

## **RISKS OF INVESTMENT**

As with any investment, the purchase of the Units will involve a number of risk factors. The Fund will assist prospective investors and their advisors by answering such questions as they may have, making available to them, upon request, such information as is in possession of the Fund or attainable by it without unreasonable expense or effort. Prospective Investors should consider the following risk factors, together with all the other information, including all other risk factors and conflicts of interest relating to an investment in the Fund, including those set forth in this Memorandum, before deciding to subscribe for Interests. Prospective Investors are urged to retain legal, investment, and tax advisors to assist them in evaluating these risks. Because of these factors, as well as other risks inherent in any investment, there can be no assurance that the Fund will be able to meet its investment objectives or otherwise can successfully carry out its investment program. The risks described below are not the only risks relating to an investment in the Fund, and other risks also may adversely affect an investment in the Fund. In addition to the Above Risks, businesses are often subject to risks not foreseen or fully appreciated by management. In reviewing this offering memorandum, potential investors should keep in mind other possible risks that could be important.

The information in this Memorandum (including financial information and information concerning prior transactions) has been obtained from published and non-published sources, including the management of certain entities that participated in such prior transactions. Certain information contained herein has been obtained from published sources prepared by third parties. While such information is believed to be reliable for the purposes used herein, none of the Fund, its affiliates, or any of their respective directors, officers, members, managers, employees, or owners assumes any responsibility for the accuracy of such information.

### ***GENERAL INVESTMENT RISKS***

#### **Business Risks.**

The success of the Fund depends upon the ability of the Manager to identify, select and consummate an investment that will offer superior returns. The availability of such opportunities will depend, in part, upon general market conditions. The business of identifying and structuring a transaction is highly competitive and involves a high degree of uncertainty. Even if the Manager identifies an attractive investment opportunity, there can be no assurance that the Fund will be permitted to invest in such opportunities. As a result, it is possible that the Fund might never be fully invested. However, Members will be required to pay management fees based on the entire amount of their Capital Contributions. No assurance can be given that the Fund's investment will generate any income or will appreciate in value.

#### **Past Performance Not a Predictor of Future Results.**

The track record of the Manager, its affiliates, and any real estate companies they have managed should not be assumed to imply or predict, directly or indirectly, any level of future performance of the Fund. The performance of the Fund is dependent on future events and is, therefore, inherently uncertain. Past performance cannot be relied upon to predict future events for a variety of reasons, including, without limitation, local and national economic circumstances, supply and demand characteristics, degrees of competition, and other circumstances pertaining to capital markets.

#### Inability to Achieve Targeted Rate of Return.

The Fund will make an investment based on the Manager's estimates or projections of internal rates of return and current returns, which in turn are based on, among other considerations, assumptions regarding the performance of the investment, the amount and terms of available financing and the manner and timing of a disposition, including possible asset recovery and remediation strategies, all of which are subject to significant uncertainty. In addition, events or conditions that have not been anticipated may occur and may have a significant effect on the actual rate of return received on the investment.

#### Lack of Operating History.

The Fund is a newly organized entity and, accordingly, has no operating history upon which prospective investors can evaluate the Fund's likely performance. Although the Fund's management team has experience in acquiring, developing, asset managing, operating, financing, and disposing of real estate, there can be no assurance that the performance of those activities will be reflective or indicative of the future performance of this Fund.

#### Investment Policies and Strategies.

The Fund may not meet its stated investment strategy and goals, and the Manager has the right to vary from its strategy and policies if it determines it is in the best interests of the Fund, subject to the terms of the Operating Agreement.

#### Investor Failure to Fund Capital Commitment.

If one or more Investors fail to fund their capital commitment obligations when due, the Fund's ability to complete its investment program or otherwise to continue operations may be substantially impaired. A default by one or more Investors who have made Commitments could limit the Fund's opportunities for investment and reduce returns to the Fund.

