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**This brochure provides information about the qualifications and business practices of LEM Capital, L.P. If you have any questions about the contents of this brochure, please contact Michelle Vaughn at [mvaughn@lemcapital.com](mailto:mvaughn@lemcapital.com) or at (215) 609-3365. 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.**

**Additional information about LEM Capital, L.P. also is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).**

LEM Capital, L.P. is registered as an investment adviser with the United States Securities and Exchange Commission. Registration does not imply a certain level of skill or training.

## **Item 2. Material Changes**

The U.S. Securities and Exchange Commission issued a final rule in July 2010 requiring advisers to provide a Firm Brochure in narrative “plain English” format. The new final rule specifies mandatory sections and organization, which are included herein.

The following is a discussion of only material changes since our brochure filing dated August 29, 2012.

- Updated to the adviser’s assets under management to reflect the new numbers as of December 31, 2012;
- Updated the format and disclosure language throughout this Brochure to reflect the firm’s advisory business and investment strategies; and
- Updated Item 10 - Other Financial Industry Activities and Affiliations section to reflect the roles and responsibilities of Independence Capital Partners, LLC.

### Item 3. Table of Contents

Item 2. Material Changes .....	2
Item 3. Table of Contents.....	3
Item 4. General Information about LEM Capital, L.P. ....	4
Item 5. Fees and Compensation .....	5
Item 6. Performance-Based Fees and Side-By-Side Management .....	7
Item 7. Types of Clients. ....	7
Item 8. Methods of Analysis, Investment Strategies and Risk of Loss.....	8
Item 9. Disciplinary Information.....	14
Item 10. Other Financial Industry Activities and Affiliations .....	14
Item 11. Code of Ethics, Participation or Interest in Client Transactions and Personal Trading ...	16
Item 12. Brokerage Practices .....	17
Item 13. Review of Accounts.....	17
Item 14. Client Referrals and Other Compensation.....	18
Item 15. Custody .....	18
Item 16. Investment Discretion.....	18
Item 17. Voting Client Securities.....	19
Item 18. Financial Information .....	19

#### **Item 4. General Information about LEM Capital, L.P.**

LEM Capital, L.P. (“LEM”) is an investment management firm co-founded by Ira M. Lubert, Jay Eisner, and Herbert Miller in 2002. Messrs. Lubert, Eisner and Miller collectively have over 70 years of real estate and related investment management experience specializing in the underwriting, structuring, recapitalizing and refinancing investment transactions in the private and public real estate industry. Most of their careers have been spent in the real estate industry and they have extensive real estate experience in development, ownership, management and finance. The day-to-day operations of LEM are led by the managing partners, Messrs. Eisner and Miller.

LEM’s investment team consists of approximately 12 experienced professionals with strong backgrounds in commercial real estate, debt markets and construction loans, bridge loans, leveraged finance, private equity, mezzanine loans and lines of credit. Over the past several years, the managing partners and the investment team have originated and purchased numerous performing and non-performing structured finance investments, preferred equity, and other high-yield debt instruments. They have collectively been involved in hundreds of individual real estate transactions and have direct and current experience in sourcing, negotiating, structuring, closing and servicing preferred equity and debt investments similar to those expected to be made by the LEM Funds.

References herein to LEM may include, as the context requires, various entities controlled by LEM or its partners and entities in which LEM provides investment management services, such as affiliated general partners.

LEM provides investment management services exclusively to privately offered pooled investment vehicles, generally organized as limited partnerships (“Fund” or “LEM Funds”)), each of which may purchase and originate real estate structured finance investments, primarily consisting of senior and preferred equity, mezzanine loans, and first mortgages. LEM may also consider B-Notes, joint venture equity and entity level investments in real estate operating companies. The assets underlying the Funds’ investments will typically consist of multifamily, office, retail, hospitality and industrial properties located primarily in the United States.

No Fund’s shares are offered hereby and each Fund is open for investment only via a “private offering,” and is intended only for investment by “accredited investors,” as those terms are defined under the Securities Act of 1933, as amended. Each Fund’s investment objective includes providing a certain level of returns net of fees and expenses as described in detail in each Fund’s offering documents.

Though LEM utilizes a similar strategy for all of the Funds, it tailors advisory services to the specific needs of the Funds to the extent that certain investments cannot be held by certain Funds for legal or tax purposes. From time to time, LEM may enter into agreements, commonly known as “side letters,” with certain investors, such as governmental pension plans, under which LEM may agree to waive or modify the application of certain investment terms applicable to such investor, without obtaining the consent of any other investor in the Funds, other than such an investor whose rights

would be materially and adversely changed by such waiver or modification. In addition, LEM may provide to investors that make a specified minimum capital commitment the right to participate in a separate pooled investment vehicle (“sidecar”) for the purpose of participating in certain co-investment opportunities with a particular Fund. The minimum capital commitment amount required to participate may vary as described in each Fund’s offering documents. During a Fund’s commitment period, if a Fund is not able to commit to a full investment required for a particular opportunity, LEM may then offer participation in the opportunity through a sidecar and to the co-investment partners on a pro-rata basis as determined by LEM.

