

**ECC Fund Manager II, LLC**  
**Form ADV Part 2A Brochure--- December 2019**

**Item 1 - Cover Page**

This Brochure provides information about the qualifications and business practices of ECC Fund Manager II, LLC (the “Advisor”), an investment Advisor registered with the United States Securities and Exchange Commission (“SEC”). Registration with the SEC does not imply that the Advisor or its employees possess a certain level of skill or training.

The information in this brochure has not been approved or verified by the SEC or by any State securities authority. If you have any questions about the contents of this brochure, please contact us at 575 Lexington Avenue, Suite 3120, New York, NY 10022, or by calling (800) 313-2616. Additional information about the Advisor is also available on the SEC’s website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). The SEC’s web site also provides information about any persons affiliated with the Advisor who are registered, or are required to be registered, as investment advisor representatives of the Advisor.

The oral and written communications of an investment advisor provide you with information about which you determine to hire or retain an investment advisor. This brochure does not constitute an offer to purchase any securities of any entities described herein. Any such offer or solicitation will be made solely to qualified investors by means of a private placement memorandum and related subscription materials.

**Item 2 - Material Changes**

As of December 31, 2019, the firm's regulatory assets under management were \$576,842,756.

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

- A. The Advisor is a Delaware limited liability company and has its principal place of business in New York City, New York. The Advisor provides investment advisory services to (i) private investment funds for sophisticated, qualified investors, including high net worth individuals, pension plans, funds of funds, family offices, endowments and other institutions (the “Funds”); and (ii) separate accounts including high net worth individuals, certain retirement plans, trusts, partnerships, corporations, or other institutional clients and businesses (the “Separate Accounts” and, together with Funds, the “Clients”).

The Advisor was formed in 2012 by Mark Bahiri and Mark Penna. Emerald Creek Advisors, LLC is the sole owner of the Advisor. Mr. Bahiri and Mr. Penna each hold a 40% interest in Emerald Creek Advisors, LLC.

- B. The Advisor generally seeks to manage investments in short-term senior debt secured by real estate throughout the United States.
- C. While each of the Advisor’s Clients will follow the general strategy stated in subsection B above, the Advisor may tailor the specific advisory services with respect to each Client based on the particular investment objectives and strategies described in the applicable Client’s confidential offering memorandum, limited partnership agreement and/or investment advisory agreement (as applicable) (referred to collectively as “Offering Documents”).

**All discussion of the Clients in this Brochure, including but not limited to their investments, the strategies used in managing the Clients, and conflicts of interest faced by the Advisor in connection with the management of the Clients are qualified in their entirety by reference to each Client’s respective Offering Documents.**

- D. The Advisor does not participate in wrap fee programs.
- E. As of December 31, 2019, the Advisor managed approximately \$576,842,756 in discretionary assets (inclusive of undrawn capital commitments and assets leveraged from credit facilities) and \$0 in non-discretionary assets.

## Item 5 - Fees and Compensation

- A. Below is a discussion of how the Advisor is compensated in connection with providing advisory services to its Clients. The Advisor may enter into different fee arrangements on a Client by Client basis pursuant to side letters or otherwise.

### Funds

#### *1. Emerald Creek Capital Income Fund IV, LLC ("Fund IV")*

Management Fees: Fund IV will, on behalf of each Member, pay to the Advisor a management fee ("Management Fee") equal to 2.0% per annum of: (A) during the Investment Period, the total Contributions, and (B) after the Investment Period, and with respect to each Investment, the aggregate amount of capital contributions made by the Members to Fund IV with respect to such Investment (including capital contributions used to fund expenses allocated to such Investment) until such Investment is no longer owned by Fund IV. Management Fees will be accrued in advance and paid semiannually. The Advisor will have the right, in its sole discretion, to waive or reduce the share of the Management Fee allocable to any Member (without a concurrent increase in any other Member's share of the Management Fee).

Investors admitted to Fund IV subsequent to the Initial Closing will be required to pay to the Advisor, unless waived in whole or in part by the Advisor, an amount equal to the Management Fee, calculable in respect of such investor's Interest, as if such investor had been admitted at the Initial Closing,

In lieu of charging a Management Fee, the Managing Member may charge Fund IV a servicing fee. Such servicing fee will be paid to an affiliate of Emerald Creek. The Management Fee for any fiscal year will be reduced by the amount of any servicing fee paid during such fiscal year.

Performance Allocation: ECC Fund SM II, LLC (the "Special Member"), which is an affiliate of the Advisor and a member of Fund IV, is entitled to a performance-based profit carried interest distribution when cash is available for distribution based on the following schedule:

- a. *Return of Capital:* First, one hundred percent (100%) to such Member until the cumulative distributions to such Member equal to Management Fees and other Fund IV Expenses incurred by such Member during such month;
- b. *Preferred Return:* Second, one hundred percent (100%) to such Member until the cumulative distributions to such Member equal a preferred return on all Company Investments at the rate of five percent (5%) per annum, compounded annually (the "Preferred Return") (such Preferred Return shall be calculated quarterly, from and including the date on which the relevant Capital Contribution was made (or deemed made in the case of Members admitted subsequent to the Initial Closing) by such Member to Fund IV until distributions are made to such Member with respect to such Capital Contribution).
- c. *Catch-Up:* Third, (A) eighty percent (80%) to the Special Member and (B) twenty percent (20%) to such Member, until the Special Member has received an amount equal to twenty percent (20%) of the aggregate distributions under paragraphs (b) and (c); and

- d. *80/20 Split*: Fourth, thereafter, eighty percent (80%) to such Member and twenty percent (20%) to the Special Member.

Withdrawals: A Member may not sell, assign, or transfer any interests in Fund IV without the prior written consent of the Advisor, which may be given or withheld in the Advisor's sole and absolute discretion.

2. *Emerald Creek Capital Cayman Income Fund IV, LP ("Cayman Fund IV")*

Management Fees: Cayman Fund IV will, on behalf of each Partner, pay to the Advisor a management fee ("Management Fee") equal to 2.0% per annum of the net assets of Cayman Fund IV attributable to such Partner's capital account as of the last day of the immediately preceding semi-annual period. Management Fees will be accrued in advance and paid semi-annually. The Advisor will have the right, in its sole discretion, to waive or reduce the share of the Management Fee allocable to any Partner (without a concurrent increase in any other Partner's share of the Management Fee).

Investors admitted to Cayman Fund IV subsequent to the Initial Closing will be required to pay to the Advisor, unless waived in whole or in part by the Advisor, an amount equal to the Management Fee, calculable in respect of such investor's Interest, as if such investor has been admitted at the Initial Closing.

In lieu of charging a Management Fee, the Advisor may charge Cayman Fund IV a servicing fee. Such servicing fee will be paid to an affiliate of Emerald Creek. The Management Fee for any fiscal year will be reduced by the amount of any servicing fee paid during such fiscal year.

Performance Allocation: ECC Fund SM II, LLC (the "Special Partner"), which is an affiliate of the Advisor and a member of the Fund, is entitled to a performance-based profit carried interest distribution when cash is available for distribution based on the following schedule:

- a. *Return of Capital*: First, one hundred percent (100%) to such Partner until the cumulative distributions to such Partner equal to Management Fees and other Cayman Fund IV expenses incurred by such Partner during such month;
- b. *Preferred Return*: Second, one hundred percent (100%) to such Partner until the cumulative distributions to such Partner equal a preferred return on all Cayman Fund IV Investments at the rate of five percent (5%) per annum, compounded annually (the "Preferred Return") (such Preferred Return shall be calculated quarterly, from and including the date on which the relevant Capital Contribution was made (or deemed made in the case of Partners admitted subsequent to the Initial Closing) by such Partner to Cayman Fund IV until distributions are made to such Partner with respect to such Capital Contribution).
- c. *Catch-Up*: Third, (A) eighty percent (80%) to the Special Partner and (B) twenty percent (20%) to such Partner, until the Special Partner has received an amount equal to twenty percent (20%) of the aggregate distributions under paragraphs (b) and (c); and
- d. *80/20 Split*: Fourth, thereafter, eighty percent (80%) to such Partner and twenty percent (20%) to the Special Partner.

