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**This brochure provides information about the qualifications and business practices of LEM Capital, L.P. If you have any questions about the contents of this brochure, please contact Michelle Vaughn at [mvaughn@lemcapital.com](mailto:mvaughn@lemcapital.com) or at (215) 609-3365. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority.**

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

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



## **Item 2. Material Changes**

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

We believe there have not been any material changes to LEM’s Form ADV filing since our last filing on November 20, 2020, however, LEM has revised this brochure to update the membership of the firm’s Management Committee, and to further describe LEM’s use of shared services.

We encourage you to carefully read this document in its entirety.

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

LEM Capital, L.P. (“LEM”) is an investment management firm co-founded by Ira M. Lubert, Jay J. Eisner, and Herbert L. Miller, Jr. in 2002. Messrs. Lubert, Eisner, and Miller collectively have over 85 years of experience in making real estate investments specializing in the underwriting, structuring, recapitalizing and refinancing investment transactions in the private and public real estate industry. Most of their careers have been spent in the real estate industry and they have extensive real estate experience in acquisition, ownership, management, and finance. The day-to-day investment operations of LEM are led by Messrs. Eisner, and Miller (“Managing Partners”) who are currently supported by Allison Bradshaw, Greg Biester and Jennifer Clausen (together with the Managing Partners known as LEM’s “Management Committee”).

LEM’s investment team consists of approximately 10 experienced professionals with strong backgrounds in multifamily and commercial real estate, private equity, debt markets, bridge loans, leveraged finance, mezzanine loans and lines of credit. Since 2011, the Managing Partners and the investment team have focused exclusively on making equity investments in multifamily properties across the United States.

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

LEM provides investment management services to privately offered pooled investment vehicles, which are generally organized as limited partnerships (each a “Fund” or collectively known as the “LEM Funds”), which will make real estate investments, primarily consisting of joint venture equity. LEM Funds will typically invest along with third party operating partners to form underlying joint venture partnerships or limited liability companies that invest in underlying real estate. Since these operating partners are independent third parties, they will typically receive compensation directly from these joint ventures for their services. This compensation will be in the form of an asset management fee, property management fee (if the operating partner or an affiliate manages the property), a construction management fee, a promote or carried interest structure, or other fees. Any compensation paid to these third-party operating partners will not offset LEM’s management fees or be treated as “special income”.

The Funds are intended only for investment by “accredited investors,” “qualified clients” and “qualified purchasers” as those terms are defined under the Federal Securities Laws. Each Fund’s investment objective includes providing a certain level of returns net of fees and expenses as described in detail in each Fund’s governing documents.

As of December 31, 2019, LEM’s regulatory assets under management were \$745,163,520 in Fund assets (i.e., Funds’ total assets and uncalled capital commitments), and are all managed on a discretionary basis.

## Item 5. Fees and Compensation

The specific terms of LEM's compensation by each Fund are dictated by the Fund's organizational documents, private placement memoranda, limited partnership agreements, management and advisory agreements, and any other applicable agreements (such as side letters or fee waivers) which are provided to Fund investors (collectively known as the "Fund's Governing Documents").

**Management Fee** - Each Fund pays a management fee (the "Management Fee"). A Fund's Management Fee generally will commence on the date of the Fund's initial closing and thereafter will be paid on the first day of each calendar quarter in advance. The Management Fee rate generally ranges from 1.00 % to 1.50% but may be negotiated lower for certain investors based on the size of their commitments to a Fund. Generally, the Management Fee rate is applied to a Fund's total capital commitments during the Fund's investment period, and on the Fund's remaining invested capital thereafter. As such, the Management Fee will vary based upon, among other things, the capital commitments by its various investors and the investment lifecycle of the Fund.

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

**Carried Interest** - In addition, the LEM Funds allocate a portion of their total investment profits (generally 20%) to their respective Fund general partners which are related persons with respect to LEM, as set forth in each of the Fund's Governing Documents (such profit allocation is commonly referred to as a "Carried Interest"). The foregoing performance-based carried interest is generally paid after the payment of a preferred return (generally 8%), compounded annually, on the Fund investors' unreturned capital contributions and the return of all Fund investors' contributed capital. Carried Interest is eligible to be paid upon the distribution of operating cash flow and proceeds generated by the realizations of each Fund's portfolio investments pursuant to a priority distribution waterfall as described in each the Fund's Governing Documents. LEM Funds' Carried Interest is charged in compliance with Rule 205-3 under the Investment Advisers Act of 1940, (as amended, the "Advisers Act").

Upon liquidation and dissolution of a Fund, LEM will be required to restore certain amounts to the Fund for distribution to the Fund's investors, to the extent that LEM has received Carried Interest distributions over the life of the Fund that are in excess of the amounts the general partner would have been entitled to receive if all distributions had been applied on an aggregate basis covering all of a Fund's transactions. However, LEM is not required to restore more than the Carried Interest distributions it received, less an amount representing income taxes thereon (generally, based on federal, state, and local tax rates at the time of repayment). LEM will also be obligated to restore distributions with respect to waived Management Fees (if any) to the extent such distributions exceed the allocations of Fund profits to the affiliated general partner with respect to the waived Management Fees.