As of December 31, 2012, LEM’s regulatory assets under management were \$392,167,398 in Fund assets (i.e., Fund total assets and uncalled capital commitments), managed on a discretionary basis.

## **Item 5. Fees and Compensation**

The specific terms of LEM’S compensation by each Fund are dictated by the Fund’s organizational documents, offering documents, management and advisory agreements, and any other applicable agreements (such as side letters or waivers).

**Management Fee** - Each Fund generally pays a management fee (the “Management Fee”). A Fund’s Management Fee generally will commence on the date of the Fund’s initial closing and thereafter be paid on the first day of each calendar quarter in advance. The Management Fee is based on a percentage of assets invested in or committed to a Fund by its investors, and may vary based on the stage of investment of the Fund and the amounts committed to the Fund by its various investors. The Management Fee generally ranges from 1.25% to 1.50%, but may be negotiated to be lower for certain investors based on the size of their investment.

In the event that a Fund’s investment advisory agreement with LEM terminates during a period covered by Management Fees paid in advance, LEM would pro rate such Management Fee and reimburse a Fund the portion of such Management Fee covering the remainder of the period.

**Carried Interest** - In addition, the LEM Funds will allocate a portion of their investment profits (generally 20%) to their respective Fund general partners which are related persons with respect to LEM, as set forth in each of the Fund’s charter and offering documents (such profit allocation is commonly referred to as a “Carried Interest”). The foregoing performance-based carried interests are generally subject to the achievement of a return (generally 8% to 9%), compounded annually, on the investors unreturned capital contributions and the return of all investors capital. Carried Interest, when applicable, is paid upon the distribution of operating cash flow and proceeds generated by the dispositions of each Fund’s portfolio investments and typically pursuant to a priority distribution waterfall typically after the return of invested capital and a preferred return. LEM Funds’ Carried Interest is charged in compliance with Rule 205-3 under the Investment Advisers Act of 1940, (as amended, the Advisers Act).

Upon liquidation and dissolution of a Fund, LEM may be required to restore certain amounts to the Fund for distribution to the investor, to the extent that LEM has received Carried Interest distributions over the life of the Fund in excess of the amounts the general partner would have been entitled to receive as Carried Interest distributions if all distributions had been applied on an aggregate basis covering all of a Fund's transactions. However, LEM is not required to restore more than the Carried Interest distributions it actually received, less income taxes thereon. LEM may also be obligated to restore distributions with respect to waived Management Fees (if any) to the extent such distributions exceed the allocations of Fund profits to the affiliated general partner with respect to the waived Management Fees.

LEM Management Fees and Carried Interest distributions are deducted from the assets or distributions of the Fund and Fund investors will not be separately billed for these services.

***Fund Expenses*** - Each Fund will pay all offering and organizational expenses incurred in the formation of each Fund and its related entities including legal, travel, accounting, conferences, printing, a portion of the cost of certain employees (not key persons or Mr. Lubert) of affiliated entities who are engaged in the capital raising activities for the Fund up to a specified amount disclosed in the Fund's offering documents.

No commissions, placement fees or other remuneration will be paid by the LEM Funds to any person in connection with the offering and/or sale of interest in the Funds, other than the reimbursement to affiliates noted above.

The Fund will generally pay all expenses related to its activities, including all costs related to: the investigation, financing, origination and acquisition of investments, whether or not consummated; holding, servicing and exiting investments; research, including the cost of subscriptions and other research tools; travel; all deal sourcing costs (including, but not limited to, costs for advertising and membership fees in industry organizations, and travel to, and attendance of, industry conferences, provided that, after the Fund's commitment period, any such expenditures must directly benefit the Fund); legal fees; auditing, tax and accounting fees; insurance; litigation expenses; third-party consultants' fees; report preparation fees, including internal costs of preparing reports and internal and third-party printing and copying costs; costs associated with investors' meetings and mailings and committee meetings; and other operating expenses of the Fund.

Additionally, LEM or an affiliate may charge the Fund or its underlying investments for the following internal costs (including the costs of services provided by an affiliated entity such as Independence Capital Partners, LLC): (i) legal services at the lower of cost or market rates; (ii) tax returns and reporting for alternative investment vehicles through or with which the Fund invests (but only costs resulting from Fund activity) and (iii) the cost of licensing the Fund or its affiliates in connection with Fund activities.