Withdrawals: A Partner may not sell, assign, or transfer any interests in Cayman Fund IV without the prior written consent of the Advisor, which may be given or withheld in the Advisor's sole and absolute discretion.

3. *ECC Income Fund Series CH, LLC ("Series CH")*

Management Fees: Series CH will pay to the Advisor a management fee ("Management Fee") equal to 1.5% per annum of the net assets of Series CH attributable to the capital account as of the last day of the immediately preceding period. Management Fees shall be due and payable in arrears and the end of each month. The Advisor will have the right, in its sole discretion, to waive or reduce the share of the Management Fee allocable.

In lieu of charging a Management Fee, the Advisor may charge Series CH a servicing fee. Such servicing fee will be paid to an affiliate of Emerald Creek. The Management Fee for any fiscal year will be reduced by the amount of any servicing fee paid during such fiscal year.

Performance Allocation: ECC Fund SM II, LLC (the "Special Member"), which is an affiliate of the Advisor and a member of the Fund, is entitled to a performance-based profit carried interest distribution when cash is available for distribution based on the following schedule:

- a. *Return of Capital:* First, one hundred percent (100%) to such Partner until the cumulative distributions to such Member equal to Management Fees and other Series CH expenses incurred by such Member during such month and the aggregate amount of losses, if any, recognized by the Company with respect to investments that have been repaid, sold or otherwise disposed of or written off since inception;
- b. *Preferred Return:* Second, one hundred percent (100%) to such Partner until the cumulative distributions to such Member equal a preferred return on all Series CH Investments at the rate of seven percent (7%) per annum, compounded annually (the "Preferred Return") (such Preferred Return shall be calculated quarterly, from and including the date on which the relevant Capital Contribution was made (or deemed made in the case of Members admitted subsequent to the Initial Closing) by such Member to Series CH until distributions are made to such Member with respect to such Capital Contribution).
- c. *Catch-Up:* Third, (A) ten percent (10%) to the Special Member and (B) ninety percent (90%) to such Member.

Withdrawals: A Partner may not sell, assign, or transfer any interests in Series CH without the prior written consent of the Advisor, which may be given or withheld in the Advisor's sole and absolute discretion.

4. *Emerald Creek Capital Income Fund V, LLC ("Fund V")*

Management Fees: Fund V will, on behalf of each Member, pay to the Advisor a management fee ("Management Fee") during the Term equal to 1.5% per annum of the net assets of the Fund attributable to such Member's capital account as of the last day of the immediately preceding semi-annual period. Management Fees will be accrued in advance and paid semiannually. The Advisor will have the right, in its sole discretion, to waive or reduce the share of the Management Fee allocable to any Member (without a concurrent increase in any other Member's share of the Management Fee).

In lieu of charging a Management Fee, the Advisor may charge Fund V a servicing fee. Such servicing fee will be paid to an affiliate of Emerald Creek. The Management Fee for any fiscal year will be reduced by the amount of any servicing fee paid during such fiscal year.

*Performance Allocation:* ECC Fund SM II, LLC (the “Special Member”), which is an affiliate of the Advisor and a member of Fund V, is entitled to a performance-based profit carried interest distribution when cash is available for distribution based on the following schedule:

- a. *Return of Capital; Payment of Fees and Expenses:* First, one hundred percent (100%) to such Member until the cumulative distributions to such Member equal the aggregate of the capital contributions made by such Member to the Fund (i) with respect to such investment and all other investments that have been disposed of, matured or written off by the Fund, at any time after a Member has exercised the Draw Bridge Option, or if a Member has not exercised the Draw Bridge Option, upon termination, winding up and dissolution of the Fund, and (ii) for Management Fees and other Fund expenses incurred by such Member, on a monthly basis;
- b. *Preferred Return:* Second, one hundred percent (100%) to such Member until the cumulative distributions to such Member equal a preferred return on all Fund Investments at the rate of five percent (5%) per annum, compounded annually (the “Preferred Return”) (such Preferred Return shall be calculated quarterly, from and including the date on which the relevant Capital Contribution was made (or deemed made in the case of Members admitted subsequent to the Initial Closing) by such Member to Fund V until distributions are made to such Member with respect to such Capital Contribution).
- c. *Catch-Up:* Third, (A) eighty percent (80%) to the Special Member and (B) twenty percent (20%) to such Member, until the Special Member has received an amount equal to twenty percent (20%) of the aggregate distributions under paragraphs (b) and (c); and
- d. *80/20 Split:* Fourth, thereafter, eighty percent (80%) to such Member and twenty percent (20%) to the Special Member.

*Withdrawals:* A Member may not sell, assign, or transfer any interests in Fund V without the prior written consent of the Advisor, which may be given or withheld in the Advisor’s sole and absolute discretion.

##### 5. *Emerald Creek Capital Cayman Income Fund V, LP (“Cayman Fund V”)*

*Management Fees:* Cayman Fund V will, on behalf of each Partner, pay to the Advisor a management fee (“Management Fee”) during the Term equal to 1.5% per annum of the net assets of Cayman Fund V attributable to such Partner’s capital account as of the last day of the immediately preceding semi-annual period. Management Fees will be accrued in advance and paid semi-annually. The Advisor will have the right, in its sole discretion, to waive or reduce the share of the Management Fee allocable to any Partner (without a concurrent increases in any other Partner’s share of the Management Fee).

Investors admitted to Cayman Fund V subsequent to the Initial Closing will be required to pay to the Advisor, unless waived in whole or in part by the Advisor, an amount equal to the Management Fee, calculable in respect of such investor’s Interest, as if such investor has been admitted at the Initial Closing.

In lieu of charging a Management Fee, the Advisor may charge Cayman Fund V a servicing fee. Such servicing fee will be paid to an affiliate of Emerald Creek. The Management Fee for any fiscal year will be reduced by the amount of any servicing fee paid during such fiscal year.



Performance Allocation: ECC Fund SM II, LLC (the “Special Partner”), which is an affiliate of the Advisor and a member of the Fund, is entitled to a performance-based profit carried interest distribution when cash is available for distribution based on the following schedule:

- a. *Return of Capital; Payment of Fees and Expenses:* First, one hundred percent (100%) to such Partner until the cumulative distributions to such Partner equal the aggregate of the capital contributions made by such Partner (i) with respect to such investment and all other investments that have been disposed of, matured or written off by the Fund, at any time after a Partner has exercised the Draw Bridge Option or if a Partner has not exercised the Draw Bridge Option, upon termination, winding up and dissolution of the Fund and (ii) for Management Fees and other Cayman Fund V expenses incurred by such Partner on a monthly basis;
- b. *Preferred Return:* Second, one hundred percent (100%) to such Partner until the cumulative distributions to such Partner equal a preferred return on all Cayman Fund V Investments at the rate of five percent (5%) per annum, compounded annually (the “Preferred Return”) (such Preferred Return shall be calculated quarterly, from and including the date on which the relevant Capital Contribution was made (or deemed made in the case of Partners admitted subsequent to the Initial Closing) by such Partner to Cayman Fund V until distributions are made to such Partner with respect to such Capital Contribution.
- c. *Catch-Up:* Third, (A) eighty percent (80%) to the Special Partner and (B) twenty percent (20%) to such Partner, until the Special Partner has received an amount equal to twenty percent (20%) of the aggregate distributions under paragraphs (b) and (c); and
- d. *80/20 Split:* Fourth, thereafter, eighty percent (80%) to such Partner and twenty percent (20%) to the Special Partner.

Withdrawals: A Partner may not sell, assign, or transfer any interests in Cayman Fund V without the prior written consent of the Advisor, which may be given or withheld in the Advisor’s sole and absolute discretion.

#### 6. *ECC Income Fund Series Y, LP (“Series Y”)*

Management Fees: Series Y will, on behalf of each Partner, pay to the Advisor a management fee (“Management Fee”) payable in advance on each January 1 and July 1 during the Term, equal to ½ of 1.5% of the balance of such Partner’s Fund Investments as of the last day of the immediately preceding semi-annual period. In the event a Partner withdraws from the Fund before the end of a Management Fee Period, the Advisor shall repay the withdrawing Partner such portion of the Management Fee already paid equal to the difference between the amount of Management Fee paid for such Management Fee period less the amount of the Management Fee allocated to the period from the beginning of such Management Fee Period to the Withdrawal Date. If a Capital Contribution is made during the Management Fee Period, the Management Fee shall be determined from the date of the Capital Contribution to the end of the Management Fee Period.

