

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

# Kirkland Income Fund I, LLC

*a Washington limited liability company*

1201 3rd Ave., Suite 2200  
Seattle, Washington 98101

## PRIVATE PLACEMENT MEMORANDUM

**\$100,000,000**

Minimum Investment \$100,000

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October 26, 2021

Kirkland Income Fund I, LLC (hereinafter referred to as the “Fund”) is a Washington limited liability company. The Fund is offering (the “Offering”) by means of this Private Placement Memorandum (the “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 Kirkland Capital Group LLC, a Wyoming limited liability company (hereinafter referred to as the “Manager”). As further described in this Memorandum, the Fund has been organized to conduct the following business to make, purchase, originate, fund, acquire and/or otherwise sell loans secured by interests in commercial real property located across the United States with an initial focus in the state of Washington. The Fund may also manage, remodel, repair, lease and/or sell commercial real properties acquired through the Fund’s lending activities, including, but not limited to, properties acquired through foreclosure and real estate owned (“REO”) property.

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 be entitled to receive income distributions from 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 PRIVATE PLACEMENT 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(A)(2) OF THE SECURITIES ACT OF 1933,

AS AMENDED (THE “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	\$50,000	\$0	\$50,000
Minimum Investment Amount <sup>4</sup>	\$100,000	\$0	\$100,000
Maximum Offering Amount <sup>5</sup>	\$100,000,000	\$0	\$100,000,000

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 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 gross proceeds received for the sale of Membership Interests. These commissions will be paid by the Manager. Although neither the Fund nor the Manager expects to make a large number of sales of Membership Interests through broker/dealers, each reserves the right in its respective sole discretion to make any or all offers and sales through broker/dealers. The amount and nature of commissions payable to broker/dealers is expected to vary in specific instances and will be agreed on a case-by-case basis by the Manager in its sole and absolute discretion. The Manager (and not the Fund) will be responsible for all such commissions payable to broker/dealers.

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 any time during the period of the Offering, increase or decrease the Maximum Offering Amount.

THIS PRIVATE PLACEMENT 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 PRIVATE PLACEMENT 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 PRIVATE PLACEMENT 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(A)(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 PRIVATE PLACEMENT 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 PRIVATE PLACEMENT 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 PRIVATE PLACEMENT MEMORANDUM SET FORTH ABOVE.

PROSPECTIVE INVESTORS SHOULD NOT REGARD THE CONTENTS OF THIS PRIVATE PLACEMENT 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 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 PRIVATE PLACEMENT MEMORANDUM CAREFULLY AND IN ITS ENTIRETY.

THE INFORMATION CONTAINED IN THIS PRIVATE PLACEMENT MEMORANDUM HAS BEEN SUPPLIED BY THE MANAGER AND THE FUND. THIS PRIVATE PLACEMENT MEMORANDUM CONTAINS SUMMARIES OF CERTAIN DOCUMENTS NOT CONTAINED IN THIS PRIVATE PLACEMENT 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 PRIVATE PLACEMENT MEMORANDUM, BUT NOT INCLUDED HEREIN AS AN EXHIBIT, WILL BE MADE AVAILABLE TO QUALIFIED PROSPECTIVE INVESTORS UPON REQUEST.

#### **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>CERTIFICATE OF FORMATION</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 they 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 Private Placement Memorandum. This Private Placement Memorandum, together with the exhibits attached including, but not limited to, the limited liability company Operating Agreement of the Fund (the “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.

<b>THE FUND AND ITS OBJECTIVES</b>	Kirkland Income Fund I, LLC is a Washington limited liability company located at 1201 3rd Ave., Suite 2200, Seattle WA 98101. The Fund will raise money through this Offering of Membership Interests to make, purchase, originate, fund, acquire and/or otherwise sell loans secured by interests in commercial property located across the United States with an initial focus in the state of Washington. The Fund may also manage, remodel, repair, lease and/or sell real properties acquired through the Fund’s lending activities, including, but not limited to, properties acquired through foreclosure and real estate owned (“ <b>REO</b> ”). (See “Lending Standards and Policies”; “Property Acquisition Guidelines and Policies” below).
<b>THE MANAGER</b>	The Fund will be managed by Kirkland Capital Group LLC, a Wyoming limited liability company. The Manager is located at 1201 3rd Ave., Suite 2200, Seattle WA 98101.
<b>THE OFFERING</b>	The Fund is offering Investors the opportunity to purchase Membership Interests in the Fund. The minimum investment amount per Investor is One Hundred Thousand Dollars (\$100,000) (the “ <u>Minimum Investment Amount</u> ”); provided, however, that the Manager reserves the right to accept subscriptions in a lesser or higher amount.
<b>MANAGER INVESTMENT</b>	The Manager commits to provide the initial capitalization to provide the Fund with sufficient operating capital through the purchase of Membership Interests in the Fund. The Manager commits to capitalize the Fund with a capital contribution up to Five Hundred Thousand Dollars (\$500,000).
<b>LIQUIDATION PREFERENCE</b>	Upon liquidation of the Fund, all Members receive their pro-rata amounts available for distribution (following the payment of debts and other