The Fund and its sub partnership investments may also be charged for the cost of accounting, legal, limited partnership transfers, certain other services and any associated direct costs provided or incurred by the Funds or its affiliates, at cost, without any

corresponding reduction of the Management Fee. Each Fund's general partner also may charge the cost of its employees who are dedicated to sub partnership investments or have these employees be directly employed by the sub partnerships which would be necessary in the sub partnership investments ordinary course of business. The general partner and/or LEM will bear their respective ordinary operating expenses, which generally include staff compensation and overhead. Fund investors are not directly charged for these expenses, but in effect pay their pro rata share of any fees or expenses charged to the Fund.

For a more detailed description of the specific Management Fees, Carried Interest and Fund expenses please see the Fund's organizational and private offering documents.

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

As described in Item 5, LEM may be paid a Carried Interest. LEM, its affiliates and certain of its employees may receive incentive compensation, which is tied explicitly to the performance of a particular Fund, and such compensation will continue to be earned based upon the performance of each Fund's portfolio as a whole, rather than that of individual transactions. The existence of the Carried Interest may create an incentive for LEM to cause a Fund to make riskier or more speculative investments than would be the case in the absence of a Carried Interest.

Any adviser that manages accounts that do not pay a Carried Interest or similar performance fee alongside accounts that pay only an asset based management fee may create additional conflicts of interest. In particular, an investment adviser may have an incentive to favor the account that pays a Carried Interest when allocating promising or profitable investment opportunities, and may avoid allocating less promising or unprofitable investment opportunities to accounts that don't have such a Carried Interest fee. All Funds managed by LEM have a Carried Interest or performance based incentive. Should LEM decide in the future to manage an asset-based account alongside their Funds, LEM will immediately address the potential conflicts that are inherent with side-by-side management.

LEM's compliance policies and procedures and code of ethics prohibit employees from favoring one account over another or considering LEM's financial interest when providing investment advice to the Funds, and any individual compensated based on the performance-fee aspect of a Fund is paid based on the Fund's overall performance, not the outcome of any single transaction or investment. In addition, certain co-investments by a Fund require approval by such Fund's advisory board, as described in the Fund's private offering documents.

#### **Item 7. Types of Clients.**

LEM provides investment advice only to the LEM Funds, which are privately offered pooled investment vehicles. Investors (generally limited partners) in the Funds may include, but are not limited to, governmental pension plans, endowments, corporate and business entities, foundations, trusts, and high net worth individuals. Each investor is

required to meet certain suitability qualifications such as being an “accredited investor”, “qualified purchaser” or “qualified client” within the meaning set forth under the Federal securities laws. Each Fund varies in size over the course of its investment lifecycle. The Funds’ private offering documents generally require a minimum initial investment or commitment by each individual investor of \$1 million and each institutional investor of \$5 million. However, each Fund’s general partner has the discretion to waive or reduce the minimum initial investment or commitment and has done so for certain investors.

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

***Methods of Analysis*** - LEM employs an investment process to determine potential investment opportunities and may use various research methods including models and methods of analyses. LEM utilizes both internal and external resources as well as a wide-ranging referral network that may include, but not be limited to, mortgage brokers, investments banks, first mortgage lenders, industry professionals, real estate owners/operators, consultants and advisors. In the initial analysis of a potential investment, the investment team reviews information furnished by the prospective borrower or investment sponsor as well as feedback from operating partners and/or other direct local relationships to determine whether the investment meets a Fund’s underwriting and investment criteria. LEM’s investment team will also conduct an independent evaluation to ensure the quality of the asset. The subject market will be analyzed to confirm long-term growth potential, a diversified economy and significant barriers to new development. If the investment team decides to proceed to the next phase for the potential investment, a proposal will be submitted to the borrower or investment sponsor outlining key terms. Once terms have been agreed upon, every new investment requires submittal to, and approval by the Fund’s investment committee.

***Investment Strategies*** - The Funds investment strategies generally employ a disciplined investment approach typically focusing on cash flow and property appreciation. The Funds seek to provide current income return while preserving investor capital primarily through investment in senior and preferred equity, mezzanine loans, and first mortgages. There can be no assurance, however, that the use of any strategy for any Fund will achieve any particular returns or avoid a loss. A Fund’s ability to achieve returns will depend on a variety of factors, many of which are beyond its or LEM’s control.

***Material Investment Risks*** - Investing in a real estate closed end fund involves risk of loss that investors must be prepared to bear. Each Fund’s private offering documents will include a more detailed disclosure of the risks of investing in a Fund; any prospective Fund investor should carefully read such documents before considering an investment. In addition, material investment risks include but are not limited to the following:

*No Assurance of Investment Return* - Each Fund’s task of identifying and evaluating real estate related investment opportunities, managing such investments and realizing a positive return for investors is difficult. There is no assurance that a Fund will be able to invest its capital on attractive terms or continue to generate positive returns or avoid losses for its investors over the long term.



