

# 457 MINNA INVESTORS, LLC

a Delaware limited liability company

## PRIVATE PLACEMENT MEMORANDUM

December 10, 2020

5,600 Membership Interests

Price: \$5,000 per Interest

Minimum Purchase: 1 Interest (\$5,000)

457 Minna Investors, LLC (“we,” “us,” “our,” “Minna Members” or the “Company”) is a Delaware limited liability company that has been formed to invest in the real property at 457-475 Minna Street, San Francisco, CA. The Manager of the Company is 457 Minna Partners LLC. We are offering membership interests in the Company (each, an “Interest” and, collectively, the “Interests”) to qualified investors.

	Price to <u>Investors</u>	Sales <u>Commissions</u>	Proceeds to <u>Company</u>
Per Interest	\$5,000.00	\$162.50	\$4,837.50
Minimum Offering	\$5,200,000.00	\$169,000.00	\$5,031,000.00
Total Offering	\$28,000,000.00	\$910,000.00	\$27,090,000.00

This offering will terminate on the Offering Termination Date, June 30, 2021. Republic Compound LLC, through its registered broker dealer OpenDeal Broker LLC (collectively, “Republic”) will solicit investors in connection with offering the Interests and is entitled to a securities fee of 3% of the gross proceeds of the offering of the Interests; and Offering and Processing Fees of 0.25% of the gross proceeds of the offering of the Interests. These fees are payable by the subscriber and will be deducted from the subscriber’s investment before it is credited to the Company. Accordingly, the subscriber’s Capital Account in the Company will only be credited with the net subscription proceeds received by the Company.

All funds paid by subscribers in the Offering will be deposited in an escrow account with Prime Trust, LLC, as “Escrow Agent”. If fewer than 1,040 Interests, or \$5,200,000 (the “Minimum Offering”), have been subscribed by the Offering Termination Date, all subscription funds will be returned to subscribers promptly with any interest accrued on such funds. If the Minimum Offering is achieved prior to the Offering Termination Date, the Manager may instruct the Escrow Agent to close the escrow account, admit Members and commence Company operations. Thereafter, subscriptions may be deposited directly in the Company’s account in the Manager’s discretion.

The Interests offered hereby are highly speculative in nature and involve a high degree of risk. See “Risk Factors” of this Private Placement Memorandum for a discussion of certain material risks of investing in Interests.

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE 1933 ACT OR APPROVED OR DISAPPROVED BY THE U.S. SECURITIES EXCHANGE COMMISSION AND EXCHANGE COMMISSION (THE “SEC”) OR BY ANY STATE SECURITIES ADMINISTRATOR, NOR HAS THE SEC OR ANY STATE SECURITIES ADMINISTRATOR PASSED ON THE ACCURACY OR ADEQUACY OF THIS PRIVATE PLACEMENT MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

These securities are subject to restrictions on transfer and resale and may not be transferred or resold except as permitted under the Securities Act of 1933, as amended (the “1933 Act”) and applicable state securities laws, pursuant to registration or exemption therefrom.

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## **CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS**

The information contained in this Private Placement Memorandum includes some statements that are not historical and that are considered “forward-looking statements.” Such forward-looking statements include, but are not limited to, statements regarding our development plans for our business; our strategies and business outlook; anticipated development of the Company, the Manager, each series of the Company; and various other matters (including contingent liabilities and obligations and changes in accounting policies, standards and interpretations). These forward-looking statements express the Manager’s expectations, hopes, beliefs, and intentions regarding the future. In addition, without limiting the foregoing, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. The words “anticipates”, “believes”, “continue”, “could”, “estimates”, “expects”, “intends”, “may”, “might”, “plans”, “possible”, “potential”, “predicts”, “projects”, “seeks”, “should”, “will”, “would” and similar expressions and variations, or comparable terminology, or the negatives of any of the foregoing, may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking.

The forward-looking statements contained in this Private Placement Memorandum are based on current expectations and beliefs concerning future developments that are difficult to predict. Neither the Company nor the Manager can guarantee future performance, or that future developments affecting the Company or the Manager will be as currently anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements.

All forward-looking statements attributable to us are expressly qualified in their entirety by these risks and uncertainties. These risks and uncertainties, along with others, are also described below under the heading “Risk Factors.” Should one or more of these risks or uncertainties materialize, or should any of the parties’ assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. You should not place undue reliance on any forward-looking statements and should not make an investment decision based solely on these forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

## **MARKET AND OTHER INDUSTRY DATA**

This Private Placement Memorandum includes market and other industry data and estimates that are based on our management's knowledge and experience in the markets in which we operate. The sources of such data generally state that the information they provide has been obtained from sources they believe to be reliable, but we have not investigated or verified the accuracy and completeness of such information. Our own estimates are based on information obtained from our and our affiliates experience in the markets in which we operate and from other contacts in these markets. We are responsible for all of the disclosure in this Private Placement Memorandum, and we believe our estimates to be accurate as of the date of this Private Placement Memorandum or such other date stated in this Private Placement Memorandum. However, this information may prove to be inaccurate because of the method by which we obtained some of the data for the estimates or because this information cannot always be verified with complete certainty due to the limits on the availability and reliability of raw data, the voluntary nature of the data gathering process and other limitations and uncertainties. As a result, you should be aware that market and other industry data included in this Private Placement Memorandum, and estimates and beliefs based on that data, may not be reliable.

### NOTICE TO RESIDENTS OF ALL STATES

THE INTERESTS HAVE NOT BEEN REGISTERED UNDER THE 1933 ACT, OR THE SECURITIES LAWS OF CERTAIN STATES AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE 1933 ACT AND SUCH LAWS. THE INTERESTS ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE 1933 ACT AND SUCH LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE INTERESTS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SEC, ANY STATE SECURITIES COMMISSION OR OTHER REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED ON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THIS PRIVATE OFFERING MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

### NOTICE TO FLORIDA OFFEREEES

THE SECURITIES BEING OFFERED HAVE NOT BEEN REGISTERED WITH THE FLORIDA DIVISION OF SECURITIES AND INVESTOR PROTECTION. IF SALES OF THESE SECURITIES ARE CONSUMMATED WITH 5 OR MORE OFFEREEES IN THE STATE OF FLORIDA, ANY SUCH OFFEREE MAY, AT SUCH OFFEREE'S OPTION, VOID ANY PURCHASE HEREUNDER WITHIN 3 DAYS AFTER THE FIRST TENDER OF CONSIDERATION IS MADE BY THE PURCHASER TO THE SPONSOR, AN AGENT OF THE SPONSOR, OR AN ESCROW AGENT OR WITHIN 3 DAYS AFTER THE AVAILABILITY OF THAT PRIVILEGE IS COMMUNICATED TO THE PURCHASER, WHICHEVER OCCURS LATER.

### NOTICE TO OREGON OFFEREEES

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE 1933 ACT, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD.

## SUMMARY OF TERMS

The following information is only a summary of certain information contained in this Private Placement Memorandum and is qualified in its entirety by reference to the remainder of this Private Placement Memorandum, which includes the Appendices and Exhibits hereto.

- Defined Terms** Certain capitalized terms used in this Private Placement Memorandum without definition are defined in the Limited Liability Company Agreement of the Company, attached hereto as Exhibit A (the “**Agreement**”).
- Manager** The Manager of the Company is 457 Minna Partners, LLC. The Manager is indirectly owned and controlled by Starcity Ventures, LLC, a Delaware limited liability company (“**Starcity**”). See “Management.” The Manager is the sole member of the Company.
- Property** The Company has been organized to own, develop and operate the property located at 457-475 Minna St, San Francisco, California (the “**Property**”). The Company expects to use significant leverage. See “Description of the Property.”
- Structure** The Company is the sole member of 457 Minna Sole Member, LLC, a Delaware limited liability company, which in turn is the sole member of 457 Minna Owner, LLC, a Delaware limited liability company (the “**Ownership LLC**”). The Ownership LLC holds title to the Property.
- Development Manager** The Manager expects to serve as the development manager for the Property pursuant to the Agreement. The Manager may delegate some or all of its duty and authority as development manager to one or more of its Affiliates (the Manager and any such delegate are referred to herein as the “**Development Manager**”). The Development Manager will oversee the design, permitting and construction of the Property. Pursuant to the Agreement, the Company pays the Manager the fees described below in “Fees.” The Development Manager and its Affiliates may act as development manager for other clients during the term of the Company without the Company’s consent. See “Management” and “Conflicts of Interest.”
- Property Manager** The Ownership LLC expects to retain Starcity Management, Inc., a Delaware corporation (the “**Property Manager**”), as the property manager for the Property pursuant to a Property Management Agreement between Ownership LLC and the Property Manager (the “**Property Management Agreement**” and, together with the Development Services Agreement, the “**Management Agreements**”). The Property Manager will oversee the marketing, leasing, management, maintenance and operation of the Property after construction is completed. The Company pays the Property Manager the fees described below in “Fees.” The Property Manager currently acts as property manager for other clients, and may act as property manager for other clients during the term of the Company without the Company’s consent. The owners and personnel of the Manager control and have significant equity interests in the Property Manager. See “Management - Property Manager” and “Conflicts of Interest.”
- Term** The Company will continue until the Property is sold or the Manager elects to dissolve it. As a result, Members must be prepared to hold their Interests in

the Company for a long time. See “Summary of the Agreement -- Duration of the Company; Dissolution and Termination.”

## Offering

**Maximum Offering.** The Company is offering a maximum of 5,600 Interests for a total purchase price of \$28,000,000.

**Minimum Offering.** The Company must sell at least 1,040 Interests, or \$5,200,000, before Offering Termination Date, or the sale of Interests will not close. If the Minimum Offering has not been subscribed by the Offering Termination Date, all subscription funds will be returned to subscribers promptly with any interest accrued on such funds. If the Minimum Offering is achieved prior to the Offering Termination Date, the Manager may cause the Escrow Agent to release all subscription funds to the Company’s general operating account, admit the Members and commence Company operations. Thereafter, subscriptions may be deposited directly in the Company’s account in the Manager’s discretion.

**Minimum Investment.** Each subscriber must purchase at least 1 Interest (\$5,000). The Manager may, however, waive the foregoing minimum investment for any particular subscriber.

**Offering Termination Date.** This offering will terminate on the Offering Termination Date, June 30, 2021. The Company may extend the Offering Termination Date to December 31, 2021.

**Closing Date.** If the Company achieves the Minimum Offering, the Company’s initial closing (the “Closing”) will take place when the Manager determines it appropriate.

**Refinancing Contingency.** The Acquisition Financing pursuant to which the Property was acquired matured on August 1, 2020 and has not been repaid. The Closing will not occur until the Acquisition Financing has been extended, refinanced, or otherwise repaid. If the Acquisition Financing has not been extended, refinanced or otherwise repaid by the Offering Termination Date, the offering will be terminated and all subscription funds will be returned to the subscribers. See “Description of the Property - Acquisition Financing.”

**Capital Contribution.** Each Member must make a Capital Contribution to the Company of \$5,000 for each Interest subscribed by that Member, reduced by fees payable to Republic.

**Placement Agent Fees.** At the Closing, the Company will pay Republic a securities fee of 3% of the gross proceeds of the offering of the Interests and Offering and Processing Fees of 0.25% of the gross proceeds of the offering of the Interests. These fees will be deducted from the subscribers’ subscription amounts before they are credited to the subscribers’ Capital Accounts. In other words, for every \$5,000 subscribed, a Member’s Capital Account will be credited with \$4,837.50.

**Manager Capital Contributions and Closing Distributions.** The Manager made a Capital Contribution of \$5,200,000 to the Company before the offering to facilitate the acquisition of the Property. At the Closing, the Company will make a distribution to the Manager from the net proceeds of the offering in an

amount sufficient to reduce the Manager's Ownership Percentage to approximately 10%, plus an 8% per annum return on the amount of capital returned to the Manager. See "Estimated Use of Proceeds."

#### **Member Loans**

*Member Loans.* If the Manager determines that the Company requires additional capital to meet the needs of the Project after the Closing, the Manager may lend that amount to the Company (a "**Member Loan**"). Any such Member Loan will bear interest at a rate of 6% per year, compounded annually and calculated on the basis of a 360-day calendar year comprised of 30-day calendar months using the actual number of days elapsed in each month. The Company must repay any Member Loan before making any distribution to the Members. See "Summary of Terms - Distributions."

#### **Additional Members**

In the event the Manager determines that additional capital is required in order to accomplish the purposes of the Company after the Closing, the Manager may elect in its sole and absolute discretion to create additional Interests on such terms and conditions as the Manager deems appropriate, and may admit new Members to the Company provided that the new Members shall purchase their Interests for cash. The Manager may admit a new Member at any time. A new Member shall make such Capital Contribution as the Manager approves and execute a counterpart of the Agreement personally or by attorney-in-fact.

#### **Distributions**

*General Distribution Provisions.* The Manager will determine, in its sole and absolute discretion, the amounts and times of all distributions by the Company; provided that the Manager will cause the Company to distribute Available Cash (if any) no less than quarterly.

The Company's "**Available Cash**" on any date means all cash funds of the Company on hand on that date after: (a) payment of all Company Expenses that are due and payable as of such date; (b) provision for the payment of all Company Expenses that the Company is obligated to pay within 90 days of such date; and (c) provision for all reserves reasonably established by the Manager from time to time during such period for future Company Expenses.

*Order of Distributions.* Distributions of Available Cash will be made as follows:

- (a) First, 100% to the Manager until the Manager has received cumulative distributions equal to the outstanding principal amount of any Member Loan then outstanding together with interest thereon;
- (b) Next, to the Members in proportion to their respective then-existing Ownership Percentages until each such Member has received aggregate distributions under this clause (b) in an amount equal to its Unreturned Capital Contributions;
- (c) Next, to the Members in proportion to their respective then-existing Ownership Percentages until each such Member has received aggregate distributions in an amount necessary to provide it with a Preferred Return with respect to all of its Capital Contributions;

- (d) Next, (1) 20% to the Manager and (2) 80% to the Members in proportion to their respective then-existing Ownership Percentages until such time as each Member has received aggregate distributions pursuant to this clause necessary to provide a 12% IRR to such Member with respect to such Member's Capital Contributions (after giving effect to distributions under clauses (b) and (c) above);
- (e) Next, (1) 30% to the Manager and (2) 70% to the Members in proportion to their respective then-existing Ownership Percentages until such time as each Member has received aggregate distributions pursuant to this clause necessary to provide a 16% IRR to such Member with respect to such Member's Capital Contributions (after giving effect to distributions under clauses (b), (c) and (d) above); and
- (f) Thereafter, (1) 40% to the Manager and (2) 60% to the Members in proportion to their respective then-existing Ownership Percentages.

The distributions to the Manager in the foregoing clauses (e)(1), (f)(1) and (g)(1) are referred to herein as the "**Carried Interest Distribution**".

A Member's "**Unreturned Capital Contributions**" on any date means the difference between such Member's aggregate Closing Capital Contributions on or prior to that date minus the sum of all distributions the Company has made to that Member pursuant to clause (d) above before that date.

"**Preferred Return**" means an amount equal to an 8% per annum, non-compounded return on a Member's Unreturned Capital Contribution, calculated from the first day of the month following the Closing through the date of distribution. The Preferred Return shall be calculated on the basis of a 360-day calendar year comprised of 30-day calendar months using the actual number of days elapsed in each month.

"**IRR**" means a return on a Member's aggregate Capital Contributions expressed as a percentage equal to the return calculated by Microsoft Excel utilizing the XIRR function assuming the specified Capital Contributions and distributions are made on the actual day such Capital Contribution or distribution occurred and compounding on an annual basis.

## **Allocations**

**Capital Accounts.** The Company establishes a separate Capital Account for each Member on admission to the Company. The initial balance of that Capital Account will equal that Member's initial Capital Contribution.

**Allocations.** Profits and Losses will be allocated to the Members for each fiscal period in amounts that cause their respective Capital Account balances to be as closely as possible in such proportions that distributions can be made in the order described under "Summary of Terms - Distributions" if the Company were to sell all Company assets for an amount equal to their book value, satisfy all of its liabilities and distribute the proceeds. The Manager can cause allocations to be made more frequently as appropriate in its discretion. The Agreement also provides for special allocations of Profits and Losses.

