

## **AECOM Capital Real Estate, LLC**

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*This brochure provides information about the qualifications and business practices of AECOM Capital Real Estate, LLC ("**ACRE**" or the "**Company**"). If you have any questions about the contents of this brochure, please contact us at (424) 512-7320 or contact our Chief Compliance Officer at [acre@aecom.com](mailto:acre@aecom.com). The information in this brochure has not been approved or verified by the SEC or by any state securities authority.*

*Additional information about the Company is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).*

*The Company is an investment adviser that is registered with the United States Securities and Exchange Commission (the "**SEC**"). Registration with the SEC as an investment adviser does not imply a certain level of skill or training.*

## **Item 2:     Material Changes**

Since the annual update to this Brochure, dated December 29, 2020, was filed with the SEC, the following material changes that have been made to this Brochure:

- the Company's main offices have been relocated to 1800 Avenue of the Stars, Suite 1425, Los Angeles, CA 90067; and
- The Company has launched a new co-investment vehicle.

Other changes have been made to this Brochure, some of which enhance existing disclosures, but the Company does not consider such changes to be material.

### **Item 3: Table of Contents**

Item 2:	Material Changes .....	ii
Item 4:	Advisory Business.....	1
Item 5:	Fees and Compensation .....	2
Item 6:	Performance-Based Fees and Side-By-Side Management.....	5
Item 7:	Types of Clients.....	5
Item 8:	Methods of Analysis, Investment Strategies and Risk of Loss.....	5
Item 9:	Disciplinary Information .....	29
Item 10:	Other Financial Industry Activities and Affiliations .....	29
Item 11:	Code of Ethics, Participation or Interest in Client Transactions and Personal Trading...	31
Item 12:	Brokerage Practices.....	31
Item 13:	Review of Accounts.....	32
Item 14:	Client Referrals and Other Compensation .....	32
Item 15:	Custody.....	33
Item 16:	Investment Discretion .....	33
Item 17:	Voting Client Securities .....	33
Item 18:	Financial Information .....	33

## Item 4: Advisory Business

AECOM Capital Real Estate, LLC ("ACRE" or the "Company") is an investment advisory firm based in Los Angeles, California, that was founded in 2018 to manage private investments in commercial real estate projects. ACRE targets co-general partner equity ("Co-GP Equity") opportunities in development and value-add commercial real estate projects in the United States. ACRE is a wholly-owned subsidiary of AECOM Capital, Inc. ("ACAP"), which is in turn a wholly-owned subsidiary of AECOM. AECOM is a publicly traded (NYSE: ACM) infrastructure consulting firm, delivering professional services throughout the project lifecycle – from planning, design and engineering to program and construction management.

Since 2013, ACAP has invested AECOM's own capital in commercial real estate projects. In connection with a business initiative to offer investment advisory services to third party investors, ACRE entered into a joint venture with Canyon Partners Real Estate LLC ("CPRE," and, together with ACRE, the "Sponsors"), pursuant to which the Sponsors co-sponsor and co-manage a private real estate fund (together with any related feeder funds, parallel funds and alternative investment vehicles, the "Fund") that focuses on investing in Co-GP Equity opportunities in development or value-add commercial real estate projects in the United States. The Fund is managed by AECOM-Canyon Partners Real Estate Fund Advisors LLC, a registered investment adviser jointly owned by ACRE and CPRE (the "Manager").

The Fund generally seeks to partner with an experienced local real estate Co-GP partner ("Co-GP Partner") to form a joint venture (an "Operating Partner JV") in order to co-develop and jointly lead the execution of a single real estate joint venture project (which may include multiple underlying properties) (a "Project JV"), although the Fund may in some instances act as the sole operating partner. The Co-GP Partner is generally the administrative partner of the Operating Partner JV (and therefore, the Project JV), subject to the rights of the Fund to approve certain major decisions and to take action in lieu of the Co-GP Partner in certain instances.

Where practicable, the Fund's Operating Partner JVs seek additional passive investment capital (*i.e.*, capital with no control rights over project execution) for the Project JV that is generally provided by a "Project LP." In some cases, the Project LP may be a co-investment vehicle comprised of Fund investors (each, an "LP Equity Co-Investment Vehicle") that will be co-sponsored and co-managed by ACRE and CPRE through the Manager.

ACRE may also co-sponsor and co-manage with CPRE other investment vehicles ("GP Equity Co-Investment Vehicles" and, together with the LP Equity Co-Investment Vehicles, the "Co-Investment Vehicles") that will offer investors opportunities to either co-invest alongside the Fund in Co-GP Equity opportunities or invest in Co-GP Equity investment opportunities that are determined not to be appropriate for the Fund. The Fund and the Co-Investment Vehicles are referred to collectively in this Brochure as the "Clients."

AECOM provides significant financial support and other services to the commercial real estate projects in which the Fund invests and AECOM is compensated for such services. See "Item 5 – Fees and Expenses" and "Item 10 – Other Financial Industry Activities and Affiliations" below.

ACRE seeks to invest each Client's assets in accordance with the applicable limited partnership agreement, private placement memorandum and other governing documents (the "Governing Documents"). ACRE conducts its investment advisory activities so as to comply with the investment objective, guidelines and restrictions set forth in the Governing Documents, as the same may be

amended from time to time. However, ACRE does not tailor its investment activities on behalf of any Client to the needs of any individual investor in such Client.

As of September 30, 2021, ACRE managed \$685,729,076 in regulatory assets under management, all on a discretionary basis.

## **Item 5: Fees and Compensation**

ACRE indirectly receives compensation from the Fund through its interest in the Manager. In particular, the Manager receives an asset-based management fee from the Fund that is typically payable quarterly in advance, as further described in the Fund Governing Documents. If the Manager's advisory agreement with the Fund is terminated, management fees will be charged on a *pro rata* basis through to the date of termination, and any fees paid in advance but not earned will be refunded. The general partner of the Fund generally makes capital calls on Fund investors for the amount of the Manager's management fees and pays the amounts received to the Manager. In addition to the management fees described above, the Manager is generally also entitled to receive a carried interest allocation from the Fund after certain performance hurdles have been met, as further described in the applicable Fund Governing Documents. Such carried interest represents a portion of the Fund's net investment profits. The Manager (and, indirectly, ACRE) will also receive similar asset-based management fees and carried interests from any Co-Investment Vehicle that it organizes.

Prior to making any investment decision, potential investors in the Fund or any Co-Investment Vehicle should review the applicable Governing Documents carefully for a full description of the fee revenues and other compensation that the Manager (and, indirectly, ACRE) can receive.

The management fees and carried interest are generally subject to waiver or reduction by the general partner with respect to some or all of a Client's limited partners in the general partner's sole discretion, as further described in the applicable Governing Documents.

In general, each Client bears all costs and expenses incurred in connection with the organization of the Client, the Client's general partner and the Manager, including the arrangements between the Sponsors relating to the Client's general partner and the Manager such as the costs of preparing the governing documents of the Client's general partner and the Manager, including legal and accounting fees, printing costs, travel and other out-of-pocket expenses, and all costs and expenses incurred in connection with the offering of interests in the Client (but not any placement fees or travel-related expenses incurred by the Sponsors in connection with the marketing of the Client) ("Organizational Expenses"), up to a maximum amount specified in the applicable Governing Documents. Organizational Expenses in excess of this amount, and any placement fees, will be paid by the Client but borne by the Manager through a 100% offset against the Client's management fee.

In addition, each Client is generally responsible for all expenses relating to its own operations ("Client Expenses"), including, without limitation, (a) any management fees; (b) fees, costs and expenses related to the due diligence, evaluation, purchase, holding, development, management, monitoring and sale of investments, including, without limitation, travel, accommodation, meal and entertainment expenses related to such investments or proposed investments, syndication fees, bank charges, closing and execution costs, sales commissions, finders and brokers fees, appraisal fees and taxes; (c) principal, interest, fees, costs and expenses and other amounts payable relating to financings (including any credit facility); (d) fees, costs and expenses relating to third-party services, including custody, legal, accounting, consulting, investment banking, administrative, tax, audit, depositary, safekeeping and other professional costs, including those services provided by the

Sponsors or other affiliates of the Client's general partner or the Manager; (e) any insurance or indemnity expenses (including the cost of premiums with respect to any directors and officers or similar insurance for the employees of the Manager (i.e., employees of the Sponsors performing services for the Manager); (f) fees, costs and expenses relating to the Client's administration, including administrative services and preparation of the Client's financial statements and reports to limited partners, which may be provided by the Sponsors or other affiliates of the Client's general partner or the Manager; (g) fees, costs and expenses relating to investor meetings and meetings with individual limited partners; (h) fees, costs and expenses relating to the Client's limited partner advisory committee, including out-of-pocket expenses of its members; (i) any taxes (except for taxes attributable to a particular Investor), fees or other governmental charges levied against the Client; (j) fees, costs and expenses associated with environmental, property management, engineering, construction and related services, including services provided by the Sponsors or other affiliates of the Client's general partner or the Manager; (k) fees, costs and expenses related to structuring, organizing, operating and maintaining investment vehicles through which the Client's investment activities are conducted (including Co-Investment Vehicles to the extent they fail to launch); (l) fees, costs and expenses relating to unconsummated transactions, including, without limitation, the fees, costs and expenses described in clause (b) above, and including amounts that would otherwise have been borne directly or indirectly by potential co-investors were such transactions consummated; (m) fees, costs and expenses related to the dissolution, liquidation and termination of the Client and its general partner; (n) fees, costs and expenses incurred in connection with any restructuring or amendments to the offering or constituent documents of the Client; (o) expenses incurred in connection with the collection of amounts due to the Client from any person, including amounts relating to defaults by limited partners in the payment of capital contributions; (p) fees, costs and expenses incurred for research or obtaining information for the Client or its investments; (q) fees, costs and expenses relating to the Client's allocable portion of information technology and systems; (r) fees, costs and expenses (and damages) related to regulation, litigation, government inquiries, investigations or proceedings, in each case related to the Client or its investments, including, without limitation, regulatory expenses of the Client's general partner and the Manager related to the preparation and filing of Form PF and other similar regulatory filings; (s) expenses relating to compliance or filings related to the European Alternative Investment Fund Managers Directive; (t) expenses related to complying with the reporting requirements of Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended and certain regulations and other administrative guidance thereunder; (u) in the case of clauses (r) through (t) above, similar regulations and administrative requirements in other jurisdictions; (v) all costs, fees and expenses of the Client's "partnership representative;" (w) fees, costs and expenses incurred in connection with administering side letters or similar agreements entered into with limited partners, including the distribution and implementation of any applicable elections pursuant to "most-favored nation" (or similar clauses) or co-investment rights; and (x) any other costs, fees or expenses that, in the determination of the Client's general partner, in consultation with the Manager, are reasonably incurred in connection with the operation of the business, the offering of interests and the maintenance of the Client or its general partner. To the extent any of the foregoing costs, fees or expenses are incurred for the benefit of the Client and other entities managed by the Client's general partner, the Sponsors or their affiliates (including any parallel investment vehicle), the Client's general partner will make a good faith allocation of such costs, fees or expenses among the Client and such other entities.

100% of any transaction, monitoring, consulting, breakup or similar fees received by the Manager and its affiliates or employees in connection with a Client's investments, net of unreimbursed transaction expenses incurred by the Manager or its affiliates, will be applied to reduce such Client's management fee for the following quarterly period ("Transaction Fees"). 100% of any placement fees paid by a Client will be applied to reduce the Client's management fee for the following quarterly

period. For the avoidance of doubt, Transaction Fees will only include the portion thereof that is allocable to the applicable Client. In addition, the Project JV will generally pay development management fees ("Development Fees") to AECOM (or an AECOM affiliate) and/or the Co-GP Partner, which will be based on the hard and soft development costs of the Project JV. However, 50% of any Development Fees payable to AECOM or an AECOM affiliate in connection with any Project JV ("AECOM Development Fees") will be applied to reduce the applicable Client's management fee.

