

**Part 2A of Form ADV: Pennybacker Capital Management, LLC - *Brochure***

**Item 1 - Cover Page**

June 2012

Pennybacker Capital Management, LLC  
3500 Jefferson Street, Suite 206  
Austin, Texas 78731  
Phone - (512) 610-2910

This Brochure provides information about the qualifications and business practices of Pennybacker Capital Management, LLC. If you have any questions about the contents of this brochure, please contact us at (512) 610-2910. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority.

Pennybacker Capital Management, LLC is a registered investment adviser. Registration of an investment adviser does not imply any level of skill or training. The oral and written communications of an investment adviser provide you with information about which you determine to hire or retain an investment adviser.

Additional information about Pennybacker Capital Management, LLC also is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

**PENNYBACKER CAPITAL MANAGEMENT, LLC**  
3500 Jefferson Street, Suite 206 • Austin, TX • 78731  
Phone: (512) 610-2910 • Fax: (512) 610-2906

## **Item 2 - Material Changes**

The Adviser is providing this updated “Brochure” to inform you of the departure of Mr. George P. Bush as a principal of the Adviser. Other than this change, there are no material changes contained herein from the Brochure dated February 2012.

Pursuant to SEC Rules, we will continue to ensure that you receive a summary of any material changes to this and subsequent Brochures within 120 days of the close of our business’ fiscal year. We may further provide other ongoing disclosure information about material changes as necessary.

Currently, our Brochure may be requested by contacting Mr. Michael C. O’Malley, the Adviser’s Chief Compliance Officer at (512) 610-2914 or momalley@pennybackercap.com.

Additional information about the Adviser is also available via the SEC’s web site [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). The SEC’s web site also provides information about any persons affiliated with the Adviser who are registered, or are required to be registered, as investment adviser representatives of the Adviser.

### Item 3 - Table of Contents

Item 1 - Cover Page.....	i
Item 2 - Material Changes .....	ii
Item 3 - Table of Contents.....	iii
Item 4 - Advisory Business .....	1
Item 5 - Fees and Compensation .....	2
Item 6 - Performance-Based Fees and Side-By-Side Management.....	5
Item 7 - Types of Clients .....	6
Item 8 - Methods of Analysis, Investment Strategies and Risk of Loss.....	7
Item 9 - Disciplinary Information.....	15
Item 10 - Other Financial Industry Activities and Affiliations.....	16
Item 11 - Code of Ethics, Participation or Interest in Client Transactions and Personal Trading.	17
Item 12 - Brokerage Practices .....	18
Item 13 - Review of Accounts.....	19
Item 14 - Client Referrals and Other Compensation .....	20
Item 15 - Custody .....	21
Item 16 - Investment Discretion .....	22
Item 17 - Voting Client Securities.....	23
Item 18 - Financial Information .....	24
Brochure Supplement(s)	

#### **Item 4 - Advisory Business**

- A. Pennybacker Capital Management, LLC (the "Adviser") is a real estate private equity firm located in Austin, Texas. The Adviser provides investment advisory services on a discretionary basis to private investment limited partnerships that focus on generating favorable risk-adjusted returns primarily by acquiring and managing middle-market multifamily, retail, office, and industrial properties located primarily in the four main regional economies within Texas (each, a "Fund", and together, the "Funds").

The Adviser was formed in 2007 by Mr. Timothy P. Berry. The Funds are managed by the three principals of the Adviser, consisting of Mr. Berry, Mr. Michael C. O'Malley, and Mr. Vince P. Reyna (collectively, the "Principals"). The Principals have more than 17 years of combined real estate private equity investing and operating experience and have developed and/or repositioned more than 50 projects as principals as well as 14 real estate investment transactions on behalf of high net worth individuals and institutional investors throughout the U.S.

- B. Investment advisory services include establishing each Fund's investment objective and selecting portfolio investments according to each Fund's specific investment strategy, as described in the applicable Fund's confidential offering memorandum (if any) and governing documents (collectively, the "Offering Documents"). The investment activity of the Adviser generally focuses on the acquisition and management of middle-market multifamily, retail, office, and industrial properties located primarily in the four main regional economies within Texas, with a secondary focus on performing and non-performing debt secured by such properties (especially debt that provides an opportunity to own the properties directly). The Adviser seeks investment opportunities in which the Adviser can capitalize on its industry relationships, acquisition platform, and significant real estate operating experience; and will also seek opportunities in which it can capitalize on market inefficiencies in the middle market, and the ongoing dislocation in the segments of the U.S. real estate and capital markets.

The Adviser's investment strategy will focus on complex, off-market and undervalued middle-market transactions that the Adviser deems to be too large for larger individual investors and too small for most institutional investors. By focusing on situations that offer enhanced value propositions, the Adviser will seek to avoid overpaying for properties and relying upon speculative market trends to produce investment returns.

- C. While each of its Funds will follow the general strategy stated above, the Adviser may tailor the specific advisory services with respect to each Fund on the individual investment strategy of each Fund and the investment guidelines and restrictions stated in each Fund's respective Offering Documents. The Adviser does not tailor its investment advisory services to individual limited partners in any of the Funds.
- D. The Adviser does not participate in wrap fee programs.
- E. As of February 13, 2012, the Adviser managed approximately \$112 million in discretionary portfolios. The Adviser does not currently manage assets on a non-discretionary basis.

