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Attorneys for Plaintiffs,
Derivatively on behalf of Pelorus Capital Fund, LLC

Assigned for All Purposes
Judge Michael Strickroth

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

KIRNIC, LCC, R, STEPHEN, LLC, B&M CAPITAL, LLC, 1997 BRAD DENIS PENNINGTON REVOCABLE TRUST, EJB ROTH, LLC AND TRAVIS GOAD, derivatively on behalf of nominal defendant PELORUS FUND, LLC,

Plaintiff(s),

vs.

DANIEL LEIMEL, JR., JAMES ROBERT SECHRIST, LOST WINDS CAPITAL, INC., JRS CAPITAL USA, INC., and PELORUS CAPITAL GROUP LLC,

Defendants, and

Case No. 30-2025-01492614-CU-FR-CJC

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT FOR:

1. **BREACH OF FIDUCIARY DUTY**
2. **UNJUST ENRICHMENT**
3. **FRAUD**

DEMAND FOR JURY TRIAL

PELORUS FUND, LLC,

Nominal Defendant(s)

Plaintiffs KIRNIC, LCC, R, STEPHEN, LLC, B&M CAPITAL, LLC, 1997 BRAD DENIS PENNINGTON REVOCABLE TRUST, EJB ROTH, LLC and TRAVIS GOAD, by and through their attorneys, bring this suit derivatively on behalf of Pelorus Fund, LLC (the "Fund") against Defendants James Robert Sechrist ("Sechrist"), Daniel Leimel Jr. ("Leimel"), Lost Winds Capital, Inc. ("Lost Winds"), JRS Capital USA, Inc. ("JRS Capital"), and Pelorus Capital Group, LLC (the "General Partner"). In support thereof, Plaintiffs state as follows:

NATURE OF THE ACTION

1. This derivative action is made necessary because the Fund's managers, Defendants Leimel and Sechrist—and the entity they control, Pelorus Capital Group, LLC (which serves as the general partner of the Fund)—have engaged in a scheme to rob value from the Fund for the purpose of enriching themselves, at the expense of the Fund's approximately 1,000 limited investors. Specifically, Leimel and Sechrist covertly misappropriated $52 million in Fund capital and loaned it out to other companies that they control and own (either in whole or part). Rather than abide by their fiduciary and contractual duties, Leimel and Sechrist made these secret related party loans to themselves while concealing their ownership interests from investors. Defendants then modified and upsized these loans without submitting them to the loan review process and underwriting standards mandated by the Fund's operating agreement, without disclosing their self-dealing, without submitting such loans to investor committee review, and without obtaining majority approval for the investments from the Fund's members.

2. These unlawful loans were uniquely disadvantageous to the Fund's investors in a multitude of ways. Their terms were off-market, inconsistent with the underwriting standards of the Fund, and one-sided in favor of the borrowers controlled by Leimel and Sechrist. Unlike the other loans in the Fund's portfolio, Leimel and Sechrist made these loans to themselves on a non-recourse basis and invested no (or de minimis) personal capital into these properties. The loan to cost ratio for Defendants' self-serving loans dramatically deviated from the Fund's underwriting policies and other investments. Moreover, Defendants misappropriated millions of dollars of investor money to pay raw profit to general contractors owned by their business partners and friends. In no other loan in the

Fund's history has Fund capital been used for the payment of profit and fees to a borrower's affiliated general contractor.

3. Leimel and Sechrist managed to keep their misconduct a secret until early 2022, when the only non-conflicted member of the general partnership uncovered (through his own diligence) the existence of one relatively small related party loan. Upon making that discovery, the non-conflicted member immediately began probing the issue and asking questions. Those questions spurred three years' worth of misstatements, lies, and obfuscation by Leimel and Sechrist, whereby they tried desperately to conceal their wrongful self-dealing; hide the existence, size, and terms of the loans they made; and prevent the Fund's investors from discovering the facts.

4. Throughout this time, Leimel and Sechrist refused repeated demands to disclose the related party loans to the Fund's investors, refused to report such loans to the Fund's auditors, circumvented and ignored the procedures set by the independent committee put in place to address the related-party loans, and obstructed the non-conflicted member's best efforts to diligence the transactions and rectify the situation for investors.

5. When confronted by the non-conflicted member, Leimel and Sechrist responded by circling their proverbial wagons. Indeed, Defendants resorted to extreme measures to prevent the Fund's investors from learning of their misdeeds. When an independent committee was established to address the related party loans, the committee demanded that curative actions be taken to protect investors. Defendants did not listen. Instead, in an effort to prevent further investigation and discovery of their wrongdoing, Defendants terminated the lawyers that were retained to guide the independent committee. On top of eliminating the threat of disclosure by the Fund's professional advisors, Defendants also purported to expel the only non-conflicted member from the General Partnership and the Fund in retaliation for his efforts to shed light on their wrongdoing and take corrective actions for the benefit of the Fund.