#### Reliance on Key Persons.

The ability of the Manager to manage the Fund's affairs currently depends on the management team and the Manager's principals. There can be no assurance that the members of the management team will remain affiliated throughout the term of the Fund or otherwise can continue to carry on their current duties throughout such term. The inability to recruit and hire replacement or additional key personnel as needed could have a material adverse effect on the Fund's operations.

#### Co-Investments.

This Fund may co-invest with other parties, including the Manager, its affiliates, any other funds sponsored by the Manager or its affiliates when and on such terms as the Manager deems appropriate, including in the event additional capital is needed or desired to support or enhance the investment property. In such co-investment transactions, the terms of investment of the Fund, the Manager, or its affiliates may not be identical and may include situations where the Manager or its affiliates receive returns or fees from such other parties which differ from those received from the Fund. Co-investment opportunities may not be determined through arm's length negotiations with the Fund. The Fund will not be obligated to provide co-investment opportunities (or provide any concessions granted to any other Investor upon becoming a Member) to any Investor because such opportunity was made available to any other Investor.

#### No Right to Remove the Manager.

The Investors have no right to remove the Manager.

#### Absence of Recourse against the Manager.

The Operating Agreement limits the circumstances under which the Manager, and its respective affiliates, and their respective officers, directors, members, Members, shareholders, employees, and consultants or agents can be held liable to the Fund or its Investors. Thus, Investors may have a more limited right of action in certain cases than they would in the absence of this provision.

#### Lack of Control by Investors.

Investors will not have an opportunity to evaluate the investments made by the Fund or the terms of any investment. Investors should expect to rely solely on the ability of the Manager to make an appropriate investment for the Fund and to appropriately manage and dispose of the investment. The business of the Fund will generally be managed by the Manager, who will have significant discretion in managing the Fund's business. The rights and obligations of Investors will be subject to the limitations set forth in the Operating Agreement, and except for the rights specifically reserved to them by the Operating Agreement and applicable law, Investors will have no part in the management and control of the Fund. Moreover, the Manager is under no obligation to call or hold any meeting. The Manager may call a meeting of the Fund in such number and at such times as Manager deems advisable. Members holding at least sixty (60%) of the Fund's ownership Interests may call meetings of the Fund in accordance with the terms of the Operating Agreement. Further, any action taken by Members, whether or not in a meeting, must be approved in writing by the Manager.

#### Lack of Marketability

There are significant restrictions on the ability to sell or transfer an Interest in the Fund. There is no public market for the Interests, and, in addition, the Interests are being sold in reliance upon exemptions from registration under the Securities Act and applicable state securities laws. Thus, the Interests may not be sold unless they are subsequently registered under the Securities Act and applicable state securities law, if so required, or unless an opinion of counsel or other evidence satisfactory to the Manager is obtained that states that registration is not required. In addition, any sale, transfer, assignment, or pledge of an Interest in the Fund must be approved by the Manager, which may be withheld at the Manager's sole and absolute discretion. Because of those restrictions, Investors may not be able to liquidate their investment in the case of emergency or otherwise. The restrictions may also influence the price an Investor would receive if a transfer were to occur.

#### Liability of Members for Repayment of Certain Distributions

Under Delaware law (applicable to an investment in the Fund), if an Investor has knowingly received a distribution from the Fund at a time when its liabilities exceed the fair market value of its assets after giving effect to the distribution, the Investor is liable to the Fund for a period of three years thereafter for the distribution. If the Fund is otherwise unable to meet its obligations, the Investors may, under applicable law, be obligated to return, with interest, cash distributions previously received by them to the extent such distributions are deemed to constitute a return of their capital contributions or are deemed to have been wrongfully paid to them. In addition, an Investor may be liable under applicable Federal and State bankruptcy or insolvency laws to return a distribution made during the Fund's insolvency.

### Conflicts of Interest

(Also see the section below Conflicts of Interest.) An investment in the Fund involves several inherent or potential conflicts of interest, which prospective Investors should carefully consider before subscribing for Interests.