	obligations of the Fund) before any liquidating payments are made to the Manager for its Membership Interest. (See Section 7.2 of the Operating Agreement, "Liquidation Preference"). The non-Manager Members shall have a liquidation preference that is senior to that of Manager Membership Interests in the Fund.
<b>COMPENSATION TO MANAGER</b>	The Manager and its Affiliates <sup>1</sup> will receive fees for managing the Fund. (See "Manager's Compensation" below).
<b>PRIOR EXPERIENCE</b>	The Principals of the Manager have prior experience in the 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 Million Dollars (\$100,000,000) (the " <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>COMMISSIONS FOR SELLING MEMBERSHIP INTERESTS</b>	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 (" <u>FINRA</u> ") and who are 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 Manager. The amount and nature of commissions payable to broker/dealers is expected to vary on a case-by-case basis as agreed

<sup>1</sup> As used herein, "Affiliates" shall mean any of the following: (1) a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Manager (or the Fund), (2) a Person who, directly or indirectly, owns or controls at least Ten Percent (10%) of the outstanding voting interests of the Manager (or the Fund), (3) a Person who is an officer, director, manager or member of the Manager (or the Fund), or (4) a Person who is an officer, director, manager, member, general partner, trustee or owns at least Ten Percent (10%) of the outstanding voting interests of a Person described in clauses (1) through (3) of this sentence. The term "Person" shall mean a natural person or Entity. The term "Entity" shall mean an association, relationship or artificial person through or by means of which an enterprise or activity may be lawfully conducted, including, without limitation, a partnership, trust, limited liability company, corporation, joint venture, cooperative or association.

	<p>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 where such compensation complies with applicable federal and/or state requirements and/or laws.</p>
<p><b>NO LIQUIDITY</b></p>	<p>There is no public market for the Membership <del>Interests</del><u>Interests</u>, and none is expected to develop. Additionally, there are substantial restrictions on the transferability of Membership Interests. (See "Risk Factors" below).</p>
<p><b>LOAN ORIGINATOR AND SERVICER</b></p>	<p>The Manager, the Fund, and/or a third-party may originate Fund loans as a mortgage broker or as otherwise required by law. In addition, the Manager intends to retain the services of a third-party loan servicer or Affiliate 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 loan servicing activities, as agreed upon by the Manager and Servicer. 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, in an effort to maintain an effective cost structure or for any other reason (or no reason), the Manager may decide to service the Fund loans itself or elect to retain a different third-party servicer if conditions warrant.</p>
<p><b>RECOVERY OF DEFERRED COMPENSATION</b></p>	<p>If the Manager or Servicer defers or assigns to the Fund any of their respective compensation, the Manager and/or Servicer may elect, in the sole and absolute discretion of the Manager, to recover the same at a later time within the same calendar year (or, if expressly approved by the Manager, in any subsequent calendar year). Notwithstanding the foregoing, the Manager and Servicer have no obligation to waive, defer, or assign to the Fund any portion of such compensation at any time.</p>
<p><b>LEVERAGING THE PORTFOLIO</b></p>	<p>While the Fund does not intend to do so, it may borrow funds from third-party lenders, investors, and/or financial institutions for Fund investments. These loans would be secured by Fund assets. Leveraging involves additional risks that are detailed later in this Memorandum. (See "Risk Factors – Business Risks – Risks of Leveraging the Fund" below).</p>
<p><b>DISTRIBUTION OF PROFITS</b></p>	<p>Members will be eligible for monthly distributions of the Fund's earnings as further described below. (See "Terms of the Offering – Cash Distributions; Election to Reinvest" below).</p>
<p><b>REINVESTMENT</b></p>	<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 – 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>



<p><b>RETURN OF CAPITAL</b></p>	<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 any or no reason (See “Summary of the Operating Agreement – Redemption Policy and Other Events of Disassociation” below).</p>
<p><b>LOSS RESERVE</b></p>	<p>A loan loss reserve may be maintained by the Fund and will be evaluated and established on a case-by-case basis at the sole and absolute discretion of the Manager. Any 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 loans will be jeopardized to the extent loans are in default and are not eventually repaid or resold, whether by the borrower or the Fund, to protect available collateral. Depending on reserve overages and the weighted risk levels of the portfolio, reserve amounts may be reduced, eliminated or increased 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>
<p><b>WITHDRAWAL</b></p>	<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 Sixty (60) 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. Each request for a return of capital will be limited to Twenty-Five Percent (25%) of such Member’s capital account balance such that it will take at least Four (4) quarters for a Member to withdraw his, her, or its total investment in the Fund; provided, however, that the maximum aggregate amount of capital that the Fund will return to the Members each fiscal year is limited to Ten Percent (10%) of the total outstanding capital of the Fund, or Five Hundred Thousand Dollars (\$500,000), whichever is less. 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>Members who wish to withdraw before they have been Members for Twelve (12) months (“<u>Early Withdrawal</u>”) can only withdraw if the Member produces evidence of undue hardship, and the Manager permits Early Withdrawal, in its sole and absolute discretion. Acceptability of a Member’s hardship will be determined by the Manager, in its sole and</p>

