

# PRIVATE PLACEMENT MEMORANDUM

*of*

*a \_ limited liability company*

*xxx Scientific Way, Suite xxx,  
Irvine, CA 92618*

*Phone: xxx.xxx.xxxx*

*Fax: xxx.xxx.xxxx*

OFFERING SERIES	OFFERING STATUS	PREFERRED RETURN	PREFERRED RETURN LOCK PERIOD	INITIAL PRICE PER UNIT	MINIMUM PURCHASE (50 UNITS)	MAXIMUM OFFERING RAISED	MINIMUM OFFERING RAISED
<i>Equity</i> Membership Units	OPEN	7.50% Preferred Return plus 50% of any Excess	2 Years Starting May 1, 2016	\$1,000	\$50,000	\$25 million	\$100,000
<i>Debt</i> Secured Notes (Amount Limited to No More than Amount of Equity Raised)	OPEN	4.5%, Security of 2x Amount of Mortgage Loans Originated	N/A	\$1,000	\$50,000	\$25 million	None

*May 2, 20XX*

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**EQUITY: THE MEMBERSHIP UNITS**  
(collectively, the “Membership Units”)

Holders of the Membership Units (“Membership Unit Holders”) will receive the income of the LLC after payment of its expenses, including compensation to the Manager, payments on the Notes and limited overhead items such as income taxes, tax return preparation, audit expenses, accounting and legal expenses. Even though the Membership Units have a Preferred Return of 7.5% (the “Preferred Return”), the Preferred Return is not guaranteed. The LLC may be unable to pay the amount of the Preferred Return. The Manager does not guaranty any investment yield or return of any investor’s capital.

Membership Unit Holders will become members in the LLC (the “Members”), and will have the option, exercisable upon subscription for Membership Units, to receive monthly distributions from the LLC operations, or to allow all or a portion of their proportionate share of LLC distributions to be retained and reinvested. In all other respects, however, an investment in the LLC is illiquid and subject to substantial restrictions on withdrawal. (See herein “Summary of LLC Operating Agreement —Withdrawal, Redemption Policy, and Other Events of Dissociation”).

It is anticipated that most if not all of LLC’s income will be taxed to Members as ordinary income, regardless of whether it is distributed in cash or reinvested, and otherwise tax-exempt entities (such as Individual Retirement Accounts and Keogh plans) may have to pay tax on a portion of their share of LLC income if the LLC engages in certain transactions. This offering involves tax and other risks. (See herein "Risk Factors — Risks Related to Mortgage Lending," "Risk Factors — Business Risks," "Income Tax Considerations for Members" and “ERISA Considerations”). Please refer to the Table of Contents.

Membership Units represent equity interests in the LLC. The price of each unit is initially \$1,000. However, the value of the Membership Units will change based upon the net asset value of the LLC. Distributions to each Membership Unit Holder will be proportionate to the number of units each Member has at the time of distribution.

**DEBT: THE SECURED NOTES**  
(collectively, the “Notes”)

The Notes offered are secured promissory notes that are general obligations of the LLC and secured by the pledge to a Custodian of real estate mortgages having a face value of double that of all outstanding Notes. Holders of the Notes (the “Note Holders” and, together with the Membership Unit Holders, the “Investors”) are not “Members” of the LLC but are secured creditors of the LLC and may also look to the net worth of the LLC for payment. Note Holders will have a security interest in a specific revolving pool of mortgage loans owned by the LLC and pledged to a Custodian for the benefit of the Note Holders. Note Holders have the right to payment before payment to the Members of the LLC.

The total amount of the Notes may not exceed one half of the amount due on the mortgage loans pledged to the Custodian and may not exceed the amount of Membership Units (based on capital contributions with respect to the Membership Units) outstanding. The Notes have a fixed interest rate of 4.50% per annum. The Notes are due and payable on the date that is the first day of the calendar month that falls after 180 days following the request for repayment of such Notes, but in any event no earlier than the second anniversary of the issuance of the Notes.

The Notes have priority over the Membership Units as to all aspects of payment. The Notes are more suitable for Investors willing to sacrifice yield for greater safety. The LLC may pledge other mortgages (i.e., those not pledged to the Custodian for the benefit of the Note Holders) to a third party bank or other creditor to secure financing.

It is anticipated that most if not all of LLC's income will be taxed to Members as ordinary income, regardless of whether it is distributed in cash or reinvested, and otherwise tax-exempt entities (such as Individual Retirement Accounts and Keogh plans) may have to pay tax on a portion of their share of LLC income if the LLC engages in certain transactions. This offering involves tax and other risks. (See herein "Risk Factors — Risks Related to Mortgage Lending," "Risk Factors — Business Risks," "Income Tax Considerations for Note Holders" and "ERISA Considerations"). Please refer to the Table of Contents.

**THE MEMBERSHIP UNITS AND THE NOTES DESCRIBED IN THIS MEMORANDUM HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR ANY OTHER SECURITIES LAWS. THE LLC IS OFFERING THE MEMBERSHIP UNITS AND THE NOTES IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND OTHER APPLICABLE LAWS. THESE EXEMPTIONS APPLY TO OFFERS AND SALES OF SECURITIES THAT DO NOT INVOLVE A PUBLIC OFFERING. THE MEMBERSHIP UNITS AND THE NOTES HAVE NOT BEEN APPROVED OR RECOMMENDED BY ANY FEDERAL, STATE, OR FOREIGN SECURITIES AUTHORITIES, NOR HAVE ANY OF THESE AUTHORITIES PASSED UPON THE MERITS OF THIS OFFERING OR DETERMINED THAT THIS MEMORANDUM IS ACCURATE OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

**THIS OFFERING INVOLVES SIGNIFICANT RISKS THAT ARE DESCRIBED IN DETAIL IN THIS MEMORANDUM. INVESTORS SHOULD NOT INVEST ANY FUNDS IN THIS OFFERING UNLESS THEY CAN AFFORD TO LOSE THEIR ENTIRE INVESTMENT. THE LOANS MADE BY THE LLC ARE NOT GUARANTEED BY ANY GOVERNMENT AGENCY, ENTITY OR OTHER INSTRUMENTALITY.**

	Price to Investors <sup>1, 2</sup>	Selling Commissions <sup>3</sup>	LLC Proceeds <sup>4</sup>
Minimum Purchase Amount	\$50,000	\$0	\$50,000
Maximum Offering Amount	\$50,000,000	\$0	\$50,000,000

(Footnotes – See herein "Terms of the Offering")

## CERTAIN TERMS OF THE OFFERING

1. The minimum purchase amount is \$50,000 of Membership Units or Notes; however, the Manager reserves the right, in its sole discretion, to accept subscriptions in a lesser amount or require a higher amount.
2. The LLC will commence operations after the Minimum Offering Amount of \$100,000 (the "Minimum Offering Amount") is raised. The exact timing is in the discretion of the Manager. The offering will continue until (i) the Maximum Offering Amount of \$50,000,000 (the "Maximum Offering Amount") is sold, or (ii) the offering is withdrawn by the LLC. Investors will be admitted to the LLC on a first-in first-out basis when their subscription funds are required by the LLC to fund a mortgage loan or to create appropriate reserves or to pay LLC expenses.
3. Membership Units and Notes will be offered and sold directly by the Manager, for which it will receive no selling commissions. Membership Units and Notes may also be sold through third party finders, who may receive selling compensation from the Manager. (See herein "Plan of Distribution") There is no firm commitment to purchase or sell any of the Membership Units or Notes.
4. When the assets of the LLC reach \$10,000,000 and the Preferred Return is being paid, the Manager, at its election, may receive reimbursement of formation expenses not to exceed \$30,000, at the rate of not more than \$10,000 per year.

## CERTAIN NOTICES

No person has been authorized to provide any information or make any representations regarding the LLC except as contained in this Private Placement Memorandum (the “Memorandum”). Statements in this Memorandum are made as of the date hereof unless stated otherwise. Neither the delivery of this Memorandum at any time, nor any sale hereunder, shall under any circumstances create an implication that the information contained herein is correct as of any time subsequent to the date hereof.

This Memorandum is being furnished to selected “accredited investors,” as defined in the Securities Act, on a confidential basis and, by accepting the Memorandum, the recipient agrees to keep confidential the information contained herein. The information contained in the Memorandum may not be provided to persons who are not directly involved in an Investor’s decision regarding the investment offered hereby. This Memorandum may not be reproduced or redistributed.

Investment in the LLC is suitable only for sophisticated Investors for whom such investment does not constitute a complete investment program and who fully understand and are willing to assume the substantial risks involved in the LLC’s specialized investment program. See “Risk Factors.” Prospective Investors should not construe the contents of this Memorandum or any supplemental or related literature as legal, business or tax advice. Each Investor should consult its own advisors concerning this investment before investing in the LLC.

The sale, transfer or disposition of the Membership Units and Notes offered hereby will be subject to significant contractual restrictions. In addition, an organized market for the Membership Units or Notes is not expected to develop at any time. Investors should be aware that they would be required to bear the financial risks of this investment for an indefinite period.

No action has been or will be taken in any jurisdiction outside the United States of America that would permit an offering of these Membership Units or Note, or possession or distribution of offering material in connection with the issuance of these securities, in any country or jurisdiction where action for that purpose is required. It is the responsibility of any Investor wishing to purchase Membership Units and/or Notes to satisfy itself as to full observance of the laws of any relevant territory outside the United States of America in connection with any such purchase, including obtaining any required governmental or other consents or observing any other applicable formalities.

**PAST RESULTS OF THE MANAGER MAY NOT BE INDICATIVE OF FUTURE PERFORMANCE. NO ASSURANCE CAN BE MADE THAT PROFITS WILL BE ACHIEVED OR THAT SUBSTANTIAL LOSSES WILL NOT BE INCURRED.**

**For Residents of All States:**

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

THE MEMBERSHIP UNITS AND THE NOTES ARE BEING OFFERED TO “ACCREDITED INVESTORS” WITHIN THE MEANING OF REGULATION D UNDER THE SECURITIES ACT. THE OFFERING OF THE MEMBERSHIP UNITS AND THE NOTES WILL NOT BE REGISTERED UNDER THE SECURITIES ACT IN RELIANCE UPON THE EXEMPTION FROM REGISTRATION PROVIDED BY SECTION 4(A)(2) OF THE SECURITIES ACT AND WILL NOT BE REGISTERED OR QUALIFIED UNDER ANY STATE SECURITIES LAWS. AS A PURCHASER OF SECURITIES IN A PRIVATE PLACEMENT NOT REGISTERED UNDER THE SECURITIES ACT, EACH INVESTOR WILL BE REQUIRED TO REPRESENT THAT IT IS AN ACCREDITED INVESTOR, WILL BE ACQUIRING THE MEMBERSHIP UNITS AND THE NOTES FOR ITS OWN ACCOUNT AND NOT WITH A VIEW TOWARD DISTRIBUTION THEREOF IN VIOLATION OF THE SECURITIES ACT, AND IT UNDERSTANDS THAT IT MUST BEAR THE ECONOMIC RISK OF THE INVESTMENT IN THE MEMBERSHIP UNITS AND THE NOTES FOR AN INDEFINITE PERIOD OF TIME.

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THESE MEMBERSHIP UNITS AND NOTES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933 AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

SUBSCRIPTION FUNDS RECEIVED FROM PURCHASERS OF MEMBERSHIP UNITS AND NOTES WILL NOT BE ADMITTED TO THE LIMITED LIABILITY COMPANY UNTIL APPROPRIATE INVESTMENT OPPORTUNITIES ARE AVAILABLE OR SUCH FUNDS ARE OTHERWISE REQUIRED, AS DESCRIBED HEREIN. DURING THE PERIOD PRIOR TO THE TIME OF ADMISSION OF SUCH INVESTORS, WHICH IS ANTICIPATED TO BE LESS THAN NINETY DAYS IN MOST CASES, PURCHASERS' SUBSCRIPTIONS WILL REMAIN IRREVOCABLE.

THIS OFFERING INVOLVES SIGNIFICANT RISKS, DESCRIBED IN DETAIL HEREIN. FEES WILL BE PAID TO THE MANAGER AND ITS AFFILIATES, WHO ARE SUBJECT TO CERTAIN CONFLICTS OF INTEREST. (SEE HEREIN "RISKS FACTORS") PROSPECTIVE PURCHASERS OF MEMBERSHIP UNITS AND NOTES SHOULD READ THIS MEMORANDUM IN ITS ENTIRETY.

THERE IS NO PUBLIC MARKET FOR MEMBERSHIP UNITS OR NOTES AND NONE IS EXPECTED TO DEVELOP IN THE FUTURE. SUMS INVESTED IN THE LIMITED LIABILITY COMPANY ARE ALSO SUBJECT TO SUBSTANTIAL RESTRICTIONS ON WITHDRAWAL AND TRANSFER (SEE HEREIN "SUMMARY OF LLC OPERATING AGREEMENT — WITHDRAWAL, REDEMPTION POLICY, AND OTHER EVENTS OF DISSOCIATION"), AND THE MEMBERSHIP UNITS AND NOTES OFFERED HEREBY SHOULD BE PURCHASED ONLY BY INVESTORS WHO HAVE NO NEED FOR LIQUIDITY IN THEIR INVESTMENT.

PROSPECTIVE PURCHASERS SHOULD NOT REGARD THE CONTENTS OF THIS MEMORANDUM OR ANY OTHER COMMUNICATION FROM THE LIMITED LIABILITY COMPANY 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 MEMBERSHIP UNITS AND/OR NOTES IN THE LLC.

THE PURCHASE OF LIMITED LIABILITY COMPANY MEMBERSHIP UNITS AND/OR NOTES 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 LIMITED LIABILITY COMPANY MAY BE SUBJECT TO FEDERAL INCOME TAXES, EVEN THOUGH SUCH PLANS ARE OTHERWISE TAX EXEMPT. (SEE HEREIN "INCOME TAX CONSIDERATIONS FOR MEMBERS," "INCOME TAX CONSIDERATIONS FOR NOTE HOLDERS" AND "ERISA CONSIDERATIONS")

THE MEMBERSHIP UNITS AND NOTES ARE OFFERED SUBJECT TO PRIOR SALE, ACCEPTANCE OF AN OFFER TO PURCHASE, AND TO WITHDRAWAL OR CANCELLATION OF THE OFFERING WITHOUT NOTICE. THE MANAGER RESERVES THE RIGHT TO REJECT ANY SUBSCRIPTIONS IN WHOLE OR IN PART.

THE MANAGER 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 LIMITED LIABILITY COMPANY OR ANY OTHER RELEVANT MATTERS, AND TO OBTAIN ANY ADDITIONAL INFORMATION TO THE EXTENT THE MANAGER POSSESSES SUCH INFORMATION.

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

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**Certain State Notices****FOR RESIDENTS OF FLORIDA:**

THE SECURITIES BEING OFFERED HAVE NOT BEEN REGISTERED WITH THE FLORIDA DIVISION OF SECURITIES AND INVESTOR PROTECTION. THE FLORIDA ACT PROVIDES THAT SALES MADE TO FIVE OR MORE PERSONS IN THIS STATE MAY BE VOIDABLE BY THE PURCHASER IN SUCH SALE EITHER WITHIN THREE (3) DAYS AFTER THE FIRST TENDER OF CONSIDERATION IS MADE BY SUCH PURCHASER TO THE ISSUER, AN AGENT OF THE ISSUER, OR AN ESCROW AGENT, OR WITHIN THREE (3) DAYS AFTER THE AVAILABILITY OF THIS PRIVILEGE IS COMMUNICATED TO THE PURCHASER, WHICHEVER OCCURS LATER.

**FOR RESIDENTS OF CALIFORNIA:**

THE SALE OF THE MEMBERSHIP UNITS AND NOTES WHICH ARE THE SUBJECT OF THIS MEMORANDUM HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH MEMBERSHIP UNITS AND NOTES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF MEMBERSHIP UNITS AND NOTES IS EXEMPT FROM THE QUALIFICATION BY SECTION 25100, 25102 OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS MEMORANDUM ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

**FOR RESIDENTS OF PENNSYLVANIA:**

EACH PERSON WHO ACCEPTS AN OFFER TO PURCHASE THE SECURITIES OFFERED HEREBY HAS A RIGHT TO WITHDRAW HIS ACCEPTANCE PURSUANT TO SECTION 207(L.C.) OF THE PENNSYLVANIA SECURITIES ACT OF 1972 (70 P.S. 1-207(M)). SUCH PERSON MAY ELECT, WITHIN TWO BUSINESS DAYS FROM THE DATE OF RECEIPT BY THE ISSUER OF HIS WRITTEN BINDING CONTRACT OF PURCHASE (OR IN THE CASE OF A TRANSACTION IN WHICH THERE IS NO BINDING CONTRACT TO PURCHASE, WITHIN TWO BUSINESS DAYS AFTER HE MAKES THE INITIAL PAYMENT FOR THE SECURITIES), TO WITHDRAW FROM HIS PURCHASE AGREEMENT AND RECEIVE A FULL REPAYMENT OF ALL MONIES PAID. SUCH A WITHDRAWAL WILL BE WITHOUT ANY FURTHER LIABILITY TO ANY PERSON TO ACCOMPLISH THIS WITHDRAWAL, A LETTER SHOULD BE SENT TO THE FUND, INDICATING THE INTENTION TO WITHDRAW SUCH LETTER SHOULD BE SENT AND POSTMARKED PRIOR TO THE END OF THE AFOREMENTIONED SECOND BUSINESS DAY.

**FOR RESIDENTS OF NEW JERSEY:**

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE BUREAU OF SECURITIES OF THE STATE OF NEW JERSEY NOR HAS THE BUREAU PASSED ON OR ENDORSED THE MERITS OF THIS OFFERING. THE FILING OF THE WRITTEN OFFERING DOES NOT CONSTITUTE APPROVAL OF THE ISSUE OR SALE THEREOF BY THE BUREAU OF SECURITIES. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL. PURCHASERS WHO HAVE NOT RECEIVED A COPY OF THIS MEMORANDUM AT LEAST 48 HOURS PRIOR TO PAYMENT, RECEIPT OF CONFIRMATION OR RECEIPT OF SECURITY, WHICH EVER OCCURS FIRST, SHALL HAVE THE RIGHT TO RESCIND THE PURCHASE WITHIN 48 HOURS AFTER RECEIVING THE MEMORANDUM. NO BROKER-DEALER, SALESMAN OR ANY OTHER PERSON IS AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED EXPRESSLY IN THE MEMORANDUM.

**FOR RESIDENTS OF NORTH DAKOTA:**

THESE SECURITIES HAVE NOT BEEN APPROVED BY THE SECURITIES COMMISSIONER OF THE STATE OF NORTH DAKOTA NOR HAS THE COMMISSIONER PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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**FOR RESIDENTS OF VERMONT:**

EACH VERMONT PURCHASER WHO ACCEPTS AN OFFER TO PURCHASE THESE SECURITIES DIRECTLY FROM THE ISSUER OR AN AFFILIATE OF THE ISSUER SHALL HAVE THE RIGHT TO WITHDRAW SUCH ACCEPTANCE WITHOUT INCURRING ANY LIABILITY TO THE ISSUER OR ANY OTHER PERSON WITHIN THREE CALENDAR DAYS OF THE FIRST TENDER OF CONSIDERATION TO THE ISSUER, AN AFFILIATE OF THE ISSUER, OR AN ESCROW AGENT.

**FOR RESIDENTS OF NEW YORK:**

THIS CONFIDENTIAL OFFERING MEMORANDUM HAS NOT BEEN REVIEWED BY THE STATE OF NEW YORK, THE NEW YORK STATE DEPARTMENT OF LAW OR THE ATTORNEY GENERAL OF THE STATE OF NEW YORK PRIOR TO ITS ISSUANCE AND USE NOR HAS ANY OF THE FOREGOING PASSED ON OR ENDORSED THE MERITS OF THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

**Forward-Looking Statements**

This Memorandum contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements include, but are not limited to, statements about the benefits of investing in the LLC, future financial and operating results, the LLC’s plans, objectives, expectations and intentions with respect to future operations; and other statements identified by words such as “anticipate,” “believe,” “plan,” “expect,” “intend,” “will,” “should,” “may,” or words of similar meaning. Such forward-looking statements are based on the current beliefs and expectations of the LLC and are inherently subject to significant business, economic and competitive uncertainties and contingencies, many of which are difficult to predict and beyond the LLC’s control. Actual results may differ materially from the results anticipated in these forward-looking statements. Therefore, undue reliance should not be placed upon these estimates and statements. The LLC undertakes no obligation to update any of these forward-looking statements to reflect subsequent events or circumstances.

You should understand that the following factors and assumptions, among others, could affect the LLC’s future results and could cause actual results to differ materially from those expressed in such forward-looking statements:

- general economic and business conditions,
- changes in foreign, political, social and economic conditions,
- regulatory initiatives and compliance with governmental regulations, and
- other matters, many of which are beyond the Manager’s control.

Other factors and assumptions not identified above, including those described under “Risk Factors” below, were also involved in the derivation of these forward-looking statements, and the failure of such assumptions to be realized as well as other factors may cause actual results to differ materially from those projected. Most of these factors are difficult to predict accurately and many are beyond the LLC’s control.

This Memorandum has been furnished on a confidential basis for use only by the person to whom it has been provided. Any reproduction or distribution of this Memorandum, in whole or in part or the divulgence of any of its contents, to any person other than the person to whom this Memorandum is delivered, without the prior written consent of the LLC, is prohibited. This Memorandum supersedes any other offering materials previously made available to prospective Investors. In considering whether to invest, prospective Investors should not rely on any documents previously received.

**Additional Questions**

The sole purpose of this Memorandum is to assist prospective Investors in deciding whether to proceed with an investment in the LLC. No one has been authorized to give any information or to make any representation with respect to the LLC that is not contained in this Memorandum. Prospective Investors should not rely on any information not contained in this Memorandum. Prospective Investors should not construe the contents of this Memorandum as legal, tax, investment or other advice. Each prospective Investor should conduct its own inquiry into the LLC, this Offering and any related matters. Before making an investment, each prospective Investor has an opportunity to direct all questions and receive answers from:

***Attn: Philip Fusco or Mitch Hill  
Fortunato Capital Partners, LLC  
16441 Scientific Way, Suite 250  
Irvine, CA 92618  
Phone: 949.396.6715  
Fax: 949.485.5652***

***philip.fusco@fortunatocapital.com or mitch.hill@fortunatocapital.com***



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## EXHIBITS

- Exhibit A: Limited Liability Company Operating Agreement
- Exhibit B: Subscription Agreement and Power of Attorney
- Exhibit C: Most Recent Financial Statement
- Exhibit D: Current Portfolio Characteristics
- Exhibit E: Custodial Agreement
- Exhibit F: Note and Security Agreement

## SUMMARY OF THE OFFERING

The following information is only a brief summary of, and is qualified in its entirety by, the detailed information appearing elsewhere in this Memorandum. This Memorandum, together with the exhibits attached including, but not limited to, the Limited Liability Company Operating Agreement of the LLC (the “Operating Agreement”), a copy of which is attached hereto as Exhibit A, should be read in their 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.