To the extent such offsets would reduce a Client's management fee for a given quarterly period to below zero, such offsets will be carried forward and reduce future installments of the management fee. If upon dissolution of a Client, any excess Transaction Fee remains, the Manager will return to such Client for the benefit of the partners an amount equal to such unapplied excess amount; *provided*, that any limited partner may waive its right to receive its *pro rata* portion of such amount.

From time to time, AECOM or its affiliates will receive fees for providing construction, construction management, design, engineering, consulting, operations and maintenance, owner's representative or other similar services in respect of investments, at rates and on terms generally consistent with rates and terms as would be agreed on an arms' length basis for the provision of similar services to third parties by the applicable AECOM entity. Neither these non-development management fees nor any Guarantee (as defined below) fees received by AECOM or its affiliates will reduce a Client's management fee (other than, for the avoidance of doubt, AECOM Development Fees, which will be treated as described above).

AECOM (or certain of its affiliates) will from time to time agree to provide completion, carry cost guarantees and certain other guarantees and/or indemnities ("Guarantees") that project lenders may require in connection with approved investments where an affiliate of AECOM is acting as either the construction manager at risk, or the owner's representative, in connection with an applicable project. If AECOM provides any such Guarantees (whether or not it is the sole guarantor), it may receive a fee from the applicable Co-GP Partner (and not the Fund, other Client, the Operating Partner JV or the Project JV). In addition, if the funds are available, AECOM or an affiliate may recover the amounts paid under a Guarantee (other than payments that were the result of certain disabling conduct by AECOM or its affiliate), plus a preferred return thereon. Investors should refer to the applicable Governing Documents for additional information on the Guarantees that AECOM expects to provide.

Similarly, if reserves available for a Project JV are depleted, AECOM will generally be required to make "Support Payments" to cover the Clients' share of certain non-budgeted completion and carrying cost overruns on behalf of the Clients (but not on behalf of the Client's Co-GP Partner or any unaffiliated Project LPs). If AECOM makes any such Support Payments, then, upon the sale of any project, AECOM will be entitled to reimbursement of those Support Payments from the applicable Clients' share of the sale proceeds on terms that depend on the phase during which the Support Payments were made and whether completion of the project was timely. Investors should refer to the applicable Governing Documents for additional information on the Support Payments that AECOM expects to provide.

The applicable Governing Documents for Client include provisions that allow such Clients to borrow money for investment and other purposes. Such borrowings may be made prior to capital being called from the Client's investors or even in lieu of calling capital. This mechanism can defer investor capital calls and provide a form of leverage that has the effect of amplifying a Client's reported net internal rate of return (IRR), particularly in the early years of a Client's investment life. Such borrowings can also accelerate the date upon which a Client's preferred return will be achieved for purposes of determining when the Manager is entitled to begin receiving carried interest allocations from the Client. In accordance with the terms of the applicable Governing Documents, interest

payments and other fees and expenses incurred in respect of such borrowings are client expenses and such expenses will decrease a Client's net returns over time.

Limited partners and prospective investors in each Client should refer to the applicable Governing Documents for more detailed information concerning the fees, carried interest and other expenses that a Client bears.

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

As noted in Item 5 above, through its interest in the Manager, ACRE is indirectly entitled to receive a carried interest allocation from the Clients after certain performance hurdles have been met. These performance-based carried interest distributions create conflicts of interest, including an incentive for ACRE to engage in riskier or more speculative investments on behalf of the Clients than might otherwise be the case. In addition, in allocating investment opportunities, ACRE would have an incentive to favor Clients with a potential for performance-based compensation over Clients with no performance-based compensation. ACRE has adopted policies and procedures that are designed to ensure that all of its Clients are treated in a fair and equitable manner with respect to the allocation of investment opportunities

## **Item 7: Types of Clients**

As of the date hereof, it is anticipated that ACRE's only clients will be Fund and the Co-Investment Vehicles. Investors in the Clients generally include endowments, foundations, public and private pension funds, funds-of-funds, corporations, U.S. and non-U.S. institutional investors, family offices, and high net worth individual investors.

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

### **Methods of Analysis; Investment Strategies**

The Fund seeks capital appreciation for its investors primarily by investing indirectly through Operating Partner JVs in Project JVs that pursue ground-up development and value-add real estate opportunities with significant growth potential and/or strong long-term prospects for value creation. The Fund focuses on build-to-core Co-GP Equity investment opportunities for development or value-add repositioning of high quality commercial real estate assets. The Fund seeks to invest in large-scale projects situated on prime development or redevelopment sites that, once developed, can be stabilized into well-leased, high-income producing core investments. The Fund targets primary commercial real estate asset classes and projects generally located in urban infill locations within the United States. Each Co-Investment Vehicle generally invests alongside the Fund in a single investment that the Fund has made, and thus benefits from the same investment strategy.

ACRE targets opportunities for the Fund that ACRE believes will benefit from the team's commercial real estate construction and design know-how and investment expertise and from the strategic insights and resources of AECOM and ACAP.

### **Sourcing**

ACRE has dedicated origination teams, which possess extensive existing relationships with developers, owners, operators, brokers, lenders and other service providers. ACRE relies on this



network of industry relationships to generate potential investment opportunities for the Fund. In addition, ACRE's affiliation with AECOM and ACAP provides ACRE with access to a captive and proprietary investment sourcing channel for investment opportunities.

### Transaction Negotiation, Underwriting, Due Diligence and Closing

ACRE has a dedicated team of experienced design and construction professionals with extensive backgrounds in development, architecture, engineering and construction. This team focuses on creating development asset value through effective design and construction for the Fund's investments, and also seeks to provide ACRE with the necessary resources to perform due diligence on the physical aspects of each potential investment. During the initial due diligence of existing buildings or vacant land parcels, ACRE's experts seek to identify and evaluate the physical attributes of a development site, including potential environmental and geotechnical impacts, to uncover potential issues and determine remediation strategies and costs.

Following the sourcing and initial review of potential investments, ACRE co-manages the underwriting, due diligence investigation, structuring, negotiation and closing processes. While ACRE makes an assessment of each potential investment's suitability for the Fund based on its underwriting and due diligence investigation, all major investment-related decisions affecting the Fund require consensus among the members of the Fund's investment committee, which includes members appointed by both ACRE and CPRE, respectively. In making such decisions, the Fund's investment committee endeavors to select investments that create a diverse portfolio for the Fund across geographies and underlying property types.

### Asset Management

Upon closing of each investment, ACRE provides oversight of the day-to-day asset management of those investments and provides ongoing performance monitoring.

ACRE's design and construction team works closely with Co-GPs and with selected outside architectural and engineering firms from the design concept through construction phase of development. The design and construction team focuses on creating development asset value through effective design and construction for the Fund's investments, concentrating on the physical aspects of an asset that have an impact on overall property value. These areas of focus include architectural design, exterior and interior finishes and mechanical, electrical and plumbing systems. This team also oversees all estimating, budgeting and construction cost management, which is intended to help mitigate the risk of development cost overruns and resulting delays on completion and stabilization.

Once the Fund's assets are developed, the Project JV business plan is to stabilize the assets into well-leased, high-income producing, core investments that are then sold to institutional core buyers seeking income-producing assets that can provide predictable yield. ACRE estimates that the average holding period of each investment will be approximately five (5) years.

### Risk Factors

The investment strategy pursued by the Fund involves a number of significant risks. This investment strategy may be deemed to be speculative, and such investment strategy is not intended as a complete investment program. It is designed for sophisticated investors who fully understand and are capable of bearing the risk of such investments. Investment risks include, but are not limited to, the following:

## **General Investment Risks**

### **Possibility of Losses**

An investment in the Fund is speculative. The Fund's success will largely depend on the Manager's ability to identify suitable investments and to negotiate advantageous terms for the Fund relating to such Investments. The Manager may not be able to execute the Fund's investment objective or generate returns to the Fund's investors commensurate with the risks of the types of investments described in the Fund's offering documents. Therefore, any investment in the Fund should only be considered by persons who can afford a loss of their entire investment.

### **No Assurance of Investment Return**

The Fund's investments will consist primarily of Co-GP Equity, and operating results in a specified period will be difficult to predict. There is no assurance that the Fund will be able to source, structure and manage investments through Operating Partner JVs in Project JVs that generate returns for investors. Even if one or more of the Fund's investments is successful, there can be no guarantee that investors will receive distributions from the Fund in an amount equal to their investment or at all.

### **Performance Uncertainty**

The performance of the Fund is dependent on future events and is, therefore, inherently uncertain. The markets in which the Fund's Project JVs operate have experienced severe disruptions over time, so results observed in prior periods may have little relevance to the results observable in the current environment. There can be no assurance as to the Fund's performance in a weaker market or weakened economy or one in which real estate financing is scarce.

### **Investor Commitment; Investment Realization**

An investment in the Fund is illiquid and requires a long-term commitment. Investors will be committed to the Fund for a number of years and will generally be unable to make withdrawals, irrespective of materially adverse changes to ACRE, the Manager, the Sponsors, the Fund, its investments, economic conditions, applicable laws and regulators, taxes and/or such investor's own financial position or circumstances. The amount and timing of distributions to investors will depend on the distributable proceeds received by the Fund, which will depend in large part on the promote received in respect of the Fund's Operating Partner JVs and Project JVs following asset realization events, as well as the Manager's determination of the amounts that the Fund will need to hold in reserve to meet expenses and financial commitments. As a general matter, the Manager estimates that the average holding period of each investment will be approximately five (5) years. Losses on unsuccessful investments may be realized before gains on successful investments are realized. Any return of capital and the realization of gains, if any, will generally not occur for a number of years after the initial funding of an investment, and prior to such time, there could be no current return on an investment.

### **Risks of Limited Number of Investments; Investment Performance**

The Fund may make a limited number of investments, each of which could involve a high degree of risk. As a result, the performance of the Fund may be significantly adversely affected by the unfavorable performance of any single Project JV. Moreover, even if some of the Fund's Project JVs

are ultimately quite successful, poor results from others could severely and adversely affect the Fund's overall performance, and investors could suffer impaired returns, or losses, as a result.

### **Uncertainty of Financial Projections**

The Fund generally evaluates investments based upon financial projections generated by the Manager. These projections are normally based primarily on the Manager's judgments based on current market conditions and the Sponsors' investment experience. In all cases, projections are only estimates of future results based upon assumptions made at the time the projections are developed. There can be no assurance that the projected results will be obtained, and actual results may vary significantly from the projections.

### **General Economic Uncertainty**

The global financial markets have experienced significant disruptions in the past and most likely will again in the future. For example, from 2008 through 2009 the global credit markets collapsed, real estate borrowers defaulted on their loans at historically high levels and banks and other lending institutions suffered heavy losses. Thereafter, during the second half of 2011 and throughout 2012, volatility in the financial markets resulting from the European sovereign debt crisis, U.S. debt ceiling crisis and U.S. government credit downgrade led to further uncertainty about the availability of capital. More recently, the immediate aftermath of the June 23, 2016 decision of United Kingdom voters to exit the European Union was characterized by pronounced price declines globally across a broad range of risk assets, as well as massive swings in currencies. The COVID-19 pandemic has also led to high volatility in the financial markets. In certain cases, these circumstances materially affected liquidity in financial markets, making terms for certain financings less attractive and resulting in the unavailability of certain types of financing. Instability in the financial markets in the future could be caused by any number of factors beyond a Fund's control, including, without limitation, terrorist attacks or other acts of war and adverse changes in national or international economic and market conditions. Uncertainty in the financial markets may adversely affect the business and performance of a Fund's investments and, accordingly, the performance of a Fund.

