

**FORM ADV, PART 2A**

**FIRM BROCHURE**

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**March 30, 2020**

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**This Brochure provides information about the qualifications and business practices of Berkshire Property Advisors, L.L.C. If you have any questions about the contents of this Brochure, please contact us at (617) 646-2300 or [compliance@berkshireresi.com](mailto:compliance@berkshireresi.com). The information in this Brochure has not been approved or verified by the United States Securities and Exchange Commission (the “SEC”) or by any state securities authority.**

**Additional information about Berkshire Property Advisors, L.L.C. also is available on the SEC’s website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).**

**Berkshire Property Advisors, L.L.C. is registered with the SEC as an investment adviser. Being a “registered investment adviser” or describing ourselves as being “registered” does not imply a certain level of skill or training.**

## **Item 2. Material Changes**

The Material Changes section of the Brochure will be updated annually when material changes occur since our last annual update. The last annual updating amendment was March 29, 2019.

### **Material Changes**

**Item 4:** Amended the description of Berkshire's senior leadership team and updated the list of its members.

**Item 8:** Added new material risks involved with investing in our strategies.

**Item 10:** Updated the list of Berkshire's Affiliates that are GP entities for its Funds.

### **Investor Referrals:**

Please contact us at (617) 646-2300 or [compliance@berkshireresi.com](mailto:compliance@berkshireresi.com) to obtain a free copy of our Brochure.

Additional information about Berkshire Property Advisors, L.L.C. is also available via the SEC's website [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

**Item 3. Table of Contents**

	<b><u>PAGE</u></b>
<b>Item 1. Cover Page .....</b>	<b>1</b>
<b>Item 2. Material Changes .....</b>	<b>2</b>
<b>Item 3. Table of Contents .....</b>	<b>3</b>
<b>Item 4. Advisory Business .....</b>	<b>4</b>
<b>Item 5. Fees and Compensation .....</b>	<b>5</b>
<b>Item 6. Performance-Based Fees and Side-By-Side Management .....</b>	<b>8</b>
<b>Item 7. Types of Clients .....</b>	<b>10</b>
<b>Item 8. Methods of Analysis, Investment Strategies and Risk of Loss.....</b>	<b>10</b>
<b>Item 9. Disciplinary Information.....</b>	<b>32</b>
<b>Item 10. Other Financial Industry Activities and Affiliations.....</b>	<b>32</b>
<b>Item 11. Code of Ethics, Participation or Interest in Client Transactions and Personal Trading.....</b>	<b>35</b>
<b>Item 12. Brokerage Practices .....</b>	<b>38</b>
<b>Item 13. Review of Accounts .....</b>	<b>39</b>
<b>Item 14. Client Referrals and Other Compensation.....</b>	<b>40</b>
<b>Item 15. Custody .....</b>	<b>41</b>
<b>Item 16. Investment Discretion .....</b>	<b>41</b>
<b>Item 17. Voting Client Securities .....</b>	<b>42</b>
<b>Item 18. Financial Information.....</b>	<b>42</b>

#### **Item 4. Advisory Business**

Berkshire Property Advisors, L.L.C. (“BPA” or the “Adviser”) is a Delaware limited liability company established in 2002. The Adviser is a wholly owned subsidiary of Berkshire Group L.L.C., (“Berkshire Residential Investments” or “Berkshire”), a Delaware limited liability company (f/k/a Berkshire Property Advisors, L.P.). Berkshire is the sole owner of the member interests in the Adviser.

Berkshire was founded in 1966 and is a real estate investment management company known for its vertically-integrated platform, experienced leadership, and an opportunistic approach to finding value on behalf of institutional investment clients. Over its more than 50-year history, Berkshire has been an active owner of U.S. residential rental housing. Berkshire is led by twelve experienced senior executives with an average tenure of 12 years with the company and an average of 25 years of overall real estate experience (“Leadership Team”).<sup>1</sup> The Leadership Team is comprised of the Chief Executive Officer, the General Counsel, the Head of Business Development, the Chief Investment Officer, the Head of Property Management, the co-Heads of Portfolio Management, the Head of Portfolio Reporting and Analytics, CIO of Development & Construction Investments, COO Property Management, Development & Construction Operations, the Head of Research and the Chief Financial Officer.

BPA’s advisory business primarily provides advisory services to multiple privately offered pooled investment vehicles (each, a “Fund”, or collectively the “Funds”), specializing in residential equity and debt investments throughout the U.S. The Adviser also provides property management, construction management, and development management services for residential real estate developments and other properties. The Adviser may provide advisory services to additional pooled investment vehicles and other types of clients in the future.

The primary focus of BPA’s advisory business is managing its Funds’ portfolios of residential real estate and real-estate related investments through acquisitions, finance, portfolio management and dispositions in accordance with the strategies set forth in each Fund’s applicable offering documents and/or governing documents and agreements (collectively, “Governing Documents”). These activities are complemented by other services the Adviser or its affiliates provide, including property management, construction management and development management services. For a further description of the Funds and the investment strategies the Adviser uses in formulating investment advice and managing its Funds’ assets, please see Items 7 and 8 of this Brochure.

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<sup>1</sup> Average tenure and average experience are as of December 2019.

The Funds do not impose restrictions on the Adviser in relation to investing in certain securities or types of securities, except as may be set forth in their respective Governing Documents. If provided in a Fund's Governing Documents, the application of certain of such restrictions may be waived, generally only with the approval of an "Advisory Committee" of the relevant Fund, if applicable. A Fund's Advisory Committee, if applicable, is generally composed of representatives (unaffiliated with Berkshire) of a number of the underlying investors (each, an "Underlying Investor") of the applicable Fund.

As of December 31, 2019, the Adviser managed approximately \$5,154,000,000 of regulatory assets on a discretionary basis, and approximately \$4,889,000,000 regulatory assets on a non-discretionary basis, for a total of approximately \$10,043,000,000 in regulatory assets under management.

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

The fee and compensation arrangements between the Adviser and each of its Funds are stated in each Fund's applicable Governing Documents, and generally are not negotiated after those documents are finalized and Underlying Investors are admitted, provided, however, that if permitted in a Fund's Governing Documents, the fees applicable to an Underlying Investor in such Fund may be reduced at the Adviser's discretion.

##### Funds

Certain Funds pay the Adviser an annual investment management fee, paid quarterly in advance or in arrears, based on a percentage of their gross asset value, net asset value, committed and/or invested capital, or as a flat fee based on a percentage of the value of a Fund's investments at the Fund's inception (in each case, as specified in a Fund's Governing Documents). For existing Funds that are subject to such fees, the applicable percentages currently range from 0.5% to 1.5%. Fees will be paid out of a Fund's distributable proceeds, operating cash flows, borrowings, or capital contributions from the its Underlying Investors. If provided in a Fund's Governing Documents, the General Partner of a Fund may waive all or a portion of any future installment of an investment management fee in exchange for the reduction of the amount of capital contributions the General Partner would otherwise be required to contribute.

In addition, if provided in a Fund's Governing Documents, the Adviser's management fee for investment management services provided to a Fund may be reduced by an amount equal to (i) fees and expenses related to placement agents used to sell interests in a Fund and (ii) organizational and offering expenses in excess of any applicable cap set forth in a Fund's Governing Documents.

Currently, certain Funds are organized as limited partnerships with an affiliate of the Adviser serving as the general partner (each, a “General Partner”). The General Partner of certain Funds will be entitled to receive distributions of “carried interest” (see Item 6 below) from the applicable Fund. Carried interest distributions generally range up to 20% of the applicable Fund’s profits after the Fund’s Underlying Investors have received their applicable preferred return, if any, and all capital contributions have been returned to the Underlying Investors. Carried interest distributions above the preferred returns will increase above established return thresholds and will vary by each Fund, as provided in a Fund’s Governing Documents, but generally range up to 20% of profits.

At the request of investors, certain Funds have declined to accept fee income related to specific fee sharing agreements associated with certain investments of such funds. This fee income may include Special Servicer fees and loan assumption fees. Such fees would represent additional income received by the Adviser for additional services we may perform related to a particular investment, outside of the normal income stream. Where Funds have declined to accept fees, such Funds have authorized the Adviser to collect and accept the fees.

Underlying Investors should review the respective Fund’s Governing Documents for detailed information with respect to applicable fees.

### *Valuation*

The Funds’ real estate assets are primarily “fair valued.” The Adviser’s Valuation Committee meets at least quarterly, and is comprised of the following voting members:

- Head of Portfolio Analytics and Valuations (Chair)
- Chief Executive Officer
- Head of Portfolio Reporting and Analytics
- Chief Investment Officer
- Co-Heads of Portfolio Management
- CIO of Development & Construction Investments
- Head of Research

The Adviser’s valuation process includes the use of internal valuation models and the use of third-party valuation experts. The Adviser generally performs internal valuations for three of the four quarters in a year and a third-party valuation expert is consulted for the remaining quarter.

Valuation methodologies include, among others, real estate appraisals using the direct capitalization method, discounted cash flow method and/or the sales comparison method.

### Other Fees

In addition to the compensation described above, certain Funds pay the Adviser or its affiliates other fees for services rendered in addition to advisory services, as set forth in a Fund's Governing Documents (and subject to applicable caps, if any, included in a Fund's Governing Documents). Fees are based on the nature of a particular Fund's investments and have included, and may include in the future, incentive management, acquisition, disposition, financing, property management, oversight, construction management and/or development (or redevelopment) management fees. Certain affiliates of the Adviser provide Funds with servicing, assumption, and origination services in connection with the Funds' investments and will be entitled to receive fees from the third-party borrowers for such services. The fees are or will be payable to the Adviser or its affiliates on terms described in a Fund's Governing Documents and will generally be charged at rates that the Adviser considers to be consistent with fees payable in arm's length transactions with qualified independent third parties providing comparable services.

The Adviser does not bill its Funds or the Underlying Investors for investment management or other fees. Rather, amounts are deducted from the assets of the Funds directly, and the Underlying Investors are indirectly charged corresponding reductions of their capital account balances in the Funds, as applicable. Similarly, distributions of carried interest are made within the Funds to which they apply, through periodic distributions of net cash flows.

The Adviser and its supervised persons do not accept any compensation for the sale of securities or other investment products, including any interests or shares in the Funds.