<b>The LLC</b>	<p><b>FORTUNATO CAPITAL PARTNERS, LLC</b> (the “LLC”) is a California limited liability company formed for the purpose of making and acquiring loans to members of the general public secured by real and personal property and selling loans when it is in the best interests of the LLC to do so. The LLC will engage in business as a mortgage lender for the purpose of making non-prime loans to the general public, and acquiring existing non-prime loans, secured by deeds of trust and mortgages on real estate throughout the United States, with the initial focus on California and Texas.</p>
<b>Membership Units</b>	<p>The LLC will have one series of Members (the “Membership Units” and the holder thereof a “Member”) who will hold units of membership interest in the LLC. The initial issue price of each Membership Unit is \$1,000 but the value of each Membership Unit will be determined by the Net Asset Value (as defined below) of the LLC. The Manager will use reasonable discretion in setting the loan loss reserve and other events that impact the Net Asset Value of the LLC.</p> <p>Even though the Membership Units have a Preferred Return, the Preferred Return is not guaranteed. The LLC may be unable to pay the amount of the Preferred Return. The Manager does not guaranty any investment yield or the return of any Investor’s capital.</p> <p>Please refer to the Operating Agreement (Exhibit A) for greater detail.</p> <p>“Net Asset Value” means, at the time of determination, the fair market value of the assets of the LLC over the liabilities of the LLC (excluding any distributions payable to the Members), in each case as reasonably determined by the Manager. The “Net Asset Value of a Membership Unit” shall mean, at the time of determination, the Net Asset Value divided by the number of outstanding Membership Units.</p>
<b>Notes</b>	<p>The Notes offered are secured promissory notes that are general obligations of the LLC secured by mortgage loans owned by the LLC and pledged to a Custodian. The total amount of the Notes may not exceed 50% of the amount owed on the mortgage loans pledged to the Custodian and may not exceed the amount of Membership Units (based on capital contributions made with respect to the Membership Units) outstanding. The Custodian is an affiliate of the Manager. Investors in Notes (the “Note Holders”) are not “Members” of the LLC but are secured creditors of the LLC and may also look to the net worth of the LLC for payment. Note Holders have a security interest in a specific pool of LLC mortgage loans and have the right to payment before payment to the Members of the LLC.</p> <p>The total amount of the Notes is initially set at \$25 million but this number could increase if the total Membership Units exceed \$25 million. The Notes have a fixed interest rate of 4.50% per annum. The Notes are due and payable on the date that is the first day of the calendar month that falls after 180 days following</p>

	<p>the request for repayment of such Notes, but in any event no earlier than the second anniversary of the issuance of the Notes.</p> <p>The Notes have priority over the Membership Units as to all aspects of payment. The Notes are more suitable for Investors willing to sacrifice yield for greater safety. The LLC may pledge other mortgages (not pledged to the Custodian) to a third party bank or other creditor to secure other third-party financing. However, the total amount of secured financing from any and all sources cannot exceed the amount of equity raised from the sale of Membership Units.</p> <p>See Exhibit F for the form Notes will take. See Exhibit E for the Custodial Agreement.</p>
<b>The Manager</b>	<p>Fortunato Capital Management, LLC  16441 Scientific Way, Suite 250  Irvine, CA 92618  Phone: 949.396.6715  Fax: 949.485.5652</p>
<b>The Custodian</b>	<p>The Custodian is an affiliate of the Manager:</p> <p>Fortunato Custodial Services, Inc.  16441 Scientific Way, Suite 250  Irvine, CA 92618  Phone: 949.396.6715  Fax: 949.485.5652</p>
<b>The Lead Note Holder</b>	<p>The Lead Note Holder is FCMH Partners LP.</p>
<b>Term of the LLC</b>	<p>Until December 31, 2035 (with provisions for one 5 year extension at the discretion of the Manager, unless sooner terminated. (See herein "Summary of LLC Operating Agreement – Term of LLC")</p>
<b>Mortgage Originator</b>	<p>The Manager, or its affiliates, may act as a mortgage originator in arranging LLC loans for compensation paid by borrowers. (See herein “The Manager and Affiliates” and “Compensation to Manager and Affiliates”)</p>
<b>Suitability Standards</b>	<p>Membership Units and Notes are offered exclusively to certain individuals, Keogh plans, IRAs and other qualified Investors who are accredited investors as defined under the rules of the Securities Act. (See herein "Investor Suitability")</p>
<b>Capitalization</b>	<p>The Maximum Offering Amount (including Notes) is \$50,000,000. The Manager reserves the right to increase the size of the offering at any time provided the ratio of Notes and third-party secured financing, if any, to Membership Units is 1 to 1 or less.</p>
<b>Selling Commissions</b>	<p>No portion of the gross proceeds of this offering will be used for the purpose of paying selling commissions and fees incurred in the sale of Membership Units and Notes.</p>

<b>Loan Portfolio</b>	All loans funded or acquired by the LLC will be secured in whole or in part by real property located in the United States. A significant portion of the portfolio will be initially be secured by California and Texas real estate.
<b>No Guaranty</b>	The loans funded and/or purchased by the LLC will NOT be guaranteed by any government agency. Third parties may personally guarantee some loans, however, exercising the remedies under any such guaranty is limited and would require lengthy and costly legal action.
<b>Cash Distributions</b>	<p>Each month and after payment of the Notes and other obligations, the Manager will distribute the LLC's accrued Net Profits (as defined below) to the Members up to the Preferred Return. The exact amount of Net Profits accrued at any point in time may be more or less than the amount distributed and may, in some cases, result in a return of capital. As among Members, Net Profits will be distributed to each Member in proportion to the number of Membership Units they own compared to the total number of Membership Units. The Preferred Return percentage set forth at the beginning of this Memorandum may not be changed by the Manager for the period of time (Preferred Return Lock Period) indicated. However, the Preferred Return is not guaranteed by the Manager or any other person and is wholly dependent upon the success of the LLC.</p> <p>"Net Profits" is defined herein as the LLC's monthly gross income less the payments of the LLC's monthly operating expenses (see "Compensation to Manager and Affiliates"), amounts due by the LLC on any loans or line of credit, accounting, audit costs, legal expenses, loan origination commissions, collection costs, LLC taxes and fees and a provision for loan losses (the "Loan Loss Reserve"). The Manager will use its reasonable discretion in estimating these amounts.</p> <p>Although the Manager intends to make regular cash distributions to its Members, the amount allocated to Members on Schedule K-1 will likely exceed the amount of cash distributions due to various accounting and reporting positions assumed by the LLC, including the Loan Loss Reserve and factors unique to the tax accounting of limited liability companies, such as the treatment of investment expense.</p>
<b>Reinvestment Election</b>	Members must elect to (i) receive cash distributions from the LLC in the amount of that Member's share of Net Profits available for distribution, or (ii) allow the distributions to be reinvested for additional Membership Units at the value of Membership Unit, or (iii) a combination of (i) or (ii) above. An election to reinvest all or a portion of the monthly distributions is revocable at any time, upon a written request to revoke such election. Such election shall become effective on the first (1st) day of the month following receipt of the election but in no event sooner than 15 days after receipt of notice. If no election is made, then the monthly distribution will be a cash distribution. The Manager reserves the right, at any time, to freeze Member reinvestment either in whole or in part.
<b>Member Withdrawal</b>	Members may withdraw as a Member of the LLC and may receive an amount equal to the Net Asset Value of its Membership Units provided that the following conditions have been met: (a) the Member has been a Member of the LLC for a period of at least 24 months, and (b) the Member agrees to a 10% holdback for its withdrawal amount to satisfy its obligations, if any, following any annual review as set forth in Section 4.2 of the Operating Agreement and further agrees to refund to the LLC any excess distributions in excess of such holdback amount to the extent required under Section 4.2 of the Operating Agreement. The LLC will use its best efforts to honor requests for a withdrawal subject to, among

	<p>other things, the LLC's then existing cash flow, financial condition, and prospective real estate investments. Withdrawal requests will be considered on a first come basis and withdrawal requests shall be honored on the first day of the month that falls 180 days or more following the date that a withdrawal request is delivered. Notwithstanding the foregoing, the Manager may, in its sole discretion, waive such withdrawal requirements if a Member is experiencing undue hardship; provided, however, the Manager reserves the right to charge a 2% early withdrawal penalty on any such Member.</p> <p>The LLC may return capital to Members that are subject to regulation under Employee Retirement Income Security Act if necessary to reduce their combined investment to 25% or less of the LLC's total capitalization.</p> <p>(See "Summary of LLC Operating Agreement – Withdrawal, Redemption Policy, and Other Events of Dissociation," "Summary of LLC Operating Agreement – Restrictions on Transfer")</p>
<b>No Liquidity</b>	<p>There is no public market for Membership Units and Notes or none is expected to develop. Additionally, there are substantial restrictions on transferability of Membership Units and Notes. (See herein "Risk Factors — Business Risks — The Membership Units and the Notes are not easily transferrable.") Investors should not purchase Membership Units or Notes unless they intend to hold them for an appropriate period of time.</p>
<b>Reports to Members</b>	<p>Audited financial statements and reports concerning the LLC's business affairs will be provided to Members. Each Member will also receive a copy of the LLC's annual income tax return. Because of the cost, the LLC may forgo an audit for the fiscal year 2016.</p> <p>The LLC will, on a quarterly basis, issue a report and spreadsheet as to the portfolio of loans it then holds without disclosing certain details of the loans, such as borrower names and property addresses.</p>

## THE STRATEGY OF THE LLC

- The Architecture of LLC. The LLC has been formed by Fortunato Capital Management, LLC, a California limited liability company, that serves as the Manager of the LLC, to provide Investors with a real estate lending investment vehicle that seeks to deliver steady cash flow returns. Purchasers of Membership Units will be admitted as Members of the LLC and will receive Membership Units in the LLC. The Note Holders will not be Members but rather creditors of the LLC. The LLC was designed to deny the Manager any share of the profits of the LLC unless and until it achieves the Preferred Return. This feature is intended to motivate the Manager to focus on the bottom line.
- Experienced Management. Philip Fusco, President of the Manager, has, through his company, PSG Capital Partners, Inc. and its affiliates and predecessors, originated \$1 billion in new mortgages since 1984. PSG has held a real estate broker's license (01920880) since 2013. The Chief Financial Officer and Secretary of the Manager, Mitch Hill, has significant experience in real estate underwriting, financing and development, as well as C-level executive experience in a number of public and private companies. Neither PSG nor the Manager have any record of discipline with the California Bureau of Real Estate.

- No Load. The Manager is seeking to capitalize the LLC with approximately \$50 million of capital commitments (including the Notes), which amount may be exceeded in the discretion of the Manager. The LLC was designed with no “front end load,” meaning other than eventually reimbursing the Manager for formation expenses, cash reserves and operating expenses, 100% of the remaining invested capital will be deployed in mortgages.
- Low Overhead. The LLC was also designed to keep expenses at a minimum. No portion of the Manager’s overhead will be allocated to the LLC although it will pay its own expenses for accounting, audit, legal, tax return preparation, loan commissions, borrowing costs, loan servicing and collection costs and LLC taxes. While the LLC will pay the Manager an Asset Management Fee each month, out of that fee the Manager will bear all executive management and other personnel compensation and all other overhead, such as rent, utilities, insurance, postage and office supplies.
- Tiered Risk Structure. The LLC is unique among mortgage funds by its equity verses debt choices. Investors who wish to elevate capital preservation over investment return can choose to invest in the Notes. The Notes have a liquidation preference and income preference over the Membership Units. In addition, the Notes are backed by a pool of mortgages pledged to a Custodian and Note Holders may also look to the net worth of the LLC for payment. On the other hand, holders of Membership Units have the possibility of a higher preferred return but no secured lien or promise of payment.
- Management Team Has Contributed Capital. Members of the management team have contributed \$500,000 as part of the initial capitalization of the LLC, showing their commitment to the success of the LLC.
- Holding Title. The investments by the LLC will all be secured by deeds of trust or mortgages on real estate. The LLC will be vested on every promissory note and deed of trust or mortgage it owns.
- Competition. Private individuals, mortgage pools, mortgage bankers and banks will compete with the LLC.
- Leverage to Lower Cost of Funds. The LLC may seek to secure a line of credit to lower its cost of funds, provide short term funding capability, generate leverage and improve the yields to its Members, but there is no guarantee it will be successful in doing so. If a credit line is obtained, the LLC will secure the line with a collateral assignment of mortgages it owns but not any mortgage loans pledged to the Custodian to secure the Notes.
- Borrowers. The LLC will employ criteria to ensure the borrower and property meets the LLC’s lending criteria. Many borrowers will be non-prime, meaning they would not qualify for financing from a conventional lending source such as a bank. The LLC’s emphasis will be on the loan-to-value of the property, primarily, and cash flow, secondarily. Much less emphasis will be placed on the creditworthiness, liquidity and income of the borrower. Initially, most loans will be secured by first deeds of trust or mortgages, but that may change as market conditions change.
- Experienced Loan Servicing. Some of the loans the LLC will make have a period of prepaid interest and therefore it may not be necessary to collect payments (“servicing” a loan) for some time. When payments are being collected, the LLC intends to employ a professional loan servicer as its servicer, which may be an affiliate of the Manager. The fees of the servicer will be paid by the Manager.

THERE IS NO ASSURANCE THAT THESE OBJECTIVES WILL BE ACHIEVED. ADDITIONALLY, THE PREFERRED RETURN IS NOT GUARANTEED, BUT WILL ONLY BE MADE TO THE EXTENT THE LLC HAS SUFFICIENT CASH FLOW TO MAKE SUCH DISTRIBUTIONS.

### **TERMS OF THE OFFERING**

This offering is made to a limited number of “accredited investors” within the meaning of Regulation D under the Securities Act to purchase Membership Units and Notes of the LLC. The minimum purchase amount from each Investor is \$50,000 of Membership Units or Notes; however, the Manager reserves the right, in its sole discretion, to accept subscriptions in a lesser amount or require a higher amount.

The offering will continue until (a) the Maximum Offering Amount is raised, or (b) the offering is withdrawn by the LLC. The Manager reserves the right to increase the size of the offering. A capital account will be established for each Member on the books and records of the LLC. Each Member will share in distributions of the LLC’s allocated amount to Members based upon the number of Membership Units owned by such Members compared to all outstanding Membership Units.

### **THE MEMBERSHIP UNITS**

Each month and after payment of the Notes and other obligations of the LLC, the Manager will distribute the LLC’s accrued Net Profits to the Members up to the Preferred Return. The exact amount of Net Profits accrued at any point in time may be more or less than the amount distributed and may, in some cases, result in a return of capital. As among Members, Net Profits will be distributed to each Member in proportion to the number of Membership Units they own compared to the total number of all Membership Units. The Preferred Return percentage set forth at the beginning of this Memorandum may not be changed by the Manager for the period of time (Preferred Return Lock Period) indicated. At that time the rates can be adjusted based upon changes in the mortgage market. In any event, the Preferred Return is not guaranteed by the Manager or any other person and is wholly dependent upon the success of the LLC.

“Net Profits” is defined herein as the LLC’s monthly gross income less the payments of the LLC’s monthly operating expenses (see “Compensation to Manager and Affiliates”), amounts due by the LLC on any loans or line of credit, audit costs, legal, accounting, collection costs and LLC taxes and fees, and a provision for loan losses (the “Loan Loss Reserve”). The Manager will use its reasonable discretion in estimating these amounts.

Although the Manager intends to make regular cash distributions to its Members, the amount allocated to Members on Schedule K-1 will likely exceed the amount of cash distributions due to various accounting and reporting positions assumed by the LLC, including the Loan Loss Reserve and factors unique to the tax accounting of limited liability companies, such as the treatment of investment expense.

### **THE NOTES**

The LLC will borrow money from Investors in exchange for the Notes. The Notes the LLC will issue are secured obligations of the LLC. The security for the Notes is the pledge to the Custodian of mortgage loans (the “Pool”) with a combined unpaid balance of at least twice the amount of all outstanding Notes. The Notes will bear the interest at a 4.5% rate per annum and are full recourse obligations of the LLC.

The LLC will pay the agreed-upon interest on the Notes to each Note Holder in monthly installments and the principal amount upon 180 days written demand after two years invested on the date that is the first day of the calendar month that falls after 180 days following the request for repayment of such Notes. Interest accrued each calendar month under a Note will be paid to a Note Holder on or before the tenth (10<sup>th</sup>) day of

the succeeding month, commencing on the first 10<sup>th</sup> day of the first full calendar month following the date of issuance of such Note, and continuing until the maturity date of such Note, at which time the unpaid balance together with accrued interest due thereon, shall be due and payable, or as otherwise provided in the subject Note.

The LLC will use the proceeds from the sale of the Notes exclusively to make and acquire mortgage loans on real property and pay LLC expenses set forth herein. These loans will have fixed or adjustable interest rates. It is expected that the income from the mortgages, taken into consideration the discount obtained when they were acquired, maturity period, and amount deemed recoverable by the LLC, will be higher than the rates owed on the Notes and will generate sufficient income to pay the Notes. There are not guaranties this will occur (See “Forward-Looking Statements” herein). Some of the Notes may be called before the underlying mortgages mature or are liquidated.

The LLC is obligated to make payments under the Notes regardless of whether its mortgage loans are being paid on a current basis by the borrower. The total amount of all Notes may not exceed 50% of amount owed on the mortgage loans in the Pool pledged to the Custodian.

### ***Security for Notes***

The Notes are the direct obligation of the LLC and are each secured by the Pool of mortgages. All Notes will be secured by a security interest in the Pool in common with other Note Holders. Accordingly, each Note Holder will have a security interest of equal priority in all of the mortgage loans comprising the Pool and not a specific mortgage loan. The Pool’s assets are security only for the Notes in the Pool. FCMH Partners LP will act as the Lead Note Holder under the Custodial Agreement (the “Lead Note Holder”). The Lead Note Holder will also invest in Membership Units and has a material ownership interest in the Manager.

The LLC, at its option and upon written notice to the Lead Note Holder, has the right to substitute mortgage loans in the Pool in accordance with the Custodial Agreement. Note Holders are encouraged to read the Custodial Agreement in its entirety.

The LLC may, from time to time, elect to sell one or more of the mortgage loans (or fractional interests in the loans) included in the Pool. The reasons for selling a mortgage loan may include the need for cash to pay for Member redemption requests, to generate capital to fund new mortgage loan requests, or to attempt to reduce the risk of the LLC relative to a particular loan or borrower. Generally, any sale of a mortgage loan shall be for no less than the acquisition basis, plus post acquisition accrued interest, together with any cost due or advanced, such as foreclosure costs if the mortgage loan is in default. However, a mortgage loan may be sold for less than full amount due if the LLC deems it prudent or necessary due to the condition of the property, market conditions, interest rates, or other factors. Any such sale for less than face value shall not alter or affect the LLC’s liability for the full stated amount of the outstanding Notes.

### ***The Custodial Agreement***

In order to secure its obligations to Investors under the Notes, the LLC has entered into the Custodial Agreement with Fortunato Custodial Services, Inc., an affiliate of the Manager, and FCMH Partners LP, as the Lead Note Holder, pledging the Pool as security for the repayment of the Notes. The Custodian and the Lead Note Holder have certain obligations to the Note Holders if the LLC defaults on its obligations under the Notes. The Lead Note Holder will also invest in Membership Units and has a material ownership interest in the Manager.

The Pool may consist of certain promissory notes evidencing mortgage loans made by the LLC, which promissory notes are secured by mortgages and deeds of trust on real property. When a mortgage loan is



added to the Pool, the LLC shall furnish notice to the Lead Note Holder and deliver to the Custodian all documents required to be delivered under the Custodial Agreement. Note Holders are encouraged to read the Custodial Agreement (Exhibit E) in its entirety.

By executing a Note, each Note Holder appoints the Custodian as his, her, or its custodian to hold the Pool assets and to carry out the terms of the Custodial Agreement.

The Custodial Agreement explains the handling of the mortgage loans and deeds of trust or mortgages in the event that the LLC desires to obtain a line of credit or loan secured by such loans and trust deeds; however, the LLC will not pledge the same loans or deeds of trust or mortgages in the Pool to secure another line of credit or loan. It may pledge other real estate and mortgage loans to another lender to secure a credit line.

### ***The Custodian***

Fortunato Custodial Service, Inc. a California corporation, an affiliate of the Manager, has agreed to serve as the Custodian of the Pool. The Manager reserves the right to designate a new custodian.

The LLC has agreed to indemnify and to hold the Custodian harmless from any and all claims, causes of action, and damages it sustains arising from its service as Custodian except for actions which are negligent, willful or in bad faith. Upon a default in the Notes, the Custodian must take action as called for in the Custodian Agreement. The Custodian may resign or be removed as provided for in the Custodial Agreement. All expenses and fees payable to the Custodian for performance of its services described herein will be the obligation of the LLC.

### ***The Lead Note Holder***

FCMH Partners LP, a California limited partnership, has agreed to serve as the Lead Note Holder under the Custodial Agreement and the Intercreditor Agreement (the "Intercreditor Agreement"), which is attached as Annex I to the Custodial Agreement. Pursuant the Intercreditor Agreement, the Lead Note Holder will receive notice of what loans are assigned to the Pool and are substituted out of the Pool, and the Intercreditor Agreement requires the LLC to provide assurances to the Lead Note Holder each time a loan is assigned to the Pool or substituted out of the Pool that the Pool consists of mortgage loans having a combined unpaid balance of at least twice the amount owed to the Note Holders. The Lead Note Holder will hold record title to the mortgages in the Pool for the benefit of all Note Holders. The Lead Note Holder has no priority over any other Note Holder as to payment, but is entitled to be reimbursed for expenses it incurs in enforcing the Intercreditor Agreement for the benefit of all Note Holders. Upon a default in the Notes, the Lead Note Holder must take action as called for in the Custodian Agreement. The Lead Note Holder may resign or be removed as provided for in the Intercreditor Agreement.

The duties of the Lead Note Holder shall be mechanical and administrative in nature, and the Lead Note Holder shall not have, or be deemed to have, a fiduciary or trust relationship in respect to any Note Holder. None of the Lead Note Holder, nor any of its or their affiliates, nor any of its or their respective officers, partners, members, employees, attorneys, agents or representatives, shall be liable to any Note Holder for any action taken or suffered by it or them or omitted to be taken by it or them under the Applicable Documents, or in connection herewith or therewith, except for damages caused directly by the Lead Note Holder's own gross negligence or willful misconduct. The Lead Note Holder will also invest in Membership Units and has a material ownership interest in the Manager.

