio is provided as security to the lender for such loan(s). Leveraging involves additional risks that are detailed later in this Memorandum. (See “Risk Factors – Business Risks – Risks of Leveraging the Fund” below).

## THE MANAGER

The Manager of the Fund is **Pacific Southwest Management Group LLC**, a Delaware limited liability company. The Manager was formed under the laws of Delaware on May 26, 2020. The Manager will manage and direct the affairs of the Fund. The principals, officers, and directors of the Manager, and their biographies, are as follows:

*Pacific Private Money Inc. President: Mark Hanf*

Mark Hanf has spent his entire career in the real estate industry. From 1982 to 2006, Mark worked for a family-held real estate and development firm founded by his father. In 2007 Mark worked in private lending and in 2008 founded Pacific Private Money Loans. Pacific Private Money Inc. was incorporated in 2010 and since then has originated over 2,000 privately funded real estate mortgage loans totaling more than \$1 billion, with zero losses of principal to its investors. Pacific is currently among the largest private lenders in Northern California.

Mark's first fund, the Pacific Private Money Fund, was launched in 2013 and has grown to over \$65 million in assets under management as of May 2021. In total, Mark is a manager or co-manager of three mortgage pool funds in addition to the Pacific Southwest Note Fund.

*EMC President: Mark Brown*

Mark Brown is a 28-year professional private investor with a singularly specific specialization in private mortgage loan securities. Mr. Brown's first experience in the seller finance market was at the age of 16 in 1983. His father and family had also been in the seller finance mortgage industry continuously since that time. Mr. Brown has been a party to more than 50,000 note acquisitions in the seller finance mortgage market.

1997-2001 Mr. Brown was a shareholder and owner of Credit Based Asset Servicing and Securitization commonly known as C-Bass LLC. C-bass was a large purchaser of scratch and dent mortgage loans and successfully securitized approximately \$41B in whole loan acquisitions.

From 1991- current he has been sole owner, investor, President and CEO of Templeton Mortgage Corporation, a corporation with the intent and sole purpose of serving the same structure and function as a private mortgage pool fund. To date, Templeton Mortgage Corp has acquired and serviced more than 1,000 private mortgage loans with the goal of long term fixed income investing.

From 1999 – current he has been the sole shareholder / owner of Enhance Mortgage Corp a corporation with the express purpose of locating investable mortgage loans at steep discounts for acquisition and investing.

*Equity Bancorp President: Edward E.N. Brown*

For over 20 years Edward Brown was CEO of a \$40 million alternative lending company based in Marin County. Today he assists Pacific Private Money with capital raising and investor presentations. Edward is also the host of two radio shows —The Best of Investing with Mark Hanf and Sports Econ 101, a national sports and business show. Edward earned his B.S. in Accounting and M.S in Taxation from Golden Gate University and has held licenses and certifications including Real Estate Salesperson, Insurance License, Series 7 Securities License, Tax Preparation License, and Certified Fund Specialist.

## INCOME TO THE FUND

The following discussion summarizes some important areas of compensation to be received by the Manager and its Affiliates, and in certain instances, the Servicer. If the Manager or Servicer defers or assigns to the Fund any of their respective compensation, the Manager and/or Servicer will be entitled to recover same at a later time within the same calendar year or at any time thereafter. Notwithstanding the foregoing, the Manager and/or Servicer have no obligation to waive, defer, or assign to the Fund any portion of such compensation at any time.

Form of Income	Estimated Amount or Method of Compensation
<b>INCOME TO THE FUND</b>	<p>The Fund's income will generally come from the following:</p> <ol style="list-style-type: none"> <li>1. Interest income from the Fund loans;</li> <li>2. Loan extension and modification fees;</li> <li>3. Forbearance fees, late fees, late charges, collection fees, prepayment penalties, default interest, and all other similarly related fees incurred by borrowers;</li> <li>4. Profits generated from early payoffs, when the unpaid principal balance is larger than the purchase price of the loan.</li> </ol>
<b>PROFIT PARTICIPATION</b>	<p>The Manager shall participate in the distribution of Net Profits as follows: the Manager shall receive One Hundred Percent (100%) of the Net Profits. Net Profits shall be distributed as determined by the Manager.</p>
<b>LOAN SERVICING FEES</b>	<p>Any loan servicing fees payable to the Servicer shall be calculated as an expense to the Fund. This fee shall be collected monthly from the payments received by the Fund from the borrowers. Notwithstanding the foregoing, the loan servicing fee may vary from loan to loan.</p>
<b>INCOME FROM REOs</b>	<p>Any REOs acquired through the Fund's lending activities will be managed, remodeled, repaired, leased, and/or sold by the Fund, the Manager, and/or its Affiliates, as determined by the Manager in its sole and absolute discretion. Any cash flow derived from REOs, or profits gained from sale of such properties shall be retained by the Fund, including any real estate commissions, property management fees, and/or fees accrued in connection with the REOs.</p>
<b>OPERATING EXPENSES</b>	<p>The Fund shall pay its own general administrative and operating expenses, which may include, without limitation, legal expenses, third-party servicing fee, accounting costs, Fund Administration fees, and/or marketing expenses. In addition, the Fund shall bear all organizational and syndication costs, fees, and expenses incurred by the Manager on behalf of the Fund in connection with the formation and organization of the Fund, including, legal and</p>

	accounting fees and expenses, or any incidentals thereto, as well as, any expenses, costs, or fees, with respect to NPLs and/or REOs, including, without limitation, legal fees, third-party servicer cost, or filing fees.
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### **FIDUCIARY RESPONSIBILITY OF THE MANAGER**

Under applicable law, the Manager is generally accountable to the Fund as a fiduciary, which means that the Manager is required to exercise good faith and integrity with respect to Fund affairs and sound business judgment. This is a rapidly developing and changing area of the law, and Members should consult with their own legal counsel in this regard. The fiduciary duty of the Manager is in addition to the other duties and obligations of, and limitations on, the Manager set forth in the Operating Agreement of the Fund. Investors should consult with their own independent counsel in this regard.

The Fund has not been separately represented by independent legal counsel in its formation or in the dealings with the Manager, and Members must rely on the good faith and integrity of the Manager to act in accordance with the terms and conditions of this Offering.

The Operating Agreement provides that the Manager will not have any liability to the Fund for losses resulting from errors in judgment or other acts or omissions unless the Manager is guilty of fraud, bad faith or willful misconduct. The Operating Agreement also provides that the Fund will indemnify the Manager against liability and related expenses (including, without limitation, legal fees and costs) incurred in dealing with the Fund, Members, or third parties as long as no fraud, bad faith, or willful misconduct on the part of the Manager is involved. Therefore, Members may have a more limited right of action than they would have absent these provisions in the Operating Agreement. A successful indemnification of the Manager or any litigation that may arise in connection with the Manager's indemnification could deplete the assets of the Fund. Members who believe that a breach of the Manager's fiduciary duty has occurred should consult with their own legal counsel in the event of fraud, willful misconduct, or bad faith.

It is the position of the U.S. Securities and Exchange Commission that indemnification for liabilities arising from, or out of, a violation of federal securities law is void as contrary to public policy. However, indemnification will be available for settlements and related expenses of lawsuits alleging securities law violations if a court approves the settlement and indemnification, and also for expenses incurred in successfully defending such lawsuits if a court approves such indemnification.

## **RISK FACTORS**

Although the Fund will attempt to comply with requests for the early withdrawal of the Membership Interests if the financial position of the Fund can accommodate it (see “Summary of the Operating Agreement – Withdrawal” below), any investment in the Membership Interests involves a significant degree of risk and is suitable only for Investors who have NO NEED FOR LIQUIDITY in their investments. When analyzing this Offering, prospective Investors should carefully consider each of the following risks and should also carefully consider the matters discussed herein under the captions “Manager’s Compensation,” “Conflicts of Interest,” “Income Tax Considerations” and “ERISA Considerations.”

## **INVESTMENT RISKS**

### **No Registration: Limited Governmental Review**

This Offering has not been registered with, or reviewed by, the U.S. Securities and Exchange Commission or any state agency or regulatory body, nor is registration contemplated.

### **Dilution**

The Membership Interests offered in the Offering consist of units of limited liability company interests of the Fund. Members may experience dilution of their respective Membership Interests in the Fund as more Investors are admitted as Members of the Fund. Further, under the Operating Agreement, the Manager has the right to cause the Fund to sell additional Membership Interests. Any such sale of additional Membership Interests would further dilute the percentage interests of the existing Members.

### **Limited Transferability of Membership Interests**

Although the Fund will attempt to redeem Membership Interests when possible (see “Summary of the Operating Agreement - Withdrawal” below), there is no public market for the Membership Interests and none is expected to develop in the future. Even if a potential buyer could be found, the transferability of these Membership Interests is also restricted by the provisions of the Securities Act of 1933 and Rule 144 promulgated thereunder, and by the provisions of the Operating Agreement. Unless an exemption is available, these Membership Interests may not be sold or transferred without registration under the Securities Act of 1933 and the prior written consent of applicable state securities regulators and agencies. Any sale or transfer of these Membership Interests also requires the prior written consent of the Fund. (See herein “Summary of the Operating Agreement” below). Members possess very limited rights to withdraw from the Fund or to otherwise recover any of their invested capital. (See “Summary of the Operating Agreement – Withdrawal” below). Investors must be capable of bearing the economic risks of this investment with the understanding that these Membership Interests may not be liquidated by resale or redemption and should expect to hold their Membership Interests as a long-term investment.

### **Size of the Offering**

There is no assurance that the Fund will obtain capital investments equal to the amount required to close the Offering. In addition, receipt of capital investments of less than the Maximum Offering Amount will reduce the ability of the Fund to spread investment risks through diversification of its investment portfolio.

**Speculative Nature of Investment**

Investment in these Membership Interests is speculative and, by investing, each Investor assumes the risk of losing the entire investment. The Fund has limited operations as of the date of this Memorandum and will be solely dependent upon the Fund and the Fund's loan portfolio, both of which are subject to the risks described herein. Accordingly, only Investors who are able to bear the loss of their entire investment and who otherwise meet the Investor suitability standards should consider purchasing these Membership Interests. (See "Investor Suitability" above).

**Conflicts of Interest**

There are several areas in which the interests of the Manager may conflict with those of the Fund. (See "Conflicts of Interest" below).

**Investors and Fund Not Independently Represented**

The Fund has not been represented by independent legal counsel for its organization and dealings with the Manager. In addition, the attorneys who have performed services for the Fund have also represented the Manager but have not represented the interests of the Investors or Members of the Fund. (See "Conflicts of Interest" below).

**Investment Delays**

There may be a delay between the time the Investor submits the Subscription Agreement to the Manager and admitted as a Member, and the time the proceeds of this Offering are invested in loans and investments by the Fund. During these periods, the Fund may invest these proceeds in short-term certificates of deposit, money-market funds, or other liquid assets with FDIC-insured and/or NCUA-insured banking institutions which will not yield a return as high as the anticipated return to be earned on Fund loans and property investments.

**Adverse Impact due to Economic Conditions**

Generally, economic recessions or downturns may result in a prolonged period of market illiquidity, which could have an adverse effect on the Fund business, financial condition, and results of operations. Periods of economic slowdown or recession, significantly rising interest rates, declining employment levels, decreasing demand for real estate, or the public perception that any of these events may occur, have resulted in and could continue to result in a general decline in acquisition, disposition and leasing activity, as well as a general decline in the value of real estate and in rents. These events could adversely affect our demand among investors, which will impact our results of operations.

During an economic downturn, it may also take longer for us to dispose of real estate investments, or the disposition prices may be lower than originally anticipated. As a result, the carrying value of such real estate investments may become impaired and we could record losses as a result of such impairment or could experience reduced profitability related to declines in real estate values. These events could adversely affect our performance and, in turn, our business, and negatively impact our results of operations.

Negative general economic conditions could continue to reduce the overall amount of sale and leasing activity in the commercial real estate industry, and hence the demand for our securities, which may in turn adversely affect our revenues. We are unable to predict the likely duration and severity of the current disruption in financial markets and adverse economic conditions in the United States and other countries.

**Lack of Regulation**

The Manager and the Fund are not supervised or regulated by any federal or state authority, except to the extent that the Manager's lending and brokerage activities are regulated and supervised by applicable authorities in at least the State of Delaware.

**Reliance on Manager**

The Manager (and/or its Affiliates) will participate in all decisions concerning the management of the Fund, including (without limitation) determining which loans to purchase and originate, and the Fund is dependent to a significant degree on its continued services. In the event of the dissolution, death, retirement, or other incapacities of the Manager or its principals, the business and operations of the Fund may be adversely affected. The Members will then elect a new Manager or the Manager shall appoint a new Manager pursuant to the Operating Agreement.

**Requirement of Additional Capital.**

Future capital requirements depend on many factors, including the Fund's ability to successfully locate investments, and whether further investment in these opportunities becomes necessary to protect the Fund's existing positions in the investments. If further capitalization becomes necessary to further stabilize, develop, or protect any of the Fund's assets, or if capitalization is needed for any other reason, any equity financing, if available at all, may not be on terms favorable to the Fund, and dilution to the Members could result. In any case, such securities may have rights, preferences, and privileges that are senior to those of the Membership Interests offered herein. If adequate capital cannot be obtained, the Fund's business, operating results and financial condition could be adversely affected.