	<p>absolute discretion. Members who request Early Withdrawal will be subject to a penalty of Five Percent (5%) of the Member’s withdrawal proceeds. The Manager may, at its sole discretion, waive an Early Withdrawal penalty.</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 elects 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 Three (3) months to Twelve (12) months, 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 assets (even if the Fund was inclined to do so) may be limited, therefore, any investment made in or through this Offering should be considered highly illiquid. (See “Summary of the Operating Agreement – Withdrawal” below).</p>
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**TERMS OF THE OFFERING**

This Offering is made to qualified Investors to purchase Membership Interests in the Fund. The Minimum Investment Amount is One Hundred Thousand Dollars (\$100,000). (See “Investor Suitability” below). While the Offering is open, Members that have subscribed for at least the Minimum Investment Amount may reinvest distributions to purchase additional Membership Interests. Existing Members may purchase additional Membership Interests in increments of Fifty Thousand Dollars (\$50,000). 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 Manager commits to provide the initial capitalization to provide the Fund with sufficient operating capital through the purchase of Membership Interests in the Fund. The Manager commits to capitalize the Fund with a capital contribution up to Five Hundred Thousand Dollars (\$500,000).

The Offering will continue until the Fund is terminated. At such time, the Offering will be deemed closed. The Fund will be funded with equity of a maximum of One Hundred Million Dollars (\$100,000,000) (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 Minimum Investment Amount and/or the Maximum Offering Amount.

Notwithstanding the foregoing, in “Terms of the Offering,” the Fund reserves the right to, in its sole and absolute discretion, 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 to the Fund and purchase 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 a check or wire transfer in the amount of the capital contribution), 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 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 or no reason. If a Subscription Agreement is accepted by the Manager, the Investor will be notified by the Manager and the Investor will deposit the investment amount with the Fund. Investor contributions prior to the deployment of capital by the Fund will not accrue interest or a Preferred Return. An Investor becomes a Member of the Fund when the Investor’s Subscription Agreement is approved, Investor Funds are deposited with the Fund, and the invested funds are deployed by the Fund.

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 FUNDS ARE DEPOSITED INTO THE FUND’S BANK ACCOUNT UPON MANAGER APPROVAL OF THE SUBSCRIPTION AGREEMENT AND DEPLOYMENT OF THE FUNDS INTO FUND INVESTMENTS.

### **Cash Distributions; Election to Reinvest**

#### ***Cash Distributions***

Members are entitled to receive monthly distributions of the Fund’s Net Profits as follows: One Hundred Percent (100%) of the Net Profits of the Fund shall be distributed to the Members on a pro-rata basis.

“Net Profits” means the Fund’s monthly gross revenue less (1) the Fund’s monthly operating expenses (including payment of outstanding debt (if any), administrative costs, legal expenses and accounting fees), (2) an allocation of income for a loan loss reserve, (3) payment of the Asset Management Fee and other compensation to the Manager.

All distributions of Net Profits will be made on a monthly basis, in arrears, and distributions to Members shall be prorated as applicable for the amount of time that a Member was a member of the Fund during such accounting period. Distribution of Net Profits is not guaranteed. Net Profits shall only be distributed

to the extent cash is available and provided that the monthly income distributions will not impact the continuing operation of the Fund, subject to the sole and absolute discretion of the Manager.

### ***Election to Reinvest***

Each Member has the option of receiving cash distributions for his, her or its share of the earnings of the Fund that is payable to the Member, or having such amount(s) credited to his, her or its capital account and reinvested in the Fund to purchase additional Membership Interests. Notwithstanding the foregoing, the Manager reserves the right to commence making cash distributions (in lieu of allowing reinvestment) at any time to any Member(s) in order for the Fund to remain exempt from ERISA plan asset regulations or any other reason. (See “ERISA Considerations” and “Summary of the Operating Agreement” below).

If no election is made, then the monthly income distribution will be a cash disbursement. Members may change their election at any time upon thirty (30) days written notice to the Fund. Upon Manager’s receipt and after the thirty (30) day notice has occurred, the Member’s election shall be changed and reflected on the first day of the following month in which the Member is entitled to receive a distribution.

**DISTRIBUTIONS ARE NOT GUARANTEED. THE MANAGER AND THE FUND MAKE NO GUARANTEES, ASSURANCES OR COMMITMENTS TO THE PAYMENT OF ANY DISTRIBUTIONS. DISTRIBUTIONS ARE ONLY MADE TO THE EXTENT CASH IS AVAILABLE AND TO THE EXTENT ANY DISTRIBUTIONS WILL NOT IMPACT THE CONTINUING OPERATIONS OF THE FUND.**

### **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 reasonable transfer fee 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 PRIVATE PLACEMENT 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 Membership Interests to an unlimited number of “Accredited Investors” .