The LLC and the Note Holders shall, severally and not jointly based on their respective pro rata shares, indemnify, defend and hold harmless the Lead Note Holders and its respective affiliates, principals, directors, officers, members, managers, partners, representatives, employees, attorneys, agents, successors and assigns

(collectively, the “Lead Parties”) from and against any and all actions, claims and damages imposed upon, incurred by or asserted or awarded against the Lead Note Holder or any other Lead Party arising from its service as Lead Note holder, except for damages resulting from gross negligence or willful misconduct.

### ***Flow of Funds and Documents***

The following is a general summary of the manner and sequence of the transfers of funds in this Offering:

- (a) The LLC will assign performing mortgage loans to the Pool from which it intends to issue Notes. Loan documents will be deposited in the Pool held by the Custodian, which will hold the Collateral on behalf of all Note Holders.
- (b) The LLC will issue the Notes to Note Holders when their subscription funds are deposited into the LLC.
- (c) The LLC will perform all loan servicing functions as to the mortgage loans, either directly or through a sub-servicer.
- (d) Each month, the LLC will cause to be prepared and distributed interest and principal payments to the Note Holders in accordance with the terms of the Notes. The LLC will be responsible for all record keeping for the Notes, payments to Investors, and the Pool. It may use service providers and sub-servicers to perform these functions for the LLC.

### ***Events of Default***

As described in the Custodial Agreement, the LLC shall be in default under a certain Note if any of the following occur (each, an “Event of Default”):

- (a) The LLC fails to pay interest or principal under any Note to any Note Holder within ten (10) days after the due date;
- (b) Any representation of the LLC or the Custodian is false, misleading or erroneous in any material respect when made or when deemed to have been made;
- (c) The LLC fails to cure a default in the performance of any other covenants of the LLC or Custodian to a Note Holder and failure to cure within ten (10) days following written notice from one or more affected Note Holders;
- (d) The bankruptcy or insolvency of the LLC;
- (e) An involuntary bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for relief under any bankruptcy law or any law for the relief of debtors shall be instituted against the LLC, and such proceeding shall not be dismissed within sixty (60) days after its commencement or an order for relief against the LLC shall have been entered in such proceeding, or any order, judgment or decree shall be entered against the LLC decreeing its dissolution or division; or
- (f) A bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for relief under any bankruptcy law or any law for the relief of debtors shall be instituted by the LLC.

### ***Remedies Upon LLC Default***

As described in the Custodial Agreement, upon the occurrence of an Event of Default, the Lead Note Holder shall, upon being directed to do so by Note Holders who hold, on an aggregate basis, at least 51% of the aggregate principal amount of the Notes then-outstanding (the "Majority"), declare the entire unpaid principal of the Notes immediately due and payable, without presentment, notice or demand, all of which are hereby expressly waived by the LLC; provided, however, upon the occurrence of any Event of Default specified in (d), (e) or (f) above, approval of the Majority shall not be required and the entire principal of the Notes shall automatically and immediately be due and payable in full, the entire unpaid principal of the Notes shall become automatically and immediately due and payable. The Lead Note Holder shall have the right to cause the mortgages in the Pool to be sold, in compliance with law, and exercise other remedies that a secured creditor would have by law, all for the benefit of all Note Holders.

### ***Prepayment of Notes***

The LLC may, at its option, prepay all sums due under any Note at any time at its discretion, without any prepayment premium or penalty.

### ***Redemption of Notes***

Note Holders may request payment on their Notes upon 180 days advance notice after two years. The Notes are due and payable on the date that is the first day of the calendar month that falls after 180 days following the request for repayment of the Note, but in any event no earlier than the second anniversary of the issuance of the Notes.

If a Note Holder requests the principal amount of the Notes to be paid on a date prior to the end of the two-year investment period (or other than 180 days after the notice has been provided), the LLC may, in its sole discretion, either accept or deny such request, and if the LLC accepts such a request, the LLC will assess a 2% early payment penalty on the principal amount of the Notes. In any event, the LLC has no obligation to honor requests for early redemption.

### ***Restrictions on Transferability of Notes***

The Notes are non-negotiable and not transferable by any Note Holder without the prior written consent of the LLC, which may be withheld or conditioned in the LLC's sole and absolute discretion. (See "Risk Factors — Business Risks — Lack of Liquidity" and "Risk Factors — Business Risks — The Membership Units and the Notes are not easily transferrable.")

### ***Assurance of Payment by the LLC***

The LLC seeks to assure payment to Note Holders of interest and principal when due on the Notes in accordance with the terms of the Notes. Repayment of principal and interest on the Notes is not limited to the cash flow generated by the LLC. All assets and revenues of the LLC, to the extent available from operations, are obligated to the repayment of the Notes. However, there are risks that the LLC will be unable to meet its obligations in a timely manner. (See "Risk Factors")

## **INVESTOR SUITABILITY**

To purchase Membership Units and Notes, an Investor must meet certain eligibility and suitability standards, some of which are set forth below, and must execute a Subscription Agreement and Power of Attorney (the "Subscription Agreement") in the form attached as Exhibit B. By executing the Subscription Agreement, an

Investor makes certain representations and warranties upon which the Manager will rely in accepting subscriptions. ***Please read and complete the Subscription Agreement carefully.***

After it commences operations, the composition of the LLC's current loan portfolio will be attached as Exhibit D to this Memorandum. It will be updated periodically. Attached as Exhibit C is a copy of the LLC's most recent financial statement. It too will be updated periodically. Investors are encouraged to review these documents before investing. If you receive a copy of this Memorandum and Exhibit C or D is older than 60 days, please request a current version before investing.

The Membership Units and Notes are being offered to sophisticated investors who qualify as "accredited investors" within the meaning of Regulation D under the Securities Act. An "accredited investor" is defined in Rule 501 of Regulation D of the Securities Act, summarized below:

1. a bank, registered broker-dealer firms, insurance company, registered investment company, business development company, or licensed small business investment company;
2. a 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 \$5 million;
3. an employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of \$5 million;
4. a private business development company as defined in the Investment Advisers Act of 1940;
5. a charitable organization, corporation, or LLC with assets exceeding \$5 million;
6. a director, executive officer, or general partner of the issuer selling the securities;
7. a natural person who has individual net worth, or joint net worth with the person's spouse, that exceeds \$1 million at the time of the purchase (not including home equity);
8. a natural person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year;
9. a trust with assets in excess of \$5 million, not formed to acquire the securities offered, whose purchases are directed by a sophisticated person; or
10. an entity in which all equity holders are accredited investors.

In the future, investors may be required to submit verification of their accredited investor status. See the Subscription Agreement for details.

In addition, employee benefits plan investors should consider regulations under ERISA. Generally, the LLC intends to limit investment by "benefit plan investors" for purposes of ERISA to under 25% of the total value of each class of the LLC equity interests. Except as set forth in the last sentence of this paragraph, no person holding Membership Units may transfer such Membership Units to any benefit plan investor prior to the time that Membership Units are registered under the applicable securities laws and otherwise qualify as "publicly-offered securities" for purposes of ERISA. Notwithstanding the foregoing, in the event that the Manager determines that the LLC qualify as an "operating company" for purposes of ERISA, the LLC may waive the restrictions on the transfer of Membership Units to benefit plan investors. See "ERISA Considerations."

#### ***Admission of Investors: Maximum Offering***

The maximum gross proceeds of this offering (including Notes) will be \$50,000,000 ("Maximum Offering Amount"), that will comprise, subject to adjustments as described elsewhere in this Memorandum, the total capitalization of the LLC. This offering may, however, be terminated at the option of the Manager at any time before the Maximum Offering Amount is received. The Manager may increase the Maximum Offering

Amount at any time provided the ratio of Notes (and any third-party secured debt, if any) to Membership Units is 1 to 1 or less.

***Subscription Agreements: Admission to the LLC***

Subscription Agreements from prospective Investors to purchase Membership Units and/or Notes will be accepted or rejected by the Manager within sixty (60) days after their receipt. The Manager reserves the right to reject any subscription tendered for any reason, or to accept it in part only. If the subscription is accepted by the Manager, the funds will be wired to the LLC and the Manager will execute such Subscription Agreements and return them to the applicable Investors.

Membership Units will be issued and Membership Unit Holders will be admitted to the LLC on the first business day of the month after the subscription is accepted. For the short month prior to such admission, if the funds are deployed by the LLC to fund a mortgage loan or to create appropriate reserves or to pay LLC expenses, the Membership Unit Holders will be paid interest on their investments, and such Membership Unit Holders will receive a IRS Form 1099 for the partial months' interest payment. The Notes will be issued when the sums representing the purchase for such Notes are transferred into the LLC.

Investors that purchased only Notes and not Membership Units will not be admitted to the LLC as Members, but will be creditors of the LLC.

If the LLC has received Subscription Agreements that exceed its deployment of loans to borrowers, it may retain the Subscription Agreements and execute them only when the funds are needed.

By executing the Subscription Agreement, an Investor agrees to purchase the value of Membership Units and/or Notes shown thereon. Accordingly, executing the Subscription Agreement does not in itself make a person an owner of the Membership Units and Notes for which he, she or it has subscribed.

After execution by the Manager, Subscription Agreements are non-cancelable and subscription funds are non-refundable for any reason, except with the consent of the Manager. After having subscribed for the minimum amount of Membership Units and Notes, a purchaser may at any time, and from time to time subscribe to purchase additional Membership Units and Notes in the LLC so long as the offering remains open. Each purchaser is liable for the payment of the full purchase price of all Membership Units and Notes for which he, she or it has subscribed. Re-verification of accredited investor status may be required.

***Election to Receive Cash Distributions or Reinvest***

Upon subscription for Membership Units, holders of Membership Units must elect to either (i) receive cash distributions from the LLC in the amount of that Member's share of cash available for distribution, (ii) allow the distributions to be reinvested by purchasing Membership Units, or (iii) split their investment into two accounts with one account receiving monthly cash distributions and the other reinvesting distributions in Membership Units. Splitting an investment will require the use of two account numbers for bookkeeping purposes. An election to reinvest all or a portion of the monthly distributions is revocable at any time, upon a written request to revoke such election. Cash distributions reinvested by Members who make such an election will be used by the LLC to make further mortgage loans or for other proper LLC purposes. The effect on reinvesting the distributions of some Members will be to increase their number of Membership Units, entitling them to a proportionate increase in their relative share of future earnings or losses of the LLC. In addition, those Members who elect to reinvest their share of distributions into additional Membership Units will increase their voting power relative to Members who receive monthly distributions of cash.

### ***Restrictions on Transfer***

As a condition to this offering of Membership Units and Notes, restrictions have been placed upon the ability of Investors to resell, transfer or otherwise dispose of any Membership Units and Notes purchased, including but not limited to, the following:

- (1) No Member may resell or otherwise transfer any Membership Units or Notes without the satisfaction of certain conditions designed to comply with applicable tax and securities laws, including (without limitation) the requirement that certain legal opinions be provided to the Manager with respect to such matters. The transferee must be an “accredited investor” as that term is defined in Rule 501 of Regulation D under the Securities Act. (See herein “Summary of LLC Operating Agreement - Restrictions on Transfer”)
- (2) The Membership Units and Notes have not been registered with the U.S. Securities and Exchange Commission under the Securities Act or other securities laws and are offered in reliance upon the exemptions from registration requirements of the Securities Act and other applicable laws, including Regulation D, Rule 506. Membership Units and Notes may not be sold or otherwise transferred without registration under the Securities Act or pursuant to an exemption therefrom.

A legend will be placed upon any instruments evidencing ownership of Membership Units and Notes in the LLC stating that the Membership Units and Notes have not been registered under the Securities Act, and set forth the foregoing limitations on resale. Notations regarding these limitations shall be made in the appropriate records of the LLC with respect to all Membership Units and Notes offered hereby. The foregoing steps will also be taken in connection with the issuance of any new instruments for any Membership Units and Notes that are presented for transfer, to the extent the Manager deems appropriate.

The Manager will charge a transfer fee of Five Hundred Dollars (\$500) per transfer of ownership to a third party. If a Member transfers Membership Units and Notes to more than one person, except transferees who will hold title together, the transfer to each person will be considered a separate transfer.

### **PLAN OF DISTRIBUTION**

Membership Units and Notes will be offered and sold by the LLC, with respect to which no commissions or fees will be paid to the Manager. No underwriters or broker-dealers have undertaken to distribute all or any portion of the Membership Units and Notes, and there is no assurance that the entire offering, or the Minimum Offering Amount, will be achieved. If the Minimum Offering Amount is not achieved, Investors' funds will be returned. If only the Minimum Offering Amount is subscribed, the offering and LLC operating expenses may constitute a greater percentage of the revenue of the LLC, and as such, a reduction of the LLC's rate of return to Investors as compared with the rate of return that might be realized on a larger portfolio of loans may occur.

The Manager may retain the services of independent third parties to locate prospective Investors, who may receive Manager paid finder fees on a case-by-case basis.

### **USE OF PROCEEDS**

In general, the proceeds from the sale of Membership Units and Notes will be used to originate and acquire mortgage loans secured by real property and to pay compensation to the Manager. See “Compensation to Manager and Affiliates.”

A summary of the LLC's loan portfolio and performance is attached as Exhibit D and will be updated from time to time. Please ask for an updated Exhibit D if the one attached to this Memorandum is older than 60 days.

## LENDING STANDARDS AND POLICIES

### *Lending Program*

The principals of the Manager have, for many years developed and successfully implemented an asset-based lending platform. The geographic focus for residential and commercial investment real estate will be in California and Texas, with consideration of other States. The Manager believes that this specific focus is critical to success in the investment real estate lending. The Manager may expand to other products and geographic areas in the future, but only after due diligence and careful consideration, including the use of local area industry professionals.

The LLC will emphasize three areas when considering new loans, which include the following:

- Loans will be made for the acquisition, rehabilitation, or refinance of residential or commercial real estate. It may finance land if it has been subdivided into buildable lots and the Manager has determined there is an active market for the subject property.
- Underwriting must meet specific risk tolerance parameters.
- When the situation is appropriate, the LLC may form a joint venture for a real estate project with a borrower in lieu of or in addition to providing financing. Typically such financing would be structured as a participating secured deed of trust or mortgage or the LLC will take title to the project for its security.

All loans are evidenced by promissory notes and secured by deeds of trust or mortgages on real estate. Loans generally are anticipated to mature between 1 and 30 years with most loans maturing in the range of 6 to 36 months.

### *Success Factors*

The Manager's executive team is equipped with the qualifications to succeed due to the following reasons:

**Approach** — The Manager's team is comprised of real estate professionals with long-term business and management experience. They are dedicated to placing the LLC first in all aspects of their decisions.

**LLC's Goals** — The LLC aims to generate steady returns for Investors without undue risk.

**Diversification** — The LLC will attempt to diversify its portfolio both as to the number of borrowers it has but also the geographical location and asset class of the properties that secure its loans. This will help mitigate downside risk or loss associated with a single-property loan. Initially, the LLC will not be diversified.

**Limited Capital Exposure and Risk Period** — The LLC will target average loan amounts of \$100,000 - \$1,500,000 with a 6 month to 30 year term, however, loans for a term of more than 5 to 10 years will usually have an adjustable rate feature, thereby mitigating exposure to fluctuating interest rates. However, most loans will have a term between 6 and 36 months. All loans and acquisitions are modeled with a downside risk analysis. After the LLC has raised \$10 million or more, no single loan will exceed 10% of the LLC's capital.

**Reporting** — The Manager intends to create and maintain strong internal controls and risk management procedures, which include the downside risk analysis referred to above and portfolio tracking.

**Successes Achieved to Date** — The Manager's management has originated over \$1 billion in mortgages for a 30 year period. The Manager has accomplished the following that it believes will help position the LLC for success:

- In business since 1984 and successfully managed the financial crisis that began in 2008.
- Strong investor retention and loyalty.
- Delivered a high yielding Trust Deed loan program to individuals, private equity, and institutional Investors.
- Created and delivered standards and procedures to support company operations and Investor communication together with third party loan services and loan reporting.
- Developed efficient investment analysis procedures and industry research capabilities.

### ***Operations Plan***

The following is a summary of the due diligence process:

**Valuation** — Each property shall require a thorough valuation, including reviewing recent sales comparables, current listings, the property's sales history and neighborhood sales velocity. In addition, all pending versus active sales are also carefully monitored to determine the impact on value and demand in each market. The LLC will also obtain either an appraisal or opinion of value from local brokers who are knowledgeable of the neighborhood and property in question. In lieu of an appraisal or broker price opinion, the Manager may do an internal valuation analysis with a property inspection by the Manager or a third party when the loan to value ratio is obviously very low.

**Title Review** —The LLC will obtain title insurance on all transactions.

**Property Condition/Site Inspection** — All properties under consideration will be inspected. The inspection is designed to determine general condition and any physical or neighborhood issues that could impact value.

### **Loan Servicing**



Loan servicing serves as an integral function in the overall lending process. Detailed reporting provides management and Investors up-to-date loan activity, performance and information.

The following servicing procedures shall achieve the goal of providing full transparency and keeping Investors informed about loan performance. The following information is readily available to Members, upon request.

- Borrower Monthly Statement; and,
- Lender Monthly Statement of all Accounts

### **Product Types**

The LLC will engage in the business of making non-prime loans to members of the general public, and acquiring existing non-prime loans, all secured in whole or in part by deeds of trust, mortgages, security agreements or legal title in real or personal property, including but not limited to:

- Single family homes for acquisition, construction, refinance and rehabilitation;
- Multiple unit residential property (such as apartment buildings) for acquisition, construction, refinance and rehabilitation;
- Commercial property (such as stores, shopping centers, shops, warehouses, offices, and manufacturing and industrial properties) for acquisition, refinance, construction and rehabilitation; and,
- Subdivided residential or commercial buildable lots.

The use of loan proceeds by the borrower will not generally be restricted, except when the finished value is necessary to be taken into consideration when underwriting the loan.

The LLC may invest in loans that are themselves secured by a loan secured by a deed of trust or mortgage. In these cases the underlying loan instruments will be assigned to the LLC as collateral for its loan pursuant to agreements that govern the collection of the LLC's loan as well as the underlying loan collateral. In addition to deeds of trust or mortgages the LLC may secure repayment of its loans by such devices as co-signers, personal guaranties, irrevocable letters of credit, assignments of deposit or stock accounts, personal property, LLC interests, and limited liability company interests.

LLC loans will be made pursuant to a strict set of guidelines designed to set standards for the quality of the security given for the loans. Such standards are summarized as follows:

1. **Priority of Mortgages.** The primary lien securing each LLC loan will be a first or junior deed of trust or mortgage.
2. **Loan-to-Value Ratios.** The LLC intends to make or purchase loans according to the loan-to-value ratios set forth below. These ratios may be increased if, in the judgment of the Manager, the loan is supported by sufficient credit worthiness of the borrower, other collateral and/or desirability and quality of the property, to justify a greater loan-to-value ratio. As used in the term "loan-to-value ratio," "value" means the fair market value of the security property as determined by the Manager in its sole discretion. In lieu of an appraisal or broker price opinion, the Manager may do an internal valuation analysis with a property inspection by the Manager or

a third party when the loan to value ratio is obviously very low. However, the Manager may elect in its sole discretion to have an independent written appraisal or Broker Price Opinion ("BPO") performed on the proposed security property. The term "loan" includes both the amount of the LLC's loan and all other outstanding debt secured by any senior deed of trust or mortgage on the security property. The amount of the LLC's loan combined with the outstanding debt secured by any senior deed of trust or mortgage on the security property will generally not exceed a specified percentage of the fair market value of the security property according to the following table:

Type of Security Property	Loan-to-Value
Residential --1 to 4 units	75%
Commercial Property (including apartments, stores, office buildings, etc.)	65%
Buildable Lots	50%
Residential Short Term (12 months or less) Fix and Flip	80%

These loan-to-value ratios will not apply to purchase-money financing offered by the LLC to sell any real estate owned by the LLC (i.e., property which is acquired through foreclosure) or to refinance an existing loan that is in default at the time of maturity. In such cases, the Manager, in its sole discretion, shall be free to accept any reasonable financing terms that it deems to be in the best interests of the LLC.

3. **Terms of Loans.** Most LLC loans will be for a period of 1 year to 30 years, with most in the range of 6 to 36 months. Loans originated whose term exceeds the life of this LLC fund will be sold, at the best prevailing rate, on the open market upon the dissolution of the LLC. Most loans will provide for monthly payments of principal and/or interest, with many LLC loans providing for payments of interest only and a "balloon" payment of principal payable in full at the end of the term. These loans require the borrower to refinance the loan or sell the property to pay the loan in full at maturity.
4. **Interest Rates.** Most LLC loans will provide for interest rates comparable to mortgage rates prevailing in the geographical area where the security property is located. Loans may include a provision for additional interest or profit dependent upon the success of the project financed by the LLC.
5. **Escrow Conditions.** LLC loans will be funded through an escrow account handled by a title insurance company, public escrow company, attorney, or the Manager or an affiliate of the Manager. The escrow agent, whomever it may be, will be instructed not to disburse any of the LLC's funds out of the escrow for purposes of funding the loan until:
  - (a) **Title Insurance.** Satisfactory title insurance coverage will be obtained for all real property loans, with the title insurance policy naming the LLC as the insured and providing title insurance in an amount not less than the principal amount of the loan. The Manager shall select the nature of each policy of title insurance, including the selection of appropriate endorsements affecting coverage. Title insurance insures only the validity and priority of the LLC's deed of trust or mortgage, and does not insure the

LLC against loss from other causes, such as diminution in the value of the security property, appraisals, loan defaults, etc.