**Limits on  
Transferability**

Members have no withdrawal or redemption rights. With the consent of the Manager, Members may assign Interests in the Company to third parties subject to compliance with applicable securities laws and the requirements of the Agreement. See "Summary of the Agreement -- Assignment of Interests."

**Fees**

*No Management Fee.* The Manager does not receive any asset management fee for serving as the Manager of the Company.

*Development Management Fees.* Pursuant to the Development Services Agreement, the Ownership LLC will pay the Manager a fee equal to 4% of the soft costs, hard costs and furniture costs for the Property, not to exceed an aggregate maximum of \$2,750,000. "Hard costs" are costs of constructing the Property, such as labor and materials. "Soft costs" are all other costs of project costs for the Property, such as city fees, permits and architectural and design costs. This fee will be paid in 36 equal monthly installments, with the final 3 installments being withheld until all final costs have been calculated.

*Property Management Fees.* Pursuant to the Property Management Agreement, the Ownership LLC pays the Property Manager a fee equal to 2.25% of the Adjusted Gross Income of the Property. "**Adjusted Gross Income**" means all gross rental income received from the Property (specifically excluding any amounts in connection with or related to the services provided by the Property Manager), less vacancy costs, collection losses and other customary exclusions determined by the Manager from time to time (if any).

*Disposition Fee.* On any sale of the Property, the Ownership LLC will pay the Manager or an Affiliate of the Manager a disposition fee equal to 1% of the gross sales proceeds.

**Expenses**

The Company will pay or reimburse the Manager for all costs and expenses actually incurred by or on behalf of the Company or any of its subsidiaries (including the Ownership LLC) or for their benefit (collectively, "**Company Expenses**"), including, but not limited to, (a) organizational expenses or costs and expenses (including commissions, if applicable) related to the syndication of the Company's interests; (b) all costs and expenses associated with negotiating and entering into contracts and arrangements in the ordinary course of the Company's business, including but not limited to any Company financing(s); (c) all interest and commitment fees on loans and debit balances; (d) costs and expenses of evaluating the Property for purchase or sale, whether or not consummated, including, without limitation, associated travel and related expenses, research and feasibility studies; (e) costs and expenses in the acquisition, holding, operating, monitoring, disposal and management of the Property including, without limitation, third-party legal and research, due diligence expenses (including, without limitation, associated travel and related expenses) and aborted deal expenses; (f) transfer, capital and other taxes, duties and costs incurred in acquiring, holding, selling or otherwise disposing of the Property, including stamp duties, commissions, government and fiscal charges, foreign exchange costs, annual fees, process fees, brokerages, finder or referral fees, sourcing and success fees, bank charges, registration and collection fees, insurance and security costs and currency hedging costs; (g) incorporation and operating expenses of any subsidiary of the Company (including the Ownership LLC) or joint venture or other entity in which the

Company has an interest, to the extent that they are attributable to the Company's interest in those entities, (h) all other travel and related expenses incurred in connection with Company investment opportunities and investments (including the Project), provided that if an investment opportunity is being considered for the Company and one or more of the Manager's other accounts or an Affiliate of the Manager, the Manager shall allocate such expenses among the Company and such other client accounts or Affiliate in such manner as it deems appropriate, (i) all fees and costs to governmental and other agencies in connection with permitting and developing the Property, (j) all fees and expenses of the Development Manager and the Property Manager, (k) all costs and expenses of maintenance, repairs and improvements of the Property, (l) all expenses relating to the investment of the Company's capital (such as, for example, custodial, clearing, banking, broken deal, brokerage and finder's fees and commissions), (m) all costs and expenses of any meetings of the Members, (n) all administration, bookkeeping, recordkeeping, legal, accounting, auditing, tax preparation, appraisal and all professional, expert and consulting fees and expenses arising in connection with the Company's activities (including fees and expenses of designers, architects, surveyors and other consultants retained by the Manager or the Company, counsel for the Company, the Manager or one or more officers or partners of the Manager and all fees, costs and expenses of accounting, bookkeeping and recordkeeping services of the Company's administrator or any similar service provider retained by the Manager to assist it in performing these services for the Company), (o) all costs and expenses incurred for the purposes of protecting and enhancing the value of the Company's assets (including the costs of instituting or defending lawsuits), (p) all fees, costs and expenses of communicating with Members (including, without limitation, communications costs, the costs of printing and distributing offering materials, subscription materials, reports and notices, legal and accounting fees and expenses and governmental and self-regulatory agency filing fees, costs and expenses), (q) all premiums and other costs and expenses of insurance policies as the Manager considers appropriate, insuring the Company, the Manager and their Affiliates against liabilities that may arise in connection with the business or management of the Company or any Property, (r) any contingencies for which the Manager determines reserves are required, and (s) any extraordinary expenses (such as litigation expenses). Except for the expenses specified above, which shall be borne by the Company, the Manager shall bear all of its own operating, general, administrative, and overhead costs and expenses incurred in managing the Company, including: (i) salaries and wages of the Company's employees, if any, and of the Manager's and its Affiliates' employees; (ii) rent for space that the Manager or its Affiliates use; and (iii) expenditures for equipment that the Manager or its Affiliates use and shall not charge the Company for any thereof.

**Suitability Standards** Members (or their representatives) must be sophisticated in financial and business matters generally and in investing in Properties and other securities. In addition, each investor must be an “accredited investor” under Regulation D. See “Suitability Standards.”

Each offeree hereunder should obtain the advice of that offeree’s own legal, accounting, tax and other advisers in reviewing this Private Placement Memorandum and before deciding to invest in Interests.

**Risk Factors and Tax Issues** An investment in the Company involves substantial risks and complex tax issues. See “Risk Factors” and “Federal Income Tax Aspects” for a discussion of some of these risks and issues.

**Reporting** The Company will furnish to the Members annual reports containing unaudited financial statements for the Company, and quarterly updates regarding the Company’s progress. The content and frequency of such reports are subject to change at the Manager’s discretion. The Manager does not intend to have the Company’s financial statements audited.

### DESCRIPTION OF THE PROPERTY

The Company has been formed to own, develop and operate the Property. The Company owns the Property indirectly through the Ownership LLC.

#### *Property Summary*

The Property is currently a two-story office building and adjacent parking lot that will be developed into a 16-story high-rise multifamily tower for mixed-income “group housing” use, located in the SoMa neighborhood of San Francisco, California. We intend to operate the entire Property, upon completion of construction and receipt of certificates of occupancy, as a rental property. The Manager’s development and leasing plans for the Property are described in greater detail in the Investment Memorandum attached hereto as Exhibit C.

Property Name	Starcity Minna
Address	457-475 Minna St., San Francisco, CA 94103
Year Built - Expected	2023
Units	270
Square Footage - Approximate	122,000
Building Amenities	Residential Lobby and Community Room Rooftop Outdoor Space Bicycle Repair Kitchen & Storage TV and Dining Lounge on each floor Package Room Rear Patio at First Level

## *Neighborhood Overview*

The South of Market submarket (SoMa) has gone through a rapid pace of development in recent years. The growth of the area is affirmed by CoStar's assessment that SoMa is now the second most expensive rental submarket in San Francisco, averaging \$3,860 per unit - trailing only the adjacent submarket of Mission Bay/China Basin/Potrero Hill.

Major tech employers have established office space in the region such as Google, Facebook, LinkedIn and Twitter. Parks are ample with Yerba Buena Gardens & Salesforce Park drawing residents from all over the city. Public transportation options are abundant with BART, Caltrain and Muni steps away. Oracle Park, home of the SF Giants, is within walking distance. Finally, the area's nightlife is rich with countless restaurants and bars. All these developments have rendered SoMa a true live, work and play destination.

## *Capitalization*

We estimate that the total capitalization for the development of the Property will be as follows:

<b>Sources</b>	
Members (Equity)	\$27,158,737
Construction Financing (Debt)	\$63,370,385
<b>Total Sources</b>	<b>\$90,529,122</b>

## *Acquisition Financing*

The Ownership LLC acquired the Property in September 2019 with a loan in the amount of \$8,000,000 from Arena (the "**Acquisition Financing**"). The Acquisition Financing matured on August 1, 2020, and has not been repaid, which constitutes an event of default under the terms of the Acquisition Financing. The Ownership LLC is in discussions with the lender regarding entering into a forbearance agreement or amending the terms of the Acquisition Financing.

On October 13, 2020, the Manager entered into a non-binding term sheet with Parkview Financial for a \$9,350,000 bridge loan to refinance the Acquisition Financing (the "**Bridge Financing**"). The Bridge Financing would bear interest at a rate equal to the 30-day LIBOR plus 10%, with interest only payments during the term. The principal amount would be due 24 months after funding; provided that the Ownership LLC may extend the term of the Bridge Financing by an additional 6 months, subject to paying an extension fee equal to 0.75% of the final loan amount. The Bridge Financing is expected to close in December 2020, but the Company cannot assure investors that the Bridge Financing will close at that time or at all.

It is a condition to the closing of the offering of the Interests that the Acquisition Financing be extended, refinanced or otherwise repaid, whether by the Bridge Financing or through other means. If the Acquisition Financing has not been extended, refinanced or otherwise repaid by the Offering Termination Date, the offering will be terminated and all subscription funds will be returned to the subscribers.

### *Construction Financing*

To complete the vertical construction at the Property, the Manager will seek to raise construction financing from one or more sources to fund 70% of total project costs, approximately \$63.37 million (the “**Construction Financing**”).

To date, the Manager has received indication of interest from two lenders for the construction financing in an amount up to 60% of the total project costs (approximately \$54-55 million) for a loan term of 36 months.

Manager plans to obtain additional quotes for the Construction Financing from institutional lenders upon completion of the project’s design and bid documents, anticipated in the latter half of 2021.

### *Additional Capital*

If the Company sells less than the maximum amount of Interests being offered, the Manager will attempt to raise additional capital to address the shortfall. The Manager expects that it would seek additional equity investments from investors in other projects previously sponsored by the Manager, or from other investors identified by the Manager. Any such additional capital may be obtained by issuing additional Interests to such investors on such terms and conditions as the Manager deems appropriate. The Manager also may offer investors the opportunity to invest in the Manager or to invest in a subsidiary of the Company. Any such investment may dilute the other Members. The consent of the Members is not required to any such investment.

### *Title to the Property*

The Property consists of two parcels that were acquired by the Ownership LLC. There is a small gap between the two legal parcels that does not have an owner. The Manager and Ownership LLC believe this is a technical issue and have filed a quiet title action to remove all objections to title. They have not received any adverse claim with respect to the title. If a claimant to that gap area comes forward, the Company may incur additional expense to address this claim and it may be difficult to complete the Property’s development.

### *Property Operations and Hold Period*

Following the Property’s construction completion, we intend to operate the Property as a rental offering. The range of rents at the Property is expected to be \$1,000-\$2,900 per month, with the average rent expected to be at \$1,900-\$2,000 per month per unit. Operating expenses, which include real estate taxes, property management fees, property insurance and repairs and maintenance costs, are estimated to be in the range of \$600-650 per month per unit. These estimates are based on the Manager’s due diligence.

We intend to hold the Property for 4-5 years following the Closing of this Offering. The determination of when to sell the Property will be made after consideration of relevant factors, including prevailing and projected economic conditions, whether the value of the Property is anticipated to appreciate or decline substantially, and how any existing lease(s) may impact the sales price we may realize.

The Manager may determine that it is in the best interests of Members to sell the Property earlier than 4 years or to hold the Property for more than 5 years.

## ESTIMATED USE OF PROCEEDS

**Net Offering Proceeds.** The following table sets forth the Manager’s best estimate of the net proceeds to the Company from the sale of the minimum and maximum amount of Interests.

<b>Application of Proceeds at Closing</b>				
	Minimum Offering (1,040 Interests Sold)		Maximum Offering (5,600 Interests Sold)	
	<u>Amount</u>	<u>% of Offering</u>	<u>Amount</u>	<u>% of Offering</u>
Gross Offering Proceeds	\$5,200,000	100%	\$28,000,000	100%
Less Offering Expenses: - Selling Commissions <sup>(1)</sup>	\$169,000	3.25%	\$910,000	3.25%
Less Closing Distribution to Manager <sup>(2)</sup>	\$2,315,126	44.52%	\$2,647,137	9.45%
<b>Net Offering Proceeds</b>	<b>\$2,715,874</b>	<b>52.23%</b>	<b>\$24,442,863</b>	<b>87.30%</b>

- (1) The Company will pay a Securities Fee equal to 3% of the gross proceeds of the offering of the Interests; and Offering and Processing Fees of 0.25% of the gross proceeds of the offering of the Interests. These fees are payable by the Members and will reduce the amount of each Member’s subscription that is credited to each Member’s Capital Account.
- (2) At the Closing, the Company will distribute to the Manager from the proceeds of the offering an amount sufficient to reduce the Manager’s Ownership Percentage to approximately 10% and provide an 8% per annum return on the amount returned to the Manager.

**Sources and Uses of Capital.** The following table sets forth the Manager’s best estimate of the sources and uses of the Company’s capital from the minimum and maximum sale of Interests.

<b>Sources of Capital</b>				
	Minimum Offering (1,040 Interests Sold)		Maximum Offering (5,600 Interests Sold)	
	<u>Amount</u>	<u>% of Capital</u>	<u>Amount</u>	<u>% of Offering</u>
Net Offering Proceeds	\$2,715,874	3%	\$24,442,863	27%
Manager Investment	\$2,715,874 <sup>(1)</sup>	3%	\$2,715,874	3%
Construction Loan	\$63,370.85	70%	\$63,370,385	70%
Additional Financing <sup>(2)</sup>	\$21,726,989	24%	\$0	0%
<b>Total Capital</b>	<b>\$90,529,191</b>	<b>100%</b>	<b>\$90,529,191</b>	<b>100%</b>

- (1) If the Company sells less than the maximum number of Interests, the Manager expects to distribute a portion of the proceeds from the offering of the Interests and the refinancing of the Acquisition Financing to the Manager to reduce the Manager’s Ownership Percentage to approximately 10% and provide an 8% per annum return on the amount returned to the Manager.
- (2) If the Company sells less than the maximum number of Interests, it will be required to raise additional capital, as described in “Description of the Property.”

<b>Uses of Capital</b>		
<u>Description</u>	<u>Amount</u>	<u>% of Capital</u>

Land	\$10,164,250	11.23%
Soft Costs	\$7,242,454	8.00%
Hard Costs	\$58,311,216	64.41%
Furniture, Fixtures and Equipment	\$1,079,358	1.19%
Financing Costs	\$8,450,280	9.33%
Operating Costs	\$2,717,338	3.00%
Development Management Fee to the Manager	\$2,564,225	2.84%
<b>Total Uses</b>	<b>\$90,529,122</b>	<b>100.00%</b>

## MANAGEMENT

The Manager of the Company is 457 Minna Partners, LLC, a Delaware limited liability company. The managing member of the Manager is Starcity Ventures LLC, a Delaware limited liability company. The Manager will also serve as the Development Manager for the Property, although it may delegate some or all of its duties and authority as Development Manager to one or more of its Affiliates. Please see the Investment Memorandum attached as Exhibit C for a description of Starcity and its business, as well as the biographies of the key personnel of Starcity and the Manager.

**Other Activities.** Starcity, its Affiliates and their respective partners, managers, members, officers and employees engage in other activities not related to the activities of the Company. For example, Starcity and its Affiliates also manage other properties similar to the Property. Any of these persons may continue, or initiate further, such activities, whether or not such activities compete with the activities of the Company. Starcity, its Affiliates and their respective partners, managers, members, officers and employees also may invest for their own accounts. See "Conflicts of Interest."