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 or spousal equivalent 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 or spousal equivalent, at the time of their purchase exceeds One Million Dollars (\$1,000,000) (excluding the value of such person’s primary residence);

3. A natural person holding one or more professional certifications or designations administered by the Financial Regulatory Authority, Inc., and in good standing: the Licensed General Securities Representative (Series 7), Licensed Investment Adviser Representative (Series 65), and Licensed Private Securities Offering Representative (Series 82);

4. A natural person holding, and in good standing, of one or more professional certifications or designations or other credentials from an accredited educational institution that the Commission has designated as qualifying an individual for accredited investor status;

5. A natural person who is considered a “knowledgeable employee” of a private fund as defined by Rule 3c-5(a)(4) under the Investment Company Act of 1940, including trustees and advisory board members, or person serving in a similar capacity of a fund relying on an exemption under Investment Company Act of 1940 Section 3(c)(1) or 3(c)(7), or an affiliated person of the fund that oversees the fund’s investments, and employees of the private fund (other than employees performing solely clerical, secretarial, or administrative functions);

6. Any family office, as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940: with assets under management in excess of \$5,000,000, that is not formed for the specific purpose of acquiring the securities offered, and whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risk of the prospective investment;

7. Any family client, as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940, of a family office meeting the requirements in paragraph (a)(12) of this section and whose prospective investment in the issuer is directed by such family office pursuant to paragraph (a)(12)(iii);

8. 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 (the “Exchange Act”); any investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940 or registered pursuant to the laws of a state; any investment adviser relying

on the exemption from registering with the Commission under section 203(l) or (m) of the Investment Advisers Act of 1940; 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 Rural Business Investment Company as defined in section 384A of the Consolidated Farm and Rural Development Act; 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 advisor, 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;

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

10. Any organization described in Section 501(c)(3)(d) of the Internal Revenue Code of 1986, as amended (the "Code"), corporation, Massachusetts or similar business trust partnership, or limited liability company, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of Five Million Dollars (\$5,000,000);

11. 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;

12. 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

13. Any entity not listed above which was not formed for the specific purpose of acquiring the securities offered, owning investments in excess of Five Million Dollars (\$5,000,000); or

14. 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	\$100,000,000	100%
Commissions Payable by the Fund <sup>(1)</sup>	\$0	100%
<b>Deployable Proceeds</b> <sup>(2)</sup>	\$100,000,000	0%

<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 FINRA and/or registered investment advisers who will be entitled to receive commissions for referring potential investors to the Fund. These commissions will be paid by the Manager. Although neither the Fund nor the Manager expects to make a large number of sales of Membership Interests through broker/dealers and/or registered investment advisers, each reserves the right in its respective sole discretion to make any or all offers and sales through broker/dealers and/or registered investment advisers. The amount and nature of commissions payable to broker/dealers and/or registered investment advisers is expected to vary in specific instances and will be agreed on a case-by-case basis by the Manager. The Manager (and not the Fund) will be responsible for all such commissions payable to broker/dealers.

<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 originate, acquire, make, fund, purchase, and/or otherwise sell loans secured by interests in commercial real estate located across the United States, with an initial focus in the state of Washington. 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.** The Fund intends to only fund loans secured by senior deeds of trust or mortgages that are in first lien position. The Fund may come across opportunities that are not in first lien position, however, the Manager will only invest in such loans in the best interest of the Fund. Therefore, to a limited extent, the Fund may fund loans secured by second and/or junior deeds of trust or mortgages, a pledge of the ownership interest in the borrowing entity (“Mezzanine loans”), and/or preferred equity interest in the borrowing entity (“Preferred Equity”), provided that, the aggregate loan-to-value ratios in Section 3 below are met.

**2. Location of Real Property Securing Loans.** Most deeds of trusts and mortgages will be secured by real property located in the United States, with a primary focus in Washington. Notwithstanding the foregoing, the Fund reserves the right to make loans in other jurisdictions.

**3. Loan-to-Value Ratio.** A loan from the Fund will generally not exceed the Loan-to-Value (“LTV”) percentage ratios set forth below. The Loan-to-Value ratio is calculated by taking the amount of

the Fund’s loan combined with the amount of outstanding debt secured by other liens on the property (the “Loan”), dividing that by the value of the real property securing the deed of trust or mortgage and multiplying that figure by One Hundred (100) to come to a percentage. “Value” shall be determined by an independent certified appraiser, non-certified appraiser, the Manager, or a commercial/residential real estate broker giving his, her, or its opinion of value of the real property. Notwithstanding the foregoing, the Fund may exceed the below stated Loan-to-Value ratios if the Manager determines in its sole business judgment that a higher loan amount is warranted by the circumstances of that particular loan, such as being able to secure multiple properties, called “cross-collateralization”, personal guaranties, prior loan history with the borrower, market conditions, if mortgage insurance is obtained, or other compensating factors that would support the Manager in making its decision in the best interest of the Fund.

Type of Real Property Securing loan	Target and Maximum LTV Ratios
Multi-Family Properties <sup>1</sup>	Target: 55% to 65%; Maximum: 75%
Commercial <sup>2</sup>	Target: 55% to 65%; Maximum: 75%

1. Multi-family includes apartments, manufactured housing (also known as mobile home parks), student housing, and senior apartments.
2. 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, but at least Twenty-Four (24) months, the Manager may re-evaluate the portfolio and Loan-to-Value ratio maximums set by the Fund and may revise the Loan-to-Value 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 Loan-to-Value ratios when and if the Manager re-evaluates them.