- (b) **Fire and Casualty Insurance.** Satisfactory fire and casualty insurance will be obtained for all loans containing improvements, naming the LLC as loss payee in an amount equal to the total amount of the LLC's loan. Appropriate liability insurance will be obtained on all unimproved real property. (See herein "Risk Factors — Risks Related to Mortgage Lending — The LLC will be subject to the risk of uninsured losses.")
  - (c) **Mortgage Insurance.** The Manager does not intend to arrange for mortgage insurance, which would afford some protection against loss if the LLC foreclosed on a loan and there existed insufficient equity in the security property to repay all sums owed.
  - (d) **Payee and Beneficiary Name.** All new loan origination documents (notes, deeds of trust, etc.) and insurance policies will name the LLC as payee and beneficiary. Loans will not be written in the name of the Manager or any other nominee, except in the case of multiple lender or fractional loans. (See herein "Fractional Interests" below) In those cases where the LLC purchases all or a portion of a loan from the Manager or an affiliate or third party, the LLC will obtain an endorsement to the original title insurance policy which names the LLC as the insured or co-insured, as appropriate. In addition, the LLC will make certain that the policies of fire and casualty insurance insuring the security property provide that the holder of the loan and/or its assignee is the loss payee.
6. **Purchase of Loans from Affiliates.** Existing loans may be purchased from the Manager or its affiliates for an amount not exceeding the amount owed thereon, only so long as any such loan is a performing loan and otherwise satisfies all of the foregoing requirements. The LLC may purchase loans from unrelated parties at prices and terms advantageous to the LLC.
7. **Loans to Manager or Affiliates.** No loans will be made to the Manager or its affiliates.
8. **Fractional Interests.** The LLC may also participate in loans with other lenders (including other limited liability companies organized by the Manager), by providing funds for or purchasing a fractional undivided interest in a loan meeting the requirements set forth above. The Manager will treat the LLC equally with all other limited liability companies and other entities controlled by the Manager when making such fractional loans.
8. **Diversification.** No LLC loan will be less than \$25,000 or more than \$2,000,000 (which can be exceeded if the total capitalization of the LLC exceeds \$20 million).
9. **Leverage.** The LLC may borrow funds in the ordinary course of business. However, at no time will the Manager borrow money for the LLC when the total amount of such loans, taken together with all other LLC indebtedness, are more than double the amount of the mortgages held by the LLC. This means that if \$20 million was invested in mortgages by the LLC, the LLC could borrow up to \$20 million to fund an additional \$20 million in mortgages. The total amount of the mortgages would then be \$40 million. The LLC intends to pledge existing loans to secure financing. If the LLC is unable to pay the loans as they come due, it may lose some or all of its pledged collateral. The lien of a secured lender is higher in right than that of any Member of the LLC.

### ***Credit Evaluations***

The Manager may consider the income level and general creditworthiness of a borrower to determine his, her, or its ability to repay the LLC loan according to its terms, in addition to considering the loan-to-value ratios described above and secondary sources of security for repayment. Loans may be made to borrowers who are in default under other obligations or in bankruptcy 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 Packaging***

The Manager or its affiliate will assemble and/or obtain all necessary information required to make a funding decision on each loan request. For those loans funded by the LLC, the documents assembled and obtained for the purpose of making the funding decision will become the property of the LLC.

### ***Loan Servicing***

It is anticipated that all LLC loans will be serviced (i.e., collection of loan payments) by the Manager, an affiliate of the Manager or a third party (the "Servicer"). The Servicer will be compensated for such loan servicing activities by the Manager out of its Asset Management Fee. The LLC will retain 50% of all prepayment penalties. (See herein "Compensation to Manager and Affiliates"). The balance of any servicing income (such as 50% of any prepayment penalties, default interest, late charges, extension fees) shall be retained by the Servicer, the Manager or an affiliate for compensation for dealing with the default or extension.

Most loans will require interest payments at the end of each thirty (30) day period, computed on the principal balance during such thirty (30) day period. Borrowers will make their checks payable to Servicer or the LLC. Checks payable to the Servicer will be deposited in Servicer's loan servicing trust account, and funds will be transferred to the LLC's bank or money market account.

The LLC will require the Servicer to adhere to the following Payment, Delinquency, Default, and Foreclosure practices, procedures and policies:

1. **Payments.** Generally, payments will be payable monthly, on the first (1<sup>st</sup>) day of each month. Interest is generally prorated to the 1<sup>st</sup> day of the month following the closing of the loan escrow.
2. **Delinquency.** Generally, loans will be considered delinquent if no payment has been received within 10 to 15 days of the payment due date. Borrower will be notified of delinquency by mail shortly after the payment due date and a late charge will be assessed (provided, however, that the Manager may, in its sole and absolute discretion, waive the late charge or hold it in abeyance). The Servicer will refer to and rely upon the late charge provisions in the applicable loan documents for each loan.
3. **Default.** A loan will be considered in default if no payment has been received within thirty (30) to forty-five (45) days of the payment due date. Foreclosure will usually be initiated shortly thereafter, with the exact timing in the business judgment of the Manager, which could be delayed several months depending on borrower circumstances and loan to value ratio of the security. Any costs of this process are to be posted to the borrower's account for reimbursement to the LLC.
4. **Foreclosure.** Statutory guidelines for foreclosures in each state are to be followed by the Servicer until the underlying property is liquidated and/or the account is brought current. Any costs of this process are to be posted to the borrower's account for reimbursement to the LLC. If a loan is completely foreclosed upon and the property reverts back to the LLC, the LLC will be

responsible for paying the costs and fees associated with the foreclosure process, maintenance and repair of the property, service of senior liens, and resale expenses.

### ***Sale of Loans***

The LLC does not presently intend to make mortgage loans primarily for the purpose of reselling such loans in the ordinary course of business. However, the LLC may eventually sell mortgage loans (or fractional interests therein) when the Manager determines that it would be advantageous to the LLC to do so. Decisions by the Manager concerning the sale of loans will be based upon the business judgment of the Manager considering prevailing market interest rates, the length of time that the loan will be held by the LLC, the payment history on the loan and the investment objectives of the LLC. The Manager or an affiliate of the Manager may purchase any loan of the LLC at any time for the amount then owed to the LLC.

### ***Borrowing/Note Hypothecation***

The LLC may borrow funds for the purpose of making mortgage loans and may assign all or a portion of its loan portfolio as security for such loan(s). The Manager anticipates engaging in this type of transaction when the interest rate at which the LLC can borrow funds is significantly less than the rate that can be earned by the LLC on its mortgage loans, giving the LLC the opportunity to earn a profit as a "spread." Such a transaction involves certain elements of risk and also entails possible adverse tax consequences. (See herein Risk Factors — Business Risks — There are risks of using borrowed funds to make mortgage loans," "Income Tax Considerations for Members," "Income Tax Considerations for Note Holders" and "ERISA Considerations") At the Manager's option, the LLC may borrow, by issuing Notes, in an amount not exceeding one half of the mortgage loans pledged to the Custodian to secure the Notes.

## **COMPENSATION TO MANAGER AND AFFILIATES**

The following discussion summarizes the forms of compensation to be received by the Manager, in its capacity as Manager. All of the amounts described below will be received regardless of the success or profitability of the LLC. None of the following compensation was determined through arm's-length negotiations.

<i><b>Form and Recipient of Compensation</b></i>	<i><b>Estimated Amount or Method of Compensation</b></i>
<b>Loan Brokerage Commissions / Loan Origination Fees (Points) to Manager or Affiliate</b>  <b>Paid by Borrower to the Manager or Affiliate</b>	<p>Loan origination fees (“Loan Origination Fees”) charged to borrowers and paid to the Manager or an affiliate. Loan origination fees consist of points, loan processing fees, underwriting fees, document preparation fees, escrow fees, disbursement fees, warehousing fees, administration fees and other similar charges. Such fees average approximately 2-5% of the principal amount of each loan. Sometimes these fees are negotiated and partially passed through to the LLC in order to make the overall loan yield suitable for the portfolio when the interest rate may otherwise be too low. The Manager reserves the right to use affiliates or other outside agencies to originate and service loans.</p>
<b>Purchase and Sale of Existing Loans</b>  <b>Collected by the LLC and retained by the Manager</b>	<p>If the LLC purchases or sells an existing loan from or to a third party, the Manager will be paid by the LLC, a fee comparable to a loan origination fee (“Purchasing Fee”).</p>
<b>Real Estate Commissions to Manager or Affiliate Upon Resale of Any Property Acquired through Foreclosure</b>  <b>Paid directly to the Manager by the LLC</b>	<p>If the Manager or affiliate elects to act as the listing agent on a property owned by the LLC, its compensation shall not exceed the prevailing rate in the area where the real property is located. (“Real Estate Commissions”). As to out of state property, a local state real estate broker will be employed by the LLC and paid the prevailing commission.</p>
<b>Loan Servicing Fee</b>  <b>Collected by the LLC and retained by the Manager or Paid Directly to Manager</b>	<p>The Manager, an affiliate or a third party will act as loan servicer of the LLC for a fee paid by the Manager. The Manager may retain a subservicer. The LLC will receive 50% of all prepayment penalties. The Manager or the Servicer or their affiliates will retain any late charges, the remainder of the prepayment penalty, any default interest and any other servicing income.</p>
<b>Asset Management Fee</b>	<p>The LLC shall pay the Manager an Asset Management Fee computed at 1/12<sup>th</sup> of 1%-2% per month of all assets under its management, including, but not limited to loans, real estate, cash and other property including assets purchased with leverage. Assets under management shall be valued in the same manner as the Manager determines Net Asset Value. Initially the fee will be 1% out of which the Manager will pay any base loan servicing fee imposed by a third party servicer. The Manager shall have the right to raise the Asset Management Fee from 1% to up to 2% after the second anniversary of the initial closing of the LLC as long as the Manager provides the Members with at least 180 days prior to the increase in such fee.</p>
<b>Performance Fee</b>	<p>The Manager is entitled to one half of all Net Profits in excess of the Preferred Return paid to Members.</p>

<b>Definition of Manager's Fees</b>	The fees listed in this table are collectively referred to herein as the "Manager's Fees."
<b>Reimbursement of Organization, Syndication, Office and Administrative Expenses to Manager</b>	When the assets of the LLC reach \$10,000,000 and the Preferred Return is being paid, the Manager, at its election, may receive formation expense reimbursement fees not to exceed \$30,000, at the rate of not more than \$10,000 per year. In addition, the LLC reserves the right to reimburse PSG Capital Partners, Inc. or Philip Fusco for its Applied Business Software license.
<b>Accounting, Auditing Fee to Outside Contractors and Overhead Expense</b>	The LLC will bear the cost of the annual tax preparation of the LLC's tax returns, any state and federal income tax due, legal fees, accounting fees and any required independent audit reports, and other reports required by agencies governing the business activities of the LLC. All other overhead will be paid by the Manager.
<b>Recovery of Deferred Compensation</b>	If the Manager defers or assigns to the LLC any of the foregoing compensation, the Manager will only be entitled to recover it during the same calendar year. The Manager has no obligation to waive, defer or assign to the LLC any portion of such compensation at any time.
<b>Custodian Compensation</b>	The LLC shall pay the Custodian, an affiliate of the Manager, reasonable compensation for all services rendered by it to be billed to the LLC. Subject to limitations set forth in the Custodial Agreement, the LLC shall reimburse the Custodian upon its request for all legal and reasonable expenses and disbursements incurred or made by the Custodian in accordance with any provision of the Custodial Agreement, and shall indemnify the Custodian and its officers, directors, employees and agents for, and to hold them harmless against, any loss or claim arising out of, or in connection with, its duties as the Custodian.

### **FIDUCIARY RESPONSIBILITY OF THE MANAGER**

The Manager is accountable to the LLC as a fiduciary, which means that the Manager is required to exercise good faith and integrity with respect to LLC affairs and sound business judgment. This is a rapidly developing and changing area of the law, and Members should consult with their own 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.

The LLC Operating Agreement attached as Exhibit A provides that the LLC shall indemnify the Manager and any committees of the Manager (including, but not limited to, its Investment Committee members) for any liability or loss (including attorneys' fees, which shall be paid as incurred) suffered by it, and shall hold the Manager harmless for any loss or liability suffered by the LLC, so long as the Manager determined, in good faith, that the course of conduct which caused the loss or liability was in the best interests of the LLC, and such loss or liability did not result from the gross negligence, fraud or criminal act of the Manager. Any such indemnification shall only be recoverable out of the assets of the LLC and not from Members.

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. The California Department of Business Oversight takes the same position with respect to liabilities arising from any violation of the securities laws of this state. 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.

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 could deplete the assets of the LLC. Members who believe that a breach of the Manager's fiduciary duty has occurred should consult with their own counsel.

## **RISK FACTORS**

Although the LLC will attempt to honor requests for the withdrawal of eligible Membership Units (even though there is no obligation for the LLC to do so) (See herein "Summary of LLC Operating Agreement — Withdrawal, Redemption Policy, and Other Events of Dissociation"), any investment in the Membership Units and Notes 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 of both Membership Units and Notes, prospective Investors should carefully consider each of the following risks and should also carefully consider the matters discussed herein under the captions "Compensation to Manager and Affiliates," "Conflicts of Interest," "Income Tax Considerations for Members," "Income Tax Considerations for Note Holders" and "ERISA Considerations."

### **RISKS RELATED TO MORTGAGE LENDING**

#### ***There will be no assurance of returns to the Members of the LLC.***

All real estate lending investments, including investments in debt secured by real property, are speculative in nature and the possibility of partial or total loss of capital will exist. There is no assurance that the LLC will be successful in producing any profits or even in returning any capital to any Investor. Investors should not subscribe to or invest in the LLC unless they can readily bear the consequences of such loss.

#### ***The LLC will be subject to general risks associated with real property lending.***

The LLC's profitability depends on the ability of our non-prime borrowers to repay their loans. The ability of a borrower to repay may be affected by local, regional, and national real estate market and economic conditions beyond the control of the LLC. Delinquencies and defaults are sensitive to local and national business and economic conditions. Favorable real estate and economic conditions may not necessarily enhance a borrower's ability to repay due to circumstances specific to a borrower and are beyond the LLC's control.

There are also special risks associated with particular sectors of real estate property in which the LLC may lend:

- *Fix and Flip Properties:* Properties recently acquired in foreclosure are usually acquired and financed with little opportunity to fully inspect the property. Frequently, the properties have deferred maintenance. There may be delays in evicting occupants, claims by the foreclosed property owner that could delay resale, unknown property defects and numerous laws now on the books and been regularly issued to make it more difficult to foreclose and evict. In addition, there is no assurance the inventory of homes will be sufficient to sustain the fix and flip market as it exists today. There is also the risk that lenders may take it upon themselves to improve and directly resell their foreclosed inventory.
- *Retail Properties:* Retail properties are affected by the overall health of the economy and a borrower's ability to pay a loan on retail property may be adversely affected by, among



other things, the growth of alternative forms of retailing, bankruptcy, departure or cessation of operations of a tenant, a shift in consumer demand due to demographic changes, changes in spending patterns and lease terminations.

- *Office Properties:* Office properties and a borrower's ability to pay a loan on an office property are affected by the overall health of the economy and other factors such as a downturn in the business operated by their tenant, obsolescence and non-competitiveness.
- *Multifamily Properties:* The value and successful operation of a multifamily property may be affected by a number of factors such as the location of the property, the ability of the property manager, the presence of competing properties adverse local economic conditions, oversupply and rent control laws or other laws affecting such properties. All of these factors may adversely affect a borrower's ability to pay.
- *Industrial Properties:* Industrial properties are affected by the health of the economy and the particular industry of the borrower. A borrower's ability to pay a loan on an industrial property may be adversely affected by, among other things, competition within the industry, growth of competing industries, bankruptcy and government regulation with respect to the industry.
- *Buildable Lots:* Loans on buildable lots are subject to the risk that entitlements will lapse or that development may be impaired by environmental, heritage, governmental controls and restrictions, zoning, soil and other conditions and risks inherent in land development.

***The LLC will be subject to the risks associated with a lack of diversification.***

The LLC intends to fund loans on all property types, generally commercial/industrial/residential, with the initial focus on the States of California and Texas. As a result, the LLC's investments will not have the geographic diversification present in some other types of investment programs and such lack of diversification will increase the LLC's exposure to adverse local real estate, economic and market conditions and other risk factors, including natural disasters and acts of terrorism.

***Some LLC loans will be subject to consumer credit protections.***

The LLC may occasionally make loans on owner and non-owner occupied residential property. The LLC may make loans that are considered "high-cost," "higher-cost" or "HCM." New regulations of the Consumer Financial Protection Bureau (the "CFPB") became effective on January 14, 2014 and now regulate all aspects of HCMs and provide not only greater regulatory oversight over this type of lending but additional consumer remedies. The new regulations require the LLC to consider the ability of each consumer to repay the subject loan. If certain parameters are met, ability to repay will be presumed to exist, but that presumption can be overcome by a consumer if they can prove the loan left them with insufficient income to live on. Before making HCMs under the new rules, the Manager will seek legal guidance and develop compliance guidelines. Notwithstanding this effort, there are still risks of enforcement action by the CFPB or civil action by a consumer who contends the LLC did not adequately comply with the new rules. If this were to occur the LLC may be forced to expend money to defend itself, pay civil penalties, pay the consumer's legal fees, and make adjustments, pay damages or make restitution to the consumer.

***There May be Loan Defaults and Foreclosures.***

The LLC is in the business of lending money secured in whole or in part by real estate and therefore bears the risks of defaults by borrowers. Many LLC loans will be interest-only loans providing for monthly interest payments with a large "balloon" payment of principal due at the end of the term. Many borrowers may be unable to repay such balloon payments out of their own funds and will be compelled to refinance. Fluctuations in interest rates and the unavailability of mortgage funds could adversely affect the ability of borrowers to refinance their loans at maturity.

The LLC will rely primarily on the value of real property and any income it produces to protect its investment. It will, to a lesser extent rely upon the creditworthiness or liquidity of a particular borrower. There are a number of factors that could adversely affect the value of such real property security, including, among other things, the following:

- (1) Except for loans which are qualified for the Manager's written opinion of value or internal analysis, the Manager will determine the fair market value of the real property by obtaining an appraisal or BPO. If the LLC obtains an appraisal or BPO, no assurance can be given that such appraisals or BPOs will, in any or all cases, be accurate. Moreover, since an appraisal or BPO is based upon the value of real property at a given point in time, subsequent events could adversely affect the value of real property used to secure a loan. Such subsequent events may include general or local economic conditions, neighborhood values, interest rates, new construction and other factors.
- (2) If the borrower defaults, the LLC may have no feasible alternative to repossessing the property at a foreclosure sale. If the LLC cannot quickly sell such property, and the property does not produce any significant income, the cost of owning and maintaining the property will directly affect the LLC's profitability.
- (3) Subsequent changes in applicable laws and regulations may have the effect of severely limiting the permitted uses of the property, thereby drastically reducing its value.
- (4) Due to certain provisions of California law applicable to real property secured loans, generally if the real property security proves insufficient to repay amounts owing to the LLC, it is unlikely that the LLC would have any right to recover any deficiency from the borrower. (See herein "Certain Legal Aspects of LLC Loans")
- (5) Some of the LLC's loans will be secured by junior deeds of trust or mortgages, which are subject to greater risk than first deeds of trust or mortgages. In the event of foreclosure, the debt secured by the senior deed of trust or mortgage must be satisfied before any proceeds from the sale of the property can be applied toward the debt owed to the LLC that are in junior positions. Furthermore, to protect its junior security interest, the LLC may be required to make substantial cash outlays for such items as loan payments to the senior lienholder to prevent their foreclosure, property taxes, insurance and repairs. The LLC may not have adequate cash reserves on hand at all times to protect its security for a particular loan, in which event the LLC could suffer a loss of its investment in that loan. (See herein "Certain Legal Aspects of LLC Loans")
- (6) The recovery of sums advanced by the LLC in making 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 simply 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 LLC's profitability.

Since the LLC will be relying on its property security to protect its investment to a greater extent than the creditworthiness of its borrowers, the LLC is likely to experience a borrower default rate higher than would be experienced if its loan portfolio was more heavily focused on borrower creditworthiness. Because of the LLC's underwriting criteria, the LLC may make loans to non-prime borrowers who would not qualify for secured loans from institutional lenders (i.e., banks and savings and loan associations).

***The LLC will be subject to risks associated with volatile interest rates.***

The LLC intends to include an adjustable rate feature in loans over 5 to 10 years in duration. The level and volatility of short-term and long-term interest rates significantly affect the lending industry. For example, a decline in interest rates may require the LLC to offer loans at lower interest rates or may hinder the LLC's ability to close loans at the targeted interest rates. A rise in interest rates could affect the LLC's cost of drawing on a line of credit to bridge finance amounts that the LLC has called or expects to call as capital contributions with no guarantee that an offsetting increase in interest rates charged on such loans. Increased interest rates may also harm a borrower's ability to refinance a loan at maturity or to make monthly payments when the interest rate adjusts. A rise in interest rates may also cause the LLC to achieve lower returns or carry more risk than alternative investments. Accordingly, volatility in interest rates could harm the LLC's ability to achieve its profitability objectives or cause the LLC to achieve less favorable results than other investments. Moreover, interest rates are influenced by a number of factors that are beyond the LLC's control and are difficult to predict.

***The LLC faces substantial competition, and if it fails to compete effectively, its operating results will suffer.***

The business of real estate lending and investing in real estate within the LLC market area is highly competitive, and the LLC may be competing with a number of other lenders, investors and developers. There are a number of funds and many experienced individuals in this area who specialize in equity-based financing. Many of these other investors have greater financial resources than the LLC and more experience in making the types of loans and investments that the LLC intends to make. The LLC may not be able to compete successfully against existing or new competitors. If the LLC does not respond adequately to competitive challenges, its business and results of operations would be harmed.

***The LLC will be subject to the risk of uninsured losses.***

Although the LLC intends to require borrowers to maintain customary insurance coverage for the properties serving as collateral, such as comprehensive insurance, including title, liability, fire and extended coverage, there are certain types of losses (generally of a catastrophic nature, such as wars, terrorism, earthquakes and floods) that are either uninsurable or not economically insurable. Should any such uninsured risk occur or cause the destruction or damage of any property, or should a hazard insured against occur where the loss is in excess of insurance limits or should the insurance company be unable to pay the claim, both invested capital and potential profits could be lost. Without limiting the foregoing, the existence of an uninsured loss on a property could adversely affect a borrower's ability to repay a loan, especially if the borrower was relying on income generated with respect to such property that suffered the loss to repay principal and interest on such loan. In addition, the existence of an uninsured loss on a property could adversely affect the value of such property, thereby reducing the LLC's recovery in the case of a default on such loan.

***The LLC may be subject to the risks associated with disposing of real property.***

If a borrower defaults on a loan held by the LLC, the LLC may seek to foreclose upon the real property serving as collateral for such loan. In such event, the LLC generally will seek to sell or otherwise dispose of such property.

The marketability and profitability of any property may be adversely affected by local, regional, and national economic conditions beyond the control of the Manager. Favorable changes may not necessarily enhance the marketability or profitability of a property. Even under the most favorable marketing conditions, there is no guarantee that a property can be sold by the LLC, or if sold, that such sale will be made upon a price and terms favorable to the LLC, including at a price sufficient to cover all of a borrower's obligations to the LLC under the defaulted loan.