## **Item 5 - Fees and Compensation**

- A. Below is a discussion of how the Adviser is compensated in connection with providing advisory services to a Fund. The Adviser may enter into different fee arrangements on a Fund by Fund basis.

### Capital Commitments

Each Fund will seek capital commitments (“Commitments”) from limited partners in one or more closings up to an amount stated in the Offering Documents. Capital calls may be required from time to time for a period of up to three years after the initial closing of the Fund (the “Commitment Period”). Thereafter, the limited partners will be released from any further obligation with respect to their undrawn Commitments, except to the extent necessary to: (i) fund the obligations and expenses of the Fund, including, but not limited to, indemnity obligations, payment of the Management Fee, and repayment of indebtedness of the Fund, (ii) complete investments by the Fund in respect of transactions that were in process as of the end of the Commitment Period, (iii) to effect follow-on investments in existing investments. In no event will a limited partner be required to make a capital contribution in an amount in excess of its unfunded Commitment.

Commitments will be drawn down *pro rata* based on original Commitments on an as-needed basis to fund investments and pay Fund expenses. Such contributions will represent each Partner’s “Capital Contributions.”

### Management Fees

Each Fund will pay its General Partner an annual management fee (the “Management Fee”) of up to 2% of total Commitments for services provided by the Adviser to the Fund, payable quarterly in advance from the date of the initial closing of a Fund until the end of the Commitment Period. Following the Commitment Period, no Fund will pay a Management Fee based on total Commitments but (i) certain Funds will pay their General Partners an annual management fee of up to 1.5% of their invested capital with respect to investments which have not been fully disposed and (ii) certain other Funds will pay their General Partners an annual management fee of up to 1.0% of their invested capital with respect to investment which have not been fully disposed. Such Management Fees are payable by the Funds quarterly in advance.

The Adviser receives the Management Fee paid by each Fund through its ownership interest in each General Partner. Certain limited partners in each Fund may pay Management Fees at lower rates than those noted above, as may be agreed to by such Fund’s General Partner in accordance with the Fund’s Offering Documents.

### Distributions

Net proceeds attributable to the disposition of each Fund’s portfolio investments, together with any dividends or interest income with respect to the Fund’s portfolio investments (“Disposition Proceeds”) will be distributed to a Fund’s partners following the General Partner’s determination of the amount of available funds to distribute after the General Partner’s consideration of such factors as the need to allocate funds to pay any Management Fees or to any reserves for Fund contingencies or any other Fund purposes that the General

## **Item 5 – Fees and Compensation (continued)**

Partner deems necessary or advisable. Generally, Disposition Proceeds are distributed in the following amounts and order:

- (a) first, 100% to the partners for payment of an annual preferred return on any unreturned Capital Contributions;
- (b) second, 100% to the partners in proportion to Capital Contributions to allow for a return of Capital Contributions to the Fund;
- (c) third, 50% to the partners and 50% to the Fund's general partner (the "General Partner") until such time as the General Partner has received a stated percentage of aggregate distributions (including the annual preferred return); and
- (d) thereafter, 80% to the partners in proportion to Capital Contributions and 20% to the General Partner.

Distributions to the General Partner under paragraphs (c) and (d) are referred to as the "carried interest."

Distributions to the Partners will be subject to certain adjustments and reserves as stated in more detail in each Fund's Offering Documents.

Upon the final liquidation of a Fund and distribution of its remaining assets, the General Partner may be required to restore funds to the partnership for distribution to the limited partners (up to the amount of its cumulative net after-tax carried interest) to the extent, if any, that the amount previously distributed to the General Partner as its carried interest exceeds the aggregate amount due to the General Partner as its carried interest on a cumulative basis.

- B. Management Fees may be paid out of current income and Disposition Proceeds of each Fund and from drawdowns of Commitments to each Fund. The Management Fees are deducted quarterly in advance from a Fund's assets by such Fund's General Partner. Disposition Proceeds are deducted by each Fund's General Partner from distributable funds as indicated in Item 5.A. above.
- C. The General Partner and the Adviser will pay all of their respective ordinary administrative and overhead expenses, including salaries, benefits and rent.

Each Fund will pay all other expenses attributable to the activities of the Fund including, without limitation: (i) expenses incurred in connection with the consummation of transactions, including financing and consulting fees, property management fees, brokerage commissions, transaction fees, and legal, accounting, investment banking, consulting, information services and professional fees; (ii) expenses incurred in connection with the carrying or management of investments, including custodial, trustee, record keeping and other administration fees; (iii) expenses incurred in connection with the Fund's financial statements, tax returns and K-1's; (iv) attorneys' and accountants' fees and disbursements; (v) taxes and other governmental charges levied against the Fund; (vi) insurance (including premiums), regulatory or litigation expenses (and damages), including regulatory expenses of the General Partner and the Adviser; (vii) expenses incurred in connection with the winding up or liquidation of the Fund; (viii) expenses relating to defaults by partners in the payment

## **Item 5 – Fees and Compensation (continued)**

of any capital contributions; (ix) expenses for transactions not consummated; (x) expenses incurred in connection with any restructuring or amendments to the constituent documents of the Fund and related entities, including the General Partner and the Adviser; (xi) expenses incurred in connection with distributions to the partners and in connection with any meetings with partners called by the General Partner; and (xii) expenses related to the Fund's indemnification obligations.