LEM Management Fees and Carried Interest distributions are deducted from the assets or

distributions of the Fund and Fund investors are not separately billed for these items.

***Fund Expenses*** - Each Fund pays offering and organizational expenses incurred in the connection with the organization of each Fund and its related entities up to a certain maximum limit set forth in the Fund's Governing Documents. These expenses include all travel and accommodation expenses regarding the marketing of a Fund, legal and accounting expenses, expenses related to attendance at industry conferences, filing fees, legal fees including negotiating side letters with specific investors and printing costs, and other similar expenses including any of the above that were advanced by LEM or its affiliates.

No commissions, placement fees or other remuneration will be paid by the LEM Funds to any person in connection with the offering and/or sale of interest in the Funds, unless the Fund's Governing Documents specifically allow for such fees.

The LEM Funds are charged with all costs and expenses relating to the activities and operations of the Fund and their subsidiaries, generally including, but not limited to: (i) administrative fees, costs and expenses related to the operation of the Fund (including fees, costs and expenses of third party accountants, lawyers and other professionals incurred in connection with the Fund's annual audit, legal compliance, financial reporting, legal opinions and tax return preparation for the Fund and its affiliated general partner) (ii) fees, costs and expenses related to the acquisition, management, development, renovation, financing, hedging, refinancing and sale or other disposition of investments and the evaluation of potential investments (regardless of whether the potential investments are consummated), including any travel, financing, legal, accounting, advisory, research and consulting expenses in connection therewith, third party software licenses related to accounting and servicing investments (including hosting, licensing, maintenance and enhancements), subscriptions and membership fees in industry organizations and travel to and attendance at, industry conferences (provided that after the commitment period any such expenditures for such subscriptions, membership fees and industry conferences will directly benefit the Fund); (iii) brokerage commissions, custodial expenses and other investment costs actually incurred in connection with investments; (iv) fees, costs and expenses related to making temporary investments and any interest or hedging expenses; (v) principal, interest on and fees and expenses arising out of all borrowings made by the Fund (including Fund level subscription facilities); (vi) expenses of liquidating the Fund; (vii) any taxes, fees or other governmental charges levied against the Fund and all expenses incurred in connection with any tax audit, investigation, settlement or review of the Fund; (viii) fees, costs and expenses related to litigation, director and officer liability insurance, risk management consulting, other insurance and indemnification obligations; (ix) the expenses of the investor advisory committee and investor meetings; (x) expenses related to organizing entities through or in which investments may be made including but not limited to REITs; (xi) Fund organizational expenses; (xii) extraordinary administrative or operating fees or expenses, including litigation and indemnification expenses; and (xiii) expenses of investor reporting.

For the LEM Multifamily Senior Equity Fund IV, L.P. ("Fund IV") and LEM Multifamily Fund V, L. P. ("Fund V"), LEM and its affiliates may provide services that would otherwise be performed by third parties to both Funds in which an investment has been made (including certain accounting, engineering, environmental, construction management, property

management, development, leasing or other similar services) on terms and conditions that LEM determines are fair and reasonable; provided, that the fees earned by LEM and its affiliates for performing such services (including employee costs and related overhead expenses allocable thereto, as reasonably determined by LEM based on the time expended by the employees who render such services) will not exceed the rate that would be payable if a comparable level of services were provided on an arm's-length basis by third parties in the business of providing such services with comparable skill and experience in providing such services to similar properties. LEM or its affiliate will charge both Funds or the Fund's underlying investments for the following internal costs (including the cost of services provided by Independence Capital Partners, LLC) to Fund IV and Fund V which will include: (i) legal services at the lower of cost or market rates; (ii) preparation and review of tax returns, tax notice resolution, tax estimates for partners, tax consulting and tax reporting for the Fund, parallel funds, the general partner and entities through or with which the Fund invests (but only costs resulting from Fund activity) and (iii) the cost of licensing the Fund and the general partner or their affiliates in connection with Fund activities. These costs will not offset LEM's Management Fee.

For Fund V, third-party fund administration fees, costs, and expenses (including accounting, tax compliance and tax planning, reporting (including investor reporting), investor servicing and other expenses associated with investor distributions and capital calls) will be a Fund expense.

In response to the health and safety risks presented by the COVID-19 pandemic, LEM has adopted a Special Travel Policy, which is designed to mitigate the spread of disease among our Employees, while still achieving LEM's objectives that rely on traveling within the United States. This Special Travel Policy is effective during the pandemic only, and LEM will revert back to normal travel policies when it is deemed safe to do so.