6. Worse still, when faced with the prospect of defaulting on their loans, Defendants took tens of millions of additional dollars out of the Fund and loaned it to themselves to service their debts. Defendants hoped to buy enough time to give themselves enough runway to finish construction and

sell the properties to repay the loans before investors of the Fund were any wiser. But Leimel and Sechrist lost that bet with money they were not entitled to use for these self-serving purposes.

7. At the same time Defendants were siphoning money out of the Fund to prop up their failing personal projects, Defendants also issued an edict gating the Fund in full and preventing investors from redeeming any of their capital. Prior to doing so, Leimel took unlawful action to ensure that the investor gate that he was planning did not impact his own personal liquidity. In the months immediately leading up to the gate—when Defendants knew the gate was coming and no other investor did—Leimel took a significant amount of his invested capital out of the Fund.

8. Defendants' conspiracy to defraud the Fund's investors has now unraveled, as their related entities have defaulted on $46,000,000 of the loans Defendants made to themselves. The magnitude of the harm that Defendants have inflicted on the very investors whose interests they are contractually and legally bound to serve is immense: the related party loans constitute approximately 13% of the Fund's total assets under management.

9. Each day that Defendants remain in place as manager of the Fund further imperils the Fund's investors. The Fund currently has $48,000,000 of exposure to the unlawful loans that Defendants made to themselves on properties that are underwater. Defendants' historical pattern of self-serving misconduct demonstrates that they cannot remain in charge of the Fund and that they are unable to discharge their fiduciary duties to investors with respect to managing the existential threat they have caused to the Fund with their self-dealing. Defendants have repeatedly misappropriated investor funds to benefit themselves at the expense of the Fund and to conceal their wrongdoing.

10. Defendants cannot be permitted to run roughshod over the interests of the Funds' investors any longer. It is time for them to go. And it is time for them to pay for the harms they have caused the Fund.

11. On behalf of the investors of the Fund, Plaintiffs bring this action to remove Defendants as managers, and to recover monetary damages and other equitable relief needed to remedy the breaches of fiduciary duty, unjust enrichment, fraud, and other injuries caused to the investors by Defendants' wrongful and deceptive acts.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action, which is brought pursuant to § 17709.02 of the California Corporation Code to remedy Defendants' breaches of fiduciary duties and related wrongful conduct that occurred in California. Pelorus Fund, LLC is a California limited liability company.

13. Venue is proper in this Court because the Company is headquartered and maintains its principal place of business at 124 Tustin Ave. #200, Newport Beach, CA 92663. In addition, a substantial portion of the wrongs alleged in this complaint occurred in the City of Newport and Orange County. All of the Defendants are residents of Orange County, California.

THE PARTIES

A. PLAINTIFFS

14. All of the Plaintiffs are investors and members of Pelorus Fund, LLC. At all relevant times, all Plaintiffs were members and held membership interests in the Fund.

15. Plaintiff Kirnic, LLC is a Georgia limited liability company with its principal place of business located at 738 Yasha Ct, Alpharetta, Georgia 30005.

16. Plaintiff R. Stephen, LLC is a Florida limited liability company with its principal place of business located at 10 Kiowa Court, Portola Valley, California 94028.

17. Plaintiff B&M Capital, LLC is a Georgia Limited Liability Company located at 1873 Falling Sky Ct., Brookhaven, Georgia 30319 .

18. Plaintiff 1997 Brad Denis Pennington Revocable Trust is a California trust located at 103 Ann Arbor Drive, Los Gatos, California 95032.

19. Plaintiff EJB Roth, LLC is a District of Columbia limited liability company with its principal place of business located at 5600 Wisconsin Ave., Chevy Chase, Maryland 20815.

20. Plaintiff Travis Goad is an individual residing at 6917 Collins Avenue, Miami Beach, Florida 33141.

21. Plaintiffs bring this action derivatively for the benefit of Pelorus Fund, LLC to redress injuries suffered, and to be suffered, by Pelorus Fund, LLC as a direct result of Defendants' conduct.

B. DEFENDANTS

22. Nominal Defendant Pelorus Fund, LLC ("Pelorus" or the "Fund") is a California limited liability company with its principal place of business located at 124 Tustin Ave. #200, Newport Beach, California 92663. The applicable operating agreement for the fund is the Third Amended and Restated Limited Liability Company Operating Agreement of Pelorus Fund, LLC dated October 1, 2021 (the "Fund Operating Agreement"), which is attached hereto as Exhibit 1. The Fund offers membership interests to (i) originate, make, purchase, or otherwise acquire, manage, and/or sell loans secured by interests in real or personal property, including properties operating in the cannabis industry throughout the United States; and (ii) acquire, manage, remodel, develop, lease, repair and/or sell real estate throughout the United States.