### Expenses

Each Fund will bear directly and/or will reimburse the Adviser for a Fund's various operating and other expenses. Expenses may include, but are not limited to:

- Legal and other organizational and offering expenses incurred in connection with a Fund's formation (and the formation of any entities affiliated with a Fund), subject to any related terms described in the Fund's Governing Documents, including any applicable cap.
- All costs and expenses incurred in maintaining the operations of a Fund and its investments, as described in a Fund's Governing Documents. Costs and expenses applicable to a Fund may include, but are not limited to,
  - a) legal, auditing, consulting, third party administration and accounting fees and expenses (including costs of reports to the Fund's Underlying

- Investors, financial statements, tax returns and K-1s), and fees of any service providers;
  - b) expenses of any meetings of the Fund's Advisory Committee, and of its Underlying Investors;
  - c) all expenses (including travel expenses), whether the transaction is consummated or not, associated with the consideration, acquisition, holding and disposition of the Fund's proposed or actual investments, including, without limitation, all costs associated with alternative investment vehicles and any holding vehicles, insurance, indemnification and other unreimbursed expenses;
  - d) all extraordinary expenses (such as litigation);
  - e) interest on and fees and expenses arising out of all permitted borrowings made by the Fund;
  - f) all third-party expenses relating to unconsummated transactions;
  - g) all expenses of liquidating the Fund; and
  - h) any taxes, fees or other governmental charges levied against the Fund and all expenses incurred in connection with any tax audit, investigation, settlement or review of the Fund.
- Brokerage and any other applicable transaction costs, and custodial fees, applicable to a Fund's investments. Please see Item 12 for a description of the Adviser's brokerage practices.
  - Third-party expenses attributable to a Fund's investments, including fees, costs, and expenses (including travel expenses) incurred in the purchase, financing, management and disposition of such investments, as well as any such fees, costs and expenses attributable to a Fund's investments that are not consummated.

The Adviser and/or its affiliates typically receive payment or reimbursement for tax related services, services related to compliance to rules applicable to real estate investment trusts, and legal services that would have been performed by third parties if the Adviser or its affiliates did not have the capability to perform the services. Reimbursements are limited to services performed for the benefit of the Fund and not the general operation of the Adviser's (or its affiliates') business. Such reimbursements may also be limited by any cap provided in a Fund's applicable Governing Documents. Miscellaneous revenues of a Fund, including acquisition, financing, and break-up fees (in each case to the extent specifically described in a Fund's Governing Documents), may be applied to offset, pay or reserve for the payment of Fund expenses (including any investment management fee) or to repay credit facility drawdowns.

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

As described in Item 5 above, the Adviser has several compensation arrangements with its Funds some of which include performance-based compensation. Detailed information about a Fund's performance-based distribution arrangements are described in each Fund's



respective Governing Documents. The Adviser's closed-end fund structures generally have a carried interest fee structure. The Adviser's perpetual life funds have in the past and may have in the future an incentive-based fee structure. Not all performance-based fees are charged at the same rates.

It is possible that performance-based compensation can create incentives for the Adviser to recommend investments which may be riskier or more speculative than those which would be recommended under a different fee arrangement. They can also create an incentive for the Adviser to favor higher fee generating investments and Funds over lower fee generating investments and Funds.

The Adviser considers a variety of factors regarding how investments are allocated to its Funds. This includes, but is not limited to:

- the investment objective of the particular Fund;
- the sourcing of the investment opportunity;
- the composition of the portfolios of each of the Funds, and the risks and obligations associated with that portfolio, such as available capital, risk tolerance, and investment objectives and guidelines of each such Fund;
- the aggregate size of the investment, including whether follow-on investments may be required;
- the investment strategy and restrictions or other obligations or requirements related to the proposed investment;
- legal, tax, regulatory and other considerations; and
- the availability of other investment opportunities.

In addition, the method of allocating investment opportunities may change over time, particularly as each Fund's investment period comes to an end. When a particular investment meets the eligibility criteria for multiple Funds, the Adviser will seek to make an allocation determination for the investment opportunity in accordance with Berkshire's investment allocation policy. This policy includes a rotation of investments to Funds based on an actively managed queue. The queue is determined through a screening process undertaken by Berkshire's investment committee that identifies which funds have available capital and are a match based on investment objectives. A Fund that has been waiting the longest for an investment meeting its criteria is awarded the next eligible opportunity. Although the Adviser seeks to allocate investment opportunities in a fair and equitable manner, decisions as to the allocation of investment opportunities which present conflicts of interest may not always be resolved in the manner that is favorable to the interests of a particular Fund.

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

As referenced in Item 4, the Adviser's advisory clients currently include the Funds, co-investment vehicles and separately-managed accounts (each, a "Client"). Each Client has different investment objectives and strategies, as set forth in the applicable Governing Documents, but in each case are generally related to residential real estate and real estate-related investments and employs one or more of the strategies described in Item 8.

Interests in each of the Funds are offered (or were offered, during a Fund's applicable offering period) to qualified investors in reliance upon an exemption from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"). The Funds are not registered under the Investment Company Act of 1940, as amended (the "Investment Company Act"), in reliance upon one or more exclusions from the definition of "investment company" therein.

The investors in the Funds include sophisticated investors such as institutional investors, pension and profit sharing plans, endowments, charitable organizations, foundations, sovereign wealth funds, funds of funds, financial institutions, trusts, family offices, knowledgeable employees and high net worth individuals. Many investors in the Funds engage with investment consulting firms to establish a relationship with the Adviser.

Several of the Adviser's Funds no longer accept new capital commitments or contributions from prospective Underlying Investors, and not all Funds had or have minimum capital commitment or contribution requirements. Certain Funds did have specified minimum capital commitments or contributions from their Underlying Investors, ranging between \$1 million to \$10 million, subject to the right of the General Partner of the applicable Fund to accept commitments of lesser amounts.

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

In providing advisory services to its Clients, the Adviser utilizes various investment strategies and methods of analysis.

The Adviser pursues investment opportunities in the U.S. residential rental housing market. Berkshire has experience across multiple sectors of the residential housing market, including market rate apartments, workforce housing, active adult communities, senior housing, student housing and manufactured housing. The investment themes and strategies it focuses on in the U.S. rental housing market vary to some degree among its Funds, as described in the applicable Governing Documents of each Fund.

Summarized below are the primary investment strategies that the Adviser currently pursues for its Funds who have a continuing commitment period (i.e., generally the period during

which such Fund can commit to making investments) or who do not have time-limited commitment periods. The Adviser's specific strategies, or the emphasis it places on different strategies, may be adjusted by the Adviser as it determines is appropriate to remain responsive to changing market conditions and, in particular, the changing phases of the real estate market cycle. Any such adjustments shall only be made in accordance with each Fund's applicable Governing Documents.

The Adviser deploys capital in U.S. residential rental housing strategies across the risk spectrum (including, but not limited to, core, core plus, value-add, development investment and opportunistic) through a variety of strategies that currently include:

**Debt Investments:** Berkshire has multifaceted experience in debt-related residential rental housing transactions. The Adviser participates in the Freddie Mac Capital Markets Execution ("CME") Program. The Federal Home Loan Mortgage Corporation ("Freddie Mac") is a U.S. government sponsored enterprise formed to acquire mortgages from Freddie Mac approved originators, and then to pool and sell those mortgages as mortgage-backed securities to investors. The CME transactions represent investments in newly-originated Freddie Mac residential rental housing first mortgage pools, supplemental mortgage pools, and floating rate pools. In connection with the Adviser's participation in the CME program, the Adviser has in the past and may in the future cause Funds to acquire discounted securities representing the junior position in Freddie Mac first mortgages and supplemental mortgages. The Adviser may also cause Funds to invest in opportunities to provide mezzanine financing for new acquisitions and refinancing of properties which have Freddie Mac as the first mortgage lender. In these Freddie Mac mezzanine loans, the Fund acquiring an interest in a loan is generally pre-approved to foreclose on the underlying collateral, and the Adviser may consider the need to do so as part of the business plan for given transactions. As with the CME program, the Adviser is part of a limited group of residential real estate companies in the U.S. that Freddie Mac has included in this program. Additionally, the Adviser may pursue opportunities for its Funds to purchase senior and senior subordinated residential real estate loans with attractive yields-to-maturity. Furthermore, the Adviser invests in U.S. residential rental housing strategies for certain Funds that involve the origination of floating-rate transitional senior mortgages or bridge loans through an affiliated entity of the Fund.

**Direct Acquisitions:** The Adviser seeks to identify what it considers to be attractive opportunities to acquire high quality value-add, core, core plus, and select redevelopment U.S. rental housing opportunities in primary markets at discounts to replacement cost through Berkshire's internal and multiple external sourcing channels. The Adviser will focus on these direct acquisition opportunities in what the Adviser considers to be strong markets. The Adviser seeks to invest in high quality, stabilized

core housing properties within the target markets. Traditional value-add opportunities will be pursued on a select basis, where the Adviser believes that the market will support the higher rental rates needed to provide attractive risk-adjusted returns.

**Recapitalizations:** The Adviser seeks to identify investment opportunities generated by undercapitalized property owners of high-quality residential assets that have impending debt maturities. These opportunities may be brought to the Adviser by lenders or equity providers to over-leveraged properties based on the Adviser's relationships with these groups. The Adviser may seek investment opportunities for its Funds throughout the capital stack to pursue these types of opportunities. The Adviser will typically seek to incorporate the option to control and manage the underlying assets when investing in complex structured transactions.

**Development:** By pursuing development transactions in target markets, the Adviser will seek to find investment opportunities that capitalize on favorable supply/demand factors in the U.S. rental housing market, utilizing the Adviser's in-house development expertise. The Adviser will target opportunities where it can determine that certain development risks have been mitigated by causing Funds to acquire partially-entitled projects, typically in a joint venture with development partners experienced in local markets. The Adviser's in-house development team monitors the development, construction and lease-up process for such investment opportunities.

In addition to the investment themes and strategies described above, the Adviser recognizes that the U.S. rental housing market is evolving, and it is therefore continually evaluating opportunities to capitalize on the current environment. The Adviser may cause Funds to pursue investments in special situations in which the Adviser believes strong risk-adjusted returns can be realized outside of the strategies described above. The types of investments that may be pursued include, without limitation, acquisitions of portfolios, selective traditional value-add acquisitions with rehabilitations, and unique joint venture opportunities.

### **Material Risks**

An investment in any Fund presents potentially significant risks and is not intended as a complete investment program. Investing in real estate, securities, and the other investments in which the Funds invest entails a risk of loss that investors should be prepared to bear.

The following material risks may relate to some or all Funds. The following risks are not a complete list or explanation of the risks involved in an investment for any Fund. References in the following material risk disclosures to "Berkshire" may include either the Adviser itself or an affiliate thereof that serves as a General Partner or managing member

to a Fund. Potential investors should reference each Fund's Governing Documents for a more complete list of risks impacting each of our Funds.