- *First Class Travel:* The purchase of a First Class ticket or the purchase of a First Class ticket and the adjacent seat may be recommended instead of Coach in order to reasonably and appropriately address potential health and/or safety risks to our Employees (i.e. limiting proximity to other passengers and reducing time on airplane). Such situations are to be examined on a case by case basis, and travel will not be reserved until approval from a Managing Partner has been obtained and a determination has been made on the reasonableness and necessity for such travel, along with the allocation of such costs among the Funds and its underlying assets (and the management company if travel is for non-Fund related reasons).
- *Private Travel:* Private air travel will be reserved from time to time in order to carry out LEM's acquisition responsibilities and asset management oversight. Such reservations will occur on a selective basis, subject to Managing Partner approval and evaluated on the criteria of cost, safety, and efficiency considerations relative to comparable travel options.
- *Extended Stay Travel:* Employees will, from time to time, travel to certain markets for extended periods of time to help LEM carry out certain acquisition and asset

management responsibilities. Extended trips will be evaluated subject to similar considerations around Fund benefit, cost, safety, and efficiency.

- Allocations of these travel expenses among the LEM Funds, underlying assets and management company related to First Class travel, private air travel and extended stays will be evaluated on a case by case basis, subject to the facts and circumstances of each trip. In no event, will LEM make expense allocation decisions based on compensation or profits to LEM, its affiliates or Employees.

As more fully described in the specific Fund's Governing Documents, the Fund and its joint ventures may also be charged for the cost of accounting, legal, limited partnership transfers, certain other services and any associated direct costs provided or incurred by such Fund or its affiliates, at cost, without any corresponding reduction of the Management Fee.

Each of the Fund's general partners and/or LEM will bear its respective ordinary operating expenses, which generally include staff compensation and overhead.

For a more detailed description of the specific Management Fees, Carried Interest and Fund expenses please see the Fund's Governing Documents.

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

As described in Item 5, each LEM Fund will have a Carried Interest program and certain employees are eligible to receive a portion of such Carried Interest as incentive compensation from the LEM Funds. Carried Interest is tied explicitly to the performance of a Fund, as a whole, not to individual transactions or investments and would be earned based upon the performance of the Fund's overall portfolio. The existence of this Carried Interest program may create an incentive for LEM to cause a Fund to make riskier or more speculative investments than would be the case in the absence of the Carried Interest.

Managing funds that pay a different performance-based fee or have different Management Fee structures (i.e. funds that pay lower fees) will create additional conflicts of interest. Under such a scenario, an investment adviser may have an incentive to favor the higher fee-paying funds when allocating investment opportunities. To address these risks, LEM has compliance policies and procedures in place that prohibit employees from favoring one Fund over another and to compensate eligible employees with respect to Carried Interest based on the performance of the entire Fund, as a whole, and not the outcome of any one single transaction or investment.

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

LEM provides investment advice only to its Funds, which are privately offered pooled investment vehicles. Investors (generally, limited partners of the partnership) in the Funds may include, but are not limited to, U.S. governmental pension plans, foreign pension funds, endowments, corporate and business entities, unions, foundations, trusts, family offices, and high net worth individuals. Each investor is required to meet certain suitability qualifications such as being an "accredited investor", "qualified client" or "qualified purchaser" within the meaning set forth under the Federal securities laws. Each Fund varies in size over the course of its investment lifecycle. The Funds' generally require a minimum initial investment or commitment by each individual investor of \$1 million and each



institutional investor of \$5 million. However, each Fund's general partner has the discretion to waive or reduce the minimum initial investment or commitment and has done so for certain investors.

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

***Methods of Analysis*** - LEM employs an internal acquisitions process that includes various research methods including analytical models and other types of analyses. LEM utilizes both internal and external resources to find potential investment opportunities as well as a wide-ranging network of mortgage bankers, mortgage lenders, investment brokers, industry professionals, real estate owners/operators, consultants, and advisors. In the initial analysis of a potential investment, the investment team reviews information furnished by the prospective operating partner as well as feedback from operating partners and/or other direct local relationships to determine whether the investment meets a Fund's underwriting and investment criteria. LEM's investment team will also conduct an independent evaluation to ensure the quality of the asset. In addition, LEM evaluates the proximity to job nodes, highway access, the new supply pipeline, and other demographic and locational aspects of the asset's submarket to assess the investment's potential. If the investment team decides to proceed to the next phase for the potential investment, a proposal is submitted to the investment sponsor outlining key terms. Once terms have been agreed upon and LEM's underwriting process is completed, every new investment requires submittal to, and approval by, the Fund's investment committee.

***Investment Strategies*** - The Funds' investment strategies employ a disciplined investment approach typically focusing on cash flow, property value appreciation and downside protection. Generally, the Funds seek to provide current income distributions while preserving investor capital and typically will invest in real estate properties through joint ventures or other equity investment vehicles. The Funds' equity investment strategies also target equity upside by acquiring well-located, high-quality, multifamily real estate properties and adding value through capital upgrades and improved management. There can be no assurance, however, that the use of any strategy for any Fund will achieve any returns or avoid a loss. A Fund's ability to achieve returns will depend on a variety of factors, many of which are beyond its or LEM's control.