23. Defendant Pelorus Capital Group, LLC ("PCG" or the "General Manager"), which previously operated as Pelorus Management Group, LLC, is a California limited liability company with its principal place of business located at 124 Tustin Ave. #200, Newport Beach, California 92663 . The applicable operating agreement for the General Manager is the Amended and Restated Limited Liability Operating Agreement of Pelorus Capital Group, LLC dated January 3, 2023 (the "GP Operating Agreement"), which is attached hereto as Exhibit 2.

24. Defendant Daniel Leimel, Jr. is an individual residing at 108 Via Plumosa, San Clemente, California 92673.

25. Defendant James Robert Sechrist is an individual residing at 316 Cedar Street, Newport Beach, California 92663. Sechrist is the sole signatory of the Fund Operating Agreement, which he signed in his capacity as manager of the General Manager.

26. Defendant Lost Winds Capital, Inc. ("Lost Winds") is a California corporation with its principal place of business at 124 Tustin Ave. #200, Newport Beach, California 92663.

27. Defendant JRS Capital USA, Inc. ("JRS") is a California corporation with its principal place of business at 124 Tustin Ave. #200, Newport Beach, California 92663.

28. Plaintiffs endeavored, through their counsel, to ascertain whether Defendants have engaged legal representation in connection with this matter. Specifically, Plaintiffs' lawyers

contacted legal counsel from the law firm of Alston & Bird who served as Fund counsel and have filed appearances in other proceedings as counsel for the General Partnership. Those conversations left the question unanswered as to whether Alston & Bird would be engaged to represent Defendants here in this Action or whether Defendants had retained other litigation counsel. As such, and in an exercise of caution, prior to commencing this Action, counsel for Plaintiffs delivered copies of this Complaint (and its exhibits) both to counsel from Alston & Bird and to Defendants.

FACTUAL ALLEGATIONS

A. The Governing Fund Documents and Defendants' Legal Duties to Investors

29. As the General Manager of the Fund, Defendant PCG manages, directs and exercises control over the Fund. Under California law, PCG owes fiduciary duties, including the duties of loyalty and care, to the Fund and the Fund's investors. As disclosed in the Private Placement Memorandum for the Fund dated January 1, 2021 (which is attached hereto as Exhibit 3) ("PPM"), the General Manager "is generally accountable to the Company as a fiduciary, which means that the Manager is required to exercise good faith and integrity with respect to Company affairs and sound business judgment." Ex. 3 at 30. The PPM further represents to investors that the investors in the Fund can "rely on the good faith and integrity of the Manager" to comply with its legal and fiduciary duties. *Id.*

30. As disclosed in the PPM, Defendant Leimel is a principal, officer, and director of the General Manager. Ex. 3 at 30. Leimel is also a Founder Member of the General Manager and the chair of the Investment Committee of the Fund. Leimel's wholly-controlled entity and alter ego, Lost Winds, is a Founder Member, Principal, and Manager of the General Manager. Acting on his own behalf and through his alter ego, Lost Winds, Leimel (together with Sechrist) manages, directs and controls the Fund. Under California law, Leimel owes fiduciary duties, including the duties of loyalty and care, to the Fund and the Fund's investors.

31. Defendants Lost Winds is wholly-controlled by Defendant Leimel. Lost Winds is a Principal and General Manager of the General Partnership and, in this capacity, manages, directs and

exercises control over the Fund. Under California law, Lost Winds owes fiduciary duties, including the duties of loyalty and care, to the Fund and the Fund's investors.

32. As disclosed in the PPM, Defendant Sechrist is a principal, officer, and director of the General Manager. Ex. 3 at 30. Sechrist is also Founder Member of the General Partnership. Sechrist's wholly-controlled entity and alter ego, JRS, is a Founder Member, Principal, and Manager of the General Partnership. Acting on his own behalf and through his alter ego, JRS, Sechrist (together with Leimel) manages, directs and controls the General Partnership and the Fund. Under California law, Sechrist owes fiduciary duties, including the duties of loyalty and care, to the Fund and the Fund's investors.

33. Defendant JRS is wholly-controlled by Defendant Sechrist. JRS is a Principal and General Manager of the General Partnership and, in this capacity, manages, directs and exercises control over the Fund. Under California law, JRS owes fiduciary duties, including the duties of loyalty and care, to the Fund and the Fund's investors.

