

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

**Item 1 - Cover Page**

March 27, 2019

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This brochure ("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).

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## **Item 2 - Material Changes**

Pennybacker Capital Management, LLC (the “Adviser”) is providing this annual update to the “Brochure” since its last update dated March 12, 2018. Since its last annual update, the Adviser had one material change to report:

- The Adviser updated Item 5 to describe construction and property management fees, and technology and research fees that may be charged to the clients and their affiliates.

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 Ms. Pamela Harper the Adviser’s Chief Compliance Officer at (512) 610-2917 or [pharper@pennybackercap.com](mailto:pharper@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.

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#### **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 across the United States (each, a "Fund," and together, the "Funds"), and a private investment limited partnership that invests in high-yield debt and preferred equity interests backed by commercial real estate-related assets or real estate operating companies ("Credit Fund").

The Adviser was formed in 2007 by Mr. Timothy P. Berry. The Adviser currently has three principals, consisting of Mr. Berry, Mr. Michael C. O'Malley, and Mr. Vince P. Reyna (collectively, the "Principals"). The Principals have more than 34 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 more than 75 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 focuses 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 tailors the specific advisory services with respect to each Fund based on 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 December 31, 2018, the Adviser managed \$887,831,819 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 enters into different fee arrangements on a Fund by Fund basis.

**It is critical that investors and prospective investors refer to the respective Fund's Offering Documents for a complete understanding of how the Adviser and/or the applicable related parties are compensated for advisory services. The information contained herein is a summary only with respect to current Fund client(s) and is qualified in its entirety by the applicable Fund's Offering Documents.**

### 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 have the ability to be required from time to time for a period of up to three years after the initial closing of the relevant 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 respective general partner ("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 2.0% of their invested capital with respect to investments which have not been fully disposed and (ii) other Funds will pay their General Partners an annual management fee of up to 1.5% of their invested capital with respect to investment which have not been fully disposed and (iii) 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 limited partners in the Credit Fund will pay its General partner a Management Fee quarterly in arrears, as follows: (i) from the date of the limited partnership agreement to the date on which the investment period terminates, 0.75% per year of the amount equal to the limited partner's Commitment and the amount of any prior capital contributions made by that limited partner, (ii) from and after the date on which the investment period terminates until the date on which the term of the Credit Fund expires or terminates, 0.75% per year of the limited partner's net

equity in the Credit Fund as measured as of the end of the preceding calendar quarter; and (iii) from and after the date on which the Credit Fund expires or terminates until the date on which the Credit Fund is dissolved, .50% per year of the limited partner's new equity.

The Adviser receives the Management Fees paid by each Fund and Credit Fund through its ownership interest in each General Partner. At the General Partner's discretion, and in accordance with the Fund's Offering Documents, certain limited partners in each Fund may pay Management Fees at different rates than those noted above.

#### Construction and Property Management Fees

The Adviser or its affiliate may charge the Fund or its affiliates fees for construction management services ("Construction Management Fees"). Construction Management Fees charged may vary. Typically, such fees will be calculated in the following ways: 1) with respect to commercial real estate investments, in an amount up to a certain percentage of the total costs incurred in connection with tenant improvement services and capital improvement services, and 2) with respect to multifamily real estate investments, in an amount up to a certain percentage of the hard costs incurred in connection with any necessary repairs, alternations, and improvements to the property.

The Adviser or its affiliate may charge the Fund or its affiliates property management fees ("Property Management Fees"). Property Management Fees charged may vary. Typically, such fees will be calculated as an amount equal to a certain percentage of gross rental receipts with respect to an investment.

In each case, the exact terms and conditions for the Construction Management Fees and Property Management Fees that may be charged to the Funds or their affiliates are qualified and governed by the applicable Offering Documents and any resolutions adopted under such Offering Documents.