*Nature of Preferred Equity and Debt Investments in Real Estate, Real Estate-Related Assets and Real Estate Operating Companies* - The Funds intend to invest in assets that are suitable only for sophisticated investors. Preferred equity and subordinate debt investments may be subject to greater risks than other investments and will be subject to rights of senior creditors. Mortgage type investments have special risks relative to collateral value. The Funds will be subject to risk of borrower default, the risks attendant to foreclosure, such as delays and expenses due to interposed defenses or counterclaims; and the possibilities that under certain circumstances even a non-collusive, regularly conducted foreclosure sale may be challenged as a fraudulent conveyance, regardless of the parties' intent. The Funds may be precluded from pursuing both foreclosure and an action on a note as remedies simultaneously, and the Funds may be limited in its ability to collect certain funds due it from a borrower that is a debtor in a case filed under Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code").

The Funds will also be subject to risk that the borrowers may not maintain adequate insurance coverage against liability for personal injury and property damage in the event of casualty or accident. Except in limited instances, the Funds do not anticipate having absolute control over their investments. The Funds generally will originate or acquire mortgage loans that are non-recourse to the borrower. The Funds' loans may not be secured by a mortgage, but may instead be secured by partnership interests or other collateral that may provide weaker rights than a mortgage. In any case, in the event of default by a borrower under a non-recourse loan, the Funds' source of repayment will be limited to the value of the collateral and may be subordinated to other lien holders. The value of the collateral may be less than the outstanding amount of each Fund's investments.

*Protection of Collateral* - The Funds intend to originate, purchase and manage diversified portfolios of high-yield multifamily and commercial real estate investments which will include preferred equity, mezzanine loans, subordinated financings and other structured finance transactions. Typically, these debt-like investments are structured in conjunction with a senior lender's first lien loan and are subject to intercreditor documentation. If the borrower/issuer defaults on its obligations to the senior lender and/or the Fund, and the senior lender and/or the Funds foreclose on collateral in which both the senior lender and/or the Funds has a security interest, the general partners will need to take action to protect the Funds' investments in the issuers or investments, including the security interest in the collateral. These actions could include funding debt service to senior lenders, buying loans from the senior lender, making additional loans to, or investments in, the issuer or borrower, and providing advances to third parties and/or restructuring its investment. Such actions may occur either within or after the commitment period. Under the Fund's organizational and private offering documents, the general partners may establish reserves to fund protective advances in their discretion. If the Funds are unable to take these actions or take

them quickly enough, the value of the Funds' investments may deteriorate materially, and the Funds may lose their collateral position with respect to those investments.

*Third-Party Participants* - The Fund may co-invest with third parties through joint ventures or other entities. Such investments may involve risks not present in investments with no third-party involvement, including the possibility that a co-venture or partner of the Fund may at any time have economic or business interests or goals that are inconsistent with those of the Fund or may be in a position to take action contrary to the Fund's investment objectives. In addition, the Fund may be liable for actions of its co-venturers or partners.

*Secured Mezzanine Debt Instruments* - Investing in secured mezzanine loans may result in a greater interest rate and higher fees than first priority lending, but also involves additional risk over senior secured lending arrangements. Investments in secured mezzanine transactions are subordinate in lien to more senior creditors and therefore are subject to greater risks than first priority lenders. Upon execution, a secured mezzanine loan may be fully secured by the collateral of the borrower but market fluctuations, declining prices or an economic downturn may decrease the value of the collateral thereby exposing the secured mezzanine loan to the risk of being under collateralized. If the value of the borrower's collateral decreases, the available collateral may only be sufficient to cover more senior liens. Junior lien holders may also have diminished capacity to negotiate favorable terms concerning collateral and repayment rights and may be forced to give up rights or subordinate rights to the senior lender. In the event of a default by the borrower, the secured mezzanine holder may be required to wait to enforce their rights against the collateral. This creates the risk that the holder of a junior lien will receive unfavorable treatment with respect to distributions, rights to collateral or during bankruptcy. If an investment company enters bankruptcy, senior lenders may control the method and manner of distribution or exert substantial power with respect to the bankruptcy proceeding. The original lending agreement may also limit the junior lien holder's rights during bankruptcy for the benefit of more senior lenders. This may diminish the junior lien holder's recovery or ability to claim an interest in collateral of the company.

*Fund Leverage* - The Funds' assets may be leveraged, which may adversely affect income earned by the Funds or may result in loss of principal. The use of leverage involves a high degree of financial risk and may increase the exposure of the Funds or their investments to factors such as rising interest rates, downturns in the economy or deterioration in the condition of the collateral underlying such investments. Market fluctuations may significantly decrease the availability of and increase the cost of leverage. The use of leverage will increase the amount of funds available to the Funds for investment but will also increase the risk of loss. Principal and interest payments on any indebtedness of the Funds will be payable regardless of whether the Funds have sufficient cash available. Lenders or other holders of senior positions would be entitled to a preferred cash flow prior to the Funds receiving a return. Since the Funds may engage in portfolio level

financing, investments may be cross-collateralized and subject to increased risk of loss. The Funds may incur recourse debt, which may subject the assets and commitments of the Funds to additional risk of loss.