Each Fund will reimburse the General Partner for up to a predetermined amount of the Fund's organizational and start-up expenses, including legal fees, travel costs, printing costs, accounting fees, filing fees, capital raising costs and other organizational expenses. Organizational expenses in excess of such predetermined amount will be borne by the General Partner.

There will be no sales charges payable by limited partners in connection with investment in the Funds. The General Partner will assume responsibility for the payment of fees and expenses to third party placement agents.

The Adviser does not maintain any trading accounts and does not use "soft" dollars.

Please refer to Item 12, Brokerage Practices, for more information.

- D. As stated above, Management Fees are payable quarterly in advance. Since limited partners are generally not permitted to withdraw or redeem their investment in a Fund prior to the dissolution of the Fund, refunds of Management Fees are not available to limited partners.
- E. Other than as described above, neither the Adviser nor any of its supervised persons receives any compensation from the sale of securities or other investment products.

## **Item 6 - Performance-Based Fees and Side-By-Side Management**

As stated in Item 5 above, the General Partner of a Fund will receive performance-based fees in connection with any Disposition Proceeds that are distributed to partners relating to dispositions of investments in portfolio companies.

Performance-based fees, in general, may create an incentive for an adviser or its supervised persons to make investments that are riskier and more speculative than would be the case in the absence of a performance-based fee.

The Adviser may manage multiple Funds with similar investment strategies on a side-by side basis. As a result of the foregoing, the Adviser, its principal(s), and/or affiliate(s) may have conflicts of interest in: (i) allocating their time and activity among the multiple Funds; (ii) allocating investments among the multiple Funds; and (iii) effecting transactions among the multiple Funds, including ones in which the Adviser, its principal(s), and/or affiliate(s) may have a greater financial interest. These conflicts of interest may create an incentive for the Adviser to favor a Fund in which the Adviser, its principal(s), and/or affiliate(s) have a greater financial interest with respect to allocation of time and activity, limited investment opportunities, or investments that the Adviser regards as more attractive or better performing investments.

To address these conflicts of interest, the Adviser has implemented policies and procedures to ensure that all Funds receive equitable and fair treatment over time with respect to the allocation of investment opportunities. These policies and procedures require the Adviser to at all times allocate investments among the Funds in a manner which it believes to be fair and equitable and prohibit the Adviser from basing an allocation decision on any of the following, or similar, reasons: (i) to generate higher fees paid by one Fund over another, or to produce greater fees to the Adviser or any of its affiliates; (ii) to develop a relationship with an existing or potential limited partner in a Fund; (iii) to compensate a limited partner in a Fund for past services or benefits rendered to the Adviser or any employee of the Adviser; or (iv) to induce future services or benefits to be rendered to the Adviser or any employee of the Adviser.

## **Item 7 - Types of Clients**

The Adviser provides investment advisory services on a discretionary basis to the Funds, which are private investment limited partnerships that focus on investing in real estate private equity transactions.

Limited partners in the Funds are required to complete and submit a subscription agreement binding them to the terms of a Fund's governing documents. The Funds will only admit "accredited investors", as defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended, and "qualified clients," as defined in Rule 205-3 under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). Generally, the minimum Commitment by a limited partner to a Fund will be \$1 million, although the General Partner may accept Commitments of lesser amounts.

## **Item 8 - Methods of Analysis, Investment Strategies and Risk of Loss**

### **A. Introduction**

The Adviser focuses on generating favorable risk-adjusted returns for the Funds' limited partners by identifying sub-performing, middle-market real estate properties that offer enhanced value propositions and are primarily located in Texas. The Adviser seeks to purchase these assets at attractive values below historical replacement cost. Targeted property types primarily include strategically located multifamily, retail, office, and industrial properties that possess the ability to generate current income, exhibit strong capital appreciation potential, and maintain a margin of economic safety due to an attractive cost basis. In addition, the Adviser will seek investment opportunities in which it can capitalize on its industry relationships, acquisition platform, and significant real estate operating experience, as well as market inefficiencies in the middle-market, and the ongoing dislocation in certain segments of the U.S. real estate and capital markets.

The Adviser is led by its Principals. The Principals are a team of experienced investment professionals who collectively have backgrounds in real estate investment management, real estate development, asset management, property management, bankruptcy workouts, credit underwriting, corporate and asset restructuring, traditional and distressed real estate debt security valuation, securities law, investment banking, and investor reporting. The Principals have developed and/or repositioned more than 50 projects as principals as well as 14 real estate investment transactions on behalf of high net worth individuals and institutional investors throughout the U.S., providing an operational mind-set and "know how" allowing the Adviser to operate properties and work with joint venture partners with a deep understanding of fundamental drivers of value. Furthermore, the Principals' experience in working in restructurings allows the Adviser to analyze distressed assets with a thorough understanding of the opportunities available to unlock value.