***General Real Estate Risks.*** Real estate historically has experienced significant fluctuations, and cycles in value and local market conditions may result in reductions in the value of real property interests. Real property investments are subject to two types of risk: systematic (macro-economic and market-level) and non-systematic (property-level). Both types of risk can affect the key components of property appreciation – changes in capitalization rate and net operating income (NOI). In addition, the properties that the Funds may invest in are often subject to extensive environmental laws and regulations, fire and safety requirements, zoning laws and similar laws, and other governmental rules, regulations and policies. Any changes in these laws, regulations and/or policies could have a materially adverse impact on the relevant properties and, consequently, on the Funds. A Fund's ability to generate sufficient net cash flow and the marketability and value of the properties underlying the Fund's investments will depend on many factors beyond the control of the Fund, including adverse changes in capital markets and macro-economic conditions; adverse local market conditions; the financial conditions of residents and buyers and sellers of properties; changes in supply of or demand for competing properties in the area; changing demographics; perceptions of prospective residents of the convenience, services, safety and attractiveness of the Fund's investments; the ability of Berkshire to provide capable management and adequate maintenance; the quality of the construction and design of a Fund's investments; changes in availability of debt financing; changes in interest rates, real estate tax rates and other operating expenses, environmental laws and regulations, zoning laws and other governmental rules and fiscal policies; environmental claims arising in respect of real estate acquired with undisclosed or unknown environmental problems or as to which inadequate reserves had been established; energy prices; changes in the relative popularity of property types and locations; risks due to dependence on cash flow; risks and operating problems arising out of the presence of certain construction materials; and acts of God and other uninsurable losses. Real estate investments generally cannot be sold quickly. Accordingly, it may not be possible to sell a Fund's investments promptly in response to economic or other conditions. There are certain risks unique to the type of residential real estate investment a Fund may make. Risks unique to military, senior, active adult, student, manufactured housing are described in more detail in the relevant Fund's Governing Documents.

***Difficulty of Locating Suitable Investments.*** Each of the Adviser's Funds will be relying on the ability of Berkshire to identify, acquire and manage investments using the proceeds of the offering of interests in or shares of such Fund. The activity of identifying, completing and realizing attractive real estate investments is highly

competitive and involves a high degree of uncertainty, and a Fund may be unable to find a sufficient number of attractive opportunities to meet its investment objectives. There are a number of real estate investment funds and other entities looking to invest in similar investments to the Adviser's Funds. The acquisition of investments may be based on competitive bidding, and other competitors for the acquisition, redevelopment and development of properties, including insurance companies, pension funds, partnerships, investment companies and real estate investment funds, may have greater economic and personnel resources than those of Berkshire or any Fund, or better relationships with sellers of the investments, lenders and others, thereby putting a Fund at a competitive disadvantage. These entities, because of their resources, may also generally be able to accept more risk than a Fund prudently can manage. This competition may generally reduce the number of suitable prospective investments offered to a Fund and increase the prices for properties of the type a Fund would likely pursue. In addition, the entry of additional investors into the segments of the real estate market in which a Fund will focus, or a decline in the number or size of assets being offered for sale could significantly alter the anticipated dynamics of demand and supply with potentially adverse consequences for a Fund. While Berkshire believes that there are currently available attractive investments of the type in which its Funds intends to invest, there can be no assurance that such investments will be available when a Fund commences operations or that then-available investments will meet a Fund's investment criteria. In addition, because a Fund's investment activity will occur over time, adverse changes in the real estate, debt and equity markets may reduce the number of investment opportunities available to such Fund. As a result, a Fund may be unable to identify and consummate enough attractive opportunities to permit it to invest all its committed capital and/or diversify its investments to the extent required to meet such Fund's return objectives.

***Concentration of Investment in Multifamily Properties.*** Berkshire expects that certain Funds' investments will consist almost entirely of investments related to multifamily properties. Such concentration may increase the volatility of a Fund's returns and may also expose a Fund to the risk of economic downturns in this sector to a greater extent than if its portfolio also included other property types. As a result, economic downturns in this sector could have an adverse effect on the financial condition, results of operations and cash flow of a Fund.

Income from, and the value of, a Fund's investments may be adversely affected by the oversupply of apartments or a reduction in demand for apartments in the areas in which they are located, the attractiveness of the apartments to potential residents, competition from other apartment or residential properties, a Fund's ability to provide adequate maintenance and insurance and increases in operating costs.

***Tenancy Risks.*** Unlike many other types of real estate investment, multifamily properties do not have residents occupying large portions of the property whose lease payments provide relatively reliable sources of income for extended lease terms. Instead such properties will typically have individual residential residents and with lease terms that are often one year or less. Multifamily properties generally experience frequent resident turnover due to factors such as transient populations, new competition in the area, and changes in the residents' economic status. A Fund would be adversely affected if a significant number of residents were unable to pay rent or if vacant apartments could not be rented on favorable terms. Even if residents renew their leases or a Fund is able to re-let the space, the terms and other costs of renewal or re-letting, including the cost of required renovations, leasing commissions, declining rental rates and other potential concessions may be less favorable or more costly than the terms of current leases or than anticipated and could require the expenditure of significant amounts of capital. General economic conditions may adversely impact the rents that a Fund receives and the value of a Fund's properties. A local economic downturn may increase competition for tenants among landlords or cause localized out-migration. Such factors could negatively impact rental rates. A liberal lending environment or a supply of inexpensive for-sale housing could also reduce the pool of available renters, leading to increased competition among landlords and falling rents. Further, tighter credit may adversely affect property values and/or borrowing and refinancing costs. Widespread new construction that outstrips absorption rates of rental units may lead to increased competition for new tenants and cause rental rates to fall. Falling construction costs – or falling prices for the acquisition of competitive properties generally – could translate into a change in perception of base market rates and create a downward trend in rental income. If market conditions locally or generally become unfavorable, the performance of a Fund may be adversely affected.

***Acquisition, Redevelopment and Development Activities.*** A Fund's acquisition, redevelopment and development activities involve many risks. In addition, investments in undeveloped land and development and redevelopment properties may involve more risk than properties on which development has been completed. Risks associated with a Fund's acquisition, redevelopment and development activities include, but are not limited to, the following:

- Acquisition, redevelopment and development opportunities explored by a Fund may be abandoned and, as a result, such Fund may fail to recover expenses already incurred in connection with exploring such opportunities.
- Acquisition, redevelopment and development costs for a property, including, without limitation, materials, labor or other expenses, may exceed original estimates, possibly making the property uneconomical.

- Zoning, land-use, building, occupancy and other required governmental permits and authorizations may be difficult or impossible to obtain, leading to delays in and/or abandonment of all or a portion of the acquisition, redevelopment or development of a property.
- Construction and lease-up may not be completed on schedule, resulting in increased debt service and redevelopment or development costs.
- Leasing costs and resident improvement costs may exceed expectations and, therefore, adversely affect the operating performance of a property.
- Construction and permanent financing may not be available on favorable terms.

The occurrence of any of the events described above could result in meaningful unanticipated delays or expenses and, under certain circumstances, could prevent completion of development activities once undertaken, any of which could adversely affect a Fund's ability to achieve its currently estimated yields on investments under redevelopment or development and, in turn, could reduce potential distributions to its Underlying Investors. Properties under development or properties planned for development may distribute little or no cash flow from the date of acquisition through the date of completion of development and may experience operating deficits after the date of completion. In addition, market conditions may change during development thus making the development less attractive than at the time it was commenced.

***Operating Risks.*** Multifamily properties are subject to a number of operating risks, including, among other things, (i) competition from other multifamily and residential properties in the same geographic market; (ii) increases in operating and maintenance costs; (iii) dependence on residents; (iv) fluctuating lease and occupancy rates; (v) the financial stability and related risks of default by residents experiencing financial problems; and (vi) adverse effects of general and local economic conditions. Furthermore, commercial spaces within a multifamily property may cause greater risk due to less consistent cash flow and potential credit concerns. These factors could adversely affect a Fund's ability to generate revenues and make distributions to its Underlying Investors.

***Risks Associated with Investments in Real Estate Debt Positions.*** Funds may acquire not only performing but sub-performing or non-performing debt interests on a selective basis and may acquire performing interests that become sub-performing or non-performing in the future. Some of these investments may be made with a goal of "loan-to-own." Investment in real estate debt generally carries with it many, if not most, of the risks associated with direct real estate investment (see General Real Estate Risks above). Notwithstanding that the Adviser and, ultimately, a Fund's General Partner (if applicable), will be responsible for the oversight and management of a Fund's



investments, the collateral for debt investments may be mismanaged or otherwise decline in value. There exists the risk that refinancing will not be available for assets serving as collateral for debt acquired by a Fund. Further, investments operating under the close supervision of a mortgage lender are, in certain circumstances, subject to certain additional potential liabilities that may exceed the value of a Fund's original investment therein.

A Fund's investments may include interests in multifamily mortgage loans. The ability of a borrower to repay a loan secured by multifamily property typically depends primarily upon the successful operation and the operating income of that property (*i.e.*, the ability of a property to attract and retain residents, and the ability of the owner to maintain the property, control operating expenses and comply with applicable laws), rather than depending upon the existence of independent income or assets of the borrower. Most multifamily mortgage loans provide recourse only to the mortgaged property and not against the borrower's other assets or personal guarantees.

There is a significant risk that a Fund may experience losses on its debt investments because of defaults by the applicable borrowers. The factors that may result in borrower defaults and losses on a Fund's investments include (i) adverse changes in economic and real estate market conditions generally and in the sectors and geographic locations applicable to the specific investment, (ii) the terms and structure of the mortgage loans and (iii) any specific limits on legal and financial recourse upon a default under the terms of the mortgage loans.

At the maturity of multifamily mortgage loans, there is typically a significant outstanding principal balance which must be repaid. This loan feature frequently requires the borrower either to sell the property or to refinance the remaining principal balance at or prior to maturity of the mortgage loan. Accordingly, investors in multifamily mortgage loans bear the risk that the borrower will be unable to sell, refinance or otherwise generate the funds required to repay the mortgage loan at maturity, thereby increasing the ultimate likelihood of a default on the borrower's obligation. Such a default may be more likely if the value of the encumbered real estate has declined in value or if market rates of interest have significantly increased.

As part of its investment program, a Fund may invest in fixed- and floating-rate loans. Floating rate loan investments would expose a Fund to the risk of lower cash flow if interest rates decrease from the date of investment. Fixed rate debt investments would expose a Fund to the risk of value deterioration in the event of interest rate increases. A Fund's debt investments may be subject to early redemption features, refinancing options, pre-payment options or similar provisions which, in each case, could result in the issuer repaying the principal on an obligation held by a Fund earlier than expected,

resulting in a lower return to a Fund than currently estimated. If market interest rates decline, it is likely that borrowers will seek to repay their loans prior to stated maturity in order to refinance at lower rates. If that happens, then, except as protected by any yield maintenance provisions, a Fund will lose the benefit of the above-market interest rate payments it otherwise would receive on the repaid loans. In addition, certain of the mortgage loans in which a Fund invests may be structured so that all or a substantial portion of the principal will not be paid until maturity, which increases the risk of default at that time.

Moreover, in certain situations, because a Fund's General Partner, the Adviser or an affiliate thereof may, in the exercise of remedies or rights under loan documents, obtain contractual rights to participate in or to influence the management of properties by borrowers, the likelihood is increased that a borrower may claim that a Fund interfered with the borrower's business, acted in bad faith in exercising its management rights or otherwise acted in a manner giving rise to a claim for lender liability. The exercise of rights or remedies may not be led or controlled by a Fund's General Partner or the Adviser, but may be led or controlled by a holder of a different debt position who may have interests that conflict with the interests of a Fund. As a lender, a Fund may also be subject to penalties for violations of state usury limitations, which penalties may be triggered by contracting for, charging or receiving usurious interest.