**Tax and ERISA Risks**

Investment in the Fund involves certain tax risks of general application to all Members in the Fund, and certain other risks specifically applicable to Keogh accounts, Individual Retirement Accounts, and other tax-exempt investors. (See "Income Taxation Considerations" and "ERISA Considerations" below)

**Tax Liability may Exceed Cash from Operations**

As a result of decisions of the Manager in operating the Fund, which may require the suspension of cash distributions due to a need to maintain a higher level of cash reserves, along with other events, there is a risk that the tax liability owed by a Member in any tax year will exceed any cash distribution from the Fund in that year. As a result, some or all of the payment of taxes may be an out-of-pocket expense of the Members.

**Unidentified Assets**

None of the specific assets in which the Fund will invest in are identified at this time. Therefore, any potential Investor is unable to evaluate the Fund's loan portfolio to determine whether to invest in the Fund. However, the general business goals of the Fund are to make and acquire loans as further described herein. Upon commencing operations, the Fund may later have specific, identifiable portfolio data which Members may review upon their request to the Manager.

## Price of Membership Interests Arbitrarily Determined

The purchase price of the Membership Interests offered through this Memorandum has been arbitrarily determined and may not reflect their actual value. The purchase price of the Membership Interests has been arbitrarily determined and is not the result of arm's-length negotiations. It bears no relationship to any established criteria of value such as book value or earnings per share, or any combination thereof. Further, the price is not based on past earnings of the Fund, nor does the price necessarily reflect the current market value of the Fund. No valuation or appraisal of the Fund or the Fund's potential business has been prepared.

## Anti-Money Laundering

The Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("PATRIOT Act") requires that financial institutions establish and maintain compliance programs to guard against money laundering activities, and requires the Secretary of the U.S. Treasury ("Treasury") to prescribe regulations in connection with antimoney laundering policies of financial institutions. The Financial Crimes Enforcement Network ("FinCEN"), an agency of the Treasury, has announced that it is likely that such regulations would subject certain pooled investment vehicles to enact anti-money laundering policies. There could be promulgated legislation or regulations that would require the Fund or its service providers to share information with governmental authorities with respect to prospective investors in connection with the establishment of anti-money laundering procedures. Such legislation and/or regulations could require the Fund to implement additional restrictions on the transfer of the Membership Interests. The Fund reserves the right to request such information as is necessary to verify the identity of prospective Investors and the source of the payment of subscription monies, or as is necessary to comply with any customer identification programs required by FinCEN and/or the U.S. Securities and Exchange Commission. In the event of delay or failure by a prospective investor to produce any information required for verification purposes, an application for or transfer of the Interests may be refused.

## Investment Company Act Risks

The Fund intends to avoid becoming subject to the Investment Company Act of 1940, as amended ("1940 Act"); however, the Fund cannot assure prospective Investors that under certain conditions, changing circumstances or changes in the law, the Fund may not become subject to the 1940 Act in the future as a result of the determination that the Fund is an "investment company" within the meaning of the 1940 Act that does not qualify for an exemption as set forth below. Becoming subject to the 1940 Act could have a material adverse effect on the Fund. Additionally, the Fund could be terminated and liquidated due to the cost of registration under the 1940 Act. In general, the 1940 Act provides that if there are 100 or more investors in a securities offering, then the 1940 Act could apply unless there is an exemption; however, the 1940 Act generally is intended to regulate entities that raise monies where the entity itself "holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities" (Section 3(a)(1)(A) of the 1940 Act).

The second key definition of an "investment company" under the 1940 Act considers the nature of an entity's assets. Section 3(a)(1)(C) of the 1940 Act defines "investment company" as any issuer that: "...is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Section 3(b)(1) of the 1940 Act provides that a company is not an "investment company" within the meaning of the 1940 Act if it is: "[An] issuer primarily engaged, directly or through a wholly-owned subsidiary or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities..."

Section 3(c) of the 1940 Act provides for the following relevant exemptions: “Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this title: (1) Any issuer whose outstanding securities (other than short-term paper) are beneficially owned ***by not more than one hundred persons*** [emphasis added] and which is not making and does not presently propose to make a public offering of its securities. Such issuer shall be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 12(d)(1) governing the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer. For purposes of this paragraph: (A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, and is or, but for the exception provided for in this paragraph or paragraph (7), would be an investment company, the beneficial ownership shall be deemed to be that of the holders of such company’s outstanding securities (other than short-term paper). (B) Beneficial ownership by any person who acquires securities or interests in securities of an issuer described in the first sentence of this paragraph shall be deemed to be beneficial ownership by the person from whom such transfer was made, pursuant to such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title, where the transfer was caused by legal separation, divorce, death, or other involuntary event....or (5) Any person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of the following businesses: (A) Purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services; (B) making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance, and services; and (C) ***purchasing or otherwise acquiring mortgages and other liens on and interests in real estate*** [emphasis added].”

Based upon the above, the Fund has been advised that the Offering is exempt under the 1940 Act and that the 3(c)(1) and/or 3(c)(5) exemptions will apply. However, there are no assurances that this will ultimately be the case.

## BUSINESS RISKS

### Limited Operating History of Operations

The Fund has a limited history of operations. The Fund’s projections are based upon the limited operating history, and limited publicly available information and industry knowledge. The Fund’s projections may not be indicative of prospects or future performance, and ultimate operations expenses and potential losses cannot be projected with certainty. There can be no assurance that expenses and losses exceeding the Fund’s total resources will not occur.

### Risks Associated with Expansion

The Fund plans on expanding its business through aggressive marketing and networking with realtors, wholesalers, title companies, banks, real estate investment clubs, and real estate investors. Any expansion of operations the Fund may undertake will entail risks. Such actions may involve specific operational activities, which may negatively impact the profitability of the Fund. Consequently, investors must assume the risk that (i) such expansion may ultimately involve expenditures of funds beyond the resources available to the Fund at that time, and (ii) management of such expanded operations may divert the Manager’s attention and resources away from its existing operations, all of which factors may have a material adverse effect on the Fund’s present and prospective business activities.

## **Competition**

The Fund will be competing for loans, investment opportunities, and property acquisitions with other mortgage funds, private investors, institutional lenders and investors, and others engaged in the mortgage lending and property acquisition businesses. These other lenders and investors may have greater financial resources and experience than the Fund and the Manager. Other lenders and investors may also generally be able to accept more risk than the Fund can manage. Competition may reduce the number of suitable prospective loans offered to the Fund.

## **Corporate Governance Risk**

The Manager consists of three principals as noted above under “The Manager” section. In the Manager’s limited liability company operating agreement, there are certain provisions or terms which may require these principals to take certain actions, or otherwise be subject to terms, that may disrupt the Fund operations. Such terms may include, without limitation: (1) member default provision for non-contribution of capital; (2) right of first refusal; (3) deadlock in the event of manager dispute; (4) eligibility to call for a meeting; or (5) requirement of unanimous consent. In any principal dispute, or otherwise that may cause disruption to the Fund operations, the Members may be adversely impacted, resulting in loss of principal and/or distribution.

The principals of will take actions to mitigate or otherwise act in the best interest of the Fund. However, there is no guarantee that will occur. Accordingly, the Fund and its Members may be adversely impacted in their return from various corporate risks.

## **Risks Related to Seller Financing Loans**

Seller financing or seller carryback loans are considered unique loan transactions, as opposed to traditional lending (i.e., bank loans). Most of the instances involve private parties, as opposed to a financial institution. Accordingly, the seller carryback loans may be limited in supply. Additionally, the holder of the notes (i.e., lender) may ultimately not agree to the pricing of the offer made by the Fund, further delaying the process of Fund capital working to produce income. In other instances, there may be deficiencies in the original seller carryback loan transactions itself, including, without limitation, recording, fraud, or other real property deficiencies. All of these risks will adversely affect the Member return.

## **Trends in Consumer Preferences and Spending**

The Fund’s operating results may fluctuate significantly from period to period as a result of a variety of factors, including competitive investment structures, foreclosures, regional unemployment, increases in interest rates, decreases in conventional lending, and general economic conditions. There is no assurance that the Fund will be successful in marketing any of its services, or that the revenues will be significant. Consequently, the Fund’s revenues may vary by quarter, and the Fund’s operating results may experience fluctuations.

## **Performance Projections**

The Manager and its principals have experience in real estate investments, loans, and related loan syndications, and the Manager, through its management of other funds and investment vehicles, has made other real estate investments and loans under other formats, but the performance of previous investments may not be indicative of the future performance of the investments relating to the Fund, and the Fund does not yet know what its long-term loan loss experience will be.

## **Risks Associated with Non-Performing Loans**

In limited instance, the Fund intends to invest in Non-Performing Loans secured by real estate. Accordingly, Non-Performing Loans carry substantial risk, including the possibility that the Non-Performing Loan may not generate any cashflow or profit for the Fund. The Fund intends to acquire the Non-Performing Loans with the expectation that they will be reformed to become performing notes. However, there is no assurance or guarantee that such Non-Performing Loans will perform, or even if reformed, it will generate cashflow for the Fund. For example, the borrower may re-enter into default after the reformation of the Non-Performing Loan or the possibility that any collateral securing the Non-Performing Loan cannot be sold for profit. In those circumstances, the Fund (and its Members) may be adversely affected and may be unable to make distributions to the Members.

## **Pandemic Risks**

In December 2019, the virus SARS-CoV-2, which causes the coronavirus disease known as COVID-19, surfaced in Wuhan, China. The disease spread around the world, resulting in the temporary closure of many corporate offices, retail stores, and manufacturing facilities across the globe, as well as the implementation of travel restrictions and remote working and “shelter-in-place” or similar policies by numerous companies and national and local governments. These actions caused the disruption of manufacturing supply chains and consumer demand in certain economic sectors, resulting in significant disruptions in local and global economies. The short-term and long-term impact of COVID-19 on the operations of the Fund and its performance is difficult to predict. Any potential impact on such operations and performance will depend to a large extent on future developments and actions taken by authorities and other entities to contain COVID-19 and its economic impact. These potential impacts, while uncertain, could adversely affect the performance of the Fund’s lending activities.

## **Fluctuations in Interest Rates**

Mortgage interest rates are subject to abrupt and substantial fluctuations and the purchase of Membership Interests is a relatively illiquid investment. If prevailing interest rates rise above the average interest rate being earned by the Fund’s portfolio, Members may wish to liquidate their investment to take advantage of higher available returns but may be unable to do so due to restrictions on transfer and withdrawal.

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## **Litigation Risks**

The Manager will act in good faith and use reasonable judgment in selecting borrowers and making, purchasing, and managing the mortgage loans and investing in, purchasing, and managing properties. However, as a lender, the Manager and the Fund are exposed to the risk of litigation by a borrower for any warranted or unwarranted allegations by a borrower regarding the terms of the loans or the actions or representations of the Manager in making, managing or foreclosing on subject properties. It is impossible to foresee the allegations borrowers will bring against the Manager or the Fund, but the Manager will use its best efforts to avoid litigation if, in the Manager’s sole discretion, it is in the best interests of the Fund. If the Fund is required to incur legal fees and costs to respond to the lawsuit, the costs and fees could have an adverse impact on the Fund’s profitability and distributions to Members.

**Failure of Borrower to Pay First Mortgage**

As it applies primarily with junior lien position loans, if the Fund's equity or profit margin on a particular Note is thin so that little to no equity exists between all of the encumbrances on the underlying property and our Note, it may not make sense for us to continue to hold and/or service the Note. Therefore, we will most likely not make a profit on that particular Note and may be at risk for losing almost all of our investment in such a Note under these or similar circumstances.

**Bankruptcy of Borrowers**

Where a borrower files a Chapter 13 Bankruptcy, if the market value of the property is demonstrated to be less than the payoff amount of a senior mortgage which is ahead of the Fund's junior mortgage, the lien securing the Fund's note can be "stripped" from the property, subject to the successful completion of the debtor's bankruptcy plan and obtaining a discharge. Although the Fund would still likely receive some debt repayment as an unsecured creditor, a substantial portion of the total debt owed would most likely be wiped out upon discharge of the bankruptcy.

Upon discharge of Chapter 7 bankruptcy, a borrower will no longer be held personally liable for the obligations of a note held by the Fund, unless the borrower reaffirms the debt while in bankruptcy. However, in any case, the Fund will retain the right to foreclose on the collateral, as granted in the mortgage or deed of trust, in the event a mutually acceptable alternative cannot be worked out between the Fund and the borrower.