34. Section 5.5(a) of the Fund Operating Agreement provides that the Fund managers "shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the Company, whether or not in the Manager's possession or control. Except, as expressly permitted herein, or by subsequent approval of the Members, the Manager shall not employ, or permit another to employ Company funds or assets in any manner except for the exclusive benefit of the Company or in the ordinary course of the Company's business." Exhibit 1 § 5.5.

35. Section 5.5(b)(1) of the Operating Agreement provides that "[t]he Manager shall exercise its rights and discharge its duties under this Agreement and the Act in a manner consistent with the contractual obligation of good faith and fair dealing."

36. Section 5.5(d) of the Operating Agreement bars managers from engaging in related-party transactions where the terms of such deals are inferior to those that "could be obtained from an unaffiliated third party in a similar transaction or an unaffiliated third-party service provider providing comparable services, in each case as determined in good faith by the Manager."

37. Section 5.4 of the Operating Agreement specifically provides that the Company "may not take any action with respect to … a transaction, not expressly permitted or contemplated by this Agreement or the Memorandum, involving a conflict of interest between the Manager and the Company" without the approval of the Members holding a majority of the issued and outstanding Membership Interests.

B. Discovery of the Related Party Loans

38. In late 2021 or early 2022, the then third, and only non-conflicted member of PCG, TGCA PEL LLC (the "Non-Conflicted Member" or "NCM"), and other PCG staff discovered that Defendants Leimel and Sechrist held an undisclosed personal ownership in an investment worth approximately $6,000,000 that utilized Fund investor capital (each such loan that Defendants made to themselves being a "Related Party Loan" or "RPL").

39. Leimel and Sechrist were barred from making such a loan to themselves without disclosing it to investors, obtaining approval for it from a majority of Fund investors, and complying with the underwriting and loan review process required by the governing Fund documents. Defendants did none of the things they were legally bound to do. They made no disclosures to investors about their respective and collective interests in this RPL, they did not submit the RPL to the Pelorus loan review process mandated by the governing Fund documents, and they did not obtain majority investor approval. Instead, they took affirmative steps to keep their self-dealing a secret.

40. When confronted by the Non-Conflicted member, Leimel and Sechrist promised to satisfy this loan in full by the Summer of 2022. Defendants further promised that they would never again use investor funds for personal projects in the future. Those promises went unfulfilled. In fact, as described in detail below, Leimel and Sechrist did the opposite of what they promised to do and proceeded to take more investor capital from the Fund to loan to themselves.

41. Notably, when this issue was first discovered and raised by the NCM and brought to the Fund's legal counsel, Leimel and Sechrist unlawfully concealed the critical fact that they had used the Fund investment to make additional loans to other companies they owned and controlled.

42. In late 2022, Leimel and Sechrist secretly began upsizing related party loans, including the three previously undisclosed loans, outside of the normal credit committee processes and without disclosing it to the NCM. Ultimately, these wrongful transactions increased the aggregate amount of Fund investment that Defendants loaned to themselves to $52 million dollars across four loans.

43. The Non-Conflicted Member and other PCG personnel then began conducting due diligence to review the RPLs to the best of their ability using the information that was available to them. Because of Defendants' deception, the information available to PCG personnel was limited to what was accessible from the Fund's general files. Notwithstanding Defendants' efforts to conceal the extent of their self-dealing, PCG personnel were able to learn additional deeply troubling facts.

44. Specifically, Defendants had hidden multiple additional, and much larger, RPLs. As with the first loan, Sechrist and Leimel failed to adhere to the Fund's governing disclosure and loan approval procedures. Despite their promises to never use investor funds for personal projects, due diligence revealed that Leimel and Sechrist instead took out even more Fund capital to extend to themselves without adhering to the required underwriting process, Fund investment committee review, or other standard Pelorus investment protocols, including disclosure to investors.

45. The Non-Conflicted Member and the Fund's then-CFO escalated concerns about the Related Party Loans to the Fund's legal counsel, emphasizing the need for Sechrist and Leimel to be recused from decision-making and outlining proposed steps to protect investors. Nevertheless, Sechrist and Leimel refused to take any action at that time.

C. Defendants' Violation of the Related Party Transactions Policy

46. In January or February of 2023, the Fund's legal counsel determined that Sechrist and Leimel were conflicted and should be removed from any and all decision-making on the Related Party Loans. Accordingly, Fund Counsel proposed the adoption of a Related Party Transactions Policy and the creation of a Conflicts Committee to address these four Related Party Loans, with TGCA PEL LLC to act as the sole non-conflicted member of the committee.