The Manager may make, or cause its affiliates to make, short-term loans to or from the Fund. The terms of such loans will not be determined through arms-length negotiations, and such loans will bear interest rates as determined by the Manager, which may not be consistent with the market rates for such loans.

Investors should note that the Manager will receive investment management fees and has the right to not take such management fees, in whole or in part, as to any monthly payment period, and to defer such management fees to such other periods as the Manager may determine. The Manager and its affiliates may also receive other fees about services provided to the Fund and the respective properties, including, without limitations, market-rate fees for property management, construction, and construction management.

The Manager and, at their option, Members, may make advances to the Fund prior to the Initial Closing to assist in the financing of investment of the Fund. As described in “Summary of Fund Terms-Pre-Initial Closing Financing”, this bridge financing may be secured or unsecured financing and will be treated as either equity or debt and will result in a six percent (6%) return to the participants.

The principal and senior executives of the Manager also provide services to other affiliates of the Manager. The principal and senior executives of the Manager may devote significant time in the future to the management of their other existing investments and professional activities. No restrictions are placed upon the Manager or its affiliates with respect to existing real estate investments or non-real estate investments separate and apart from the Fund. Further, the Manager and its affiliates and principal may purchase property that meets the Fund’s investment criteria to complete a Section 1031 like-kind exchange with respect to any properties owned by the Manager or its affiliates and principal.

In the ordinary course of business, the Manager and its Affiliates may engage in activities in which such party’s interests conflict with the interest of the Fund, such as leasing office space in the investment property owned by the Fund. In determining, negotiating, or overseeing arrangements involving payments to the Fund by the Manager or an Affiliate of the Manager, the Manager is under a conflict between the incentive to minimize payments made by the Manager or its Affiliates and the incentive to maximize payments to the Fund. Lease arrangements between the Fund, on the one hand, and the Manager or any of its Affiliates, on the other hand, shall not be negotiated at arm’s length, and the Fund may be able to obtain more favorable terms with a counterparty unaffiliated with the Manager. The Manager intends, however, that the terms of any such lease arrangement shall be no less favorable than the prevailing rates for similar office space located in the markets in which the investment is located. The Manager and/or its Affiliates is under no obligation to lease any space in the investment property owned by the Fund, including, but not limited to, in the event that the investment property held by the Fund has vacancies it is unable to fill.

### Broad Discretion in Use of Funds

The Fund has broad discretion on how to allocate the proceeds received as a result of this Offering and may use the proceeds in ways that differ from the proposed uses summarized in this Memorandum. If the Fund fails to invest and

utilize the proceeds effectively, its business and financial condition could be harmed and there may be the need to seek additional financing to fund operations.

#### Lack of Sufficient Funding.

The success of the Fund and the Manager's ability to implement its business strategy is dependent upon the Fund's ability to raise capital. If the Fund is unable to raise sufficient capital, it may not be able to carry out all its planned acquisitions. If that were the case, the Fund would have to be more reliant upon outside financing or third parties to complete its business plan. As an alternative, the Fund may reduce the number of planned acquisitions and thereby limit its diversification.

#### Phantom Income.

Although it is intended that distributions will be made on a regular basis, there can be no guarantee that will be the case. Accordingly, it is possible that Members in the Fund could be allocated taxable income in a given taxable year without corresponding distributions of cash or property by the Fund to pay such tax liabilities.

#### ***FEDERAL INCOME TAX RISKS***

*Generally*, the income tax aspects of an investment in the Fund are complicated. Prospective Investors should review the discussion herein under the heading "**Tax Considerations**" and discuss the applicable tax considerations with their own professional tax advisors familiar with the Investor's particular income tax situation and with the income tax laws and regulations applicable to the Investor and investment partnerships.