**Indemnification and Limitation of Liability.** Under the Agreement, the Company will indemnify the Manager, its Affiliates, any person acting on behalf of the Manager or such Affiliate (including but not limited to an officer of the Company appointed as such by the Manager), any person that controls the Manager, and each other person the Manager elects to cover (each, an "**indemnified person**") from and against any cost, claim, liability, damage, loss, settlement or expense (including court costs, legal and expert witness fees and expenses and all costs of investigation, taxes and penalties) an indemnified person incurs by virtue of the Company's breach of any such agreement or such indemnified person's acting as or on behalf of the Manager in connection with the Company's activities. These agreements also provide that indemnified persons will not be liable to the Company or any Member for any cost, claim, liability, damage, loss, settlement or expense incurred by the Company or any of its Members that arises out of or is in any way connected with any recommendation or other act or failure to act of the indemnified person under the Agreement, or the services that the indemnified person may provide to the Company, including, but not limited to, any (a) error in judgment with respect to the Company, or (b) tax liability asserted against any Partner by any federal, state or local authority as a result of any position taken by the Company or any Partner. These indemnifications and loss limitations do not apply, however, to costs, claims, liabilities, damages, losses, settlements or expenses that arise from the indemnified person's gross negligence, willful misconduct or fraud.

The Agreement also provides that, subject to the Manager's approval, the Company will advance funds for legal expenses and other costs incurred by an indemnified person in connection with any such cost, claim, liability, damage, loss or expense if the indemnified person undertakes to repay the advanced funds to the Company if it is finally determined by a court of competent jurisdiction that the indemnitee is not entitled to indemnification thereunder.

Members may have a more limited right of action than they would ordinarily have as a result of these limitations in the Agreement. To the extent that such exculpatory provisions purport to include indemnification for liabilities arising under the 1933 Act, in the opinion of the SEC, this indemnification is contrary to public policy and therefore unenforceable.

Members who believe that the Manager has breached its fiduciary duty should consult their own counsel.

**Property Manager.** The Ownership LLC intends to retain the Property Manager, which is an Affiliate of the Manager, as the property manager for the Property. The Property Manager provides the Company with certain property management services with respect to the Property, including marketing, leasing, managing, maintaining and operating the Property. The Company pays the Property Manager the fees described in "Summary of Terms - Fees." The Property Manager currently acts as property manager for other clients, and may act as a property manager for other clients after the Closing without the Company's consent.

Pursuant to the Property Management Agreement, the Ownership LLC will indemnify the Property Manager against liabilities incurred in connection with acting on behalf of the Ownership LLC, unless such liabilities are due to the Property Manager's gross negligence, willful misconduct or fraud. The Property Management Agreement will not terminate during the Company's term unless a party thereto materially breaches the Property Management Agreement, fails to cure such breach and the other party terminates the Property Management Agreement. The Property Management Agreement may be amended by the Company and the Property Manager at any time without notice to the Members. Any Member may request a copy of the Property Management Agreement from the Manager.

Starcity and its personnel control and have significant equity interests in the Property Manager. See "Conflicts of Interest."

## CONFLICTS OF INTEREST

The Starcity organization is composed of numerous limited liability companies, corporations and individuals that are affiliated with one another through identical or related ownership and management. The Company is subject to various conflicts of interest arising out of its relationships with the Manager and its Affiliates, including conflicts arising out of the nature and timing of the compensation of the Manager, the Development Manager and the Property Manager by the Company and the Ownership LLC and the possibility that the Manager or its Affiliates may manage other companies that invest in real estate similar to the Property. Because the Company was organized and will be operated by the Manager, these conflicts will not be resolved through arm's-length negotiations but through the exercise of the Manager's best business judgment consistent with its fiduciary responsibility to the Members and Starcity's investment objectives and policies. These conflicts include the following:

**Interests in Other Properties.** Starcity and its Affiliates serve as the general partners or managers of other entities that invest in real estate properties similar to the Property, often in the same geographic area as the Property. None of the Company or the Members will have any interest in any property other than the Property. Starcity and its Affiliates have legal and financial obligations with respect to those other ventures that are similar to their obligations to the Company. In particular, the principals of Starcity will devote only so much of their time to the activities of the Company and the Property as they deem necessary. The other activities of Starcity involve a conflict of interest in that time and resources will be devoted to activities other than the business of the Company and the Property, and none of the income or benefits of such other activities will accrue to the Company or the Members.

**Development Manager and Property Manager.** The Manager will serve as the Development Manager for the Property, although it may delegate some or all of its duties as such to one or more Affiliates of Starcity. The Property Manager is an Affiliate of the Manager. Starcity has a significant equity interest in and controls the Property Manager. Accordingly, the Manager has a conflict of interest in the appointment of and continuing relationship with the Development Manager and the Property Manager. The Development Manager and the Property Manager may charge fees that are higher than the fees that would be charged by other third parties. The Property Manager provides similar services to other properties that may compete with the Property.

**Leasing and Sale of the Properties.** Starcity and its Affiliates have acquired interests in properties located in the same geographic area that may compete with the Property for purchasers or tenants. Such competition may create conflicts of interest on the part of Starcity to the extent that the principals of Starcity may elect to devote more effort, promotion or resources to the leasing or sale of a particular property or project in which the Company has no interest.

**Profits Interest of the Manager.** In addition to receiving distributions with respect to its Capital Contributions to the Company, the Manager is entitled to the Carried Interest Distributions, subject to the Members having recovered their Capital Contributions and their Preferred Returns. The Carried Interest Distributions reflect an incentive interest of the Manager and are not based on corresponding Capital Contributions by the Manager to the Company. As the Carried Interest Distributions could lead to a substantial return for the Manager, they could lead the Manager and its Affiliates to modify its strategy and operation of the Company to enhance the likelihood that the Manager will receive a substantial return from the Carried Interest Distributions. In that event, the Manager and its Affiliates who are in a position to affect the strategies and operations of the Company could place undue emphasis on the maximization of potential return from investments by the Company at the expense of other criteria, such as preservation of capital, in order to achieve a higher return from the Carried Interest Distributions. Such policies could result in increased risk to the Company.

**Lack of Separate Representation.** Legal counsel to the Manager does not represent the interests of the Members or the Company in connection with the organization of the Company or the offering of the Interests, and such counsel disclaims any fiduciary or attorney-client relationship with the Members or the Company. Neither the Company nor the Members as a group have been represented by separate counsel. The employees, attorneys, accountants and other experts who perform services for the Company all perform such services at the request of and solely for the benefit of the Manager and its Affiliates and do not represent, or intend to provide any benefit to, or take into consideration the interests of, the Members.

**Manager and Its Affiliates Owning Interests.** After the Closing, the Manager and its Affiliates will own at least 10% of the Interests for its own respective accounts. To the extent that any vote or action is to be taken by the Members, the interests of the Manager and its Affiliates may conflict with the interests of other Members when they vote their Interests.

## RISK FACTORS

An investment in our Interests involves risks. In addition to other information contained elsewhere in this Private Placement Memorandum, you should carefully consider the following risks before acquiring our Interests offered by this Private Placement Memorandum. The occurrence of any of the following risks could materially and adversely affect the business, prospects, financial condition or results of operations of our Company, the ability of our Company to make cash distributions to the holders of Interests and the market price of our Interests, which could cause you to lose all or some of your investment in our Interests. Some statements in this Private Placement Memorandum, including statements in the following risk factors, constitute forward-looking statements.

*Risk Factors Related to the Company.*

**Both the Company and the Manager are newly formed entities with limited operating history, which makes their future performance difficult to predict.**

Both we and the Manager are newly formed entities and have limited operating history. You should consider an investment in our Interests in light of the risks, uncertainties and difficulties frequently encountered by other newly formed companies with similar objectives. To be successful in this market, we and the Manager must, among other things:

- identify and acquire real estate assets consistent with our investment strategies;
- increase awareness of our name within the investment products market;
- attract, integrate, motivate and retain qualified personnel to manage our day-to-day operations; and
- build and expand our operations structure to support our business.

We have minimal operating capital and for the foreseeable future will be dependent upon our ability to finance our operations from the sale of equity or other financing alternatives. The failure to successfully raise operating capital could result in our bankruptcy or other event which would have a material adverse effect on us and our Members. There can be no assurance that we will achieve our investment objectives.

**Any adverse changes in the Manager's financial health or our relationship with the Manager or its affiliates could hinder our operating performance and the return on your investment.** The Manager will utilize the Manager's personnel to perform services on its behalf for us. Our ability to achieve our investment objectives and to pay distributions to our Members is dependent upon the performance of the Manager and its affiliates as well as the Manager's real estate professionals in the development management of our assets and operation of our day-to-day activities. Any adverse changes in the Manager's financial condition or our relationship with the Manager could hinder the Manager's ability to successfully manage our operations and our Property.

**Dependence on Management.** The Company's success depends on the skill and acumen of the Manager, the Property Manager and their key personnel. They devote a significant amount of time to other activities, including managing the other Properties and investing in opportunities without presenting such opportunities to the Company or the Members, even if such opportunities may be appropriate for the Company. See "Conflicts of Interest." If any of them should cease to participate in the Company's activities, the Manager's and the Property Manager's ability to manage the Property could be impaired severely. The Company cannot assure investors that: (a) it will realize its objectives; (b) its strategy will prove successful; or (c) investors will not lose all or a portion of their investment in the Company. See "Investment Strategy" and "Management."

The Manager has exclusive and absolute discretion and authority to manage and control the Company, except as limited by the Agreement or applicable law. The Manager may exercise its discretion and authority conditionally or unconditionally, arbitrarily or inconsistently in varying or similar circumstances, without accountability to the Company or any Member. For example, the Manager may provide certain Members more frequent or more detailed reports of the Company's performance and special distribution rights that it does not provide to other Members.

**The Company will hold an interest in a single property, a non-diversified investment.** The Company will own and operate a single Property at 457-475 Minna Street in San Francisco. The return on

your investment will depend on the revenues generated by the Property after completion of construction and the appreciation of the value of the Property over time. These, in turn, are determined by such factors as national and local economic cycles and conditions, financial markets and the economy, competition from existing properties as well as future properties and government regulation (such as tax and building code charges). The value of a Property may decline substantially after an investor purchases its interest in it.

**Limitation of Liability and Indemnification of Various Persons.** Pursuant to the Agreement, the Manager, its Affiliates, any person acting on their behalf, any person that controls the Manager and any person that the Manager elects to cover generally is not responsible to the Company or any Member for losses incurred in connection with the Company's activities, including without limitation, any (a) error in judgment with respect to the Company; or (b) tax liability asserted against any Member by any federal, state or local authority as a result of any position taken by the Company or any Member; provided that if the loss is due to the action of that person, such conduct must not have constituted gross negligence, willful misconduct or fraud. Accordingly, Member losses generally will not be recoverable from the Manager if they resulted from an erroneous decision.

The Development Services Agreement, the Property Management Agreement and the Company's and the Ownership LLC's agreements with their auditors and other service providers may contain provisions that limit the liability of and indemnify those parties and their affiliates in certain circumstances.

**Liquidation.** If the Company becomes insolvent, the Members may be required to return with interest any property distributed that represented a return of capital, repay any distributions wrongfully made to them and forfeit any undistributed profits.

### *Risk Factors Related to the Offering*

**There is currently no trading market for our securities. An active market in which Members can resell their Interests may not develop.** There is currently no public trading market for any Interests, and an active market may not develop or be sustained. If an active public or private trading market for our securities does not develop or is not sustained, it may be difficult or impossible for you to resell your Interests at any price. Accordingly, you may have no liquidity for your Interests, particularly if the Property is never sold. Even if a public or private market does develop, the market price of the Interests could decline below the amount you paid for your Interests.

**There may be state law restrictions on an Member's ability to sell the Interests.** Each state has its own securities laws, often called "blue sky" laws, which (1) limit sales of securities to a state's residents unless the securities are registered in that state or qualify for an exemption from registration and (2) govern the reporting requirements for broker-dealers and stockbrokers doing business directly or indirectly in the state. Before a security is sold in a state, there must be a registration in place to cover the transaction, or it must be exempt from registration. We do not know whether our securities will be registered, or exempt, under the laws of any states. A determination regarding registration will be made by broker-dealers, if any, who agree to serve as the market-makers for our Interests. There may be significant state blue sky law restrictions on the ability of Members to sell, and on purchasers to buy, our Interests. Members should consider the resale market for our securities to be limited. Members may be unable to resell their securities, or they may be unable to resell them without the significant expense of state registration or qualification.

**There is no guarantee that the Company will reach its funding target from potential investors, and this could adversely impact returns to Members.** Due to the start-up nature of the Company and the Manager, there can be no guarantee that the Company will reach its funding target from potential investors. In the event the Company does not reach its funding target, it may not be able to achieve its investment objectives of constructing and operating the Property. The Company also may be required to obtain additional financing in the form of mezzanine debt, preferred equity financing, Member Loans or other

borrowing. The Company may not be able to obtain such financing on attractive terms and such financing may add substantial cost to the construction and operation of the Property, which would have a material adverse effect on the return to the Members. If the Company is unable to raise funding, this may impact any Members already holding Interests as they will not see the benefits which arise from full project capitalization and subsequent development and operations.

**Disruptions in the financial markets or deteriorating economic conditions could adversely impact the residential real estate market, which could hinder our ability to implement our business strategy and generate returns to you.** The success of our business is significantly related to general economic conditions and, accordingly, our business could be harmed by an economic slowdown and downturn in real estate asset values. Periods of economic slowdown or recession, significantly rising interest rates, declining employment levels, decreasing demand for real estate, declining real estate values, or the public perception that any of these events may occur, may result in a general decline in financing, leasing, and disposition activity, as well as a general decline in the value of real estate and in rents, which in turn would reduce the value of our Interests.

During an economic downturn, it may also take longer for us to dispose of the Property or the selling price may be lower than originally anticipated. As a result, the carrying value of the Property may become impaired and we could record losses as a result of such impairment or we could experience reduced profitability related to declines in real estate values or rents. Further, as a result of our target leverage, our exposure to adverse general economic conditions will be heightened.

All the conditions described above could adversely impact our business performance and profitability, which could result in our failure to make distributions to our investors and could decrease the value of an investment in the Company. In addition, in an extreme deterioration of the Company's business, we could have insufficient liquidity to meet our debt service obligations when they come due in future years. If we fail to meet our payment or other obligations under secured loans, the lenders will be entitled to proceed against the collateral granted to them to secure the debt owed. The collateral will be the Property itself.

**Returns to Members could be adversely affected by our inability to obtain construction financing at desirable terms or at all.** Development of the Property depends on obtaining the Construction Financing at or close to the terms expected. If terms prove to be unfavorable, it may lead to reduced financial performance at the Property. If the Company is unable to obtain construction financing, then the Company will not have the necessary capital to complete the project. In that event, the Company may be forced to sell the Property before the project can be completed, which would have a material adverse effect on our performance and profitability and the value of the Interests.

**Joint venture investments could be adversely affected by our lack of sole decision-making authority, our reliance on the financial condition of co-venturers and disputes between us and our co-venturers.** We may enter into a joint venture, partnership and other co-ownership arrangements (including preferred equity investments) for the purpose of developing and operating the Property. In such an event, we would not be in a position to exercise sole decision-making authority regarding the joint venture. Investments in joint ventures may, under certain circumstances, involve risks not present were a third party not involved, including the possibility that partners or co-venturers might become bankrupt or fail to fund their required capital contributions. Co-venturers may have economic or other business interests or goals which are inconsistent with our business interests or goals, and may be in a position to take actions contrary to our policies or objectives. Such investments may also have the potential risk of impasses on decisions, such as a sale, because neither we nor the co-venturer would have full control over the joint venture. In addition, to the extent our participation represents a minority interest, a majority of the participants may be able to take actions which are not in our best interests because of our lack of full control. Disputes between us and co-venturers may result in litigation or arbitration that would increase our expenses and

prevent our officers from focusing their time and effort on our business. Consequently, actions by or disputes with co-venturers might result in additional risk. In addition, we may in certain circumstances be liable for the actions of our co-venturers.