47. Deflecting the concerns raised by the NCM about the RPLs, Leimel and Sechrist stonewalled the establishment of the Conflicts Committee and the corresponding policy—each of

which were essential to protect the Fund's investors—for two months. Leimel and Sechrist orchestrated this delay so they could misappropriate even more Fund money while evading scrutiny by the Conflicts Committee.

48. During this same January-February 2023 period of time, the NCM discovered that Defendants were on the verge of a payment default on one of the RPLs and were scheming to avoid detection by lending more Fund capital to themselves to service their debt to the Fund and to cover construction cost overruns. The NCM repeatedly urged Leimel and Sechrist to adopt and follow the Related Party Policy prior to entering into any modification of this loan or extending any Fund investment to themselves. The NCM also recommended multiple modifications to the terms of this loan that were required in order to bring it closer to market standard and in line with the Fund's other investments.

49. Seeking to extend more money to themselves regardless of what the Conflicts Committee or NCM found, or what protecting the interests of the Fund's investors required, Leimel and Sechrist delayed the implementation of the Conflicts Committee and went ahead with their loan modification. In doing so, Leimel and Sechrist rejected the majority of these NCM's recommendations, but did agree to implement some smaller set of modifications. Later, however, Leimel and Sechrist changed the terms approved by the NCM, and, acting as both borrower and lender, made a more favorable deal to themselves using Fund money.

50. Moreover, despite being fully aware that this property was worth significantly less than the amounts they loaned to themselves, Leimel and Sechrist falsely represented to the NCM at this time that (i) they had multiple buyers lined up to purchase these properties at prices above the debt amount, (ii) all RPLs would be fully repaid no later than the end of the Summer of 2023, (iii) investors of the Fund would be repaid in full, and (iv) there would be nothing for the Conflicts Committee to do in the future because the RPLs would be fully repaid. As it turned out, all of Leimel and Sechrist's promises were untrue.

51. Finally, on April 5, 2023 and after months of delay, Leimel and Sechrist, as controllers of the Fund, adopted the Related Party Transaction Policy (the "Policy"), a copy of which is attached

as Exhibit 4. Among other things, the Policy barred Leimel and Sechrist from reviewing Related Party Transactions. That review was only to be performed by the NCM. The Policy also required that Leimel and Sechrist take basic steps protect the Fund from liability and regulatory problems by disclosing all Related Party Transactions in the Company's annual audited financial statements and its annual report to the members.

52. The Policy also prohibited any Related Party Transaction was to be executed or continued without approval and ratification by the Conflicts Committee. Specifically, the Policy provides that a "Related Party Transaction may be consummated or shall continue only if the Conflicts Committee shall approve or ratify such transaction in accordance with the guidelines set forth in the Policy." Ex. 3.

53. In addition, Section D of the Policy provides:

> After the adoption of this Policy, if the Company becomes aware of a Related Party Transaction that has occurred but was not evaluated under this Policy, the matter shall be reviewed by the Conflicts Committee.
>
> The Conflicts Committee will consider all of the relevant facts and circumstances regarding the Related Party Transaction, including the items listed above, and will evaluate all options available to the Company, including ratification, revision or termination of the Related Party Transaction.

Id.

54. The Policy further vests authority in the Conflicts Committee to examine the facts and circumstances pertaining to the Related Party Transaction and shall take such action as it deems appropriate.

D. Leimel and Sechrist begin Defaulting on the Related Party Loans

55. Following the adoption of the Policy in April 2023, and given the timeline Defendants provided, end of Summer 2023, the NCM repeatedly reached out to Defendants in an effort to obtain information about the RPLs. Leimel and Sechrist stalled.

56. By mid-October, the Conflicts Committee of the Fund was officially established and positioned to review and make decisions with respect to the RPLs. The Policy empowered the Committee to evaluate the RPLs and develop solutions to rectify the issues and damage they caused.

57. Acting as controllers and managers of the Fund, Leimel and Sechrist appointed TGCA PEL LLC as the sole, non-conflicted member of the Conflicts Committee. Defendants also authorized the retention of Greenspoon Marder as independent legal counsel to advise the Conflicts Committee.

58. After months of deflecting the NCM's demands for an update on the RPLs, Sechrist and Leimel finally agreed to sit down for a Conflicts Committee meeting in October 2023. It was at this October 2023 meeting that the magnitude of Defendants' misconduct began to come to light. Despite having reassured the NCM several months earlier that buyers were lined up for the property securing one of the RPLs (referred to on the Fund's books as the "Morongo II" loan), Leimel and Sechrist now conceded that this representation was false. As it turns out, Defendants never had a single buyer interested in purchasing the property units securing the Morongo II loan at values above the debt.