### **Uncertainty Due to Public Health Crisis**

A public health crisis, such as the recent outbreak of the COVID-19 global pandemic, can have unpredictable and adverse impacts on global, national and local economies, which can in turn negatively impact the Fund and its investment performance. Disruptions to commercial activity (such as the imposition of quarantines or travel restrictions) or, more generally, a failure to contain or effectively manage a public health crisis, have the ability to adversely impact the businesses of a Fund's investments. In addition, such disruptions can negatively impact the ability of ACRE's personnel to effectively identify, monitor, operate and dispose of investments. Finally, the outbreak of COVID-19 has contributed to, and could continue to contribute to, extreme volatility in financial markets. Such volatility could adversely affect ACRE's ability to raise, find or extend financing, stabilize its investments, or identify potential purchasers of its investments, all of which could have material and adverse impact on the Funds' performance. The course of a public health crisis such as COVID-19 (or any future pandemic, epidemic or outbreak of a contagious disease) is difficult to predict and presents material uncertainty and risk with respect to the Funds' performance.

## **ACRE and CPRE Relationship**

### **Limited Operating History; Past Performance of Sponsors**

The Sponsors have limited prior experience working together to manage a Co-GP Equity investment vehicle, including performing the investment, operational, administrative and regulatory compliance tasks inherent in such a vehicle (although they each do have experience that is relevant to the Fund's investment program). The Fund's general partner and the Manager were formed expressly for the purpose of carrying out the activities described herein and have limited prior operating history upon which an investor can base its prediction of future success or failure.

### **Joint Sponsorship of General Partner and Manager; Decision-Making Failures**

The Manager is a joint venture between ACRE and CPRE, the Sponsors. The Fund is operated and managed by the Fund's general partner and the Manager, respectively, which are entities that are each jointly owned and controlled by the Sponsors. Although ACRE and CPRE have worked, and expect to continue to work, cooperatively on implementing the Fund's investment program, there can be no assurance that ACRE and CPRE will agree on all matters, and because all major investment-related decisions affecting the Fund require consensus among ACRE and CPRE, any disagreements could result in deadlock or other decision-making failures. Such disagreements could arise from commercial interests of ACRE that differ from those of CPRE, including as a result of different economic interests in the Fund or its investments, or other arrangements or agreements made or entered into by each respective Sponsor. While the Manager has put in place policies and procedures which they believe are reasonably designed to avoid and manage disagreements that may arise and facilitate the smooth and efficient day-to-day management of the Manager and the Fund's investments, including as it relates to disputes involving the Fund's investment committee, conflicts or deadlocks may still arise between the Sponsors in their respective roles in connection with the Fund, and there can be no assurance that deadlock or other decision-making failures will be successfully mitigated. Such failures could impede, delay or frustrate the Fund's investment program, cause the Fund to forego profitable investment opportunities or to not make follow-on investments or take other actions that preserve and/or enhance the value of existing investments, or they could diminish the Fund's ability to influence Operating Partner JVs' and Project JVs' operations, all to investors' detriment. Ultimately, repeated decision making failures could cause the Sponsors to dedicate less time and resources to the Fund in favor of other business activities and ventures in the Sponsors' individual capacities. The Manager cannot provide any assurances that they will agree on all material decisions related to the Fund and that disagreements will not have a negative effect on the Fund. Inherent in any joint venture is the potential for disagreement between the partners and no dispute resolution protocol can completely eliminate the risk of deadlock or decision-making failures under all circumstances. In the case of deadlock or other decision-making failure related to a proposed investment, the Sponsor that supported the approval of that investment may independently pursue that investment, subject to any fiduciary duties owed to the Manager's other advisory clients, in which case the Fund would lose out on a potentially attractive opportunity. A Sponsor may decide not to support such an investment for reasons unrelated to the investment's intrinsic characteristics and such lost opportunities are an inevitable consequence of a jointly sponsored vehicle where all major investment-related decisions affecting that vehicle are required to be made unanimously. Accordingly, no person should purchase interests in the Fund unless such person accepts the entrustment of all aspects of the management of the Fund to the Fund's general partner and the Manager and understands the potential consequences from deadlock or other decision-making failures by the Sponsors as it relates to the Fund's investment program and otherwise.

## **Dependence on Key Manager Personnel; Business Activities of the Manager**

The Fund will be largely dependent upon the expertise, skill and judgment of the members of the Fund's investment committee and the other employees of the Sponsors who perform services for the Manager. These individuals are integral to the Fund's success because they are, among other things, responsible for attracting commitments, sourcing investment opportunities and assisting the Fund in the underwriting and negotiation of investments. The directors, the Fund's investment committee members and the other employees of the Sponsors that serve as officers of the Manager are not under contractual obligation to remain with the Sponsors or to perform services for the Manager for all or any portion of the term of the Fund. Competition in the real estate investment management services industry for qualified personnel is intense and increasing. The loss of one or more of certain key persons or lack of involvement in the Fund could have a material and adverse effect on the performance of the Fund.

Moreover, the Sponsors' employees devote varying portions of their business time and attention to the affairs of the Manager in relation to the Sponsors' other business activities and affairs. Neither Sponsor nor any of its principals, employees or affiliates is legally required to devote full time to the Manager nor is the Manager required to devote full time to the Fund. Those persons may conduct other business and provide investment advisory, real estate development and other services to other clients and accounts. The compensation arrangements with such other clients and accounts may be more lucrative than those with respect to the Fund, which can create incentives for a Sponsor or its principals or employees to favor such other clients. Adverse changes in the relationship between the Sponsors could also cause a Sponsor to shift its resources to other activities. Investors will have no direct interest in the Manager or either Sponsor's other businesses and those businesses may, over time, grow and expand in ways that detract from, or disadvantage, the Fund.

## **Strategy Risks**

### **Operating Partner JVs; Co-GP Partners**

The Fund invests in Co-GP Equity—Operating Partner JVs, through which the Fund, together with Co-GP Partners, invest in Project JVs. In such Operating Partner JVs, the Fund shares control or has limited control of the Operating Partner JV, and therefore, would have a limited ability to protect its interests. Co-GP Partners, as the administrative partner of the Operating Partner JV, generally have a certain degree of authority and responsibility for the daily management of the Project JV's underlying real estate activities and the Fund is in large part dependent on the Co-GP Partner's ability to execute the Project JV's strategy. These joint venture arrangements therefore create risks not present in Project JV investments in which the Fund acts as the sole operating partner, including dysfunctional management, increased costs, greater illiquidity, the possibility that the Co-GP Partner may have financial difficulties resulting in a negative impact on such investment, may have economic or business interests or goals that are inconsistent with those of the Fund or may be in a position to take or block certain actions, contrary to the Fund's investment objective. Disputes that arise between the Fund and a Co-GP Partner could result in costly litigation and adverse reputational consequences to the Fund. If the Fund and a Co-GP Partner have the ability to dispose of their interests in the Operating Partner JV separately, a disposition by the Co-GP Partner party could depress the market value of the Fund's interest. In addition, agreements governing Operating Partner JVs often contain restrictions on the transfer of a joint venturer's interest, "buy-sell" mechanisms or similar provisions that can require the Fund to obtain a Co-GP Partner's consent prior to divesting its interest or result in the purchase or sale of the Fund's interest at disadvantageous time or on disadvantageous terms. If a Co-GP Partner is removed from an Operating

Partner JV, the ability of the Fund to exercise certain rights could require the cooperation of a successor Co-GP Partner or other persons. The Fund is also subject to various costs and fees relating to Operating Partner JVs and could in certain circumstances be liable for the actions of Co-GP Partners. Operating Partner JVs are not liquid assets, and the Fund would therefore experience difficulty liquidating its interest if the Manager decided it was in investors' best interest to do so.

### **Controlling Person Liability**

The Manager generally seeks to structure investments in a manner that allows the Fund to have significant influence on the management, operations and strategic direction of the Operating Partner JVs and the Project JVs in which it invests. This exercise of control and/or significant influence could subject the Fund to additional risks of liability for failure to supervise management, environmental damage, violation of government regulations (including securities laws) or other types of liability in which the limited liability characteristic of entity ownership can be ignored. In this case, the Fund's assets could potentially be exposed to claims by the Operating Partner JV and/or Project JV, their security holders and/or their creditors. If any such claims were to arise, the Fund might suffer a significant loss on the related Investment.

### **Project JVs; Project LPs**

The Project JVs engage in the acquisition and development or improvement of real estate assets sourced and/or managed by the Manager's affiliates. Investors' returns in the Fund are driven, in substantial part, by the promote arising in respect of the Fund's Operating Partner JV interest in the Project JVs. As a general partner interest, the Fund is jointly and severally liable with any other Co-GP Partners for the Project JV's debts and obligations, which could be significant. Project JVs depend on Project LPs to contribute substantial amounts of LP Equity to finance their development activities. There is a risk that Project LPs may experience financial difficulties preventing them from contributing capital to the Project JVs, may have or come to have economic or business interests or investment objectives that are inconsistent with those of the Co-GPs or may be in a position to cause to be taken or block certain major actions of the Co-GPs, resulting in a negative impact on the Project JV. Disputes that arise between Co-GPs and a Project LP could result in costly litigation and adverse reputational consequences to the Co-GPs. If Co-GPs such as the Fund and Project LPs have the ability to dispose of their interests in the Project JV separately, a disposition by a Project LP could depress the value of the Fund's interest. Further, agreements governing Project JVs may contain restrictions on the transfer of a Co-GP's interest or alternatively, may have Co-GP removal provisions that would result in a requirement that the Fund purchase its Co-GP Partner's, or sell its own, Co-GP Equity at a disadvantageous time or on disadvantageous terms. If the Fund's Co-GP Partner is removed from a Project JV, the ability of the Fund to exercise certain rights could require the cooperation of a successor Co-GP Partner, Project LPs or other persons. The Fund is also indirectly subject to various costs and fees relating to Project JVs that can escalate quickly if development and stabilization timelines extend. Moreover, Co-GP Equity in Project JVs is not a liquid asset, and the Fund may therefore experience difficulty liquidating its interest if the Fund decided it was in the investors' best interest to do so.

### **Approval or Veto Rights of Project LPs**

Any investor providing LP Equity capital to a Project JV (including those associated with a Fund investor) may require certain approval or veto rights for material actions of the Operating Partner JV in respect of the Project JV. While the Manager will seek to limit the rights of LP Equity investors, doing so may not be practicable in certain Project JVs, especially those with third-party especially



those with third-party LP Equity investors. In that case, the Operating Partner JV would not be able to exercise total control over the execution of the Project JV's business plan. In exercising its separate rights, an LP Equity investor could face economic incentives to act in a manner that favors their own interests, as a holder of LP Equity in the Project JV, over the economic interests of the Fund as a holder of Co-GP Equity. For example, the Project LP could block the Project JV from obtaining additional financing to mitigate the risk of capital loss or could force a sale or the purchase of an underperforming underlying asset in order to accelerate the realization of its investment return. If an LP Equity investor that is a Fund Investor is also a member of an Advisory Committee, it could have a similar incentive to vote on Advisory Committee matters in a manner that is disadvantageous to the Fund but favors its LP Equity investment. While the conflicting economic incentives would be diluted in the case of an LP Equity investor that is also a Fund investor, they could still exist. And as a general matter, the greater a Fund Investor's LP Equity exposure with respect to a particular Project JV, and the greater the variation of the economic terms between LP Equity and Co-GP Equity, the greater a Fund investor's interests would be expected to diverge from, and give rise to an incentive to take adverse action with respect to, the other Fund investors.