*Market Conditions May Dramatically Affect the Funds' Investments* - Volatile market conditions at various times have had a dramatic effect on private real estate related investments. In addition, terrorist attacks and other acts of violence or war may affect the operations and profitability of the Fund's Investments. Such events could cause consumer confidence and spending to decrease or result in increased volatility in the U.S. and worldwide financial markets and economy. They also could result in a continuation of the current economic uncertainty in the U.S. or abroad. Any of these occurrences could have a significant impact on the operating results and revenues of the underlying properties, and, in turn, on the return of the Funds' investments.

*Investments May be Subject to Usury Limitations* - Interest charged on loans owned by the Funds (which may include amounts received by the Funds from appreciation interests) may be subject to state usury laws imposing maximum interest rates and penalties for violation, including restitution of excess interest and unenforceability of debt. Any unfavorable action challenging contracts or agreements in which the Funds are a party may have an adverse impact on the returns to the Funds and may negatively impact the returns to investors.

*Due Diligence Processes.*- The due diligence investigation that LEM and its strategic partners perform with respect to any investment opportunity may not reveal or highlight all relevant facts that may be necessary or helpful in evaluating such opportunity, including, among other things, the existence of fraud or other illegal or improper behavior. Moreover, such an investigation will not necessarily result in the investment being successful.

*Long-term Nature of Investments* - Investments in the Funds require a long-term commitment, with no certainty of return. The Funds may experience severe financial difficulties as a result of its portfolio investments. Some of the investments will be highly illiquid, and the Funds may be unable to realize on such investments in a timely manner. There may be little or no near-term cash flow available to the investors. Partial or complete sales, transfers or other dispositions of investments which may result in a return of capital or the realization of gains, if any, are generally not expected to occur for a number of years after an investment is made. Since the Funds may only make a limited number of investments and since many of the investments may involve a high degree of risk, poor performance by a few of the investments could severely affect the total returns to investors.

*Environmental Risks* - The real properties underlying investments will be subject to federal and state environmental laws, regulations and administrative rulings, which, among other things, establish standards for the treatment, storage and disposal of solid and hazardous waste. Real property owners are subject to federal and state environmental laws that may impose joint and several liability on past and present owners and users of real property for hazardous substance

remediation and removal costs. Therefore, the Fund may incur loss from environmental claims arising in respect of real properties underlying its Investments with undisclosed or unknown environmental problems or as to which inadequate reserves have been established.

*Inflation Risk* - When any type of inflation is present, a dollar today will not buy as much as a dollar next year, because purchasing power erodes at the rate of inflation.

*Interest-rate Risk* - The market value of the Funds' investments may be affected by changes in interest rates. In general, the market value of a debt investment will change in inverse relation to an interest rate change where a debt investment has a fixed interest rate or only limited interest rate adjustments. Accordingly, in a period of rising interest rates, the market value of such a debt investment will decrease. Moreover, in a period of declining interest rates, debt investments without adequate call protection may benefit less than other fixed income securities due to accelerated prepayments. Interest rate changes may also affect the Funds' returns on new investments that it makes. If there is a period of declining rates prior to the end of the commitment period, the amounts becoming available to the Funds for investment due to repayment of its investments may be re-invested at lower rates than the Funds have been able to obtain in prior investments or than the rates on the repaid investments. Also, increases in the interest rates on debt, if any, incurred by the Funds in originating or acquiring investments may not be reflected in increased rates of return on the investments funded or acquired through such debt, thereby adversely affecting the Funds' returns on such investment. Accordingly, interest rate changes may adversely affect the total return on the Funds' investment portfolios.

*Diversification Limits* - The Funds generally do not have established limits or constraints with respect to geographic regions or real estate product types. Lack of diversification across the portfolio may increase a Fund's exposure to adverse real estate market conditions in any given region, property or product type.

*Expedited Transactions* - Investment analyses and decisions by LEM may be required to be undertaken on an expedited basis to take advantage of investment opportunities. In such cases, the information available to LEM at the time of an investment decision may be limited, and LEM may not have access to detailed knowledge of all circumstances that may adversely affect an investment. In addition, LEM may rely upon independent consultants in connection with its evaluation of proposed investments; however, no assurance can be given that these consultants will accurately evaluate such investments, and a Fund may incur liability as a result of such consultants' actions.