59. Making matters worse, Leimel and Sechrist disclosed for the first time that such properties were deeply underwater. Leimel and Sechrist also disclosed for the first time that they were in imminent danger of a payment default on the Morongo II loan.

60. At this meeting, Leimel and Sechrist proposed a self-serving path forward for that loan that involved taking more capital out of the Fund to avoid payment default and conceal losses. Specifically, Defendants proposed to divert an additional $15 million of Fund money to increase the size of the Morongo II Loan from $25 million to $40 million. Their motive was transparent: they sought to continue to throw good investor money after bad and fund additional interest payments to conceal the fact that they could not service the debt themselves. This proposed use of an additional $15,000,000 of investor funds to cover up the Related Party Loan defaults was rejected by the Conflicts Committee. The Morongo II loan then entered payment default in November 2023.

61. In addition, dating back to the discovery of the Related Party Loans in 2022 and throughout the next seven months, both the NCM and the Fund's CFO repeatedly implored Leimel and Sechrist to disclose these transactions to the Fund's investors. As they stressed to Defendants, disclosure to the Fund's auditors was required. Defendants delayed making any such disclosure for nearly a year. Finally exasperated by Defendants' continued unlawful self-dealing and refusal to

fulfil their duties of disclosure, the Fund's CFO resigned in November 2023. The Fund's CFO specifically cited as the reason for his resignation Leimel and Sechrist's failure to take action to address their self-dealing and make the necessary disclosures to the Fund's investors and auditors.

E. The Fund is Gated

62. Meanwhile in this same November 2023 time period, Leimel and Sechrist announced to investors that they had made the decision to gate the Fund. As a result, investors have been prevented from redeeming their investments from that point until now. Notably, Defendants delayed making any disclosure of the RPLs until after they gated the funds, as they sought to avoid the risk that such disclosure would spur investors to redeem their investments.

63. In the months immediately leading up to Defendants' decision to gate investor funds, Leimel redeemed significant amounts of his own invested capital from the Fund.

F. Defendants Default on Additional Loans

In early January 2024, Defendants defaulted on $19,500,000 loan referenced on the Fund's books as the "Leave it to Beaver" loan. A few days before that default, Leimel and Sechrist claimed to have unilaterally abandoned their interest in the borrower entity in a misguided attempt to repackage the transaction as a "former related-party loan" at the time of default. Defendants sought to make believe that they were somehow no longer conflicted. That way, Defendants believed they could circumvent the Conflict Committee's recommendations with respect to that loan and take even more money from the Fund to hide the losses.

64. In total, $46,000,000 of the $52,000,000 RPLs have now entered default. Fund capital extended to these RPLs constitutes approximately 13% of the assets under management.

65. In the midst of learning about these payment defaults, the Conflicts Committee performed an evaluation of the RPLs in order to assess the extent of the problem and develop solutions to mitigate any losses to investors on a go forward basis.

66. The Conflicts Committee, guided by independent legal counsel, determined that the terms of the Related Party Loans were materially off-market in comparison to other loans in the Fund's investment portfolio. The Conflicts Committee recommended a series of actions that

Defendants were required to take to bring the loan terms into compliance with market terms and the governing Fund investment guidelines. Leimel and Sechrist largely refused to do so.

67. That assessment performed by the Conflicts Committee revealed additional troubling conduct by Leimel and Sechrist. Among other wrongful acts, Defendants misappropriated millions of dollars of payments of investor funds to pay profits and fees to general contractors controlled by their business affiliates and partners, despite knowing full-well that their loans were underwater and inflicting damage on Fund investors.

G. Defendants Evade the Conflicts Committee and the Policy

68. On January 12, 2024, the Conflicts Committee issued a Related Party Transactions Memorandum, which set forth a detailed analysis of the Related Party Loans and a set of measures that needed to be implemented to mitigate the damage those transactions caused to the Fund.

69. The Conflicts Committee identified numerous red flags in the loan arrangements. Specifically, the Related Party Transactions Memorandum emphasized that:

- The loan to cost ratio for the RPLs ranged from 105% to 173%, which was significantly higher than standard market terms, which ranged from 60% to 75%;
- Despite the higher loan to cost ratio, the Company received no equity kickers, which would have given the Fund a stake in the underlying investment;
- Amounts loaned significantly exceeded both industry standards as well as the terms of newly originated loans in the portfolio;
- The loans failed to require sponsors to contribute equity, and new sponsors were permitted to assume loans without an equity investment;
- Loans were modified to fund interest, using only Fund capital to fund the projects;
- Interest reserves were excessive, while interest rates were substantially lower than standard market rates and other loans in the Fund's portfolio;
- All four RPLs were non-recourse, limiting the Fund's options in the event of default, without any accompanying bad boy carve-out guarantees that would make the borrower liable for certain misconduct;
- Net worth and liquidity guidelines, which would have disqualified the borrowers, were not followed;
- Defendants obtained inflated appraisals for significantly higher quality builds outs in order to borrow more funds than standard market terms would permit;

- There were no cross-collateralization or cross-default protocols, which decreased the pool of recoverable assets in the event of default; and

- Anomalous payments were authorized, suggesting suspicious activities on the part of the borrower, including the use of investor capital to make payments to Defendants' business partners and friends.