The Fund expects to be treated as a partnership for Federal income tax purposes, with the result that the Investors, and not the Fund, will be taxed on their distributive shares of the Fund's items of income and gain. Investors will have this income tax liability even in the absence of cash distributions and thus may have taxable income and income tax liability arising from their investments in the Fund in years in which they receive no cash distributions from the Fund. If this occurs, the tax on such profits will be an out-of-pocket cost of the Investors.

In addition to Federal income taxes, each Investor may incur income tax liabilities under the State or local income tax laws of certain jurisdictions in which the Fund will operate and/or own assets, as well as in the jurisdiction of that Investor's residence or domicile. State and local income tax laws vary from one location to another, and Federal, State, and local income tax laws are both complex and subject to change. In addition, special income tax considerations may apply to qualified employee benefit plans and other tax-exempt entities, as well as to non-U.S. residents.

No assurance can be given that the Fund's interpretation of the existing Federal income tax laws and Treasury Regulations for any given year will not be challenged by the Internal Revenue Service, resulting in an increase in taxable income or a decrease in allowable deductions.

#### Changes in the Law- Recent Legislation.

In recent years, numerous changes to the Code have been enacted. These changes have affected marginal tax rates, personal exemptions, itemized deductions, depreciation and amortization rates, and other provisions of the Code. There can be no assurance that the present federal income tax treatment of an investment in the Fund will not be

adversely affected by future legislative, judicial or administrative action. Any modification or change in the Code or the regulations promulgated thereunder, or any judicial decision, could be applied retroactively to an investment in the Fund. In view of this uncertainty, prospective Investors are urged to consider ongoing developments in this area and consult their advisors concerning the effects of such developments on an investment in the Fund, considering their own personal tax situations.

#### Risk of Audit.

Information returns filed by the Fund are subject to audit by the IRS. An audit of the Fund's return may lead to adjustments, in which event the Members may be required to file amended income tax returns. In addition, any such audit may lead to an additional audit of an Investor's income tax return, which may lead to adjustments other than those relating to such Investor's investment in the Fund. The costs of such audit and adjustments would be borne by the affected Members.

#### Other Potential Tax Risks.

In evaluating an investment in the Fund, a prospective Investor should also consider, in addition to the above potential tax consequences, the following tax consequences (amongst others): (i) the possibility that there may be a recapture of depreciation so that upon a sale of Interests, or of a Fund real estate investment, a portion of the gain may be taxed as ordinary income tax rates; (ii) the possibility that his or her income tax liability resulting from a sale of a Fund investment (including a sale or disposition resulting from the foreclosure or other enforcement of a security interest) or from a sale or other disposition (e.g., by gift) of his or her Interests may exceed his or her share of the cash proceeds therefrom (whether or not distributed), and to the extent of such excess, the payment of such income taxes will be an out- of-pocket expense; (iii) the possibility that in connection with the reduction or compromise of a debt obligation of one or more of the Fund's investments, the Investors may be required to recognize debt forgiveness income without a corresponding distribution; (iv) the possibility of tax liability on the Fund's current operating income in excess of amounts that the Manager deems advisable to distribute; (v) the possibility that foreign, State or local income tax treatment may be adverse; (vi) the possibility that there may be adverse changes in the income tax laws and their interpretation; and (vii) the possibility that the interest expense of the Fund might not be allowable as a deduction to some or all of the Investors. Moreover, there is uncertainty concerning certain other of the income tax aspects of an investment in the Fund, and there can be no assurance that some of the deductions claimed or positions taken by the Fund may not be successfully challenged by the IRS.

#### ***OTHER REGULATORY AND LEGAL RISKS***

##### Federal and State Securities Laws: Absence of Regulation Applicable to the Fund.

The Fund has not registered and will not register this Offering under the Securities Act in reliance on the exemption provisions of Section 4(a)(2) of the Securities Act and Regulation D promulgated by the SEC. The Fund also has relied on exemptions from securities registration requirements under applicable state securities laws. Investors in the Fund, therefore, will not receive any of the benefits that registration may be deemed to afford. Given the planned nature of the Fund's investments, or pursuant to certain available exemptions, the Fund should not be required to register as an "investment company" under the Investment Company Act of 1940, and investors in the Fund will not have the protections that may be deemed to be afforded to investors under such Act.