***Material Investment Risks*** - Investing in a real estate closed end fund involves risk of loss that investors should be prepared to bear. Each of these material investment risks and others are further described in the applicable Fund's Governing Documents which all investors should carefully read before investing:

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

***General Risk of Real Estate Investment*** - Real estate property investments are subject to varying degrees of risk. Real estate values are affected by a number of factors, including: (i) changes in the general economic climate or in national or international economic

conditions; (ii) local conditions (such as an oversupply of space or a reduction in demand for space); (iii) the quality and philosophy of management; (iv) competition based on rental rates; (v) attractiveness and location of the properties and changes in the relative popularity of commercial properties as an investment; (vi) financial condition of tenants, buyers and sellers of properties; (vii) quality of maintenance, insurance and management services; (viii) changes in real estate tax rates and other operating costs and expenses; (ix) energy and supply shortages; (x) changes in interest rates and the availability of mortgage funds, which may render the sale or refinancing of properties difficult or impracticable; (xi) uninsured losses or delays from casualties or condemnation; (xii) government regulations (including those governing usage, improvements, zoning and taxes) and fiscal policies; (xiii) potential liability under changing environmental and other laws; (xiv) risks and operating problems arising out of the presence of certain construction materials; (xv) structural or property level latent defects; (xvi) acts of God; and (xvii) other factors beyond the control of the general partner. Investments in existing entities (e.g., buying out a distressed partner or acquiring an interest in an entity that owns a real property) could also create risks of successor liability.

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

***Risks Related to Investments in Multifamily Properties*** - A large number of risk factors will affect the value and successful operation of multifamily properties, including (1) physical attributes of the property such as its age, condition, design, appearance, access to transportation and construction quality; (2) location of the property; (3) ability of management to provide adequate maintenance and insurance; (4) the types of services or amenities that the property provides; (5) the property's reputation; (6) the level of mortgage interest rates and availability of government incentives, which may encourage tenants to purchase rather than lease housing; (7) the presence of competing properties; (8) the tenant mix, such as the tenant population being predominantly students or being heavily dependent on workers from a particular business or personnel from a local industrial unit; (9) adverse local or national economic conditions, which may limit the amount of rent that may be charged and may result in a reduction of timely rent payments or a reduction in occupancy levels; (10) state and local regulations, which may affect the building owner's ability to increase rent to the level of market rents for an equivalent apartment; (11) government assistance/rent subsidy programs; and (12) the inventory of unsold condominium units and investor-owned homes in the local market that are being rented until economic conditions in the condominium and housing markets improve. If any such risk factors are heightened or the conditions associated with such risk factors deteriorate, the Fund's investments in multifamily properties may incur losses.

In addition, certain jurisdictions regulate the relationship between an owner and its tenants. Commonly, these laws require a written lease, good cause for eviction, disclosure of fees and notification to residents of changed land use, while prohibiting unreasonable rules and retaliatory evictions. In addition to U.S. federal, state and/or local regulation of the landlord-tenant relationship, some counties and/or municipalities impose rent control on apartment buildings. These ordinances will limit rent increases to fixed percentages, to percentages of increases in the consumer price index, to increases set or approved by a governmental agency or to increases determined through mediation or binding arbitration.

***Debt Financing: Leverage*** - A Fund's investments will involve material amounts of indebtedness. Each Fund expects to leverage its investments with debt financing at the property or operating company level. Debt service requirements may deplete cash flows and relatively small changes in the overall value of investments will have a magnified impact on the value of the equity of the Fund. If a portfolio investment were unable to generate sufficient cash flow to meet principal and interest payments on its indebtedness, the value of the Fund's investment in such portfolio investment would be significantly reduced or even eliminated. In addition, debt financing may restrict the number of funds available for distribution to the Fund's investors. Certain tax-exempt investors may be subject to unrelated business income taxation because of a Fund's use of leverage. The use of leverage involves a high degree of financial risk and will increase the exposure of the investments to adverse economic factors such as rising interest rates, downturns in the economy or deterioration in the condition of the investments. In addition, borrowings by a Fund under a credit facility may be secured by the Fund's Investor capital commitments as well as by the Fund's assets. If a Fund makes an investment with the intent of subsequently financing a portion of that investment, there is a risk that the Fund will be unable to successfully complete such a financing. This could lead to a Fund having a larger amount of capital invested in an investment than anticipated and reduce diversification.

***Potential Restrictive Covenants*** - The Fund may enter into a credit facility with one or more lenders in order to finance its operations (including the acquisition of the Fund's investments). It is anticipated that any such credit facility will contain a number of common covenants that, among other things, might restrict the ability of the Fund to: (i) acquire or dispose of assets or businesses; (ii) incur additional entity level indebtedness; (iii) make capital expenditures; (iv) make cash distributions; (v) create liens on assets; (vi) enter into leases, investments or acquisitions; (vii) engage in mergers or consolidations; (viii) make capital calls to the Partners; or (ix) engage in certain transactions with affiliates, and otherwise restrict corporate activities of the Fund (including its ability to acquire additional investments, businesses or assets, certain changes of control and asset sale transactions) without the consent of the lenders. The Fund may incur indebtedness under such credit facility that bears interest at a variable rate. Economic conditions could result in higher interest rates, which could increase debt service requirements on variable rate debt and could reduce the amount of cash available for various Fund purposes.