The Advisor will have the right, in its sole discretion, to waive or reduce the share of the Management Fee allocable to any Partner (without a concurrent increases in any other Partner’s share of the Management Fee. For the avoidance of doubt, the Management Fee shall not be waived for any Defaulting Partner upon Default.

In lieu of charging a Management Fee, the Advisor may charge Series Y a servicing fee. Such servicing fee will be paid to an affiliate of Emerald Creek. The Management Fee for any fiscal year will be reduced by the amount of any servicing fee paid during such fiscal year.

Performance Allocation: ECC Fund SM II, LLC (the “Special Partner”), which is an affiliate of the Advisor and a member of the Fund, is entitled to a performance-based profit carried interest distribution when cash is available for distribution based on the following schedule:

- e. *Return of Capital:* First, one hundred percent (100%) to such Partner until the cumulative distributions to such Partner equal the sum of (i) the Management Fees and other Series Y expenses incurred by such Partner during such period since the last distribution, together with any amount of Management Fees and Fund Expenses incurred by such Partner that has not been previously distributed and (ii) the amount of any Capital Contribution made by such Partner that was used to fund the acquisition of an investment which has been fully written down since the last distribution, together with the amount of any Capital Contribution relating to such written-down investment for any prior period that has not been previously distributed.
- f. *Preferred Return:* Second, one hundred percent (100%) to such Partner until the cumulative distributions to such Partner equal a preferred return on all Series Y Investments at the rate of nine percent (9%) per annum, compounded annually (the “Preferred Return”) (such Preferred Return shall be calculated quarterly, from and including the date on which the relevant Capital Contribution was made (or deemed made in the case of Partners admitted subsequent to the Initial Closing) by such Partner to Series Y until distributions are made to such Partner with respect to such Capital Contribution.
- g. *Catch-Up:* Third, (A) fifteen percent (15%) to the Special Partner and (B) eight five percent (85%) to such Partner.

Withdrawals: A Partner may not sell, assign, or transfer any interests in Series Y without the prior written consent of the Advisor, which may be given or withheld in the Advisor’s sole and absolute discretion.

## 7. *Separate Accounts*

- A. The fees and expenses associated with each Separate Account will be negotiated with each Separate Account and are described in detail in each Separate Account’s investment management agreement.

Management Fees: The Management Fee is generally calculated and paid each month in advance. The annual Management Fees negotiated with each Separate Account client.

Performance Fees: Performance fees are negotiated with each account owned by Qualified Clients. Any performance fees will be calculated based on net profits.

Management Fees and, if applicable, performance fees are generally deducted in advance with respect to each period for which they are due from each Separate Account directly upon invoice to the custodian.

- B. Management fees and performance allocations/fees are paid as indicated in Item 6.A. above.

- C. Each Fund generally bears its own expenses, including legal, accounting, brokerage, custody, administration and other expenses, which expenses are set forth in detail in each such Fund's Offering Documents.

Each Separate Account also generally bears its own expenses, including legal, accounting, brokerage, custody, administration and other expenses, which expenses are described in more full detail in such Separate Account's investment management agreement.

Although the Advisor generally does not execute transactions with broker-dealers in connection with the implementation of its investment strategy, to the extent that any Client transactions are executed through a broker-dealer, the Client will incur brokerage and other transaction costs. Please refer to Item 12, Brokerage Practices, for more information.

- D. As stated above, any Management Fees are payable in advance with respect to each period for which such Management Fees are due. Since the Fund IV, Cayman Fund IV, Series CH, Fund V, Cayman Fund V and Series Y investors are generally not permitted to withdraw investments in a Fund without the prior written consent of the Advisor, refunds of Management Fees are generally not available to Fund IV, Cayman Fund IV, Series CH, Fund V, Cayman Fund V and Series Y investors.

In the event that the advisory agreement is terminated with respect to a Separately Managed Account during a month in which the Management Fee has been paid in advance, the Advisor will refund any pre-paid Management Fees by a Separately Managed Account if the advisory contract with such Account is terminated before the end of the billing period. Management Fee refunds are calculated on a pro-rata basis for partial periods.

- E. Neither the Advisor nor its affiliates or associated persons receive compensation for the sale of securities or other investment products.

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

As stated in Item 5, the Advisor or its affiliates receives performance-based fees or allocations from certain Clients. These payments are subject to Section 205(a)(1) of the Investment Advisors Act of 1940, as amended (the “Advisors Act”), in accordance with the available exemptions thereunder, including the exemption set forth in Rule 205-3.

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

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

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

**Item 7 - Types of Clients**

As mentioned in Item 4, the Advisor provides investment advisory services to (i) private funds for sophisticated, qualified investors, including high net worth individuals, pension plans, funds of funds, family offices, endowments and other institutions and (ii) separate accounts including high net worth individuals, retirement plans, trusts, partnerships, corporations, or other businesses.

The Offering Documents for each Client include certain stated minimum investment amounts, although the Advisor may accept investments in a lesser amount at its sole discretion.

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

### **A. Investment Objective and Strategy**

*Fund IV, Cayman Fund IV, Series CH, Fund V, Cayman Fund V, Series Y and SMAs*

The investment objective of the Advisor with respect to Fund IV, Cayman Fund IV, Series CH, Fund V, Cayman Fund V, Series Y and certain related SMAs is to provide uncorrelated absolute returns with low volatility benefiting from compelling risk-adjusted spreads in the bridge lending market. The Funds intend to offer investors the ability to gain access to short duration loan opportunities collateralized by a senior mortgage position.

The Advisor intends to achieve its objective by having the Funds and SMAs generally invest in short-term senior debt secured by real estate throughout the United States. The Funds and SMAs provide flexible capital to borrowers who are experiencing liquidity constraints and who are taking advantage of time sensitive opportunities.

#### **Implementation of Investment Strategy**

*Loan Sourcing:* The Advisor intends to locate and originate deals through several avenues, which may include the following:

1. Established Broker Relationships – The Advisor has established a database of over 10,000 mortgage brokers, which database is continually managed through the Advisor's software programs. These mortgage brokers regularly receive updates regarding Emerald Creek from third party automated emailing systems utilized by the Advisor.
  2. Industry Events – The Advisor intends to attend and exhibit at lending trade shows. In addition, the Advisor intends to sponsor and participate in mortgage conferences. Past events in which the Advisor participated and associations in which it is a member include: Commercial Real Estate Financing Conference (CREF), Crittenden Real Estate Conference and events sponsored by the National Association of Mortgage Brokers (NAMB), the Real Estate Board of NY (REBNY) and the Mortgage Bankers Association (MBA).
  3. Website Loan Applications – The Advisor's website allows potential borrowers to complete applications online. The online applications are screened daily by the Advisor.
  4. Print Advertising – The Advisor intends to advertise its services in certain publications, which may include The Real Deal, Real Estate Weekly, The Niche Report, Commercial Observer and NY Real Estate Journal.
  5. Web Advertising – The Advisor intends to utilize web advertising, which may include Google Keyword Advertising, business.com, commercialdeals.com and third party automated emailing systems.
  6. Repeat Borrowers – The Advisor has historically sourced loans from previous borrowers and reasonably expects to continue to do so.
- B. The Advisor's investment strategies involve a high degree of business and financial risk that can result in substantial losses and is suitable only for investors prepared to bear such risk. The risks factors below are not intended to be exhaustive. Prospective investors should carefully review the risks described in the applicable Client's Offering Documents:

**General**

All investments risk the loss of capital. No guarantee or representation is made that a Client will achieve its investment objective. An investment in a Fund or SMA is speculative and involves certain considerations and risk factors, which prospective investors should consider before subscribing. Interests in a Fund or SMA are a potentially suitable investment only for sophisticated investors for whom an investment in a Fund or SMA does not represent a complete investment program and who, in consultation with their own investment and tax Advisors, fully understand and are capable of assuming the risks of an investment in the Interests.