70. After extensively cataloguing the multiple problems with the Related Party Loans, the Memorandum articulated a series of necessary action steps to protect the Fund's investors. Among other things, Defendants were required to: (i) provide the Conflicts Committee with all information pertaining to the Related Party Loans; and (ii) refrain from taking any actions or making any decisions concerning the Related Party Loans without the prior written authorization of the Conflicts Committee.

71. Despite being precluded from participating in the Conflicts Committee, Leimel and Sechrist refused to follow the committee's required measures. Instead, Defendants unilaterally terminated Counsel for the Conflicts Committee. Defendants also refused to pay such legal counsel's invoices, which resulted in counsel suing the fund for nonpayment of legal fees.

72. In January 29, 2024, Leimel and Sechrist issued a memorandum responding to the Conflicts Committee, in which Defendants baselessly quibbled over the scope of the Conflicts Committee's mandate, documented the fact that Defendants improperly pushed the one and only NCM off the Conflicts Committee in retaliation for his efforts to protect investors, and took the inexplicable position that Defendants were somehow no longer conflicted from their self-dealing due to their supposed divesture of their ownership interests in certain borrower affiliates.

73. The Conflicts Committee responded with a second memorandum on February 21, 2024. In that memorandum, the Conflicts Committee emphasized that (i) the Policy adopted by the Fund mandated that the Non-Conflicted Member be the only member of the Conflicts Committee to participate in the review and implementation of subsequent solutions with respect to the related party loans, (ii) Leimel and Sechrist could not undo their conflict through supposed divestures of their interests in the loans, and (iii) Leimel and Sechrist repeatedly took actions designed to "cover up losses," to "extend additional credit in order to conceal," and to obstruct the Conflicts Committee's

discovery of the amount of losses that Defendants had caused. In addition, the memorandum meticulously identified, on a loan by loan basis, the many problems that infected the RPLs.

74. Leimel and Sechrist responded by ignoring the Conflicts Committee's findings and recommendations, firing the legal counsel for the Conflict Committee, and setting off on numerous actions to retaliate against the NCM for his attempts to protect the investors of the Fund.

H. Sechrist and Leimel Mislead the Fund's Auditors

75. In March of 2024, the Non-Conflicted Member informed the Fund's auditors from CohnReznick that the RPLs had not been adequately addressed in the Fund's previous disclosures despite the Conflict Committee's insistence that full disclosure be made.

76. In response, CohnReznick amended the 2022 audit to include disclosure of the related party loans and refused to complete the 2023 audit. CohnReznick raised questions about Defendants' delayed disclosure of the RPLs and resigned as the Fund's auditors.

I. Defendants Continue to Take Money out of the Fund

77. Defendants continued their coverup in March 2024. To hide the fact that they defaulted on $46,000,000 of RPLs, Leimel and Sechrist planned another modification of the Leave it to Beaver Loan (the RPL referenced above), which was in payment default.

78. Acting in defiance of the Conflicts Committee and the Policy, Defendants sought to increase the size of the loan with investor money and then split it into twelve separate loans. The purpose of splitting the RPL into twelve separate pieces was to avoid detection by Fund investors. Further revealing Defendants' illicit motives and intentions, they sought to accomplish all of this without undergoing the underwriting process mandated by the controlling Fund documents.

79. The NCM objected to this modification and the Conflicts Committee rejected Defendants' proposed modification to this RPL. In March 2024, Fund Counsel advised Leimel that he required approval of the Conflicts Committee before undertaking his proposed loan restructuring. Despite an express written warning from Fund Counsel that Leimel and Sechrist could create personal liability for themselves with their threatened course of action, Leimel and Sechrist moved forward with this modification of the Leave it to Beaver into 12 smaller loans. Leimel and Sechrist then made

material misrepresentations in investor quarterly updates, in which they falsely announced to the Fund's investors that this was a successful refinance of an RPL.

J. Retaliation against the NCM and Resignation of Key Employee

80. In or around April 2024, the Fund's Vice President of Originations resigned shortly after raising significant concerns about Leimel and Sechrist's conduct with respect to the RPLs. This key staff member emphasized that she was instructed by Defendants to close RPLs modifications outside the standard Fund policies and procedures applied to the other loans in the Fund's portfolio while concealing such transactions from the NCM.