### **Investment Characteristics**

The Adviser will identify middle-market value by focusing on investments that it believes are too large for most individual investors and are too small for most institutional investors. The Adviser expects these investments to exhibit discounted pricing levels, enjoy lower relative levels of absolute risk from transaction structuring, and realize favorable capital appreciation. The Adviser generally defines the middle-market as transactions requiring between \$2 million to \$20 million of equity. The Adviser believes that this market segment provides more market inefficiencies than primary core markets that have greater transaction liquidity, analyst coverage, and market transparency.

The Adviser's investment team intends to primarily pursue direct equity investments, but may utilize a variety of structures and approaches to optimize returns and minimize risks. Types of transaction structures that the Adviser may pursue include, without limitation: (i) direct fee simple acquisition of controlling equity interests in properties or the acquisition of limited partner interests in existing entities; (ii) development or redevelopment of real estate property through entities formed with selected real estate operators; (iii) investments in performing and non-performing senior and subordinate debt and preferred equity investments in structured transactions where the Adviser seeks to mitigate risks by taking a strategic position in the capital structure of an investment entity with what it considers to have fundamentally sound real estate; and (iv) investments in pools of loans or individual loans from a pool of

## **Item 8 – Methods of Analysis, Investment Strategies and Risk of Loss (continued)**

loans secured by quality and or undervalued real estate assets, purchased from various CMBS trusts.

### Market Opportunity

While the Adviser believes its investment strategy can be executed profitably in any real estate or economic cycle, the Adviser believes that its strategy will be buoyed by two primary factors: (i) ongoing macroeconomic and capital markets issues that are impacting property owners and lenders nationwide that the Adviser believes will create attractive acquisition opportunities for the Funds and (ii) the strong growth and demand projected in the Adviser's target markets within Texas, which the Adviser believes will support real estate fundamentals and property cash flow growth.

Specific macro issues that the Adviser believes may create opportunities for the Funds it advises include: (i) over \$1 trillion of debt maturities coming due over the next four years; (ii) limited ability for distressed real estate owners to refinance loans originated at or near the peak of the market due to valuation shortfalls as well as a limited availability of mortgage debt for non-core properties; (iii) the highest rate of commercial bank failures since the early 1990s; and (iv) global macroeconomic issues that are likely to constrain growth over the next few years. The Adviser seeks to take advantage of these opportunities to pursue attractive risk-adjusted transactions such as recapitalizations, foreclosures, distressed note sales, and property sales.

### Investment Process

The Adviser utilizes a disciplined approach to screen, analyze, underwrite, and manage assets. The firm employs what it considers to be industry-leading best practices and a consistently exercised disciplined approach to conduct investment analysis and market research. Furthermore, by thoroughly evaluating risks, the Adviser believes it is positioned to make appropriate determinations of investment suitability. By defining risks in a comprehensive manner, the Adviser then creates a basis from which to determine if risks can be adequately mitigated, and also to determine if the expected investment returns match up with the risks being taken. Risk mitigation strategies are thorough and the Adviser defines specific plans during its due diligence phase. Investments are subject to comprehensive reviews of regional markets, competitive sub-markets, and property-specific attributes such as the credit of the tenancy. Alternative strategic plans for an asset are then formulated and the options deemed viable are further reviewed in the context of the above risk factors. Regional markets are gauged by real estate sub-sector and the Adviser assesses where each market is in its cycle.

The Adviser's fundamental research and analysis is complemented by its disciplined investment style, which seeks to focus on the downside, identify the upside, and use leverage judiciously. The Adviser believes that by understanding the potential downside or loss of an investment, and sizing its positions accordingly, it will be able to generate above-average returns with low risk of principal loss. The Adviser sustains a strict focus on always maintaining a defensible capital stack for each asset. Furthermore, the Adviser believes that its Principals have earned the reputation of closing in properties that are placed under purchase contract. This reliability, combined with the Adviser's track record, provides

## **Item 8 – Methods of Analysis, Investment Strategies and Risk of Loss (continued)**

potential deal flow from parties looking for an efficient buyer of distressed or time-constricted assets.

### Post-Closing Management

The Adviser applies a “hands-on” operationally intensive approach to property positioning, capital structure, and exit timing. The Adviser may incorporate one or more management strategies with respect to assets in the Funds’ portfolio, including: (i) seeking to maximize and strengthen the quality of cash flow by enhancing revenue through improvements in occupancy rates, lease terms, and leasing strategies as well as containing costs through more efficient operating procedures; (ii) increasing rents by upgrading the interior, exterior, and/or common areas of property and/or repositioning the property within its market to attract an upgraded tenant profile at increased rents; (iii) exploiting expansion opportunities; (iv) determining the optimal capital structure that will maximize the risk-adjusted return to a Fund; and (v) constantly monitoring market conditions and evaluating exit alternatives to manage risk and exploit opportunities.