**Foreclosure by Senior Lienholder**

Though the Fund loans will primarily be secured by senior deeds of trust or mortgages, the Fund may elect to invest in junior lien positions. In the instance of junior lien positions, a senior lienholder may foreclose on the subject real estate before the Fund, resulting in the Fund's interest in the subject real estate be eliminated. If a borrower's performance on a first lien fails, the Fund can be foreclosed ahead of the first lien, which may result in taking the property subject to the first lien. If the first lien starts foreclosure ahead of the Fund, the Fund, as junior lienholder, has the right to protect its secured interest in the property by bringing the payments current on the first lien, and then may elect to foreclose ahead of the first lien. In some instances, it may not be profitable for the Fund to expend additional funds to enforce such protections, in which case the Fund's lien would be removed from the property, leaving the Fund with an unsecured debt worth significantly less than when it was secured.

**Failure of Servicer to Comply with Regulations**

The Fund's business is subject to multiple laws including regulations applicable to note servicers. The lending industry is heavily regulated by laws governing lending practices at the federal, state, and local levels. In addition, proposals for further regulation of the financial services industry are continually being introduced. Failure of the Fund or its Servicer to comply with these laws could lead to loss of the property, legal fees, and other unexpected costs that could adversely affect investments. These laws and regulations to which the Fund and its Servicer is subject include those pertaining to:

- real estate settlement procedures;
- fair lending;
- compliance with federal and state disclosure requirements;
- debt collection;
- the establishment of maximum interest rates, finance charges, and other charges;

- secured transactions and foreclosure proceedings; and
- private regulations providing for the use and safeguarding of non-public personal financial information of borrowers.

### **Loan Defaults and Foreclosures**

The Fund will participate in loans and take the risk that borrowers will default on those loans and other risks that lenders typically face, many of which are detailed in this Offering. Fund loans may be made to borrowers who do not qualify for loans from more traditional sources of financing, such as banks and savings and loans associations. Fund loans may generally provide for a monthly payment from the borrower followed by a “balloon” payment at the loan’s maturity. Many borrowers may be unable to pay such a balloon payment and are compelled to refinance the balloon amount into a new loan. Fluctuations in the interest rates, unavailability of mortgage funds, and a decrease in the value of the real property securing the loan could adversely affect the borrower’s ability to refinance their loans at maturity.

The Fund will generally look to the underlying property securing the loan to determine whether to make the loan to the borrower and, to a lesser extent, the credit rating a borrower has. Nonetheless, borrowers will need to demonstrate adequate ability to meet its financial obligations under the terms of any loan which the Fund originates or purchases.

To determine the fair market value of the property securing the loan, the Fund will primarily rely on an appraisal, Manager’s opinion of value of the property, or other similar opinion. Appraisals are a judgment of an individual appraiser’s interpretation of a property’s value. Due to the differences in individual opinions, values may vary from one appraiser to another. Furthermore, the appraisal is merely the value of the real property at the time the loan is originated. Market fluctuations and other conditions could cause the value of real property to decline over time.

If the borrower defaults on the loan, the Fund may be forced to purchase the property at a foreclosure sale. If the Fund cannot quickly sell the real property and the property does not produce significant income, the Fund’s profitability will be adversely affected.

Due to certain provisions of state law that may apply to all real estate loans, if real property security proves insufficient to repay amounts owing to the Fund, it is unlikely that the Fund will be able to recover any deficiency from the borrower.

Finally, the recovery of sums advanced by the Fund in making or investing in mortgage loans and protecting its security may also be delayed or impaired by the operation of the federal bankruptcy laws or by irregularities in the manner in which the loan was made. Any borrower may delay a foreclosure sale for a period ranging from several months to several years by filing a petition in bankruptcy which automatically stays any actions to enforce the terms of the loan. It can be assumed that such delays and the costs associated therewith will reduce the Fund’s profitability.

### **Speculative Value of Property and Notes**

Some properties and/or notes may not sell for the anticipated value. This result may cause a loss of principal, and/or a reduction in or loss of profits and/or returns on investment for the Fund and its Members.

**A Borrower's Credit Worthiness Information may not Accurately Reflect the Borrower's Creditworthiness, which may ultimately cause the Fund to Lose its Investment in the Loan and a Decline in the Value of the Fund's Assets**

For certain loans, such as residential mortgage loans, the Fund intends to evaluate and assess the borrower's creditworthiness, income level, and ability to repay the loan by assessing credit scores, reviewing bank accounts, and other financial records. A borrower's credit score and/or other general information provided by the borrower may not accurately reflect the borrower's actual creditworthiness if the credit score and other information provided is outdated, incomplete or inaccurately reported. Additionally, there is a risk that, following the data of the credit report that the Fund obtains and reviews, a borrower may have, including, without limitation: (1) become delinquent in the payment of an outstanding obligation; (2) defaulted on a pre-existing debt obligation; (3) taken on additional debt; or (4) sustained another adverse financial event. If a borrower inaccurately provides information or any information provided becomes outdated, the borrower's likelihood of default on a loan may be higher than anticipated by the Fund and may ultimately cause the Fund to lose any amounts advanced to the borrower as part of the loan.

**Residential Mortgage Lending**

The residential mortgage lending industry is subject to regulation by federal, state, and local government authorities and is subject to various laws and judicial and administrative decisions imposing various requirements and restrictions, including licensing requirements, establishing maximum interest rates and finance charges, requiring disclosures to borrowers and governing lending practices.

Further, certain provisions of the Dodd-Frank may impose limitations on the rates the Fund is able to charge for consumer loans that the Fund intends to offer. As a result, there can be no assurance that the Fund will remain competitive in the market due to the restrictions imposed by Dodd-Frank.

Although the Fund believes that its activities are in compliance in all material respects with applicable federal, state and local laws and rules and regulations, there can be no assurance that more restrictive laws, rules, and regulations or interpretations thereof, including, but not limited to, the expansion of the requirements for the Fund to be licensed in the states in which it offers loans, will not be adopted or enforced in the future, which could make compliance much more difficult or expensive, restrict the Fund's ability to originate, purchase or sell loans, further limit or restrict the amount of interest and other charges earned under loans originated or purchased.

**Consumer Protection Laws**

The Fund is may fund and make residential mortgage loans. Federal and state consumer protection laws and related regulations impose several and substantial requirements on lenders (such as the Fund) and servicers involved in consumer finance. These include requirements of imposing several disclosures of contract terms to borrowers on loan documents, foreclosure notice procedures, limitations on loan terms, collection practices, and creditor remedies. Applicable federal laws include, without limitation, the following: Truth in Lending Act, Equal Opportunity Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, Home Mortgage Disclosure Act. In addition, there will be substantial state requirements the Fund will need to comply with, and which will vary depending on the state where the loan is made. State consumer protection laws impose additional requirements on lenders and servicers and generally regulate the following: interest rates and charges, licensing requirements, annual reporting requirements, disclosures to include in loan and loan-related documents provided to borrowers, collection of loan debt, foreclosure requirements, servicing practices, and origination practices.

Failure to comply with any of the above regulations may impose specific statutory liabilities on lenders which include heavy civil penalties, right of rescission, and in some instances criminal prosecution of the principals of the Fund. If the Fund is found in violation of any consumer or lending laws it may be subject to the following, without limitation:

- Inability of the lender to collect all or part of the principal of or interest on the loan;
- Administrative enforcement actions against the Fund;
- Revocation or suspension of consumer lending license;
- Liability for expenses, damages and/or monetary damages resulting from a violation;
- Provide borrower with right of rescission; and
- Substantial litigation costs and legal fees related to defending any alleged violations of consumer protection and/or lending laws.

### **High Cost Mortgages**

There are special provisions and regulations that apply to certain types of loans. For example, in the California State Law (Finance Code section 4970 *et seq.*), for example, and the Federal Home Ownership and Equity Protection Act of 1994<sup>1</sup> and the regulations interpreting it (collectively, “HOEPA”) impose substantive restrictions on, and require certain disclosures with respect to, “high cost” consumer purpose mortgage loans<sup>2</sup> secured by a consumer’s principal dwelling (other than purchase money, construction or reverse mortgage loans) that involve interest, loan points, and other finance charges that exceed certain threshold levels. Failure to comply with HOEPA opens the Fund to, among other things, a loss of all finance charges and fees paid by the consumer.

There is also significant uncertainty and vagueness of the law at both the federal and state level. The Fund may originate Home Equity Lines of Credit (“HELOCs”) that are presumed to be exempt from both HOEPA and state’s high cost mortgage law. The documents that the Fund uses to originate HELOCs are designed to comply with both HOEPA and state’s high cost mortgage law. However, since the law is relatively new and vague, the Fund’s documents may be determined not to comply with the above, resulting in a loss of all finance charges and fees paid by the consumer.

### **Right of Rescission (Owner-Occupied Properties/Consumer Purpose Loan/Refinance)**

A consumer purpose refinance loan secured by owner-occupied property is subject to a right of rescission under the Federal Truth in Lending Act (“TILA”) if the material disclosures required by the TILA are not properly provided or if the creditor fails to deliver properly completed Notices of Right to Cancel to the consumer(s). If the consumer is not provided with the TILA material disclosures or the Notice of Right to Cancel as set forth above, the consumer is granted an extended rescission period of Three (3) years during which the consumer may exercise their right to cancel the loan transaction.

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<sup>1</sup> See Section 32 of the Regulation Z, the Federal regulation which implements the Truth in Lending Act.

<sup>2</sup> A loan is a high cost loan if (i) the APR at consummation will exceed by more than eight (“8”) percentage points the yield on Treasury Securities having comparable periods of maturity on the 15<sup>th</sup> day of the month immediately preceding the month in which the application is received by the lender or (ii) the total Points & Fees payable by the consumer at or before loan closing will exceed the greater of 8% of the total loan amount, or \$400.00.

**Risks Related to Rehabilitation Loans**

Rehabilitation loans involve particular risks, involving, among other things, the timeliness of the project's completion, the integrity of appraisal values, whether or not the completed property can be sold for the amount anticipated, and the length of the ultimate sale process.

If rehabilitation work is not completed (due to contractor abandonment, unsatisfactory work performance, or various other factors) and all the loan funds have already been expended, then in the event of a default the Fund may have to invest significant additional funds to complete rehabilitation work. Any such investment would be recuperated by the Fund prior to the Member being paid back. If the value of an uncompleted property is materially less than the amount of the loan, even if the work were completed, then upon a default the Fund might need to invest additional funds in order to recoup all or a portion of the investment. Default risks also exist when it takes a borrower longer than anticipated either to construct or resell the property, or if the borrower does not receive sufficient proceeds from the sale to repay the corresponding loan in full.

**Participation in Other Loans**

The Fund may be participating in loans with other lenders. When participating in loans with other lenders, the Fund or its Manager may not have control over the determination of when and how to enforce a default, depending on the terms of any participation agreement with the other lenders, other lenders may have varying amounts of input into such decision-making process, including the ultimate decision-making power on if and when to enforce a default. If the Fund participates with a lender affiliated with the Manager or its principals, it is possible that the Fund would not be the lead lender, although the principal of the Manager who is affiliated with the other lender may be the decision-making party. There is no certainty who will be a lead lender in a situation where the Fund participates in ownership of a loan with another entity.

**Increase in Loss Rates.**

Loss rates on loans may be significantly affected by economic downturns or general economic conditions beyond the Fund's control and beyond the control of individual borrowers. In particular, loss rates on corresponding loans may increase due to factors such as (among other things) local real estate market conditions, prevailing interest rates, the rate of unemployment, the level of consumer confidence, the value of the U.S. dollar, energy prices, changes in consumer spending, the number of personal bankruptcies, disruptions in the credit markets and other factors.

**Risks of Government Action**

While the Manager will use its best efforts to comply with all laws, including federal, state and local laws and regulations, there is a possibility of governmental action to enforce any alleged violations of mortgage lending laws which may result in legal fees and damage awards that would adversely affect the Fund.

**Risks of Leveraging the Fund**

The Fund may borrow funds from a third-party lender, investors, and/or financial institutions to make or acquire loans and properties. These loans may be secured by the loans held by the Fund. In order to obtain such a loan, the Fund may also assign part or its entire asset portfolio to the lender. Such borrowed money may bear interest at a variable rate, whereas the Fund may be making fixed-rate loans. Therefore, if prevailing interest rates rise, the Fund's cost of money could exceed the income earned from that money, thus reducing the Fund's profitability or causing losses. Furthermore, leveraging the Fund may also result in the receipt of some taxable income by investors (such as ERISA plans) that are otherwise tax-exempt. (See "Income Taxation Considerations" below).

## **Risks Associated with Fund Performance**

If the Fund's investments in assets do not perform and generate income, the Fund may not be able to make expected distributions to its Members. Several factors may adversely affect the economic performance and value of the Fund's investments. These factors include but are not limited to, decrease in value of the loans, borrower non-performance, decrease in real estate or other asset values, increase in investor competition, lengthy legal proceedings, adverse legal judgments, changes in the national, regional and local economic climate, local conditions that may cause borrowers to not be able to make their interest payments, and which may devalue the Fund's collateral and other assets to the extent that exit strategies and liquidation of assets become unavailable. The Fund's performance would also depend on the Fund's ability to collect rent from tenants and to pay for adequate maintenance, insurance and other operating costs (including real estate taxes), which could increase over time. In addition, the expenses of owning and operating real property and other assets are not necessarily reduced when circumstances such as market factors and competition cause a reduction in income from the property. In addition, interest rate levels, the availability of financing, changes in laws and governmental regulations (including those governing usage, zoning and taxes), and the possibility of bankruptcies of tenants or borrowers may adversely affect the Fund's financial condition and results of operations.