***Market Conditions May Dramatically Affect the Funds' Investments*** - Volatile market conditions at various times have had a dramatic effect on private real estate related investments. In addition, public health emergencies, terrorist attacks and other acts of

violence or war may affect the operations and profitability of a Fund's investments and make it difficult to value such Fund investments. Such events could cause consumer confidence and spending to decrease or result in increased volatility in the U.S. and worldwide financial markets and economies. The extent of the impact of any public health emergency, including COVID-19, on LEM and the operational and financial performance of its investments held by this Fund will depend on many factors, including the duration and scope of such public health emergency, the extent of any related travel advisories and restrictions implemented, the impact of such public health emergency on overall supply and demand, goods and services, investor liquidity, consumer confidence and levels of economic activity and the extent of its disruption to important global, regional and local supply chains and economic markets, all of which are highly uncertain and cannot be predicted. The effects of a public health emergency, including COVID-19, may materially and adversely impact the value and performance of any investment or LEM's ability to manage and divest investments and the ability of the firm to achieve its investment objectives, all of which could result in significant losses. In addition, LEM or its investment may be significantly impacted, or even temporarily or permanently halted, as a result of government quarantine measures, voluntary and precautionary restrictions on travel or meetings and other factors related to a public health emergency, including its potential adverse impact on the health of any such entity's personnel. Any of these occurrences could have a significant impact on the operating results and revenues of the underlying properties, and, in turn, on the return of the Funds' investments.

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

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

***Environmental Risks*** - The joint ventures' underlying real estate properties will be subject to federal and state environmental laws, regulations, and administrative rulings, which, among other things, establish standards for the treatment, storage and disposal of solid and hazardous waste. Real estate property owners are subject to federal and state environmental laws that may impose joint and several liability on past and present owners and users of real property for hazardous substance remediation and removal costs. Therefore, a Fund may incur loss from environmental claims arising in respect of real properties underlying its Investments with undisclosed or unknown environmental problems or as to which

inadequate reserves have been established.

***Inflation Risk*** - When any type of inflation is present, a dollar today will not buy as much as a dollar next year, because purchasing power erodes at the rate of inflation. Although the shorter-term leases in multifamily properties (typically one year or less) may allow multifamily properties to respond more quickly to inflationary pressures than other commercial property types with longer term leases, there can be no assurance that rental increases on renewal or new leases will be sufficient to offset the impact of inflation.

***Interest Rate Risk*** - The LEM Funds have exposure to interest rate risks, meaning that changes in prevailing interest rates could negatively affect the value of a Fund's investment (e.g., interest rate changes may affect, among other items, the cash flows of an investment directly and the cost of leverage). The Funds intend to use various interest rate hedging products including caps and swaps to try to mitigate this risk.

***Lack of Diversification*** - An LEM Fund may not be sufficiently diversified with respect to geographic regions and given that each Fund expects to invest predominantly in multifamily properties, lack of diversification across the portfolio will increase a Fund's exposure to adverse real estate or capital market conditions in each region or that are applicable to multifamily properties. If investments are concentrated in a limited number of geographical regions, a Fund's performance with respect to those investments may be negatively affected by market conditions specific to those areas. Unforeseen events such as natural disasters, terrorist attacks or a general decline in the job market in a region may adversely affect the returns on investments in such locations. Depending on the number and size of investments located in a region, unfavorable events may impact the returns to a Fund. Additionally, various unfavorable events may adversely impact the entire multifamily asset class (either regionally or nationally) and thereby impact a Fund's returns.

***Risky and Illiquid Investments*** - The investments made by the Fund carry risk and are illiquid. The investments may be unsecured and subordinated to material amounts of senior indebtedness. The investments may not be protected by financial covenants or limitations upon additional indebtedness. Illiquidity will result from the absence of an established market for the investments, as well as legal or contractual restrictions on their sale by the Fund. Dispositions of investments may be subject to contractual and other limitations on transfer (including prepayment penalties with respect to property-level debt) or other restrictions that would interfere with subsequent sales of such investments or adversely affect the terms that could be obtained upon any disposition thereof. The possibility of partial or total loss of capital will exist and prospective investors should not subscribe for interests in the Fund unless they can readily bear the consequences of such loss. Even if the investments of the Fund are successful, they may not produce a realized return for an unspecified duration of time.

***Expedited Transactions*** - Investment analyses and decisions by LEM may be required to be undertaken on an expedited basis to take advantage of investment opportunities. In such cases, the information available to LEM at the time of an investment decision may be limited, and LEM may not have access to detailed knowledge of all circumstances that



may adversely affect an investment. In addition, LEM will rely upon independent consultants in connection with its evaluation of proposed investments; however, no assurance can be given that these consultants will accurately evaluate such investments, and a Fund may incur liability because of such consultants' actions.

***Inability to Identify Attractive Investments*** - No assurance can be given that LEM will be able to originate investments that satisfy the rate of return objectives of their Funds or that such investments will perform as expected. Each Fund will face competition for investments from both private and public investors, some of which have greater financial and other resources than LEM and more extensive experience. Interim investments may offer returns lower than those targeted for long-term investment by the Funds. LEM intends to make draws on commitments as funds are needed during the commitment period; however, investments consistent with a Funds' strategy may not be available at all times.