#### Technology and Research Fees

The Adviser or its affiliate may also charge the Fund or its affiliates technology and research fees ("Research Fees"). Research Fees charged may vary, but typically, such fees equal \$25,000 per asset held by the Funds. The exact terms and conditions for the Research Fees that may be charged to the Funds or their affiliates are qualified and governed by the applicable Offering Documents and any resolutions adopted under such 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 consideration of such factors as the need to allocate funds to pay any Management Fees or any reserves for Fund contingencies or any other Fund purpose that the General Partner deems necessary or advisable.

Generally, Disposition Proceeds are distributed in the following amounts and order:

- (a) first, 100% to the limited partners for payment of an annual preferred return on any unreturned Capital Contributions;

- (b) second, 100% to the limited partners in proportion to Capital Contributions to allow for a return of Capital Contributions to the Fund;
- (c) third, 50% to the limited partners and 50% to the relevant 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 limited 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 capital to the Fund 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 can 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 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 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. Further, the Funds incur the cost of third-party placement agent fees and expenses, which are subtracted from the Management Fees.

Each Fund will reimburse the General Partner 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 their investment in the Funds.

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. The Management Fee will be paid 1) either out of cash flows of the Funds, through calls made by the Funds, or through a combination of the two, as determined by the General Partner, and in any case shall be paid by the Fund to the General Partner in quarterly installments in advance (pro rated for any partial quarterly period for which it applies), or 2) quarterly in arrears, as described in the Fund’s offering documents.
- E. 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, have the ability to 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 manages 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 could 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 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 private funds for sophisticated, qualified investors, including high net worth individuals, pension plans, funds of funds, family offices, endowments, foundations, and other institutions. The private funds are limited partnerships that focus on investing in real estate private equity transactions.

Generally, limited partner interests in the private funds require a minimal capital commitment of \$25,000, although the General Partner is able to 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 across the United States. The Adviser seeks to purchase these assets at attractive values below historical replacement cost. Targeted property types primarily include strategically located multifamily (including senior living), 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 over 75 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 \$5 million to \$30 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 pursues 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 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 market 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 can create opportunities for the Funds it advises include: (i) looming 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 certain asset types; and (iii) global macroeconomic issues. 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-sectors 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 potential investment opportunities 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) creating 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, mismanaged, miscapitalized, 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.

*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 is frequently 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 can 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 adversely affect an investment.

*Credit and Financing.* The Adviser and the Funds 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 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 can 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.

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

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

*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 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 equity investments. In addition, financial instruments held by the Funds may be such that they require a substantial length of time to liquidate.

*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 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.

*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 can exceed the value of a Fund's original investment.

*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 can 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 can 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 weakens its financial condition and result in the failure to pay rent when due. The ability of residential tenants to pay rent when due can 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 can 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 can have the effect of further delaying the foreclosure process.

Foreclosure litigation tends to create a negative public image of the collateral property and 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 can be found liable for damages suffered by various parties as a result of such actions. In addition, under certain circumstances, payments to a Fund can 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 can 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 can 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 can 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 can be responsible and to assess the status of environmental regulatory compliance. There can be no assurance, however, that such audits will be performed on all properties and/or that they will reveal all environmental liabilities relating to an acquired property.

**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. In connection with sponsoring any limited partnership, the Adviser will also sponsor an affiliated general partner for such limited partnerships, which will receive the compensation described in Item 5. Other than these affiliated general partner entities, 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 its 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, cannot 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. Principals have the option to invest such amounts 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 can 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 can 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 conducts a review of its portfolio company investments held by the Funds 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. While not a client solicitation arrangement, with respect to the Funds, the Adviser has entered into an agreement with a third-party placement agent. This agreement provides for compensation to be paid to the placement agent for referring limited partners to the Funds. Under this agreement, the placement agent receives a percentage of the capital commitments attributable to each prospective limited partner referred depending upon specific circumstances and restrictions. Any such agreement with a placement agent is disclosed to prospective limited partners in the Funds.

**Item 15 - Custody**

The Adviser is deemed under Rule 206(4)-2 of the Advisers Act to have custody of the assets of certain 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.

**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.