## **Diversification Risks**

The Fund may participate in a limited number of loans and the Fund lending activities may not be widely diversified. As a consequence, the Fund's aggregate return may be substantially adversely affected by the unfavorable performance of even a single investment. The ability of the Fund to diversify the risks of making investments will depend upon a variety of factors, including the size, characteristics, type and class of the investments being made, and with regard to short-term loans, the number and quality of borrowers in need of financing. The Fund may not be able to make investments that would provide a desired level of diversification.

## **General Risks of Commercial Real Estate Market**

The Fund may invest in the commercial real estate market. Concentration in commercial real property entails risks that are specific to the industry. For example, the Fund may experience fluctuations in occupancy rates, rent schedules, and operating expenses, among other factors, which can adversely affect operating results of the commercial real property and the borrower's ability to make payments on the loans. Operating performance will also depend on adverse changes in local population trends, market conditions, neighborhood values, national, regional or local economic and social conditions, federal, state or local regulations, controls or fiscal policies, including those affecting rents, prices of goods, fuel and energy consumption, environmental restrictions, real estate taxes, zoning and other factors affecting real property. Additionally, there may be a need for capital improvements and repairs, accounting for inflation, financial condition and profitability of tenants, uninsured losses, acts of nature such as floods and earthquakes, and other risks. Some or all of these factors may also affect the financial condition of borrower's on loans secured by commercial real property and thus their ability to make payments on these loans.

In addition, in the event a borrower defaults on a loan and lacks sufficient assets to satisfy our loan, we may suffer a loss of principal or interest. In the event a borrower declares bankruptcy, the Fund may not have full recourse to the assets of the borrower, or the assets of the borrower may not be sufficient to satisfy the loan. If a borrower defaults on our loan or on debt senior to our loan, or in the event of a borrower bankruptcy, our loan will be satisfied only after the senior debt is paid in full. Where debt senior to our loan exists, the presence of intercreditor arrangements may limit our ability to amend our loan documents, assign our loans, accept prepayments, exercise our remedies (through "standstill periods"), and control decisions made in bankruptcy proceedings relating to borrowers.

## **Risks Related to Sale of Loans**

The Fund may participate in the sale of loans with Affiliates or third-parties, including institutions. In certain sales contracts exists a buy-back clause which may be enforced by the purchaser of the loans, including, in the event if the Fund has breached a representation or warranty contained in such sale agreement. In that instance, the Fund may be forced to repurchase one or more loans sold to the purchaser. The breach of a representation or warranty by the Manager may impact the Fund's ability to originate new loans and collect fees and strip interest income which the Fund and Manager use to fund its operations and distribute returns to the Members.

## **U.S. State Licensing Requirements**

The Manager believes that the Fund or its Affiliates have either obtained the licenses necessary for (or are exempt from) participating lawfully in the business of business purpose lending in each state in which it plans to make loans prior to commencing operations, based on current assessment of the regulatory requirements of each such state. This means that while the Fund and Manager may believe that that the Fund's practices in a particular state are compliant with that state's current regime, it is possible that that regime might come under question from state or other regulatory authorities, and/or be changed in such a way as to adversely affect the Fund's ability to continue lending or conducting business in that state or may prohibit continuation of Fund's loans in that state. The Fund intends to monitor such regulatory activity closely, but may fail to correctly or adequately anticipate regulatory action in this developing arena.

## **Uninsured Losses**

The Manager will arrange for title, fire, and casualty insurance on the real properties securing the Fund's investments. However, there are certain types of losses, including catastrophic, war, floods, mudslides, and other acts of God, which are either uninsurable or economically uninsurable. Should any such disaster occur, or if the insurance policies lapse through oversight, the Fund could suffer a loss of principal and interest on the loan secured by the uninsured property.

## **Possible Repeal of Usury Exemption**

Depending on the state, loans arranged by or through a mortgage lending licensee are generally exempt from the otherwise applicable state's usury limitation. Should this exemption be repealed, the Fund may no longer be able to originate loans in excess of the usury limit, potentially reducing its return on investment or forcing it to limit its lending or investing activities. In addition, some states have maximum interest rates that may be charged on a loan by a lender. If the Fund were to exceed the maximum interest rate allowed by law in any of those states, it could become subject to penalties and fees, thus potentially reducing the Fund's return on its investment on a loan or forcing the Fund to limit its lending or investing activities.

## **Risks of Real Estate Ownership**

There is no assurance that the Fund's owned properties will be profitable or that cash from operations will be available for distribution to Members. Because real estate, like many other types of long-term investments, historically has experienced significant fluctuations and cycles in value, specific market conditions may result in occasional or permanent reductions in the value of property interests. The marketability and value of the Fund's properties will depend upon many factors beyond the control of the Manager and the Fund, including, without limitation:

- changes in general or local economic conditions;

- changes in supply or demand for competing properties in a geographical area (e.g., as a result of over-building);
- changes in interest rates;
- the promulgation and enforcement of governmental regulations relating to land use and zoning restrictions, environmental protection, and occupational safety;
- condemnation and other taking of property by the government;
- unavailability of mortgage funds that may increase borrowing costs and/or render the sale of a property difficult;
- unexpected environmental conditions;
- the financial condition of tenants, ground lessees, ground lessors, buyers and sellers of properties;
- changes in real estate taxes and any other operating expenses;
- energy and supply shortages and resulting increases in operating costs or the costs of materials and construction;
- various uninsured, underinsured or uninsurable risks (such as losses from terrorist acts), including risks for which insurance is unavailable at reasonable rates or with reasonable deductibles; and
- imposition of rent controls.

### **Risks of Development, Renovation, and Undeveloped Property**

The Manager anticipates that the Fund may invest primarily in existing properties that require varying degrees of development. In addition, some properties may be under construction or under contract to be developed or redeveloped. Properties that involve development or redevelopment will be subject to the general real estate risks described above and will also be subject to additional risks, such as unanticipated delays or excess costs due to factors beyond the control of the Manager and the Fund. These factors may include (without limitation):

- strikes;
- adverse weather;
- earthquakes and other "force majeure" events;
- changes in building plans and specifications;
- zoning, entitlement and regulatory concerns, including changes in laws, regulations, elected officials and government staff;
- material and labor shortages;
- increases in the costs of labor and materials;

- changes in construction plans and specifications;
- rising energy costs;
- delays caused by the foregoing (which could result in unanticipated inflation, the expiration of permits, unforeseen changes in laws, regulations, elected officials and government staff, and losses due to market timing of any sale that is delayed); and
- delays in completing any development or renovation project will cause corresponding delays in the receipt of operating income and, consequently, the distribution of any cash flow by the Fund with respect to such property.

### **Risks Associated with Buying Contaminated Properties**

The Fund presently does not intend to originate and/or otherwise invest in loans secured by properties with known environmental conditions. Notwithstanding the foregoing, in the event a property is found to have environmental conditions and/or is contaminated after the Fund has acquired such loan, the Fund may be required to take steps to complete the remediation of such property (or properties), in order to be able to sell the property to a third-party. The Manager would plan to use contractors, service providers, and/or Affiliates to help the Manager in evaluating, servicing, and managing issues associated with contaminated properties, who will be covered under their own insurance policies. However, costs related to remediating such properties will likely negatively impact the Fund's business operations, as unanticipated costs may arise.

In addition, if toxic environmental contamination is discovered to exist on a property underlying a corresponding loan, it might affect the borrower's ability to repay the corresponding loan and the Fund could suffer from a devaluation of the loan security. To the extent that the Fund is forced to foreclose and/or operate such a property, potential additional liabilities include reporting requirements, remediation costs, fines, penalties, and damages, all of which would adversely affect the likelihood that Members would receive a return of capital on their Membership Interests.

Of particular concern may be those properties that are, or have been, the site of manufacturing, industrial, or disposal activity. These environmental risks may give rise to a diminution in value of the security property or liability for clean-up costs or other remedial actions. This liability could exceed the value of the real property or the principal balance of the related mortgage loan. For this reason, the Fund may choose not to foreclose on contaminated property rather than risk incurring liability for remedial actions.

Under the laws of certain states, an owner's failure to perform remedial actions required under environmental laws may give rise to a lien on mortgaged property to ensure the reimbursement of remedial costs. In some states, this lien has priority over the lien of an existing mortgage against the real property. Because the costs of remedial action could be substantial, the value of a mortgaged property as collateral for a mortgage loan could be adversely affected by the existence of an environmental condition giving rise to a lien.

The state of the law is currently unclear as to whether and under what circumstances clean-up costs, or the obligation to take remedial actions, can be imposed on a secured lender. If a lender does become liable for cleanup costs, it may bring an action for contribution against the current owners or operators, the owners or operators at the time of on-site disposal activity or any other party who contributed to the environmental hazard, but these persons or entities may be bankrupt or otherwise judgment-proof. Furthermore, an action

against the borrower may be adversely affected by the limitations on recourse in the loan documents pursuant to state law.

### **Rise in Insurance Costs**

Real estate properties are typically insured against risk of fire damage and other typically insured property casualties, but are sometimes not covered by severe weather or natural disaster events such as landslides, earthquakes, or floods. Changes in the conditions affecting the economic environment in which insurance companies do business could affect the borrower's ability to continue insuring the property at a reasonable cost or could result in insurance being unavailable altogether. Moreover, any hazard losses not then covered by the borrower's insurance policy would result in the corresponding Loan becoming significantly undersecured or in the property being at risk, and a Member could sustain a significant reduction, or complete elimination of, the return on investment.

### **Compliance with the Americans with Disabilities Act and Other Changes in Governmental Rules and Regulations**

Under the Americans with Disabilities Act of 1990 ("ADA"), all public properties are required to meet certain federal requirements related to access and use by disabled persons. Properties acquired by the Fund or in which the Fund makes a property investment may not be in compliance with the ADA. If a property is not in compliance with the ADA, then the Fund may be required to make modifications to such property to bring it into compliance, or face the possibility of imposition, or an award, of damages to private litigants. In addition, changes in governmental rules and regulations or enforcement policies affecting the use or operation of the properties, including changes to building, fire, and life-safety codes, may occur which could have adverse consequences to the Fund.

### **Dodd-Frank Wall Street Reform and Consumer Protection Act (amending the Federal Truth in Lending, Real Estate Settlement Procedures, and Equal Credit Opportunity Acts)**

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") created the Consumer Financial Protection Bureau ("CFPB") and transferred regulatory and rulemaking authority for the federal laws regulating consumer mortgage lending to the CFPB. Title XIV of Dodd-Frank, the Mortgage Reform and Anti-Predatory Lending Act, provides for substantial amendments to the statutes and regulations which govern consumer purpose loans secured by one to four residential properties.

Many of the final rules implementing the Dodd-Frank amendments took effect in January 2014. In part, the new rules require creditors to document and verify a consumer's ability to repay the mortgage loan; require appraisals for all higher-cost and high-cost loan transactions; restrict prepayment penalties on higher-cost loans and prohibit them on high-cost loans; require creditors to establish escrow accounts for all higher-cost and high-cost loan transactions; and, require creditors to obtain written certification that a consumer has received homeownership counseling prior to closing a high-cost mortgage loan. Failure to comply with the new rules implemented in Regulation Z may subject the Fund to, among other things, rescission of the loan and a loss of all finance charges and fees paid by the consumer.

### **Risks Related to Tenancy and Leaseholds**

The Fund does not intend to engage in any direct commercial real property acquisition. However, there may be instances in which the Fund may own and hold commercial real properties as a result of the Fund's lending activities, including REOs. Although the Fund intends to divest these properties as soon as practicable, that may not always be the case and the Manager (or an Affiliate or third party) may have to

manage the property and lease to tenants until sold. In such instances, there are risks associated with certain aspects of leases, including, without limitation:

- Tenancy bankruptcy;
- Cost of unlawful detainer and lessor remedies, including, breach of lease agreement covenants;
- Risks of noncompliant eviction;
- Contest of leases related to businesses and/or franchisees;
- Unintended consequences of remedies provided under the lease agreements, including, in the event the borrower defaults; and
- Occupancy risks such that the real property may fail to stabilize and/or generate income.

All of the above risks will diminish the overall financial return to the Members.

### **Economic Conditions**

Changes in national or local economic conditions (including economic recessions, as noted above) could result in unanticipated declines in real estate values. Any decline in real estate values could have an adverse effect upon the Fund and could result in losses to Members. No assurance exists that the Fund would be able to avoid losses if real estate assets decline materially.

### **Borrower Fraud**

Borrowers and property developers supply a variety of information regarding the current rental income, property valuations, market data, and other information. The Fund attempts to verify much of the information provided, but as a practical matter, cannot verify all of it, which may result as incomplete, inaccurate, or intentionally false. Borrowers and developers may also misrepresent their intentions for the use of investment proceeds. The Fund may not verify any statements by applicants as to how proceeds are to be used. If a borrower or developer supplies false, misleading, or inaccurate information, Members may lose all or a portion of the investment in the loans.