### **Additional Capital Requirements; Cash Constraints**

If a Project JV requires additional capital, there could be no obligation on the part of the Project LP to provide such funds (by loan or otherwise) even if the funds are needed to pay operating deficits, to meet cash requirements, to prevent foreclosure of a mortgage encumbering one or more of the Project JV's underlying properties or for any other purpose. While AECOM will generally make Support Payments to cover non-budgeted Project JV cost overruns on behalf of both the Fund and an LP Equity Co-Investment Vehicle and provide all Project JV lender required Guarantees for approved investments, as further discussed in "AECOM Support Payments and Guarantees" below, it may not have such obligation to make those payments on behalf of the Fund's Co-GP Partner and for unaffiliated Project LPs, nor may Guarantees obligate AECOM to provide additional capital under particular circumstances. To the extent a Project JV has inadequate capital to meet its requirements, to the extent additional external financing is also unavailable, the Project JV's business plan could be severely disrupted and, in an extreme case, the properties owned by the Project JV could be lost as a result of a mortgage foreclosure. Such a foreclosure would result in the loss of part or all of the Fund's investment in that Project JV and adverse tax and other consequences to Investors.

### **AECOM Guarantees and Investment Approvals**

While AECOM is required, pursuant to agreements with the Fund, to provide all Project JV lender required Guarantees for approved investments, doing so will be contingent upon the Project JV meeting AECOM's underwriting criteria for providing such Guarantees. Additionally, there may be other circumstances in which AECOM will not be in a position to provide required Guarantees, including a material adverse change in AECOM's financial condition, investments where an AECOM affiliate is not acting as construction manager or owner representative for the underlying Project JV or where a provision of a required guarantee would violate a covenant under a material agreement binding upon AECOM, such as a loan agreement. Therefore, any deterioration in AECOM's financial condition or other circumstances that preclude AECOM from providing guarantees could force the Fund to forego proposed investments and financings, and have a material adverse effect on the successful implementation of the Fund's investment program.

## Availability and Competition for Investments

Investors are relying on the Manager's abilities with respect to the use of proceeds of its offerings. The activity of sourcing, structuring, consummating and realizing attractive investments is highly competitive, involves a high degree of uncertainty and is subject in some cases to the prevailing real estate market or the regulatory or political environment. While the Manager believes that there are attractive investment opportunities available, there can be no assurance that such investments will continue to be available during the Fund's entire investment period, or that available investments will meet the Fund's investment criteria. The Manager competes for investments with other real estate investment vehicles, as well as individuals, publicly traded REITs, financial institutions, pension funds, real estate private equity funds and other institutional investors. In particular, over the past several years, as the commercial real estate market has strengthened and real estate fund sponsors have sought new and creative ways to complete their capital stacks, many real estate Co-GP Equity funds have been formed and grown in size. Additional Co-GP Equity funds with similar investment objectives may be formed in the future by other unrelated parties and further consolidation in the industry could occur, resulting in larger Co-GP Equity funds and investment vehicles. The Manager will likely be competing for investment opportunities with entities that have substantially greater financial, personnel and other real estate-related resources, better sourcing and acquisition abilities or better relationships with Co-GP Partners or third-party Project LPs. Such competitors may also generally be able to accept more risk than the Fund prudently can accept or accept lower returns.

## Due Diligence

When conducting due diligence and research on potential Co-GP Partners, third-party Project LPs and investments, the Manager may be required to evaluate significant and complex business, financial, tax, accounting, environmental, geotechnical, engineering, design, legal and political issues. Outside consultants, legal counsel, accountants, investment banks and other advisors may be involved in the research process in varying degrees depending on the nature of the investment. The due diligence investigation and research that the Manager carries out with respect to any prospective opportunity may not necessarily reveal or highlight all relevant facts that may be necessary or helpful in evaluating such opportunity, could lead to inaccurate or incomplete conclusions or could be manipulated by negligence or misconduct. Moreover, such an investigation, no matter how exhaustive, will not necessarily result in the ensuing Investment being successful.

## Uncertain Duration, Realization Strategies

The Manager may not know the maximum — or, often, even the expected — duration of any particular investment at the time of consummation. The realization strategy on which an investment is predicated could be precluded by economic, legal, political or other factors even if that strategy appeared to be viable when an investment was consummated. Moreover, the Fund's investments will generally be highly illiquid compared to other asset classes, meaning that realization of outstanding investments on the Fund's termination or otherwise could be a process of uncertain duration. In particular, investments that are Co-GP Equity in an Operating Partner JV where the Fund's stake is 50% or less are generally more difficult to realize, and the realization price for such a joint venture stake can differ materially from the fair market value of the investment.



## **Contingent Liabilities; Returns of Distributions**

In connection with the realization or disposition of an investment, the Fund may be required to make representations about the business and financial affairs of such investment typical of those made in connection with the sale of any business, may be responsible for the content of disclosure documents under applicable securities laws and could be required to indemnify the purchasers of such investment to the extent that any such representations or disclosure documents turn out to be inaccurate. These arrangements could result in contingent liabilities, which, if not satisfied out of the Fund's assets or operating reserves, may ultimately be required to be funded by Fund investors making capital contributions to the Fund or returning previous distributions received from the Fund. Separately, under the Delaware Revised Uniform Limited Partnership Act, an investor who has received a distribution in violation of such Act will, under certain circumstances, be obligated to return that distribution to a Fund.

## **Possibility of Fraud or Other Misconduct**

Fraud or misconduct by Co-GP Partners, third-party Project LPs or their respective affiliates, agents or employees could cause significant losses to the Fund. This includes entering into transactions without authorization, the failure to comply with operational procedures, misrepresentations in connection with development or stabilization activities or the improper use or disclosure of confidential or material non-public information, which could result in reputational damage, litigation, business disruption or financial losses to the Operating Partner JV, Project JV and ultimately, to the Fund. No assurances can be given that the Manager will be able to identify or prevent such misconduct.

## **Appraisal Risks**

Appraisals used in connection with an investment program, including in determining whether to invest in a particular Project JV or to mark up the Project JV's assets in connection with the admission of a Project LP, represent the related appraiser's subjective analysis and opinion at the appraisal time and are not guarantees of, and may not necessarily be indicative of, present or future market values. There can be no assurance that different appraisers would not have arrived at different, and perhaps substantially different, valuations, even if those persons used the same general approach to and same method of valuation. Particularly during periods of volatility in the commercial real estate markets (whether local, regional or national), appraisals might not accurately reflect the value or condition of the relevant asset, while asset values may decline following the time an appraisal is performed.

## **Commercial Real Estate Risks**

The value of the commercial real estate underlying a Project JV will fluctuate depending on conditions in the general economy and the commercial real estate business. The factors that affect that value may include, among other things: national, regional and local economic conditions; the condition of financial markets; developments or trends in a particular sector or industry; competition from other available space; local conditions such as an oversupply of space or a reduction in demand for real estate in the area; management of properties; the development and/or redevelopment of properties; changes in market rental and occupancy rates; the timing and costs associated with property improvements and rentals; changes in operating costs; the financial condition of tenants or prospective tenants; availability of obtaining financing on acceptable terms; fluctuations in interest rates; changes in zoning laws and taxation; government regulation; potential liability under environmental or other laws or regulations; and acts of God, terrorist attacks, social unrest and civil

disturbances. The returns on the investments therefore may decline as a result of adverse changes in any of these factors.

Moreover, commercial real estate assets are subject to cyclicalities and other uncertainties. The cyclicalities and leverage associated with real estate assets have historically resulted in periods, including significant periods, of adverse performance, including performance that may be materially more adverse than the performance associated with other asset classes.

### **Infill Developments**

The real estate assets developed by Project JVs will generally be situated on prime urban infill development or development sites. Infill development involves several inherent risks as compared to greenfield development. Infill development typically requires the acquisition of several small lots, sometimes without clear entitlement, to assemble one viable development or redevelopment parcel. Moreover, infill opportunities are often found in weaker and older urban neighborhoods that typically do not have the same market support as suburban locations. Strict design standards are often needed to ensure that infill development is compatible with adjacent structures, making the process of securing required government approvals more time-consuming and burdensome. Environmental conditions and uncertainties in infill locations often result in additional costs and constraints on development. Further, elements of the existing infrastructure often require upgrades or repairs adding to total development cost. As a result of the foregoing risks, lenders typically rely on different, more stringent underwriting standards for infill developments that require more Co-GP Equity in the Project JV capital stack, reducing potential investment returns.

### **Build-to-Core Development**

The Manager intends to target investments in high-quality, large scale “build-to-core” developments that are typically situated on prime development or redevelopment sites that, once developed, can be stabilized into well-leased, high-income producing, core investments that can be sold to institutional core buyers. These types of developments present several additional risks versus core commercial real estate developments. Most significantly, development risk tends to be elevated owing to the modern, state-of-the-art nature of the real estate assets being developed, which often contain the latest technological advances and amenities. These types of assets also tend to experience higher volatility than core assets, which makes them more susceptible to a market downturn or correction. Moreover, some of the markets the Manager intends to target are not considered to be suitable for new construction owing to land scarcity, zoning restrictions, high cost of living and other factors, thus inhibiting build-to-core development.

### **Project JV Focus Areas**

Project JVs are generally focused on the top ~25 U.S. commercial real estate markets. Accordingly, the Fund will be exposed to greater economic risks than if the Fund made investments with greater geographic dispersion. The Fund will be susceptible to adverse developments in the economic and regulatory environment (such as business layoffs or downsizing, industry slowdowns, relocations of businesses, increases in real estate and other taxes, costs of complying with governmental regulations or increased regulation and other factors) as well as natural disasters (such as earthquakes, floods, wildfires and other events) and the consequences of climate change that occur in these areas. Any adverse developments in the economy or real estate market in any geographical focus area could adversely impact the financial condition of the Fund’s investments. No assurances

are made as to the continued growth of the economy in any such area, nor are any assurances made that such area's economy will not experience a downturn.

### **Primary Commercial Real Estate Asset Classes**

Project JVs focus primarily on primary commercial real estate asset classes (*e.g.*, mid- and high-rise multifamily, hospitality, retail, office, mixed-use and select condominium assets), although they may also engage in development of other commercial real estate assets (*e.g.*, industrial, self-storage, student housing and senior housing assets). The performance of each of the primary asset classes is subject to many of the risks associated with owning and operating other types of commercial real estate as well as risks unique to the relative real estate sector, exposing the Fund to greater economic risks than if its investments had greater diversification of underlying asset classes. For example, a large number of special factors may adversely affect the successful development and value of a multifamily property, including the physical attributes of the building, location, services or amenities, reputation, the level of prevailing mortgage interest rates, the presence of competing properties and the tenant mix. The value of hospitality properties may be adversely affected by specific operational risks common to the hotel and leisure industry, including competition for guests and meetings from other properties, increases in operating costs due to inflation and other factors that may not be offset by increased room rates, dependence on demand from business and leisure travelers, increases in energy costs, airline fares and other travel-related expenses, terrorism alerts and warnings, military actions, pandemics, changes in travel and vacation patterns and economic conditions. The value of retail properties may be adversely affected by unique risks including local competition, technological disruption and change, shifting consumer trends and preferences and changes in local regulations. The value of office properties is subject to special risks including tenant quality, reduced demand because of a decline in a particular business segment, building design and access and property location. The development and value of condominium properties are subject to specific risks including local supply and demand, pricing volatility, construction defects and changing demographic patterns. Finally, the development and value of mixed-use commercial real estate assets are generally subject to the risks inherent in each of their component properties, along with other specific risks, including difficulty of obtaining financing, construction complications, parking availability, public safety concerns and security issues.

### **Real Estate Acquisitions**

Real estate acquisition activities are subject to many risks. Project JVs may acquire properties through foreclosure or similar proceedings, which properties are subject to liabilities or have problems relating to state of title, environmental and geotechnical condition, physical condition or compliance with zoning laws, building codes or other legal requirements. In each case, the acquisition of real estate could be without any recourse, or with only limited recourse, with respect to unknown liabilities or conditions. As a result, if any liability were asserted against the Project JV relating to those properties, or if any adverse condition existed with respect to the properties, the Project JV might have to pay substantial sums to settle or cure it, which could adversely affect its cash flow and operating results.