No assurance can be given that there will be a ready market for the sale of any real property acquired by the LLC pursuant to a foreclosure. The sales prices of such properties will depend on a variety of factors, including the value of a particular property in relation to similar properties in the market area, the property's history and condition, the availability of tax benefits associated with such properties, the then projected economic and demographic trends for the immediate area in which the such properties are located, the availability of purchasers and the availability and terms of credit and financing for a purchaser of a particular property. The LLC may provide financing in connection with the sale of any property and therefore receive as partial payment a purchase money obligation of the purchaser, thereby decreasing the cash immediately available for distribution to the Members and subjecting the Members to the risk of default on the purchaser's debt obligation and certain potential adverse tax consequences.

Due to certain provisions of state laws applicable to certain types of real estate loans, including anti-deficiency provisions under California law, the LLC may have no ability to recover any deficiency should the property prove insufficient to repay a loan. The LLC's ability to foreclose and dispose of a property may be delayed or impaired by the operation of the federal bankruptcy laws, which may delay disposition of a property for a period ranging from several months to several years. The length of such a delay and the costs associated therewith may have an adverse impact on the LLC's profitability.

When the LLC acquires any property by foreclosure or otherwise, the LLC is exposed to the risks of liability incidental to property ownership. Owners of property may be subject to taxation with respect to the property, liability for injury to persons and property occurring on the property or in connection with the activity conducted thereon, liability related to environmental contamination, and liability for non-compliance with governmental regulations.

***The LLC may be subject to the risks associated with environmental contamination.***

Under current federal and state law, the owner of property contaminated with toxic or hazardous substances (including a lender that has acquired title through foreclosure) may be liable for all costs associated with any remedial action necessary to bring the property into compliance with applicable environmental laws and regulations.

The LLC is not expected to participate in the on-site management of any facility on the property in order to minimize the potential for liability for cleanup of any environmental contamination under applicable federal, state or local laws. There can be no assurance that the LLC would not incur full recourse liability for the entire cost of any such removal and cleanup, or that the cost of such removal and cleanup would not exceed the value of the property. In addition, the LLC could incur liability to tenants and other users of the affected property, or users of neighboring property, including liability for consequential damages. The LLC would also be exposed to risk of lost revenues during any cleanup and the risk of lower lease rates or decreased occupancy if the existence of such substances or sources on the property become known. If the LLC fails to remove the substances or sources and clean up the property, it is possible that that federal, state or local environmental agencies could perform such removal and cleanup, and impose and subsequently foreclose liens on the property for the cost thereof. The LLC may find it difficult or impossible to sell the property prior to or following any such cleanup. The LLC could also be liable to the purchaser of such property if the LLC knew or had reason to know that such substances or sources existed. In such a case, the LLC could also be subject to the costs described above. The owner may also incur liability to users of the property or users of neighboring property for bodily injury arising from exposure to such substances. If the LLC is required to incur such costs or satisfy such liabilities, this could have a material adverse effect on the LLC's profitability. Additionally, if a borrower is required to incur such costs or satisfy such liabilities, this could result in the borrower's inability or unwillingness to repay its loan from the LLC.

Even if a mortgage lender does not foreclose on a contaminated site, the mere existence of hazardous substances on a property may depress the market value of the property such that the loan is no longer adequately secured.

A lender's best protection against environmental risks is to thoroughly inspect and investigate the property before making or investing in a loan. However, environmental inspections and investigations are very expensive, and often are not financially feasible in connection with loans of the size and type to be made by the LLC. As a result, toxic contamination reports or other environmental site assessments will generally not be obtained by the LLC in connection with its loans, unless the Manager believes that such reports are necessary to evaluate known or suspected environmental risks. The Manager intends to take certain precautions to avoid environmental problems, such as requiring environmental reports to be obtained or not making or investing in loans secured by properties known or suspected to have environmental problems. However, there is no guarantee that the Manager will be successful in identifying the need to obtain environmental reports. There is also no guarantee that the Manager will be successful in identifying the existence or extent of any such environmental problems, even in cases when certain environmental reports are obtained.

***The LLC is subject to the risks relating to compliance with applicable law.***

Although the Manager will seek for it and the LLC to comply with all federal, state and local lending regulations, there is no assurance that the Manager or the LLC will always be compliant or that there will not be allegations of non-compliance even if the Manager and the LLC were fully compliant. Any violation of applicable law could result in, among other things, damages, fines, penalties, litigation costs, investigation costs and even restrictions on the ability of the LLC's ability to conduct business.

***The LLC is subject to the risks of litigation.***

The Manager will act in good faith and use reasonable judgment in seeking borrowers and making and managing the loans for the LLC. However, as a lender, the LLC is exposed to the risk of litigation by a borrower for any allegations by the borrower (warranted or otherwise) regarding the terms of the loans or the actions or representations of the Manager or the LLC in making, managing or foreclosing on the loans. It is impossible for the Manager to foresee what allegations may be brought by a specific borrower, and the Manager will seek to avoid litigation, if, in the Manager's judgment, the circumstances warrant an alternative resolution. If an allegation is brought or litigation is commenced against the LLC, the LLC will incur legal fees and costs to respond to the allegations and to defend any resulting litigation. If the LLC is required to incur such fees and costs, this could have an adverse effect on the LLC's profitability.

***The LLC may be affected by changes in legal, regulatory and legislative environments in which it operates.***

The LLC is subject to lending regulations at the federal, state and local levels, and proposals for further regulation of the lending services industry are continually being introduced. The LLC is also subject to many other federal, state and local laws and regulations that affect the LLC's business, including those regarding taxation. Congress and state legislatures, as well as federal and state regulatory agencies and local governments, review such laws, regulations and policies and periodically propose changes or issue guidance that could affect the LLC in substantial and unpredictable ways. Such changes could, for example, limit the types and value of lending services and products the LLC can offer, alter its liability, increase its cost to offer such services and products or hinder its ability to fund loans quickly enough to serve its intended client base. It is possible that one or more legislative proposals may be adopted or regulatory changes may be implemented that would have an adverse effect on the LLC's business.

***The LLC is subject to the risks related to the accuracy and completeness of information about customers, properties and counterparties.***

In deciding whether to extend credit or enter into other transactions with customers and counterparties, the LLC may rely on information furnished to it by or on behalf of customers and counterparties, including financial statements and other financial information. The LLC also may rely on representations of customers and counterparties as to the accuracy and completeness of that information and, with respect to financial

statements, on reports of independent auditors. While the LLC intends to conduct due diligence regarding the value of properties and the information provided by customers and counterparties, it may rely on or be unable to identify inaccurate or fraudulent information. The LLC's financial condition and results of operations could be negatively impacted to the extent it relies on or fails to identify customer, property or counterparty information that is not complete or accurate.

## **BUSINESS RISKS**

### ***The LLC's financial objectives may not be achieved.***

The projections contained in any reports previously, contemporaneously or subsequently sent to prospective Investors are based on numerous assumptions that are subject to uncertainty and over which the LLC will have no control. There is no assurance that assumed or projected returns will be achieved or maintained or that the assumed level of expenses will not be exceeded. Reduced revenue, increased expenses or a combination of both will decrease the operating profit on which the forecasted amounts of cash distributions are based.

In addition, facts, forecasts and other statistics in this Memorandum have been derived from various sources generally believed to be reliable. However, the LLC cannot guarantee the quality or reliability of such source materials. They have not been prepared or independently verified by the LLC and, therefore, the LLC makes no representations as to the accuracy of such facts, forecasts and statistics. Due to possibly flawed or ineffective collection methods or discrepancies between published information and market practice and other problems, any statistics in this Memorandum may be inaccurate and should not be unduly relied upon.

### ***Lack of Liquidity***

There is no public market for the Membership Units and Notes being sold by the LLC in this Memorandum. In addition, even if a Member or Note Holder locates a potential buyer, the Membership Units and Notes are non-negotiable and any sale or transfer thereof is subject to the prior written consent of the LLC, which may be granted or withheld in its sole and absolute discretion. The transferability of Membership Units and Notes is also restricted by certain provisions of federal and state securities laws. (See "Summary of LLC Operating Agreement — Restrictions on Transfer") Therefore, only Investors who have no immediate need for liquidity in their investments should consider purchasing the Notes.

### ***The Membership Units and the Notes are not easily transferrable.***

The Membership Units and Notes being sold in the offering are restricted securities under the Securities Act, for which no public or private market presently exists. Transfers of the Membership Units and Notes are subject to restrictions of federal and state securities laws and to the restrictions set forth in the Operating Agreement. Even if a Member or Note Holder locates a potential buyer, the Membership Units and Notes are non-negotiable and any sale or transfer thereof is subject to the prior written consent of the LLC, which may be granted or withheld in its sole and absolute discretion. As a result of such restrictions on transfer, it may be difficult or impossible to transfer the Membership Units and Notes to any transferees. Accordingly, an investment in the Membership Units and Notes should be made only if you can assume the risks of an illiquid investment.

### ***The LLC has no prior operating history.***

The LLC is a newly formed limited liability company with no prior operating history before January 1, 2014 from which to predict the prospects for its business; its success will in a large part depend on its ability to identify and make profitable investments. Identifying and making profitable lending investments is difficult

and involves a high degree of risk, competition and uncertainty, and the availability of such investments is subject to general market conditions.

The LLC's business must be considered in light of the risks, expenses and problems frequently encountered by entities with no operating history. There is no assurance that the LLC will be able to attain profitability. The LLC's profitability is dependent upon many factors beyond its control. The LLC has limited resources and has had no revenues to date.

***The LLC has not acquired any investments at inception and therefore faces the risks associated with unspecified investments.***

As of the date of this Memorandum the LLC had not entered into any binding agreements to fund any loans and does not intend to do so until after it commences operations. No assurance can be given as to when the LLC will fund any loans. Members will not have an opportunity to evaluate the specific merits or risks of any prospective investment. As a result, Members will be dependent on the judgment of the Manager in connection with the investment and management of the proceeds of this offering, including the selection of the properties to be funded. The LLC's reliance on the Manager is substantially increased in a "blind" investment offering such as this (i.e., specific deals have not been targeted), because the LLC will be completely reliant upon the Manager to locate, evaluate and negotiate for the funding of loans. There can be no assurance that determinations ultimately made by the Manager will permit the LLC to achieve its business objectives. The number of investments that the LLC makes and diversification of its investments may be dependent on the amount of proceeds raised herein and will be reduced if less than the maximum amount of the offering is raised. The LLC's success will depend on its ability to identify suitable investments, to negotiate and arrange the closing of appropriate transactions, to successfully service loans, and, if necessary dispose of foreclosed properties. There can be no guarantee that a sufficient number of investments will be available and that the LLC will therefore be able to invest all funds committed by the Members.

***The LLC will be subject to the risks of relying on the Manager and certain key personnel.***

The LLC's ability to achieve its business objectives successfully will be largely dependent upon the efforts of the LLC's management team. The Manager will make all decisions with respect to the management of the LLC as well as the selection of the real estate lending investments. Members will not have the opportunity to evaluate the investments that the LLC will fund and must rely on the ability of the Manager and its management team with respect to such investments. Accordingly, no person should purchase Membership Units and Notes in the LLC unless he or she is willing to entrust all aspects of the management of the LLC to the Manager. Although the principals of the Manager have been active in various aspects of the real estate industry for many years, there can be no assurance that the Manager will be able to operate the LLC profitably or achieve the objectives of the LLC. The LLC has not entered into any employment agreements or other understandings with the members of the management team or obtained any "key man" life insurance on their lives. The loss of the services of any principal could have a material adverse effect on the LLC's ability to achieve successfully its business objectives. In addition, the Manager and its principals will only devote such time as they determine, in their sole and absolute discretion, is reasonably necessary to carry out the business and affairs of the LLC.

***There are risks associated with indemnification of the Manager and its principals.***

The Manager and its principals and members of the Manager's Investment Committee ("Covered Persons") will be indemnified by the LLC from any and all claims of the third parties directly arising out of its management of the LLC, except for claims arising out of the fraud, gross negligence, bad faith or willful misconduct of a Covered Persons. The Covered Persons will have no liability to the LLC for a mistake or error in judgment or for any act or mission believed to be within its scope of authority unless such mistake, error of judgment or act or omission was made, performed or omitted by the Covered Persons fraudulently or in bad faith or constituted gross negligence. As a result, the right of any Member to bring an action against the Covered Persons may be severely limited.

***The LLC is subject to operational risks.***

Although the LLC intends to employ reasonable diligence in conducting its business and supervising its employees and agents, no amount of diligence can eliminate many types of operational risk, including the risk of fraud by employees, agents or outsiders, misinterpretation or misapplication of rules, regulations or other requirements, unauthorized transactions by employees or agents or operational errors, including clerical or record-keeping errors or those resulting from faulty or disabled computer or telecommunication systems. Certain errors may be repeated or compounded before they are discovered and successfully corrected. The LLC is exposed to the risk that external parties on whom the LLC relies will be unable to fulfill their contractual obligation to the LLC (or will be subject to the same risk of fraud or operational errors by their respective employees and agents as the LLC is).

***Distributions will be subject to prior payment of expenses and reserves.***

Distributions will only be paid to the extent that the LLC has sufficient cash flow to make such payments. The Manager anticipates that there will be significant cash flow available during the investment term, but there is no guarantee that the LLC will be able to generate such cash flows. In addition, there will not be any cash flow available for distribution until the LLC has made all payments required under any debt obligation and all other payments required to be made for LLC expenses and other payables, and the Manager has established a reserve for liabilities. Even if distributions are made, they may not be sufficient to satisfy a Member's tax obligations with respect to the LLC.

***The LLC may be adversely affected if it does not perfect an exemption from registration under federal and state securities laws.***

The LLC intends to offer Membership Units and Notes without registration under any securities laws in reliance on an exemption for "transactions by an issuer not involving any public offering." While the Manager believes reliance on such exemption is justified, there can be no assurance that factors such as the manner in which offers and sales are made, concurrent offerings by other companies, the scope of disclosure provided, failures to make notices, filings or changes in applicable laws, regulations or interpretations will not cause the LLC to fail to qualify for such exemptions under U.S. federal or one or more states' securities laws. Failure to so qualify could result in the rescission of sales of Membership Units and Notes at prices higher than the current value of those Membership Units and Notes, potentially materially and adversely affecting the LLC's performance and business. Further, even non-meritorious claims that offers and sales of Membership Units and Notes were not made in compliance with applicable securities laws could materially and adversely affect the Manager's ability to conduct the LLC's business.

***The Manager is not registered as an investment adviser and the LLC is not registered as an investment company.***

The Manager believes the nature of the LLC will not subject it to, and the Manager intends for the LLC to rely on Section 3(c)(5) of the Investment Company Act of 1940, as amended (the "Investment Company Act") for its exemptions from the registration requirements of the Investment Company Act. Other exemptions may be available. There is no assurance that the Manager's belief in this regard is or will continue to be correct or that such exemptions will remain available. The Manager is not registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), and accordingly is not subject to any of the recordkeeping or business practice provisions of the Advisers Act, although the Advisers Act antifraud provisions are applicable. The performance of the LLC's investment portfolio could be materially adversely affected if the LLC or the Manager were to become subject to the Investment Company Act or the Advisers Act because of the various burdens of compliance therewith. Neither the LLC nor its counsel can assure Investors that, under certain conditions, changing circumstances or changes in the law, the LLC may not become subject to such regulation.

***Neither the LLC nor the Manager has retained separate legal representation for the Members.***



Attorneys represent the Manager only in connection with the organization and operation of the Manager and the LLC. Those attorneys do not represent the LLC or its Members, either individually or collectively, nor is it anticipated that the LLC will engage separate counsel to represent the LLC or any of the Members with respect to these matters. The Manager's attorneys do not expect to furnish any Member with any legal opinion and have not opined upon the adequacy of this Memorandum or the fairness of the disclosure herein. Prospective Investors must consult with their own counsel with regard to all of these matters.

***There are tax risks associated with the LLC.***

Prospective Investors in the LLC are subject to complex and potentially adverse tax consequences as a result of investing in the LLC. In addition, Investors may be allocated a portion of taxable income of the LLC without regard to actual cash distributions. Accordingly, such Investors' tax liability could exceed the cash distributions to them in any tax year. Furthermore, tax laws and regulations applicable to an investment in the LLC and to the management of the LLC are subject to change, and any such change may have a material adverse effect on the Investors and the LLC. Prospective Investors should consult their own tax advisers with reference to their specific tax situations, including any applicable federal, state, local, and foreign taxes. There are a number of additional tax risks associated with an investment in the LLC.

***There are risks of using borrowed funds to make mortgage loans.***

The LLC may use borrowed funds to fund mortgage loans in order to produce a higher return. Interest rate fluctuations may have a particularly adverse effect on the LLC if it is using borrowed money to fund mortgage loans. Such borrowed money may bear interest at a variable rate, whereas the LLC may be making fixed rate loans. Therefore, if prevailing interest rates rise, the LLC's cost of money could exceed the income earned from that money, thus reducing the LLC's profitability or causing losses. The Manager does not intend to use borrowed funds to make loans in excess of 50% of its loan portfolio including loans funded with leverage. If the LLC is unable to repay the loan the lender could foreclose on the collateral the LLC has pledged to it, resulting in the loss of some or all of the assets that were pledged.

***Investors are subject to risks associated with fluctuations in interest rates.***

Recent years have demonstrated that mortgage interest rates are subject to abrupt and substantial fluctuations. The LLC intends to make 1 to 30 year loans. The purchase of Membership Units and Notes is an illiquid investment. If prevailing interest rates rise above the average interest rate being earned by the LLC's loan portfolio, Investors may be unable to liquidate their investment in order to take advantage of higher returns available from other investments. If prevailing interest rates fall significantly below the average interest rate being earned by the LLC's loan portfolio, borrowers may elect to refinance their loans and prepay their loan from the LLC, reducing the overall yield of the LLC's loan portfolio.

***There is the possibility of repeal of usury exemption.***

Under current California law, loans arranged by or through a real estate broker are exempt from the otherwise applicable usury limitation of ten percent (10%) simple interest. The LLC intends to have a real estate broker arrange every loan the LLC makes. Should the usury exemption be repealed, the LLC may no longer be able to originate loans in excess of the usury limit unless it obtains a California Finance Lender's license, potentially reducing its return on investment or forcing it to limit its lending activities.

***The Manager is not required to devote full time to the business of the LLC.***

The Manager is not required to devote its full time to the LLC's affairs, but only such time as the affairs of the LLC may reasonably require. Competition for the Manager's time could impact the success of the LLC because unless sufficient time is devoted to marketing for borrowers, underwriting loan request, closing new loans and collecting existing ones, the success of the LLC could suffer.

***The LLC will compete with clients and affiliates of the Manager.***

An affiliate of the Manager, PSG Capital Partners, Inc. ("PSG") is engaged in business as a mortgage broker and lender to the public, serving a substantial number of investor clients other than the LLC. PSG has agreed to provide the LLC with the right of first refusal on all loan applications it receives that meet the LLC's lending criteria. Nevertheless, PSG must still determine whether a particular loan request meets the LLC's lending criteria. This may compel PSG to make decisions that may at times favor persons other than the LLC. The Operating Agreement exonerates the Manager and its affiliates from liability for investment opportunities given to other persons that fall outside of the terms of the right of first refusal granted to the LLC.

***There may be a delay between the time Membership Units or Notes are sold and the time Investors begin to receive their investment returns***

There may be a delay between the time Membership Units and Notes are sold and the time purchasers of Membership Units and Notes are admitted to the LLC and begin to participate in the investment yield being realized by the LLC on its loan portfolio. Once the Minimum Offering Amount is achieved, funds will be transferred to the LLC as required to fund mortgage loans, create appropriate reserves, or pay LLC expenses. (See herein "Use of Proceeds")

***Investors may be subject to risks associated with Tax, ERISA and other similar risks.***

Investment in the LLC involves certain tax risks of general application to all Investors, and certain other risks herein specifically applicable to retirement plans, Individual Retirement Accounts, other tax-exempt Investors and certain other Investors. (See "Income Tax Considerations for Members," "Income Tax Considerations for Note Holders" and "ERISA Considerations").

**ADDITIONAL RISKS RELATED TO THE NOTES**

In addition to the risks discussed above, investment in the Notes poses these additional risks:

***Defaults on the loans funded and/or purchased by the LLC may adversely impact your Notes.***

The LLC's ability to meet its obligations under the Notes is largely dependent upon the borrowers' full and timely performance of their obligations under the mortgage loans. The mortgage loans owned by the LLC are not guaranteed or insured by any governmental agency, any private insurer, the LLC, or any other person. If a mortgage loan is defaulted upon by the underlying borrower and ultimately results in foreclosure, and if the foreclosure results in the failure of the LLC to recover the unpaid principal balances of the mortgage loan, the ability of the Note Holders to recover their investment in the Notes may be significantly reduced. If the LLC defaults under the Notes, the liability of the LLC to the Note Holders will be limited pursuant to the liquidation process.

***Significant expenses can result from collection efforts against the LLC.***

If the LLC defaults under one or more of the Notes and Note Holders bring legal action, significant expense, delay and uncertainty could result. The LLC's resources would be spent trying to defend the legal actions and it may be forced to seek relief under the Bankruptcy Laws to avoid seizure of its assets by the Note Holders. A bankruptcy filing involves considerable expense, delay and uncertainty. The right of the Note Holders to payment may be inferior to third-party creditors. If the assets of the LLC after payment of its expenses and third party debts were less than the amount owed on the Notes, the Note Holders may suffer a loss. In addition their right to payment could be impaired by a reorganization plan under Chapter 11 of the Bankruptcy Law. This means that the interest rate on the Notes could be reduced or eliminated, the amount of the principal balance reduced and the time for payment extended. Note Holders could incur significant legal expense protecting their interests.

***There are risks of how the Notes would be treated if the LLC were subject to a bankruptcy proceeding.***

If the LLC defaults under one or more of the Note and Note Holders bring legal action, the LLC may be forced to seek relief under the Bankruptcy Laws to avoid seizure and liquidation of its pledged assets by the Note Holders. A bankruptcy filing involves considerable expense, delay and uncertainty. Third-party creditors may claim that the right of the Note Holders to payment is inferior to third-party creditors. There could be challenges to the perfection of the Note Holder's security interest in the mortgage loans held by the Custodian. In addition their right to payment could be impaired by a reorganization plan under Chapter 11 of the Bankruptcy Law. This means that the interest rate on the Notes could be reduced or eliminated, the amount of the principal balance reduced and the time for payment extended. Note Holders could incur significant legal expense protecting their interests.

## **CONFLICTS OF INTEREST**

The following is a list of some of the important areas in which the interests of the Manager will conflict with those of the LLC. The Members must rely on the general fiduciary standards which apply to a Manager of a LLC to prevent unfairness by the Manager and/or its affiliates in a transaction with the LLC. (See herein "Fiduciary Responsibility of the Manager").