When the Fund finances a loan, its primary assurances that the financing proceeds will be properly spent by the borrower or developer are the contractual covenants agreed to by the borrower or developer, along with their business history and reputation. Should the proceeds of a financing be diverted improperly, the borrower or developer might become insolvent, which could cause the Members to lose their entire investment.

### **Unforeseen Changes**

While the Fund has enumerated certain material risk factors herein, it is impossible to know all risks which may arise in the future. In particular, Members may be negatively affected by changes in any of the following: (i) laws, rules and regulations; (ii) regional, national and/or global economic or health factors and/or real estate trends; (iii) the capacity, circumstances and relationships of partners of Affiliates, the Fund or the Manager; (iv) general changes in financial or capital markets, including (without limitations) changes in interest rates, investment demand, valuations or prevailing equity or bond market conditions; or (v) the presence, availability or discontinuation of real estate and/or housing incentives.

The Fund continuously encounters changes in its operating environment, and the Fund may have fewer resources than many of its competitors to continue to adjust to those changes. The operating environment of the Fund is undergoing rapid changes, with frequent introductions of laws, regulations, competitors, market approaches, and economic impacts. Future success will depend, in part, upon the ability of the Fund to address the needs of its borrowers, sponsors, and clients by adapting to those changes and providing products and services that will satisfy the demands of their respective businesses and projects. Many of the competitors have substantially greater resources to adapt to those changes. The Fund may not be able to effectively react to all of the changes in its operating environment or be successful in adapting its products, services, and approach.

## **CONFLICTS OF INTEREST**

The following is a list of some of the important areas in which the interests of the Manager and its Affiliates may conflict with those of the Fund. The Members must rely on the general fiduciary standards and other duties that may apply to a manager of a limited liability company to prevent unfairness by any of the aforementioned in a transaction with the Fund. (See “Fiduciary Responsibility of the Manager” above).

### **Loan Origination and Renewal Commissions and Forbearance Fees**

The Manager and/or its Affiliates will have the sole and absolute discretion to determine whether or not to make, acquire or sell a particular loan or property. None of the Manager’s compensation set forth under “Manager’s Compensation” was determined through arms-length negotiations. Any increase in such charges may have a direct, adverse effect upon the interest rates that borrowers will be willing to pay the Fund, thus may reduce the overall rate of return to Members. Conversely, if the Fund reduces the loan fees charged, a higher rate of return might be obtained for the Fund and the Members. This conflict of interest will exist in connection with every transaction the Fund participates in.

### **Fund Management Not Required to Devote Full-Time**

The Manager is not required to devote its capacities full-time to the Fund's affairs, but only such time as the affairs of the Fund may reasonably require.

### **Competition with Affiliates of the Fund**

Though they currently have no intention to do so, there is no restriction preventing the Fund or any of its affiliates, principals, or management from competing with the Fund by investing in collateral liens or sponsoring the formation of other investment groups like the Fund to invest in similar areas. If the Fund or any of its principals were to do so, then when considering each new investment opportunity, the Fund or such affiliate, principal or manager would need to decide whether to originate or hold the resulting transaction in the Fund, as an individual or in a competing entity. This situation would compel the Manager to make decisions that may at times favor persons other than the Fund. The Operating Agreement exonerates the Fund and its Affiliates, principals, and management from any liability for investment opportunities given to other persons.

### **Loan Transactions by Managers**

The Manager and/or its principals and Affiliates may contribute loans to the Fund that otherwise meet the lending and underwriting criteria discussed herein. Such transactions would generally increase the Membership Interests or percentage ownership or interest of the Manager as a Member of the Fund, and correspondingly would dilute the ownership and percentage interests of other Members.

**Loan Servicing by the Fund or Manager**

The Manager has reserved the right to retain other firms in addition to, or in lieu of, the Manager acting as the loan servicer to perform the various brokerage services, loan servicing, and other activities in connection with the Fund's investment portfolio that are described in this Memorandum. Such other firms may or may not be affiliated with the Fund or Manager. Loan servicing firms not affiliated with the Fund or Manager may provide comparable services on terms more favorable to the Fund. The Manager has very wide discretion in determining which entity (including, but not limited to, the Manager itself, an Affiliate of the Manager, or an unaffiliated third party) will service the loans.

**Other Companies & Partnerships or Businesses**

The Manager and its managers, principals, directors, officers, or affiliates may engage, for their own account or for the account of others, in other business ventures similar to that of the Fund or otherwise, and neither the Fund nor any Member shall be entitled to any interest therein. As such, there exists a conflict of interest on the part of the Manager because there may be a financial incentive for the Manager to arrange or originate transactions for private investors and other mortgage funds. Further, the Manager may be involved in creating other mortgage or real estate funds that may compete with the Fund.

The Fund will not have independent management and it will rely on the Manager and its managers, principals, directors, officers, and/or affiliates for the operation of the Fund. The Manager and these individuals/entities will devote only so much time to the business of the Fund as is reasonably required. The Manager may have conflicts of interest in allocating management time, services and functions between various existing companies, the Manager and any future companies which it may organize as well as other business ventures in which it or its managers, principals, directors, officers and/or affiliates may be or become involved. The Manager believes it has sufficient staff to be fully capable of discharging its responsibilities.

**Purchase, Sale and/or Hypothecation of Loans**

The Fund and its managers, principals, directors, officers, and/or affiliates may sell, buy or hypothecate loans (use loans as collateral for another loan) to the Fund, provided that such loans meet the then-existing underwriting criteria of the Fund. The Fund may pay a price greater or less than the remaining balance on such loans. The price at which existing loans are bought and sold is normally a function of prevailing interest rates and the term of the loan. Therefore, the Fund or its managers, principals, directors, officers, and/or affiliates, may make a profit on the sale of an existing loan from the Fund to the Fund. There will be no independent review of the value of such loans or of compliance with the conditions set forth above.

**Lack of Independent Legal Representation**

Investors and the Fund have not been represented by independent legal counsel to date. The use of the Manager's counsel in the preparation of this Memorandum and the organization of the Fund may result in a lack of independent review. Investors are encouraged to consult with their own attorney for legal advice in connection with this Offering. Also, since legal counsel for the Manager prepared this Offering, legal counsel will not represent the interests of the Members at any time.

**Conflict with Related Programs**

The Manager and its managers, principals, directors, officers, and/or Affiliates may cause the Fund to join with other entities organized by the Manager for similar purposes as partners, joint venturers or co-owners

under some form of ownership in certain loans or in the ownership of repossessed real property. The interests of the Fund and those of such other entities may conflict, and the Fund controlling or influencing all such entities may not be able to resolve such conflicts in a manner that serves the best interests of the Fund.

### **Other Services Provided by the Manager or its Affiliates**

The Manager or its Affiliates may provide other services to persons dealing with the Fund or the loans. The Manager or its Affiliates are not prohibited from providing services to, and otherwise doing business with, the persons that deal with the Fund, the Membership Interests, or the Members.

### **Sale of Real Estate to Affiliates**

In the event the Fund becomes the owner of any real property by reason of foreclosure on a Fund loan or otherwise, the Manager's first priority will be to arrange for the sale of the property for a price that will permit the Fund to recover the full amount of its invested capital plus accrued but unpaid interest and other charges, or so much thereof as can reasonably be obtained in light of current market conditions. In order to facilitate such a sale, the Manager may, but is not required to, arrange a sale to persons or entities controlled by it, (e.g. to another limited liability company formed by the Manager for the express purpose of acquiring foreclosure properties from lenders such as the Fund). The Manager will be subject to conflicts of interest in arranging such sales since it will represent both parties to the transaction. For example, the Fund and the potential buyer will have conflicting interests in determining the purchase price and other terms and conditions of sale. The Manager's decision will not be subject to review by any outside parties. The Fund may sell a foreclosed property to the Manager or an Affiliate at a price that is fair and reasonable for all parties, but no assurance can be given that the Fund could not obtain a better price from an independent third party.

## **CERTAIN LEGAL ASPECTS OF FUND LOANS**

Each of the Fund's loans will be secured by, among other things, a deed of trust, mortgage, leasehold deed of trust or leasehold mortgage, or security agreement. The deed of trust and the mortgage are the most commonly used real property security devices. A deed of trust has three parties: a debtor, referred to as the "trustor"; a third party, referred to as the "trustee"; and the lender, referred to as the "beneficiary." The trustor irrevocably grants the property until the debt is paid, "in trust, with power of sale" to the trustee to secure payment of the obligation. The trustee's authority is governed by law, the express provisions of the deed of trust, and the directions of the beneficiary. The Fund will be the beneficiary under all deeds of trust securing the Fund's loans. In a mortgage loan, there are only two parties: the mortgagor (borrower) and the mortgagee (lender).

In the United States, each state's laws determine how a mortgage is foreclosed. The route usually requires a judicial process, but varies from state to state. For properties located in the United States, some states have a statute known as the "one form of action" rule, which requires the beneficiary of a collateral lien to exhaust the security under the security lien (i.e., foreclose on the property) before any personal action may be brought against the borrower. Foreclosure statutes vary from state to state. Loans by the Fund secured by mortgages will be foreclosed in compliance with the laws of the state where the real property collateral is located.

### **Foreclosure Example**

Some states, for example and for illustration only, have a statute known as the "one action" rule which requires the beneficiary of a deed of trust to exhaust the security under the deed of trust (i.e., foreclose on

the property) before any personal action may be brought against the borrower. There are two methods of foreclosing a deed of trust.

(a) Foreclosure of a deed of trust is accomplished in most cases by a non-judicial trustee's sale under the power of sale provision in the deed of trust. Prior to such sale, the trustee must record a notice of default and send a copy to the trustor and to any person who has recorded a request for a copy of a notice of default, and to the successor in interest to the trustor and to the beneficiary of any junior deed of trust. The trustor or any person having a junior lien or encumbrance of record may, during a Three (3) month reinstatement period, cure the default by paying the entire amount of the debt then due, exclusive of principal due only because of acceleration upon default, plus costs and expenses actually incurred in enforcing the obligation and statutorily limited attorneys' and trustee's fees. Thereafter, and at least Twenty-One (21) days before the trustee's sale, a notice of sale must be posted in a public place and published once a week over such period. A copy of the notice of sale must be posted on the property, and sent to the trustee, to each person who has requested a copy, to any successor in interest to the trustor and to the beneficiary of any junior deed of trust, at least Twenty-One (21) days before the sale. Following the sale, neither the debtor/trustor nor a junior lien has any right of redemption, and the beneficiary may not obtain a deficiency judgment against the trustor.

(b) A judicial foreclosure (in which the beneficiary's purpose is usually to obtain a deficiency judgment where otherwise unavailable) is subject to most of the delays and expenses of other lawsuits, sometimes requiring up to several years to complete. Following a judicial foreclosure sale, the trustor or his, her, or its successors in interest may redeem for a period of One (1) year (or a period of only Three (3) months if the entire amount of the debt is bid at the foreclosure sale), and until the trustor redeems, foreclosed junior lien holder may redeem during successive redemption periods of Sixty (60) days following the previous redemption, but in no event later than One (1) year after the judicial foreclosure sale. The Fund generally will not pursue a judicial foreclosure to obtain a deficiency judgment, except where, in the sole discretion of the Manager, such a remedy is warranted in light of the time and expense involved.

States may have statutory prohibitions which limit the remedies of a beneficiary under a deed of trust. Statutes may limit a beneficiary's right to obtain a deficiency judgment against the trustor following foreclosure of a deed of trust - one based on the method of foreclosure and the other on the type of debt secured.

A deficiency judgment may be barred where the foreclosure was accomplished by means of a non-judicial trustee's sale. If foreclosure becomes necessary, it is anticipated that all applicable Fund loans will be enforced by means of a non-judicial trustee's sale. A deficiency judgment may be barred in any event where the foreclosed deed of trust secured by a "purchase money obligation," i.e., a promissory note evidencing a loan used to pay all or part of the purchase price of a residential property occupied, at least in part, by the purchaser. This restriction may apply to a number of Fund loans.

Some states have a "one action" rule, which requires the beneficiary to exhaust the security under the deed of trust by foreclosure before bringing a personal action against the trustor on the promissory note. State law may limit any deficiency judgment obtained by the beneficiary following a judicial sale to the excess of the outstanding debt over the fair market value of the property at the time of sale, thereby preventing a beneficiary from obtaining a large deficiency judgment against the debtor as a result of low bids at a judicial sale.

Other matters, such as litigation instituted by a defaulting borrower or the operation of the federal bankruptcy laws, may have the effect of delaying enforcement of the lien of a defaulted loan and may in certain circumstances reduce the amount realizable from sale of a foreclosed property.

Foreclosure statutes vary from State to State. Any loans by the Fund secured by mortgages will be foreclosed in compliance with the laws of the state where the real property collateral is located. The above example is for illustration purposes only and is not an exhaustive summary of laws applicable to foreclosure or default or a reflection or summary of the laws of any other state or foreign jurisdiction.