**Reliance on Management:** The success of a Client will depend in substantial part on the skill and expertise of the employees of the Advisor. There can be no assurance that Emerald Creek's investment professionals or other employees of the Advisor will continue to be employed by the Advisor throughout the life of a Fund or SMA. The loss of key personnel could have a material adverse effect on a Client.

**Lack of Management Control by Members:** Under a Fund Agreement, the Members do not have the right to participate in the management, control or operation of a Fund or to remove the Advisor.

**Third Party Litigation:** A Client's investment activities may subject it to third-party litigation risk, including actions brought by borrowers or Third Party Participants. In competition with such actions, a Fund would be obligated to bear defense, settlement and other costs, and the Advisor would generally be entitled to indemnification by a Fund. Such costs and indemnification could adversely affect a Fund's rate of return.

**Side Letters:** A Fund and/or the Advisor may enter into side letters or other similar agreements without the approval of other Members, which would have the effect of establishing rights under, or altering or supplementing the terms of, a Fund Agreement or Subscription Agreement with respect to such Member in a manner more favorable to such Member than those applicable to other Members. Such rights or terms in any such side letter or other similar agreement may include, without limitation, (i) different notice periods, minimum investment amounts or Management Fees/Carried Interest, (ii) excuse rights applicable to particular investments (which may increase the percentage interest of other Members in, and contribution of obligations of other Members with respect to, such investments), (iii) the agreement of the Advisor to extend certain information rights or additional diligence, valuation or reporting rights to such Member, including, without limitation, to accommodate special regulatory or other circumstances of such Member, (iv) waiver or modification of certain confidentiality obligations of such Member, (v) consent of the Advisor to certain transfers by such Member or other exercises by the Advisor of its discretionary authority under a Fund Agreement in certain respects for the benefit of such Member, (vi) restrictions on, or special rights of such Member with respect to the activities of the Advisor and its affiliates, (vii) additional obligations and restrictions on the Advisor and a Fund with respect to the structuring of investments in light of the legal, tax and regulatory considerations of such Member or (viii) other rights or terms in light of particular legal, regulatory, public policy or other characteristics of such Member. The terms of any such side letter or agreement will not be disclosed to other Members unless the Advisor, in its sole discretion, determines otherwise. Any rights or terms so established in a side letter or other similar agreement with a Member will govern solely with respect to such Member.

### **Potential Conflicts of Interest**

Emerald Creek engages in and will continue to engage in activities which may conflict with the interests of Members, a Client, and/or any investment. Except as otherwise expressly indicated, nothing contained herein or in a Client Agreement or other Client documents will restrict the activities and operations of Emerald Creek, the Advisor, or their respective parents, subsidiaries or affiliates. By acquiring an Interest, each Member will be deemed to have acknowledged the existence of such actual and potential conflicts of interest and, to the extent possible under applicable law, to have waived any claim with respect to the existence of any such conflict of interest and any profits arising therefrom.

**Management of a Fund:** The functions performed by the Advisor are not exclusive. The Advisor has rendered in the past and will continue to render in the future various services to others and perform a variety of other functions that are unrelated to the management of a Fund and the selection and acquisition of investments. The officers and employees of the Advisor will devote such time as the Advisor, in its sole discretion, deems necessary to carry out the operations of a Fund effectively. Officers and employees of the Advisor may also work on projects for other affiliates of Emerald Creek and may spend a significant portion of their time on matters unrelated to a Fund. Conflicts of interest may arise in allocating management time, services or functions among the Advisor and such other affiliates.

**Client and Other Relationships:** Emerald Creek and the Advisor have, and continue to seek to develop, financial and advisory relationships with numerous U.S. and non-U.S. companies. It should be recognized that such relationships may indirectly preclude a Client from engaging in certain transactions and may constrain a Client's investment flexibility.

**Defaulting Members:** The Advisor may face conflicts of interest in pursuing remedies against a Defaulting Member. Some of the remedies allow the Advisor to cause the sale of the Interest held by the Defaulting Member to a third-party, or an affiliate of the Advisor, or in a transaction in which the Advisor is acting as agent. Such remedies may benefit the Advisor and its affiliates to the exclusion of a Client or the non-Defaulting Member.

**Co-Investment:** The Advisor from time to time may, subject to certain exceptions set forth in a Fund Agreement, offer Members or third parties, including Third Party Participants, opportunities to co-invest with a Fund in particular investments. Co-investment opportunities may result in additional benefits for those who so invest. As the Advisor retains complete discretion as to how co-investment opportunities are allocated among Members, the benefits of an investment in which the Advisor has made co-investment opportunities available will be received only by the Members selected by the Advisor for such opportunities, and not by any of the other Members. In some cases, co-investments may be offered to other clients of Emerald Creek, its subsidiaries and/or its affiliates. These allocations present conflicts of interest, and there can be no assurance that it might not be alleged that a Fund received a smaller allocation or inferior terms in investments in particular issuers than it would otherwise have received if Emerald Creek did not have a conflict of interest in advising both investors or from particular counterparties. In addition, such co-investment transactions could create conflicts of interests to the extent Emerald Creek (or its affiliates) are simultaneously representing the interests of more than one co-investing party. In addition, the Advisor may form specially created co-investment vehicles. Such co-investments may be on terms that may differ from those of Members in a Fund.



Principal Transactions: The ECC Lenders are affiliates of the Advisor and Emerald Creek. A Client may face conflicts of interest in connection with respect to the terms of a Client's investments, including with respect to the obligations of the Advisor and its affiliates.

Provision of Services by Emerald Creek: Emerald Creek or its affiliates may provide a Client or any ECC Lender with certain products and services. Each of Emerald Creek and its affiliates and any of their respective shareholders, members, managers, partners, directors, officers, employees, attorneys and agents may, among other things: (a) serve as directors (whether supervisory or managing), partners, officers, employees, agents, nominees or signatories for any ECC Lender; (b) receive fees for services rendered to or for any person or entity related thereto; and/or (c) subject to compliance with applicable law, sell any assets to, or purchase any assets from, a Client or any ECC Lender while acting in the capacity of principal or agent. The Management Fee (or any other fee, charge, or payment due under any of a Client's documents) shall not be reduced or offset by any portion of any such fees except as may otherwise be agreed to by the Advisor or any of its affiliates in their sole discretion.

Certain Risks of Conflicts of Interest: Emerald Creek, the Advisor and its affiliates are engaged in the business of investing in securities and financial instruments for their own account and for the account of others. Emerald Creek and the Advisor may allocate investment opportunities to such affiliates or other clients in addition to, or in lieu of, a Fund or any ECC Lender.

#### **Limitation of Representation**

Kramer Levin Naftalis & Frankel LLP's representation as legal counsel of a Fund and the Advisor and their affiliates is limited to those specific matters upon which it has been consulted. There may exist other matters which would have a bearing on a Client and/or the Advisor or any of their affiliates upon which Kramer Levin Naftalis & Frankel LLP has not been consulted. Kramer Levin Naftalis & Frankel LLP does not undertake to monitor the compliance of a Client or the Advisor with the investment programs, valuation procedures and other guidelines set out herein, nor does it monitor compliance with applicable laws. Additionally Kramer Levin Naftalis & Frankel LLP relies upon information furnished to it by a Client and/or the Advisor, and does not investigate or verify the accuracy and completeness of information set out herein concerning the Advisor or a Client, other service providers and their affiliates and personnel. Kramer Levin Naftalis & Frankel LLP does not represent the Members.

The offer and sale of the Fund interests in certain jurisdictions may be restricted by law, and Client investments may involve legal requirements, foreign exchange restrictions and tax considerations unique to each investor. The Interests are not registered under the securities laws of any jurisdiction and are being offered solely in a private placement. Interests are transferable only with the consent of the Advisor. The Funds and the Advisor are governed by the law of the State of Delaware. The Funds make no representations with respect to whether any holder of Interests is permitted to hold such Interests. Interests that are acquired by any person or in any transaction in violation of applicable law, as determined by the Advisor in its sole discretion, may be compulsorily redeemed. The foregoing list of risk factors and potential conflicts of interests does not purport to be a complete enumeration or explanation of the risks or potential conflicts involved in an investment in a Fund. Prospective investors should read this entire Memorandum, a Fund Agreement, the Subscription Agreement and any other Fund document and consult with their own Advisors before deciding whether to invest in a Fund.