Investing in securities and other assets (including private equity portfolio companies and real estate investments) involves the risk of loss, which investors should be prepared to bear.

- B. The Adviser’s investment strategy focuses on complex, off-market and undervalued real estate private equity transactions which involve high degree of business and financial risk that can result in substantial losses and is suitable only for investors prepared to bear such risk. The risks factors below are not intended to be exhaustive. Prospective limited partners in a Fund should carefully review the risks described in the applicable Fund’s Offering Documents.

*Investor Suitability.* Prospective investors are encouraged to meet with and obtain more information regarding the Funds from representatives of the Adviser, who will make available such information for prospective investors. In addition, prospective investors should consult with their own financial, legal, and tax advisors prior to investing in a Fund. Each investor will be required to represent to the Adviser as to such investor’s qualifications to invest in a Fund and will also be required to represent that it has met the financial suitability standards for participation in a Fund.

*Liquidity.* An investment in a Fund represents a highly illiquid investment and should only be acquired by investors able to commit their funds for an indefinite period of time and who have the financial resources necessary to withstand the risks involved in an investment in a Fund, including the possibility of a total loss thereof. Limited partner interests in a Fund are not registered under federal or state securities laws and may not be resold unless they are subsequently registered or an exemption from such registration is available. Transfers of limited partner interests are also subject to certain restrictions set forth in each Fund’s Offering Documents. Limited partners are not permitted to unilaterally withdraw capital from a Fund. Consequently, an investment in a Fund should be considered only as a long-term and illiquid investment.

*Limited Current Return.* The return of capital and the realization of profits, if any, will generally occur only upon the partial or complete disposition of an investment. Only certain investments are expected to generate current cash flows, and with respect to such

## **Item 8 – Methods of Analysis, Investment Strategies and Risk of Loss (continued)**

investments, interim cash flow generated by such investments may not be sufficient to pay Fund expenses and service borrowings.

*Targeted Returns.* The Funds will make investments based on estimates or projections of sales prices, rental rates, internal rates of return, and current returns, which in turn will be based on, among other considerations, assumptions regarding the performance of potential investments, the amount and terms of available financing, and the manner and timing of dispositions, all of which are subject to significant uncertainty. In addition, events or conditions that have not been anticipated may occur and may have significant effects on the actual rate of return on Fund investments. There is no assurance that a Fund will achieve its expected internal rate of return on the Fund's investments, and the Fund may earn no return or lose principal on an investment.

*Difficulty in Locating Suitable Investments.* A limited partner in a Fund must rely upon the ability of the Adviser to identify, structure, and implement investments consistent with such Fund's investment objective and policies. There can be no assurance that there will be a sufficient number of suitable investment opportunities to enable a Fund to invest all of its committed capital in opportunities that satisfy the Fund's investment objectives, or that such investment opportunities will lead to completed investments by the Fund. Identification of attractive investment opportunities is difficult and involves a high degree of uncertainty. The return of capital and the realization of profits, if any, will generally occur only upon the partial or complete disposition of an investment. Only certain investments are expected to generate current cash flows, and with respect to such investments, interim cash flow generated by such investments may not be sufficient to pay Fund expenses and service borrowings.

*Limited Partner Default.* If limited partners in a Fund fail to fund their subscription obligations or make required capital contributions when due, the Fund's ability to complete its investment program or otherwise continue operations may be substantially impaired.

*Diversification.* While diversification may be an objective of certain Funds, there is no assurance as to the degree of diversification that will actually be achieved in a Fund's investments either by geographic region or asset type. A Fund may participate in a limited number of investments and, as a consequence, the aggregate return of the Fund may be adversely affected by the unfavorable performance of even a single investment.

*Expedited Transactions.* Investment analyses and decisions by the Adviser may frequently be required to be undertaken on an expedited basis to take advantage of investment opportunities. In such cases, the information available to the Adviser at the time an investment decision is made may be limited, and the Adviser or seller/owner may not have access to detailed information regarding the investment property. Therefore, no assurance can be given that the Adviser will have knowledge of all circumstances that may adversely affect an investment.

*Credit and Financing.* The Adviser and the Funds may agree to arrange for and deliver financing and equity to a Fund's portfolio investment based on agreed to terms. However, because of changes in interest rates, market conditions, perceived risk, acquisitions and mergers of credit providers, and other related factors, the credit providers to the Adviser and the Funds could reduce or eliminate credit availability or seek to revise the terms made

## **Item 8 – Methods of Analysis, Investment Strategies and Risk of Loss (continued)**

available. Such actions could make it difficult for the obligated parties to deliver on their agreements on favorable terms, if at all, and could have an adverse effect on the Funds.

*Interest Rates.* Interest rates are highly sensitive to many factors, including governmental monetary and tax policies, domestic and international economic and political considerations, and other factors beyond the Adviser's or the Funds' control. Interest rate fluctuations may adversely affect the Funds' returns.