In general, the Fund will seek to maintain a weighted Loan-to-Value ratio for the Fund of approximately Fifty-Five Percent (55%) to Sixty-Five Percent (65%); provided that the maximum Loan-to-Value ratio for the Fund shall not exceed Seventy-Five Percent (75%), 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.

The foregoing LTV ratios do not apply to purchase-money financing offered by the Fund or bridge loan made for the purposes of acquisition of real property. Examples of these types of loans may be, but are not limited to, real estate owned by the Fund whereby the Fund decides to sell the property and carry back a loan on the property to make it cash flow positive. The value of such real estate stated herein will be based on the purchase price.

**4. Valuation of Assets.** The value of Fund assets is determined in such a manner as the Manager deems fair and reasonable. In making valuation determinations, the Manager may or may not use particular pricing services, brokers, or other intermediaries as it shall determine. The Manager may amend or replace those policies, or deviate from them, in its sole discretion. The Manager has a conflict of interest in that the Manager may receive a benefit, from its Assets Under Management Fee, if assets are given favorable valuations. Notwithstanding the foregoing, as it pertains to Nonperforming Notes, or “NPNs,” they will be valued at a Ten Percent (10%) discount to face value.

**5. Terms of Fund Loans.** The terms of the Fund loans will vary. Loans generally have terms of as short as Three (3) months to as long as Twelve (12) months. A loan may, however, be shorter in term or exceed the foregoing terms if the Manager’s believes, in its sole and absolute discretion, that the loan is in the best interests of the Fund. Many loans that the Fund will originate or acquire may provide for interest-only payments followed by a balloon payment at the end of the term. For risk hedging purpose, borrowers may be required to make principal and interest payments. 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 Three to Twelve (3 to 12) month 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 between one-quarter of one percent (0.25%) and one percent (1%) of the original loan amount, but may be higher or lower depending on market rates and conditions.

**6. 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.

**7. 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).

**8. 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.

**9. Acquiring Loans from Other Lenders.** In the event the Fund acquires loans from other lenders, the Fund will receive assignments of all beneficial interest in any loans purchased.

**10. Purchase of Loans from Affiliates.** The Fund may purchase loans from the Manager or Affiliates or third-parties so long as such loans meet the lending requirements set forth above.

**11. 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.

**12. Non-Performing Loans.** It is not the intent of the Fund, however, the Fund may, in limited circumstances and when commercially reasonable, purchase, take back, receive, or otherwise acquire non-performing loans secured by real property located throughout the United States ("Nonperforming Notes" or "NPNs"). Nonperforming Notes 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 intent, if it acquires a Nonperforming Note is to acquire the Note at a discount and refinance, modify, or otherwise reform the Nonperforming Note to become a performing Note. Alternatively, the Fund may also foreclose and/or acquire a property securing a Nonperforming Note using the general standards and criteria set forth below.

**13. Equity Participation and Mezzanine Positions.** While it is not the intention of the Fund, if determined by the Manager to be in the best interest of the Fund, the Fund may fund a Mezzanine loan as an alternative to a loan 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.

**14. 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 then 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).

**15. Diversification of the Fund’s Capital in Loans.** Prior to the Fund having Ten Million Dollars (\$10,000,000) in capital, no loan originated or acquired shall exceed Ten Percent (10%) of total Fund capital at the time of the loan. After the Fund has Ten Million Dollars (\$10,000,000) in capital, no loan originated or acquired by the Fund shall exceed Fifteen Percent (15%) of the total Fund capital at the time of the loan. A loan may exceed the foregoing percentage limitations if, in the Manager’s sole and absolute discretion, that the loan is in the best interests of the Fund.

**16. Property Acquisition.** The Fund may also manage, remodel, repair, lease and/or sell commercial real properties acquired through the Fund’s lending activities, including but not limited to properties acquired through foreclosure and real estate owned (“REO”) properties. The Fund may establish limited liability companies that are wholly owned subsidiaries of the Fund to own and hold title of a property the Fund has acquired and intends to improve, develop, and sell. These wholly owned subsidiaries will be single purpose entities (“SPE”) created solely for the purpose of owning, improving, developing and/or selling properties the Fund acquires. The Manager shall serve as the sole manager of any SPEs that are wholly owned subsidiaries of the Fund.

### **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 loan-to-value 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 servicer. Notwithstanding the foregoing, the Manager reserves the right to retain the services of an Affiliate or a different third party to serve as Servicer of the loans, at any time for any other reason (or no reason) at its sole and absolute discretion. The servicer, whether a third party, the Manager or its affiliate, or the Fund, shall be herein referred to as the “Servicer.” To the extent applicable, the Manager will oversee the activities and performance of the Servicer. -(See “The Manager’s Compensation” 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.

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

While the Fund does not intend to leverage its assets as an ongoing strategy, it may borrow funds to provide temporary financing for the purchase of certain loans.