- C. An investment involves a high degree of risk, including the risk that the entire amount invested may be lost. The Advisor may invest Client assets in debt instruments and engage in transactions using strategies and financial techniques with significant risk characteristics.

No guarantee is made that the investment objectives of the Advisor will be realized. Below is a list of potential investment risk factors. There is no guarantee that the Advisor will be able to control these risks or that the risks will not aggregate in a manner adverse to the Advisor's Clients. The risks factors below are not intended to be exhaustive. Prospective investors should carefully review the risks described in the applicable Client's Offering Documents.

### **Risks Relating to a Client's Investments**

**Diversification:** Although the Advisor intends to diversify its investments within the bridge lending arena, the limited degree of diversification of types of investments may result in the performance of a Client to be more susceptible to a single economic, political or social event.

**Future Investments; Inability to Invest Committed Capital:** Although the Advisor believes that a Client will be well positioned to take advantage of attractive investment opportunities, there can be no assurance that it will in fact be so positioned. Moreover, with the exception of certain investments, the investments that will be acquired by a Client have not yet been identified, and the activity of identifying, completing and realizing attractive investments is highly competitive and involves a high degree of uncertainty. A Client is likely to compete for desirable investments with third parties with similar investment objectives, some or all of which may have capital and resources in excess of those of a Client. Specifically, the Advisor expects to encounter significant competition from real estate investment trusts, banks, conduits, pension funds, public and private lending companies and mortgage bankers. The Advisor will seek to compete and attract borrowers by offering rapid response time in terms of approval and closing, but there can be no assurance that a Client will secure every opportunity for which it competes. These third parties may invest in promising opportunities before a Client is able to do so or their competitive offers to invest may thereby limit suitable investment opportunities for a Client. In addition, many of the Advisor's competitors will have substantially greater assets and therefore will have the ability to make larger loans. An increase in funds available to lenders, or a decrease in borrowing activity, may increase competition for making loans and may result in loans available to a Client having a greater risk or lower returns. As a result, Clients face risks and uncertainties with respect to the selection of investments and will be relying on the ability of the Advisor to find and close suitable future investments using the proceeds of this offering. There is no assurance that the Advisor will be able to fully invest the Commitments or that suitable investment opportunities will be identified that satisfy a Client's investment objective. If the Advisor is unable to invest the Commitments fully, the potential return to the Clients could be materially reduced.

**Risks of Acquiring Real Estate Loans:** Investments will be secured by real estate in the United States, which, at the time of their acquisition or thereafter, may be nonperforming for a wide variety of reasons. Nonperforming real estate loans may require a substantial amount of workout negotiations and/or restructuring, which may require a substantial reduction in the interest rate and a substantial write-down of the principal of such loan. Even if a restructuring were successfully accomplished, however, there is a risk that upon maturity of such real estate loan replacement "takeout" financing will not be available. Purchases of participations in real estate loans raise many of the same risks as investments in real estate loans and also carry risks of illiquidity and lack of control. It is possible that the Advisor may find it necessary or desirable to foreclose on collateral securing one or more investments. The foreclosure process can be lengthy and expensive. Borrowers often resist foreclosure actions by asserting numerous claims, counterclaims and defenses against the holder of a real estate loan including, lender liability claims and defenses, even when such assertions may have no basis in fact, in an effort to prolong the foreclosure action. In some states, foreclosure actions can take up to several years or more

to conclude. The borrower may file for bankruptcy at any time during the foreclosure proceedings, staying the foreclosure action and further delaying the foreclosure process. Foreclosure litigation tends to create a negative public image of the collateral property and may result in disrupting ongoing leasing and management of the property.

**Risk of Government Intervention:** Interest rates are subject to certain risks arising from government regulation of, or intervention in, the interest rate markets through regulation of the local exchange market, limits on inflows of funds or changes in the general level of interest rates. Such regulation or intervention could adversely affect a Client's performance.

**Leverage:** The Fund may utilize leverage, as the Manager deems appropriate in its sole discretion, with respect to its investment strategy. While leverage presents opportunities for increasing the total return on investments, it has the effect of potentially increasing losses as well. Accordingly, any event which adversely affects the value of an investment could be magnified to the extent leverage is utilized and may result in a substantial loss to the Fund.

**Prepayment and Reinvestment Risk:** Investments may be prepayable in whole or in part at any time at the option of the obligor thereof, and loans in some cases may but generally will not provide for the payment of a prepayment premium. Prepayment on loans may be caused by a variety of factors which are often difficult to predict, including the prevailing level of interest rates as well as economic, demographic, tax, social, legal and other factors. For example, during periods of declining interest rates or for other reasons, borrowers may exercise their option to prepay principal on debt obligations earlier than scheduled. Principal proceeds received upon such a prepayment are subject to reinvestment risk. Any inability of the Advisor to reinvest payments or other proceeds in satisfactory financial assets may adversely affect a Client's yield. Moreover, there is no assurance that the Advisor will be able to reinvest proceeds in assets with comparable interest rates or (if it is able to make such reinvestments) as to the length of any delays before such investments are made.

**Inability of Borrowers to Refinance or Sell the Underlying Real Property:** The Advisor intends to invest in short-term senior loans secured by commercial real estate which will generally be due within six (6) months to three (3) years. In addition, borrowers will be required to pay all or substantially all of the principal balance of the loans at maturity, in most cases with little or no amortization of principal over the term of the loan. Accordingly, in order to satisfy this obligation, at the maturity of a loan, a borrower may be required to refinance or sell the property or otherwise raise a substantial amount of cash. The ability to refinance or sell or otherwise raise a substantial amount of cash is dependent upon factors which neither a Client nor the borrowers control, such as national, local and regional business and economic conditions, government economic policies, and the level of interest rates. If a borrower is not able to pay the balance due at maturity, the loan will be in default, and if a Client or the relevant ECC Lender is not willing to extend or restructure the loan, the Advisor will in most cases be required to foreclose on the property, which can be expensive and time consuming and could adversely affect a Client's return.

**Compliance with Real Estate Laws:** In many jurisdictions in which a Client may acquire investments, the laws relating to real estate lending, management and/or ownership may be complex or unclear. To the extent such laws apply to a Client or any ECC Lender, a Client or such ECC Lender may not be in compliance with one or more such laws and may be liable for fines or other penalties for such non-compliance.

**Fraud:** Of paramount concern in the origination of loans is the possibility of material misrepresentation or omission on the part of the borrower. Such inaccuracy or incompleteness

may adversely affect the valuation of the collateral underlying an investment or may adversely affect the ability of a Client or an ECC Lender to perfect or effectuate a lien on the collateral securing an investment. Notwithstanding the diligence of the Advisor, representations made by borrowers may be incomplete or inaccurate. In addition, under certain circumstances, payments to a Client and therefore by a Client to the Members may be reclaimed if such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment

**Risk of Decline in Value of Real Estate Collateral:** The value of the real estate which underlies an investment is subject to market conditions. Changes in the real estate market may adversely affect the value of the collateral and thereby lower the value to be derived from a liquidation. In addition, adverse changes in the real estate market increase the probability of default, as the incentive of the borrower to retain equity in the property declines. Furthermore, many of the properties which will secure investments may be suffering varying degrees of financial distress or may be located in economically distressed areas. An investment may become non-performing for a variety of reasons, including, without limitation, because the underlying property is too highly leveraged (and, therefore, the property is unable to generate sufficient income to meet its debt service payments), the property is poorly managed, or because the underlying property has a high vacancy rate, has not been fully completed or is in need of rehabilitation. Such non-performing investments may require a substantial amount of workout negotiations and/or restructuring, which may entail, among other things, a substantial reduction in the interest rate, capitalization or interest payments and a substantial write-down of the principal of the loan. However, even if such restructuring were successfully accomplished, a risk exists that upon maturity of such Investment, replacement “take-out” financing will not be available.