### **Commercial Real Estate Development**

Project JVs engage in commercial real estate development activities through the acquisition of undeveloped land or underdeveloped real property, real estate developments or redevelopments and/or properties requiring renovation or deferred maintenance. Development is a highly capital intensive activity that involves a variety of risks, including those relating to the availability and timely

receipt of regulatory approvals, the cost and timely completion of construction, which may be beyond the Project JV's control as a result of weather, labor conditions or material shortages, lease-up velocity and rent levels and the availability of both construction and permanent financing on favorable terms. These risks could result in substantial unanticipated delays and expenses and could prevent completion (or timely completion) of development, any of which could have an adverse effect on the Project JV's cash flow and operating results. Properties under development or properties acquired to be developed generally generate no revenue while under development and experience operating deficits for a period after completion of development while they are being stabilized. Project JVs may commence development or redevelopment activities prior to obtaining financing for such activities and there is no guarantee that financing will be available on favorable terms or at all. The inability to obtain financing could compromise the viability of a Project JV's business plan.

### **Avoidance or Fraudulent Conveyance**

The sale and purchase of real property or trust beneficiary interests in real property can be cancelled or avoided by a trustee in bankruptcy, corporate reorganization, civil rehabilitation or similar procedure or by the seller's creditors. Even if the fair market value was used to establish the purchase price in the transaction, the transaction may be cancelled under certain circumstances—for example, if the seller intended to conceal, donate or otherwise dispose of the sale proceeds in a manner that would harm the seller's creditors, and the purchaser knew of such intention at the time of the transaction. Under certain circumstances, payments received by a Project JV may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment.

### **Reliance on Service Providers**

Project JVs rely extensively on third-party service providers in connection with the acquisition, development, stabilization and realization of commercial real estate, including construction companies, equipment suppliers, consultants, architects, engineers, designers, project managers, property managers, appraisers, brokers, vendors, financial institutions and insurance companies. ACRE's affiliates (including ACAP) provide a variety of services to Project JVs. If any of these service providers fails to perform its services competently, effectively and up to prevailing industry standards, disputes could arise, required government approvals could be delayed and the Project JV's operations could be severely disrupted. Any such failures could, in turn, cause the Fund to experience significant losses. Disputes involving services provided by ACRE's affiliates could have especially deleterious effects on a Fund that could compromise the successful implementation of a Fund's investment program.

### **Reports and Surveys**

Project JVs will receive engineering reports and environmental and geotechnical surveys with respect to their underlying properties. The reports make observations about the properties. There can be no assurance that such reports will reveal the full extent of development or repairs required or that the costs thereof, which the Project JVs will have to bear, will not exceed allotted funds.

### **Project JV Leverage; Construction Loans**

As is typical of commercial real estate development, Project JVs rely on substantial amounts of borrowing in order to finance their development activities. In such arrangements, third-party lenders will have a priority security interest in the cash flow generated by the Project JVs prior to the

Co-GPs receiving asset-level fees, development fees and/or a promote or incentive fee. Conditions in the debt financing markets may negatively affect the ability of Project JVs to obtain attractive financing and can increase the cost of such financing if it is obtained, leading to lower-yielding investments and potentially reducing investment returns. It is possible that Project JVs will be unable to obtain the required leverage to purchase, develop, renovate, stabilize or refinance properties. In some recent periods the availability of real estate financing has been curtailed and the interest cost has increased substantially.

In particular, Project JVs often rely on financing in the form of construction loans (or other forms of interim financing). These loans generally involve a higher degree of risk than other types of financing due to a variety of factors, including generally larger loan balances, the dependency on successful completion of a development, the dependency upon the successful operation of the development (such as achieving satisfactory occupancy and rental rates) for repayment, the difficulties in estimating construction costs and loan terms that often do not require full amortization of the loan over its term but, instead, provide for a balloon payment at stated maturity. If Project JVs experience difficulty refinancing construction loans, their development timelines could extend, significantly delaying the ultimate realization of the investment.

### **Stabilization Activity**

The economic feasibility and ultimate success of Project JV real estate developments will be driven in large part upon units being stabilized following the completion of construction through sales or leasing activities. Stabilized properties tend to have the least risk and are highly desired as core assets by institutional buyers. However, there can be no assurance that income or occupancy will meet or exceed the levels demanded by such buyers. Income and occupancy could be affected by a number of factors, including without limitation, crime and other neighborhood factors, the physical condition of the developed real estate, the economic environment, as well as competition from new or existing real estate. If a Project JV's asset is not considered stabilized, it would likely lose a significant portion of its potential value, which would materially affect the Fund's realization strategy for the related Investment and adversely affect the Fund's returns.

### **Government Regulation and Reform**

Government authorities at all levels are actively involved in the promulgation and enforcement of regulations relating to land use and zoning restrictions, environmental protection and safety and other matters affecting the ownership, development and use of real property. Project JV development and stabilization activities often requires the approval of governmental authorities and, in some cases, consent of third parties. There can be no assurance that any such approvals and consents will be obtained on a timely basis, if at all. Similarly, regulations may be promulgated that could have the effect of restricting or curtailing certain usages of existing structures, or requiring that such structures be renovated or altered in some manner. The need to obtain such approvals and consents and otherwise to comply with regulatory requirements could have the effect of increasing the expenses, and lowering the income, of a Project JV.

In addition to the foregoing, certain industry segments in which the Fund intends to invest, are (or could become) (a) highly regulated at both the U.S. federal and state levels, and (b) subject to frequent regulatory change. The laws and regulations relating to certain industries, are complex, can be ambiguous or can lack clear judicial or regulatory interpretive guidance. An adverse review or determination by any applicable judicial or regulatory authority of any such law or regulation, or an

adverse change in applicable regulatory requirements, could have a material adverse effect on the operations and/or financial performance of the Fund or any Project JV in which the Fund invests.

### **Sale-Leaseback Transactions**

Project JVs can enter into sale-leaseback transactions, whereby properties that are purchased are leased back to the sellers of such properties. A transaction structured as a sale-leaseback could be re-characterized as either a financing or a joint venture, either of which outcomes could adversely affect the Project JV from a business and financial perspective. If the sale-leaseback were re-characterized as a financing, the Project JV might not be considered the owner of the property, and as a result, would have the status of a creditor in relation to the tenant. In that event, the Project JV would no longer have the right to sell or encumber its ownership interest in the property. Instead, the Project JV would have a claim against the tenant for the amounts owed under the lease, with the claim arguably secured by the property. The tenant/debtor might have the ability to propose a plan restructuring the term, interest rate and amortization schedule of its outstanding balance under the lease. If confirmed by the bankruptcy court, the Project JV could be bound by the new terms, and prevented from foreclosing its lien on the property. If the sale-leaseback were re-characterized as a joint venture, the Project JV and its lessee could be treated as co-venturers with respect to the property. As a result, the Project JV could be held liable, under some circumstances, for debts incurred by the lessee relating to the property. Either of these outcomes would adversely affect the Project JV's cash flow and the amount available for payment of the general partner promote.

In the event that any sale-leaseback transaction is challenged and re-characterized as a financing transaction or a loan for United States federal income tax purposes, deductions for depreciation and cost recovery relating to such property would be disallowed.

### **Insurance Availability**

There are certain types of losses, generally of a catastrophic nature, such as earthquakes, floods, hurricanes, terrorism or acts of war, that may be uninsurable or not economically insurable. Inflation, changes in building codes and ordinances (including those related to "green" certifications), environmental considerations and other factors, including terrorism or acts of war, also can make the insurance proceeds insufficient to repair or replace a property if it is damaged or destroyed. Under these circumstances, the insurance proceeds received might not be adequate to restore a Project JV's economic position with respect to the affected property. Any uninsured loss could result in the loss of cash flow from, and the asset value of, the affected property.

### **Environmental Laws**

There may be environmental problems associated with commercial real estate. If environmental contamination exists on a property owned by a Project JV, the Project JV could become subject to strict liability for the contamination. The presence of hazardous substances on a property may adversely affect the Project JV's ability to sell the property. The costs of investigation, remediation or removal of those substances may be substantial. The owner or control party of a site could potentially be subject to common law claims by third parties based on damages and costs resulting from environmental contamination emanating from a site. Certain environmental laws also impose liability in connection with the handling of or exposure to asbestos-containing materials, pursuant to which third parties may seek recovery from owners of real properties for personal injuries associated with these materials. Such environmental liability exposure associated with a Project JV's properties could materially and adversely affect a Fund's performance.



## Property Defects

Properties acquired by Project JVs may have design, construction or other defects or problems that require unforeseen capital expenditures, special repair or maintenance expenses or the payment of damages to third parties. Structural, seismic and other reports on which Co-GPs relied as part of their pre-acquisition due diligence investigations of these properties may be inaccurate or deficient, at least in part because defects may be difficult or impossible to ascertain. Statutory or contractual representations and warranties made by various sellers of properties a Project JV acquires may not necessarily provide protection from liabilities arising from property defects. Furthermore, even after selling a property a Project JV could continue to owe a statutory warranty obligation to the purchaser if any latent defects in such property are subsequently discovered.

## Property Leases

Project JVs may acquire real estate assets that are currently under lease to tenants. The financial failure of, or other default by, tenants under these leases is likely to cause a significant, if not complete, reduction in the operating cash flow generated by the property and could decrease the value of that property substantially. The success of these type of investments will therefore be materially dependent on the financial stability of the tenants on the leases. Upon the expiration or other termination of the leases that are currently in place, Project JVs could be unable to re-lease the vacant property at a comparable lease rate, or at all, or without incurring additional expenditures in connection with the re-leasing. In certain cases, Project JVs may bundle leases to a portfolio of properties together under a single master lease, which could include non-monetary cross default provisions. While the use of this type of structure may reduce the risks associated with the financial failure of a single property or tenant, it could create greater risk if a tenant's attempt to reject such a lease benefits other similarly situated tenants.

## Ground Leases

Certain properties acquired by Project JVs may be subject to ground leases, where third-party owners hold the fee interest in those properties. In these cases, the Project JV's interest in the property will be subordinate to that of the fee owner, and potentially also to interests held by third parties, such as mortgages or other liens (*e.g.*, mechanic's liens). A default, bankruptcy or insolvency by the fee owner could result in the termination or impairment of the Project JV's interest if the fee owner (or its bankruptcy trustee) rejects or disaffirms the lease (with the approval of the current tenants) or seeks to sell the property free and clear of the ground lease.

## Purchase Rights

In some circumstances, Co-GPs may cause Project JVs to grant the tenant of a property under lease the right to repurchase that property or the Project JV may acquire an interest in that property subject to a right of repurchase. In either case, the purchase price may be a predetermined fixed price or based on the market value at the time of exercise, or it may be based on an agreed-upon formula. If the tenant exercises its right to purchase the property at a particular price and the property's market value has increased beyond that price, the Project JV would be limited in fully realizing the appreciation on that property. Similarly, Co-GPs may grant a Project LP the right to purchase assets under development upon stabilization pursuant to terms agreed at the admission of the Project LP or the organization of the related LP Equity Co-Investment Vehicle, as the case may be. If the third-party Project LP or LP Co-Investors (defined below) exercise this right at a price below the current market value of the property, the Project JV would also be limited in fully realizing the appreciation

on the property. Such purchase rights may be granted as an inducement to secure LP Equity participation in a Project JV and/or to provide the Project JV with certainty with respect to its asset realization strategy.

### **Reputation in Community**

The reputation of real estate in the surrounding community is an important factor in whether the associated Project JV will be able to generate sufficient revenues to pay debt service and provide a return on its investment. Reputations can in some cases be based on incorrect information, so that even if the development exceeds expectations in all other respects, it can still fail as a consequence of an unjustified negative reputation. In particular, Project JVs that engage in development in gentrifying neighborhoods can be subject to negative publicity regarding the local impact of the development.