In the event of default and the exhaustion of any equity support, reserve fund or letter of credit support, a Fund might not be able to recover all its investment in the debt obligations purchased. A Fund's investments in loans may involve workout negotiations, restructuring and the possibility of foreclosure. Even if a restructuring were successfully accomplished, however, there exist the risks of a substantial reduction in the interest rate and a substantial write-down of the principal of such loans. It is possible that Berkshire may find it necessary or desirable to foreclose on collateral securing one or more real estate loans purchased by a Fund.

#### ***Risks to Relationships with Government-Sponsored Enterprises (GSEs)***

There is uncertainty regarding the future of GSEs with whom we rely on to source certain investment activity (e.g., Freddie Mac and Fannie Mae). Should Freddie Mac or Fannie Mae have its mandates changed or reduced, be disbanded or reorganized by the government or otherwise discontinue providing liquidity to a Fund's sector, it could significantly reduce a Fund's access to debt investment opportunities and adversely affect a Fund's ability to invest all its committed capital or complete its investment program.

#### ***Risks Associated with Enforcement of Rights Against Borrowers Following Defaults.***

If the borrowers under the debt instruments comprising a Fund's investments default

in their obligations, a Fund may seek to pursue foreclosure and other remedies, if any, available under the terms of the related loans. Exercise of foreclosure and other remedies may involve lengthy delays and additional legal and other related expenses. The foreclosure process varies from jurisdiction to jurisdiction and can be drawn-out and expensive. Applicable laws in certain jurisdictions may provide borrowers with an array of rights to resist foreclosure actions by asserting numerous claims, counterclaims and defenses against the holder of a real estate loan including, without limitation, lender liability claims and defenses. In some jurisdictions, foreclosure actions can take several years or more to litigate. Foreclosure litigation can create a negative public image of the applicable property and may result in disruption of the ongoing leasing and management of the property. In certain circumstances, foreclosing mortgage creditors may also become liable, upon taking title to collateral, for environmental or structural damage at the property site. Due to the potential difficulties presented by the foreclosure process, in some cases, a Fund or, if applicable, senior lenders may seek to negotiate with the borrower to restructure the debt as an alternative to pursuing foreclosure or other remedies. Although a restructuring may avoid the delay and expense of foreclosure, it is likely to have other adverse consequences for a Fund. Any restructuring may involve either or both a substantial reduction in the interest rate and a substantial write-down of the principal of the restructured loans, which will reduce the value of a Fund's investment and may result in a loss on the investment. A restructuring could also delay the realization of value. If any of the above occurs, a Fund's ability to make anticipated distributions to the Partners could be delayed or otherwise adversely affected.

***Bankruptcy Considerations.*** Claims on real estate assets operating in workout modes or under applicable bankruptcy laws could, if a Fund inappropriately exercises control over the management and policies of the debtors, be subordinated or disallowed, and may, in certain circumstances, be subject to additional potential liabilities that could exceed the value of a Fund's original investment, including equitable subordination and/or disallowance of claims or lender liability. Furthermore, payments made to a Fund with respect of such claims, and distributions by a Fund to its Underlying Investors, could be recovered if such payments or distributions are found to have been fraudulent conveyances or preferential payments or the equivalent under the laws of certain jurisdictions. Bankruptcy laws may delay the ability of a Fund to realize on collateral for claims held by it or may adversely affect the priority of such claims through doctrines such as equitable subordination or may result in a restructuring of the debt through principles such as the "cramdown" provisions of the bankruptcy laws. In addition, there are other risks and uncertainties related to litigation, bankruptcy and other laws and regulations affecting the rights and remedies of a Fund with respect to these assets that can create additional financial risks to a Fund.

***General Risks of Secured Loans.*** Certain loans held by a Fund will be secured. While secured loans originated or purchased by a Fund or its affiliates will often intend to be over-collateralized, a Fund may be exposed to losses resulting from default and foreclosure. Therefore, the value of the underlying collateral, the creditworthiness of the borrower and the priority of the lien are each of great importance. The Adviser cannot guarantee the adequacy of the protection of such Fund's interests, including the validity or enforceability of the loan and the maintenance of the anticipated priority and perfection of the applicable security interests. Furthermore, the Adviser cannot assure that claims may not be asserted that might interfere with enforcement of the Fund's rights. In the event of a foreclosure, a Fund may assume direct ownership of the underlying asset. The liquidation proceeds upon sale of such asset may not satisfy the entire outstanding balance of principal and interest on the loan, resulting in a loss to such Fund. Any costs or delays involved in the effectuation of a foreclosure of the loan or a liquidation of the underlying property will further reduce the proceeds and thus increase the loss.

***Risks Associated with Subordinate Debt.*** Certain debt instruments in which a Fund may invest may be subordinated to substantial amounts of senior indebtedness, all or a significant portion of which may be secured and/or subject the Fund to a "first loss" subordinate holder position. In such cases, the ability of the Fund to exercise its remedies upon a default, or to take action in anticipation of a default to protect the value of its investment, is likely to be substantially less than that of senior creditors. For example, under the terms of typical subordination agreements, senior creditors are able to block the acceleration of the junior debt or the exercise by junior debt holders of other rights they may have as creditors. Accordingly, the Adviser may not be able to take the steps necessary to protect the Fund's interests in a timely manner or at all.

Debt securities and investments of the type in which a Fund may invest are also subject to other risks arising out of the laws governing creditors' rights, including (i) the possible invalidation of an investment transaction as a "fraudulent conveyance" under relevant creditors' rights laws, (ii) the possible assertion of so-called "lender liability" claims by the issuer of the obligations and (iii) environmental liabilities that may arise with respect to the collateral securing the obligations. In many cases, the Adviser's management of Funds' investments and remedies with respect thereto, including the ability to foreclose on any collateral securing such investments, will be subject to the rights of senior lenders (if any) and contractual inter-creditor provisions. Accordingly, there can be no assurance that the Fund's rate of return objectives will be realized.

***Risks Associated with CMBS.*** A Fund may invest in commercial mortgage-backed securities ("CMBS") and mezzanine debt. Some of these investments in CMBS and mezzanine debt securities may be unsecured and subordinated to substantial amounts

of senior indebtedness, all or a significant portion of which may be secured and/or subject a Fund to a “first loss” subordinate holder position. The ability of the Adviser to influence a company’s affairs, on behalf of a Fund, especially during periods of financial distress or following insolvency, is likely to be substantially less than that of senior creditors. For example, under terms of subordination agreements, senior creditors will typically be able to block the acceleration of the mezzanine debt or other exercises by a Fund of its rights as a creditor. Accordingly, the Adviser may not be able to take the steps necessary to protect the Funds’ investments in a timely manner or at all. Further, the ability of a borrower to make payments on the loan underlying these securities is dependent primarily upon the successful operation of the property rather than upon the existence of independent income or assets of the borrower. In the event of default and the exhaustion of any equity support, reserve fund, letter of credit and any classes of securities junior to those in which a Fund invests, it will not be able to recover all its investment in the securities purchased. Investments in subordinate securities, such as CMBS and mezzanine debt, have a higher risk of loss than investments in more senior securities.

CMBS and mezzanine debt securities are also subject to other creditor risks including, but not limited to: (i) the possible invalidation of an investment transaction as a “fraudulent conveyance” under relevant creditors’ rights laws, (ii) so-called lender liability claims by the issuer of the obligations and (iii) environmental liabilities that may arise with respect to collateral securing the obligations. The securities a Fund invests in may be subject to early redemption features, refinancing options, prepayment options, or similar provisions which, in each case, could result in the issuer repaying the principal on an obligation held by a Fund earlier than expected, resulting in a lower return to a Fund than currently estimated. In many cases, the Adviser’s management of Funds’ investments and remedies with respect thereto, including the ability to foreclose on any collateral securing such investments, will be subject to the rights of the senior lenders and contractual inter-creditor provisions. In addition, depending on fluctuations of the equity markets and other factors, warrants and other equity securities may become worthless. Accordingly, there can be no assurance that a Fund’s rate of return objectives will be realized.

***Risks Associated with Mezzanine Loan Origination.*** A Fund may provide mezzanine financing to real estate development and operating companies for new acquisitions of multifamily real estate and refinancing transactions, which are typically secured primarily by a pledge of the development or the operating company’s direct or indirect ownership interests in the underlying real estate property. If a Fund provides mezzanine financing, its ability to foreclose on the pledged ownership interests in the underlying property may be constrained by inter-creditor uninsured arrangements that, for example, may require a Fund to cure material defaults under the underlying bank

loan before being entitled to foreclose on its collateral. Foreclosure may also be limited by the rights of the borrower under applicable law. Even if a Fund is able to foreclose on its collateral, as the new direct or indirect owner of the underlying property, a Fund will become the borrower, in effect, with respect to the underlying bank loan and the owner (subject to the underlying bank loan and any other senior mezzanine indebtedness) of the underlying property. Investments in mezzanine loans therefore involve not only the risks associated with subordination to the rights of senior lenders, but also the risks associated with ownership and management of the underlying property and the risks of being the borrower, in effect, with respect to a loan that may be in default.

***Risks Associated with High Yield Debt.*** A Fund may invest a portion of its capital in loans that are rated below investment-grade by one or more nationally recognized rating organizations or are unrated but of comparable credit quality to obligations rated below investment-grade. High yield debt is generally unsecured and is frequently subordinate to other obligations of the obligor. High yield debt is rated lower because the issuers thereof are more likely than other debtors to default on their obligations as a result of adverse changes in the financial condition of such debtor or in general economic conditions (including, for example, a substantial period of rising interest rates or declining earnings). Many issuers of high yield debt are highly leveraged, and because of such relatively high debt-to-equity ratios there is a greater risk that their operations might not generate sufficient cash flow to service their debt obligations. In addition, many issuers of high yield debt may (i) be in poor financial condition, (ii) be experiencing poor operating results, (iii) have substantial capital needs, (iv) have negative net worth, (v) be subject to particular competitive issues or (vi) be subject to bankruptcy or other reorganizations or liquidation proceedings. Certain of these securities may not be publicly traded, and therefore it may be difficult to obtain information as to the true condition of the issuers. Overall declines in the below investment-grade bond and other markets may adversely affect such issuers by inhibiting their ability to refinance their debt at maturity. In most cases, such debt will be rated below “investment grade” or will be unrated and face ongoing uncertainties and exposure to adverse business, financial or economic conditions and the issuer’s failure to make timely interest and principal payments. The market for high-yield securities has experienced periods of volatility and reduced liquidity. The market values of certain of these debt securities may reflect individual corporate developments. It is likely that a general economic recession or a major decline in the demand for products and services, in which the obligor operates, could have a materially adverse impact on the value of such securities. In addition, adverse publicity and investor perceptions, whether or not based on fundamental analysis, may also decrease the value and liquidity of these debt securities.

***Risks Associated with Bank Loans.*** A portion of a Fund's investments may consist of interests in loans originated by banks and other financial institutions. The loans invested in by a Fund may include term loans and revolving loans, may pay interest at a fixed or floating rate and may be senior or subordinate. Purchasers of bank loans are predominantly commercial banks, investment funds and investment banks.