**We may offer differing terms for particular Members and other companies.** Affiliates of the Manager manage other vehicles that invest in properties similar to the Property. See “Conflicts of Interest.” The terms that govern any such company may be more advantageous than those generally applicable to the Company, and the terms that apply to a particular investor in any such company or a particular Member of the Company may be more advantageous than those generally applicable to other Members in the Company. For example, some Members or investors in another vehicle may receive the following terms and conditions that do not apply to other Members in the Company: a reduction, rebate or waiver of fees or Carried Interest Distributions (or other terms); rights to receive reports on a more frequent basis or that include information not provided to other Member; rights to approve certain actions by the Company or other vehicles; special rights to make future investments in the Company or other vehicles; and such other rights as may be negotiated by those persons or other companies.

### *Risk Factors Related to the Development of the Property*

**We are engaged in development activities and may further engage in redevelopment or repositioning activities in the future, either of which could expose us to different risks that could adversely affect us, including our financial condition, cash flow and results of operations.** We are engaged and will continue to be engaged in development at the Property for at least the first three to four years of your investment. At any time during development, we will be subject to certain risks, which could adversely affect us, including our financial condition, cash flow and results of operations. These risks include, without limitation:

- the availability and pricing of construction or other debt financing on favorable terms, or at all;
- the availability and timely receipt of regulatory approvals;
- The availability and timely receipt of a site building permit and any addenda permit necessary to commence or continue construction;
- costs related to start up, development, construction and design may be higher than anticipated;
- cost overruns and untimely completion of construction (including risks beyond our control, such as weather or labor conditions or material shortages); and
- changes in the pricing of construction as design progresses to construction.

These risks could result in substantial unanticipated delays or expenses and could prevent the initiation or the completion of development and redevelopment activities, any of which could have an adverse effect on our financial condition, results of operations, cash flow, the market value of the Interests and our ability to satisfy the Property’s debt obligations and to make distributions to our Members.

**We may encounter regulatory delays in the building permitting process.** Necessary approvals for the project will rely on dual approvals from the San Francisco Department of Building Inspection and the California Department of Housing and Community Development’s chosen Design Approval Agency. Approvals will also be required from public utility agencies such as Pacific Gas & Electric. Due to the innovative nature of modular high-rise construction, there is little to no local precedent for the approval and construction of a comparable building in San Francisco. Obtaining approvals will require careful coordination between both parties to ensure consensus is reached during plan check, permit approvals and inspections. Any delays in this process will delay the entire project.

**We could be subject to cost escalation due to environmental discoveries.** Real property and the operations conducted on real property are subject to federal, state and local laws and regulations relating to protection of the environment and human health. We could be subject to substantial liability in the form of fines, penalties or damages for noncompliance with these laws and regulations. Even if we are not subject to liability, other costs incurred to avoid or mitigate any such liability, such as the cost of removing or remediating hazardous or toxic substances, could be substantial. These laws and regulations generally govern wastewater discharges, air emissions, the operation and removal of underground and above-ground storage tanks, the use, storage, treatment, transportation and disposal of solid and hazardous materials, the remediation of contamination associated with the release or disposal of solid and hazardous materials, the presence of toxic building materials and other health and safety-related concerns.

Some of these laws and regulations may impose joint and several liability on the tenants, owners or operators of real property for the costs to investigate or remediate contaminated properties, regardless of fault, whether the contamination occurred prior to purchase, or whether the acts causing the contamination were legal. Activities of our tenants, the condition of properties at the time we buy them, operations in the vicinity of our properties, such as the presence of underground storage tanks, or activities of unrelated third parties may affect our Properties.

The presence of hazardous substances, including hazardous substances that have not been detected, or the failure to properly manage or remediate these substances, may hinder our ability to sell, rent or pledge such property as collateral for future borrowings. Any material expenditures, fines, penalties or damages we must pay will reduce our ability to make distributions to our Members and may reduce the value of your investment.

Certain environmental laws and common law principles could be used to impose liability for the release of and exposure to hazardous substances, including asbestos-containing materials and lead-based paint. Third parties may seek recovery from real property owners or operators for personal injury or property damage associated with exposure to released hazardous substances and governments may seek recovery for natural resource damage. The costs of defending against claims of environmental liability, of complying with environmental regulatory requirements, of remediating any contaminated property, or of paying personal injury, property damage or natural resource damage claims could reduce the amounts available for distribution to our Members.

The cost of defending against claims of liability, of compliance with environmental regulatory requirements, of remediating any contaminated property, or of paying personal injury claims could materially adversely affect our business, assets or results of operations and, consequently, amounts available for distribution to our Members. We may be subject to all the risks described here even if we do not know about the hazardous materials and if the previous owners did not know about the hazardous materials on the property.

In addition, when excessive moisture accumulates in buildings or on building materials, mold growth may occur, particularly if the moisture problem remains undiscovered or is not addressed over a period of time. Some molds may produce airborne toxins or irritants. Concern about indoor exposure to mold has been increasing, as exposure to mold may cause a variety of adverse health effects and symptoms, including allergic or other reactions. As a result, the presence of significant mold at any of our projects could require us to undertake a costly remediation program to contain or remove the mold from the affected property or development project, which would adversely affect our operating results.

Environmental laws also may impose liens on property or restrictions on the manner in which property may be used or businesses may be operated, and these restrictions may require substantial expenditures or prevent us or our Property Manager and its assignees from operating such properties. Some of these laws and regulations have been amended so as to require compliance with new or more

stringent standards as of future dates. Compliance with new or more stringent laws or regulations or stricter interpretation of existing laws may require us to incur material expenditures. Future laws, ordinances or regulations may impose material environmental liability.

**Costs may escalate as the building design matures.** The current cost estimates for the project are based on an early stage of design and there is a possibility that unforeseen costs will arise and need to be incurred. Should any permitting authorities decline to approve certain design or engineering aspects of the project as currently contemplated for any reason, the resulting revised scheme may be more costly to construct.

**Costs may escalate due to inflation.** The current cost estimates are based on an estimated rate of inflation and escalation in labor rates. If these estimates are wrong, cost escalation could occur.

**Costs may escalate due to increased fees to the city and authorities having jurisdiction.** Cost estimates for fees paid to the city and other authorities having jurisdiction are based on current impact fee requirements. If these fees increase it will lead to an increase in cost for the project.

**Labor unions opposing the project and causing delay or stoppage of work.** San Francisco labor unions have a history of opposing modular construction. Projects have been stopped in the past for this reason. Methods that labor unions could use to stop or delay this project include picketing, striking or appealing the project's building permits.

**Contractors may default on their obligations.** The general contractor or key subcontractors may become insolvent or declare bankruptcy, and thus be unable to finish the project. Key subcontractors may become insolvent or incapable of executing on their highly specialized scope, therefore jeopardizing the schedule, budget, & executability of the project's development scheme.

**Contractors may not be able to comply with labor requirements.** The development is subject to the prevailing wage and other labor requirements set by California Senate Bill 35 (SB-35). The general contractor and key subcontractors must meet all of SB-35's requirements and may not be able to due to improper internal controls, exposing the project to fines for non-compliance.

**Modular construction technology is unproven, especially in a seismic zone.** The development plan anticipates utilizing a site-built structural system with volumetric (six-sided) modules constructed off-site, transported to the Property, and connected to the structural system. Such a plan has not been executed in San Francisco, especially in a Seismic Hazard Zone such as the one where the Property is located.

**Modular construction may encounter issues due to defects in manufacturing.** The quality of the modules will depend on an external, third-party manufacturer that will have their own quality control system. Defects in manufacturing can occur and cause cost escalation and delays in the project.

**Modular construction may face issues due to transportation from an overseas factory.** The Property will be supplied with volumetric modules from an overseas factory. This means the modules will need to be shipped across the ocean to their final destination in San Francisco. During the trip, issues can arise from water damage to handling damages.

**Modular construction may face issues due to stacking modules onsite.** Stacking the modules onsite consists of rigging, lifting and setting by crane. During this process, risks arise from mishandling the modules.

**We may face a legal challenge related to the title of the property.** The Property consists of two parcels that were acquired by the Ownership LLC. There is a small gap between the two legal parcels that

does not have an owner. The Manager and Ownership LLC have filed a quiet title action to remove all objections to title, and there is risk that a claimant may come forward and cloud title, making it difficult to complete the Property's development.

### *Risks Related to Real Estate Investments Generally*

**The investment in the Property will be subject to the risks typically associated with real estate.** The Property will be subject to the risks typically associated with real estate. The value of real estate may be adversely affected by a number of risks, including:

- natural disasters such as earthquakes, wildfires, hurricanes, and floods;
- acts of war or terrorism, including the consequences of terrorist attacks;
- adverse changes in national and local economic and real estate conditions;
- an oversupply of (or a reduction in demand for) space in the areas where the Property is located and the attractiveness of the Property to prospective tenants;
- changes in governmental laws and regulations, fiscal policies and zoning ordinances and the related costs of compliance therewith and the potential for liability under applicable laws;
- costs of remediation and liabilities associated with environmental conditions affecting the Property; and;
- the potential for uninsured or underinsured property losses.

The value of the Property will be affected significantly by its ability to generate cash flow and net income, which in turn depends on the amount of rental or other income that can be generated net of expenses required to be incurred with respect to the Property. Many expenditures associated with a Property (such as operating expenses and capital expenditures) cannot be reduced when there is a reduction in income from the Property.

These factors may have a material adverse effect on the value that we can realize from the investment in the Property.

**Many factors impact the residential rental market, and if rents do not increase sufficiently to keep pace with rising costs of operations, our income and distributable cash will decline.** The success of our business model depends, in part, on conditions in the residential rental market. Our development strategy at the Property is premised on assumptions about occupancy levels and rental rates, and if those assumptions prove to be inaccurate, our cash flows and profitability will be reduced.

**We anticipate involvement in a variety of litigation.** We anticipate involvement in a range of legal actions in the ordinary course of business. These actions may include eviction proceedings and other landlord-tenant disputes, challenges to title and ownership rights and issues with local housing officials arising from the condition or maintenance of the Property. These actions can be time consuming and expensive. We cannot assure you that we will not be subject to expenses and losses that may adversely affect our operating results.

**We may not be able to sell the Property at a price equal to, or greater than, the price for which we purchased it, which may lead to a decrease in the value of our assets.** The value of the Property to a potential purchaser may not increase over time, which may restrict our ability to sell the property, or if we are able to sell the Property, may lead to a sale price less than the price that we paid to purchase the Property.

**We may be unable to renew leases or re-lease space as leases expire.** If tenants do not renew their leases upon expiration, we may be unable to re-lease the vacated space. Even if the tenants do renew the

lease or we are able to lease to a new tenant, the terms and conditions of the new lease may not be as favorable as the terms and conditions of the expired lease. If the rental rates for our properties decrease or we are not able to release a significant portion of our available and soon-to-be-available space, our financial condition, results of operations, cash flow, the market value of our Interests and our ability to satisfy our debt obligations and to make distributions to our Members could be adversely affected.

**The actual rents we receive for the Property may be less than estimated market rents, and we may experience a decline in realized rental rates from time to time, which could adversely affect our financial condition, results of operations and cash flow.** As a result of potential factors, including competitive pricing pressure in the residential rental market, a general economic downturn and the desirability of the Property compared to others, we may be unable to realize our estimated market rents for the Property. In addition, depending on market rental rates at any given time as compared to expiring leases in our Property, from time to time rental rates for expiring leases may be higher than starting rental rates for new leases. If we are unable to obtain sufficient rental rates for the Property, then our ability to generate cash flow growth will be negatively impacted.

**Properties that have significant vacancies are difficult to sell, which could diminish the return on this Property.** The Property may incur vacancies either by the expiration of tenant leases or the continued default of tenants under their leases. If vacancies continue for a long period of time, we may suffer reduced revenues resulting in less cash available for distribution to our Members. In addition, the resale value of the Property could be diminished because the market value of the Property may depend in part upon the value of the cash flow generated by the leases associated with it. Such a reduction in the resale value of a Property could also reduce the value of our Members' investment.

Further, a decline in general economic conditions could lead to an increase in tenant defaults, lower rental rates and less demand for residential real estate space in that market. As a result of these trends, we may be more inclined to provide leasing incentives to our tenants in order to compete in a more competitive leasing environment. Such trends may result in reduced revenue and lower resale value of properties, which may reduce your return.

**We may be required to make rent or other concessions and/or significant capital expenditures to improve the Properties in order to retain and attract tenants, generate positive cash flow or to make real estate properties suitable for sale, which could adversely affect us, including our financial condition, results of operations and cash flow.** In the event there are adverse economic conditions in the real estate market which leads to an increase in tenant defaults, lower rental rates and less demand for residential real estate space in that market, we may be more inclined to increase concessions to rents, accommodate increased requests for renovations and offer improvements or provide additional services to our tenants in order to compete in a more competitive leasing environment, all of which could negatively affect our cash flow. If the necessary capital is unavailable, we may be unable to make these potentially significant capital expenditures. This could result in non-renewals by tenants upon expiration of their leases and our vacant space remaining untenanted, which could adversely affect our financial condition, results of operations, cash flow and the market value of the Interests.

**Our dependence on rental revenue may adversely affect us, including our profitability, our ability to meet our debt obligations and our ability to make distributions to our Members.** Our income will be primarily derived from rental revenue from the Property. As a result, our performance will depend on our ability to collect rent from tenants. Our income and funds for distribution would be adversely affected if a significant number of our tenants:

- delay lease commencements;
- decline to extend or renew leases upon expiration;

- fail to make rental payments when due; or
- declare bankruptcy.

Any of these actions could result in the termination of such tenants' leases with us and the loss of rental revenue attributable to the terminated leases. In these events, we cannot assure you that such tenants will renew those leases or that we will be able to re-lease spaces on economically advantageous terms or at all. The loss of rental revenues from our tenants and our inability to replace such tenants may adversely affect us, including our profitability, our ability to meet our debt and other financial obligations and our ability to make distributions to our Members.

**Property taxes could increase due to property tax rate changes or reassessment, which could impact our cash flow.** We will be required to pay state and local property taxes on the Property. The real property taxes may increase as property tax rates change or as our Property is assessed or reassessed by taxing authorities. If the property taxes we pay increase, our financial condition, results of operations, cash flow, the value of our Interests and our ability to satisfy our principal and interest obligations and to make distributions to our Members could be adversely affected.

**Uninsured losses relating to real property or excessively expensive premiums for insurance coverage, including due to the non-renewal of the Terrorism Risk Insurance Act of 2002, or the TRIA, could reduce our cash flows and the return on our Members' investments.** There are types of losses, generally catastrophic in nature, such as losses due to wars, acts of terrorism, earthquakes, wildfires, floods, hurricanes, pollution or environmental matters that are uninsurable or not economically insurable, or may be insured subject to limitations, such as large deductibles or co-payments. Insurance risks associated with such catastrophic events could sharply increase the premiums we pay for coverage against property and casualty claims.

This risk is particularly relevant with respect to potential acts of terrorism. The TRIA, under which the U.S. federal government bore a significant portion of insured losses caused by terrorism, will expire on December 31, 2020, and there can be no assurance that Congress will act to renew or replace the TRIA following its expiration. If the TRIA is not renewed or replaced, terrorism insurance may become difficult or impossible to obtain at reasonable costs or at all, which may result in adverse impacts and additional costs to us.

Changes in the cost or availability of insurance due to the non-renewal of the TRIA or for other reasons could expose us to uninsured casualty losses. If any of our properties incurs a casualty loss that is not fully insured, the value of our assets will be reduced by any such uninsured loss, which may reduce the value of our Members' investments. In addition, other than any working capital reserve or other reserves we may establish, we have no source of funding to repair or reconstruct the Property. Also, to the extent we must pay unexpectedly large amounts for insurance, we could suffer reduced earnings that would result in lower distributions to Members.

Additionally, mortgage lenders insist in some cases that multifamily property owners purchase coverage against terrorism as a condition for providing mortgage loans. Accordingly, to the extent terrorism risk insurance policies are not available at reasonable costs, if at all, our ability to finance or refinance our properties could be impaired. In such instances, we may be required to provide other financial support, either through financial assurances or self-insurance, to cover potential losses. We may not have adequate, or any, coverage for such losses.