### **Eminent Domain**

Municipalities and other government subdivisions may, in certain circumstances, seek to acquire certain real estate assets owned by Project JVs through eminent domain proceedings. While the related Co-GPs can seek to contest these proceedings, doing so could be costly and could divert those partners' attention from the underlying development, and there can nevertheless be no assurance that a municipality or other government subdivision will not succeed in acquiring such real estate assets. In such event, there is a risk that the Project JV will not receive adequate compensation for the assets acquired, or that it will be reimbursed for all charges associated with the divestiture of those assets.

### **Mold**

When excessive moisture accumulates in buildings or on building materials, mold can grow, particularly if the moisture problem remains undiscovered or is not addressed over a period of time. Some molds produce airborne toxins or irritants. Indoor air quality issues can also stem from inadequate ventilation, chemical contamination from indoor or outdoor sources and other biological contaminants such as pollen, viruses and bacteria. Indoor exposure to radon, airborne toxins or irritants above certain levels can be alleged to cause a variety of adverse health effects and symptoms, including allergic or other reactions. The presence of significant mold at any of a Project JV's properties could require a costly remediation program to contain or remove the mold from the affected property. In addition, the presence of significant mold could expose the Project JV to liability from purchasers, tenants and others if property damage or health concerns arise.

### **Public Accommodations**

Under the Americans with Disabilities Act of 1990 (the "ADA"), all public accommodations in the U.S. must meet U.S. federal requirements related to access and use by disabled persons. If a Project JV's property does not comply with the ADA, then the Project JV can be required to incur costs to bring the property into compliance, which may or may not have been foreseen at the time of acquisition. Future changes to U.S. federal, state and local laws also may require modifications to properties, or restrict developers' ability to renovate properties. Project JVs cannot predict the ultimate cost of compliance with the ADA or other similar legislation, but those costs can be substantial.



## **Casualty or Condemnation**

A fire or other major casualty could destroy real estate. Even if it were practicable to restore the damage caused by a major casualty, the development or stabilization activities of an affected Project JV would likely be suspended for a considerable period of time. While Project JVs will secure insurance protection for their underlying real estate, in the event of any substantial loss, disputes over insurance claims could arise. Moreover, there are certain types of losses that are either not insurable or not economically insurable. If such a casualty or condemnation occurs, a Project JV could lose its entire investment, and other liabilities (including tax liabilities) could also result.

## **Terrorism and Vandalism**

In the current environment, there is a risk that one or more of a Project JV's real estate assets will be directly or indirectly affected by terrorist attack or vandalism. This could have a variety of adverse consequences for the Project JV, including risks and costs related to the destruction of property, inability to engage in development or stabilization activities for an extended period, decline in rents or sale prices achievable or property value and injury or loss of life, as well as related litigation. As discussed above, such risks may not be insurable or may be insurable at rates that the Project JV's Co-GPs deem economic. So long as Project JVs follow typical industry practices in protecting their underlying assets, recourse to them in the event of losses may be limited and such losses could be borne by the Co-GPs including a Fund.

## **Property Taxes**

Real property owned by Project JVs are likely to be subject to real property taxes. Such taxes can increase as property tax rates change and as the properties are assessed or reassessed by taxing authorities. An increase in property taxes on a Project JV's real property could adversely affect its results from operations and could decrease the value of that real property.

## **Project JV Litigation**

The acquisition, development, stabilization and sale of real properties by Project JVs carry certain litigation risks, which could result in losses to the Fund. Litigation may be commenced with respect to a property acquired by a Project JV in relation to activities that took place prior to the Project JV's acquisition of such property. In addition, at the time of sale of a property, a potential buyer (including a Project LP) could claim that it should have been afforded the opportunity to purchase the asset, potentially pursuant to a purchase right granted by the Project JV, or alternatively that such buyer should be awarded due diligence expenses incurred or statutory damages for misrepresentation relating to disclosures made by the Project JV, if such buyer is passed over in favor of another as part of the Project JV's efforts to maximize sale proceeds. Similarly, successful buyers may later sue the Project JV or the related Operating Partner JV under various damage theories, including those sounding in tort, for losses associated with latent construction defects or other problems not uncovered in due diligence. Project JVs may also be exposed to litigation resulting from the activities of tenants of the underlying properties or their customers.

## **Certain Conflicts of Interest**

ACRE is subject to various actual or potential conflicts of interest. These conflicts will arise out of the Sponsors' relationship to each other, with the Fund, with the Sponsors' other business activities, and with the provision of services by the Sponsors and their affiliates to the Fund and the Fund's affiliates

and the nature of the Fund's investments. Further, agreements and arrangements, including those relating to compensation, between the Fund and ACRE and its affiliates are not and will not be the result of arms' length negotiations.

### **ACRE and CPRE Relationship; Management Deadlocks**

The Fund is controlled and managed by the Manager which is jointly owned and controlled by ACRE and CPRE. Although ACRE and CPRE expect to work together cooperatively in managing a Fund, and each has a financial interest in the Fund's success, there can be no assurance that they will not have interests that conflict with one another and/or with those of the Fund or its investors. Such conflicts could arise from the Sponsors' relative compensatory and profit-sharing arrangements with respect to the Fund through their ownership of the Manager, relative equity ownership of the Fund, involvement in Project JVs, agreements regarding the sponsorship and management of future investment vehicles, income tax classifications, other business relationships and activities unrelated to the Fund and/or other commercial or financial interests. In particular, ACRE and CPRE are each a part of a large, global organization with multiple lines of business unrelated to the Fund. Any of these factors could create an incentive for a Sponsor to act in a manner that favors its own interests over that of the Fund or its investors in connection with the operation of the Manager, or could spur disagreements that result in conflicts, deadlocks or other decision-making failures. While the Manager has implemented policies and procedures intended to facilitate dispute resolution since all material decisions related to investments require consensus among the Sponsors' designated representatives, there is no assurance that they will be successful in all cases, as they may not overcome the actual or perceived differences in the net benefits realized by the Sponsors from their participation in the Fund. Ultimately, any such conflicts could undermine and potentially compromise the continued viability of the Fund's investment strategy and materially and adversely affect the Fund's returns. There can be no assurance that the Sponsors' interests will remain aligned at all times during the Fund's term and that they will have incentives to work cooperatively towards the success of the Fund's investment program.

### **Allocation of Time and Resources; Other Business Activities and Ventures**

Except as specifically noted in the Fund's Governing Documents, the Sponsors and any of their respective affiliates (each an "Manager Party" and together, the "Manager Parties") are not restricted from engaging in other business activities and ventures, including investing for their own account, forming, marketing and managing other pooled investment vehicles or client accounts or engaging in other investment-related activities, and will generally receive compensation and/or an interest in any profits in connection with respect to any of the foregoing. In particular, the Manager Parties are and will continue to be general partners or managing members of other entities which have invested, or have been formed to invest, directly or indirectly, in commercial real estate assets. Neither the Fund nor any investor will have any right to participate in any manner in any profits or income earned or derived by any Manager Parties from or in connection with the conduct of any such other business activity or venture. Except as noted above, such ventures may be competitive with the Fund or the Project JVs in which the Fund invests.

Moreover, the Manager Parties expect to form additional real estate investment funds or other investment entities, some or all of which may have investment objectives that are similar to those of the Fund. The Manager Parties may devote a substantial portion of their time and resources to the launch and management of such entities. If an Manager Party is presented with an investment opportunity that would be appropriate for the Fund but might also be appropriate for, and can permissibly be allocated to, another fund or managed account, the Manager would be subject to

conflicts of interest in selecting an investment entity to invest in such opportunity, as the compensation to be received by the Manager Party as a result of their sponsorship or management of other investment entities could be greater than their aggregate compensation from as compared to another fund. The decision as to whether the Fund or another fund would participate in such an investment would be made by the Manager Party after a review of the portfolio of each such entity at the time of investment, on the basis of such factors as the investment objectives and criteria of each such entity, the investment size, capacity constraints, the effect of such an investment upon the diversification of the portfolio of each possible investing entity and the length of time each such entity has had funds available for investment. While generally the Fund must be substantially invested before investments can be allocated away from the Fund, there is still a possibility that other entities compete with the Fund for attractive investment opportunities and that the Fund does not participate in otherwise suitable investments that arise during the investment period, to investors' detriment. There can be no assurance that investors in the Fund will be offered the opportunity to participate in any other entities formed by Manager Parties, including those that invest in Co-GP Equity.

In addition to the foregoing activities, the Manager Parties will also be involved in the sponsorship and management of LP Equity Co-Investment Vehicles and/or Co-GP Equity Co-Investment Vehicles, as described below. While these vehicles will not necessarily be competitive with the Fund, they will nonetheless require management time, services and functions to be allocated between a Fund and such Co-Investment Vehicles, thus giving rise to potential conflicts.

### Compensation Structure

Because the Manager will receive a management fee and carried interest, either directly or indirectly, from the Fund, the Sponsors have a conflict of interest between their responsibility to manage the Fund for the benefit of investors and their interest in maximizing the fees and distributions received. For example, the management fee is payable regardless of the performance of the Fund's investments, which creates an incentive for the Sponsors to maximize the capital raised and deployed by the Fund.

The carried interest potentially payable to the Manager creates an incentive for ACRE to pursue riskier or more aggressive investments than might be the case in the absence of such performance-based distribution structure. If the Fund performs poorly, this creates an incentive for ACRE to devote resources to other clients or accounts from which it has better prospects for earning performance-based compensation.

As distributions and carried interest are determined only upon investment dispositions or other realization events, distributions can be affected by the timing and structure of such realization and other factors within the control of the Manager, and, indirectly, the Sponsors. Subject to the Manager's and the Sponsor's fiduciary duties, under certain circumstances, it can be in their economic interest to realize an investment while the same may not be in the economic interest of all investors. For example, changes to the Internal Revenue Code enacted in the Tax Cuts and Jobs Act (the "TCJ Act") could encourage the Sponsors to cause the Fund to hold investments for longer than it otherwise would. Specifically, under the TCJ Act, to the extent income allocated in respect of any carried interest includes realized gains, those gains will be eligible for long-term capital gains treatment by one of the Sponsors (and subject to tax at a lower rate) only to the extent the Fund holds the relevant assets for at least three years. Differences in the tax treatment of the carried interest for each Sponsor could therefore make it in the economic interest of one Sponsor to realize an Investment while the same may not be in the economic interest of the other Sponsor. This could lead

to the Fund's investment committee deadlock as related to such investment, which would trigger the Manager's deadlock resolution procedures.

Separately, although carried interest distributions will be subject to a clawback at the end of the Fund's term, the clawback amount may not necessarily be sufficient to cause investors to receive a return of all of their capital contributions and the applicable preferred return thereon.

### **AECOM Fees**

It is expected that AECOM and/or its affiliates will be retained by Operating Partner JVs and/or Project JVs from time to time and entitled to fees and other compensation for providing construction, construction management, design, engineering, consulting, operations and maintenance, owner's representative or other similar services (collectively, "AECOM Fees"). Without limitation, it is anticipated that AECOM and its affiliates have or will perform construction management services, development management services and design and consulting services, and in each case receive compensation in respect of investments. Other types of services can be provided and/or fees outside the ranges contemplated in the Fund's Governing Documents can be charged with advisory committee approval.

While it is expected that the rates and terms of the arrangements with affiliated service providers will generally be consistent with rates and terms that would be agreed on an arms' length basis for the provision of similar services to third parties by the applicable affiliated service providers, fees paid to AECOM and/or its affiliates will detract from the Fund's returns and potentially create an incentive for ACRE to recommend approval by the Fund's investment committee of an investment where AECOM and/or its affiliates stand to receive such fees. Except for that portion (50%) of any AECOM Development Fees applied to offset the management fee, no other AECOM Fees—that is, fees received for providing any services *other than* development management will be shared with the Fund or its investors, be applied to reduce the management fee or carried interest payable in respect of the Fund or be required to be contributed to the Fund by ACRE.