### **Special Considerations in Connection with Junior Encumbrances**

In addition to the general considerations concerning trust deeds discussed above, there are certain additional considerations applicable to second and more junior deeds of trust (“junior encumbrances”). By its very nature, a junior encumbrance is less secure than a more senior lien. If a senior lien holder forecloses on its loan, unless the amount of the bid exceeds the senior encumbrances, the junior lien holder will receive nothing. Because of the limited notice and attention given to foreclosure sales, it is possible for a junior lien holder to be sold out, receiving nothing from the foreclosure sale, although all legal methods of recouping the Fund’s investment will be exhausted. By virtue of anti-deficiency legislation, discussed above, a junior lien holder may be totally precluded from any further remedies.

Accordingly, a junior lien holder (such as the Fund in certain cases) may find that the only method of protecting its security interest in the property is to take over all obligations of the trustor with respect to senior encumbrances while the junior lien holder commences its own foreclosure, making adequate arrangements either to (1) find a purchaser for the property at a price which will recoup the junior lien holder’s interest, or (2) to pay off the senior encumbrances so that the junior lien holder’s encumbrance achieves first priority. Either alternative may require the Fund to make substantial cash expenditures to protect its interest. (See “Business Risks” above).

The Fund may also make wrap-around mortgage loans (sometimes called “all-inclusive loans”), which are junior encumbrances to which all the considerations discussed above will apply. A wrap-around loan is made when the borrower desires to refinance his, her, or its property but does not wish to retire the existing indebtedness for any reason, e.g., a favorable interest rate or a large prepayment penalty. A wrap-around loan will have a principal amount equal to the outstanding principal balance of the existing secured loans plus the amount actually to be advanced by the Fund. The borrower will then make all payments directly to the Fund, and the Fund in turn will pay the holder of the senior encumbrance. The actual ultimate yield to the Fund under a wrap-around mortgage loan will likely exceed the stated interest rate on the underlying senior loan, since the full principal amount of the wrap-around loan will not actually be advanced by the Fund. State laws generally require that the Fund be notified when any senior lien holder initiates foreclosure.

If the borrower defaults solely upon his, her or its debt to the Fund while continuing to perform with regard to the senior lien, the Fund (as junior lien holder) will foreclose upon its security interest in the manner discussed above in connection with deeds of trust generally. Upon foreclosure by a junior lien, the property remains subject to all liens senior to the foreclosed lien. Thus, if the Fund were to purchase the security property at its own foreclosure sale, it would acquire the property subject to all senior encumbrances.

The standard form of deed of trust used by most institutional lenders, like the one that will be used by the Fund or its affiliates, confers on the beneficiary the right both to receive all proceeds collected under any hazard insurance policy and all awards made in connection with any condemnation proceedings, and to apply such proceeds and awards to any indebtedness secured by the deed of trust in such order as the beneficiary may determine. Thus, in the event improvements on the property are damaged or destroyed by fire or other casualty, or in the event the property is taken by condemnation, the beneficiary under the underlying first deed of trust will have the prior right to collect any insurance proceeds payable under a hazards insurance policy and any award of damages in connection with the condemnation, and to apply the same to the indebtedness secured by the first deed of trust before any such proceeds are applied to repay

the loan in respect of the Fund. The amount of such proceeds may be insufficient to pay the balance due to the Fund, while the debtor may fail or refuse to make further payments on the damaged or condemned property, leaving the Fund with no feasible means to obtain payment of the balance due under its junior deed of trust. In addition, the borrower may have a right to require the lender to allow the borrower to use the proceeds of such insurance for restoration of the insured property.

### **Bankruptcy Laws**

If a borrower or property owner on which a lien is imposed files for protection under the federal bankruptcy statutes, the Fund will be initially barred from taking any foreclosure action on its real property security by an “automatic stay order” that goes into effect upon the borrower's filing of a bankruptcy petition. Thereafter, the Fund would be required to incur the time, delay, and expense of filing a motion with the bankruptcy court for permission to foreclose on the real property security (“relief from the automatic stay order”). Such permission is granted only in limited circumstances. If permission is denied, the Fund will likely be unable to foreclose on its security for the duration of the bankruptcy, which could be years. During such delay, a borrower may or may not be required to pay current interest on the Fund loan. Also, a property owner may or may not be able to pay down the lien. The Fund would therefore lack the cash flow it anticipated from the loan, and the total indebtedness secured by the security property would increase by the amount of the defaulted payments, perhaps reaching a total that would exceed the market value of the property.

In addition, bankruptcy courts have broad powers to permit a sale of the real property free of the Fund's lien, to compel the Fund to accept an amount less than the balance due under the loan and to permit the borrower to repay the loan over a term which may be substantially longer than the original term of the loan.

### **“Due-on-Sale” Clauses**

The Fund's forms of promissory notes and deeds of trust, like those of many lenders, contain “due-on-sale” clauses, which permits the Fund to accelerate the maturity of a loan if the borrower sells, conveys or transfers all or any portion of the property, but may or may not contain “due-on-encumbrance” clauses which would permit the same action if the borrower further encumbers the property (i.e., executes further deeds of trust). The enforceability of these types of clauses has been the subject of several major court decisions and legislation in recent years.

(1) Due-on-Sale. Federal law now provides that, notwithstanding any contrary pre-existing state law, due-on-sale clauses contained in mortgage loan documents are enforceable in accordance with their terms by any lender after October 15, 1985. On the other hand, acquisition of a property by the Fund by foreclosure on one of its loans may also constitute a “sale” of the property, and would entitle a senior lienholder to accelerate its loan against the Fund. This would be likely to occur if then prevailing interest rates were substantially higher than the rate provided for under the accelerated loan. In that event, the Fund may be compelled to sell or refinance the property within a short period of time, notwithstanding that it may not be an opportune time to do so.

(2) Due-on-Encumbrance. With respect to mortgage loans on residential property containing four or fewer units, federal law prohibits acceleration of the loan merely by reason of the further encumbering of the property (e.g., execution of a junior deed of trust). This prohibition does not apply to mortgage loans on other types of property. Although many of the Fund's junior lien mortgages will be on properties that qualify for the protections afforded by federal law, some loans will be secured by properties that do not qualify for the protection, including (without limitation) small apartment buildings or commercial properties. Junior lien mortgage loans made by the Fund may trigger acceleration of senior loans on properties if the senior loans contain valid due-on-encumbrance clauses, although both the number of such

instances and the actual likelihood of acceleration are anticipated to be minor. Failure of a borrower to pay off the senior loan would be an event of default and subject the Fund (as junior lienholder) to the risks attendant thereto. It will not be customary practice of the Fund to make loans on non-residential property where the senior encumbrance contains a due-on-encumbrance clause. (See “Special Considerations in Connection with Junior Encumbrances.”)

### **Prepayment Charges**

Loans may provide for certain prepayment charges to be imposed on the borrowers in the event of certain early payments on the loan. The Manager reserves the right, but has no obligation, at its business judgment to waive collection of prepayment penalties. Applicable federal and state laws may limit the prepayment charge on residential loans. For commercial or multi-family loans there is no federal law that limits the prepayment amount charged, but applicable state laws may vary.

## **LEGAL PROCEEDINGS**

Neither the Fund, Manager nor any of its managers, principals, directors, or officers of the Fund are now, or within the past Five (5) years have been, involved in any material litigation or arbitration.

## **INCOME TAX CONSIDERATIONS**

### **Federal Income Tax Aspects**

The following discussion generally summarizes the material federal income tax consequences of an investment in the Fund based upon the existing provisions of the Code, and applicable Treasury regulations thereunder, current administrative rulings and procedures, and applicable judicial decisions. However, it is not intended to be a complete description of all tax consequences to prospective Investors with respect to their investment in the Fund. No assurance can be given that the Internal Revenue Service (“IRS”) will agree with the interpretation of the current federal income tax laws and regulations summarized below. In addition, the Fund or the Investors may be subject to state and local taxes in jurisdictions in which the Fund may be deemed to be doing business.

ACCORDINGLY, ALL PROSPECTIVE INVESTORS SHOULD INDEPENDENTLY SATISFY THEMSELVES REGARDING THE POTENTIAL FEDERAL AND STATE TAX CONSEQUENCES OF PARTICIPATION IN THE FUND AND ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS, ATTORNEYS OR ACCOUNTANTS IN CONNECTION WITH ANY INTEREST IN THE FUND. EACH PROSPECTIVE INVESTOR SHOULD SEEK, AND RELY UPON, THE ADVICE OF THEIR OWN TAX ADVISORS IN EVALUATING THE SUITABILITY OF AN INVESTMENT IN THE FUND IN LIGHT OF THEIR PARTICULAR INVESTMENT AND TAX SITUATION.

### **Tax Law Subject to Change**

Frequent and substantial changes have been made, and will likely continue to be made, to the federal and state income tax laws. The changes made to the tax laws by legislation are pervasive, and in many cases, have yet to be interpreted by the IRS or the courts.

### **State and Local Taxes**

A description or analysis of the state and local tax consequences of an investment in the Fund is beyond the scope of this discussion. Prospective Members are advised to consult their own tax counsel and advisors

regarding these consequences and the preparation of any state or local tax returns that an Investor may be required to file.

In addition to the United States Federal Income tax considerations described herein, Members should consider the potential state and local tax consequences of a purchase of Membership Interests. In addition to being taxed and subject to tax-filing obligations in its own state or locality of residence or domicile, a Member may be subject to the tax filing obligations and income, franchise and other taxes in jurisdictions in which the Fund conducts its activities. Although no assurances can be provided, the Fund intends to conduct its activities in such a manner that will not cause Members who are not otherwise subject to taxation in states other than their state of residence, to be taxed and subject to tax filing obligations in other states solely as a result of owning Membership Interests. The Fund itself may also become subject to tax in certain jurisdictions. This discussion does not purport to discuss the state and local tax consequences of an investment in the Membership Interests.

### **Federal Partnership Treatment**

The Fund is likely to be treated as a partnership under the Code. Assuming that the Fund has been properly formed under Delaware law, is operated in accordance with applicable Delaware corporate and business law and the terms of the Operating Agreement, it is the Fund's opinion (subject to the discussion regarding "Taxable Mortgage Pools" below) that, if the matter were litigated, it is more likely than not that the Fund would prevail as to its classification and would be taxed as a partnership for federal income tax purposes. If the Internal Revenue Service ("IRS") determined that the Fund was an association taxable as a corporation for federal income tax purposes, there would be significant adverse tax consequences to the Fund and possibly to its investors, including (without limitation) the Fund would have to pay tax on its net income and then the investor would have to pay tax on any distributions as dividends as opposed to interest income.

### **IRS Audits**

Informational returns filed by the Fund are subject to audit by the IRS. The IRS devotes considerable attention to the proper application of the tax laws to partnerships. An audit of the Fund's return may lead to adjustments which adversely affect the federal income tax treatment of Membership Interests and cause Members to be liable for tax deficiencies, interest thereon and penalties for underpayment. An audit of the Fund's tax return could also lead to an audit of their individual tax return that may not otherwise have occurred, and to the adjustment of items unrelated to the Fund. Prospective Investors should make their determination to invest based on the economic considerations of the Fund rather than any anticipated tax benefits. Furthermore, the IRS has taken the position in Temp. Reg. 1.163-9T that any interest on income taxes owed by an individual is personal interest, subject to limitations on deduction, regardless of the nature of the activity that produced the income that was the source of the tax.

If the IRS makes audit adjustments to the Fund's income tax returns, it may assess and collect any taxes (including any applicable penalties and interest) resulting from such audit adjustment directly from the Fund. Generally, the Fund may elect to have the Members take such audit adjustment into account in accordance with their interest in the Fund during the tax year under audit, but there can be no assurance that such election will be effective in all circumstances and the manner in which the election is made and implemented has yet to be determined. If the Fund is unable to have the Members take such audit adjustment into account in accordance with their interests in the Fund during the tax year under audit, current Members may bear some or all of the tax liability resulting from such audit adjustment, even if such Members did not own Membership Interests in the Fund during the tax year under audit. If, as a result of any such audit adjustment, the Fund is required to make payments of taxes, penalties, and interest, cash available for distribution to Members might be substantially reduced. The Fund may, at any time, during

the existence of the Fund or any predecessor of the Fund, directly seek reimbursement of underpaid taxes, penalties, and interest from the Members who held Membership Interests during the year which is under IRS, state, or local audit examination, even if such Member has since redeemed its Membership Interest and is no longer a Member of the Fund. The Fund will designate the Manager to act as the partnership representative who shall have the sole authority to act on behalf of the Fund with respect to dealings with the IRS under these audit procedures. The acts of the Manager in its capacity as the partnership representative, including the extension of statutes of limitation, will bind the Fund and all Members. The Members will not have a right to participate in the audit proceedings.