A Fund may acquire interests in bank loans either directly (by way of sale or assignment) or indirectly (by way of participation). The purchaser of an assignment typically succeeds to all the rights and obligations of the assigning institution and becomes a lender under the credit agreement with respect to the debt obligation; however, its rights can be more restricted than those of the assigning institution. Participation interests in a portion of the debt obligation typically result in a contractual relationship only with the institution participating out the interest, not with the borrower. If a Fund purchases participations, then the Fund generally will have no right either to enforce compliance by the borrower with the terms of the underlying loan or to set-off obligations that the Fund may otherwise owe to the borrower and may only be able to enforce its rights through the institution selling the participation. Furthermore, the Fund may not directly benefit from the collateral supporting the loan in which it has purchased the participation. As a result, the Fund would assume the credit risk of both the borrower and the institution selling the participation. Purchases of participations in bank loans raise many of the same risks as investments in bank loans and also carry risks of illiquidity and lack of control.

Investment in loans through a direct assignment of a financial institution's interests with respect to the loan may involve additional risks to a Fund. For example, if a loan is foreclosed, a Fund could become part owner of any collateral, and would bear the costs and liabilities (including tax liabilities) associated with owning and disposing of the collateral. In addition, it is conceivable that, under emerging legal theories of lender liability, a Fund could be held liable as a co-lender. It is unclear whether loans and other forms of direct indebtedness offer securities laws protections against fraud and misrepresentation. In the absence of definitive regulatory guidance, a Fund relies on the Adviser's research in an attempt to avoid situations where fraud or misrepresentation could adversely affect the Fund.

***Limited Information.*** Investment analyses and decisions by a Fund's General Partner (if applicable) and/or Adviser may frequently be required to be undertaken on an expedited basis to take advantage of investment opportunities. In such cases, the information available at the time of making an investment decision may be limited, and a General Partner and/or Adviser may not have access to complete information regarding the investment, such as physical matters, zoning regulations or other local conditions affecting an investment. In addition, in certain instances, the General Partner

and/or Adviser may not receive access to all available information to determine fully the origination, credit appraisal and underwriting practices utilized with respect to an investment or the manner in which the investment has been serviced or operated. Therefore, no assurance can be given that a General Partner and/or Adviser will have knowledge of all circumstances that may adversely affect an investment. In addition, a Fund's General Partner (if applicable) and/or Adviser expect to rely on specialized expert input by various third-party consultants and service providers in connection with its evaluation of proposed investments.

***Portfolio Acquisition and Multi-Step Transaction Risks.*** A Fund may acquire multiple assets in a single transaction. Portfolio acquisitions are more complex and expensive, however, than single asset acquisitions, and the risk that a multiple asset acquisition will not close may be greater than in a single asset acquisition. A seller may require that a group of assets be purchased as a package, even though one or more of the assets in the portfolio does not meet a Fund's investment criteria. In such cases, the Adviser, on behalf of a Fund, may attempt to make a joint bid with another buyer that may default on its obligations, or the Adviser, on behalf of a Fund, may purchase a portfolio of assets with the intent to dispose subsequently of those assets that the Adviser has determined the Fund should sell. There is no guarantee, however, that the Adviser, on behalf of a Fund, will successfully dispose of such assets or that it will be able to dispose of them on terms favorable to the Fund.

If the Adviser chooses to effect a transaction on behalf of a Fund by means of a multi-step acquisition, there can be no assurance that all of such required steps can be successfully consummated. This could possibly result in the Fund owning a significant real estate investment without having working control over the assets or access to its cash flow to service debt incurred in connection with the acquisition and without being able to dispose of such position at prices equal to or greater than its purchase price.

***Control Issues.*** In certain situations, the Adviser, on behalf of a Fund, may acquire a non-controlling interest in a company or other asset in which a Fund invests may rely on independent third-party management or strategic partners with respect to the operation of a company or other asset in which it invests or may only acquire a participation in an asset underlying an investment, and therefore, may not be able to exercise control over the management of such company or investment. Such investments may involve risks in connection with such third-party involvement, including the possibility that a third-party partner or investor may have financial difficulties, resulting in a negative impact on such investment, may have economic or business interests or goals which are inconsistent with those of a Fund or may take action contrary to a Fund's investment objectives. In addition, a Fund may in certain circumstances be liable for the actions of its third-party partners or investors. A Client



may not have absolute control over the management of such investment in instances where a Fund co-invests with a co-investment vehicle or another Fund, or in a joint venture arrangement.

***Liquidity Considerations.*** A Fund's investments generally will be illiquid. Real estate investments by their nature are often difficult or time-consuming to liquidate. Moreover, there can be no assurance that a Fund will realize value on its investments in a timely manner. Dispositions of a Fund's investments also may be subject to contractually imposed limitations on transfer or other restrictions that could interfere with the sale of a Fund's investments or adversely affect the terms that could be obtained upon any sale. This illiquidity may limit the ability of the Adviser to change the composition of a Fund's portfolio promptly in response to changes in economic or other conditions and limit near-term cash flow available for distribution to its Underlying Investors.

***Investments Longer than Term.*** The Adviser, on behalf of a Fund, may make investments that may not be advantageously disposed of prior to the date that a Fund will be dissolved, either by expiration of such Fund's term or otherwise. Although the Adviser expects that investments will be disposed of prior to dissolution or be suitable for in-kind distribution at dissolution, the Adviser generally will have only a limited ability to extend the term of any Fund and such Fund may have to sell, distribute or otherwise dispose of investments at a disadvantageous time as a result of dissolution.

***Liabilities Upon or Following Disposition of Investments.*** In connection with the sale or other disposition of an investment, a Fund may be required to make representations about the business and financial affairs of an investment typical of those made in connection with the sale of any business or asset, or may be responsible for the content of disclosure documents under applicable securities laws. It may also be required to indemnify the purchaser of such investment to the extent that any such representations or disclosure documents are determined to be inaccurate or misleading. These arrangements may result in contingent liabilities, which might ultimately have to be funded by the Underlying Investors in a Fund to the extent that such Underlying Investors have received prior distributions from the Client.

***Third Party Claims.*** A Fund may invest in properties subject to known or unknown liabilities and with limited or no recourse. As a result, if liability were asserted against such Fund based upon such properties, such Fund might have to pay substantial sums to dispute or remedy the matter, which could adversely affect such Fund's cash flow. Unknown liabilities with respect to investment properties could include, for example, liabilities for clean-up of undisclosed environmental contamination; claims by residents, vendors or other persons relating to the former owners of the properties;

liabilities incurred in the ordinary course of business; and claims for indemnification by the general partners, directors, officers, and others indemnified by the former owners of the properties.

***Risks of Leverage Generally.*** A Fund's underlying investment entities will likely utilize a leveraged capital structure, in which case a third party typically would be entitled to cash flow generated by such investments prior to such Fund receiving a return. Although the use of leverage may enhance returns and increase the number of investments that can be made, it may also substantially increase the risk of loss. Additionally, use of leverage on any particular investment will increase the exposure of such investment to adverse economic factors such as rising interest rates, severe economic downturns or deterioration in the condition of the real estate investment or its market. The extent to which a Fund uses leverage may have important consequences to its Underlying Investors, including, but not limited to, the following: (i) greater fluctuations in the net assets of such Fund; (ii) use of cash flow (including capital contributions) for debt service and related costs and expenses, rather than for additional investments, distributions or other purposes; (iii) increased interest expense if interest rate levels were to increase significantly; (iv) in certain circumstances, prematurely harvesting investments to service such Fund's debt obligations; and (v) limitation on the flexibility of such Fund to make distributions to its Partners or sell assets that are pledged to secure the indebtedness. In addition, if a property is mortgaged to secure payment of indebtedness and a Fund is unable to meet its mortgage payments, the property could be foreclosed upon or otherwise transferred to the mortgagee, with a consequent loss of income and asset value to such Fund.

***Interest Rate Fluctuation.*** A Fund may incur variable rate indebtedness. In that case, increases in interest rates would increase such Fund's interest costs thereby decreasing the amount of available funds for distribution to its Underlying Investors. Increases in interest rates also may cause a reduction in the value of the Fund's investments. Interest rates are highly sensitive to many factors, including governmental monetary and tax policies that are beyond the control of a Fund. The Adviser, on behalf of a Fund, may employ a hedging strategy to limit the effects of changes in interest rates including engaging in interest rate swaps, caps, floors and other interest rate exchange contracts. There is a cost associated with the use of these types of derivatives to hedge a Fund's assets and liabilities. Moreover, there is no perfect hedge for any investment, and a hedge may not perform its intended use of offsetting losses on an investment. With respect to certain potential hedge instruments, a Fund is exposed to certain counterparty risks, such as a swap counterparty ceasing to make markets and quote prices in such instruments, which may render the Fund unable to enter into an offsetting transaction with respect to an open position. Consequently, the profitability of a Client may be adversely affected during any period because of changing interest rates.

***Environmental Considerations.*** A Fund could face meaningful risk of loss from lawsuits related to environmental claims associated with such Fund's investments. A Fund may be held liable pursuant to environmental claims under various federal, state and local laws, ordinances and regulations as well as common law principles (collectively, "Environmental Laws") for the costs of removal or remediation of certain hazardous or toxic substances on or in a property and subject a Fund to claims or liability for the costs of removal or remediation of hazardous substances that are released at, in, on, under or from the property. The cost of any required remediation and the owner's liability therefor as to any property are generally not limited under such laws and could exceed the value of the property and/or the aggregate assets of the owner. In addition to claims for cleanup costs, the presence of hazardous substances on or the release of hazardous substances from a property or a facility and persons who arranged for off-site disposal activities could result in a claim by a private party for personal injury or property damage or could result in a claim from a governmental agency for other damages. Liability under such Environmental Laws can be imposed on the owner or the operator of real property or a facility without regard to fault or even knowledge of the release of hazardous substances and other regulated materials on, at, in, under, or from the property or facility. In addition, some Environmental Laws create a lien on the contaminated site in favor of the government for damages and costs it incurs in connection with contamination. Any environmental studies that may be conducted before a Fund invests in a property cannot guarantee that such Fund will be aware of all contamination at such property and the subsequent costs of removal, management or remediation, either because such conditions were latent or because of changes in laws and regulations. The presence of hazardous substances in amounts requiring response action or the failure to undertake necessary remediation may adversely affect a Fund's ability to use or sell real estate or borrow money using such real estate as collateral, which could have an adverse effect on a Fund's return from such investment.

Certain U.S. federal, state, and local laws, regulations, and ordinances govern the removal, encapsulation, or disturbance of asbestos-containing materials ("ACMs") when such materials are in poor condition or in the event of construction, remodeling, renovation, or demolition of a building. These laws may impose liability for release of ACMs and may provide for third parties to seek recovery from owners or operators of real property for personal injury associated with ACMs. In connection with its ownership and operation of real estate, a Fund may incur liability for such costs.