The Fund does not intend to, but may elect to borrow funds from third party lenders, investors, and/or financial institutions to finance the Fund's investment in loans. This type of borrowing may involve a third-party loan in which all or a portion of the Fund's asset portfolio is provided as security. This type of borrowing 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 Kirkland Capital Group LLC, a Wyoming limited liability company. The Manager was formed under the laws of Washington on June 4, 2019 and transferred to Wyoming on October 26, 2021. 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:

### **Brock Freeman, Member of the Manager**

Brock is a real estate investor and advisor involved with startups and funds. With a career spanning technology, finance, and strategy in both Asia and America, Brock's focus is leveraging technology to improve business results. He believes technology should be used to enable and improve relationships, not replace them. Brock runs monthly PropTech Seattle Open House events and started the Seattle chapter of Foundation for International Blockchain and Real Estate Expertise (FIBREE) where he is the Regional Chair. He is a member of the Cascadia Blockchain Council and testified to the Washington State House Committee on Innovation and Technology on behalf of the first blockchain bill. Brock started his career as a Taiwan stock market analyst in Taipei, later returning to Seattle and joining a mortgage bank as an underwriter where he went on to build the industry's first web-based end-to-end loan underwriting, processing, and secondary marketing platform. Brock is not only a self-taught software developer, he is also experienced in go-to-market strategy, sales and customer acquisition, product-market founder fit, team development and mentoring, as a startup founder and with high-growth companies in Hong Kong and the U.S. Brock is certified in Six Sigma, PMP, and Scrum Agile. He holds a BA in Business Administration and Finance from the University of Washington.

### **Chris Carsley, CFA, CAIA, Managing Member of the Manager**

Chris is Managing Partner of Arch River Capital LLC and Arch River Navigator Fund I LP (together, "Arch River"). He is responsible for the investment management, finance structuring, and capital partnerships of Arch River including its regulatory and reporting compliance practices. Chris brings over 25 years of investment industry expertise specializing in corporate and venture finance, business valuation, business operations efficiency, regulatory compliance practices, securities research, portfolio management, arbitrage trading, and hedging.

Previously to Arch River, Chris was Managing Director of Bluewater Global Ltd, an international holding company, where he performed corporate analysis and invested in a variety of direct and indirect venture capital projects.

Prior to entering venture capital investments, he was responsible for the creation of the business risk and operational due diligence program as a senior member of the investment research and analysis team at Benchmark Plus Management. He was also the head execution trader of futures, options, and OTC based trades for the Benchmark Funds.

Chris was a trader for Paloma Securities where he negotiated and structured ISDAs, securities lending and financing agreements that targeted global arbitrage opportunities primarily for Canadian and European markets. Chris was also a senior member of the hedge fund security finance team that performed due

diligence for the Paloma hedge funds to assist in enhanced finance/margin treatment and short coverage costs.

Prior to Paloma, Chris was a portfolio manager for the investment division of Key Asset Management where he managed institutional and private client discretionary accounts and was responsible for sales, asset research/valuation and portfolio allocation.

Chris is currently a trustee and Vice President of the Charles Wright Academy Endowment Committee. He has served on the board since March 2017. Chris co-founded the Northwest Hedge Fund Society (now the Seattle Alternative Investment Association) in 2004. He is Co-head of the executive board of the Seattle CAIA chapter that launched in 2017. He earned his Chartered Financial Analyst (CFA) designation in 1998, Chartered Alternative Investment Analyst in 2011, and holds a BBA from the University of Portland.

### MANAGER’S COMPENSATION

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 Compensation	Estimated Amount or Method of Compensation
<b>ASSET MANAGEMENT FEE</b>	<p>The Manager shall earn an asset management fee (“<u>Asset Management Fee</u>”) equal to One and One-Half Percent (1.5%) of the Assets Under Management, calculated and payable monthly.</p> <p>“Assets Under Management” means the total Fund capital, including cash, notes (at book value), real estate owned (at the lower of cost or fair market value), accounts receivable, advances made to protect loan security, unamortized organizational expenses and any other Fund assets valued at fair market value. The Asset Management Fee will be paid on the last day of each calendar monthly with respect to Assets Under Management as of the first day of such monthly.</p>
<b>LOAN ORIGINATION FEES, EXIT FEES, AND LENDER DISCOUNT POINTS</b>	<p>Loan origination fees, exit fees, and lender discount points are generally collected from borrowers and will be collected and paid to the Manager. Such fees and points average (in the aggregate) between One and Ten Percent (1 and 10%) but may be as low as Zero Percent (0%) or as high as Fifteen Percent (15%), depending on market conditions.</p> <p>One Hundred Percent (100%) of the loan origination fees, exit fees and lender discount points shall be paid to the Manager. Loan origination fees consist of loan processing fees, underwriting fees, document preparation fees, escrow fees, disbursement fees, warehousing fees, administration fees and other similar charges.</p>