**General Real Estate Risks:** With respect to properties acquired by a Client or any ECC Lender through foreclosure or otherwise, a Client or such ECC Lender will incur the burdens of ownership of real property, which include the paying of expenses and taxes, maintaining such property and any improvements thereon, and ultimately disposing of such property. In addition, real estate investments generally will be subject to the risks incident to the ownership and operation of commercial real estate and/or risks incident to the making of nonrecourse loans secured by real estate, including (i) risks associated with the general economic climate; (ii) local real estate conditions; (iii) risks due to dependence on cash flow; (iv) risks and operating problems arising out of the absence of certain construction materials; (v) changes in supply of, or demand for, competing properties in an area (as a result, for instance, of over-building); (vi) the financial condition of tenants, buyers and sellers of properties; (vii) changes in availability of debt financing; (viii) energy and supply shortages; (ix) changes in the tax, real estate, environmental and zoning laws and regulations; (x) various insured or uninsurable risks; (xi) natural disasters; and (xii) the ability of a Client, the ECC Lender or third party borrowers to manage the real properties.

**Environmental Hazards:** If properties acquired by a Client or the ECC Lender through foreclosure or otherwise were subsequently found to have an environmental problem, such acquiring entity could incur substantial costs and suffer complete loss of its investment in such property as well as of other assets. Under environmental laws enacted by the United States and the various states and elsewhere, owners of property may be liable for the cleanup and removal of hazardous substances even where the owner was not responsible for placing the hazardous substances on the property or where the property was contaminated prior to the time the owner took title. The costs of removal and clean-up of hazardous substances and wastes can be extremely expensive and, in some cases, can exceed the value of a property. Similarly, real estate is subject to loss due to so-called “Special Hazards” (e.g., floods, earthquakes, hurricanes). It may be impractical or impossible to fully insure against such events and, should such an event occur, a Client, directly or through an ECC Lender, could incur substantial costs

and suffer a complete loss of its investment in such property.

Casualty Risk: A Client will require all borrowers to obtain comprehensive insurance covering the property collateralizing a Client's loans in an amount intended to be sufficient to provide for the replacement of the improvement at the property in the event of casualty. In addition, if a Client owns real property as a result of foreclosure or otherwise, a Client intends to carry comprehensive insurance covering such property for the replacement cost of the improvements at such property in the event of a casualty. However, the amount of insurance coverage maintained for any property may not be sufficient to pay the full replacement cost of the improvement following a casualty event. In addition, the rent loss coverage under a policy may not extend for the full period of time that a tenant may be entitled to a rent abatement as a result of, or that may be required to complete restoration following, a casualty event. In addition, there are certain types of losses, such as those arising from earthquakes, floods, hurricanes and terrorist attacks that may be uninsurable or that may not be economically insurable. Changes in zoning, building codes and ordinances, environmental considerations and other factors may make it impossible for borrowers or a Client, as the case may be, to use insurance proceeds to replace damaged or destroyed improvements at a property. If any of these or similar events occur, the amount of coverage may not be sufficient to replace a damaged or destroyed property and/or to repay in full the amount due on all loans collateralized by such property and, therefore, may reduce the value of an investment and the returns.

Equitable Subordination: Investments in properties operating in workout modes or under Chapter 11 of the U.S. Bankruptcy Code are, in certain circumstances, subject to certain additional potential liabilities which may exceed the value of a Client's original investment. For example, under certain circumstances, lenders who have inappropriately exercised control of the management and policies of a debtor may have their claims subordinated or disallowed or may be found liable for damages suffered by parties as a result of such actions.

Action of the Agent: A Client and/or the ECC Lenders may rely on an agent to collect its portion of the payments on a loan. Furthermore, a Client and/or the ECC Lender may rely on such agent to use appropriate creditor remedies against the borrower. Typically, the agent is given broad discretion in enforcing the credit agreement, and is obligated to use only the same care it would use in the management of its own property. In the event that an agent becomes insolvent, or has a receiver, conservator or similar official appointed for it by the appropriate bank regulatory authority or becomes a debtor in a bankruptcy proceeding, assets held by the agent under a loan agreement should remain available to a Client or the ECC Lender, as applicable. If, however, assets held by the agent for the benefit of a Client or the ECC Lender were determined by an appropriate regulatory authority or court to be subject to the claims of the agent's general or secured creditors, a Client or the ECC Lender might incur certain costs and delays in realizing payment on a loan or suffer a loss of principal or interest.

Commitment Risk: It is standard practice in real estate finance for the lender to issue a commitment to fund, prior to the completion of due diligence. In the ordinary course of events, the lender would then complete the necessary work and make the decision to fund based on the information gained. Should the lender choose not to fund, it may become liable for doing so.

Interest Rate Risk: Investments may bear interest at a floating-rate. A Client will be taking on interest rate risk to the extent that the floating rate applicable to the financial assets in which a Client invests decrease, reducing the cash flow available to a Client. In addition, such floating-rate investments may fluctuate in value due to changes in interest rates because of a time lag between the period when interest rates rise and when rates on the investments are reset.

Credit Risk: There can be no assurance that any borrower in an investment will not default, or that an event that has an immediate and significant adverse effect on the value of an investment will not occur, and that a Client will not sustain a loss on a transaction as a result.

Obligation of Good Faith to the Borrower: In recent years, a number of judicial decisions in the United States have upheld the right of borrowers to sue lending institutions on the basis of various evolving legal theories (collectively termed “lender liability”). Generally, lender liability is founded upon the premise that an institutional lender has violated a duty (whether implied or contractual) of good faith and fair dealing owed to the borrower or has assumed a degree of control over the borrower resulting in the creation of a fiduciary duty owed to the borrower or its other creditors. A Client and the ECC Lenders may be subject to potential allegations of lender liability. In addition, courts have in some cases applied the doctrine of equitable subordination to subordinate the claim of a lending institution against a borrower to claims of other creditors of the borrower when the lending institution is found to have engaged in unfair, inequitable or fraudulent conduct.

Other Holders of Term Debt: Third Party Participants may participate in investments, which may involve risks, including the possibility that a Third Party Participant may at any time have economic or business interests or goals which are inconsistent with those of a Client, or may be in a position to take action contrary to a Client’s investment objectives.

Recourse to a Client’s Assets: As is the case with respect to companies generally, the assets of a Client, including any investments and any funds held by a Client, are available to satisfy all liabilities and other obligations of a Client. If a Client generally becomes subject to a liability, parties seeking to have the liability satisfied may have recourse to a Client’s assets generally and not be limited to the particular asset giving rise to the liability.

Assignments of Loans: Participations in Loans: In addition to originating loans, a Client may acquire interests in loans either directly (by way of novation or assignment) or indirectly (by way of participation in the loans originated by any ECC Lender). In addition, the ECC Lenders may also acquire interests in loans by way of novation or assignment. Each institution from which such an interest is acquired is referred to herein as a “Selling Institution”. Interests in loans acquired directly by way of novation or assignment are each referred to as an “Assignment”. Interests in loans acquired indirectly by way of participation or sub participation are each referred to herein as a “Participation”. Assignments and Participations are sold without recourse to the Selling Institution and the Selling Institution will generally make no representations or warranties about the underlying loan, the obligors thereunder, the documentation or any collateral securing the loans. In addition, a Client will be bound by provisions of the underlying loan agreements, if any, that require the preservation of the confidentiality of information provided by the obligor.

As described in more detail below, holders of Participations are subject to additional risks not applicable to a holder of a direct interest in a loan.

(a) Assignment: The purchaser of an Assignment typically succeeds to all the rights of the assigning Selling Institution and becomes entitled to the benefit of the loans and the other rights of the lender under the loan agreement. A Client or any ECC Lender, as an assignee, will generally have the right to receive directly from the obligor all payments of principal and interest to which it is entitled provided notice of such Assignment has been given to the obligor. As a purchaser of an Assignment, a Client or any ECC Lender typically will have the same voting rights as other lenders under the applicable loan agreement and will have the right to vote to waive enforcement of breaches of covenants. A Client or any ECC Lender will also

have the same rights as other lenders to enforce compliance by the obligor with the terms of the loan agreement, to set off claims against the obligor and to have recourse to collateral supporting the loan. As a result, a Client or any ECC Lender will generally not bear the credit risk of the Selling Institution and the insolvency of the Selling Institution should have little effect on the ability of a Client or any ECC Lender to continue to receive payment of principal or interest from the obligor. A Client or any ECC Lender will, however, assume the credit risk of the obligor.