Nonetheless, ACRE considers these arrangements to be appropriate because AECOM Fees are attributable to discrete services being provided by AECOM and/or its affiliates that would otherwise be provided by third parties, at rates negotiated by the Co-GP Partners and approved by the Fund's investment committee, and they provide distinct advantages to the Fund versus non-affiliated service providers that can help the Fund implement its investment program. These advantages include alignment of ACRE's financial interests with those of investors, the experience and reliability of ACRE's affiliated service providers, high-level operational and strategic control by the Fund over its service providers, ability to establish common operating processes across investments and long-term loyalty and attention to the Fund's investments. The payment of AECOM Fees in connection with a proposed investment will be disclosed in the Fund's investment committee memorandum and must therefore be approved by the Fund's investment committee in connection with the approval of an investment, thus requiring the approval of CPRE. If, on the other hand, AECOM and/or its affiliates do not provide services in connection with an investment, the Fund will rely on third-party service providers, whose fees could be higher or lower than AECOM Fees for equivalent services, and the use of which would not offer the advantages noted above.

### **AECOM Support Payments and Guarantees**

Any member of the Fund's investment committee appointed by ACRE may, when voting to approve or disapprove any matter, take into account the interests of ACRE or its other affiliates in connection

with the related investment. Those interests can conflict with those of the Fund and the investors. In particular, in considering a potential investment, a member of the Fund's investment committee appointed by ACRE may consider Project JV-level Support Payments and lender required Guarantees that AECOM will generally be required to provide if their investment is approved. If such Investment does not meet AECOM's underwriting criteria or AECOM is otherwise unable to provide a Guarantee or Support Payments, both discussed above, it is expected that the the members of the Fund's investment committee appointed by ACRE would vote against the investment and the investment would not be approved. While the ACRE believes such consideration of AECOM's interests to be appropriate under the circumstances, the Fund could be required to forego potentially attractive and appropriate investments as a result.

For those investments that are approved, AECOM's recovery rights with respect to Guarantee payments and rights to reimbursement for Support Payments could create incentives for AECOM to take actions contrary to the interests of the Fund. ACRE nevertheless believes that AECOM's Guarantees and Support Payments will provide valuable benefits to the Fund. Among other things, AECOM's obligations to make Support Payments should substantially reduce the risk of loan defaults that could disrupt the completion or stabilization of Project JVs and adversely affect the Fund. AECOM's Guarantees should also help Project JVs secure financing on more competitive terms.

### **Expense Allocation**

The Fund is responsible for all costs and expenses in connection with its operation, *other than* the costs and expenses that will be the responsibility of the Manager, the Sponsors or other third parties. A conflict of interest could therefore arise in ACRE's determination of whether certain costs or expenses that are incurred in connection with the operation of the Fund meet the definition of a "fund expense" for which the Fund is responsible, or whether such expense(s) should be borne by the Manager, the Sponsors or other third parties. The Fund will be reliant on the determinations of ACRE and the Manager in this regard, and also in regard to the allocation of investment expenses and any common operating expenses as among the a Fund and any other clients or accounts managed, advised or sponsored by the Manager Parties, including LP Equity Co-Investment Vehicles, Co-GP Equity Co-Investment Vehicles and Fund Co-GP SPEs.

### **Investments in Project JVs and Operating Partner JVs; Co-investment with Related Parties**

Neither the Manager nor its affiliates or related persons (including the Sponsors) are precluded from entering into transactions with Operating Partner JVs or Project JVs, forming other investment vehicles to make non-Co-GP Equity investments through Operating Partner JVs and Project JVs or causing their clients or accounts to co-invest in Operating Partner JVs and Project JVs with the Fund. As a result, the Fund may from time to time invest in Project JVs that are capitalized or financed by other entities that are managed or sponsored by affiliates of the Manager, including ACRE. In addition, the Fund may acquire interests in Operating Partner JVs and Project JVs in which other clients of the Manager or its affiliates are also lenders or investors, as applicable, either in a similarly situated position (*e.g.*, holders of Co-GP Equity) or in different positions in the capital stack with different risk and return profiles (*e.g.*, holders of LP Equity, preferred equity or debt). Alternatively, the Fund may co-invest in certain Operating Partner JVs and Project JVs with Funds managed or sponsored by the Manager or its affiliates, including ACRE. All of these arrangements could create conflicts and disputes between the Fund and the related investors regarding the terms of the Operating Partner JVs and Project JVs, as applicable, and the enforcement of the entities' respective rights therein. Differences in entity size, capital availability, compensation arrangements, investment objectives, risk tolerance, investment restrictions, holding periods or tax treatment could influence



the decisions the Manager or its affiliates, including ACRE, make with respect to their clients' interests in the Operating Partner JVs and Project JVs. In some cases, the Manager could have an incentive to recommend that the Fund's investment committee take action with respect to an investment that it would not otherwise recommend but for other clients' interests (including clients of the Sponsors). Such actions could disadvantage the Fund by favoring other clients over the Fund or attempting to maximize the value received across all of the Manager's and its affiliates' clients rather than solely to the Fund. The foregoing conflicts of interest are particularly acute where Fund investors are also LP Co-Investors through LP Equity Co-Investment Vehicles managed and sponsored by the Manager, as described in greater detail below.

### LP Equity Co-Investments

Where practicable, the Manager will seek to make arrangements with Co-GP Partners in particular Project JVs to offer certain Fund investors (as determined in the Manager's sole discretion) the opportunity to make LP Equity investments in those Project JVs ("Co-Investments"). Co-investments will be made through an LP Equity Co-Investment Vehicle through which eligible and electing Fund investors ("LP Co-Investors") will provide LP Equity to particular Project JVs.

LP Equity Co-Investment Vehicles will own a different security and therefore will have different economic interests than the Fund does in respect of the Project JVs in which each invests. While the Manager and the Sponsors, include ACRE, generally intend to cause the Fund and an LP Equity Co-Investment Vehicle to provide capital to a specific Project JV on a *pari passu* basis, based on sharing ratios determined by the Manager, such that they both share in the Project JV's profit and loss, LP Equity Co-Investment Vehicles will not share in the Project JV's Co-GP promote or any other preferential Co-GP economics, including asset-level fees such as pre-development fees, asset management fees and/or leasing fees. LP Equity Co-Investment Vehicles will, however, pay the Manager, and indirectly ACRE) ongoing asset-based management fees (but not any carried interest on profits thereof).

While ACRE believes that LP Equity Co-Investments will generally provide benefits to the Fund by making capital that is readily accessible available to each Project JV, Fund investors should be aware that the Fund and any LP Equity Co-Investment Vehicles will hold securities with differing economic terms, and that the Manager's duties to the Fund and its duties to the LP Equity Co-Investment Vehicles, as well as its economic incentives for managing the Fund and the LP Equity Co-Investment Vehicles, are expected to conflict in a number of ways.

In particular, the fact that the Manager would be entitled to asset-based management fees from LP Equity Co-Investment Vehicles could create incentives for the Manager to "sweeten the deal" for LP Co-Investors in ways that could be detrimental to the Fund (despite any contrary interests of the Co-GP Partner) in order to ensure an LP Equity Co-Investment Vehicle achieves its fundraising target and to maximize the overall fee revenues arising from the Fund and such LP Equity Co-Investment Vehicle to the Manager and its affiliates, including ACRE. As an example, if the Fund together with its Co-GP Partner for a particular Project JV, make investments (whether to acquire the land or other assets to be developed by the Project JV, or for other purposes) prior to the admission of a Project LP to the Project JV, the Project LP will be required to "buy in" to the Project JV by contributing LP Equity capital on terms determined by the Fund and the Co-GP Partner. The terms of these "buy-ins" may include interest-like payments to compensate the Fund and the Co-GP Partner for the use of their capital and/or "true up" payments to reflect (generally unrealized) appreciation in land values or other assets of the Project JV. When the Project LP is an LP Equity Co-Investment Vehicle, the Manager's (and, indirectly, ACRE's) interest in maximizing the terms of any "buy-in" by the LP Equity

Co-Investment Vehicle for the benefit of the Fund will conflict with its interest in attracting LP Co-Investors to provide LP Equity to the Project JV (which will entitle the Manager to management fees from the LP Equity Co-Investment Vehicle that will not be shared with the Fund or a Fund's Co-GP Partner).

Furthermore, the interests of an LP Equity Co-Investment Vehicle and the Fund may diverge during the lifespan of an investment, causing the Manager to make decisions that benefit the LP Equity Co-Investment Vehicle or the Manager's interest in that vehicle and the Fund as a whole over the interests of the Fund and the Fund's investors. For example, where certain return thresholds are not anticipated to be achieved, thus reducing the possibility that the Fund will earn a promote or incentive fee from the underlying Project JV, the Manager would be incentivized to pursue a more conservative asset management strategy to minimize downside risk to the benefit of the LP Equity Co-Investment Vehicle, as compared to a more aggressive strategy that could generate higher returns for the Fund but with greater downside risk. These actions could give rise to disputes with the Fund's Co-GP Partner in the Project JV, which would be incentivized to favor the more aggressive strategy as its interest is limited to the Operating Partner JV. If these disputes are not resolved amicably, they could result in litigation, the cost of which would generally be borne by the Fund; damage the Fund's relationship with the Co-GP Partner causing the Fund to lose future potential attractive investments introduced by that Co-GP Partner; or inflict other reputational damage to the Fund, the Manager and the Sponsors in the commercial real estate marketplace generally that adversely affects the implementation of the Fund's investment program.

### **Co-GP Equity Co-Investments**

Where appropriate, the Manager may decide to provide opportunities for Fund investors to make co-investments in Co-GP Equity alongside the Fund. The Manager will generally undertake no obligation to offer Co-GP Equity co-investment opportunities to investors, and, to extent it does, will do so in such allocations and on such terms as the Manager determines in its sole discretion.

While ACRE believes that there are benefits of having Fund investors as Co-GP Equity co-investors, as they already have an interest in the Fund and can provide the capital required to facilitate the completion of investments, potential conflicts are nonetheless inherent in, or arise from, the Manager's discretion in providing such co-investment opportunities to certain investors.

In particular, the availability of co-investment capital creates an opportunity for the Fund to make certain investments that would not be made if such capital were not available. The Manager (and, indirectly, ACRE) could then be incentivized to pursue certain investments based on the internal investment policies of potential co-investors. The Manager could also reduce the Fund's allocation to certain investments to increase the allocation available to Co-GP Equity co-investors and/or to increase the Manager's (and, indirectly ACRE's) overall compensation. Alternatively, the Manager could also increase the Fund's exposure to an investment to the extent co-investment capital is not available in order to allow for the investment to be consummated, causing the Fund to bear additional expenses and reducing the diversification of the Fund's portfolio.

Additionally, investors participating in Co-GP Equity co-investments could invest in investments directly or, similar to LP Equity investment opportunities, through aggregation vehicles sponsored and managed by the Manager. The fees, other compensation and terms of any investment in such aggregation vehicles could differ from the fees, other compensation or terms of an investment in the Fund—importantly, such vehicles may not pay any management fees or carried interest. Co-investors in a particular investment may also have certain control rights the Fund investor does not

have and may not have the same economic interests or objectives as the Fund. Among other things, Co-GP Equity co-investors may have the ability to liquidate their interest in an investment at a different time or times, and/or in different amounts than the Fund. They may also take other actions that make it more difficult for the Fund to realize the value of the investment or that adversely affect the Investment.