*Unable to Identify Attractive Investments* - No assurance can be given that the Funds will be able to originate investments that satisfy its rate of return objectives or that such investments will perform as expected. The Funds will face competition for investments from both private and public investors, some of which have greater financial and other resources than the Fund and more

extensive experience than the Fund. Interim investments may offer returns lower than those targeted for long-term investment by the Funds. The Funds intend to make draws on commitments as funds are needed during the commitment period; however, investments consistent with the Funds' strategy may not be available at certain instances.

*Interest Subject to Restrictions on Transfer and Withdrawal* - Interests are not transferable except with the consent of the general partner. Investors may not withdraw capital from the Funds. There will be no public market for the partnership interests. Each investor will be required to represent that it is acquiring its interest for investment purposes and not with a view to resale or distribution. Each investor must be prepared to bear the economic risk of an investment for an indefinite period, since interests cannot be resold unless they are subsequently registered under the Securities Act, or an exemption from such registration is available, and provisions of the Funds' organizational and private offering documents relating to restrictions on transfer of interests are complied with.

*Funds' Lack of Control Over Investments* - As an investor primarily in preferred equity and debt securities, the Fund will not have direct control over the underlying properties and may have to rely on independent third party management or strategic partners to operate the issuer in a manner that results in full and timely payment of interest and principal, protects any collateral and otherwise complies with the agreements under which such securities were issued.

*Defaulting Limited Partner* - In the event that an investor fails to fund any of its commitment when required, among other remedies available to the Fund, the Fund may accelerate such investor's unfunded commitment, such investor's interest in the Fund may be forfeited or subject to dilution, the Fund may withhold distributions from such investor and such investor may be prohibited from participating in future investments.

*Hedging* - In connection with the financing of certain assets, a Fund may employ hedging techniques designed to protect against adverse movements in currency and/or interest rates. While such transactions may reduce certain risks, such transactions themselves may entail certain other risks. Thus, while a Fund may benefit from the use of hedging mechanisms, unanticipated changes in interest rates, securities prices or currency exchange rates may result in poorer overall performance for a Fund than if it had not entered into such hedging transactions.

*Information About Investments* - LEM intends to keep investors apprised of the status of the Fund's investments and their operating partners on a periodic basis. In reviewing these reports, investors should be aware that LEM and the Fund may be subject to confidentiality agreements that limit the amount of information that LEM may disclose about Fund investments.

*Regulatory Risks* - Each Fund relies on various exemptions from federal and state statutes and rules, such as ERISA, the Investment Company Act of 1940 ("1940

Act”) and the Securities Act of 1933 (the “Securities Act”), to operate without having to register under such statutes and rules. Loss of any such exemption, or a change in these statutes and rules or certain others, such as the Advisers Act, anti-money laundering rules, and the U.S. Internal Revenue Code, could impact a Fund’s ability to continue to operate as it currently does. A Fund’s exemption from certain investor protection laws means that a Fund’s investors do not have the benefit of protections afforded by such laws, including ERISA, the 1940 Act and the Securities Act.

*Investors Will Have Limited Recourse Against LEM* - The Fund’s organizational and private offering documents generally limits the circumstances under which the general partner or its affiliates will be held liable to the Fund. As a result, investors may have a more limited right of action in certain cases than they would have in the absence of such limitations. In addition, the organizational documents provide that the Fund will indemnify the general partner and its affiliates, partners and employees for certain claims, losses, damages, and expenses arising out of their activities on behalf of the Fund. Such indemnification obligations could materially adversely affect the returns to investors.

*Conflicts of Interest* - Fund investments are subject to various conflicts of interest, including those between co-investors in specific projects, between various investors in a Fund, and between LEM and a Fund. These conflicts are more fully discussed in each Fund’s private offering documents. Additional conflicts of interest information is described below in Item 10.

## **Item 9. Disciplinary Information**

Neither LEM nor any of its employees has been involved in the past ten years in any legal or disciplinary event in which LEM believes is material to an investor or prospective investor in their evaluation of LEM’s advisory business or Fund management.

## **Item 10. Other Financial Industry Activities and Affiliations**

LEM has financial relationships and arrangements that are material to its advisory business with the following related entities:

LEM will utilize Independence Capital Partners, LLC (“ICP”) to provide certain non-investment services such as compliance, investor relations, accounting and tax support, information technology and insurance. ICP also provides similar services to other affiliated investment advisory firms which include: LLR Management, L.P.; Patriot Financial Manager, L.P.; Quaker Partners Management, L.P.(an exempt filer); LBC Credit Management, L.P.; and Lubert-Adler Management Company, L.P. (collectively, the “ICP Affiliate Firms”). Each ICP Affiliate Firm is separately managed by its partners and investment professionals and offers advisory services to private investment funds focused on varying assets classes.

Mr. Lubert, a co-founder of LEM has ownership interests in ICP, the ICP Affiliated Firms and other private investment funds and operating businesses. In the past, the partners of ICP Affiliated Firms and LEM have shared information and collaborated regarding investment opportunities and, on rare occasion, co-invested in particular investments. LEM expects to continue to collaborate with these firms so long as LEM believes the collaboration is benefiting its investment process and Fund investors.