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

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

***Controlling Person Liability*** - The Funds are expected to have a controlling interest or consent rights in most of their investments in real estate joint ventures. The exercise of control over an entity can impose additional risks of liability for environmental damage, failure to supervise management, violation of government regulations (including securities laws) or other types of liability in which the limited liability characteristic of business ownership may be ignored. If these liabilities were to arise, the Fund might suffer a significant loss.

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

***Information About Investments*** - LEM intends to keep investors apprised of the status of the Fund's investments on a periodic basis. In reviewing these reports, investors should

be aware that LEM and the Funds may be subject to confidentiality agreements that limit the amount of information that LEM may disclose about Fund investments.

***Insurance May Not Cover All Losses*** - Comprehensive casualty insurance will be maintained on the properties underlying the Fund's investments, including liability and fire and extended coverage, in amounts sufficient to permit replacement in the event of a total loss, subject to applicable deductibles. LEM will endeavor to obtain coverage of the type and in the amount customarily obtained by owners of properties similar to the real property that it acquires in the future.

***Regulatory Risks*** - Each Fund relies on various exemptions from federal and state statutes and rules, such as ERISA, the Investment Company Act of 1940 ("1940 Act") and the Securities Act of 1933 (the "Securities Act"), to operate without having to register under such statutes and rules. Loss of any such exemption, or a change in these statutes and rules or certain others, such as the Advisers Act, anti-money laundering rules, and the U.S. Internal Revenue Code, could impact a Fund's ability to continue to operate as it currently does. A Fund's exemption from certain investor protection laws means that a Fund's investors do not have the benefit of protections afforded by such laws, including ERISA, the 1940 Act and the Securities Act.

***Cybersecurity Risks*** - LEM, the Funds' service providers and other market participants increasingly depend on complex information technology and communications systems to conduct business functions. LEM has taken steps to evaluate and mitigate cybersecurity risks, but there can be no assurance that such steps and any policies or practices will adequately address or prevent all types of cybersecurity risks. Such systems are subject to several different threats or risks that could adversely affect the Funds and their investors. For example, unauthorized third parties may attempt to improperly access, modify, disrupt the operations of, or prevent access to our systems. Third parties may also attempt to fraudulently induce employees or investors to disclose sensitive information to gain access to the LEM's data or that of a Funds' investors. A successful penetration or circumvention of the security of the LEM's systems could result in the loss or theft of an investor's data or funds, the inability to access electronic systems, loss or theft of proprietary information or corporate data, physical damage to a computer or network system and/or costs associated with system repairs. Such incidents could cause LEM or the Funds to incur regulatory penalties, reputational damage, additional compliance costs and/or financial loss.

***Litigation*** - In the ordinary course of its business, the Fund may be subject to litigation from time to time. The outcome of such proceedings may adversely affect the value of the Fund and may continue without resolution for long periods of time. Any litigation may consume substantial amounts of the General Partner's time and attention, and that time and the devotion of these resources to litigation may, at times, be disproportionate to the amounts at stake in the litigation.

***Americans with Disabilities Act and Similar Laws*** - Under the Americans with Disabilities Act of 1990 (the "ADA"), all public accommodations in the United States must meet federal requirements related to access and use by disabled persons. If one or more of the properties in the Fund's portfolio does not comply with the ADA, then the Fund may 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 federal, state, and local laws also may require modifications to the Fund's properties or restrict the Fund's ability to renovate its properties. The Fund cannot predict the ultimate cost of compliance with the ADA or other legislation. If the Fund incurs substantial costs to comply with the ADA and any other similar legislation, the Fund's financial condition, results of operations, cash flow, cash available for distribution and ability to satisfy its debt service obligations could be materially adversely affected.

***Investors Will Have Limited Recourse Against LEM*** - A Fund's Governing Documents generally limit the circumstances under which the general partner or its affiliates will be held liable to that Fund. Thus, investors will have more limited rights of action in certain cases than they would have in the absence of such limitations. In addition, the organizational documents provide that a Fund will indemnify the general partner and its affiliates, partners and employees for certain claims, losses, damages, and expenses arising out of their activities on behalf of that Fund. Such indemnification obligations could have a material adverse effect on the returns to investors.

***Reliance on LEM*** - The LEM Funds will be managed exclusively by LEM and its affiliates, and determinations regarding the Fund's management, acquisition, financing, and disposition policies, as well as policies with respect to certain other operating activities (including but not limited to contributions, distributions, and cash management) will be determined by LEM. Therefore, investors will not be able to make investment or other decisions on behalf of the Fund.