***Loan origination fees - (PAID BY BORROWER)***

None of the compensation set forth under "Compensation to the Manager and Affiliates" was determined through arm's-length negotiations. The various loan origination fees charged to the borrowers by the Manager, its affiliate or a third party broker will generally average approximately two percent (2%) to five percent (5%) of the principal amount of each loan, but may range as high as fifteen percent (15%). Any increase in such charges may have a direct, adverse effect upon the interest rates that borrowers will be willing to pay the LLC, thus reducing the overall rate of return to Members. Conversely, if the Manager or its affiliate reduces the loan fees charged, a higher rate of return might be obtained for the LLC and the Members. This conflict of interest will exist in connection with every LLC loan transaction.

***Custodian compensation***

The Custodian is an affiliate of the Manager. The Custodian will receive reasonable compensation for all services rendered by it from the LLC. The Custodian is also entitled to reimbursement from the LLC for all legal and reasonable expenses and disbursements incurred or made by the Custodian in accordance with the Custodial Agreement, except any such expense or disbursement as may be attributable to its negligence, willful misconduct and bad faith. In addition, subject to limitations set forth in the Custodial Agreement, the LLC will indemnify the Custodian and its officers, directors, employees and agents for, and to hold them harmless against, any loss, claim, cause, action, proceeding, liability, judgment, settlement or expense incurred without gross negligence, willful misconduct or bad faith on their part, arising out of, or in connection with, its duties as the Custodian, including the costs and expenses of defending themselves against any claim in connection with the exercise or performance of any of its powers or duties as the Custodian.

***Other businesses***

The Manager or its affiliates may also provide loan brokerage services to place loans other than those that will be offered to the LLC. There accordingly exists a conflict of interest on the part of the Manager between its affiliate and the LLC, based on the availability for placement by the affiliate of non-LLC mortgage funds. The Manager may decide, or may influence the selection of which loans are appropriate for funding by the LLC, or by such other sources, after consideration of factors deemed relevant by the Manager, including the

size of the loan, portfolio diversification and amount of non-performing loans, which may not always be for the benefit of the LLC.

The Manager and its affiliates may engage, for their own account, or for the account of others, in other business ventures similar to that of the LLC or otherwise, and neither the LLC nor any Member shall be entitled to any interest therein.

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

***Purchase, sale and/or hypothecation of loans to the LLC***

The Manager and its affiliates may sell, buy, or hypothecate loans (use loans as collateral for another loan) to the LLC, provided such loans meet the underwriting criteria set forth above. There will be no independent review of the value of such loans, or of compliance with this Memorandum.

***Conflict with related programs***

The Manager and its affiliates may cause the LLC 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 LLC and those of such other entities may conflict, and the Manager controlling or influencing all such entities may not be able to resolve such conflicts in a manner that serves the best interests of the LLC.

***Sale of real estate to affiliates***

In the event the LLC becomes the owner of any real property by reason of foreclosure on an LLC loan, the Manager's first priority will be to arrange the sale of the property for a price that will permit the LLC 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 LLC formed by the Manager for the express purpose of acquiring foreclosure properties from lenders such as the LLC.) 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 LLC 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 Manager has undertaken to resolve these conflicts by adopting certain policies for the disposition of real property. While the Manager is not obligated to adhere to such policies in all instances, it plans to do so. Those policies are as follows:

- (1) No foreclosed property will be sold to an affiliate unless the Manager has used reasonable efforts to sell the property at a fair price on the open market for at least sixty (60) days.
- (2) In the event the property is sold to an affiliate, the net purchase price must be as favorable, or more favorable to the LLC than any bona fide third-party offer received.
- (3) The purchase price will also be:

- (a) no lower than ninety-five percent (95%) of the independently appraised fair market value of such property at the time of sale, and
- (b) neither the Manager nor any of its affiliates will be entitled to a real estate commission in connection with such a sale, unless the purchase price is at least one hundred percent (100%) of the independently appraised value of such property at the time of sale.

It is the Manager's opinion that these undertakings will yield a price which is fair and reasonable for all parties, but no assurance can be given that the LLC could not obtain a better price from an independent third party.

### **CERTAIN LEGAL ASPECTS OF LLC LOANS**

Each of the LLC's loans will be secured by a deed of trust, mortgage, security agreement, or legal title. The deed of trust and mortgage are the most commonly used real property security devices. A deed of trust formally has three parties; a debtor, referred to as the "trustor"; a third party referred to as the "trustee"; and the lender/creditor, 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 LLC will be the beneficiary under all deeds of trust securing LLC loans. In a mortgage loan, there are only two parties, the mortgagor (borrower) and the mortgagee (lender). State law determines how a mortgage is foreclosed. The process usually requires a judicial process.

The Manager may cause the LLC to purchase existing loans from the Manager and/or its affiliates, provided such loans meet the underwriting standards applicable to other loans purchased by the LLC, no foreclosure has been initiated with respect to such loan, and the price paid by the LLC does not exceed the principal balance then owing upon such loan.

#### ***Foreclosure***

Foreclosure laws vary from state to state. The manner in which the LLC will enforce its rights under a mortgage or deed of trust will depend on the laws of the state in which the property is situated. Depending on local laws, a lender may be able to enforce its mortgage or deed of trust by judicial foreclosure or by non-judicial foreclosure through the exercise of a power of sale. Local laws will also dictate, among other things, the amount of time and costs associated with a judicial or non-judicial foreclosure sale, whether or not a lender would be entitled to recover a deficiency judgment (i.e., the resulting shortfall if the proceeds from the sale of the property are not sufficient to pay the debt) from the borrower, either concurrently with or following a judicial or non-judicial sale, whether there are limits as to the amount of this deficiency judgment, and whether the borrower would have a right to redeem the property following a judicial or non-judicial sale. The Manager intends to engage attorneys and other real estate professionals familiar with the laws of each state where the LLC's mortgage or deed of trust is located prior to enforcing such mortgage or deed of trust.

Since many of the LLC's loans are anticipated to be secured by property located in California, the following is a review of California law. In California, a statute known as the "one form of action" rule requires the beneficiary of a deed of trust to exhaust the security under the deed of trust (i.e., foreclose on the property) before any personal action may be brought against the borrower. There are two methods of foreclosing a deed of trust.

1. Foreclosure of a deed of trust is accomplished in most cases by a non-judicial trustee's sale under the power of sale provision in the deed of trust. Prior to such sale, the trustee must record a notice of default and send a copy to the trustor and to any person who has recorded a request for a copy of a notice of default, and to the successor in interest to the trustor and to the beneficiary of any junior deed of trust or mortgage. The trustor or any person having a junior lien or encumbrance of record may, during a three month reinstatement period, cure the default by paying the entire amount of the debt then due, exclusive of principal due only because of acceleration upon default, plus costs and expenses actually incurred in enforcing the obligation and statutorily limited attorneys' and trustee's fees. Thereafter, and at least twenty-one (21) days before the trustee's sale, a notice of sale must be posted in a public place and published once a week over such period. A copy of the notice of sale must be posted on the property, and sent to the trustee, to each person who has requested a copy, to any successor in interest to the trustor and to the beneficiary of any junior deed of trust or mortgage, at least twenty-one (21) days before the sale. Following the sale, neither the debtor/trustor nor a junior lien has any right of redemption, and the beneficiary may not obtain a deficiency judgment against the trustor.
2. A judicial foreclosure (in which the beneficiary's purpose is usually to obtain a deficiency judgment where otherwise unavailable) is subject to most of the delays and expenses of other lawsuits, sometimes requiring up to several years to complete. Following a judicial foreclosure sale, the trustor or his or her successors in interest may redeem for a period of one (1) year (or a period of only three months if the entire amount of the debt is bid at the foreclosure sale), and until the trustor redeems, foreclosed junior lienholder may redeem during successive redemption periods of sixty (60) days following the previous redemption, but in no event later than one (1) year after the judicial foreclosure sale. The LLC generally will not pursue a judicial foreclosure to obtain a deficiency judgment, except where, in the sole discretion of the Manager, such a remedy is warranted in light of the time and expense involved.

Foreclosure statutes vary from state to state. Loans by the LLC secured by mortgages will be foreclosed in compliance with the laws of the state where the real property collateral is located.

### ***Anti-Deficiency Legislation***

California has four principal statutory prohibitions which limit the remedies of a beneficiary under a deed of trust. Other states may have similar limitations. Two statutes limit the beneficiary's right to obtain a deficiency judgment against the trustor following foreclosure of a deed of trust, one based on the method of foreclosure and the other on the type of debt secured. Under one statute, a deficiency judgment is barred where the foreclosure was accomplished by means of a non-judicial trustee's sale. It is anticipated that all of the LLC's loans will be enforced by means of a non-judicial trustee's sale, if foreclosure becomes necessary. Under the other statute, a deficiency judgment is barred in any event where the foreclosed deed of trust secured by a "purchase money obligation," (i.e., a promissory note evidencing a loan used to pay all or part of the purchase price of a residential property occupied, at least in part, by the purchaser). This restriction may apply to a number of LLC loans.

The third statute is known as the "one form of action" rule which requires the beneficiary to exhaust the security under the deed of trust or mortgage by foreclosure before bringing a personal action against the trustor on the promissory note. The fourth statutory provision limits any deficiency judgment obtained by the beneficiary following a judicial sale to the excess of the outstanding debt over the fair market value of the property at the time of sale, thereby preventing a beneficiary from obtaining a large deficiency judgment against the debtor as a result of low bids at the judicial sale.

Other matters, such as litigation instituted by a defaulting borrower or the operation of the federal bankruptcy laws, may have the effect of delaying enforcement of the lien of a defaulted loan and may in certain circumstances reduce the amount realizable from sale of a foreclosed property. States other than California also have laws intended to limit deficiency judgments and requiring the exhaustion of the security.

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

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

Accordingly, a junior lienholder (such as the LLC in some 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 lienholder commences its own foreclosure, making adequate arrangements either to (i) find a purchaser for the property at a price which will recoup the junior lienholder's interest, or (ii) to pay off the senior encumbrances so that the junior lienholder's encumbrance achieves first priority. Either alternative may require the LLC to make substantial cash expenditures to protect its interest. (See herein "Risk Factors — Business Risks").

If the borrower defaults solely upon his, her, or its debt to the LLC while continuing to perform with regard to the senior lien, the LLC (as junior lienholder) 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, were the LLC to purchase the security property at its own foreclosure sale, it would acquire the property subject all senior encumbrances. The standard form of deed of trust used by most institutional lenders, like the one that will be used by the LLC, 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 or mortgage 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 or mortgage before any such proceeds are applied to repay the LLC's loan. The amount of such proceeds may be insufficient to pay the balance due to the LLC, while the debtor may fail or refuse to make further payments on the damaged or condemned property, leaving the LLC with no feasible means to obtain payment of the balance due under its junior deed of trust or mortgage. 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.

### ***"Due-on-Sale" Clauses***

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

1. **Due-on-Sale.** Federal law now provides that, notwithstanding any contrary pre-existing state law, due-on-sale clauses contained in mortgage loan documents are enforceable in accordance with their terms by any lender after October 15, 1985. On the other hand, acquisition of a property by the LLC by foreclosure on one of its loans may also constitute a "sale" of the property, and would entitle a senior lienholder to accelerate its loan against the LLC. 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 LLC may be compelled to sell or refinance the property within a short period of time, notwithstanding that it may not be an opportune time to do so.
2. **Due-on-Encumbrance.** With respect to mortgage loans on residential property containing four or less units, federal law prohibits acceleration of the loan merely by reason of the further encumbering of the property (e.g., execution of a junior deed of trust or mortgage). This prohibition does not apply to mortgage loans on other types of property. Although many of the LLC's junior lien mortgages will be on properties that qualify for the protection afforded by federal law, some loans will be secured by small apartment buildings or commercial properties. Junior lien mortgage loans made by the LLC may trigger acceleration of senior loans on properties if the senior loans contain due-on-encumbrance clauses, although both the number of such instances and the actual likelihood of acceleration is anticipated to be minor. Failure of a borrower to pay off the senior loan would be an event of default and subject the LLC (as junior lienholder) to the risks attendant thereto. It will not be customary practice of the LLC to make loans on non-residential property where the senior encumbrance contains a due-on-encumbrance clause. (See herein "Special Considerations in Connection with Junior Encumbrances," above).

### ***Prepayment Charges***

Some loans originated by the LLC 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 at its business judgment to waive collection of prepayment penalties. LLC loans secured by mortgages or deeds of trust encumbering single family, owner-occupied, dwellings may be prepaid at any time. Again, other state laws may be different.

### ***Bankruptcy Laws***

If a borrower files for protection under the federal bankruptcy statutes, the LLC 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 LLC 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 LLC 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, the borrower may or may not be required to pay current interest on the LLC loan. The LLC 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 LLC's lien, to compel the LLC 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.



## LLC HISTORY

The LLC was organized in California in April 2015 and conducts its business in Irvine, Orange County, California with an office in Dallas, Texas. The LLC specializes in making non-prime real estate loans throughout California and Texas but it may consider expansion into other states as the opportunity presents itself. A copy of the LLC's most recent financial statements is attached hereto as Exhibit C.

## THE MANAGER AND AFFILIATES

The LLC is managed by Fortunato Capital Management, LLC, a California limited liability company ("Manager"), which was formed in April 2015. The President and principal shareholder of the Manager is Philip Fusco and the Chief Financial Officer and other principal shareholder is Mitch Hill. Neither Mr. Fusco nor Mr. Hill have any record of discipline with the California Bureau of Real Estate.

### **Philip Fusco, President and Shareholder of Manager:**

Mr. Fusco is President of PSG Capital Partners, Inc., a California-based private bridge financing lender, with approximately 100 private investors or funds participating in millions of dollars placed monthly into private residential and commercial bridge loans. Since 1984, PSG and its predecessor entities have closed over \$1 billion in loans throughout the Northern and Southern California regions. Mr. Fusco's experience allows him to simplify complex lending opportunities, involving multiple parties, in order to structure secure, win-win solutions for investors and clients alike. His track record has allowed PSG to earn repeat lending business from satisfied investors, professionals, and clients. Mr. Fusco has developed hundreds of relationships throughout the State of California and the U.S. through financing loans for clients of institutional and commercial banks, mortgage bankers and brokers, attorneys, life insurance companies, equity funds, CPAs, financial advisors, and estate planners. Mr. Fusco studied Business at the University of Maryland, College Park and obtained his Bachelor's Degree from Pacific Baptist Bible College. He is a Master's Candidate at BIOLA University. He is married and resides in Southern California.

### **Mitch Hill, Chief Financial Officer and Shareholder of Manager:**

Mr. Hill has significant experience in real estate underwriting, financing and development as well as C-level executive experience in a number of public and private companies. Mr. Hill received a BS in Business Accounting from Brigham Young University and a MBA from the Harvard Graduate School of Business Administration. After completing his MBA, Mr. Hill worked in the real estate investment banking division of Goldman Sachs in New York and California. Mr. Hill left Goldman Sachs to join Disney Development Company and later Walt Disney Imagineering. He served as Chief Financial Officer (CFO) of both groups and led the financial management of billions of dollars of projects including four theme parks and related infrastructure, hotels and retail / entertainment facilities as well as a 10,000 acre, master-planned community called Celebration, FL. More recently, Mr. Hill has served in a CFO capacity for a number of private equity and venture capital-backed companies in the medical device and health care services fields. Mr. Hill was also CFO of Buy.com, Inc. at the time of its initial public offering in February 2000. He is married and resides in the Dallas/Ft. Worth area.

## LEGAL PROCEEDINGS

Neither the LLC, the Manager nor any of the officers or directors of the Manager since inception have been involved in any material litigation or arbitration with one exception.

*Weatherby v. JCLS Associates, et al.* In 2011, Helen Weatherby obtained three mortgage loans from JCLS Associates (an affiliate of Philip Fusco) secured by a vacant house she owned in Dana Point. She defaulted on all of the mortgages. To attempt to stop foreclosure she filed a lawsuit, first in federal court and then in state court (Orange County Superior Court No. 30-2013-00652190-CU-BC-CJC) claiming that the Dana Point property was owner-occupied and JCLS, Philip Fusco and others had not complied with various laws applicable to owner-occupied consumer loans. During the case, Mr. Fusco acquired the interest of a senior lienholder on the property. Her request for a restraining order was denied by the federal court and then by state court because not only was the house vacant when the loans were made but Ms. Weatherby signed three declarations under penalty of perjury to the effect she did not occupy the house. JCLS foreclosed in 2014 yet Ms. Weatherby has refused to dismiss her suit. Mr. Fusco intends to vigorously contest the case because he believes it lacks any merit.

## **SUMMARY OF LLC OPERATING AGREEMENT**

The following is a summary of the LLC Operating Agreement, and is qualified in its entirety by the terms of the Operating Agreement itself. Potential Investors are urged to read the entire LLC Operating Agreement, a copy of which is attached hereto as Exhibit A.

### ***Rights and Liabilities of Members***

The rights, duties and powers of Members are governed by the LLC's Operating Agreement and the California Limited Liability Company Act (the "California LLC Act"), and the discussion herein of such rights, duties and powers is qualified in its entirety by reference to such Operating Agreement and the California LLC Act.

Investors who become Members in the LLC in the manner set forth herein will not be responsible for the obligations of the LLC. 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.

Members will have no control over the management of the LLC, except that Members holding a majority of the issued and outstanding Membership Units may, without the concurrence of the Manager, take the following actions:

- (a) terminate the LLC (including merger or reorganization with one or more other LLCs);
- (b) approve or disapprove a transaction involving a conflict of interest between the Manager and the LLC; or
- (c) approve or disapprove the sale of all or substantially all the assets of the LLC.

Members representing 10% of the LLC interests may call a meeting of the LLC. The Operating Agreement only permits removal of the Manager by the Members if: (i) the Manager commits an act of willful misconduct which materially adversely damages the LLC and (ii) holders of not less than 51% of the Membership Units vote in favor of such removal.

### ***Capital Contributions***

Interests in the LLC will be sold in Membership Units. The Manager is not required to contribute any funds to the LLC, but may do so. With respect to any Membership Units it may purchase, the Manager will have the same rights as any other Member.

### ***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 LLC. The Manager is not required to devote full time to LLC affairs but only such time as is required for the conduct of LLC business. The Manager has the power and authority to act for and bind the LLC.

### ***Profits and Losses***

At the end of each fiscal year or other accounting period, in general, income and loss of the LLC will be allocated among the Members in such amounts to cause the adjusted capital accounts of each Member, immediately after such allocation, to equal (proportionately) the distributions that would be received by such Members if the LLC's assets were sold at their adjusted asset value (generally, the investment's costs basis for investments for which no realization event has occurred, and the investment's disposition value for investments for which a realization event has occurred), all partnership liabilities were satisfied and the net assets of the LLC were distributed in accordance with the distribution provisions of the Operating Agreement. No guarantee can be made that the management fees and/or other fees will be deductible by the LLC or a Member.

### ***Distributions***

The LLC will make all distributions as described in the "Summary of the Offering – Distributions."

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

The LLC will compensate the Manager and its affiliates as described in the "Compensation to Manager and Affiliates."

### ***Adjustment of Membership Units Holdings***

Voting rights are based on the capital accounts of each Member. Once the Minimum Offering Amount has been achieved by the LLC, the Manager, at its discretion, may adjust the capital accounts of the Membership Units based upon its adjustment of the loan loss reserve.

### ***Meetings***

The Manager, or Members representing 10% of the LLC interests, may call a meeting of the LLC on at least ten (10) days, but not more than sixty (60) days, written notice. Unless the notice otherwise specifies, all meetings will be held at 2:00 p.m. at the office of the Manager of the LLC. Members may vote in person or by proxy at the LLC meeting. A majority of the outstanding LLC interests will constitute a quorum at LLC meetings.

### ***Accounting and Reports***

The Manager will cause to be prepared and furnished to the Members an annual report of the LLC's operation, which will be prepared by an independent accounting firm. Within ninety (90) days after the close of the year covered by the report, a copy or condensed version will be furnished to the Members. The Members shall also be furnished such detailed information as is reasonably necessary to enable them to complete their own tax returns within ninety (90) days after the end of the year. Due to expense, the Manager may elect to defer or forgo a formal audit of its books for its first full year of operations.

The Manager presently intends to maintain the LLC'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 and state income tax purposes. The Manager reserves the right to change such methods of accounting,

upon written notice to Members. Any Members may inspect the books and records of the LLC at all reasonable times.

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

A Member may resign as such at any time. A Member will also cease to be a Member upon, (i) such Members' expulsion from the LLC; or (ii) when Member no longer owns any Membership Units (any, an event of "Dissociation").

Upon the occurrence of an event of Dissociation: (i) the Member's right to participate in the LLC's governance, receive information concerning the LLC's affairs and inspect the LLC's books and records will terminate; and (ii) unless the Dissociation resulted from the Transfer of the Member's Membership Units, the Member will be entitled to receive the Distributions to which the Member would have been entitled as of the effective date of the Dissociation had the Dissociation not occurred. The Member will remain liable for any obligation to the LLC that existed prior to the effective date of the Dissociation, including any costs or damages resulting from the Member's breach of this Agreement. Under most circumstances, the Member will have no right to any return of his or her capital prior to the termination of the LLC unless the Manager elects to return capital to a Member.

Members may withdraw as a Member of the LLC and may receive an amount equal to the Net Asset Value of its Membership Units provided that the following conditions have been met: (a) the Member has been a Member of the LLC for a period of at least 24 months, and (b) the Member agrees to a 10% holdback for its withdrawal amount to satisfy its obligations, if any, following any annual review as set forth in Section 4.2 of the Operating Agreement and further agrees to refund to the LLC any excess distributions in excess of such holdback amount to the extent required under Section 4.2 of the Operating Agreement. The LLC will use its best efforts to honor requests for a withdrawal subject to, among other things, the LLC's then existing cash flow, financial condition, and prospective real estate investments. Withdrawal requests will be considered on a first come basis and withdrawal requests shall be honored on the first day of the month that falls 180 days or more following the date that a withdrawal request is delivered. Notwithstanding the foregoing, the Manager may, in its sole discretion, waive such withdrawal requirements if a Member is experiencing undue hardship; provided, however, the Manager reserves the right to charge a 2% early withdrawal penalty on any such Member.

#### ***Restrictions on Transfer***

The Operating Agreement places substantial limitations upon transferability of LLC interests. No Membership Units may be transferred if, in the 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 LLC as a LLC or, cause a termination of the LLC for federal income tax purposes.

A transferee may not become a substitute Member without the consent of the Manager. Such consent may not unreasonably be withheld if the Transfer 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 LLC or to inspect the LLC books, but is entitled only to the share of income or return of capital to which the transferor would be entitled. The Manager may require an opinion of counsel prior to any transfer to be provided at the Member's expense.