The investment team for an LEM Fund will continue to devote time to the management of the other existing LEM Funds, which may create conflicts in the allocation of management resources. In general, Messrs. Eisner and Miller will spend substantially all of their business time on the management and operation of a Fund until a specified time noted in the Fund's private offering documents. Thereafter, they will devote such business time to the management of each Fund as is necessary to perform their duties.

Investment opportunities may arise that are appropriate for more than one Fund and/or one or more other ICP Affiliated Firm funds. The Lubert-Adler Funds may engage in various real estate or real-estate related investment activities and conflicts of interest may arise as a result of such real estate ownership and activities, particularly ownership of real estate properties in the same markets targeted by an LEM Fund. In these situations, the investment team which first sourced or originated the opportunity may invest in the opportunity without offering it to other ICP Affiliated Firms. Opportunities first sourced or originated by Mr. Lubert or Mr. Adler will be offered to the Lubert-Adler Funds. If the Lubert-Adler Funds do not invest in such an opportunity or if additional funding is required for such an opportunity, the opportunity or a portion thereof may be offered to other ICP Affiliated Firm.

In addition, while LEM believes such occasions will be rare, there may be occasions in which LEM determines in its reasonable discretion that it would be advantageous to co-invest in an opportunity with an ICP Affiliated Firm fund. If such an occasion arises, with advisory board approval, a Fund may co-invest with the ICP Affiliated Firm fund in the opportunity only on a pari passu basis (that is, in the same security with equal rights of payment or level of seniority). These co-investment opportunities may be subject to the approval of the co-investing ICP Affiliated Firm fund's executive or advisory board in accordance with the fund's governing documents. A Fund expects that the relative amounts co-invested by the Fund and an ICP Affiliated Firm fund will be determined in the reasonable discretion of LEM and the management teams of the other applicable ICP Affiliated Firm in view of the amount made available for co-investment by the investment team which first sourced or originated the deal and the relative available capital, investment objectives, financing capacity and diversification limits of each fund participating in the co-investment (among other things).

In addition, LEM may enter into co-investments with third parties through joint ventures or other entities, some of which may be syndicators of pooled investment vehicles.

LEM and/or the Funds may from time to time enter into other written agreements or side letters with one or more investors whereby, in consideration for agreeing to invest certain amounts in a Fund and other consideration deemed material to a Fund, such investors may be granted rights not otherwise afforded to other investors. These side letters may

entitle an investor to make an investment in a Fund on terms other than those described in the Funds' organizational and offering documents. Any such terms, including with respect to (i) reporting obligations; (ii) transfer rights to affiliates; (iii) withdrawal rights due to adverse tax or regulatory events; (iv) consent rights to certain partnership agreement amendments; or (v) any other matters described in a Fund's private offering documents may be more favorable than those offered to any other investor. Such agreements will have the effect of establishing rights under, or altering or supplementing the terms of, the partnership agreement with respect to such investor.

Investors should take time to review the conflicts as more fully described in each of the Fund's private offering documents prior to making an investment decision to invest in a Fund.

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

***Code of Ethics*** - LEM has adopted a written code of ethics (the "Code") that is applicable to all of its partners, officers and employees ("Access Persons") and is designed to comply with Rule 204A-1 of the Advisers Act. LEM's Code is based upon the premise that LEM and its Access Persons have a fiduciary responsibility to render professional, continuous and unbiased investment advisory service and put the interests of its Funds first. The Code requires all Access Persons to (1) comply with all applicable laws and regulations; (2) observe all fiduciary duties and put Fund interests ahead of those of LEM; (3) observe LEM's personal trading policies so as to avoid "front-running" and other conflicts of interests between LEM and its Funds; (4) report any perceived violations of the Code; and (5) ensure that they have read the Code, agreed to adhere to the Code, and are aware that a record of all violations of the Code will be maintained.

The Code governs the securities trading and investing activities of all Access Persons for their own personal accounts. All Access Persons must first pre-clear personal trades for covered securities, as defined under the policy, in personal accounts where they have beneficial ownership. They must also seek preapproval when participating in a private placement or transacting in initial public offerings ("IPOs"). A pre-clearance request will be denied if such securities or an issuer are under consideration for investment, or have been acquired by an LEM Fund or LEM is in receipt of material non-public information of a publicly-traded company or if another conflict may exist.

Under the Code, Access Persons are also required to file certain periodic reports and certifications with LEM's Chief Compliance Officer. A copy of the Code is distributed to each Access Person at the time of hire and annually thereafter. Access Persons are also required to attend annual Code of Ethics training and certify that they are in compliance with the Code. Access Persons who violate the Code can be subject to sanctions by LEM's Compliance Committee, including possible employment termination. A copy of the Code is available upon request from LEM's Chief Compliance Officer, Michelle Vaughn at [mvaughn@lemcapital.com](mailto:mvaughn@lemcapital.com).