**Climate change may adversely affect our business.** To the extent that climate change does occur and affects the market(s) that we invest in, we may experience extreme weather and changes in precipitation and temperature, all of which may result in physical damage or a decrease in demand for the

Property that we develop. Should the impact of climate change be material in nature or occur for lengthy periods of time, the financial condition or results of operations for the Property and its investors would be adversely affected. In addition, changes in federal and state legislation and regulation on climate change could result in increased capital expenditures to improve the energy efficiency of the Property that we develop in order to comply with such regulations.

**The adverse economic effects of the COVID-19 pandemic are unknown and could materially impact this investment.** The global novel coronavirus (COVID-19) pandemic has caused and continues to cause disruption in the global economy, unprecedented business and travel disruption and extreme fluctuations in global capital and financial markets. The pandemic has led to significant increases in unemployment levels, a decline in business and consumer confidence and spending, an economic recession in many economies throughout the world and significant increases in federal, state and local deficits and debt. The severity and extent of the impact of the pandemic on the U.S. and global capital, financial and real estate markets and economies will depend largely on future developments, including the duration of the spread of the outbreak within the U.S. and the policies implemented in connection with restoring business and other activity, all of which are highly uncertain and cannot be predicted. A prolonged period of economic contraction or stagnation may adversely affect the Company's performance. Additional effects may arise that cannot be predicted currently, including the impact of the pandemic on service providers to the Company, the Manager, the Property Manager and their Affiliates.

**Tenant relief laws may negatively impact our rental income and profitability.** As a landlord of a large residential Property, we may be involved in evicting residents who are not paying their rent or are otherwise in material violation of the terms of their lease. Eviction activities will impose legal and managerial expenses that will raise our costs. The eviction process is typically subject to legal barriers, mandatory "cure" policies and other sources of expense and delay, each of which may delay our ability to gain possession and stabilize the Property. Additionally, state and local landlord-tenant laws may impose legal duties to assist residents in relocating to new housing or restrict the landlord's ability to recover certain costs or charge residents for damage that residents cause to the landlord's premises. We and any property managers we hire will need to be familiar with and take all appropriate steps to comply with all applicable landlord-tenant laws, and we will need to incur supervisory and legal expenses to ensure such compliance. To the extent that we do not comply with state or local laws, we may be subjected to civil litigation filed by individuals, in class actions or by state or local law enforcement. We may be required to pay our adversaries' litigation fees and expenses if judgment is entered against us in such litigation or if we settle such litigation.

**Rent control or rent stabilization laws could prevent us from raising rents to offset increases in operating costs.** Various states, cities, or municipalities have a system of rent regulations known as rent stabilization and rent control. San Francisco is one such city. Tenants of regulated apartments are entitled to receive required services, to have their leases renewed, and may not be evicted except on grounds allowed by law. The Property will include deed-restricted units, and such units will be subject to maximum rent regulations that could limit the amount of rent we are able to collect, which could have a material adverse effect on our cash flows at the Property and subsequent distributions to Members. New regulations could expose market-rate units at newly-built residential properties to rent control laws and have a further material adverse effect on our cash flows at the Property.

**Real estate investments are relatively illiquid and may limit our flexibility.** Real estate investments are relatively illiquid, which may limit our ability to react promptly to changes in economic or other market conditions. Our ability to dispose of the Property in the future will depend on prevailing economic and market conditions. Our inability to sell the Property on favorable terms or at all could have an adverse effect on our sources of working capital and our ability to satisfy our debt obligations. In addition, real estate can at times be difficult to sell quickly at prices we find acceptable. When we sell the Property, we may recognize a loss on such sale.

**The failure of any bank in which we deposit our funds could reduce the amount of cash we have available to pay distributions to our Members and make additional investments.** The Federal Deposit Insurance Corporation, or FDIC, only insures accounts up to \$250,000 per depositor per insured bank. We expect to have cash and cash equivalents and restricted cash deposited in certain financial institutions in excess of federally insured levels. If any of the banking institutions in which we have deposited funds ultimately fails, we may lose our deposits over \$250,000.

**The occurrence of a cyber incident, or a deficiency in our cyber security, could negatively impact our business by causing a disruption to our operations, a compromise or corruption of our confidential information, or damage to our business relationships, all of which could negatively impact our financial results.** We collect and retain certain personal information provided by our Members and tenants in the Property. While we expect to implement a variety of security measures to protect the confidentiality of this information and periodically review and improve our security measures, we can provide no assurance that we will be able to prevent unauthorized access to this information. A cyber incident is considered to be any adverse event that threatens the confidentiality, integrity, or availability of our information resources. More specifically, a cyber incident is an intentional attack or an unintentional event that can include gaining unauthorized access to systems to disrupt operations, corrupt data, or steal confidential information. As our reliance on technology has increased, so have the risks that could directly result from the occurrence of a cyber incident including operational interruption, damage to our relationship with our tenants, and private data exposure, any of which could negatively impact our reputation and financial results.

**We will depend on tenants for our revenue, and lease defaults or terminations could reduce our net income and limit our ability to make distributions to our Members.** The success of our investments materially depends on the financial stability of our tenants. A default or termination by a tenant on its lease payments to us would cause us to lose the revenue associated with such lease and require us to find an alternative source of revenue to meet mortgage payments and prevent a foreclosure. If a tenant defaults we may experience delays in enforcing our rights as landlord and may incur substantial costs in protecting our investment and re-leasing our property. If a tenant defaults on or terminates a lease, we may be unable to lease the property for the rent previously received or sell the property without incurring a loss. These events could cause us to reduce the amount of distributions to our Members.

**Potential development and construction delays and resultant increased costs and risks may hinder our operating results and decrease our net income.** Investments in this Property will be subject to the uncertainties associated with the development and construction of real property, including those related to re-zoning land for development, environmental concerns of governmental entities and community groups and our general contractor's and subcontractors' ability to build in conformity with plans, specifications, budgeted costs and timetables. If a builder fails to perform, we may resort to legal action to rescind the purchase or the construction contract or to compel performance. A builder's performance may also be affected or delayed by conditions beyond the builder's control. We may incur additional risks when we make periodic progress payments or other advances to builders before they complete construction. These and other factors can result in increased costs of a project or loss of our investment. In addition, we will be subject to normal lease-up risks relating to newly constructed projects. We also must rely on rental income and expense projections and estimates of the fair market value of property upon completion of construction when agreeing upon a sale price at the time we sell the property. If our projections are inaccurate, we may gain too little from the sale of the Property, and the return on our investment could suffer.

**Costs associated with complying with the Americans with Disabilities Act and similar laws (including but not limited to Fair Housing Amendments Act of 1988 and the Rehabilitation Act of 1973) may decrease cash available for distributions to our Members.** Our Property may be subject to the Americans with Disabilities Act of 1990, as amended, or the ADA. Under the ADA, all places of public accommodation are required to comply with federal requirements related to access and use by disabled

persons. The Fair Housing Amendments Act of 1988 requires apartment communities first occupied after March 13, 1991 to comply with design and construction requirements for disabled access. For projects receiving federal funds, the Rehabilitation Act of 1973 also has requirements regarding disabled access. If the Property is not in compliance with such laws, then we could be required to incur additional costs to bring the Property into compliance. We cannot predict the ultimate amount of the cost of compliance with such laws. Noncompliance with these laws could also result in the imposition of fines or an award of damages to private litigants. Substantial costs incurred to comply with such laws, as well as fines or damages resulting from actual or alleged noncompliance with such laws, could adversely affect us, including our future results of operations and cash flows.

**A decline in the market values of the Property may adversely affect periodic reported results of operations and credit availability, which may reduce earnings and, in turn, cash available for distribution to our Members.** A decline in the market value of the Property may adversely affect us particularly in instances where we have borrowed money based on the market value of the asset. If the market value of the Property declines, the lender may require us to post additional collateral to support the loan. If we were unable to post the additional collateral, we may have to sell the Property at a time when we might not otherwise choose to do so. A reduction in credit available may reduce our earnings and, in turn, cash available for distribution to our Members.

Further, credit facility providers may require us to maintain a certain amount of cash reserves or to set aside unlevered assets sufficient to maintain a specified liquidity position, which would allow us to satisfy our collateral obligations. As a result, we may not be able to leverage the Property as fully as we would choose, which could reduce our return on equity. If we are unable to meet these contractual obligations, our financial condition could deteriorate rapidly.

Market value of our Property may decline for a number of reasons, such as changes in prevailing market rental rates, increases in loan defaults, widening of credit spreads and downgrades of ratings of the securities by ratings agencies.

**A prolonged economic slowdown, a lengthy or severe recession or declining real estate values could harm our operations.** Our Property, its development, or its operations, may be susceptible to economic slowdowns or recessions, which could lead to financial losses in our investment and a decrease in revenues, net income and assets. An economic slowdown or recession, in addition to other non-economic factors such as an excess supply of properties, could have a material negative impact on the value of, and the cash flows from, the Property, which could significantly harm our revenues, results of operations, financial condition, business prospects and our ability to make distributions to our Members.

**Deficiencies in our internal control over financial reporting could adversely affect our ability to present accurately our financial statements and could materially and adversely affect us, including our business, reputation, results of operations, financial condition or liquidity.** Effective internal control is necessary for us to accurately report our financial results. There can be no guarantee that our internal control over financial reporting will be effective in accomplishing all control objectives all of the time. As we grow our business, our internal control will become more complex, and we may require significantly more resources to ensure our internal control remains effective. Deficiencies, including any material weakness, in our internal control over financial reporting which may occur in the future could result in misstatements of our results of operations that could require a restatement, failing to meet our reporting obligations and causing investors to lose confidence in our reported financial information. These events could materially and adversely affect us, including our business, reputation, results of operations, financial condition or liquidity.

## *Risk Factors Related to the Operations at the Property*

**Competition may impede our ability to attract or retain tenants or re-lease space, which could adversely affect our results of operations and cash flow.** The leasing of residential real estate is highly competitive. We will compete based on a number of factors that include location, rental rates, security, suitability of a property's design to prospective tenants' needs and the manner in which a property is operated and marketed. The number of competing properties could have a material effect on our occupancy levels, rental rates and on the operating expenses of the Property. If other lessors and developers of similar spaces in our markets offer leases at prices comparable to or less than the prices we offer on the Property, we may be unable to attract or retain tenants or re-lease space at the Property, which could adversely affect our results of operations and cash flow.

**Compliance with governmental laws, regulations and covenants that are applicable to our Property may adversely affect our business and growth strategies.** Residential rental properties are subject to various covenants, local laws and regulatory requirements, including permitting and licensing requirements. Local regulations, including municipal or local ordinances, zoning restrictions and restrictive covenants, may restrict our use of our Property and may require us to obtain approval from local officials or community standards organizations at any time with respect to our Property. Among other things, these restrictions may relate to fire and safety, seismic, asbestos-cleanup or hazardous material abatement requirements. We cannot assure you that existing regulatory policies will not adversely affect us or the timing or cost of any future renovations, or that additional regulations will not be adopted that would increase such delays or result in additional costs. Our business and growth strategies may be materially and adversely affected by our ability to obtain permits, licenses and zoning approvals. Our failure to obtain such permits, licenses and zoning approvals could have a material adverse effect on us and cause the value of our Interests to decline.

**Potential for lease-up uncertainty due to market conditions.** The effects of the COVID-19 pandemic have changed the San Francisco multifamily real estate market, making it difficult to predict the state of the market when the property opens. In particular, the Property is intended to be operated as a group housing facility, in which tenants will make use of common kitchens, dining areas and community areas. We cannot predict whether the COVID-19 pandemic will affect the likelihood that tenants will desire to make use of such shared facilities. As a result, there is a risk that lease-up will be slower than expected and therefore impact the financial return projections.

**Potential for stabilized operating costs to exceed expectations.** As a result of potential factors, including differences between comparable/benchmark properties, changes to economic conditions, or decisions relating to the design or operation of the building, we may experience higher operating costs than forecasted. If we are unable to offset these costs with increases to income or through operational efficiency, then our ability to generate the projected cash flow and exit valuation may be negatively impacted.

**Potential for necessary capital improvements to exceed accrued capital reserves.** Regular capital improvements are necessary for any multi-family real estate investment and capital reserves will be funded from the operating income of the property. Should any unexpected capital improvements be required or exceed the amount of accrued reserves at the time, additional investment may be required, which could negatively impact the project's economics and cash flows.

**Potential for below-market-rate rent limits to decrease.** 53% of the units in the Property are below market rate units that therefore rely on either the state of California or the city of San Francisco's annual median income tables. If these tables are adjusted it will affect the monthly rent able to be charged and therefore affect financial performance of the Property.

**Deficiencies in management of below-market-rate rent units.** 53% of the units in the Property are below market rate units subject to a variety of federal, state, and local legislation impacting the operation of the property including leasing, rent collection, tenant disputes, and other matters. Operation of such units is in certain respects markedly different than Starcity's existing portfolio of residential for-rent units, and therefore may pose challenges to or expose weaknesses in Starcity's ability to successfully operate the building.

**Reliance on Technology.** The Company and their service providers (including the Property Manager and accountants) rely heavily on internal and third-party computer hardware and software, online services, data feeds, and other technology to conduct their activities, including the development and leasing of the Property. Disruptions to these systems or resources may make it difficult or impossible to implement the Company's strategy and operate the Property and could materially and adversely affect the Company. Examples of such circumstances include natural disasters, terrorism, cybersecurity attacks, public service or utility disruptions such as those caused by fires, floods, earthquakes, systems failures and other extraordinary events.

### *Securities and Tax Risks*

**Anti-Money Laundering.** If the Manager or any governmental agency believes that the Company has accepted subscriptions for Interests by, or is otherwise holding assets of, any person or entity that is acting, directly or indirectly, in violation of any U.S., international or other anti-money laundering laws, rules, regulations, treaties or other restrictions, or on behalf of any suspected terrorist or terrorist organization, the Manager or such governmental agency may freeze the assets of that investor or suspend its distributions. None of the Company or the Manager will be liable for losses in connection with delays or otherwise related to the anti-money laundering verification process. The Company also may be required to remit or transfer those assets to a governmental agency.

**State and Federal Securities Laws.** This offering has not been registered under the 1933 Act, in reliance on the exemptions in section 4(a)(2) of the 1933 Act and Regulation D promulgated thereunder. Similar reliance has been placed on apparently available exemptions from securities registration or qualification requirements under applicable state securities laws. The Company cannot assure investors that the offering currently qualifies or will continue to qualify under any of such exemptions due to, among other things, the adequacy of disclosure and the manner of distribution, the existence of similar offerings in the past or in the future, or the retroactive change of any securities law or regulation. If, and to the extent that, claims or suits for rescission are brought and successfully concluded for failure to register this offering or other offerings or for acts or omissions constituting offenses under the 1933 Act, the 1934 Act, or applicable state securities laws, the Company could be affected materially and adversely, jeopardizing its ability to operate successfully. Furthermore, the human and capital resources of the Company and the Manager could be affected adversely by defending actions under these laws, even if the Company is ultimately successful in its defense.

The Manager believes that, by virtue of section 3(c)(5) of the Investment Company Act of 1940, as amended (the "ICA"), the Company should not be deemed to be an "investment company" and, accordingly, should not be required to register as such under the ICA. Section 3(c)(5) is available to, among others, any entity that is primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate. The rules and interpretations of the SEC and the courts relating to section 3(c)(5) and the definition of "mortgages and other liens on and interests in real estate" are highly complex and uncertain in numerous respects. As a result, if the Company were unable to rely on another exemption, the Company cannot assure investors that it will not be deemed an "investment company" for purposes of the ICA and required to register as such thereunder, in which event the Company and the Manager could be subject to legal actions by regulatory authorities and others and could be forced to terminate. The costs of defending any such action could constitute a material part of the

Company's assets. Termination could have materially adverse effects on the Company and the value of the Interests.

Neither the Company nor the Manager is or intends to be registered or licensed as a real estate agent or broker or securities broker or dealer under the Securities Exchange Act of 1934, as amended, or any other securities law. The Manager believes that none of those persons is required to be so registered, but if the SEC, or any state law administrator were to assert that such licenses or registration is required, the Company would bear the resulting increased expenses and its activities could be restricted. If it were determined that the Manager is required to be licensed as a real estate agent or broker or registered as a securities broker or dealer, it might be precluded from performing its duties as such, which could lead to dissolution of the Company, and liquidation of its investments at a time when such liquidation may be disadvantageous to the Company, or could lead to other materially adverse effects on the Company's activities.