(b) Participation: Participation of a Client in a Selling Institution's portion of a loan typically results in a contractual relationship only with such Selling Institution and not with the obligor under such loan. A Client would, in such case, have the right to receive payments of principal and interest to which it is entitled only upon receipt by the Selling Institution of such payments from the obligor. In purchasing Participations, a Client generally will have no right to enforce compliance by the obligor with the terms of the applicable loan agreement, nor any rights of set off against the obligor and a Client may not directly benefit from the collateral supporting the loan in respect of which it has purchased a Participation. As a result, a Client will assume the credit risk of both the obligor and the Selling Institution selling the Participation. In the event of the insolvency of the Selling Institution selling a Participation, a Client may experience delays in securing payments made to the Selling Institution by the obligor and may be treated as a general creditor of the Selling Institution and may not benefit from any set off between the Selling Institution and the obligor and a Client may suffer a loss to the extent that the obligor may set off claims against the Selling Institution. If a Client is treated as a general creditor of the Selling Institution, it may not have any exclusive or senior claim with respect to the Selling Institution's interest in, or to the collateral securing, the loan in question. A Client may purchase a Participation from a Selling Institution that does not itself retain any economic interest in the loan, and therefore, such Selling Institution may have limited interest in monitoring the terms of the loan agreement and the continuing creditworthiness of the obligor. When a Client holds a Participation in a loan it generally will not have the right to vote to waive enforcement of any covenants breached by an obligor. Although most participation agreements provide that the Institution may not vote in favor of any amendment, modification or waiver that forgives principal or interest, reduces principal or interest that is payable, postpones any payment of principal (other than a mandatory pre-payment) or interest or release substantially all of the collateral without the consent of the participant at least to the extent the participant would be affected by any such amendment, modification or waiver, there can be no assurance that this will be the case. A Selling Institution voting in connection with a potential waiver of a restrictive covenant may have interests which are different from those of a Client and such Selling Institutions are not required to consider the interest of a Client in connection with the exercise of its votes. The rights and obligations of the Fund in connection with a purchase of a Participation from a Selling Institution, including the economic terms of such purchase, will be set forth in the applicable participation agreement between the Fund and the Selling Institution.

### **Risks Relating to the Terms of a Client Agreement**

Indemnification: A Client will be required to indemnify the Advisor and their respective affiliates, officers, directors, agents, stockholders, members and partners for liabilities incurred in connection with the affairs of a Client. Such liabilities may be material and have an adverse effect on the returns to the Members. The indemnification obligation of a Client will initially be payable from the assets to a Client, including the unfunded commitments of the Members in a Fund. If the assets of a Fund are insufficient, a Fund may recall distributions previously made to the Members.

Lack of Transferability of Interest: The Interests offered have not been registered under the securities laws of any jurisdiction and are subject to restrictions on transfer contained in such laws and a Client Agreement. Interests are not transferable except with the consent of the Advisor. There will not be any market for the Interests.

Dilution from Subsequent Closings in Funds: Members subscribing for interests at subsequent closings will participate in existing investments, diluting the interest of existing Members therein. Although such additional Members will contribute their pro rata share of draws previously called by a Fund (plus an additional amount thereon representing interest), there can be no assurance that this payment will reflect the fair value of the existing investments at the time such additional Members subscribe for Interests.

Performance Fees: The existence of the Carried Interest may create an incentive for the Advisor and its affiliates to make more speculative investments on behalf of a Client than it would otherwise make in the absence of such performance-based compensation.

Sale or Distribution of Assets: If a Client's account is liquidated, it could take several years to liquidate a Client's assets. The Advisor will endeavor to ensure that the investments of a Client are fully repaid, sold or otherwise disposed of during the liquidation. However, it may not be possible for a Client to dispose advantageously of all of the investments and, as a result, a Client may have to sell, distribute or otherwise dispose of investments at a disadvantageous time as a result of dissolution or extend the term of a Client account. To the extent that certain investments remain unsold or not fully repaid at the end of the liquidation period, which prevent a Client from being finally wound up, the liquidator of a Client account (the "Liquidator") may decide to distribute property in-kind.

Clients may be subject to restrictions on disposal in-kind property distributed to them and, consequently, Clients may not be able to realize the full value of such in-kind property. In addition, the Liquidator may choose to distribute the proceeds of the disposition of in-kind property to the Clients instead of distributing such in-kind property, and may not be able to dispose of such in-kind property at optimal prices and, consequently, the proceeds received by such Clients from the sale of such in-kind property by the Liquidator may be less than the value of the in-kind property itself. In-kind distributions may have adverse tax consequences that may not otherwise apply to an equivalent cash distribution. There can be no guarantee or assurance as to the liquidity of in-kind property distributed to Clients, or the effect that such lack of liquidity could have on the value of such in-kind property or such Clients' return on their investment in a Fund.

Default in Fund Offerings: A Fund may experience difficulty in making up for a shortfall from other sources should a Member fail for whatever reason to pay to a Fund sums drawn down by the Advisor in respect of its Commitments. Other Members may be required to make additional contributions to replace such shortfall, thereby reducing the diversification of their investments. Any default by one or more Members could have an adverse effect on a Fund, its assets and the interest of other Members. A Defaulting Member will be subject to the remedies specified in a Fund Agreement. In addition, the Advisor may, in its sole discretion, take any of the following actions: (i) freeze the capital account of such Defaulting Member; (ii) cause the Defaulting Member to share in the net losses of a Fund, if any, to the extent of its capital account, but not in any of its net profits; (iii) prohibit the Defaulting Member from participating in any future capital contributions with respect to its Commitment; (iv) cause the Defaulting Member's Interest to be forfeited; (v) cause the Defaulting Member's Interests to be sold or transferred; (vi) reduce the capital account of a Defaulting Member by thirty percent (30%) and reallocate



the amount of such reduction in capital account among all Members other than the Defaulting Member on terms established by the Advisor in its sole discretion, provided, that the amount so reallocated to any Member shall not reduce the Commitment of such non-Defaulting Member; (vii) maintain such Defaulting Member's obligations to pay its share of Fund's expenses as if the Default had not occurred; (viii) apply amounts otherwise distributable to such Defaulting Member in satisfaction of all amounts payable by such Defaulting Member, including, without limitation, the Default Expenses of such Defaulting Member; (ix) reduce such Defaulting Member's percentage interest in a Fund, which reduction may be to zero; (x) release such Defaulting Member from its obligations under its Commitment; and/or (xi) exercise any other remedy available under applicable law.

Excuse; Fund Co-Investments: Certain Members may be excused from certain investments. In addition, the Advisor from time to time may, subject to certain exceptions set forth in a Fund Agreement, offer Members or third parties, including Third Party Participants, opportunities to co-invest with a Fund in particular investments. Such Third Party Participants and other co-investors may choose to participate in some, but not all, of the investments. Accordingly, the percentage interest of the other Members or a Fund, as applicable, in, and the contribution of obligations of the other Members or a Fund, as applicable, with respect to, certain investments may be more or less than what it would have been otherwise.

No Right of Fund Withdrawal: Except as otherwise determined by the Advisor, a Member may not make full or partial withdrawals from a Fund or make a demand for such Member's capital account until the termination of a Fund.

Compulsory Fund Redemption and Withdrawal: The Advisor may cause the Member to compulsorily redeem its interest and withdraw from a Fund in certain circumstances, including, among others, if the Member ceases to be an eligible investor, the continued holding of such Interests by such Member could cause a Fund or the Advisor to violate a law or regulation, to become subject to a material tax, regulatory or other burden or to suffer other economic disadvantages, or such Member has breached a Fund Agreement and/or the Subscription Agreement.

Limited Recourse to the Fund Advisor: A Fund Agreement will limit the circumstances under which the Advisor and its affiliates can be held liable to a Fund and the Members. As a result, Members may have more limited rights of action in certain cases than they would in the absence of such provisions.

Lack of Control by Fund Members and other Clients: Members and other Clients will not have an opportunity to evaluate the investments made by the Advisor or the terms of any particular Investment. The Clients' business will generally be managed by the Advisor, and accordingly the Advisor will have significant discretion in managing a Client's business. The rights and obligations of Members and other Clients will be subject to the limitations set forth in a Member's or Client's Agreement and except for the rights specifically reserved to them by a Fund or Client Agreement and applicable law, the Members or other Clients will have no part in the management and control of a Fund or other Client account.