The sale of the securities offered herein has not been qualified with the commissioner of corporations of the state of California, and the issuance of these securities or the payment or receipt of any part of the consideration therefore prior to such qualification is unlawful unless the sale of units is exempt from qualification by section 25100, 25102 or 25105 of the California Corporations Code. The rights of all parties to the operating agreement are expressly conditioned upon such qualification being obtained unless the sale is so exempt.

#### Liquidity of Interests.

Investors should be aware of the long-term nature of this investment. There is not now and will not be a public market for the Interests. Because the Interests have not been registered under the Securities Act or under the securities laws of any State or foreign jurisdiction, the Interests are “restricted securities” and cannot be resold in the United States except as permitted under the Securities Act and applicable state securities laws, pursuant to registration thereunder or exemption from such registration. It is not contemplated that registration of the Interests under the Securities Act or other securities laws will ever be affected. The Interests may also not be sold or otherwise transferred without the consent of the Manager and compliance with the Operating Agreement. Accordingly, an Investor may not be able to liquidate his, her or its investment in the Fund in the event of an emergency or for any other reason, and an Investor’s Interests due to the illiquid nature of the Interest and the limitation on transfer may not be accepted as collateral for loans. Limitations on the transfer of the Interests may also adversely affect the price that an investor might be able to obtain for Interests in a private sale.

#### **CONFLICTS OF INTEREST**

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

#### ***NON ARMS’-LENGTH COMPENSATION***

The Fund or the Manager will determine in good faith whether or not to enter any investments in Properties, or to enter into any transaction, on behalf of the LLC. None of the Manager’s or its affiliated companies’ compensation described herein was negotiated at “arms’ length.”

#### ***FUND MANAGEMENT NOT REQUIRED TO DEVOTE FULL-TIME***

The Manager is not required to devote its capacities full-time to the Fund's affairs. Nevertheless, the Manager does plan to devote such time to the management of the LLC as the affairs of the Fund reasonably require.

#### ***COMPETITION WITH AFFILIATES OF THE FUND***

Although they currently have no intention to do so, there is no restriction preventing the Fund or any of its affiliates, principals, Members, or management from competing with the Fund by investing in properties or sponsoring the formation of other investment groups like the Fund to invest in similar areas. If the Fund or any of its principals

were to do so, then when considering each new investment opportunity, the Fund or such affiliate, principal or manager would need to decide whether to originate or hold the resulting transaction in the Fund, as an individual or in a competing entity. This situation would compel the Manager to make decisions that may at times favor persons other than the Fund. The Operating Agreement exonerates the Fund and its affiliates, principals and management from any liability for investment opportunities given to other persons.

#### ***OTHER COMPANIES & PARTNERSHIPS OR BUSINESSES***

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

#### ***CREDITOR RELATIONSHIP WITH THE FUND***

If the Fund chooses to employ leverage, the Fund may obtain such leverage from the Manager or an Affiliate. Any such arrangement would render the Manager or Affiliate, as applicable, in the position of a creditor vis-à-vis the Fund (which would be a debtor as a result of obtaining such access to leverage). As a creditor, the Manager or Affiliate may have interests or views that are contrary to, or otherwise in conflict with, the interests and views of the Members. While the Manager would nevertheless be expected to exercise its fiduciary duty for Members in managing the Fund, the Manager would clearly have a conflict from its or its Affiliate's creditor relationship with the Fund.

The entry into a credit or leverage relationship between the Fund and the Manager or an Affiliate will generally be on terms and conditions that are fair and reasonable for all parties, but no assurance can be given that the Fund could not obtain better terms and conditions or a more favorable arrangement from an independent third party.

#### ***OTHER SERVICES PROVIDED BY THE MANAGER OR ITS AFFILIATES***

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