Co-founders, managing principals, certain employees, related persons and other accredited investors may invest in the Funds, either through a general partner affiliate or



as direct investors in the Funds. LEM or an affiliated general partner, as applicable, may reduce all or a portion of the Management fee and/or Carried Interest related to investment held by such persons.

For more information regarding LEM's practice with respect to recommendations to Funds of investments or simultaneous purchases in which LEM or a related person has a material financial interest, please reference Item 10.

## **Item 12. Brokerage Practices**

LEM is granted discretion over the selection and amount of securities and other investments to be bought or sold without obtaining prior consent or approval from any Fund investor. LEM's investment authority with respect to any particular Fund is subject to the investment objectives, guidelines and/or conditions set forth in the Fund's private offering documents. It should be noted that the LEM Funds invest in privately negotiated real estate transactions where the brokerage terms of such transactions are largely influenced by a third party operating partner and their capabilities to successfully close on such real estate transactions. LEM seeks to have transactions executed in the best interest of the participating Funds, taking into account various factors such as the size, competence, terms and deal structure.

LEM does not participate in or accept any soft dollar benefits or commission sharing arrangements and does not direct any brokerage in exchange for referrals.

For more information regarding LEM's practice to aggregate Fund co-investments, please reference Item 10.

## **Item 13. Review of Accounts**

***Monitoring of Accounts*** - LEM monitors each investment on a constant basis through an asset management program designed to track an investment's financial and operating performance. The asset management team will also augment monitoring by continuing to provide industry related research for each investment. LEM believes that the key to an investment exit lies in the ongoing knowledge of the asset's performance and the market where it resides.

Further, each Fund requires detailed financial reports and operating information from each investment on a regular basis and conducts routine reviews and quantitative analyses. All investments will be assigned to an asset manager who will be responsible for maintaining communication with the borrower or investment sponsor and their respective management teams. Formal asset review meetings will be held quarterly and on an as-needed basis in order to monitor the investment's performance. When feasible, a Fund may structure investments with financial penalties aimed at compelling covenant compliance. Moreover, a Fund may enhance oversight when an investment underperforms its underwritten plan.

In addition to routine investment oversight through daily communications among the investment teams, formal portfolio review meetings are held quarterly or on an as-needed basis with the managing principals of LEM. Asset valuations, including

permanent writedowns, are reviewed by the valuation committee on a quarterly basis pursuant to generally accepted accounting principles accounting procedures.

***Investor Reporting*** - LEM provides Fund investors with the following: (i) annual audited financial statements; (ii) quarterly unaudited financial statements; (iii) semi-annual reports containing an operation summary of the Funds' investments; and (iv) such other information as is necessary for the preparation of tax returns. In addition, LEM schedules an annual advisory board meeting and investor meeting to review the state of the Fund. Investor meetings will be held as long as unfunded commitments or unreturned capital contributions exceed 20% of a Fund's commitments.

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

LEM does not receive any compensation or economic benefit (i.e., sales awards or prizes) from a third party for advisory services other than from the Funds and their investors.

From time to time, LEM may enter into solicitation or consulting arrangements pursuant to which LEM will compensate persons for client referrals. Presently, LEM has one consulting agreement in place for investor referrals. With respect to investors that are referred by the consultant, a consulting fee will be paid by LEM as agreed upon by the terms of the consulting agreement.

Whenever a consulting fee is paid to a solicitor or consultant, the solicitation or consulting agreement requires that the solicitor or consultant disclose the consulting fee to each prospective investor. The purpose of the fee disclosure is to bring to each prospective investor's attention that the solicitor or consultant can have an incentive to favor sales of interest in one kind of investment over the sales of interests in other types of investments.

#### **Item 15. Custody**

Each Fund's account is subject to audit by a registered independent accountant at least annually, distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all investors within 120 days of the end of its fiscal year, and upon liquidation will distribute its audited financial statements prepared in accordance with generally accepted accounting principles to all investors promptly after the completion of such audit. Certificated securities, as required by applicable law, will be placed in custody with a third party qualified custodian.

#### **Item 16. Investment Discretion**

Under each Fund's private offering documents, LEM has investment discretion to manage the Funds' assets.

**Item 17. Voting Client Securities**

LEM investment strategy and portfolio composition do not include investments in publicly traded securities that attach voting rights, such as common stock. Therefore, LEM does not vote any proxies.

**Item 18. Financial Information**

LEM does not require or solicit prepayment of fees six months or more in advance. LEM is not subject to any financial condition that is reasonably likely to impair its ability to meet contractual commitments to its clients.