***Compliance with Americans with Disabilities Act and the Fair Housing Act and Other Changes in Governmental Regulations.*** Under the Americans with Disabilities Act of 1990 (the "ADA"), all public properties are required to meet certain U.S. federal requirements related to access and use by disabled persons. In addition, changes in

governmental rules and regulations, including Title VIII of the Civil Rights Act of 1968 (the “Fair Housing Act”), or enforcement policies affecting the use or operation of the properties, including changes to building, fire, and life-safety codes, may occur. Properties underlying a Fund’s investments may not be in compliance with the ADA, the Fair Housing Act or other governmental requirements. If a property is not in compliance with the ADA, the Fair Housing Act or other governmental requirements, then a Fund may be required to make modifications to such property to bring it into compliance, or face the possibility of an imposition of fines or an award of damages to private litigants. A Fund may also incur additional costs from time to time in the future to stay in compliance with any changes in the ADA, the Fair Housing Act or other governmental regulations. Additional legislation may impose further burdens or restrictions on owners with respect to access by disabled persons. The ultimate amount of the cost of compliance with the ADA, the Fair Housing Act or such other legislation is not currently ascertainable and, while such other costs are not expected to have a material effect on a Fund, such costs could be meaningful.

***Uninsured Losses.*** The Adviser generally intends to maintain and/or require to be maintained comprehensive insurance on each of Funds’ real property investments, including general liability, fire, extended coverage and rental loss insurance, with reputable carriers and with policy specifications and insured limits which the Adviser believes are adequate and appropriate under the circumstances, given relative risk of loss, the cost of such coverage and industry practice. If any of the portfolio companies in which a Fund invests fails to comply with these requirements and an uninsured loss occurs, the consequences may be adverse for the Fund. Additionally, there are certain types of losses, generally of a catastrophic nature, including, without limitation, wars, natural disasters, terrorist attacks and other similar events, that may be uninsurable or insurable only on commercially unrealistic terms. Although in general, losses related to terrorism are difficult to ensure against due to stringent federal guidelines in place defining acts of terrorism that trigger insurance coverage, Berkshire does purchase insurance to protect each Fund’s real assets against damages resulting from terrorism events. Even if insurance is in place and an insured loss is paid, inflation, changes in building codes and ordinances, environmental considerations and other factors may also make it infeasible to use the insurance proceeds to repair or replace a property if it is damaged or destroyed. If an uninsured loss or a loss more than insured limits occurs with respect to one or more of a Fund’s investments, the Fund could lose the value of these investments, as well as the anticipated future revenue from those investments. Any such loss could adversely affect the financial condition, results of operations and cash flow of a Fund.

***Risks Related to Investments in Senior Housing.*** The Adviser may invest in senior housing development projects and acquisitions of senior housing facilities. This may

come in the form of assisted living, memory care and senior independent living opportunities. The Adviser intends to rely on third-parties to manage the day-to-day operations of senior housing facilities, which are subject to the risks described above in Control Issues. Senior housing investments are also vulnerable to government regulatory oversight, changes in applicable law, and the risks that the population levels, economic conditions or employment conditions may decline in the surrounding geographic area. Any of these developments likely would have an adverse impact on the size or affluence of the resident population in the area and a negative impact on the occupancy rates, rent levels, property values and net operating income.

***Governmental, Legal, Tax and Regulatory Risk Generally.*** The regulatory environment for private investment funds is evolving; legal, tax, and regulatory changes could occur during the term of a Fund that may adversely affect a Fund or its investors. Changes in laws and regulations could result in increased compliance costs, additional capital expenditures or additional potential liabilities. In addition, the securities and futures markets are subject to comprehensive statutes, regulations, and margin requirements. U.S. and foreign regulatory bodies, self-regulatory organizations and exchanges are authorized to take extraordinary actions in the event of market emergencies.

***Bridge Loans.*** Certain Funds provide bridge financing to one or more borrowers with the expectation of a subsequent sale or refinancing within 12-60 months. For reasons not always in the Fund's control, such sale or refinancing may not occur, which would result in such bridge investment being outstanding longer than anticipated. In such event, the Fund may have more risk associated with such borrower or more capital invested in such borrower than originally anticipated and would not be able to invest that capital in other investments of the Fund.

***Consequence of Default on Commitments.*** In the event that a Limited Partner fails to fund any of its Commitment when required, such Limited Partner may forfeit a portion of its Interest in a Fund, may be subject to a forced sale of its Interest in a Fund and may be precluded from participating in future investments. Additionally, if one or more Limited Partners fail to fund their capital contributions when due, a Fund's ability to complete its investment program, pay its obligations when due or otherwise continue operations may be substantially impaired. A default by a substantial number of Limited Partners would limit opportunities for investment diversification and likely reduce returns to a Fund. In addition, it may be difficult or impossible to obtain or enforce a judgment against certain defaulting Limited Partners such as, for example, those affiliated with foreign governments or international organizations established by treaty that enjoy certain immunities, including immunities from taxation and service of process, for the amount of their capital calls, if the Fund were to have such investors as Limited Partners. The inability of a Fund to enforce certain Limited Partners' obligations to contribute capital to a Fund could impair the Fund's ability to take advantage of investment opportunities

***Cyber Security Breaches and Identity Theft.*** Cyber security incidents and cyber-attacks are occurring globally at more frequent and severe levels and will likely continue to increase in frequency in the future. Information and technology systems may be vulnerable to damage or interruption from computer viruses and other malicious code, network failures, computer and telecommunication failures, infiltration by unauthorized persons and security breaches, usage errors by their respective professionals or service providers, power, communications, or other service outages and catastrophic events such as fires, tornadoes, floods, hurricanes, and earthquakes. If unauthorized parties gain access to such information and technology systems, they may be able to steal, publish, delete, or modify private and sensitive information. Although the Adviser has implemented various measures to manage risks relating to these types of events, including obtaining a cybersecurity risk insurance policy, and such systems could prove to be inadequate and, if compromised, could become inoperable for extended periods of time, cease to function properly or fail to adequately secure private information. Breaches such as those involving covertly introduced malware, impersonation of authorized users, and industrial, governmental or other espionage may not be identified even with sophisticated prevention and detection systems, potentially resulting in further harm and preventing it from being addressed appropriately. The Adviser may have to make significant investments to fix or replace such systems. The failure of these systems and/or of disaster recovery plans for any reason could cause significant interruptions in operations and result in a failure to maintain the security, confidentiality, or privacy of sensitive data, including personal information relating to investors (and their beneficial owners) and the intellectual property and trade secrets of the Adviser. Such a failure could harm the reputation of the Adviser, subject them to legal claims and adverse publicity and otherwise affect their business and financial performance.

***Distributions in Kind.*** Although, under normal circumstances, a Fund intends to make distributions in cash, it is possible that under certain circumstances (including the liquidation of a Fund), distributions may be made in kind and could consist of securities for which there is no readily available public market. In such event, there can be no assurance that any investor will be able to dispose of such securities at the value determined by the independent expert appointed by a Fund to value such securities (which value will be used in determining the General Partner's carried interest).

***Liability for Return of Distributions.*** If a Fund is otherwise unable to meet its obligations, the Partners may, under applicable laws or applicable provisions of the Partnership Agreement, be obligated to return certain cash distributions previously received by them to fund the liabilities and obligations of the Partnership, subject to certain limitations as set forth in the Partnership Agreement, or to the extent such distributions are deemed to have been wrongfully paid to them. In addition, a Partner may be liable under applicable U.S. federal and state bankruptcy or insolvency laws to return a distribution made by a Fund with respect to an investment that becomes subject to bankruptcy or insolvency proceedings.

***Risks Related to Preferred Equity Investments.*** A Fund may make investments in preferred equity interests. While preferred equity interests are senior to common equity

and will therefore be entitled to receive certain distributions before distributions on common equity are paid, they are subordinate to any debt in the capital structure of the issuer. Available cash and assets of the issuer are therefore used first to pay amounts owed to its senior debt holders, and there is no guarantee that the issuer will have sufficient remaining cash to pay any distributions owed on the preferred equity. In addition, preferred equity interests are unsecured and generally have no rights to foreclose on the underlying real estate assets of the issuer in the event the issuer is unable to pay dividends on the preferred equity. Preferred equity interests also typically do not carry voting rights.

***Reliance on Key Personnel.*** A Fund's future success depends, to a significant extent, upon the continued services of certain key personnel of the Investment Manager. There can be no assurance that such key individuals will continue to serve in their current positions or continue to be employed by the Investment Manager. Berkshire significantly reduces the risk of losing valuable institutional knowledge by building out a team of experienced individuals with the ability to carry out critical investment and operational functions should a key person leave the firm. However, if a significant number of individuals left the firm over a short period of time, replacing multiple individuals could be difficult, and this type of scenario could have a material adverse effect on a Fund's investment results and its prospects in the short term.

***Risk Related to a Pandemic or Public Health Emergencies.*** An outbreak of an infectious disease and/or any other serious public health concern leading to government action on the federal, state and local level resulting in travel restrictions, quarantines, shelters-in-place and/or closure of offices, businesses or other public venues, could have a significant impact on the global economy, adversely affecting the Adviser and the Funds. The degree of a public health emergency's impact on the operational and financial performance of a Fund will depend on many factors, such as its duration and scope, any related government travel advisories and restrictions, the availability of certain goods and services, the nature of investor activity, macroeconomic reactions and ensuing government policy responses, all of which cannot be predicted with certainty. A public health emergency can not only have material and adverse impacts on the value and performance of the Fund's investments, but also on the ability of the Fund and to source, manage and divest investments and achieve its investment objectives, all of which could result in significant losses to the Fund. Furthermore, the operations of a Fund's investments, the Fund itself and the Fund's General Partner may be significantly impacted, or cease indefinitely, as a result of government actions and the potential adverse impact on the health of each entity's personnel.

***Climate Change Risk.*** Berkshire's property investments may be susceptible to physical and operational impacts of potential climate change in the area where they are located. Failure to assess this risk properly could result in higher expenses (through rising insurance costs or physical property damage) and/or lost revenue (impacts on available units to rent due to damage and or business interruption) that will negatively affect performance and therefore result in lower fees collected from our Funds, impacting the Adviser's revenue. The risk of climate change may also impact future investments by

the Funds, as the General Partner may choose not to pursue otherwise attractive investment opportunities in areas where climate change is more likely to occur.

**Item 9. Disciplinary Information**

There are no legal or disciplinary events to report that are material to a Fund's or prospective Fund's evaluation of our advisory business or the integrity of our management.