*Leverage.* A Fund may incur indebtedness to fund acquisitions, development or capital improvements, restructure existing debt or enhance returns. This leverage will increase the exposure of such investments to adverse economic factors such as rising interest rates, economic downturns, or deterioration in the condition of the investment or its corresponding market. There can be no assurances that a Fund, upon the incurrence of debt, will be able to meet its debt service obligations. To the extent that a Fund cannot meet its debt servicing obligations, the value of the Fund's investments could be significantly reduced or even eliminated, and the Fund risks the loss of some or all of its assets to foreclosure.

*Key Personnel.* Each Fund's success is highly dependent on the talents, efforts, and experiences of the Principals. The diminution or loss of services of a Principal could have a material adverse effect on the Funds.

*Troubled or Underperforming Assets.* The Funds may make investments in preferred or mezzanine debt instruments, subordinated debt interests, or joint ventures in partnerships, or invest in other troubled assets that involve a significant degree of legal and financial risk. Furthermore, investments in assets operating in workout modes or under the U.S. Bankruptcy Code are, in certain circumstances, subject to certain additional potential liabilities, which may exceed the value of a Fund's original investment.

*Regulation.* The offering of interests in the Funds will not be registered under the securities laws of any jurisdiction. Accordingly, the protections available from these laws will not generally be available to the Funds' limited partners. Additionally, no assurance can be given that future legislation, administrative rulings, or court decisions will not adversely affect the operations of a Fund, one or more investments held by a Fund, or an investment by a limited partner in a Fund.

- C. Investments by a Fund in real estate and real-estate related assets involve a high degree of business and financial risk that can result in substantial losses and is suitable only for investors prepared to bear such risk. The risks factors below are not intended to be exhaustive. Prospective limited partners in a Fund should carefully review the risks described in the applicable Fund's Offering Documents.

*Illiquid Investments.* Investments in real estate generally are not liquid, and there is no assurance that there will be a ready market for real property interests held by a Fund. The Funds generally will not be able to sell their limited equity investments publicly unless their sale is registered under applicable federal and state securities laws, or unless an exemption from such registration requirements is available, and may not be able to monetize its debt investments. It is unlikely that there will be a public market for these limited equity investments. In addition, financial instruments held by the Funds may be such that they require a substantial length of time to liquidate.

## **Item 8 – Methods of Analysis, Investment Strategies and Risk of Loss (continued)**

*Competition.* A Fund may encounter competition for real property investments. Competition for investments may have the effect of increasing costs, thereby reducing investment returns for a Fund.

*Real Estate Market.* There is no assurance that the operations of a Fund will be profitable or that cash from investments will be available for distribution to its limited partners. Since real estate, like many other types of long-term investments, historically has experienced significant fluctuations and cycles in value, specific market conditions may result in occasional or permanent reductions in the value of real property interests. The marketability and value of the real property interests will depend on many factors beyond the control of the Funds and the Adviser, including, without limitation: (i) changes in general or local economic conditions; (ii) changes in supply or demand for competing properties in an area; (iii) changes in interest rates; (iv) promulgation and enforcement of governmental regulations relating to land-use and zoning restrictions, environmental protection, and occupational safety; (v) unavailability of mortgage funds which may render the sale of a property difficult; (vi) the financial condition of tenants, buyers, and sellers of properties; (vii) changes in real estate tax rates and other operating expenses; (viii) the imposition of rent controls; (ix) energy and supply shortages; (x) various uninsured or uninsurable risks; and (xi) acts of God and natural disasters. Investments in multi-family housing in particular are subject to a number of factors affecting the demand for such housing, including, but not limited to, the national economic climate, the local economic climate (which may be adversely impacted by industry slowdowns, business or military base closings, and changing demographics), local real estate conditions (such as oversupply of or reduced demand for apartments), the perceptions of prospective residents of the safety, convenience, and attractiveness of the communities or neighborhoods in which such multi-family housing units are located and the quality of local schools and other amenities, and other factors beyond the control of the Adviser or the Funds. Because investments in real estate generally are not liquid, there is no assurance that there will be a ready market for real property interests held by a Fund.

*Real Estate Tenants.* Adverse changes in the operation of any acquired property, or the financial condition of any tenant, could have an adverse effect on the Adviser's ability to collect rent payments and, accordingly, on its ability to make distributions to make distributions to a Fund's limited partners. A commercial tenant of an acquired property may experience, from time to time, a downturn in its business, which may weaken its financial condition and result in the failure to pay rent when due. The ability of residential tenants to pay rent when due may also be affected by changes in the national and local economic climate or other factors beyond the control of the Adviser or the Funds. At any time, a tenant may seek the protection of bankruptcy or insolvency laws, which could result in the rejection and termination of such tenant's lease and thereby cause a reduction in the distributable cash flow of a Fund. No assurance can be given that tenants will not file for bankruptcy protection in the future or, if any tenants file, that they will affirm their leases and continue to make rental payments in a timely manner. If a tenant's lease is not affirmed following bankruptcy or if a tenant's financial condition weakens, a Fund's operating cash flow may be adversely affected.

*Foreclosure.* It is possible that a Fund would find it necessary or desirable to foreclose on some of the collateral securing one or more debt investments. The foreclosure process can be lengthy and expensive. At any time during the foreclosure proceedings, the borrower may file for bankruptcy, which may have the effect of further delaying the foreclosure process.