#### ***Manager's Interest***

The Manager may withdraw from the LLC at any time upon reasonable written notice to all Members, in which event the Manager would not be entitled to any termination or severance payment from the LLC, except for the return of the Net Asset Value of the Member's Membership Units. The Manager may also sell

and transfer any Membership Units it may own for such price as it shall determine, in its sole discretion, and neither the LLC nor the Members will have any interest in the proceeds of such sale. However, a successor Manager may only be elected by the Members.

### ***Term of LLC***

The term of the LLC will continue until December 31, 2035, with a provision for one 5 year extension at the sole discretion of the Manager and further extensions provided by majority vote of the Members, unless dissolved sooner. The LLC will dissolve and terminate sooner under any of the following circumstances:

- (1) the vote of the Members to dissolve;
- (2) the sale of all or substantially all of the LLC's assets;
- (3) any event that makes the LLC ineligible to conduct its activities as a limited liability company under the California LLC Act; or
- (4) otherwise by operation of law.

See Sections 2.3 (Term) and 7.1 (Dissolution) of the Operating Agreement.

### ***Winding-Up***

The LLC will not cease to exist immediately upon the occurrence of an event of dissolution, but will continue until its affairs have been wound up. Upon dissolution of the LLC, the Manager will wind up the LLC's affairs by liquidating the LLC'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 LLC shall be applied to satisfy or provide for LLC debts and the balance shall be distributed to Members in accordance with the terms of the Operating Agreement.

Upon dissolution and termination of the LLC, a winding-up period is provided for liquidating the LLC's assets and distributing cash to Members. Due to high prevailing interest rates or other factors, the LLC could suffer reduced earnings (or losses) if a substantial portion of its loan portfolio remains and must be liquidated quickly during the winding up period. Members who sell their Membership Units prior to any such liquidation will not be exposed to this risk. Conversely, if prevailing interest rates have declined at a time when the loan portfolio must be liquidated, unanticipated profits could be realized by those Members who remained in the LLC until its termination.

## **INCOME TAX CONSIDERATIONS FOR MEMBERS**

### ***Federal Income Tax Aspects***

The following discussion generally summarizes the material federal income tax consequences of an investment in the LLC 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 the prospective Members with respect to their investment in the LLC. 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 LLC or the Members may be subject to state and local taxes in jurisdictions in which the LLC may be deemed to be doing business.

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

### ***Federal Income Tax Matters***

The federal income tax consequences of an investment in Membership Units and Notes are complex and their impact may vary depending on each Member's particular tax situation. Potential Members should consider the following federal income tax risks, among others:

- (a) The LLC may be classified as an association, taxable as a corporation, which would deprive Members of the tax benefit of operating in a limited liability company form (taxable as a partnership for federal income tax purposes);
- (b) A Member's share of LLC taxable income may, in any period exceed his or her share of cash distribution from the LLC;
- (c) The allocation of the LLC's income, gain, loss, deduction and credit may lack substantial economic effect and may be reallocated among the Members in a manner different from that set forth in the Operating Agreement;
- (d) The federal income tax returns of the LLC might be subject to audit, in which event any adjustments to be made in the LLC's income, gains, losses, deductions, or credits would be made in an audit with regard to which Members would have little, if any, control; and,
- (e) Adverse changes in the federal income tax laws might occur, which could affect the LLC retroactively as well as prospectively.

EACH PROSPECTIVE MEMBER IS URGED TO SEEK CONSULTATION WITH SPECIFIC REFERENCE TO INDIVIDUAL TAX SITUATIONS AND POTENTIAL CHANGES IN THE APPLICABLE LAW.

### ***No IRS Ruling or Opinion of Legal Counsel***

The LLC will not request a ruling from the IRS with respect to any tax issues concerning the LLC, including, but not limited to, whether the LLC will be classified as a partnership for federal income tax purposes, or any issues concerning an investment in the LLC. Furthermore, the LLC will not obtain an opinion of counsel with respect to any of the tax issues concerning the LLC or an investment in the LLC.

### ***LLC Tax Status***

The Members will be entitled to deduct their distributive shares of any LLC tax deductions, and to include in income their distributive shares of any LLC income or gains, only if the LLC is classified as a partnership rather than a corporation for federal income tax purposes. If it is recognized as a partnership for federal income tax purposes, the LLC will not be subject to federal income tax on any of its taxable income, and all LLC income, gains, losses, deductions and credits will pass through to the Members and will be taxable only once to the Members themselves. On the other hand, if the LLC were to be classified as an association taxable as a corporation for federal income tax purposes, the LLC would be subject to federal income tax on its taxable income at the tax rates applicable to corporations, and the Members would not be allowed to claim

any LLC tax credits or deduct any LLC operating losses on their individual returns. Consequently, classification of the LLC as a partnership for federal income tax purposes will enable the Members to secure the anticipated tax benefits of their investment in the LLC.

### ***Federal Taxation of Limited Liability Companies and Members***

A limited liability company is treated as a partnership for federal income tax purposes, unless, as discussed above, it is classified as an association taxable as a corporation. For purposes of this discussion, it is assumed the LLC will be classified as a partnership for federal income tax purposes. As such, the LLC incurs no federal income tax liability. Instead, all Members are required to report on their own federal income tax returns their distributive share of the LLC's income, gains, losses, deductions and credits for the taxable year of the LLC ending with or within each Member's taxable year, without regard to any LLC distributions.

### ***Taxation of Undistributed LLC Income***

Under the laws pertaining to federal income taxation of partnerships, no federal income tax is paid by the partnership as an entity. Each individual Member reports on his or her federal income tax return his or her distributive share of partnership income, gains, losses, deductions and credits, whether or not any actual distribution is made to such Member during a taxable year. Each Member may deduct, subject to the limitations discussed below, his, her or its distributive share of partnership losses, if any, to the extent of the tax basis of his or her Membership Units at the end of the partnership year in which the losses occurred. The characterization of an item of profit or loss will usually be the same for the Member as it was for the partnership. Since Members will be required to include partnership income in their personal income without regard to whether there are distributions of partnership income, such Investors will become liable for federal and state income taxes on LLC income even though they have received no cash distributions from the LLC with which to pay such taxes. Distributions by the LLC to a Member will generally not be taxable unless the amount of any cash distributed is in excess of the Member's adjusted tax basis in its LLC interest.

### ***LLC Allocations***

A Member's distributive share of LLC income, gains, deductions, losses and credits for federal income tax purposes is generally determined in accordance with provisions of the Operating Agreement. However, the IRS may reallocate such items if an allocation in the Operating Agreement does not have "substantial economic effect" and is in accordance with the Member's respective "economic interest" in the LLC.

The IRS has issued regulations to determine whether an allocation has "substantial economic effect," or if it is in accordance with the Member's respective "economic interests" in the LLC. In general, an allocation of income, gain, loss or deduction, or an item thereof, to a Member has economic effect if, and only if:

- (1) the allocation is properly reflected in that Member's capital account and such capital account is maintained in accordance with the regulations;
- (2) liquidation proceeds are to be distributed in accordance with the Member's positive capital account balances; and
- (3) either:
  - (a) any Member with a deficit in its capital account following the distribution of liquidation proceeds must restore the amount of such deficit to the LLC by the later of either the end of the taxable year of the liquidation or ninety (90) days after the liquidation, or
  - (b) the Operating Agreement must contain "qualified income offset" and "minimum gain charge back" provisions applicable to the Members.

The Operating Agreement does not require Members to restore deficit balances in their capital accounts. However, the Operating Agreement does contain provisions that are believed to meet the requirements for "qualified income offset" and "minimum gain charge back" provisions. (See herein Section 4.2 of the Operating Agreement)

In order for the economic effect of an allocation to be considered substantial, the U.S. Department of Treasury regulations require that the allocations must have a reasonable possibility of substantially affecting the dollar amounts to be received by the Members, independent of tax consequences. In applying the substantiality test, tax consequences that result from the interaction of the allocation with such Members tax attributes that are unrelated to the LLC must be taken into account.

### ***Limitations on Deduction of Losses***

**Adjusted Basis:** The adjusted basis of a Member's interest in the LLC is equal to the amount of cash or the adjusted basis of any property which that Member contributes to the LLC,

- (1) increased by that Member's share of LLC liabilities, if any,
- (2) decreased (but not below zero) by distributions to the Member from the LLC (including constructive cash distributions resulting from a decrease in LLC liabilities),
- (3) decreased by the Member's allocable share for the taxable year and prior taxable years, of the LLC's losses, and
- (4) increased by that Member's allocable share for the taxable year and prior taxable years of the LLC's income.

Under certain circumstances, Members may include a portion of certain LLC liabilities in their basis. The LLC does not presently intend to borrow funds from any Member. A LLC liability is a recourse liability to the extent that one or more Members bear the economic risk of loss for such liability and are shared based on such economic risk of loss. A LLC liability is a non-recourse liability to the extent that no Member bears the economic risk of loss for such liability and are shared based on each Member's percentage interest in the LLC. It is not known at this time if the LLC will incur any recourse liabilities or any non-recourse liabilities.

If a Member's allocable share of a LLC loss for any LLC taxable year exceeds the Member's adjusted basis in his/her interest in the LLC at the end of that taxable year, such excess may not be deducted at that time but may be carried over and deducted in any later year in and to the extent that, the Member's adjusted basis in his/her interest in the LLC at the end of the later taxable year exceeds zero.

**At-Risk Rules:** In addition to the adjusted basis limitation, a Member's ability to deduct LLC losses is further limited by the at-risk rules. These rules, which only apply to individuals and certain closely held corporations, allow a Member to deduct losses from an at-risk activity only to the extent of the Member's amount at-risk with respect to such activity at the close of the taxable year. Each Member will be considered at-risk with respect to that Member's initial cash capital contribution to the LLC. A Member generally is not considered to be at-risk for LLC liabilities with respect to which the Member has no personal liability.

A Member will only be considered at-risk for LLC indebtedness to the extent that the Member is personally liable for repayment of such indebtedness or the Member pledged certain property as security for the repayment of such indebtedness. Also, in case of certain real property holding activities, a Member will be considered at-risk for qualified non-recourse financing as defined in the Code. Each Member's initial amount at-risk for their interest in the LLC will be limited to such Member's initial cash capital contribution to the LLC. If a Member borrows the money to fund a capital contribution to the LLC, the Member should consult his or her own tax advisor regarding the possible tax consequences of such borrowing under the at-risk rules.



**Passive Loss Rules:** In addition to the adjusted basis limitation and at-risk rules, the ability of a Member that is an individual or a closely held corporation to deduct a share of LLC losses is further limited by the passive loss rules. These rules provide that passive activity losses can only be deducted against passive activity income and cannot be deducted against income from other sources. A passive activity is any activity which involves the conduct of any trade or business and in which the taxpayer does not materially participate. Depending on their individual situations, Members may or may not be considered to materially participate in the management of the LLC, and the income and losses from the LLC may or may not be treated as income or loss from a passive activity. Since the impact of the passive loss rules will vary from Member to Member, all Members should consult their own tax advisor regarding this matter.

### ***Profit Objective of the LLC***

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:

- (1) the gross income derived from the activity; or
- (2) deductions (such as interest and taxes) that are allowable in any event.

The applicable Treasury 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 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 LLC will satisfy this test.

### ***Portfolio Income***

The LLC's primary source of income will be interest, which is ordinarily considered "portfolio income" under the Internal Revenue Code ("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 LLC will be treated as portfolio income, not as passive income, to Members. Therefore, Investors in the LLC will not be entitled to treat their proportionate share of LLC income as passive income, against which passive losses (such as deductions from unrelated real estate investments) may be offset.

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

The LLC has been organized to invest in loans primarily secured by deeds of trust on real property. However, if the LLC were at any time deemed for federal tax purposes to be holding one or more LLC loans primarily for sale to customers in the ordinary course of business (a "dealer"), any gain or loss realized upon the disposition of such loans 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 to customers in the ordinary course of business would also constitute unrelated business taxable income to any Investors 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 LLC intends to make and hold the LLC loans for investment purposes only, and to dispose of LLC loans, by sale or otherwise, at the discretion of the Manager and as consistent with the LLC's investment objectives. It is possible that, in so doing, the LLC will be treated as a "dealer" in mortgage loans, and that profits realized from such sales will be considered unrelated business taxable income to otherwise tax-exempt Investors in the LLC.

### ***Unrelated Business Taxable Income***

The following summary constitutes only a general discussion of certain aspects of unrelated business taxable income as it applies to Qualified Plans and other tax-exempt entities. A detailed analysis of ERISA considerations of an investment in the LLC is beyond the scope of this discussion.

Membership Units may be offered and sold to certain tax-exempt entities (if such as qualified pension or profit sharing plans or other tax exempt entities qualified under ERISA) that otherwise meet the Investor suitability standards described elsewhere in this Memorandum. (See herein "Investor Suitability") Such tax exempt entities generally do not pay federal income taxes on their income unless they are engaged in a business which generates "unrelated business taxable income," as that term is defined by Section 513 of the Code. Under the Code, tax exempt purchasers of Membership Units will be deemed to be engaged in an unrelated trade or business by reason of interest income earned by the LLC. Interest income (which will constitute the primary source of LLC income) does not constitute an item of unrelated business taxable income, except to the extent it is derived from debt financed property.

Rents from real property and gains from the sale or exchange of property are also excluded from unrelated business taxable income, unless the property is held primarily for sale to customers or is acquired or leased in certain manners described in Section 514(c)(9) of the Code. Therefore, unrelated business taxable income may also be generated if the LLC operates or sells at a profit any property that has been acquired through foreclosure on a LLC loan, but only if such property (1) is deemed to be held primarily for sale to customers, or (2) is acquired from or leased to a person who is related to a tax-exempt Investor in the LLC.

The trustee of any trust that purchases Membership Units in the LLC should consult with his or her tax advisors regarding the requirements for exemption from federal income taxation and the consequences of failing to meet such requirements, in addition to carefully considering his or her fiduciary responsibilities with respect to such matters as investment diversification and the prudence of particular investments.

### ***Sale of Member Interest in the LLC***

A sale of all or part of a Member's Membership Units will result in the recognition of gain or loss in an amount equal to the difference between the amount of the sales proceeds or distribution (including any constructive distribution) and such Member's adjusted tax basis for the portion of the Membership Units disposed of. Such Member's adjusted tax basis will be adjusted for this purpose by its allocable share of the LLC's income or loss for the year of such sale. Any gain or loss recognized with respect to such sale generally will be treated as capital gain or loss and will be long-term capital gain or loss if the Membership Units have been held for more than one year. To the extent that the proceeds of the sale are attributable to a Member's allocable share of certain ordinary income items of the LLC (e.g., unrealized receivables) and such proceeds exceed the Member's adjusted tax basis attributable to such ordinary income items, any gain will be treated as ordinary income. A Member will be required to recognize the full amount of any such ordinary income even if that amount exceeds the overall gain on the sale and even if the Member recognizes an overall loss on the sale.

In the unlikely event that fifty percent (50%) or more of the total number of Membership Units in the capital and profits of the LLC are sold or exchanged within any consecutive twelve (12) month period, the LLC would be considered terminated for federal income tax purposes. A termination of the LLC for federal income tax purposes would cause the LLC's taxable year to end with respect to all Members and could have potentially adverse federal income tax consequences, including a change in the adjusted tax basis of LLC property and the bunching of taxable income within one taxable period. The LLC is empowered, by the Operating Agreement, to prohibit of any transfer of interest in the LLC that would cause such termination.

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

Individual Members may be subject to the alternative minimum tax, which increases a Member's tax liability to the extent the Member's "Alternative Minimum Tax" exceeds his or her regular income tax (less certain credits) for the year. The amount of alternative minimum tax liability (if any) for a Member will depend on such Member's income, gain, deduction, loss, credit and tax preference from sources other than the LLC and the interaction of these items with such Member's share of LLC income, gain, loss, deduction, credit and tax preference in determining a Member's alternative minimum taxable income. The passive loss limitation rules discussed above will apply to income, gain, deductions, loss and credits from LLC sources in the same manner as in determining its/his/her regular taxable income.

BECAUSE OF THE COMPLEXITY OF THE COMPUTATION OF THE ALTERNATIVE MINIMUM TAX, PROSPECTIVE MEMBERS ARE URGED TO CONSULT THEIR PERSONAL TAX ADVISORS WITH REGARD TO THE IMPACT OF THE ALTERNATIVE MINIMUM TAX ON THEIR TAX SITUATIONS.

### ***LLC Election to Step Up the Basis of its Assets when Members Sell Their Membership Units in the LLC***

When Members sell or exchange Membership Units, the Transferee Members may have an adjusted basis in the Membership Units equal to their cost. The LLC does not automatically adjust the tax basis of its property to reflect the change in the Transferee Member's adjusted basis for his/her Interest. However, the LLC may elect, in its sole discretion, upon a sale or exchange of a Member's Membership Units in the LLC, to adjust the tax basis of LLC property only for purposes of determining the Transferee Member's share of depreciation and gain or loss from the LLC. The general effect of such an election is that the Transferee Members are treated, for purposes of depreciation and gain or loss, as though they had acquired a direct Interest in the LLC assets, and therefore a new cost basis for such assets. Any such election, once made, cannot be revoked without the consent of the IRS. If the LLC chooses not to make the aforementioned election, a Transferee Member may be at a disadvantage in selling their Interest in the LLC since the Transferee ordinarily would obtain no current tax benefit for the excess, if any, of the cost of such Interest over the Transferee's share of the LLC's adjusted basis in its assets.

### ***LLC Audits: The Tax Treatment of LLC Items and Penalties***

The tax treatment of all LLC items of income, expense, gain or loss will be determined at the LLC level in a consolidated proceeding rather than in separate proceedings with the Members. A determination by the IRS in proceedings at the LLC level is referred to as a final administrative adjustment ("FAA"). When an FAA is made, the IRS must initially send notice to a "Tax Matters Partner." The LLC believes that in the context of a limited liability company, the IRS will recognize the Manager as the appropriate person to serve in that capacity. The Operating Agreement designates the Manager as Tax Matters Partner, but gives the Manager the authority to designate another person. The IRS also has such authority. Generally, notice to the Members must be mailed within sixty (60) days after the mailing of notice to the Tax Matters Partner. Every Member is entitled to participate in the IRS administrative proceedings at the LLC level. If a settlement is reached with one or more Members, it is binding on them. All other Members shall be entitled to settle on the same terms if they so request. A Member will not be bound by the Tax Matters Partner's settlement agreement if the Member files a statement, within a period to be prescribed by the Secretary of the Treasury, stating that the Tax Matters Partner does not have the authority to enter into a settlement with the IRS on his or her behalf. In general, no person other than the Tax Matters Partner may bind any Member with respect to a settlement agreement with the IRS. Also, the LLC and its Members may choose to litigate an assessment of tax made under the IRS FAA procedures.

While the IRS will ordinarily be required to initiate proceedings against the LLC and not against an Individual Member, such requirement is waived with respect to any Member whose treatment of an item on his or her individual return is inconsistent with the treatment of that item on the LLC's tax return, unless the

Member files a statement with the IRS identifying the inconsistency. In the absence of such a disclosure, the IRS may, without sending the Member a deficiency notice, assess and collect the additional tax necessary to make the Members treatment of the item consistent with the LLC's treatment of the item.

If a deficiency is determined as the result of an audit, each Member will be liable for payment of his or her share of the deficiency, plus compound interest at the then applicable interest rate. Interest on tax deficiencies is generally non-deductible. If a deficiency is determined as the result of an audit, Members may be subject to the "Accuracy related penalty" on all or a portion of the deficiency. The amount of the accuracy related penalty is twenty percent (20%) of any underpayment attributable, among other things, to:

- (1) negligence or intentional disregard of rules or regulations,
- (2) a substantial underpayment of tax, or
- (3) a substantial valuation overstatement.

This penalty does not apply if the Member can show there was reasonable cause for the underpayment and the Member acted in good faith with respect to the underpayment. In the case of a deficiency attributable to a substantial underpayment, the penalty also does not apply to the extent the Member had "substantial authority" for the position taken on the tax return or the facts relevant to that position were adequately disclosed on the Members return or in a statement attached to the return.

New audit rules, currently scheduled to become effective for tax years beginning in 2018, will generally apply to the LLC. Under the new rules, unless an entity elects otherwise, taxes arising from audit adjustments are required to be paid by the entity rather than by its partners or members. The LLC will have the authority to utilize, and intends to utilize, any exceptions available under the new provisions (including any changes) and Treasury Regulations so that the Members, to the fullest extent possible, rather than the LLC itself, will be liable for any taxes arising from audit adjustments to the LLC's taxable income. It is unclear to what extent these elections will be available to the LLC and how any such elections may affect the procedural rules available to challenge any audit adjustment that would otherwise be available in the absence of any such election. Prospective investors are urged to consult with their tax advisors regarding the possible effect of the new rules.

### ***Organization Expenses***

When the assets of the LLC reach \$10,000,000 and the Preferred Return is being paid, the Manager, at its election, may receive formation expense reimbursement fees not to exceed \$30,000, at the rate of not more than \$10,000 per year.

### ***Tax Returns***

The LLC intends to retain a certified public accounting firm to prepare and review the LLC's annual federal information tax return, including Schedule K-1, which the LLC will issue to all Members, and other tax returns the LLC may be required to file. The Schedule K-1 will provide the Members with the information regarding the LLC that the Members will need to prepare and file their own tax returns.

### ***Tax Year***

The LLC intends to adopt a December 31st year-end for federal income tax reporting purposes.

### ***Method of Accounting***

The LLC will report its income for federal income tax reporting purposes using the accrual method of accounting. Under the accrual method, income is reportable in the year when earned, whether or not it has actually or constructively been received, and expenses are deductible in the year in which all events have occurred that determine the fact of the LLC's liability, the amount of the liability is determinable with reasonable accuracy and "economic performance" (as defined in the Code) has occurred.

### ***Tax Shelter Registration***

The Manager has determined the LLC is not a tax shelter under the applicable tax shelter registration rules. Accordingly, the Manager will not register the LLC with the IRS as a tax shelter.

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

Frequent and substantial changes have been made and will likely continue to be made, to the federal 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 detailed analysis of the state and local tax consequences of an investment in the LLC is beyond the scope of this discussion. Prospective Members are advised to consult their own tax counsel regarding these consequences and the preparation of any state or local tax returns that a Member may be required to file.