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

Each of the Adviser's Funds, as of December 31, 2019, that is a Fund organized as partnership or limited liability company has an affiliate of the Adviser serving as its General Partner or Manager. Listed below are the current General Partners and Managers:

- Berkshire Multifamily Value Plus Fund GP III, L.L.C. (the General Partner to Berkshire Multifamily Value Fund III, L.P.).
- Berkshire Multifamily Value Plus Fund IV GP, L.L.C. (the General Partner to Berkshire Multifamily Value Plus Fund IV, L.P., BVF-VI (Co-Invest) KJ08, L.P., BVF-IV (Co-Invest) K728, L.P., and BVF-IV (Co-Invest) K726, L.P.).
- Berkshire Value Fund V GP, L.L.C. (the General Partner to Berkshire Value Fund V, L.P.).
- Berkshire FF Multifamily Co-Investment Fund GP, L.L.C. (the General Partner to Berkshire FF Multifamily Co-Investment Fund, L.P.).
- Berkshire Multifamily Equity Fund GP, L.L.C. (the General Partner to Berkshire Multifamily Equity Fund, L.P.).
- Berkshire Multifamily USA Property Partners GP, L.L.C. (the General Partner to Berkshire Multifamily USA Partners, L.P.).
- Berkshire Multifamily Income Realty Fund GP, LLC (the General Partner to Berkshire Multifamily Income Realty Fund, L.P. d/b/a as Berkshire Core Fund).
- The Berkshire Companies Limited Partnership (the Manager to APTCO Holdings, L.L.C.).
- Berkshire Seaport, L.L.C. (the Manager to Seaport Del Co., L.L.C. and Seaport U.S. Co., L.L.C.).
- BIR GP, L.L.C. (the General Partner to Berkshire Income Realty-OP L.P.).
- Berkshire Multifamily Debt Fund II GP, L.L.C. (the General Partner to Berkshire Multifamily Debt Fund II, L.P.).
- Berkshire Senior Housing Fund I GP, LLC (the General Partner to Berkshire Senior Housing Fund I, L.P.).
- Berkshire Bridge Loan Investors I GP, LLC (the General Partner to BBLI)



- Berkshire Bridge Loan Investors II GP, LLC (the General Partner to Berkshire Bridge Loan Investors II, L.P.)
- PBOne GP, LLC (the General Partner to PBOne America Residential Investors, L.P.)

Each General Partner has made a capital commitment to invest in the applicable Fund it serves as General Partner, and in connection with the commitment, it will be (or is) invested *pro rata* with the limited partners in the Fund in all transactions of the Fund. Each General Partner and its affiliates may invest their capital through one or more limited partners in a Fund or, in the sole discretion of the applicable General Partner, through a separate co-investment vehicle on substantially the same terms and conditions as the Fund. A General Partner's investment in a Fund through a limited partnership interests may create conflicts of interest to the extent that the consent of limited partners in a Fund is required, and therefore, any such limited partner through which a General Partner invests in a Fund will not participate in any consent process relating to the limited partners of the Fund.

The Adviser does not usually recommend or select other investment advisers for its Funds. From time to time, the Adviser may cause one or more of its Funds to make investments in joint ventures, whether through tenancies-in-common or other venture partnerships, with a seller of a property investment, an independent third party or another investment entity sponsored by the Adviser's affiliates (including another Fund), generally in structures where the Adviser retains control rights over any major decisions relating to such joint ventures.

There are occasions when the Adviser and its affiliates encounter potential conflicts of interest in connection with a Fund, including in connection with the following aspects of the activities of the Adviser and its Funds:

In addition to the investment advisory services the Adviser provides to its Funds, as described in this Brochure, the Adviser and its affiliates also provide property management, construction management and development management services for multifamily real estate developments and other properties owned as investments by its Funds or affiliates. Additional information regarding such services is included in Item 11.

Each Fund will rely on the Adviser (and, in part, on an affiliated General Partner, if applicable) for the day-to-day administration and operation of the Fund and the management of the Fund's investments. Members of the Adviser's management team are not under any obligation to devote their full time and attention solely to the business of any particular Fund. They may work on other projects for the Adviser or its affiliates, subject to any restrictions set forth in a Fund's Governing Documents. Consequently, conflicts of interest may arise in allocating management time, services

or functions of key personnel, as well as other officers and employees of the Adviser to the extent they are needed for services or functions on behalf of any particular Fund at the same time.

Except as limited by a Fund's Governing Documents, the Adviser, any applicable General Partner, and their respective directors, members, partners, shareholders, officers, employees, agents and affiliates (collectively, the "Affiliated Parties") could conduct other business, whether or not such business is in competition with any Fund. The Affiliated Parties may own interests in other properties in the same general location as the properties in which a Fund has an interest, and such properties may compete with those of a Fund for buyers, residents or financing. While the Adviser and its affiliates intend to avoid situations involving conflicts of interest, conflicts of interest may nevertheless arise in the day-to-day operations of the Adviser's Funds and the conduct of other businesses. In addition, as a result, the Adviser, any applicable General Partner, and their affiliates may from time to time acquire confidential or material non-public information that they will not be able to use for the benefit of a Fund, which may lead to such Fund not being able to initiate a transaction that it otherwise might have initiated and not being able to sell an investment that it otherwise might have sold.

An affiliate of the Adviser, Berkshire Realty Ventures, L.L.C. ("BRV"), manages a pooled vehicle that currently has a controlling interest in various joint ventures that are in the business of owning properties that include hotels, office, industrial, mixed-use and senior living facilities. The pooled vehicle may hold interests in other real-estate related operating companies in the future. The pooled vehicle managed by BRV is controlled and managed by Affiliated Parties of the Adviser, and Affiliated Parties also own all the equity interests therein and in BRV. Therefore, despite their relatively small percentage of Berkshire's overall advisory business, the activities of BRV may still compete for the time, services or functions of those members of the Adviser's key personnel, other officers and employees to the extent that they also work on matters related to BRV from time to time. Additionally, certain Funds managed by the Adviser may work on residential housing development projects with joint venture partners in which BRV holds a controlling interest. Despite mitigating controls in the Adviser's investment process, the Adviser may have further incentive to work with such joint venture partners when planning development projects for investments in its Funds.

Listed below are the current General Partners and Managers of BRV Funds:

- BRVP GP, L.L.C. (the General Partner to BRV Partners Fund I Limited Partnership)
- BRVP II GP, L.L.C. (the General Partner to BRV Partners Fund II, LP)

Investment vehicles managed by the Adviser and its affiliates existing prior to the formation of any particular Fund may have limited rights to acquire investments that might otherwise be suitable for such Fund. In addition, although a Fund's Governing Documents may contain limitations on the ability of the Adviser or its affiliates to form successor investment vehicles (each, a "Successor Fund") until the expiration of conditions set forth in the Governing Documents, it is still possible, subject to any such applicable limitations, that a Successor Fund may be launched before an existing Fund's capital commitments from Underlying Investors have been fully invested or committed for investment. The Adviser and its affiliates are also permitted to pursue certain investments outside of the Funds, subject to any applicable restrictions set forth in a Fund's Governing Documents.

The Adviser and its affiliates has in the past, and may in the future, offer co-investment opportunities to third parties. As a result, the Adviser may encounter conflicts of interest in allocating investments between such entities and the Funds. For a description of the Adviser's policy and procedures relating to the allocation of investment opportunities, see Item 11.

Certain of the Adviser's Funds are controlled and managed by affiliates of Berkshire. In addition, there may be other or different potential conflicts of interest that arise in the future. Additional information regarding investments by affiliates of Berkshire in certain of the Adviser's Funds, as well as other conflicts of interest arising from the relationships and activities of the Adviser and its affiliates is provided below in Item 11.

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

The Adviser has adopted a Code of Ethics (the "Code"), which includes policies and procedures governing personal trading activities, conflicts of interests, fair dealing, handling confidential information, handling material non-public information, accepting and offering gifts, making political contributions, and engaging in outside business activities. The Code is applicable to all of the Adviser's personnel, both non-clerical and clerical, who are directly or indirectly involved in Berkshire's investment advisory business (the "Advisory Personnel"). The Code is intended to seek to ensure that such persons act in the best interests of the Adviser's Clients and particularly, that each such person conducts his or her affairs, including personal securities transactions, in a manner as to avoid serving his or her own personal interests ahead of the Clients.

As described in Item 10, from time to time the Adviser may cause one or more of its Funds to make investments in joint ventures, whether through tenancies-in-common or other venture partnerships, with a seller of a property investment, an independent third party or

another investment entity sponsored by the Adviser's affiliates (including another Fund). In the past the Adviser, in limited circumstances, has also caused a Fund to invest in another Fund managed by the Adviser. Such investments may occur, in limited circumstances, in the future. The Adviser will only cause a Fund to invest in a joint venture as described above, or to invest in another Fund, if and to the extent permissible pursuant to a Fund's Governing Documents, and provided that the Adviser has determined the investment is appropriate in light of the Fund's applicable investment strategies and restrictions. If a Fund makes such an investment through a structure where Berkshire is paid corresponding fees by the Fund and at any other level within the structure, Berkshire will waive or set off any such fees payable to Berkshire in order to ensure that no Fund pays a "double layer" of fees.

Not all of the Adviser's Funds pay performance-based compensation to the Adviser (or its affiliated General Partners), and not all performance-based compensation is charged at the same rates. The Adviser and its affiliates may face conflicts of interest in this regard, as further described in Item 6. In addition, in an effort to increase potential returns to its Funds, and thereby to increase potential performance-based compensation to one or more of its General Partners or to itself, as applicable, the Adviser may have an incentive to select investments for a Fund that involve a higher degree of risk than might otherwise be the case if the General Partner were not so compensated. Furthermore, a General Partner could be inclined to consider the capital needs of Berkshire (including the Adviser and its affiliates) when determining the amount and timing of distributions to be made by a Fund to its Underlying Investors.

The Adviser may also face conflicts of interests in relation to its allocation of investment opportunities among its Funds. In allocating investment opportunities among its Funds, the Adviser may face incentives to favor those Funds in which its affiliates hold equity interests or where the Adviser or a General Partner is entitled to receive performance-based compensation over other Funds that do not pay the Adviser or a General Partner any performance-based compensation (or, similarly, to favor Funds with performance-based compensation arrangements that are paid at a higher rate or that otherwise pay higher amounts to the Adviser or a General Partner).

The Adviser has implemented policies and procedures to seek fair and equitable allocation of investment opportunities among its Funds. Pursuant to its allocation policy and procedures, the Adviser's overall objective is to treat each Fund in a fair and equitable manner, depending on the particular facts and circumstances and the needs and financial objectives of each of the Funds. Allocations of investment opportunities will not be based upon a Fund's performance or applicable fee structures or other factors that might otherwise provide an incentive to give preferential treatment to one or more Funds. Each Fund has its own investment guidelines and Governing Documents that must be considered by the Adviser in making investment allocation determinations. Many Funds' Governing

Documents also include specific allocation rules (each, an “Allocation Rule”) that the Adviser is required to observe, subject to any waivers permitted in accordance with the Funds’ relevant Governing Documents. Allocation Rules include, but are not limited to:

- provisions relating to exclusivity with respect to particular types of investments during certain time periods, and specified exceptions thereto;
- provisions that may permit certain types or categories of investments to be made by a Fund, notwithstanding a conflicting Allocation Rule; and
- provisions that limit the concentration of a Fund in one or more particular categories of investments.