Securities and investment businesses generally are regulated comprehensively and intensively under state and federal laws and regulations. Any investigation, litigation or other proceeding that state or federal regulatory agencies or private parties undertake that involves the Manager or the Company could require them to spend a significant amount of money and time to address those matters, which could have materially adverse consequences for the Company. In addition, because this offering has not been registered under the 1933 Act, the Company is not registered under the ICA, and the Manager is not registered as broker or dealer with any regulatory authority, the Members do not have certain regulatory protection available to investors in offerings or entities that are registered under such laws or that are managed by brokers that are registered under such laws.

**Tax Considerations.** The tax aspects of an investment in the Company are complicated. Each investor should have them reviewed by professional advisers familiar with such investor's personal tax situation and with the tax laws and regulations applicable to the investor and investment limited partnerships. The Company is not intended and should not be expected to provide any tax shelter, but is organized as a partnership to provide for a single level of tax.

The availability of a single level of tax depends on the classification of the Company as a partnership rather than as an "association" taxable as a corporation for federal income tax purposes. Regulations provide that a limited liability company with 2 or more member may elect to be taxed as a corporation or a partnership and if no election is made a limited liability company should be taxed as a partnership. The Company does not intend to elect to be taxed as a corporation, and thus should be treated for federal income tax purposes as a partnership.

In addition, the Members, and not the Company, are taxed on any realized income or gain of the Company (to the extent that the Members are subject to income tax). This tax liability exists even in the absence of cash distributions. Accordingly, a Member may have taxable income and tax liability arising from that Member's investment in the Company in a Fiscal Year when no cash is distributed to that Member by the Company, or even in a Fiscal Year when that Member's Capital Account balance is reduced (for example, when that Member's share of net unrealized losses exceeds that Member's share of net realized income and gain in that Fiscal Year).

Under Code section 67(c), temporary regulations prevent taxpayers from deducting indirectly, through a pass-through entity such as a partnership, expenses that would not be deductible if paid or incurred directly by such taxpayers. Under Code section 67(g), expenditures related to investment income or property generally are not deductible. The fees paid to the Development Manager and the Property Manager and other expenses of the Company may constitute such investment income expenditures and thus may not be deductible by a Member. The IRS may assert that the Carried Interest Distribution should be treated as an expense of the Company, rather than as an allocation of Profits. If the IRS successfully

asserts that position, the Carried Interest Distribution also may constitute such an investment income expenditure and not be deductible. See "Federal Income Tax Aspects-- Deductibility of Certain Fees Paid to the Manager or an Affiliate."

Tax-exempt Members may be subject to unrelated business taxable income as a result of their investment in the Company.

The tax consequences described herein may not apply to the Company or the Members. Such matters are subject to change by legislation, administrative action and judicial decisions. Legislation has been proposed from time to time in Congress that, if enacted, could modify the tax treatment of the Company or the Members. In addition, the Company may engage in some investments that have uncertain federal income tax consequences. If the IRS challenges any tax position that the Company takes and such challenge is sustained, Members may be liable for interest and penalties. See "Federal Income Tax Aspects -- Audit of Tax Returns."

A Member may be liable for taxes under state or local income tax laws of certain jurisdictions in which the Company operates as well as the jurisdiction of such Member's residence or domicile, which laws vary from 1 locale to another and which, like federal income tax laws, are complex and subject to change. Special tax considerations also may apply to tax-exempt entities. Prospective investors should consult with their own tax advisers concerning the effect of federal, state and local taxes on an investment in the Company.

#### SUITABILITY STANDARDS

Interests are suitable investments only for investors for which an investment in the Company does not constitute a complete investment program and who fully understand, are willing to assume, and who have the financial resources necessary to withstand, the risks involved in the Company's investment program and to bear the potential loss of their entire investment in Interests. Prospective investors should determine whether an investment in Interests is suitable for them, should examine this Private Placement Memorandum, which includes the Exhibits hereto, and should request such additional information about the offering, the Company and the Manager and their activities as they consider necessary to make an informed investment decision.

In addition to the net worth and income standards described below, each investor must have funds adequate to meet personal needs and contingencies, must not need prompt liquidity from the investment, and must purchase Interests for investment only and not with a view to their sale or distribution. Each investor, either alone or together with a purchaser representative, also must have sufficient knowledge and experience in financial and business matters generally and in real estate and securities investment in particular to be capable of evaluating the merits and risks of investing in the Company. Members may not withdraw capital from the Company, and the Manager expects that it will be several years (if at all) before the Company will be able to make distributions to the Members. For these reasons, and due to the other risks of investment (some of which are discussed under "Risk Factors"), a purchase of Interests is not suitable for an investor who does not meet the suitability standards discussed in this Private Placement Memorandum.

**Investors who are subject to income tax should be aware that investment in the Company is likely to create taxable income or tax liabilities that exceed cash distributions available to pay such liabilities. Accordingly, Interests are not a suitable investment for prospective investors who will be subject to and do not desire such consequences.**

**Accredited Investors.** The Company will sell Interests only to accredited investors. Generally, to be treated as an accredited investor, a purchaser must meet 1 of the following tests:

(a) Individuals. If the purchaser is an individual, the purchaser must represent that he or she either (1) has a net worth individually or with his or her spouse that at the time of his or her purchase of Interests exceeds \$1,000,000, excluding both the fair market value of his or her primary residence and the amount of any debt secured by such residence up to its fair market value, but including in his or her liabilities the amount of any increase in the last 60 days in the debt secured by such residence (accordingly, both the portion of any debt secured by such primary residence that exceeds its fair market value and the amount of any increase in such debt in the last 60 days must be deducted, without double counting, in calculating his or her net worth); or (2) has individual income that exceeds \$200,000 in each of the 2 most recent years or joint income with his or her spouse that exceeds \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

(b) Trusts. A revocable trust (including an individual retirement account, that is, an IRA) generally will be treated as an accredited investor if each grantor is an accredited investor and the grantors may amend or revoke the trust at any time. An irrevocable trust generally will be treated as an accredited investor if (1) it has total assets that exceed \$5,000,000 and was not formed for the specific purpose of acquiring Interests, and its investment in Interests is directed by a person experienced in financial and business matters who is capable of evaluating the merits and risks of such investment, or (2) the trustee of the trust is a bank, and the bank makes the decision to invest in Interests on behalf of the trust.

(c) Certain Plans. An employee benefit plan within the meaning of Title I of ERISA will be treated as an accredited investor if (1) it is a Plan, all of whose participants are accredited investors, (2) it is a Plan and the investment decision is made by a plan fiduciary that is either a bank, insurance company or registered investment adviser, (3) it has total assets that exceed \$5,000,000, or (4) it is a self-directed Plan, with investment decisions made solely by persons who are accredited investors.

(d) Other Entities. Any organization described in Code section 501(c), any corporation, partnership, limited liability company and most other business entities not formed for the specific purpose of acquiring Interests with total assets that exceed \$5,000,000 will be considered an accredited investor.

(e) Other Purchasers. Other accreditation standards are described in the Offering Questionnaire included with the Subscription Agreement.

**Rejection of Subscriptions** The Manager may reject the Subscription Agreement of any prospective investor for whom it appears that Interests may not be a suitable investment or for any other reason regardless of whether the prospective investor meets the suitability standards. A prospective investor should not, however, rely on the Manager to determine the suitability of an investment in Interests for such prospective investor.

**Stricter State Standards.** Residents of certain states may be subject to stricter suitability standards than those stated above. The Manager may reject the Subscription Agreements of prospective investors not meeting such standards.

**Reliance on Subscriber Information.** The Subscription Agreement and Offering Questionnaire that each prospective investor must complete contain certain representations and requests for information regarding whether a prospective investor satisfies the Company's investor suitability standards. The Interests have not been registered under the 1933 Act and are offered in reliance on section 4(a)(2) thereof

and Regulation D thereunder, and in reliance on applicable exemptions from state law registration or qualification provisions.

The Company is offering the Interests in reliance on Rule 506(c) of Regulation D, which requires, among other things, that the Company take reasonable steps to verify that each purchaser is an accredited investor. Pursuant to Rule 506(c), the Manager will obtain written confirmation from Republic, through its registered broker OpenDeal Broker LLC, that Republic has verified that each subscriber is an accredited investor. Prospective investors must provide any additional evidence the Manager or Republic deem necessary to verify that the investors are accredited investors and to substantiate information or representations contained in their Subscription Agreements and Offering Questionnaires.

The standards set forth above are only minimum standards. The Manager may impose additional standards or waive minimum suitability standards not imposed by law. The Manager imposes comparable suitability standards in connection with any transfer of Interests.

**Use of Purchaser Representative.** Under Regulation D, a prospective investor may be required, under certain circumstances, to use a “purchaser representative” to assist in evaluating the merits of an investment in the Company. Certain states impose similar requirements under their securities laws even for some investors who are not subject to the Regulation D purchaser representative requirement.

Each prospective investor who proposes to engage a purchaser representative must, before or concurrently with that investor’s subscription, complete and return to the Manager a Purchaser Representative Questionnaire, a form of which is available on request from the Manager. The Manager will evaluate the qualifications of each proposed purchaser representative and will notify the prospective investor whether that person is acceptable as a purchaser representative. Each purchaser representative must disclose to each prospective Member whom he or she represents any past, present or proposed relationship with the Company, the Manager or any of their Affiliates.

Each investor who requires a purchaser representative must select and compensate that investor’s own purchaser representative. Purchaser representatives may not be engaged or employed by, or be paid fees or commissions by, the Company, the Manager, or any of their Affiliates.

**Transfer Restrictions.** Transferring Interests is severely restricted. No market for Interests exists or is expected to develop. Interests cannot be sold unless either they subsequently are registered under the 1933 Act and registered or qualified under any applicable state securities laws or exemptions from such registration and qualification are available. The Manager will not recognize or permit any disposition of Interests that does not comply with the Subscription Agreement, the Agreement, the 1933 Act, the ICA and any other applicable securities law. Accordingly, a purchaser of Interests must bear the economic risk of the investment indefinitely.

## FEDERAL INCOME TAX ASPECTS

**General.** The Company is not intended to be a so-called “tax-shelter.” No substantial tax benefits are expected to be derived from an investment in the Company. Moreover, because the Company may realize Profits during a tax year without a distribution to the Members in that year, ownership of Interests may create taxable income in excess of distributions. See “Risk Factors -- Tax Considerations.”

Summarized below are the material federal income tax principles applicable to the Company, based on the Code, the Regulations and published rulings and court decisions currently in effect. Future legislative or administrative changes or court decisions may significantly modify the law and render inapplicable or incorrect the statements expressed herein. Any such changes may or may not be retroactive with respect to transactions completed prior to the effective date of such changes. As a result of recent

changes in the Code and the Regulations, there is significant uncertainty regarding various federal income tax aspects of limited partnerships. The applicable Regulations and interpretations dealing with this area of taxation are under continuing review by the IRS, and changes in such Regulations or interpretations could adversely affect the Company and the Members. This summary does not discuss all of the tax consequences that may be relevant to a particular investor or to certain investors subject to special treatment, such as tax-exempt entities, non-U.S. investors, financial institutions, insurance companies, dealers and other investors that do not own Interests as capital assets.

Tax effects on Members of federal income tax laws may not be the same as those of state or local income tax laws. Prospective investors are therefore urged to consult their personal tax advisers regarding the impact of state and local taxes on an investment in the Company. The Company does not intend to request a ruling from the IRS with respect to any federal income tax matters.

PROSPECTIVE INVESTORS SHOULD CONFER WITH THEIR PERSONAL TAX ADVISERS REGARDING THE TAX CONSEQUENCES OF INVESTMENT IN THE COMPANY, BASED ON THEIR PARTICULAR CIRCUMSTANCES. THE MANAGING MEMBER ASSUMES NO RESPONSIBILITY FOR THE TAX CONSEQUENCES OF THIS TRANSACTION TO ANY INVESTOR.

**Federal Income Tax Treatment as a Partnership.** Regulations provide that a domestic business entity with 2 or more members that is not a corporation or 1 of certain other specified entities under state law may elect for federal income tax purposes to be taxed as either a partnership or as an association taxable as a corporation. Under these Regulations, a limited liability company with 2 or more members established under state law will be classified as a partnership unless it files with the IRS an election to be taxed as an association. The Company does not intend to elect to be taxed as an association and thus should be treated for federal income tax purposes as a partnership.

Code section 7704 treats publicly traded partnerships that engage in active business activities as corporations for federal income tax purposes. Publicly traded partnerships include those whose interests (a) are traded on an established securities market (including the over-the-counter market), or (b) are readily tradable on a secondary market or the substantial equivalent thereof. Interests will not be traded on an established securities market. The Agreement contains provisions restricting transfers and withdrawals of Interests that should cause Interests to be treated as not being readily tradable on a secondary market or the substantial equivalent thereof.

If, as expected, the Company is treated for federal income tax purposes as a partnership and not as an association taxable as a corporation, it will file annual income tax information returns and will not be subject as an entity to the payment of federal income tax. Instead, each Member receives an IRS Form 1065, Schedule K-1, if applicable, or comparable state form detailing such Member's share of Company income, gain, loss, deduction or credit each year. Each Member is required to report, on such Member's personal income tax return, such Member's share of Company taxable income and losses without regard for any cash actually distributed to such Member, and in the absence of substantial distributions (as is contemplated), such Member will have to use such Member's funds from other sources to meet the tax liability on any Profits allocated to such Member. Similarly, each Member may report such Member's share of Losses, if any, for tax purposes, even if such Member receives a cash distribution; however, a Member may be limited in its ability to deduct such losses; see "Members' Bases in Interests", "General Tax Treatment of Members", "At-Risk Rules," and "Characterization of Company Income as 'Passive' and 'Portfolio'", below.

If, for any reason, the Company were to be treated for tax purposes as an association taxable as a corporation, income, gain, loss, deductions and credits of the Company would be reflected only on the Company's tax returns, and income and loss would not pass through to the Members. The Members would be treated as corporate shareholders for tax purposes. The Company would be required to pay income tax at corporate tax rates on any net income, thereby reducing the amount of cash, if any, available for reinvestment or distribution to the Members. All or a portion of the distributions made to the Members would be taxable to them as dividends to the extent of Company earnings and profits. If there were no

earnings and profits, any distribution to a Member would be considered a return of capital to the extent of such Member's basis and as capital gain to the extent that such distributions exceeded each Member's basis. In addition, dividends are treated as portfolio income rather than passive activity income under the Code and, as such, could not be offset by passive activity losses from other investments. Finally, a change in the Company's status for tax purposes could be treated by the IRS as a taxable event, in which case the Members could have a tax liability under circumstances where they would not receive a cash distribution from the Company.

**Members' Bases in Interests.** Generally, the initial tax basis of any partner's interest in a partnership equals the amount of money paid plus the basis of any property contributed to the partnership less liabilities assumed by the partnership plus such partner's share of the partnership's liabilities. If, however, any partner is personally liable for any partnership liability, only those partners that are personally liable may include their proportionate share of the liability in basis. Basis is reduced (but not below zero) by the partner's share of partnership distributions and losses. Basis is increased by a partner's share of partnership income and additional contributions to capital. A partner may deduct such partner's share of partnership losses only to the extent that such losses do not exceed such partner's adjusted basis. Losses in excess of basis may be carried over until basis is increased above zero.

**General Tax Treatment of Members.** A Member's share of Company losses that may be deducted on the Member's personal tax return cannot exceed the tax basis of such Member's Interests. See "Members' Bases in Interests" above. In addition, a Member (other than a corporation that is neither an S corporation nor a closely-held corporation) will not be entitled to deduct such Member's share of Company losses to the extent such share exceeds the aggregate amount the Member is "at risk" as of the close of the taxable year. Further, a Member (other than a corporation that is neither an S corporation nor a personal services corporation) will not be entitled to deduct such Member's share of Company losses to the extent such share exceeds the Member's passive income. See "Limitations on Deductibility of Losses and Expenses" below.