## **INCOME TAX CONSIDERATIONS FOR NOTE HOLDERS**

This discussion does not address all of the federal income tax considerations that may be relevant to a particular Note Holder's circumstances, and does not discuss any aspect of federal tax law other than income taxation (except to the limited extent below with respect to federal estate taxation) or any state, local or non-U.S. tax consequences of the purchase, ownership and disposition of the Notes. This discussion applies only to Investors who purchase the Notes for cash at original issue and who hold the Notes as capital assets within the meaning of the Code (generally, property held for investment). This discussion does not address federal income tax considerations applicable to Note Holders that may be subject to special tax rules, such as (without limitation):

- securities dealers or brokers, or traders in securities electing mark-to-market treatment;
- banks, thrifts or other financial institutions;
- insurance companies;
- regulated investment companies or real estate investment trusts;
- tax-exempt organizations;
- persons holding Notes as part of a "straddle," "hedge," "synthetic security" or "conversion transaction" for federal income tax purposes, or as part of some other integrated investment;
- partnerships or other pass-through entities;
- persons subject to the alternative minimum tax;

- certain former citizens or residents of the United States; and
- “U.S. Holders” (as defined below) whose functional currency is not the U.S. dollar.

As used herein, a “U.S. Holder” is a beneficial owner of Notes that is, for federal income tax purposes, (i) an individual citizen or resident of the United States, (ii) a corporation (or any other entity treated as a corporation for federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia, (iii) an estate whose income is subject to U.S. federal income tax regardless of its source, or (iv) a trust if (A) a United States court has the authority to exercise primary supervision over the administration of the trust and one or more U.S. persons (as defined under the Code) are authorized to control all substantial decisions of the trust or (B) it has a valid election in place to be treated as a U.S. person. A “Non-U.S. Holder” is any beneficial owner of a Note that is not a U.S. Holder. If a partnership (or other entity treated as a partnership for U.S. federal income tax purposes) holds Notes, the federal income tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. A partnership holding Notes, and partners in such a partnership, should consult their own tax advisors with regard to the U.S. federal income tax consequences of the purchase, ownership and disposition of the Notes by the partnership.

THIS DISCUSSION OF THE MATERIAL FEDERAL INCOME TAX CONSIDERATIONS OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE NOTES IS NOT INTENDED TO BE, NOR SHOULD IT BE CONSTRUED TO BE, LEGAL OR TAX ADVICE TO ANY PARTICULAR PERSON. ACCORDINGLY, ALL PROSPECTIVE INVESTORS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS WITH RESPECT TO THE U.S. FEDERAL, STATE, LOCAL AND NON-U.S. TAX CONSEQUENCES RELATING TO THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE NOTES BASED ON THEIR PARTICULAR CIRCUMSTANCES.

### ***U.S. Holders***

**Payments of Interest.** In general, interest on the Notes will be taxable to a U.S. Holder as ordinary income at the time it accrues or is received, in accordance with the U.S. Holder’s regular method of accounting for federal income tax purposes.

**Sale, Exchange and Retirement of Notes.** A U.S. Holder’s tax basis in the Notes that the U.S. Holder beneficially owns will, in general, be its cost for those Notes.

Upon a U.S. Holder’s sale, exchange, retirement or other taxable disposition of the Notes, the U.S. Holder will recognize gain or loss equal to the difference between the amount the U.S. Holder realizes upon the sale, exchange, retirement or other disposition (less an amount equal to any accrued and unpaid interest that will be taxable as interest for federal income tax purposes if not previously taken into income) and the U.S. Holder’s adjusted tax basis in the Notes. That gain or loss will be capital gain or loss. Capital gains of individuals derived in respect of capital assets held for more than one year are eligible for reduced rates of taxation. The deductibility of capital losses is subject to limitations.

**Prepayments.** If the LLC prepays a Note in full, the Note will be treated as retired and, as described above, a U.S. Holder will generally have gain or loss equal to the difference, if any, between the amount realized upon the retirement and the U.S. Holder’s adjusted tax basis in the Note.

**Losses as a Result of Worthlessness.** In the event that a Note becomes wholly worthless, a U.S. Holder may be entitled to deduct its loss on the Note as a capital loss in the taxable year the Note becomes wholly worthless. U.S. Holders should consult their tax advisors regarding the availability of deduction of losses in respect of the Notes.

**Additional Tax on Net Investment Income.** Certain non-corporate U.S. Holders are subject to a 3.8% tax, in addition to regular tax on income and gains, on some or all of their “net investment income,” which generally will include interest realized on a Note and any net gain recognized upon a sale or other disposition of a Note. U.S. Holders should consult their tax advisors regarding the applicability of this tax in respect of the Notes.

**Information Reporting and Backup Withholding.** In general, information reporting requirements will apply to certain payments of principal, premium, if any, redemption price, if any, interest and other amounts paid to a U.S. Holder on the Notes and to the proceeds of sales of the Notes if the U.S. Holder fails to provide to the applicable withholding agent a correct taxpayer identification number or certification of foreign or other exempt status or fail to report in full dividend and interest income.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a U.S. Holder’s U.S. federal income tax liability provided the required information is timely furnished to the IRS.

#### ***Non-U.S. Holders***

The following is a discussion of the material federal income and estate tax consequences that generally will apply to an Investor if the Investor is a Non-U.S. Holder of Notes.

**Federal Withholding Tax.** Under the “portfolio interest” rule, the 30% federal withholding tax will not apply to any payment of interest, on the Notes, to a Non-U.S. Holder provided that:

- interest paid on the Notes is not effectively connected with the Non-U.S. Holder’s conduct of a trade or business in the United States;
- the Non-U.S. Holder does not actually or constructively own 10% or more of the capital or profits of the LLC within the meaning of Section 871(h)(3) of the Code and related Treasury regulations;
- the Non-U.S. Holder is not a controlled foreign corporation that is related to the LLC through ownership;
- the Non-U.S. Holder is not a bank whose receipt of interest on the Notes is described in Section 881(c)(3)(A) of the Code;
- the interest is not considered contingent interest under Section 871(h)(4)(A) of the Code and the related Treasury regulations; and
- the Non-U.S. Holder provides to the applicable withholding agent its name and address on an IRS Form W-8BEN or W-8BEN-E (or successor form), and certifies, under penalty of perjury, that it is not a U.S. person or (2) the Non-U.S. Holder holds its Notes through certain foreign intermediaries, and the Non-U.S. Holder satisfies the certification requirements of applicable Treasury regulations. Special certification rules apply to certain Non-U.S. Holders that are pass-through entities rather than corporations or individuals.

If the Non-U.S. Holder cannot satisfy the requirements described above, payments of interest made to the Non-U.S. Holder will be subject to the 30% federal withholding tax (which will be deducted from such interest payments by the paying agent), unless the Non-U.S. Holder provides to the applicable withholding agent with a properly executed:

- IRS Form W-8BEN or W-8BEN-E (or successor form) claiming an exemption from or reduction in the rate of withholding under the benefit of an applicable tax treaty; or
- IRS Form W-8ECI (or successor form) stating that interest paid on the Notes is not subject to withholding tax because it is effectively connected with the Non-U.S. Holder's conduct of a trade or business in the United States as discussed below.

Special certification rules apply to certain Non-U.S. Holders that are pass-through entities rather than corporations or individuals. The 30% federal withholding tax generally will not apply to any payment of principal or gain that a Non-U.S. Holder realizes on the sale, exchange, retirement or other taxable disposition of the Notes.

**Federal Income Tax.** If a Non-U.S. Holder is engaged in a trade or business in the United States and interest on the Notes is effectively connected with the conduct of that trade or business, the Non-U.S. Holder will be subject to federal income tax on that interest on a net income basis (although the Non-U.S. Holder will be exempt from the 30% withholding tax, provided the certification requirements discussed above are satisfied) in the same manner as if the Non-U.S. Holder were a U.S. person as defined in the Code. In addition, if the Non-U.S. Holder is a foreign corporation, it may be subject to a branch profits tax equal to 30% (or lower applicable treaty rate) of its earnings and profits for the taxable year, subject to adjustments, that are effectively connected with the conduct by the Non-U.S. Holder of a trade or business in the United States. For this purpose, interest on the Notes will be included in the Non-U.S. Holder's earnings and profits.

Any gain realized on the disposition of the Notes generally will not be subject to federal income tax unless:

- that gain is effectively connected with a Non-U.S. Holder's conduct of a trade or business in the United States and, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment; or
- the Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of that disposition and certain other conditions are met.

**Federal Estate Tax.** A Non-U.S. Holder's estate will not be subject to federal estate tax on the Notes beneficially owned by the Non-U.S. Holder at the time of his or her death, provided that any payment to the Non-U.S. Holder on the Notes would be eligible for exemption from the 30% federal withholding tax under the "portfolio interest" rule described above under "—Federal Withholding Tax," without regard to the certification requirement described in the sixth bullet point of that section.

**Information Reporting and Backup Withholding.** Generally, the LLC must report to the IRS and to a Non-U.S. Holder the amount of interest. Copies of the information returns reporting such interest payments and any withholding may also be made available to the tax authorities in the country in which the Non-U.S. Holder resides under the provisions of an applicable income tax treaty.

In general, backup withholding will not apply to payments that the LLC makes or any of the LLC's paying agents (in its capacity as such) makes to a Non-U.S. Holder if the Non-U.S. Holder has provided the required certification to the applicable withholding agent that the Non-U.S. Holder is a Non-U.S. Holder as described above and provided that neither the LLC nor any of its paying agents has actual knowledge or reason to know that the Non-U.S. Holder is in fact a U.S. Holder (as described above).

In addition, a Non-U.S. Holder will not be subject to backup withholding and information reporting with respect to the proceeds of the sale of Notes within the United States or conducted through certain U.S.-related financial intermediaries, if the payor receives the certification described above and does not have



actual knowledge or reason to know that the Non-U.S. Holder is in fact a U.S. person, as defined under the Code, or the Non-U.S. Holder otherwise establishes an exemption.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a Non-U.S. Holder's federal income tax liability provided the required information is timely furnished to the IRS.

#### ***Additional Federal Income Tax Withholding Rules***

Sections 1471 through 1474 of the Code (commonly referred to as "FATCA") and applicable Treasury Regulations impose a 30% federal withholding tax on withholdable payments (as defined below) made to a foreign financial institution, unless such institution enters into an agreement with the Department of Treasury to, among other things, collect and provide to it substantial information regarding such institution's United States financial account holders, including certain account holders that are foreign entities with United States owners, or the foreign financial institution otherwise qualifies for an exemption from these rules and provides appropriate documentation (such as an IRS Form W-8BEN-E). FATCA also generally imposes a 30% federal withholding tax on withholdable payments to a nonfinancial foreign entity unless such entity provides the paying agent with a certification that it does not have any substantial United States owners or a certification identifying the direct and indirect substantial United States owners of the entity (generally by providing an IRS Form W-8BEN-E).

"Withholdable payments" include payments of interest on the Notes, as well as gross proceeds from the sale or other taxable disposition of the Notes, unless the payments of interest or gross proceeds are effectively connected with the conduct of a U.S. trade or business and taxed as such.

These withholding and reporting requirements will apply currently with respect to interest on the Notes, but will not apply to withholding on gross proceeds on the sale or other taxable disposition of the Notes unless such a disposition occurs after December 31, 2018. A foreign financial institution located in a jurisdiction that has an intergovernmental agreement with the United States governing FATCA may be subject to different rules. Prospective investors are urged to consult their own tax advisors regarding the application of withholding under FATCA to the Notes.

## **ERISA CONSIDERATIONS**

### ***General***

The following is a summary of certain considerations associated with the purchase of Membership Units and Notes by employee benefit plans that are subject to Title I of the United States Employee Retirement Income Security Act of 1974, as amended ("ERISA"), plans, individual retirement accounts and other arrangements that are subject to Section 4975 of the Code or provisions under any federal, state, local, non-U.S., or other laws or regulations that are similar to such provisions of the Code or ERISA (collectively, "Similar Laws"), and entities whose underlying assets are considered to include "plan assets" of any such plan, account or arrangement (each, a "Plan"). This summary is based on the provisions of ERISA and the Code, and the related regulations and administrative and judicial interpretations, as of the date hereof. This summary does not purport to be complete, and no assurance can be given that future legislation, court decisions or administrative regulations, rulings or pronouncements will not significantly modify the requirements summarized herein. Any such changes may be retroactive and thereby apply to transactions entered into before the date of their enactment or release.

### ***General Fiduciary Matters***

ERISA and the Code impose certain duties on persons who are fiduciaries of a Plan subject to Title I of ERISA or Section 4975 of the Code (an “ERISA Plan”) and prohibit certain transactions involving the assets of an ERISA Plan and its fiduciaries or other interested parties. Under ERISA and the Code, any person who exercises any discretionary authority or control over the administration of an ERISA Plan or the management or disposition of the assets of an ERISA Plan, or who renders investment advice for a fee or other compensation to an ERISA Plan, is generally considered to be a fiduciary of the ERISA Plan.

In considering an investment of a portion of the assets of any Plan in Membership Units and Notes, a fiduciary should determine (i) whether the investment is in accordance with the documents and instruments governing the plan and the applicable provisions of ERISA, the Code or any Similar Law relating to the fiduciary’s duties to the Plan including, without limitation, the prudence, diversification, delegation of control and prohibited transaction provisions of ERISA, the Code and any other applicable Similar Laws, (ii) whether in making the investment, the Plan will be considered to hold, as plan assets, (1) only the investment in Membership Units and Notes or (2) an undivided interest in our underlying assets (please read the discussion under “—Plan Asset Issues” below), and (iii) whether the investment will result in recognition of unrelated business taxable income by the Plan and, if so, the potential after-tax investment return. Please read “Income Tax Considerations for Members—Unrelated Business Taxable Income”.

Governmental plans (as defined in Section 3(32) of ERISA) and certain church plans (as defined in Section 3(33) of ERISA) and non-U.S. plans (as defined in Section 4(b)(4) of ERISA), while generally not subject to the fiduciary responsibility provisions of ERISA or the provisions of Section 4975 of the Code, may nevertheless be subject to local, state or other federal or non-U.S. laws that are substantially similar to ERISA and the Code. Fiduciaries of any such Plans should consult with their counsel before acquiring Membership Units and Notes.

### ***Prohibited Transaction Issues***

Section 406 of ERISA and Section 4975 of the Code (which also applies to IRAs that are not considered part of an employee benefit plan) prohibit ERISA Plans from engaging in specified transactions involving plan assets with persons or entities who are “parties in interest,” within the meaning of ERISA, or “disqualified persons,” within the meaning of Section 4975 of the Code, unless an exemption is available. A party in interest or disqualified person who engages in a non-exempt prohibited transaction may be subject to excise taxes and other penalties and liabilities under ERISA and the Code. In addition, the fiduciary of the ERISA Plan that engages in such a non-exempt prohibited transaction may be subject to excise taxes, penalties and liabilities under ERISA and the Code. In this regard, the U.S. Department of Labor has issued prohibited transaction class exemptions, or “PTCEs,” that may apply to the acquisition and holding of Membership Units and Notes. These class exemptions include, without limitation, PTCE 84-14 respecting transactions determined by independent qualified professional asset managers, PTCE 90-1 respecting insurance company pooled separate accounts, PTCE 91-38 respecting bank collective investment funds, PTCE 95-60 respecting life insurance company general accounts and PTCE 96-23 respecting transactions determined by in-house asset managers. In addition, the statutory service provider exemption provided by Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code, which exempts certain transactions between ERISA Plans and parties in interest or disqualified persons that are not fiduciaries with respect to the transaction could apply. Each of these class exemptions and statutory exemptions contains conditions and limitations with respect to their application. There can be no assurance that all of the conditions of any such exemptions will be satisfied.

### ***Plan Asset Issues***

ERISA and the regulations (the “Plan Asset Regulations”) promulgated under ERISA by the United States Department of Labor, or DOL, generally provide that when an ERISA Plan acquires an equity interest in an

entity that is neither a “publicly offered security” nor a security issued by an investment company registered under the Investment Company Act, the ERISA Plan’s assets include both the equity interest and an undivided interest in each of the underlying assets of the entity unless it is established either that, immediately after the most recent acquisition of an equity interest in the entity by a Plan, less than 25% of the total value of each class of equity interest in the entity is held by “benefit plan investors” as defined in Section 3(42) of ERISA (the “25% Test”) or that the entity is an “operating company,” as defined in the Plan Asset Regulations. The Plan Asset Regulations define an “equity interest” as an interest in an entity other than an instrument that is treated as indebtedness under applicable local law and which has no substantial equity features.

For purposes of the Plan Asset Regulations, (i) a “publicly offered security” is a security that is (a) “freely transferable,” (b) part of a class of securities that is widely held by 100 or more investors independent of the issuer and each other and (c) (x) sold to the plan as part of an offering of securities to the public pursuant to an effective registration statement under the Securities Act of 1933 and the class of securities to which such security is a part is registered under the Securities Exchange Act of 1934 within 120 days after the end of the fiscal year of the issuer during which the offering of such securities to the public has occurred, or (y) is part of a class of securities that is registered under Section 12(b) or (g) of the Securities Exchange Act of 1934; and (ii) an “operating company” includes an entity that is primarily engaged, directly or through a majority owned subsidiary or subsidiaries, in the production or sale of a product or service, other than the investment of capital.

In addition, under the Plan Assets Regulations, it is possible that we could qualify as a “real estate operating company,” in which case Plans would not be considered to own an undivided interest in each of the our assets. We would qualify as a real estate operating company if (1) on certain specified testing dates, at least 50% of our assets, valued at cost, are invested in real estate that is managed or developed and with respect to which we have the right to substantially participate directly in the management or development of the real estate, and (2) it is in our ordinary course of business to engage directly in real estate management or development activities.

It is not clear whether we currently qualify as an operating company or a real estate operating company for purposes of the Plan Asset Regulations, and while we may so qualify in the future, there can be no assurance that such qualification will be achieved or will, if so achieved, continue indefinitely. Membership Units and Notes will not qualify as a “publicly offered security” prior to registration and while they may so qualify thereafter, there can be no assurance in such regard. Furthermore, it is not anticipated that we will be an investment company registered under the Investment Company Act.

Prior to such time, if any, the Manager determines that our Membership Units and Notes qualify as a class of “publicly traded securities,” we intend to limit investment in our Membership Units and Notes, as applicable, by “benefit plan investors” to under 25% of the total value of each class of our equity interests (not including the investments of persons with discretionary authority or control over our assets, of any person who provides investment advice for a fee (direct or indirect) with respect to such assets, and “affiliates” (as defined in the applicable regulations issued under ERISA) of such persons; provided, however, that under no circumstances are investments by benefit plan investors excluded from such calculation). The Plan Asset Regulations define an “equity interest” as an interest in an entity other than an instrument that is treated as indebtedness under applicable local law and which has no substantial equity features. Except as set forth in the last sentence of this paragraph, because the 25% Test is ongoing, no person holding Membership Units or Notes may transfer such Membership Units or Notes to any benefit plan investor prior to the time that Membership Units or Notes, as applicable, are registered and otherwise qualify as “publicly-offered securities” for purposes of ERISA. Notwithstanding the foregoing, in the event that the Manager determines that we qualify as an “operating company” for purposes of ERISA, we may waive the restrictions on the transfer of Membership Units and Notes to benefit plan investors.

### ***Plan Asset Consequences***

If our assets were deemed to be “plan assets” under ERISA, this would result, among other things, in (i) the application of the prudence and other fiduciary responsibility standards of ERISA to investments made by us, and (ii) the possibility that certain transactions in which we might seek to engage could constitute “prohibited transactions” under ERISA and the Code.

### ***Representation***

Accordingly, by acceptance of Membership Units and/or Notes each purchaser or subsequent transferee of Membership Units and/or Notes will be deemed to have represented and warranted either that (i) no portion of such purchaser’s or transferee’s assets used to acquire such Membership Units and/or Notes constitutes assets of any employee benefit plan or (ii) the purchase of Membership Units and/or Notes by such purchaser or transferee will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or similar violation under any applicable Similar Laws. In addition, in order to help us monitor investments by benefit plan investors, each purchaser (and subsequent transferee) is required to represent in the purchaser’s letter or subscription agreement or transfer documentation whether the purchaser or subsequent transferee is a benefit plan investor and to provide such additional information as may be reasonably requested to determine whether the purchaser or a subsequent transferee meets the suitability standards for ownership of Membership Units and/or Notes.

The foregoing discussion is general in nature, is not intended to be all-inclusive, and is based on laws in effect on the date of this offering memorandum. Such discussion should not be construed as legal advice. Due to the complexity of these rules and the excise taxes, penalties and liabilities that may be imposed upon persons involved in non-exempt prohibited transactions, it is particularly important that fiduciaries, or other persons considering purchasing Membership Units and/or Notes on behalf of, or with the assets of, any plan consult with their own counsel regarding the potential applicability of ERISA, Section 4975 of the Code and Similar Laws to such investment and whether an exemption would be applicable to the purchase of Membership Units and/or Notes. While the Manager will provide annually upon the written request of a Member an estimate of the value of the Membership Units and Notes based upon, among other things, outstanding mortgage investments, it may not be possible to value the Membership Units and Notes adequately from year to year, because there will be no market for them.

## **ADDITIONAL INFORMATION AND UNDERTAKINGS**

The Manager undertakes to make available to each offeree every opportunity to obtain any additional information from the LLC or the Manager necessary to verify the accuracy of the information contained in this Memorandum, to the extent that it possesses such information or can acquire it without unreasonable effort or expense. This additional information includes, without limitation, all the organizational documents of the LLC, recent financial statements for the Manager and all other documents or instruments relating to the operation and business of the LLC and material to this offering and the transactions contemplated and described in this Memorandum. Prospective Investors may request additional information from:

***Philip Fusco or Mitch Hill  
Fortunato Capital Partners, LLC  
16441 Scientific Way, Suite 250  
Irvine, CA 92618  
Phone: 949.396.6715  
Fax: 949.485.5652***

***philip.fusco@fortunatocapital.com or mitch.hill@fortunatocapital.com***

**EXHIBIT A**

**LIMITED LIABILITY OPERATING AGREEMENT**

*ATTACHED AS A SEPARATE DOCUMENT*

**EXHIBIT B**

**SUBSCRIPTION AGREEMENT AND POWER OF ATTORNEY**

*ATTACHED AS A SEPARATE DOCUMENT*

**EXHIBIT C**

**CURRENT FINANCIAL STATEMENTS**

*ATTACHED AS A SEPARATE DOCUMENT*

**EXHIBIT D**

**SUMMARY OF LOAN PORTFOLIO**

*ATTACHED AS A SEPARATE DOCUMENT*



**EXHIBIT E**

**CUSTODIAL AGREEMENT**

*ATTACHED AS A SEPARATE DOCUMENT*

**EXHIBIT F**

**FORM OF NOTE AND SECURITY AGREEMENT**

*ATTACHED AS A SEPARATE DOCUMENT*