Separately, the Fund will bear all (or its *pro rata* share of) the fees, costs and expenses associated with any Co-GP Equity co-investment that is not consummated (a “broken deal”) arising prior to an investor’s contractual commitment to participate in such investment. Once an investor is so committed to participate, the investor will be required, as a condition of its participation, to bear all such costs or, to the extent doing so is not reasonable and practicable under the circumstances, such costs will be borne exclusively by the Manager (and not, for the avoidance of doubt, by the Fund or the other investors). Nevertheless, investors should be aware that under certain circumstances, the Fund may bear more than its *pro rata* share of broken deal expenses. ACRE believes this is reasonable because (a) the amount of broken deal expenses associated with an investment is expected to be the same, or substantially similar, regardless of whether co-investors are contractually committed to participate in such investment and (b) broken deal expenses are often incurred prior to the date on which co-investors are contractually committed to participate in such investment and thus obligated to bear those expenses.

### **Business Transactions by the Manager Parties and Affiliates**

The Manager Parties, including ACRE, or their affiliates have engaged and will continue to engage in business transactions with Co-GP Partners, third-party Project LPs and other third parties that do business with or provide services to the Fund as well as in connection with the Manager Parties’ other business activities and ventures. The business dealings between the Fund and those third parties will be on what the Manager believes to be an arms’ length basis, but the Manager will not generally give other service providers an opportunity to bid to provide services to the Fund on a competitive basis. Therefore, it is possible that the Fund will pay more (or less) than current market rates or those rates paid by other investment vehicles or accounts managed or sponsored by the Manager or its affiliates for certain services provided by third parties.

**No guarantee or representation can be made that the Clients will achieve their investment objective or that investors will receive a return of their capital. All investing involves a risk of loss and the investment strategies pursued by the Clients could lose money over short or even long periods of time. Prospective investors are advised to review the applicable Governing Documents for full details on the investment, operational and other actual and potential risks.**

### **Item 9: Disciplinary Information**

Not applicable.

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

Neither ACRE nor any of its directors, officers or principals is registered, or has an application pending to register, as a broker-dealer or as a registered representative of a broker-dealer. Neither ACRE nor any of its directors, officers or principals is registered, or has an application pending to register, as a futures commission merchant, commodity pool operator, commodity trading advisor, or as an associated person of any of the above.



ACRE is affiliated with AECOM and ACAP. ACAP has historically been a developer of and investor in real estate, public-private partnership (P3) and infrastructure projects across North America and select international markets. AECOM is a publicly traded (NYSE: ACM) infrastructure consulting firm, delivering professional services throughout the project lifecycle – from planning, design and engineering to program and construction management. The Fund's Governing Documents provide that, until such time as the Fund is either 90% invested or its investment period has expired or been terminated, AECOM and its affiliates will generally not invest outside the Fund in investment opportunities that fall within the Fund's primary investment objective.

AECOM and/or its affiliates will be retained by Operating Partner JVs and/or Project JVs from time to time and entitled to fees and other compensation for providing construction, construction management, design, engineering, consulting, operations and maintenance owner representative or other similar services (collectively, "AECOM Fees"). Without limitation, AECOM and its affiliates will perform construction management services, development management services and design and consulting services, and in each case receive compensation in respect of investments, as further described in the Fund's Governing Documents. Other types of services may be provided and/or fees outside the ranges contemplated in the applicable the Fund's Governing Documents may be charged with the Fund's limited partner advisory committee approval.

While rates and terms of the arrangements with affiliated service providers will generally be consistent with rates and terms that would be agreed on an arms' length basis for the provision of similar services to third parties by the applicable affiliated service providers, fees paid to AECOM and/or its affiliates will detract from the Fund's returns and potentially create an incentive for ACRE to recommend investment committee approval of an investment where AECOM and/or its affiliates stand to receive such fees. As noted in Item 5 above, except for that portion (50%) of any AECOM Development Fees applied to offset the management fee, no other AECOM Fees—that is, fees received for providing any services other than development management, such as construction services or other services provided by AECOM and its affiliates—will be shared with the Fund or its investors, be applied to reduce the management fee or carried interest payable in respect of the Fund or be required to be contributed to the Fund by ACRE.

If the affiliation between AECOM and ACRE is terminated (through the sale, transfer or dissolution of AECOM, ACAP, ACRE or otherwise), the Fund would no longer benefit from the competitive advantage (if any) provided by AECOM and any services provided to investments or ACRE by AECOM may need to be provided instead by third parties, potentially at an increased cost to such investments. Finally, ACAP personnel will devote at least some of their time and resources to ACAP's existing businesses.

The Manager is a related person of ACRE and a registered investment adviser. The Manager is jointly owned and controlled by ACRE and CPRE. For more information regarding the Manager, please refer to the Form ADV for the Manager available at: [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). Conflicts of interest will arise from time to time in allocating time, services, or other resources among ACRE and the investment activities of the Manager. Certain personnel of ACRE are obligated to devote a certain amount of time to the Manager. Accordingly, such ACRE personnel's time will not be dedicated exclusively to the Funds. In addition, potential conflicts of interest will arise from time to time in connection with the relationship between ACRE and CPRE as well as in connection with transactions with AECOM and its affiliates. See "Item 8 – *Methods of Analysis, Investment Strategies and Risk of Loss*" above.

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

ACRE has adopted a code of ethics (the “Code”) that establishes standards of ethical conduct for its employees and sets forth policies and procedures for addressing potential conflicts of interest that may arise between ACRE’s personnel and the Clients. The Code is based on the principle that ACRE owes a fiduciary duty to its clients and that all of ACRE’s personnel must therefore avoid any activities, interests or relationships that might present an actual or potential conflict of interest with ACRE’s clients or otherwise interfere with ACRE’s ability to make decisions in the best interests of its clients. Among other things, the Code addresses personal trading activities, receipt of gifts and business entertainment, outside business activities and political contributions.

As a general rule, ACRE does not buy or sell securities of public companies. However, in the ordinary course of its business, ACRE will from time to time come into possession of material non-public information relating to public and private companies. The Code requires ACRE to maintain a “Restricted List” of companies in whose securities ACRE’s personnel are generally prohibited from trading. ACRE’s investment professionals are required to report all of their personal holdings in securities and personal securities transactions to ACRE’s CCO on a quarterly basis. In addition, ACRE personnel are required to pre-clear any personal securities transaction they may wish to make in securities issued in an initial public offering or private placement and in any securities issued by a company on the Restricted List. In general, personal securities transactions in any company that is on the Restricted List will not be approved in the absence of extraordinary circumstances.

ACRE’s personnel are also prohibited from giving or receiving gifts or business entertainment that might call into question the exercise of such person’s ability to exercise independent judgement on behalf of ACRE’s clients. Under the Code, ACRE’s personnel are also required to pre-clear any outside business activities they may wish to engage in and any political contributions they may wish to make.

ACRE’s employees must certify annually that they have read and agree to comply in all respects with the Code and that they have disclosed or reported all personal securities transactions, holdings and accounts required to be disclosed or reported by the Code.

The paragraphs above only represent a summary of key provisions in the Code. ACRE will provide a copy of the entire Code to any client or prospective client (including any investor therein) upon request.

Because the general partner and the Manager of the Fund are affiliates of ACRE, the Company has a material interest that creates conflicts that must be managed. The Fund has a limited partner advisory committee (the seats of which are filled by limited partners that represent a significant percentage of the Fund’s committed capital and that are not affiliates of ACRE, CPRE, the Manager or the general partner) that reviews transactions where a potential conflict of interest exists, pursuant to the applicable provisions of the Fund’s Governing Documents.

## **Item 12: Brokerage Practices**

ACRE’s advisory business generally involves privately negotiated transactions in commercial real estate in which best execution obligations do not arise in the same context as transactions in publicly traded securities. With respect to such private transactions, ACRE believes it fulfills its best execution responsibilities through careful evaluation and negotiation of the terms of each such transaction.

However, ACRE may from time to time purchase or sell publicly traded securities. In such circumstances, ACRE considers various factors in determining which broker is most likely to deliver best execution including, but are not limited to, the Company's knowledge of negotiated commission rates and spreads currently available; the nature of the security or instrument being traded; the size and type of the transaction; the nature and character of the markets for the security or instrument to be purchased or sold; the desired timing of the trade; the activity existing and expected in the market for the particular security or instrument; confidentiality; the execution, clearance, and settlement capabilities as well as the reputation and perceived financial soundness of the broker selected and other brokers considered; ACRE's knowledge of actual or apparent operational problems of any broker; the broker or dealer's execution services rendered on a continuing basis and in other transactions; and the reasonableness of spreads or commissions.

ACRE does not maintain relationships with broker-dealers that feature soft-dollar benefits or referral arrangements.

### **Item 13: Review of Accounts**

ACRE monitors each of the investments it makes on an ongoing and continuous basis.

On a quarterly basis, investors in the Fund will receive written financial reports, including an unaudited balance sheet, a statement of net income or net loss, a statement of changes in financial position or a cash flow statement, and a supplemental statement of such investor's capital account. On an annual basis, investors in the Fund also will receive audited financial statements of the Fund, valuations of all of the Fund's investments, and tax information necessary for the completion of U.S. tax returns.

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

The Manager may, from time to time, determine to engage a third party placement agent to introduce potential investors to the Fund. Depending on the specific arrangement, the Manager may pay a placement fee, which may be calculated as a percentage of the commitment amount of the investor. If the Manager compensates a placement agent for referring an investor, such arrangements will be disclosed in writing to the investor. In all cases, placement fees will be borne entirely by the Manager through management fee offsets.

As noted in Item 5 above, 100% of the Fund's pro rata share of any transaction, monitoring, consulting, break-up, and other similar fees received by Manager and its affiliates and employees in connection with the Fund and its investments, net of unreimbursed transaction expenses incurred by the Manager or its affiliates and 50% of the Fund's pro rata share of any AECOM Development Fees, are credited to the Fund and distributed to its investors in accordance with the Fund's Governing Documents. From time to time, AECOM or its affiliates receive fees for providing construction, construction management, design, engineering, consulting, operations and maintenance or other similar services in respect of investments, at rates and on terms generally consistent with rates and terms as would be agreed on an arms' length basis for the provision of similar services to third parties by the applicable AECOM entity. Neither these non-development management fees nor the Guarantee fees received by AECOM or its affiliates are credited to the Fund and distributed to its investors in accordance with that Fund's Governing Documents (other than, for the avoidance of doubt, AECOM Development Fees, which are treated as described above).

## **Item 15: Custody**

ACRE conducts all business operations in such a way that all client cash and securities over which the Company is deemed to have custody under applicable law (other than certain privately offered securities) will be preserved in the safekeeping of independent qualified custodians.

With respect to each Client, an independent public accountant audits the Client's financial statements annually, and the audited financial statements are distributed to the investors of the Client.

## **Item 16: Investment Discretion**

In general, advice to the Funds is provided on a discretionary basis. The terms and conditions governing ACRE's authority over the investments made on behalf of its clients is set forth in writing in the applicable investment management agreement or Fund Governing Documents.

## **Item 17: Voting Client Securities**

In accordance with Rule 206(4)-6 of the Advisers Act, ACRE has adopted and implemented written policies and procedures governing the voting of client securities. The Clients are primarily invested in privately-held commercial real estate investments that do not typically issue proxies. However, in the event proxies have to be voted, ACRE is responsible for voting proxies on behalf of its Clients. ACRE votes client proxies in a way that it believes will maximize value for its Clients. In exercising its voting discretion, ACRE and its employees seek to avoid any direct or indirect conflict of interest raised by such voting decision. All conflicts of interest will be resolved in the interests of ACRE's Clients.

A copy of ACRE's written proxy voting policies and procedures, as well as a record of how the Company has voted in the past, is maintained and available for client review upon written request.

## **Item 18: Financial Information**

ACRE is not aware of any financial conditions that are reasonably likely to impair its ability to meet its contractual obligations to its clients. ACRE has never been the subject of a bankruptcy petition.