## **Item 8 – Methods of Analysis, Investment Strategies and Risk of Loss (continued)**

Foreclosure litigation tends to create a negative public image of the collateral property and may result in disrupting ongoing leasing and management of the property.

Under certain circumstances, lenders who have inappropriately exercised control of the management or policies of a debtor may be found liable for damages suffered by various parties as a result of such actions. In addition, under certain circumstances, payments to a Fund may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment.

Following a foreclosure, a Fund subsidiary would need to operate the collateral property, thus subjecting the Fund subsidiary to environmental and other risks associated with the ownership and operation of real property. Furthermore, there can be no assurance that the Fund would be able to sell its foreclosed properties at a price that would result in a return on the original investment.

*Insurance.* The Adviser generally maintains, where appropriate and available at a reasonable cost to the Funds, comprehensive casualty insurance on its real property. The Adviser seeks to obtain coverage of the type and in the amount customarily obtained by owners of properties similar to the real property held by the Funds. However, there may be a limited number of cases where the coverage of insurance may differ from the Adviser's general guidelines for reasons such as the value of the asset being primarily attributable to the underlying land or the building being functionally obsolete. Additionally, there are certain types of losses that are generally of a catastrophic nature, such as earthquakes, floods, and hurricanes, that may be uninsurable or not economically insurable. Inflation, changes in building codes and ordinances, environmental considerations, provisions in loan documents encumbering properties that have been pledged as collateral for loans, and other factors also might make it economically impractical to use insurance proceeds to replace a property if it is damaged or destroyed. Under such circumstances, the insurance proceeds received by a Fund, if any, may not be adequate to restore the Fund's investment with respect to the affected property.

*Environmental Liabilities.* Under various federal, state, and local laws and regulations, an owner or operator of real estate may be held liable for the costs of removal or remediation of hazardous or toxic substances located on or in the property. These laws often impose such liability without regard to whether the owner knew of, or was responsible for the presence of, such hazardous or toxic substances. The costs of any required removal or remediation of such substances may be substantial. In addition, a Fund's liability as to any property is generally not limited under such laws and regulations and could exceed the value of the property and/or the aggregate assets of the Fund. The presence of such substances, or the failure to remediate such substances properly, may also adversely affect the owner's ability to sell or lease the property or to borrow using the property as collateral. A Fund may also be liable for environmental contamination of properties that are sole or for the release of hazardous or toxic substances from such properties.

Generally, the Adviser will receive or obtain Phase 1 environmental audits on all of the properties acquired by the Funds. The purpose of these audits is to identify potential sources of contamination for which such properties may be responsible and to assess the status of environmental regulatory compliance. There can be no assurance, however, that such audits will reveal all environmental liabilities relating to an acquired property.

**Item 8 – Methods of Analysis, Investment Strategies and Risk of Loss (continued)**

**For a more complete description of the risks associated with investing in a Fund, investors should refer to the relevant Offering Documents for each Fund.**

**Item 9 - Disciplinary Information**

Registered investment advisers are required to disclose all material facts regarding any legal or disciplinary events that would be material to your evaluation of the adviser or the integrity of adviser's management.

There are no legal or disciplinary events that are material to an evaluation of the Adviser's advisory services or the integrity of management.

**Item 10 - Other Financial Industry Activities and Affiliations**

- A. The Adviser is not registered, and does not have an application pending to register, as a broker-dealer or registered representative of a broker-dealer. Currently, no employees of the Adviser are registered representatives of a broker-dealer.
- B. Neither the Adviser nor any of its management persons are registered, or have an application pending to register, as a futures commission merchant, commodity pool operator, commodity trading advisor, or an associated person of the foregoing entities.
- C. The Adviser has no relationships or arrangements with any related person listed in the instructions to Item 10.C. that are material to its advisory business or to the Funds.
- D. The Adviser does not recommend or select other investment advisers for the Funds.

## **Item 11 - Code of Ethics, Participation or Interest in Client Transactions and Personal Trading**

- A. The Adviser has adopted a written Code of Ethics (the “Code”) designed to address and avoid potential conflicts of interest as required under Rule 204A-1 under the Advisers Act. The Code sets forth a standard of business conduct and compliance with federal securities laws by all of the Adviser's employees. The Code contains policies and procedures that ensure that all personal securities trading by employees of the Adviser is conducted in such a manner as to avoid actual or potential conflicts of interest or any abuse of an individual's position of trust and responsibility. The Adviser prohibits personal trading on certain securities or instruments; requires pre-clearance of personal trades in certain circumstances, including purchases of an IPO, REIT, or a new real estate private placement; requires periodic reporting of employees' personal securities transactions and holdings; and requires prompt internal reporting of Code violations.

While the Adviser very rarely has access to non-public information relating to public companies, as part of its Code, the Adviser has established procedures to prevent the abuse of material, non-public information, which includes procedures for, among other things, the use and maintenance of restricted trading lists. Because the structure of the Adviser would make information barriers impractical, the firm has not imposed information barriers to restrict the internal flow of possible material, non-public information. Thus, all professionals are deemed to be in receipt of material, non-public information, in all instances where any professional of the Adviser has received material, non- public information, and, therefore, may not trade on the basis of that information.