***Role of the Third-Party Administrator*** - The LEM Funds will rely on a third-party administrator to provide certain reporting, accounting, and other administrative functions on behalf of the Fund. The Fund will depend on the services provided by the Administrative Agent to the Fund in order to comply with certain reporting and other obligations set forth in the Partnership Agreement. The General Partner expects to engage the Administrative Agent on terms it believes to be reflective of the market for similar service providers and intends to monitor the Administrative Agent and its performance. However, there is no assurance that the Administrative Agent will comply with its obligations to the Fund or that the Fund will be able to recover in full any damages caused by any failure of the Administrative Agent to comply with such obligations. Limited Partners will not have the ability to bring a direct claim against the Administrative Agent.

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

## **Item 9. Disciplinary Information**

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



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

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

LEM utilizes Independence Capital Partners, LLC (“ICP”) to provide certain non-investment services such as compliance, insurance, accounting, and tax support. ICP also provides similar services to other investment advisory firms which include: LLR Walnut, L.P.; Patriot Financial Manager, L.P.; Quaker Partners Management, L.P. (an exempt filer); LBC Credit Management, L.P.; and Lubert-Adler Management Company, L.P. (collectively, the “ICP Participating Firms”). Each ICP Participating Firm has a representative on the Board which oversees ICP’s budgets, policies, and procedures. LEM is not under common control with any of the other ICP Participating Firms, meaning no person owns more than 25% of the voting securities of both LEM and one of the other ICP Participating Firms. Each ICP Participating Firm is separately managed by its partners and investment professionals and offers advisory services to private investment funds focused on various assets classes and/or investment objectives.

The ICP Participating Firms and the Funds in which they manage share coverage under certain insurance policies, such as general partner liability insurance and crime insurance. The cost of such shared policies will be allocated as reasonably determined by the ICP Participating Firms, considering such factors as will be reasonably determined, including, without limitation, the estimated relative costs of standalone policies for each ICP Participating Firm, the relative capital called or estimated to be called for each Fund, and the relative claims experience of the ICP Participating Firms.

Mr. Lubert, a Co-Founder of LEM, has voting and non-voting ownership interests in ICP and all the above ICP Participating Firms. Each ICP Participating Firm manages private investment funds that may invest in real estate, private equity, debt, or venture capital companies, some of which may have investment mandates that are similar to, but not directly overlapping with, the investment mandates of the LEM Funds. In the past, the partners of ICP Participating Firms and LEM have shared information and collaborated regarding investment opportunities and, on one occasion, co-invested in an investment.

In addition to his interests in ICP and the ICP Participating Firms, Mr. Lubert’s outside business interests include holding voting and non-voting interests in several investment advisers to private equity funds; controlling, voting and non-voting interests in numerous operating companies; and controlling, voting and non-voting interests in private real estate investments. He also serves, or has served, on the board of directors of a number of private and public companies and non-profit organizations. Mr. Lubert intends to pursue additional investment opportunities to the extent these opportunities are not suitable for the LEM Funds or not prohibited by any applicable Funds’ Governing Documents.

LEM’s Managing Partners will devote substantially all of their business time to real estate activities of LEM. If during Fund V’s commitment period, both Messrs. Eisner and Miller cease to devote substantially all of their business time to the real estate activities of LEM or cease to be actively involved in investment oversight and management of Fund V, notice must be given to Fund V investors.

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

In accordance with its Governing Documents, LEM Fund V is prohibited from making any co-investments with any other LEM Fund or ICP Participating Firm sponsored fund.

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

LEM may offer certain institutional investors as defined by the Fund's Governing Documents, an opportunity to co-invest in a Fund's investment on the same terms as those offered to a Fund but has no obligation to offer such opportunities. These co-investment opportunities will be allocated pro rata based on the commitments of the Fund's institutional investors.

An LEM Fund may engage affiliates of LEM to perform services in connection with the ownership and operation of investments, so long as those services are required by the Fund's business. Such services shall be provided on terms that are determined by LEM to be fair and reasonable to the Fund. Any fees payable pursuant to any such agreements with not reduce the Management Fee payable to LEM.

In certain circumstances, advisors and service providers will charge different rates or have different arrangements for services provided to other affiliates as compared to services provided to a LEM Fund and its Fund investments which will result in more favorable rates or arrangements than those payable by a Fund or portfolio investment. Certain advisors and service providers (including accountants, administrators, lenders, brokers, attorneys, consultants, operating partners, investment, or commercial banking firms) may be investors in the LEM Funds. These relationships may influence LEM in deciding whether to select or recommend such a service provider to perform various services for a Fund or Fund investment (the cost of which will generally be borne directly or indirectly by a Fund or Fund investment, as applicable). Notwithstanding the foregoing, investment transactions for a Fund that require the use of a service provider will generally be allocated to service providers on the basis of best execution and other considerations, such as service provider's provision of certain investment-related services that LEM believes benefits a Fund.

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

capital commitments. These side letters will entitle an investor to terms other than those described in the Fund's Governing Documents which may be more favorable than those offered to other investors who have committed a lesser amount. These differing terms may address: (i) reporting obligations; (ii) transfer rights to affiliates; (iii) withdrawal rights due to adverse tax or regulatory events; (iv) consent rights to certain partnership agreement amendments; or (v) any other matters described in a Fund's Governing Documents. Such agreements will have the effect of establishing rights under, or altering or supplementing the terms of, the partnership agreement with respect to such investor.