Any cash received by a Member from the Company generally will not cause recognition of taxable income (or tax loss) for Federal income tax purposes but will reduce such Member's basis in such Member's Interests (but not below zero). However, cash distributions in excess of a Member's adjusted basis in such Member's Interests will result in the recognition of taxable income to the extent of such excess. Any such taxable income will generally be treated as capital gain and will be long- or short-term depending on the Member's holding period for such Member's Interests, except to the extent attributable to "unrealized receivables" or inventory of the Company, including any real property held by the Company that is treated as inventory, which shall be ordinary income. However, with respect to a Member subject to the "at risk" rules, if the Member's share of Company losses or distributions reduces such Member's "at risk" amount to zero, subsequent distributions of cash or other property to him will cause him generally to recapture as ordinary income an amount equal to Company losses previously deducted (and not previously recaptured by him) to the extent of such distributions. The gain realized on a non-pro rata distribution may be taxed to Members as ordinary income to the extent attributable to each Member's share of depreciation recapture, other "unrealized receivables," and inventory that has substantially appreciated in value. Ordinary income currently is taxed at rates up to 37% while the maximum tax rate applicable to capital gains currently is 20% for capital assets held more than 12 months. Individuals are allowed to use capital losses to offset in full capital gains. To the extent that capital losses exceed capital gains in a taxable year, such excess capital losses can be used to offset a maximum of \$3,000 in ordinary income per year, with the excess capital loss carried over and deductible, in future years. See "Subsequent Sales of Interests" below.

In addition, individuals, estates and trusts are subject to a Medicare tax of 3.8% on "net investment income" (or undistributed "net investment income," in the case of estates and trusts) for each taxable year, with such tax applying to the lesser of such income or the excess of such person's adjusted gross income (with certain adjustments) over a specified amount. Net investment income includes net income from rents and net gain attributable to the disposition of investment property. Net income and gain attributable to an investment in the Company might be included in an investor's "net investment income" subject to this Medicare tax.

Each year the Manager will prepare and furnish to each person who was a Member of record during the year the information required by the IRS for the preparation of the Members' income tax returns. In preparing such information, which generally will not be reviewed by counsel, the Manager will utilize various accounting and reporting conventions to determine the respective Members' allocable shares of income, gain, loss, deductions and other tax items. No assurance can be given that any such conventions will yield a result that conforms in every respect to the requirements of the Code, Regulations or administrative pronouncements of the IRS. Neither counsel nor the Manager can assure prospective Members that the IRS will not contend successfully in court that such accounting and reporting conventions are impermissible. Any such contentions could result in substantial expenses to the Company and the Members in contesting such contentions, as well as an increase in the tax liability of the Members because of adjustments to their allocable shares of the Company's income, gains, losses, deductions and credits.

**Profit and Loss Allocations.** Profits or Losses of the Company are allocated among the Members in accordance with the Agreement, which provides, among other things, that the Manager receives a Carried Interest Distribution as described in "Summary of Terms - Distributions." Such allocation is not equivalent to the Members' and the Manager's proportionate share of Capital Contributions. Because unrealized Profits and Losses may be allocated prior to the year in which they are recognized and Members may withdraw before the recognition event, the timing of Profits and Losses for tax purposes may not correlate with the economic realization of Profits and Losses.

Code section 704(b) provides that a partner's distributive share of income, gain, loss, deduction or credit is determined by the partnership agreement if the allocation to the partner thereunder has substantial economic effect. If an allocation to a partner does not have substantial economic effect, such partner's distributive share of profits or losses for tax purposes is determined in accordance with such partner's interest in the partnership, taking into account all facts and circumstances.

In general, the Regulations provide that an allocation has "economic effect" only if (a) capital accounts are maintained in accordance with the detailed requirements of the Regulations, (b) liquidation proceeds are, throughout the term of the partnership, to be distributed in accordance with the partners' capital accounts, and (c) any partner with a deficit capital account following the distribution of liquidation proceeds is required to restore such deficit to the partnership for payment to creditors or for distribution to partners with positive capital accounts, or alternatively, the partnership agreement provides for a "qualified income offset." The Manager believes that the Company will meet the requirements of the economic effect test.

Even if the allocations meet the economic effect test, the Regulations provide that the economic effect of an allocation must be "substantial." The economic effect will be treated as substantial "if there is a reasonable possibility that the allocation will affect substantially the dollar amount to be received by the partners from the partnership, independent of tax consequences." The Manager believes that allocations under the Agreement affect substantially the dollar amounts received by the Members, within the meaning of the Regulations.

The applicable Regulations also include a complex set of special provisions with respect to the allocation of losses and deductions attributable to nonrecourse liabilities of a partnership. The Regulations provide, in general, that an allocation of such losses and deductions will be recognized if (i) the 3 economic effect requirements above are satisfied; (ii) the Agreement provides for allocations of deductions attributable to nonrecourse liabilities among the partners in a manner reasonably consistent with allocations of some other significant partnership items which have substantial economic effect and which are attributable to the property securing nonrecourse liabilities of the partnership; and (iii) the Agreement contains a "minimum gain chargeback." The Agreement contains a section designed to meet the minimum gain requirements.

**Limitations on Deductibility of Losses and Expenses; Other Issues Related to Calculation of the Company's and the Members' Capital Gains and Losses**

**At-Risk Rules.** Members who are individuals or certain closely-held corporations (corporations in which 5 or fewer shareholders own directly or indirectly more than 50% of the stock), are subject to the “at-risk” rules with respect to their investment in Interests. In the case of a Member that is a partnership or an S corporation, these rules apply at the partner or shareholder level. A Member who is subject to the “at-risk” rules may not deduct such Member’s share of Company losses to the extent such share exceeds the amount such Member is “at risk” with respect to the Company. Excess losses are carried forward to subsequent years in which a sufficient “at-risk” amount is present.

A Member will generally be considered to be “at risk” to the extent of (1) the cash and adjusted basis of other property such Member has contributed to the Company, (2) any borrowings of the Company with respect to which the Member has personal liability, and (3) the net fair market value of those assets of the Member, not used in the activities of the Company, that secure nonrecourse borrowings of the Company. Any amounts not deductible in any year by a Member as a result of the at-risk limitation may be carried over and deducted in a succeeding year to the extent of the Member’s share of undistributed income in such succeeding year, plus any additional amounts with respect to which the Member is then at risk. For purposes of the succeeding year, the amount at risk with respect to a Member will be reduced by losses allowed to the Member in the preceding years. If, at the end of any taxable year, the amount a Member is at risk is less than zero (for example, due to Distributions from the sale of a Property), the Member must treat as ordinary income an amount equal to such negative amount at risk. However, the amount of income so recognized may be treated as a suspended deduction that is carried forward and deducted at such time as it is allowable due to an increase in the Member’s amount at risk, but at that time such deduction might be subject to the passive activity loss rules discussed below.

**Characterization of Company Income as “Passive” or “Portfolio”.** Section 469 of the Code distinguishes between earned income, income from a “passive” activity and portfolio income. A passive activity generally includes (1) trade or business activities in which the taxpayer does not materially participate, and (2) rental activities where payments are primarily for the use of tangible real or personal property. Code Section 469(c)(7) provides an exception to the rule that rental activities are passive, if the activity involves a rental real estate activity and the taxpayer performs a certain amount of real property services in the taxable year. In general, losses generated by a passive activity will be allowed only to offset income from a passive activity. Portfolio income includes interest, dividends, royalty or annuity income and gain from sales of portfolio assets, such as property held for investment. Portfolio income is not treated as passive income and must be accounted for separately. To the extent the Company is engaged in a passive activity, income of the Company from such activity is deemed “passive income” which is available to be offset by any other passive losses which the Member has from other sources as well as losses from non-passive activities. Passive losses, however, will not be available to offset income from active or portfolio activities. Each Member’s distributive share of items of Company income, gain, loss, deduction and credit should generally constitute income, losses and credit from passive activities (except to the extent the items of income or loss are derived from the investment of working capital which will constitute portfolio income or loss). Passive losses and credits that are disallowed may be carried forward indefinitely and allowed as a deduction in subsequent years. To the extent passive activity losses from an investment have not been absorbed by passive activity income from such investment or other passive activities, such losses are usable upon disposition of the investment in the following order: first, against passive activity income or gain from the activity; second, against passive activity income or gain from other passive activities; and, third, against any other income or gain of the taxpayer, including wages and portfolio income. Disallowed losses from a passive activity are allowed in full when a taxpayer disposes of such Member’s entire interest in such activity in a qualified transaction. Suspended losses will, however, reduce the taxpayer’s basis and at-risk investment in the related activity. With respect to the Company, the passive loss rules will preclude Members from deducting against their active or portfolio income losses generated by the Company. This passive loss provision applies generally to individuals, estates, trusts and personal service corporations and has limited application to closely held corporations.

**Limitations on the Deductibility of Interest.** Section 163(d) of the Code limits the deductibility of interest on funds borrowed by an investor to purchase or carry securities or property held for investment, such as the Interests. Investment interest expense generally is allowed only to the extent of net investment income. "Net investment income" is generally defined as the excess of the sum of the following items over investment expenses (excluding interest) directly connected with the production of investment income: (i) gross income from property held for investment, including interest, dividends, annuities and royalties; and (ii) net gain from investment property. Investment interest expense which cannot be deducted for any year because of the foregoing limitations may be carried over and deducted in succeeding taxable years, subject to the foregoing limitations. Interest expense on indebtedness incurred to purchase or carry Interests should be treated as passive activity expenditures and thus might not be subject to the investment interest limitations, but the IRS might assert that it should be subject to the investment interest limitations. Similarly, a Member's share of interest expense incurred by the Company in carrying on its business also should be treated as passive activity expenditures that might not be subject to the investment interest limitations.

Section 163(j) of the Code generally provides that the deduction of business interest is limited to the sum of (i) business interest income of the taxpayer for the tax year, (ii) thirty percent of the taxpayer's adjusted taxable income for the year and (iii) financing interest of such taxpayer. In the case of any partnership, this limit is applied at the partnership level. Business interest is generally defined as interest allocable to a trade or business of a taxpayer. If the Company is deemed to be engaged in a trade or business, the limitation may apply. The Company may be able to elect out of the applications of this section. In addition, the limitation does not apply to a taxpayer if its average annual gross receipts for the prior tax year does not exceed \$25 million. Because this section has been recently enacted, its application to the Company is unclear.

**Deductibility of Certain Fees Paid to the Managers or an Affiliate.** The Company intends to claim the fees paid to the Development Manager and the Property Manager as currently deductible expenses on the Company's Federal income tax returns. The Manager believes that those fees should be deemed to be an ordinary and necessary expense. Accordingly, they should be deductible by the Company; provided, however, that each Member's ability to deduct such Member's share of those fees and other expenses of the Company may be limited due to the various restrictions on deductibility of losses and expenses discussed herein. Expenses related to investment property under Code Section 212 generally are not deductible. The fees paid to the Development Manager and the Property Manager and other fees and expenses of the Company may thus not be deductible if the Company is treated as being an investment activity rather than a trade or business.

**Depreciation.** Residential real property that is held for investment or used in a trade or business generally is depreciated over 27.5 years under the straight line method. Nonresidential real property is generally depreciated over 39 years. Depreciation is not allowed for any Property that is held primarily for sale and treated as inventory. Any personal property will be depreciated over the shorter periods applicable to the particular properties. Because some of the Members may be tax-exempt entities and non-U.S. taxpayers, the effective specified life of property held by the Company may be increased to 40 years for depreciation purposes.

**Distributions by the Company.** Distributions by the Company will be taxable to a Member only if and to the extent that they exceed the Member's basis in the Interests or such Member's amount at risk with respect to the Company's activities. The amount of any cash distributions to the Member (including any deemed distribution on a reduction in such Member's share of Company indebtedness) for any year in excess of such Member's basis in the Interests generally will be taxable to the Member as capital gain, assuming the Member's Interests are held as capital assets. A decrease in the Member's percentage interest in the Company due, for example, to admission of new Members, will decrease such Member's share of nonrecourse debt, which is a deemed distribution of cash. Such deemed distribution may result in ordinary income pursuant to Section 751(b) of the Code to a Member whether or not such deemed distribution exceeds the adjusted basis of the Member's interest. Such deemed distribution will, in part, be treated as

an exchange of “unrealized receivables,” which includes recapture income, and “substantially appreciated inventory” (as defined in Sections 751(c) and 751(d) of the Code) for money. If additional Interests are issued by the Company, however, certain items of income, gain, loss or deduction may be reallocated to reflect the fair market value of the Company’s property and such reallocation could minimize or eliminate the recognition of such ordinary income. The IRS may contend that such ordinary income must be recognized by those Members whose percentage interests have decreased due to the admission of new Members. If a Member’s amount at risk is reduced below zero at a time when such Member’s adjusted basis in the Interests exceeds zero (e.g., due to nonrecourse indebtedness), such Member will recognize recapture (ordinary) income to the extent that such Member’s “at risk” amount is so reduced. The amount of recapture income recognized is limited to previously allowed losses, less previously recognized recapture income, with respect to the Company. The Manager does not anticipate that Company distributions will exceed the basis or at-risk amounts of the Members in their Interests.

**Disposition of Interests.** In general, on a sale or other taxable disposition of Interests, a Member realizes gain or loss equal to the difference between the amount realized on the disposition, including such Member’s share of the Company’s nonrecourse liabilities and the adjusted tax basis for such Member’s Interests. Gain recognized by a Member on the sale of Interests of the Company which have been held by him for more than twelve months will generally be taxable as long-term capital gain. If the Company has employed leverage, a Member’s share of the Company’s nonrecourse indebtedness may exceed the tax basis for such Member’s Interests, particularly because such basis is reduced by the excess of such Member’s prior cash distributions in excess of such Member’s share of the Company’s income (or loss), and the taxable gain may exceed the cash proceeds of sale. See “Distributions by the Company.”

That portion of a selling Member’s gain allocable to “appreciated inventory items” (including real property treated as inventory) and “unrealized receivables” would be treated as ordinary income. However, loss, if any, will generally be capital loss. As indicated above, suspended passive losses may be used in full (even to offset active income) if a taxpayer disposes of such Member’s entire interest in a passive activity in a fully taxable transaction and the transferee is not a related person to the taxpayer (as defined in Section 267(b) or 707(b)(1) of the Code). Accordingly, a Member’s disposition of such Member’s Interests in a fully taxable transaction to an unrelated party would permit such Member to use such Member’s suspended passive losses in full in the year of sale or disposition.

**Section 754 Election.** The Company may file an election under Section 754 of the Code to adjust the basis of property in the case of transfers of Interests or a distribution of property. It is irrevocable once made, unless the Company obtains approval for a revocation from the IRS. This election requires the Company to adjust the basis of its property when a transfer of Interests or a distribution to a Member of property creates a difference between the basis of Company assets and the basis of the Members’ Interests. The adjustment equals the amount of the gain or loss recognized or the amount of change in basis in the distributed property, is divided between capital gain and ordinary income property, and is allocated among the assets in each class.

**Liquidation of the Company and Sale of Assets.** The Agreement provides generally that on liquidation of the Company, all non-cash assets will be sold and the sales proceeds will be distributed pursuant to the terms of the Agreement. The Company will realize gain or loss on sale of the Properties and each Member will report such Member’s share of such gain or loss together with such Member’s share of other items of Company income, gain, loss, and deduction for the year of liquidation. In addition, a Member will recognize gain or loss measured by the difference between the cash such Member receives in liquidation and the adjusted tax basis of such Member’s Interests. See “Members’ Bases in Interests” above. If the Interests are capital assets in the hands of the Member, gain or loss recognized generally will be taxed as short or long-term capital gain or loss, depending on the period the Interests were held, except to the extent provided in Section 751 of the Code.