### **Profit Objective of the Fund**

Deductions will be disallowed if they result from activities not entered into for profit to the extent that such deductions exceed an amount equal to the greater of: (a) the gross income derived from the activity; or (b) deductions (such as interest and taxes) that are allowable in any event. The applicable Treasury Department regulations indicate a transaction will be considered as entered into for profit where there is an expectation of profit in the future, either of a recurring type or from the disposition of property. In addition, the Code provides, among other things, an activity is presumed to be engaged for profit if the gross income from such activity for Three (3) of the Five (5) taxable years ending with the taxable year in question exceeds the deductions attributable to such activity. It is anticipated that the Fund will satisfy this test.

### **Property Held Primarily for Sale: Potential Dealer Status**

The Fund has been organized to invest in loans and notes primarily secured by deeds of trust or mortgages on real property and to acquire real estate properties. However, if the Fund were at any time deemed for federal tax purposes to be holding one or more Fund loans, notes or properties primarily for sale to customers in the ordinary course of business (a “dealer”), any gain or loss realized upon the disposition of such loans, notes or properties would be taxable as ordinary gain or loss rather than as capital gain or loss. The federal income tax rates for ordinary income are currently higher than those for capital gains. In addition, income from sales of loans, notes, and properties to customers in the ordinary course of business would also constitute unrelated business taxable income to any Members which are tax-exempt entities. Under existing law, whether or not real property is held primarily for sale to customers in the ordinary course of business must be determined from all the relevant facts and circumstances. The Fund intends to make and hold the Fund loans, notes and properties for investment purposes only, and to dispose of Fund loans, notes and properties, by sale or otherwise, at the discretion of the Manager and as consistent with the Fund’s investment objectives. It is possible that, in so doing, the Fund will be treated as a “dealer” in mortgage loans, notes and properties, and that profits realized from such sales will be considered unrelated business taxable income to otherwise tax-exempt Investors in the Fund.

### **Taxable Mortgage Pool Rules**

Notwithstanding the check-the-box provisions, the IRS may still reclassify certain partnerships as corporations for federal income tax purposes, if they meet the definition of a “taxable mortgage pool” under Internal Revenue Code Section 7701(i)(2)(A)(ii). A taxable mortgage pool is any entity whose assets consist substantially of debt instruments, who is the obligor under debt obligations with Two (2) or more maturities, and where there is a relationship between the debt instruments and the debt obligations of the entity. The issue of what constitutes debt obligations with Two (2) or more maturities is unclear. The regulations state that “[T]he purpose of section 7701(i) is to prevent income generated by a pool of real estate mortgages from escaping Federal income taxation when the pool is used to issue multiple class mortgage-backed securities.” The Fund has only one class of Membership Interests. A literal reading of this provision could lead to the conclusion that the Fund would not be reclassified as a taxable mortgage pool and taxed as a corporation. In order to further explain any such interpretation, the Manager has

committed that to the extent it leverages the Fund assets (i.e., borrows funds from another lender for purpose of making loans and pledges one or more loans of the Fund as collateral for such borrowing), the Fund intends to only have one line of credit at a time so that the IRS would find it difficult to make the argument that the Fund has debt obligations with two (2) or more maturities. However, due to the lack of clarity with respect to this provision, there is no assurance (and no opinion of any kind can be given) that the IRS would not attempt to tax the Fund as a corporation and not a partnership. Any such taxation would have an adverse effect on the Fund and the return an Investor would receive on their investment in the Fund.

### **Portfolio Income**

A primary source of Fund income will be interest, which is ordinarily considered “portfolio income” under the Code. Similarly, Temporary Regulations issued by the Internal Revenue Service in 1988 (Temp. Reg. Section 1.469-2T(f)(4)(ii)) confirmed that net interest income from an equity-financed lending activity such as the Fund will be treated as portfolio income, not as passive income, to Members. Therefore, Members will not be entitled to treat their proportionate share of Fund income as passive income, against which passive losses (such as deductions from unrelated real estate investments) may be offset. Another source of Fund income will be capital gains from selling real property. Capital gains are also treated as portfolio income and not as passive income to the Members. Thus, Members will not be entitled to treat their proportionate share of Fund income as passive income, against which passive losses may be offset.

### **Phantom Income**

The Fund intends to engage in the business of purchasing, acquiring, selling, or otherwise investing in the NPLs and/or distressed assets, with the anticipation that such loans (or assets, as applicable) may be modified or otherwise re-perform. If there is modification that is sufficiently substantial, the Fund must recognize gain or loss on the difference between the value of the NPL and the re-performing loan. This is otherwise known as the “phantom income.” This income will be recognized and reported by the Fund (and its respective Members) due to the difference in value between the two loans (or otherwise assets that have gains), even if there was no cash proceed received by the Fund. In effect, the Members’ rate of return may be diminished, or otherwise, the Members may incur taxes from such activities.

### **Basis**

The Fund may deduct the shares of the losses only to the extent of the adjusted basis of the Members’ interests in the Fund, as set forth under Sections 752 and 465 of the Code. Specifically, most assets will incur borrowing in which the debt may be a nonrecourse liability. In such case, the basis of the Member may be called into question as to whether this nonrecourse debt will enter into bases of the Member’s interests. Accordingly, the nonrecourse debt may result in reduction of the Member’s profit sharing ratio in accordance with the Code.

### **Depreciation and Recapture**

Where applicable, the Manager intends to conduct a straight-line depreciation method set forth under 26 CFR Section 1.167(b)-1 of the assets, unless otherwise impractical or it is in the best interest of the Fund that an alternative depreciation method may be used, as determined by the Manager in its sole and absolute discretion. However, the IRS may challenge the useful lives chosen by the Manager and/or Fund with respect to the chosen depreciation method, as well as the basis with respect to the useful life of the Fund assets. Accordingly, the IRS may cause adverse tax consequences against the Fund (and the Members) for challenging the depreciation method.

**Deductibility of Prepaid and Other Expenses**

It is possible that the Fund may take deduction that is large for prepaid interest, if any, early in the operation of the Fund. However, the assets of the Fund, including the assets, may have little to no income in such year, and the IRS may determine that the prepayment created a material distortion of income at the Fund-level and require that the deduction be allocated over the term of the loan securing the assets. In such instances, the Fund (and its Members) will have adverse tax consequences on such allocation.

**Tax Liability in Later Years**

After the commencement of operation of the Fund, the Member's tax liabilities may exceed cash distributions. In addition, the Fund (and its Members) may incur tax in the event the Fund's mortgage amortization payments exceed its depreciation deductions (i.e., the crossover point).

**Sale or Disposition of Partnership Interests and/or Fund Assets**

The Partnership Interests are restricted securities and subject to substantial restriction on transfer or sale of its securities. (See "Restrictions on Transfer" above). Notwithstanding the foregoing, in the event that the Member transfers or dispose of its Partnership Interests, whether through redemption or transfer, the Member will incur tax for such transaction. In addition, there may be adverse tax consequences for any of the Fund's nonrecourse liabilities with respect to the Fund assets. Wherever applicable, such income and/or gain may be treated as ordinary income (as opposed to capital gain).

In addition, if the Manager or its Affiliates sells or disposes any or all of the assets, including, the condominium, the Fund (and its Members) may incur taxes at ordinary income. In addition, the sale of condominiums may trigger a "dealer" status under the Code, which may result in income being treated as ordinary income. The Members are encouraged to speak to his, her, or its own tax advisors with respect to the Fund and its investments.

**Liquidation and/or Termination of the Fund**

The Fund may be dissolved under the terms as provided in the Operating Agreement. In such event, the Fund (and its Members) will incur tax on any remaining distribution made by the Manager on behalf of the Fund.

**Understatement Penalties**

The Fund will be subject to substantial understatement penalty in the event that it understates its income tax. The IRS imposes a penalty of Twenty Percent (20%) on any substantial understatement of income tax. Furthermore, the IRS can charge interest on underpayments of income tax exceeding One Hundred Thousand Dollars (\$100,000) for any tax year owing by certain corporations at a rate that is higher than the normal interest rate. The Manager strongly advises prospective investors to consult with their own tax advisor to be sure that they fully evaluate the proposed tax treatment of LLC as described herein.

**Unrelated Business Taxable Income**

The Fund may generate unrelated business taxable income for Members that are qualified plans such as self-directed IRA's, or tax-exempt organizations such as pension/benefit plan investors, colleges, universities, private foundations, and charitable remainder trusts. Particularly if the Fund pursues a credit facility or leverage, it is highly likely that the Fund may generate unrelated business taxable income for such Members. Investors should be aware also that the issue of how the unrelated business taxable income

of a qualified plan or exempt organization should be taxed is regularly under discussion by one or more committees of Congress. The Fund advises that all Members, particularly Members with qualified plans or exempt organizations, consult with their own tax advisor to be sure they fully evaluate the impact of unrelated business taxable income for Members.

## ERISA CONSIDERATIONS

The following is a discussion of how certain requirements of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and the Code relating to Employee Benefit Plans and certain Other Benefit Arrangements (each as defined below) may affect an investment in the Membership Interests. It is not, however, a complete or comprehensive discussion of all employee benefits aspects of such an investment. If the Investors are trustees or other fiduciaries of an Employee Benefit Plan or Other Benefit Arrangement, before purchasing Membership Interests, they should consult with their own independent legal counsel to assure that the investment does not violate any of the applicable requirements of ERISA or the Code, including, without limitation, the ERISA fiduciary rules and the prohibited transaction requirements of ERISA and the Code.

### ERISA Fiduciary Duties

Under ERISA, persons who serve as trustees or other fiduciaries of an Employee Benefit Plan have certain duties, obligations, and responsibilities with respect to the participants and beneficiaries of such plans. Among the ERISA fiduciary duties are the duty to invest the assets of the plan prudently, and the duty to diversify the investment of plan assets so as to minimize the risk of large losses. An “Employee Benefit Plan” is a plan subject to ERISA that is an employee pension benefit plan (such as a defined benefit pension plan or a section 401(k) or 403(b) plan) or any employee welfare benefit plan (such as an employee group health plan).

### Prohibited Transaction Requirements

Section 406 of ERISA and Section 4975 of the Code proscribe certain dealings between Employee Benefit Plans or Other Benefit Arrangements, on the one hand, and “parties-in-interest” or “disqualified persons” with respect to those plans or arrangements on the other. An “Other Benefit Arrangement” is a benefit arrangement described in Section 4975(e)(1) of the Code (such as a self-directed individual retirement account (“IRA”), other than an Employee Benefit Plan.

Prohibited transactions include, directly or indirectly, any of the following transactions between an Employee Benefit Plan or Other Benefit Arrangement and a party in interest or disqualified person:

- (a) sales or exchanges of property;
- (b) lending of money or other extension of credit;
- (c) furnishing of goods, services or facilities; and
- (d) transfers to, or use by or for the benefit of, a party in interest or disqualified person of any assets of the Employee Benefit Plan or Other Benefit Arrangement.

In addition, prohibited transactions include any transaction where a trustee or other fiduciary of an Employee Benefit Plan or Other Benefit Arrangement:

- (a) deals with plan assets for his own account,

- (b) acts on the behalf of parties whose interests are adverse to the interest of the plan, or
- (c) receives consideration for his personal account from any party dealing with the plan with respect to plan assets.

The terms “party in interest” under ERISA and “disqualified person” under the Code have similar definitions. The terms include persons who have particular relationships with respect to an Employee Benefit Plan or Other Benefit Arrangement, such as:

- (a) fiduciaries;
- (b) persons rendering services of any nature to the plan;
- (c) employers any of whose employees are participants in the plan, as well as owners of 50% or more of the equity interests of such employers;
- (d) spouses, lineal ascendants, lineal descendants, and spouses of such ascendants or descendants of any of the above persons;
- (e) employees, officers, directors and Ten Percent (10%) or more owners of such fiduciaries, service providers, employers or owners;
- (f) entities in which any of the above-described parties hold interests of 50% or more; and
- (g) Ten Percent (10%) or more joint venturers or partners of certain of the parties described above.

Certain transactions between Employee Benefit Plans or Other Benefit Arrangements and parties in interest or disqualified persons that would otherwise be prohibited transactions are exempt from the prohibited transaction rules due to the application of certain statutory or regulatory exemptions. In addition, the United States Department of Labor (“DOL”) has issued class exemptions and individual exemptions for certain types of transactions. Violations of the prohibited transaction rules may require the prohibited transactions to be rescinded and will cause the parties in interest or disqualified persons to be subject to excise taxes under Section 4975 of the Code.

### **Investments in the Fund**

If any Investor is a fiduciary of an Employee Benefit Plan, the investor must act prudently and ensure that the plan’s assets are adequately diversified to satisfy the ERISA fiduciary duty requirements. Whether an investment in the Fund is prudent and whether an Employee Benefit Plan’s investments are adequately diversified must be determined by the plan’s fiduciaries in light of all of the relevant facts and circumstances. A fiduciary should consider, among other factors, the limited marketability of the Membership Interests.

Investors also should be aware that under certain circumstances the DOL may view the underlying assets of the Fund as “plan assets” for purposes of the ERISA fiduciary rules and the ERISA and Internal Revenue Code prohibited transaction rules. DOL regulations indicate that Fund assets will not be considered plan assets if less than Twenty Five Percent (25%) of the value of the Membership Interests is held by Employee Benefit Plans and Other Benefit Arrangements.