If and to the extent that an applicable Allocation Rule is permitted to be waived, and is waived, the Adviser will document the reasons for the determination, and will comply with any required notifications pursuant to the applicable Governing Documents.

The Adviser may also face certain conflicts of interests in relation to its allocation of certain expenses among its Funds, as the Adviser may face incentives to allocate fewer expenses to those Funds where the Adviser or a General Partner is entitled to receive performance-based compensation. In particular, if and to the extent permissible pursuant to their applicable Governing Documents, one or more Funds may be required to bear certain expenses relating to unconsummated transactions. If an investment opportunity is not consummated, the Fund(s) to which such investment opportunity was initially allocated will generally bear some or all such expenses, and may also be required to bear certain termination fees, if applicable to that investment opportunity. In the event that a particular investment opportunity has not been allocated to one or more Fund(s) at the time that such investment opportunity is terminated or otherwise, for any reason, cannot be consummated, then the Adviser shall seek to allocate any related expenses and termination fees, if any, in a manner that is fair and equitable, in light of all applicable circumstances, and in a manner which is not based upon any Fund’s applicable fee structures or any other factors which could appear to provide preferential treatment to one or more Funds.

Berkshire and certain principals, officers and senior-level employees have in the past, and may in the future, invest in Funds for their own accounts, subject to each Fund’s applicable eligibility criteria. While non-affiliated limited partners own the majority of the equity interests in most of our Funds, Berkshire’s principal owners and members of their families own, directly or indirectly, all or substantially all the equity interests in some of our Funds. Such principal owners, in their management capacities with the Adviser and their positions on the investment committees (each, as further described in Item 16, an “Investment Committee”) for the Adviser’s Funds, may have an incentive to (i) dedicate additional time and resources to those Funds in which they and/or their family members hold equity interests, and (ii) allocate attractive investment opportunities to such Funds. Each of the

foregoing conflicts of interests could have a detrimental effect on the performance of the investment portfolios of Berkshire's other Funds. If a conflict arises, Berkshire will address these by acting in the best interests of each applicable Fund, in a fair and equitable manner, in accordance with each applicable Fund's Governing Documents, and after taking into consideration all relevant circumstances.

Certain services are provided to Funds by Berkshire and its affiliates, including property management, construction management and development management services. This may create a conflict of interest with Funds, as the Funds generally cannot select other service providers to provide these services to them or negotiate compensation for such services, having delegated to the Adviser the rights to engage its affiliates for such services (or to provide such services itself), and to cause the fees for such services to be paid by the applicable Funds. Conflicts of interest may also arise with respect to related contract terms, such as, for example, in determining whether a service provider is entitled to be indemnified pursuant to any agreement between a Fund and such service provider or whether such service provider has satisfactorily performed in compliance with its agreement with a Fund. The Adviser addresses such conflicts by seeking to ensure that the fees chargeable to any Fund for the relevant services to be provided by Berkshire or its affiliates, in each case as provided in the Fund's Governing Documents, are clearly defined in the Funds' Governing Documents. In addition, any other services provided by Berkshire and its affiliates to a Fund and its investments are typically required to be made on terms and conditions that are at least comparable to the terms and conditions that would be available in arm's-length transactions with independent third parties providing similar services. However, any fees charged in connection with such services and any other terms and conditions relating to such services will not actually be determined through arm's-length negotiations.

Neither the disclosures in this Item 11 nor the policies and procedures in the Adviser's Code can address every possible circumstance that may give rise to conflicts of interests that may impact the Adviser's Funds. The Adviser's Code requires that its Advisory Personnel be alert to potential conflicts of interest and that any potential conflict of interests must be reported immediately to the Adviser's Chief Compliance Officer.

We will provide a copy of our Code to any Client and Underlying Investor or prospective Client and Underlying Investor upon request made to the Adviser's Chief Compliance Officer or designee.

## **Item 12. Brokerage Practices**

The Funds' investment strategies do not typically involve public securities. The Adviser does not generally select or recommend broker-dealers for Fund transactions, however certain Funds maintain a brokerage account for purposes of engaging in limited money

market fund transactions, as temporary investments, if permitted pursuant to their Governing Documents.

The Adviser does not have any formal arrangements where it obtains research and brokerage services with Funds' commissions ("soft dollars") that would commit the Adviser to any specific or implied level of trading with any broker-dealer or a third party in connection with Funds' securities transactions.

The Adviser and its affiliates will determine the commissions to be paid to real estate brokers used in connection with the purchase, sale or leasing of Funds' real estate properties. This discretion may be exercised without obtaining consent of the Fund. In selecting the real estate broker, the Adviser and its affiliates evaluate various factors including, but not limited to, the broker's experience and knowledge of specific property and local market conditions, the type of property involved, and the fee charged.

The Adviser will select brokers to sell private debt securities held as part of its debt strategies. Sales of private debt securities held in Berkshire Funds occur on the secondary market. Selection of brokers is discussed between investment team members involved in the sale of the asset. All sales are reviewed and approved by Berkshire's Investment Committee. Final selection of brokers to sell private debt securities are based on a variety of factors including ability to locate willing buyers of such securities, price, commission and yields.

Due to various considerations, such as Funds' different strategies and where Funds are situated within their respective investing life cycles, the Adviser typically does not aggregate purchases or sales of securities for various Fund accounts.

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

#### *Account Reviews*

At the time that the Adviser causes a Fund to acquire a real estate property investment, the Adviser develops a comprehensive business plan for each property, which typically includes a number of potential exit strategies once the property value has been maximized, as determined by the Adviser. Such business plans are evaluated and amended annually and are monitored by the Adviser throughout the year. The Adviser also uses economic and submarket forecasting information provided by third-party experts along with the Adviser's own experience and resources in an effort to seek to time and implement exit strategies for its Funds' investments. The annual business plans also include the evaluation of individual property improvement plans and potential exit strategies.

The advisory activities are also subject to the oversight of an Investment Committee that is responsible for approving all investments and dispositions of investments for the Funds. Each investment committee is comprised of a number of the Adviser's principals and executives.

#### *Client Reports*

Each Fund will use commercially reasonable efforts to furnish unaudited financial statements on a quarterly basis to all its Underlying Investors (other than for the last fiscal quarter of each fiscal year). Underlying Investors in each Fund will also receive on a quarterly basis descriptive information regarding: (i) the Fund's investments; (ii) transactions between the Fund and its General Partner (if applicable) and other affiliates of the Adviser, other than those specifically provided for in a Fund's Governing Documents; and (iii) each Underlying Investor's own capital account in a Fund and details of all Fund transactions which flowed through the capital account. Each Fund will also include the estimated value of each of its investments in its annual report and each quarterly report. Most Funds, after the end of each fiscal year, will have audited financial statements prepared and sent to each of its Underlying Investors. Funds that are not audited will have financial statements prepared and delivered to its Underlying Investors each year, and will also be subject to an annual surprise examination by its auditor.

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

#### *Investor Referrals*

The Adviser may enter into agreements with placement agents in connection with the referral of prospective Underlying Investors. While the specific terms of each arrangement differ, generally a placement agent's compensation is based upon the capital commitments made by the referred Underlying Investors to the relevant Fund.

Under certain circumstances and subject to the Fund's Governing Documents, the Funds' pay the placement agent fees, but this payment results in a corresponding reduction in the Management Fee that would be paid to the Adviser.

Any such arrangements entered by the Adviser will be fully disclosed to the affected Funds and will comply with the requirements of Rule 206(4)-3 under the Advisers Act, where applicable. As of the date of this brochure, the Adviser has engaged a sub-placement agent for certain Funds in Korea and in Israel.

#### *Other Compensation*

The Adviser does not currently receive any economic benefits from someone who is not a Fund for providing investment advice or other advisory services to our Funds.



## **Item 15. Custody**

Funds' portfolios typically include investments that are not securities, but rather are direct investments in real estate. In such cases, Funds will generally also have accounts that contain funds derived from rents and other operating cash and funds related to the operations of the real estate investments.

Funds' portfolios may also include real estate-related debt securities and other interests that are considered to be securities. Under the provisions of Rule 206(4)-2 under the Advisers Act (the "Custody Rule"), the Adviser may have custody of securities, as well as of funds owned by its Funds, due to its ability to obtain possession of such securities and funds from third-party qualified custodians or due to its authority in certain instances to deduct its fees from fund accounts. Securities held in Funds' portfolios are typically privately offered securities that are not required to be held by a qualified custodian pursuant to an exemption provided under the Custody Rule. Any securities that do not qualify for an available exception under the Custody Rule and any funds with respect to which the Adviser is deemed to have custody will be held with a qualified custodian.

The Adviser does not use a qualified custodian to send quarterly account statements to its Funds or to their Underlying Investors. With respect to its funds held in certain Funds, the Adviser will rely on an exception available to "pooled investment vehicles" from the reporting and other obligations imposed by the Custody Rule by requiring each Fund to distribute its annual audited financial statements to its Underlying Investors within 120 days following the end of the Fund's fiscal year, in accordance with the requirements of the Custody Rule. All Underlying Investors should carefully review these audited financial statements. All other Funds will have financial statements prepared and delivered to its Underlying Investors each year, and will be subject to an annual surprise examination by its auditor, in accordance with the requirements of the Custody Rule. All Underlying Investors should contact the Adviser's Chief Compliance Officer or designee if there are any material discrepancies between the audited financial statements and reports that they may receive from the Adviser.

In addition, in connection with the final liquidation of a Fund, the Adviser will obtain a final audit and distribute audited financial statements to the Underlying Investors in the liquidated Fund promptly after completion of the audit.

## **Item 16. Investment Discretion**

The Adviser generally has discretionary authority to manage the assets of each of its Funds pursuant to investment management agreements between each Fund and the Adviser. These agreements include an explicit grant of discretionary authority to manage the applicable Fund's assets. The Adviser will exercise its discretionary authority in

accordance with the investment objectives and strategy and applicable limitations, if any, set forth in applicable Governing Documents of each Fund. Furthermore, the advisory activities of the Adviser with respect to any Fund are subject to the oversight of the Adviser's Investment Committee that is responsible for approving all investments and dispositions of investments for such Fund.

**Item 17.      Voting Client Securities**

The Adviser does not expect that its Funds will typically hold investments that give rise to instances of proxy voting, or other voting with respect to its Fund's real estate investments.

However, one or more Funds may from time to time hold shares or other securities or interests in special purpose vehicles or other entities, and the Funds may have the opportunity from time to time to vote on matters that arise under the governing documents of the special purpose vehicles or entities in which they are invested. In such cases, the Adviser will evaluate the matter which is the subject of the vote in light of the relevant circumstances and will seek to vote in a manner that the Adviser determines will further the best interests of the relevant Fund.

The Adviser maintains a proxy voting policy and will provide a copy of the policy to Fund investors upon request.

**Item 18.      Financial Information**

The Adviser believes that it has no financial condition that is reasonably likely to impair its ability to meet contractual commitments to its funds, and the Adviser has not been the subject of any bankruptcy proceeding.