#### Other Tax Issues

**State, Local and Foreign Taxes.** In addition to the Federal income tax aspects described above, prospective investors should consider potential state, local and foreign tax consequences of an investment in Interests. Each investor is advised to consult his or her own tax adviser to determine whether the state or other jurisdiction in which he or she is a resident imposes a tax on his or her share of the taxable income of the Company, and whether an income tax or other return also must be filed in those states where the Company owns Property.

The Company will advise each Member of such Member's share of income or loss to be reported to each of the states where the Company owns property. Personal exemptions, computed in various ways, are allowed by some states and may reduce the amount of tax owed to a particular state. The Company may be required to withhold state taxes from distributions to Members in some instances.

To the extent that a Member pays tax to a state in which such Member is not a resident by virtue of Company operations within that state, such Member may be entitled to a deduction or credit against tax owed to such Member's state of residence with respect to the same income, and such Member should consult such Member's tax adviser in that regard. In addition, payment of such state taxes constitutes a deduction for Federal income tax purposes, assuming that the taxpayer itemizes deductions.

**Tax Shelter Reporting.** Under Regulations designed to help the IRS discover tax shelter type transactions, the Company and the Manager may be required to report certain transactions to the IRS. Such transactions include certain transactions listed by the IRS as potential tax shelter transactions and transactions substantially similar to such transactions, and transactions in which the Company generates significant tax losses. If the Company or the Manager is required to report such a transaction, a Member also may have to report such transaction by filing a form with its tax return, which could raise the risk that such Member would be audited by the IRS and that the IRS would challenge the tax treatment of such transaction, and of other items, on such Member's return. Failure to report such transactions could result in significant penalties for the Company and for Members. Although the Company is not intended to be a tax shelter, it cannot assure investors that it will not engage in any such reportable transactions. Potential investors must be aware that an investment in the Company could cause that investor to have to file such a form with its tax return. In addition, the Regulations provide that if the Company engages in any such potential tax shelter transactions, it or the Manager has to maintain certain documentation for the IRS, possibly including lists of the Members. Moreover, a tax-exempt entity could be subject to excise taxes under Code section 4965 if the Company engages in reportable transactions.

**Audit of Tax Returns.** The Manager understands that the IRS is paying increased attention to the proper application of the tax laws to partnerships. The Company may engage in some investments with uncertain federal income tax consequences. The IRS may challenge the Company's tax position on its information returns with respect to such investments. While the Company was not formed to allow investors to avail themselves of losses or deductions the Company may generate, the IRS still may audit the Company's information returns. Any such audit may precipitate audits of the income tax returns of Members.

An audit adjustment to the Company's tax return could result in a tax liability (including interest and penalties) imposed on the Company for the year during which the adjustment is determined. The tax liability generally is determined by using the highest tax rates under the Code applicable to U.S. taxpayers, although the Company may be able to use a lower rate to compute the tax liability by taking into account that the Company has certain tax exempt Members. Alternatively, the Company may be able to elect with the IRS to pass through such adjustments for any year to the Members who participated in the Company for that prior year, in which case each such Member, and not the Company, would be responsible for the payment of any tax deficiency, determined after including its share of the adjustments on its tax return for that year. If such an election is made by the Company, interest on any deficiency will be at a rate that is 2% higher than the otherwise applicable interest rate on tax underpayments. If such an election is not made, the current year Members may bear the tax liability (including interest and penalties) arising from audit adjustments at significantly higher rates and in amounts that are unrelated to their prior year economic

interests in the Company items that were adjusted. The Manager or its delegate will act as the partnership representative of the Company and will have the authority to bind the Company under the modified audit procedures becoming effective then.

**Possible Legislative Tax Changes.** The foregoing summary of federal income tax law reflects provisions of recent legislation. Their meaning is uncertain, however, because Regulations and other official interpretations have not been issued with respect to a number of such provisions. Tax legislation might change the analysis herein significantly and may have substantial adverse effects on Members. Members should consult with their own professional advisers as to all current and possible future proposals with respect to federal, state and local tax legislation and the effect, if any, that such legislation may have on an investment in Interests.

The federal income tax aspects of the Company summarized above are general in nature and are not intended to be a complete explanation of the federal income tax results of investing in the Company. Each prospective Member should consult with such prospective Member's own tax adviser for detailed information.

## SUMMARY OF AGREEMENT

The following discussion briefly summarizes certain provisions of the Agreement. As with all other references to or descriptions of the Agreement in this Private Placement Memorandum, the following discussion is only a summary and is qualified in its entirety by reference to the Agreement, the form of which is included as Exhibit A in this Private Placement Memorandum.

**Rights of the Manager.** The Manager has full, exclusive and complete authority in managing and controlling the Company for the purposes stated in the Agreement and makes all decisions affecting the Company.

**Capital Contributions.** Members may make Capital Contributions to the Company as described in "Summary of Terms - The Offering."

**Capital Accounts.** The Company maintains an individual Capital Account for each Member, to which is credited or debited such Member's Capital Contributions and shares of Profits, Losses and distributions as described in "Summary of Terms - Allocations."

**Assignment of Interests.** A Member may assign an interest in the Company, subject to compliance at such Member's expense with federal and state securities laws, the Agreement, the Member's Subscription Agreement, and the consent of the Manager, which may be withheld at the Manager's sole discretion.

Any assignment is effective as of midnight of the last day of the calendar month in which it is made unless the Manager determines otherwise. No such assignment relieves the assignor of such assignor's responsibility for any expenses, obligations or liabilities, whether accruing before or after the assignment. Unless and until an assignee is admitted to the Company as a substituted Member as described below, such assignee is entitled only to receive distributions from the Company attributable to the assigned interest from and after the effective date thereof, but the Manager and the Company may treat the assigning Member as the absolute owner of the assignor's interest in the Company and will not be liable for distributions made in good faith to the assignor until the effective date of the assignment and until appropriate documents of assignment have been delivered to the Manager and recorded on the Company's books.

An assignee of any Interests may become a substituted Member only with the consent of the Manager and after the Manager receives such appropriate documentation of the assignment and substitution as it may reasonably require. Nevertheless, no assignee may become a substituted Member

unless the assignee consents in writing, in form satisfactory to the Manager, to be bound by the terms of the Agreement in the place and stead of the assigning Member.

**Rights of Members.** The Members have the following rights:

(a) No Member is subject to mandatory assessment, nor is any Member personally liable for any of the Company's debts or liabilities or any of its losses (except as may be required under the Delaware Act), but a Member is at risk to the extent of any undistributed income attributable to such Member.

(b) No Member, as such, may take part in managing the Company, or transact any business for the Company, nor does a Member, as such, have the power to sign for or bind the Company to any agreement or other document. A majority in interest of the Members may, however, with the concurrence of the Manager, consent to amend the Agreement. In addition, a majority in interest of the Members may admit a manager or elect to continue the Company's affairs after an event that would otherwise require the dissolution of the Company under the Delaware Act. The Members have no other voting rights and, accordingly, do not have the power to remove the Manager.

All votes required or permitted to be taken by the Members are taken by written consent. The Agreement does not provide for meetings of the Members to be held. A Member may, with the consent of the Manager, waive all or any portion of that Member's voting rights that are conferred on it by the Agreement or the Delaware Act with respect to that Member's Ownership Percentage. If a Member and the Manager agree to any such waiver, then, for voting purposes only, the portion of such Member's Ownership Percentage with respect to which voting rights are waived are deemed held by the Members who have not waived any of their voting rights, pro rata in proportion to their respective Ownership Percentages. If the Manager elects, a Defaulting Member will have no voting rights.

**Records and Books.** The Manager maintains and preserves during the term of the Company the records required to be maintained under the Delaware Act. The Manager, however, has the right to keep confidential from Members any information that the Manager reasonably believes to be in the nature of trade secrets or other information (such as, for example, the identity of the Members and investments) the disclosure of which the Manager believes is not in the Company's best interests or could damage the Company or its business, or that the Company is required by law or agreement with a third party to keep confidential.

**Confidentiality.** Each Member is obligated to use financial statements and other information regarding the Company delivered by the Manager only to further his, her or its interests as a Member and, except for disclosures required or permitted by applicable law (such as any disclosures made pursuant to so called "whistle blower" statutes), must maintain the confidentiality of those financial statements and that other information. Notwithstanding the foregoing, a Member (and each of its employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Company and any materials provided to the Members relating to such tax treatment and structure. These obligations are not affected by, and survive, the Company's dissolution or termination and any Member's death, disability, incapacity, withdrawal, insolvency or dissolution.

**Costs of Special Services.** A Member must pay any costs incurred in connection with special services requested by that Member. Such services would include, for example, those that would benefit the Member but would not benefit the Company, such as a special asset evaluation or financial accounting for the purposes of estate valuation and legal fees and other expenses relating to the assignment or transfer of an Interest, fees and expenses relating to any placement agent or broker who refers or solicits such Member to the Company or incurred as a result of the failure of the Member to provide sufficient, correct

or additional information as required for the Company to comply with Code sections 1471-1474 (or any successor provisions and similar laws of other countries) or to avoid withholding under such sections. If that Member does not pay the cost of such services promptly after the Manager's request for payment, the Manager may deduct the amount thereof from any distribution otherwise payable to that Member or from the applicable Capital Account and pay such amount to the person entitled thereto.

**Claims Against the Company.** The Manager will arrange to prosecute, defend, settle or compromise actions at law or in equity at the expense of the Company as the Manager may consider necessary to enforce or protect the interests of the Company. The Manager will satisfy any judgment, decree, decision or settlement under the terms of which the Company (or the Manager, or any Affiliate of the Manager, on behalf of the Company) is obligated to pay any amount, first, out of available proceeds of any insurance of which the Company is the beneficiary, and then out of Company assets and income. Nevertheless, if any such payment is made out of the assets or income of the Manager, it is entitled to reimbursement, with interest, for such payment out of assets and income of the Company thereafter received.

**Duration of the Company; Dissolution and Termination.** The Company will be dissolved on (1) the sale of all or substantially all of the Property; (2) the election of the Managing Member to dissolve the Company; (3) the voluntary or involuntary dissolution of all Members; or (4) any other event that, under the Delaware Act, requires the Company's dissolution except that the Company shall not be terminated nor its affairs wound up if the a Majority in Interest of the Members elect to continue the Company and its business within ninety (90) days after the occurrence of said event.

The Company will not be dissolved or terminated by the expulsion, retirement, withdrawal, death, insanity, adjudication of bankruptcy, insolvency or dissolution of any Member, by any assignment of Interests or by the admission of new Members.

In the event of the Company's dissolution and termination, the Manager, or a "**Liquidating Person**" previously appointed by the Manager or in certain circumstances appointed by a majority in interest of the Members, will wind up the Company's affairs, liquidate at least so much of the Company assets as may be required to pay all liabilities, including all costs of dissolution and any payment the Manager has agreed to make to the Liquidating Person for his or her services in connection with the dissolution; and loans to the Company by any Member (including any Member Loan, but excluding any distributions or withdrawals payable to any Member), pay all such liabilities, establish a reserve for contingencies and distribute the Company's remaining assets (in cash or in kind or partly in cash and partly in kind, as the Manager or the Liquidating Person may determine) in proportion to and to the extent of the Members' respective Capital Accounts. After a reasonable period of time has passed, any balance remaining in any such reserve will be distributed to the Members as described in this paragraph. Each Member may look solely to the Company's assets for the return of such Member's Capital Contributions, and if the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contributions of each Member, such Member will have no recourse against any other Member. The winding up of the affairs of the Company and the distribution of its assets will be conducted exclusively by the Manager, or the Liquidating Person, who is authorized to do anything authorized by law for these purposes.

**Amendments.** The Manager may propose amendments to the Agreement, in which case it will submit to the Members a verbatim statement of any amendment so proposed. The amendment will become effective only on the consent of the Manager and a Majority Combined Interest. For purposes of obtaining consent to the proposed amendment, the Manager may require a response within a specified reasonable time (which may not be less than 15 days). Failure to respond will constitute a consent in accordance with the Manager's recommendation with respect to the proposed amendment.

Notwithstanding the above, the Manager may, without the consent of any Member, amend the Agreement (a) if, in the opinion of the Manager, the amendment does not have a material adverse effect on the Members generally with respect to their Interests attributable to their existing Capital Commitments (as opposed to any future Capital Commitments they may wish to make), or (b) whether or not any Member is adversely affected thereby, if the Agreement specifically provides for such amendment. In no event may any amendment change the Company to a general partnership or change the limited liability of the Members as such without the consent of all Members.

The Manager also may enter into a written agreement with a Member or prospective Member on the Company's behalf that, with respect to that Member or prospective Member, modifies the terms and conditions of the Agreement and any other agreement between the Company and that Member or prospective Member. Any such agreement will govern in the event of a conflict with the Agreement.

**Dispute Resolution.** The Agreement contains an arbitration clause, under which the Members waive their right to seek remedies in court, including any right to a jury trial. Any dispute arising between or among any of the Members or any of their Affiliates arising out of, relating to or in connection with the Agreement or the Company or its formation, organization, capitalization, business or management, including the determination of the scope and applicability of the agreement to arbitrate, will be resolved exclusively through binding arbitration in the county and state of the principal office of the Investment Adviser at the time the claim for arbitration is submitted and conducted under the auspices of JAMS pursuant to its Comprehensive Arbitration Rules and Procedures applying the laws of Delaware to all state law claims. Disputes will not be resolved in any other forum or venue. Such arbitration will be conducted by a retired judge who is experienced in resolving disputes regarding the securities business. Only limited discovery will be conducted in accordance with JAMS' Comprehensive Arbitration Rules and Procedures. The arbitration award will not include factual findings, conclusions of law or other written explanation of the reasons for the award. No punitive or exemplary damages will be awarded, unless (but only to the extent that) such damages are required by statute to be an available remedy for the specific claim(s) asserted. Any party's right to appeal or seek modification of any ruling or award of the arbitrator is severely limited. Any award rendered by the arbitrator will be final and binding, and judgment may be entered upon it in any court of competent jurisdiction in the county and state of the principal office of the Investment Adviser at the time such award is rendered or as otherwise provided by law. The Agreement is governed by Delaware law. The Members must maintain the confidential nature of the arbitration proceeding and the award, including when seeking to confirm or vacate the award in court, unless otherwise required by law or judicial decision.

**Attorneys' Fees and Costs.** If any dispute between or among any of the Company and the Members or any of their respective Affiliates results in litigation or arbitration, the prevailing party or parties in such dispute will be entitled to recover from the other party or parties all reasonable fees, costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred by the prevailing party or parties in connection therewith, all of which will be deemed to have accrued on the commencement of such action and will be paid whether or not such action is prosecuted to judgment. Any award, judgment or order entered in such action will specifically provide for the recovery of attorneys' fees and costs incurred in enforcing such award or judgment and an award of prejudgment interest from the date of the breach at the maximum rate allowed by law. For these purposes, (a) attorneys' fees include, without limitation, fees incurred in postaward or postjudgment motions, contempt proceedings, garnishment, levy, and debtor and third party examinations, discovery and bankruptcy litigation, and (b) prevailing party means the party that is determined in the proceeding to have prevailed or who prevails by dismissal, demurrer, default or otherwise.

**Power of Attorney.** Each Member, by executing a Subscription Agreement agreeing to be bound by and become a party to the Agreement, will irrevocably appoint the Manager such Member's attorney-

in-fact, to perform appropriate acts as specified in the Agreement and the Subscription Agreement, forms of which are included as Exhibits A and B, respectively, to this Private Placement Memorandum.

## **REPORTS**

The Company furnishes annual reports to the Members containing audited financial statements of the Company. Members are required to maintain the confidentiality of those financial statements, reports, and other information about the Company or the Investment Adviser, except for disclosures required by applicable law and must use such information only to further their interests as Members. These obligations are not affected by, and survive, the Company's dissolution or termination and any Member's death, disability, incapacity, withdrawal, insolvency or dissolution.

The Company or the Manager may provide to any Member (or the Member's designated agents) statements, reports and other communications relating to the Company or the Member's investment in the Company exclusively in electronic format, such as email, without separate mailing of paper copies, provided that the Member consents to receive such statements, reports and other communications in such format.

CORPORATE STRUCTURE (PLACEHOLDER)