The Adviser will provide a copy of the Code to any investor or prospective investor upon request.

- B. Affiliates of the Adviser serve as the General Partners to the Funds, which issue partnership interests to third party investors. Other than with respect to these structures, neither the Adviser nor any of its related persons recommend to the Funds, or buy or sell for Funds, investments in which the Adviser or any related persons have a material financial interest.
- C. The Principals and other members of the management team make significant capital commitments in each Fund. Such amounts may be invested pro rata with the limited partners of each Fund in all Fund portfolio investments. Other than any such investments in the Funds, neither the Adviser nor any of its related persons invest in the same or related securities that either the Adviser or its related persons recommend to the Funds.
- D. Neither the Adviser nor any related person recommends investments to the Funds, or makes investments for the Funds, at or about the same time that the Adviser or its related persons buys or sells the same investments for their own account.

## **Item 12 - Brokerage Practices**

- A. The Adviser's investment strategy involves acquiring and managing middle-market real estate properties and debt securities. While the Funds may invest in debt or loans secured by real estate assets, the Funds do not purchase or sell publicly traded equity securities. As a result, the Adviser does not select or recommend broker-dealers for the purchase and sales of securities for the Funds.

The Adviser does not maintain any trading accounts and does not use "soft" dollars received from broker-dealers from the purchase and sales of securities for the Funds. However, the Adviser may receive ancillary benefits from real estate brokers used by the Adviser for the Funds' non-securities transactions, such as the purchase or sale of real estate property. Such benefits may include research services, introductions to sellers, buyers, lenders and other service providers, underwriting services, and such other services typically provided by real estate brokers to their clients. The Adviser does not select real estate brokers based on the potential to receive any ancillary benefits and does not cause any Fund to pay a higher commission than those charged by other real estate brokers in return for these benefits.

- B. Not Applicable.

### **Item 13 - Review of Accounts**

- A. The Adviser conduct reviews of all portfolio company investments held by each Fund generally every two weeks but not less than once a month. These reviews consist of an operational update, a review of any leasing and tenancy matters, and a review of financial performance. All firm investment and operational staff participate in the ongoing monitoring of Fund portfolio company investments.
- B. See Item 13.A. above.
- C. Annually, the Adviser assists each Fund in furnishing all limited partners with (i) audited written financial statements prepared in accordance with generally accepted accounting principles, accompanied by the report of its independent certified public accountants, and (ii) tax information necessary for the completion of tax returns. In addition, on a quarterly basis, the Adviser assists each Fund in developing unaudited financial statements that the Fund furnishes to its limited partners. Such reports are sent to the limited partners of a Fund by such Fund's accountants or General Partner following review by the Adviser.

#### **Item 14 - Client Referrals and Other Compensation**

- A. The Adviser does not receive any economic benefit, including sales awards or prizes, from any third party for providing advisory services to the Funds.
- B. The Adviser may enter into agreements with certain placement agents that provide for compensation to be paid to the placement agents for referring limited partners to the Funds. Under these agreements, the placement agents will typically receive a percentage of the Capital Commitments attributable to each prospective limited partner referred depending upon the specific circumstances. In such cases, details of the arrangement will be provided to the limited partner. All such arrangements will be in accordance with all applicable laws and regulations, including Rule 206(4)-3 of the Advisers Act.

**Item 15 - Custody**

The Adviser may be deemed under Rule 206(4)-2 of the Advisers Act to have custody of the assets of the Funds by virtue of its control of the General Partner of each Fund. All assets and securities of the Funds are held by qualified custodians with the exception of assets that are considered to be “privately offered securities” under Rule 206(4)-2(b). Fund limited partners receive annual financial statements audited by an independent public accounting firm within 120 days. Fund limited partners are urged to carefully review such statements.

**Item 16 - Investment Discretion**

The Adviser exercises its discretion in managing the investments of each Fund subject to the Fund's particular investment objectives, policies, and strategies disclosed in its Offering Documents. In connection with this discretionary authority, the Adviser selects portfolio company investments for each Fund. The Adviser exercises its discretionary authority to select portfolio company investments for each Fund and to control the assets of the Funds through its control of the General Partner of each Fund. While the Adviser has the sole discretionary authority to select portfolio company investments for a Fund, the Fund's General Partner has the authority to veto the Adviser's decision to make a portfolio company investment for the Fund.

**Item 17 - Voting Client Securities**

The Adviser's investment strategy involves acquiring and managing middle-market real estate properties. As a result, the Adviser does not invest the Funds in public equity securities and therefore does not receive proxies on behalf of the Funds.

**Item 18 - Financial Information**

- A. The Adviser does not require or solicit prepayment of more than \$1,200, six months or more in advance.
- B. The Adviser does not believe it has any financial condition that is reasonably likely to impair its ability to meet its contractual commitments to the Funds.
- C. The Adviser has not been the subject of a bankruptcy petition at any time during the past ten years.