<b>PURCHASE OF EXISTING LOANS</b>	When the Fund purchases an existing loan (or pool of loans) from a third party, the Manager will be paid a fee comparable to a loan origination fee.
<b>LOAN EXTENSION AND MODIFICATION FEES</b>	Loan extension and modification fees are collected from borrowers by the Manager. Such fees are typically between One and Three Percent (1 and 3%) of the original loan amount, but may be higher or lower depending on market rates and conditions. Such fees collected and retained by the Manager as part of the Manager's compensation.
<b>LOAN PROCESSING, LOAN DOCUMENTATION, AND OTHER SIMILAR FEES</b>	Loan processing, documentation and other similar fees are collected from the borrower and payable to the Manager at prevailing industry rates as part of the Manager's compensation.
<b>OTHER LOAN FEES</b>	All other fees paid by borrowers on account of the Fund loans will be retained by the Fund. All other fees including, but not limited to, all forbearance fees, late fees, late charges, collection fees, prepayment penalties, default interest, and all other similarly related fees incurred by borrowers (including, but not limited to, other fees authorized by loan documents for work performed regarding the subject loan) will be retained by the Fund.
<b>LOAN SERVICING FEE</b>	If the Manager appoints a third-party Servicer, then any loan servicing fees payable to the Servicer shall be calculated as an expense to the Fund. This fee may be expensed on a monthly basis from payments received by the Manager (on behalf of the Fund) from borrowers. The loan servicing fee may vary from loan to loan.
<b>PROPERTY MANAGEMENT FEE</b>	In the event that the Fund acquires any real property, the Manager may cause the Fund to engage a third party to provide property management services with respect to such real property, or may elect to provide such services itself (or through an Affiliate of the Manager). In the event the Manager (or an Affiliate thereof) provides any such property management services, the Fund shall pay the Manager or its applicable Affiliate a market-rate property management fee. A monthly property management fee shall generally be computed as a specified numerical percentage (which percentage shall be set by the Manager on a case-by-case basis for each subject property) multiplied by monthly gross rents for the property.
<b>REAL ESTATE COMMISSIONS</b>	The Manager, an Affiliate, or a third-party may earn real estate commissions to list and sell real estate the Fund acquires through foreclosure or otherwise, subject to applicable licensing requirements and laws. Such parties are

	entitled to receive customary fees that are typical in the industry for the purchase and sale of real estate, which may be up to a combined Six Percent (6%) of the sale price.
<b>OPERATING EXPENSES</b>	The Manager shall be entitled to reimbursement by the Fund (but only to the extent that Fund assets are sufficient therefor) for reasonable and necessary out-of-pocket expenses incurred by the Manager on behalf of the Fund. Further, the Fund shall reimburse the Manager and its Affiliates for any reasonable formation, accounting, analyst, banking, transactional fees and legal costs incurred in connection with the formation of the Fund and the capital raising activities undertaken by the Fund.

### **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 Private Placement 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.

## **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 Washington and Wyoming.

## **Reliance on Manager**

The Manager (and/or its Affiliates) will participate in all decisions with respect to 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 incapacity 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.

## **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.

## **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 loans 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.

### **Investment Company Act Risks**

The Fund intends to avoid becoming subject to the Investment Company Act of 1940, as amended (the "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 purposes 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**

### **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.

### **Fluctuations in Interest Rates**

Mortgage interest rates are subject to abrupt and substantial fluctuations and the purchase of Membership Interests are 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.

### **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.

### **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 be applicable 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 has the ability to 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.

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

The Fund will concentrate its investments in commercial real property. Although risks may be mitigated through lending in a broader market throughout the United States, 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 a 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.

### **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 General Partner (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 return to the Limited Partners.

### **Participation in Other Loans**

The Fund does not intend to participate in loans with other lenders, however, the Fund may participate in loans with other lenders if it is determined to be in the best interest of the Fund. 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 varied 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.

### **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).

### **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 fines, thus potentially reducing the Fund's return on its investment on a loan or forcing the Fund to limit its lending or investing activities.

## **REAL ESTATE RISKS**

### **Risks of Real Estate**

There is no assurance that Fund REO properties or properties securing Fund loans will be profitable or that cash from operations will be available for the repayment of loans or distributions 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 commercial real estate 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 properties in an 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;
- 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 Fund does not intend to make loans secured by property that is being developed or under construction, however, if such a loan is funded, the property securing such loan is subject to additional risks. 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; and
- 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).
- Delays in completing any development or renovation project will cause corresponding delays in the receipt of operating income and, consequently, the repayment of borrowed funds and any distribution of any cash flow by the Fund with respect to a loan secured by such property.

## **Due Diligence May Not Uncover All Material Facts**

The Manager has prior experience in real estate and will endeavor to obtain and verify material facts regarding any property it may acquire through foreclosure or other means. It is possible, however that the Manager may not discover certain material facts about a specific property, because information presented by a borrower may have been prepared in an incomplete or misleading fashion, and material facts related to a property may not be discovered until the Fund takes possession.

## **Fund Loans affected by Net Income of Underlying Property**

The ability of a borrower to repay a loan secured by an income-producing property typically is dependent primarily upon the successful operation of such property. If the net operating income of the property is reduced, the borrower's ability to repay the loan may be impaired. Net operating income of an income-

producing property can be adversely affected by many factors, including, but not limited to, the factors provided in “Risk Factors.”

Where the Fund obtains a security interest in a property, no assurance can be given that such security interest will be properly perfected, or that the collateral’s ultimate value will fully protect the Fund’s credit risk. In the event of any default under a mortgage loan held by the Fund, the Fund will bear a risk of loss of principal to the extent of any deficiency between the value of the collateral and the principal and accrued interest of the loan, which may have a material adverse effect on the Fund’s cash flow from operations and limit amounts available for distribution to Members. In the event of the bankruptcy of a loan borrower, the security provided by the collateral will be reviewed, and possibly, its value evaluated or interpreted, by a bankruptcy court in a manner that may be adverse to the Fund. The process of foreclosure of a loan can be an expensive and lengthy, which may have a substantial negative effect on the Fund’s anticipated return.