Tax Issues: In computing its United States federal income tax liability for a taxable year, each Member of a Fund and other Clients will be required to take into account his, her or its allocable share of income, gain, loss and deduction for the taxable year ending within or with such taxable year of the Member, regardless of whether the Member has received any distributions. Prospective investors should also be aware that they will be subject to various limitations on their ability to deduct their allocable share of losses (or items of loss and deduction). For these

and various other reasons, it is possible that the federal income tax liability with respect to a Client's allocable share of earnings in a particular year could exceed the cash distributions for the year, thus giving rise to an out-of-pocket payment. In addition, a Member or other Client may become subject to tax return filing obligations, income, franchise and other taxes in State and local jurisdictions, such as the State of New York, in which a Client conducts business or other activities, earns income or owns property, even if the Member or Client is not a resident of such jurisdiction. A Fund itself may also become subject to tax in certain jurisdictions, including the City of New York. In view of the complexity of the United States federal, state, local and non-U.S. tax aspects of the offering, and given that certain of the tax aspects of the offering may not be the same for all investors, prospective investors must consult their own tax Advisors with specific reference to their own United States federal, state, local and non-U.S. tax situations prior to investing.

ERISA Risk for Benefit Plan Investors: Persons acting as fiduciaries with respect to any Benefit Plan Investor should satisfy themselves that an investment in a Fund or other Client is prudent, taking into consideration cash flow and other objectives of the investor as may be applicable in light of its individual circumstances, and, to the extent applicable, consistent with Section 404 of ERISA. See Section V. - "Certain Tax and Regulatory Considerations - ERISA Considerations."

Diverse Fund Member Group: The investors in a Fund may have conflicting investment, tax and other interests with respect to their investments. The conflicting interests of individual investors may relate to or arise from, among other things, the nature of investments made by the Advisor, the structuring or the acquisition of a Fund and the Fund's investments and the timing of disposition of investments. As a result, conflicts of interest may arise in connection with the decisions made by the Advisor, including with respect to the nature or restructuring of investments that may be more beneficial for one investor than for another investor, especially with respect to investors' individual tax situations. In selecting and structuring investments appropriate for a Fund, the Advisor will consider the investment and tax objectives of a Fund, not the investment, tax or other objectives of any investor individually.

Absence of Fund Regulatory Oversight: While a Fund may be considered similar in some ways to an investment company, it is not required and does not intend to register as such under the Investment Company Act of 1940 and, accordingly, investors in a Fund are not accorded the protections of the Investment Company Act.

Unspecified Investments and Potential Nonavailability of Suitable Investments: Members of Funds and other Clients will be unable to evaluate investments at the time they make their investment in a Client account, including (i) the terms of the acquisition of any investments or (ii) other relevant economic and financial data affecting an investment.

Changes in Applicable Law: A Fund must comply with various legal requirements, including requirements imposed by U.S. Federal income tax law and U.S. Federal and state securities laws. If any of the laws and regulations currently in effect should change or any new laws or regulations should be enacted, the legal requirements to which a Fund and the Members may be subject could differ materially from current requirements and may materially and adversely affect a Client.

**Item 9 - Disciplinary Information**

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

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

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

- A. The Advisor is not registered, and does not have an application pending to register, as a broker-dealer or registered representative of a broker-dealer. Currently, no employees of the Advisor are registered representatives of a broker-dealer.
- B. Neither the Advisor nor any of its management persons are registered, or have an application pending to register, as a futures commission merchant, commodity pool operator, commodity trading Advisor, or an associated person of the foregoing entities.
- C. ECC Fund SM II, LLC is a related party to the Advisor as well as an investor in each of the Funds advised by the Advisor. ECC Fund SM II, LLC is entitled to receive the performance allocation described in Item 5. Because ECC Fund SM II, LLC is an investor in all of the Funds, there are no foreseen conflicts of interest arising between Funds. However, there may be a potential conflict of interest between Funds and the Advisor's separately managed accounts where one client could be favored over another should one client be entitled to higher management and/or performance allocation fees than another client. In order to address this potential conflict of interest, the Advisor has adopted a written Code of Ethics that contains policies and procedures to address conflicts of interest. Under such policies and procedures, the Advisor is required to make investment decisions for its Clients in a manner that is consistent with its fiduciary duties to its Clients.
- D. The Advisor does not receive any compensation for the recommendation of other investment Advisors for its Clients.

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

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

While the Advisor rarely has access to non-public information relating to public companies, as part of its Code, the Advisor has established procedures to prevent the abuse of material, non-public information, which includes procedures for, among other things, the use and maintenance of restricted trading lists.

A copy of the Advisor's Code of Ethics will be provided to Clients or prospective Clients upon request.

- B. Affiliates of the Advisor serve as the managers to Funds, which issue partnership interests to third party investors. Other than with respect to these structures and ECC Fund SM II, LLC as described in Item 10(C), neither the Advisor nor any of its related persons recommend to its Clients, or buy or sell for its Clients, investments in which the Advisor or any related persons have a material financial interest.
- C. See Item 10.C.
- D. See Item 10.C.

**Item 12 - Brokerage Practices**

- A. The Advisor's investment strategy involves investing primarily in loan origination and does not involve the purchase or sale of publicly traded equity securities. As a result, the Advisor does not select or recommend broker-dealers for the purchase and sale of securities for its Clients.

The Advisor does not maintain any trading accounts and does not use "soft" dollars received from broker-dealers from the purchase and sales of securities for its Clients.

- B. Not applicable.
- C. Not applicable.
- D. Not applicable.
- E. Not applicable.
- F. Not applicable.

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

- A. Mark Bahiri and Mark Penna, the Managing Members of Emerald Creek Advisors LLC, are responsible for reviewing Client investment portfolios. Mr. Bahiri and Mr. Penna perform daily, weekly or monthly reviews of Client positions as they deem appropriate. Performance, certain investment positions, exposure levels, and investment opportunities are among some of the matters that may be discussed.
- B. See Item 13.A. above.
- C. Annually, the Advisor assists each Fund in furnishing all investors with (i) audited written financial statements prepared in accordance with generally accepted accounting principles, accompanied by the report of its independent certified public accountants, and (ii) tax information necessary for the completion of tax returns. Additionally, non-audited portfolio performance is distributed to the investors on a quarterly basis. The Advisor will provide investors in a Separate Account with such reports that are required by such Separate Account's Offering Documents.

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

- A. The Advisor does not receive any economic benefit, including sales awards or prizes, from any third party for providing advisory services to Clients.
- B. The Advisor may enter into agreements with persons who refer potential investors for Clients to the Advisor. For their referral services, these persons may receive compensation from the Advisor in the form of a percentage of the Management Fee and/or performance-based fee or allocation that the Advisor and its affiliates receive from the Clients with respect to the referred investors. All such arrangements will be in accordance with Rule 206(4)-3 under the Advisors Act.



**Item 15 - Custody**

The Advisor may be deemed under Rule 206(4)-2 of the Advisors Act to have custody of Fund assets by virtue of its control of the assets. All Fund assets and securities are held by qualified custodians or by Funds pursuant to an exemption from the requirement for a qualified custodian. As noted in Item 13, Fund Investors receive annual financial statements audited by an independent public accounting firm. Fund Investors are urged to carefully review these statements.

The Advisor does not have nor is it deemed to have custody of the assets and securities of the Separate Accounts or any subsidiary trusts of Funds.

**Item 16 - Investment Discretion**

The Advisor exercises discretion in managing the investments of each Client, based on the Client's particular investment objectives, policies and strategies disclosed in its Offering Documents.

The Advisor contractually assumes discretionary authority over the assets of each Fund under an investment management agreement entered into among the Advisor, a Fund and a Fund's Advisor or other controlling entity.

The Advisor contractually assumes discretionary authority with each Separate Account under an investment management agreement with the Separate Account.

**Item 17 - Voting Client Securities**

The Advisor's investment strategy involves loan origination. Although the Funds are permitted to invest in equities in limited circumstances, currently, the Advisor does not invest Client assets in public equity securities and therefore does not receive proxies on behalf of its Clients.

**Item 18 - Financial Information**

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