The Fund anticipates that if any Investor is an Employee Benefit Plan subject to ERISA, the Fund will limit the investments by all Employee Benefit Plans and Other Benefit Arrangements to ensure that the Twenty Five Percent (25%) limit is not exceeded. Because the Twenty Five Percent (25%) limit is determined after every subscription or redemption, the Fund has the authority to require the redemption of all or some of the Membership Interests held by any Member that is an Employee Benefit Plan or Other Benefit Arrangement if the continued holding of such Membership Interests, in the sole opinion of the Fund, could result in the Fund being subject to the ERISA fiduciary rules.

If there are no Employee Benefit Plan investors in the Fund, the Fund anticipates that investments by Other Benefit Arrangements (such as self-directed IRAs) may exceed the Twenty Five Percent (25%) limit. This situation may cause the underlying assets of the Fund to be considered plan assets for purposes of the Code prohibited transaction rules. In such a case, the Other Benefit Arrangement investors must ensure that their investments do not constitute prohibited transactions under Section 4975 of the Code. Such investors should consult with independent legal counsel on these issues.

### **Special Limitations**

The discussion of the ERISA fiduciary aspects and the ERISA and Code prohibited transaction rules contained in this Memorandum is not intended as a substitute for careful planning. The applicability of ERISA fiduciary rules and the ERISA or Code prohibited transaction rules to Investors may vary from one Investor to another, depending upon that Investor's situation. Accordingly, Investors should consult with their own attorneys, accountants and other personal advisors as to the effect of ERISA and the Code on their situation of a purchase and ownership of the Membership Interests and as to potential changes in the applicable law.

## **SUMMARY OF THE OPERATING AGREEMENT**

The following is a summary of the Operating Agreement, and is qualified in its entirety by the terms of the Operating Agreement itself. In the event of any conflict, misunderstanding, or ambivalence between, or resulting from, the summary below and the actual terms of the Operating Agreement, the latter shall govern. Potential Investors are urged to carefully read the entire Operating Agreement, which is set forth as Exhibit A-2 to this Memorandum.

### **Accounting and Reports**

Annual reports concerning the Fund's business affairs, including the Fund's annual income tax return, will be provided to Members who request them in writing. Each Member will receive his, her, or its respective K-1 Form as required by applicable law. The Manager may, at its sole and absolute discretion, designate any Person to provide tax and accounting advice to the Fund, at any time and for any reason.

The Manager presently intends to maintain the Fund's books and records on the accrual basis for bookkeeping and accounting purposes, and also intends to use the accrual basis method of reporting income and losses for federal income tax purposes. The Manager reserves the right to change such methods of accounting upon written notice to Members. Any Member may inspect the books and records of the Fund at reasonable times.

### **Adjustment of Membership Interest Holdings**

Allocations of profit, gain, and loss in the Fund are made, as required by law, in proportion to the Members' respective capital accounts. Voting rights are based upon the number of Membership Interests each Member owns. Because some Members may choose to reinvest their share of profits, gains and losses, it

is likely that the value of their capital accounts will increase relative to the capital accounts of Members who take monthly income distributions of their share of profits, gains, and losses. The Manager, at its discretion, may set the membership interest value for additional Membership Interests by adjusting the book value of the assets of the Fund to reflect the fair market value of those assets and determining the liabilities of the Fund.

### **Capital Distributions**

The Fund may, in the sole and absolute discretion of the Manager, make distributions of capital to Members in proportion to their capital account balances as of the date the distribution is declared.

### **Compensation to Manager and Affiliates**

The Fund will compensate the Manager and Affiliates as described in “Manager’s Compensation” herein.

### **Manager’s Interest**

The Manager may withdraw from the management of the Fund at any time upon Thirty (30) days’ written notice to all Members. A successor manager of the Fund may only be elected by the Members. In any such event, a majority of the Members, shall promptly elect a successor as Manager; provided, however, if the then Manager desires to appoint an Affiliate as the new Manager, then such Affiliate may become the Manager without Member approval.

### **Cash Distributions**

The Fund will make distributions to Members as described in the “Terms of the Offering” above.

### **Operating Expenses**

The Fund shall pay its own general administrative and operating expenses, which may include, without limitation, legal expenses, third-party servicing fee, accounting costs, Fund Administration fees, and/or marketing expenses. In addition, the Fund shall bear all organizational and syndication costs, fees, and expenses incurred by the Manager on behalf of the Fund in connection with the formation and organization of the Fund, including, legal and accounting fees and expenses, or any incidentals thereto, as well as, any expenses, costs, or fees, with respect to NPLs and/or REOs, including, without limitation, legal fees, third-party servicer cost, or filing fees.

It shall reimburse the Manager for any expenses incurred by the Manager stated herein, as well as those that are properly considered ordinary and reasonable business expenses of the Fund, *provided, however*, that the organizational cost (including legal fees) will be amortized over a Twenty-Four (24) month period. This expense reimbursement fee will be calculated as of the first day of the month with regards to the aggregate capital in the Fund as of that day and paid out as of the first day of the following month.

### **Profits and Losses**

The Fund’s profit or loss for any taxable year, including the taxable year in which the Fund is dissolved, will be allocated among the Members in proportion to their capital account balances that they held during the applicable tax reporting period.

**Restrictions on Transfer**

The Operating Agreement places substantial limitations upon transferability of Membership Interests. Any transferee must be a person that would have been qualified to purchase a Membership Interest in this offering. No Membership Interest may be transferred if, in the sole judgment of the Manager, a transfer would jeopardize the availability of exemptions from the registration requirements of federal securities laws, jeopardize the tax status of the Fund as a limited liability company taxed as a partnership, or cause a termination of the Fund for federal income tax purposes.

A transferee may not become a substitute Member without the consent of the Manager. Such consent may not be unreasonably withheld if the transferor and the transferee comply with all the provisions of the Operating Agreement and applicable law. A transferee who does not become a substitute Member has no right to vote in matters brought to a vote of the Members, or to receive any information regarding the Fund or to inspect the Fund books, but is entitled only to the share of income or return of capital to which the transferor would be entitled.

**Rights and Liabilities of Members**

The rights, duties, and powers of Members are governed by the Operating Agreement and applicable Delaware corporate and business law, and the discussion herein of such rights, duties, and powers is qualified in its entirety by reference to them.

Investors who become Members in the manner set forth herein will not be responsible for the obligations of the Fund. They may be liable to repay capital returned to them plus interest if necessary to discharge liabilities existing at the time of such return. Any cash distributed to Members may constitute, wholly or in part, return of capital.

**Rights, Powers, and Duties of Manager**

Subject to the right of the Members to vote on specific matters, the Manager will have complete charge of the business of the Fund. The Manager is not required to devote itself full-time to Fund affairs but only such time as is required for the conduct of Fund business. The Manager has the power and authority to act for and bind the Fund. The Manager is granted the special power of attorney of each Member for the purpose of executing any document which the Members have agreed to execute and deliver.

**Fund Brought to Close**

The Fund will not cease to exist immediately upon the occurrence of an event of dissolution, but will continue to exist until its affairs have been brought to a close. Upon dissolution of the Fund, the Manager will bring to a close to the Fund's affairs by liquidating the Fund's assets as promptly as is consistent with obtaining the fair market value thereof, either by sale to third parties or by collecting loan payments under the terms of the loan(s) until a suitable sale can be arranged. All funds received by the Fund shall be applied to satisfy or provide for Fund debts and liabilities and the balance, if any, shall be distributed to Members on a pro-rata basis.

**Withdrawal**

Members who invest in the Fund may not withdraw their capital until they have been members of the Fund for at least Twelve (12) months. Members who have been members of the Fund for a period longer than Twelve (12) months may request withdrawal from the Fund in writing and give the Fund at least Thirty (30) days' notice prior to expecting to be withdrawn from the Fund. The withdrawal date shall be effective

upon the date of receipt of the Member's withdrawal request. The Fund will use its best efforts to return capital subject to, among other things, the Fund's then cash flow, financial condition, and prospective transactions in assets.

The Fund and the Manager are not under any circumstances obligated to liquidate any assets, properties, or loans in any efforts to accommodate or facilitate any Member(s)' request for withdrawal or redemption from the Fund. Each request for a return of capital will be limited to Fifty Percent (50%) of such Member's capital account balance such that it will take at least Two (2) quarters for a Member to withdraw his, her, or its total investment in the Fund. Withdrawal requests will be processed by the Fund on a first-come, first-served basis. Notwithstanding the foregoing, the Manager may, in its sole and absolute discretion, waive or modify such withdrawal requirements.

The Manager may at any time suspend the withdrawal of funds from the Fund, upon the occurrence of any of the following circumstances: (i) whenever, as a result of events, conditions or circumstances beyond the control or responsibility of the Manager or the Fund, disposal of the assets of the Fund is not reasonably practicable without being detrimental to the interests of the Fund or its Members, determined in the sole and absolute discretion of the Manager; (ii) it is not reasonably practicable to determine the net asset value of the Fund on an accurate and timely basis; or (iii) if the Manager has determined to dissolve the Fund. Notice of any suspension will be given within Ten (10) business days from the time the decision was made to suspend distributions to any Member who has submitted a withdrawal request and to whom full payment of the redemption proceeds has not yet been remitted. If a redemption request is not rescinded by a Member following notification of a suspension, the redemption will be effected as of the last day of the calendar month in which the suspension is lifted, on the basis of the net asset value of the Fund at that time and in the order determined by the Manager in its sole and absolute discretion.

### **Redemption Policy and Other Events of Disassociation**

The Manager may, at its sole and absolute discretion, cause the Fund to repurchase Membership Interests from Members desiring to resign from membership or as a part of a plan to reduce the outstanding capital of the Fund. There is no guarantee that the Fund will have sufficient funds to cause the redemption of any Membership Interests. Therefore, any investment in the Fund should be considered illiquid.

The Fund may also expel a Member for cause if the Member has materially breached or is unable to perform the Member's material obligations under the Operating Agreement. A Member's expulsion from the Fund will be effective upon the Member's receipt of written notice of the expulsion by the Fund.

Upon any expulsion, transfer of all of Membership Interests, withdrawal or resignation of any Member, an event of disassociation shall have occurred and (a) the Member's right to participate in the Fund's governance, receive information concerning the Fund's affairs and inspect the Fund's books and records will terminate and (b) unless such disassociation resulted from the transfer of the Member's Membership Interests, the Member will be entitled to receive the distributions to which the Member would have been entitled as of the effective date of the dissociation had the dissociation not occurred. The Member will remain liable for any obligation to the Fund that existed prior to the effective date of the dissociation, including, without limitation, any costs or damages resulting from the Member's breach of the Operating Agreement. Under most circumstances, the Member will have no right to any return of his or her capital prior to the termination of the Fund unless the Manager elects, at its sole and absolute discretion, to return capital to a Member.

The effect of redemption or disassociation on Members who do not sell or return their Membership Interests will be an increase in each Member's respective percentage interest in the Fund and therefore an increase in each Member's respective proportionate interest in the future earnings, losses, and distributions of the

Fund and an increase in the respective relative voting power of each remaining Member. Notwithstanding anything to the contrary herein, redemption shall be at the sole and absolute discretion of the Manager and the Manager shall not be compelled to redeem or repurchase Membership Interests at any time or for any reason.

The redemption of Membership Interests shall be subject to the Fund's availability of sufficient cash to pay the expenses of the Fund, maintain any loan loss reserve, and pay the redemption or withdrawal amounts to other Members who requested withdrawal or redemption in the order of the request. No redemption or withdrawal may be made that would render the Fund unable to pay its obligations as they become due. The Fund shall not be required to sell its assets to raise cash to effectuate any redemption or withdrawal.

A redeeming Member shall have the rights of a transferee until such time as the Fund has actually redeemed those Membership Interests, that is, the Member shall be entitled to receive distributions, but shall not be entitled to vote. Redeemed Membership Interests revert to authorized but unissued Membership Interests and the former holder retains no interest of any kind in such Interests.

### **LEGAL MATTERS**

The Fund has retained Geraci Law Firm of Irvine, California to advise it in connection with the preparation of this Offering, the Operating Agreement, the Subscription Agreement, and any other documents related thereto. Geraci Law Firm has not been retained to represent the interests of any Investors or Members in connection with this Offering. Investors that are evaluating or purchasing Membership Interest should retain their own independent legal counsel to review this Offering, the Memorandum, the Operating Agreement, the Subscription Agreement, and any other documents related to this Offering, and to advise them accordingly.

### **ADDITIONAL INFORMATION AND UNDERTAKINGS**

The Fund and Manager undertake to make available to each Investor every opportunity to obtain any additional information from them necessary to verify the accuracy of the information contained in this Memorandum, to the extent that they possess such information or can acquire it without unreasonable effort or expense. This additional information includes all the organizational documents of the Fund, recent financial statements for the Fund, and all other documents or instruments relating to the operation and business of the Fund that are material to this Offering and the transactions described in this Memorandum.