### **Loans to Development Projects Generally have a Higher Degree of Risk**

The Fund may loan funds to ground up development projects that meet the Fund’s investment objectives, which generally have a higher degree of risk when compared to existing income generating properties.

### **Regulations may exist or come about to restrict certain Property Uses**

Such regulation may adversely affect the value of properties secured by Fund loans. In recent years, the value of real estate has also sometimes been adversely affected by the presence of hazardous substances or toxic waste on, under, or in the environs of the real estate. A substance (or the amount of a substance) may be considered safe at the time a loan is funded, but later classified by law as hazardous. Under environmental laws, owners of properties have been liable for substantial expenses to remedy chemical contamination of soil and groundwater at their real estate even if the contamination predated their ownership. Although the Fund will exercise reasonable efforts to assure that real estate securing Fund loans do not give rise to such liabilities, environmental contamination cannot always be detected through readily available means, and the possibility of such liability cannot be excluded.

### **Insurance Coverage on Property Secured by Fund Loans may not be Sufficient**

The Fund expects that the properties securing loans made will be covered by comprehensive liability, fire, extended coverage, or rental loss insurance, at levels the Fund expects are adequate and comparable to coverage customarily obtained by owners of similar properties. However, the coverage limits of insurance policies covering the secured property may be insufficient to cover the full cost of repair or replacement of all potential losses. Moreover, this level of coverage may not continue to be available in the future or, if available, may be available only at unacceptable cost or with unacceptable terms.

Additionally, there may be certain extraordinary losses, such as those resulting from civil unrest, terrorism, or environmental contamination, which are not generally, or fully, insured against because they are either uninsurable or not economically insurable. For example, a property may not be insured against losses as a result of environmental contamination. Any loss could have a material adverse effect on the Fund, the Fund’s ability to make distributions to its Members, and/or the Fund’s ability to pay amounts due on any Fund debt.

### **Risks Associated with Loans Secured by Contaminated Properties**

The Fund presently does not intend to 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 made 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 have a negative impact on the Fund's business operations.

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

Under the Americans with Disabilities Act of 1990 (the "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 (where the Fund has acquired the property) 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 borrowers and/or the Fund.

### **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 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 which 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 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 individual state law determines 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.

### **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"). The Fund does not intend to provide loans secured by junior encumbrances, unless such loan is determined by the Manager to be in the best interest of the Fund. The Fund would only fund a junior encumbrance to take advantage of specific opportunities and will not look to make loans on junior encumbrances as a regular activity of the Fund. 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 a period of 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., The enforceability of this type of clauses has been the subject of several major court decisions and legislation in recent years. 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 lien holder 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.

### **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 charge, 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 Internal Revenue Code of 1986, as amended (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 (the “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 Internal Revenue Code of 1986 (the “Code”). Assuming that the Fund has been properly formed under Washington law, is operated in accordance with applicable California 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 (the “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 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. 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.

### **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 (\$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 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 own 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 (the “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 Private Placement 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, 1099, or other tax documents 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 Manager shall be entitled to reimbursement by the Fund (but only to the extent that Fund assets are sufficient therefor) for reasonable and necessary out-of-pocket expenses incurred by the Manager on behalf of the Fund. Further, the Fund shall reimburse the Manager and its Affiliates for any reasonable formation, accounting, analyst, banking, transactional fees and legal costs incurred in connection with the formation of the Fund and the capital raising activities undertaken by the Fund.

## **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 Washington 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 Sixty (60) 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 Twenty-Five Percent (25%) of such Member's capital account balance such that it will take at least Four (4) quarters for a Member to withdraw his, her, or its total investment in the Fund; provided, however, that the maximum aggregate amount of capital that the Fund will return to the Members each fiscal year is limited to Ten Percent (10%) of the total outstanding capital of the Fund, or Five Hundred Thousand Dollars (\$500,000), whichever is less. 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.

Members who wish to withdraw before they have been Members for Twelve (12) months ("Early Withdrawal") can only withdraw if the Member produces evidence of undue hardship, and the Manager permits Early Withdrawal, in its sole and absolute discretion. Acceptability of a Member's hardship will be determined by the Manager, in its sole and absolute discretion. Members who request Early Withdrawal will be subject to a penalty of Five Percent (5%) of the Member's withdrawal proceeds. The Manager may, at its sole discretion, waive an Early Withdrawal penalty.

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 elects 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.

All prospective Investors should understand that the average term of loans is expected to range from Six (6) months to Three (3) 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 assets (even if the Fund was inclined to do so) may be limited, therefore, any investment made in or through this Offering should be considered highly illiquid. (See "Summary of the Operating Agreement – Withdrawal" below).

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

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 if the Member has materially breaches 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 disassociation had the disassociation not occurred. The Member will remain liable for any obligation to the Fund that existed prior to the effective date of the disassociation, 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.