LEM provides investment advisory services to its Funds, and its affiliates serve as sponsors of, the Funds, and will, in the future provide investment advice to and/or serve as sponsors of affiliated investment partnerships, limited liability companies and their general partners or managing members, as applicable. The general partners are relying investment advisers registered in accordance with SEC guidance under the Advisers Act pursuant to LEM's registration. These relying advisers operate as a single advisory business together with LEM Capital, are under common control and are subject to LEM's Code of Ethics and compliance programs adopted pursuant to the requirements of the Advisers Act.

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

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

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

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

Under the Code, Access Persons are also required to file certain periodic reports and

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

LEM Co-Founders, Managing Partners and investment professionals may have business interests separate and apart from their interests in LEM and its Funds. Such outside business interests may include controlling, voting and non-voting interests in private equity funds, operating companies, and private real estate investments. New outside business interests are subject to review by the Chief Compliance Officer to check for obvious conflicts of interest. Existing outside business interests are reviewed at least annually for changes in circumstances which could potentially lead to material conflicts. If an employee becomes aware of a material conflict of interest between an outside business interest and his or her employment or role with respect to a Fund and, such employee is expected to inform LEM's Chief Compliance Officer and, where possible, propose methods to mitigate the conflict. Mitigation efforts may include, among other things, recusing oneself from participating in certain decisions, and, where required by a Fund's limited partnership agreement, disclosing such conflict to, or seeking a waiver of such conflict from, the applicable Fund's advisory committee. Nevertheless, from time to time, various conflicts of interest may arise. For example, some of the existing private real estate investments may be in the same asset class or general market as investments of the Fund and may compete for tenants or other resources.

Co-founders, Managing Partners, certain employees, related persons, and other accredited investors will invest in the Funds, either through a general partner affiliate or as direct investors. LEM or an affiliated general partner, as applicable, may reduce all or a portion of the Management Fee and/or Carried Interest related to investments held by such persons.

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

## **Item 12. Brokerage Practices**

LEM is granted discretion over the selection and size amount of a Fund's real estate investments and/or securities to be bought or sold without obtaining prior consent or approval from any Fund investor. LEM's investment authority with respect to any Fund is subject to the investment objectives, guidelines and/or conditions set forth in the Fund's Governing Documents. It should be noted that the LEM Funds invest in privately negotiated real estate transactions where the brokerage terms of such transactions are largely influenced by a third-party operating partner and their capabilities to successfully close on such real estate transactions. LEM seeks to have transactions executed in the best interest of the participating Funds, considering various factors such as the size, competence, terms, and deal structure. LEM does not participate in or accept any soft dollar benefits or commission sharing arrangements and does not direct any brokerage in exchange for referrals. For more

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

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

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

Furthermore, LEM requires detailed financial reports and operating information from each underlying real estate property on a regular basis and conducts routine reviews and quantitative analyses. All investments are assigned to a LEM asset manager who is responsible for maintaining ongoing communication with the operating partners and their respective management teams. Formal asset review meetings are held quarterly and on an as-needed basis to monitor each Fund's investment performance. Moreover, a Fund may enhance oversight when an investment underperforms its underwritten business plan.

Asset valuations (based on fair values calculated and presented in accordance with United States generally accepted accounting principles), including permanent write-downs, are reviewed by LEM's internal valuation committee on a quarterly basis pursuant to LEM's valuation policy.

***Investor Reporting*** - LEM provides Fund investors with the following: (i) annual audited financial statements; (ii) quarterly unaudited financial statements; (iii) quarterly reports containing an operational summary of the Funds' investments; and (iv) such other information as is necessary for the preparation of tax returns. In addition, LEM generally schedules an annual advisory board meeting and periodic investor meetings or calls to review the status of each Fund.

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

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

During fund raising periods, LEM has in the past entered into (and will in the future enter into) solicitation, placement, or consulting arrangements pursuant to which LEM compensates third parties for investor referrals related to limited partnership interests being marketed or offered by a Fund. With respect to investors that are referred by a third party, a placement fee, subject to a specific agreement with such third party, are paid by LEM, and not any Fund. These types of arrangements are disclosed to prospective investors before they make an investment in the relevant Fund to make them aware that the solicitor or consultant will have an incentive to favor offering interests in one kind of investment over the interests in other types of investments.

**Item 15. Custody**

LEM is deemed to have custody of client assets by virtue of its status as general partner to the Funds. LEM complies with the Advisers Act custody rules in the following manner: each Fund: (i) is subject to audit by an independent accountant registered with the Public Company Accounting Oversight Board, at least annually; (ii) distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all investors within 120 days of the end of its fiscal year; and (iii) upon liquidation will distribute its audited financial statements to all investors promptly after the completion of such audits. Such audits will include confirmation of any funds and certificated securities that, as required by applicable law, are placed in custody with a qualified custodian.

**Item 16. Investment Discretion**

Under each Fund's Governing Documents, LEM has investment discretion to manage the Funds' assets.

**Item 17. Voting Client Securities**

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

**Item 18. Financial Information**

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