81. The NCM then resigned as Managing Partner of PCG on May 29, 2024, citing the intractable issues concerning the Conflicts Committee, ongoing self-dealing by Defendants, Defendants' failure to make disclosures to investors, and retaliatory action taken against the NCM for his efforts to protect investors. A copy of the NCM's resignation letter is attached hereto as Exhibit 5.

82. That retaliation included, but was not limited to, Leimel and Sechrist's exclusion of the NCM from the vast majority of PCG strategy and decision making since the fall of 2023, and Leimel and Sechrist's endeavors to dilute the NCM's vote on the investment committee in a PCG Board meeting on February 21, 2024. In their effort to retaliate against the NCM, Defendants went so far as to issue letters to the NCM in which Defendants purported to strip the NCM of all of his economic interests in both the Fund and the Managing Member. Defendants wrongly believed they could do so by claiming that the NCM was "expelled" from the Fund and "removed" from the Managing Member.

K. Demand Futility

83. Demand on the General Partner is futile and thus excused because Defendants Leimel and Sechrist are the sole managers and controllers of the General Partner, and control and exercise complete dominion over all of the Fund's operations and activities, including the management tof its portfolio.

84. As alleged in detail above, the loans that Leimel and Sechrist made to themselves were in violation of their legal duties. Leimel and Sechrist acted in bad faith and with willful misconduct in making such loans to themselves.

85. As described in detail above, Leimel and Sechrist have refused time and time again to take remedial action on the RPLs recommended by the NCM, the Conflicts Committee, the Fund's auditors, the Fund's counsel, and counsel for the Conflicts Committee.

86. Leimel and Sechrist acted for selfish and self-interested reasons in making the loans, in breach of their fiduciary duties to investors using the limited partners' investment. Leimel and Sechrist fraudulently concealed the loans, and took unlawful action to misappropriate additional investor capital in furtherance of their unlawful concealment.

87. Leimel and Sechrist, through their words, actions, and misdeeds have made it crystal clear that they will not take action against themselves to protect the Fund and its limited partners.

88. Based on the allegations set forth in this Complaint, Leimel and Sechrist are not disinterested or independent with respect to the conduct alleged herein or in considering a demand to redress the injuries that they have inflicted on the Fund and its limited partners.

89. In addition, based on the foregoing, the misconduct challenged herein is not the product of a valid exercise of business judgment.

90. As such, and based on the allegations set forth in this Complaint, demand upon Defendants is futile and legally excused and Plaintiffs are legally authorized to file this Action.

FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty against all Defendants)

91. Plaintiffs incorporate by reference and reallege each and every allegation contained above as though fully set forth herein.

92. Each of the Defendants owe the Fund and its investors (including Plaintiffs) traditional fiduciary duties of loyalty, good faith, and care.

93. Each of the Defendants breached their fiduciary duties to the Fund and its investors by, among other misconduct detailed in this Complaint:

a. Misappropriating tens of millions of dollars of Fund capital to make loans to themselves on off-market terms to benefit themselves at the expense of the Fund's investors, including Plaintiffs;

b. Actively concealing the Related Party Loans from investors and auditors;

c. Modifying such Loans to increase investor exposure and further obscure their financial impact on the Fund and their self-dealing;

d. Actively circumventing the recommendation so the Conflicts Committee to benefit themselves to the detriment of investors.

e. Ignoring and intentionally creating material risks and devaluation of the limited partners' investment in the Fund;

f. Wrongfully elevating their own interests above the interests of Plaintiffs and the Fund; and

g. Wrongfully and purposefully concealing their bad conduct from investors;

94. Each of Defendants' conduct was not taken in good faith, was not fair, was taken against the interests of the Fund and its investors, and was the result of willful misconduct designed to benefit Defendants Leimel and Sechrist and inflict damage upon the Fund and its investors.

95. The Fund has been damaged in an amount to be proven at trial by reason of Defendants' breach of fiduciary duty.

96. By reason of Defendants' breaches of fiduciary duty, Plaintiffs are entitled to other equitable relief.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

97. Plaintiffs incorporate by reference and reallege each and every allegation contained above as though fully set forth herein.

98. By their wrongful acts and omissions, the Defendants were unjustly enriched at the expense of and to the detriment of the Fund.

99. The Defendants were unjustly enriched as a result of the financial benefits they received from the off market Related Party Loans that contained terms that were unduly favorable to the Defendants by virtue of their undisclosed personal ownership in the recipients of the Related Party Loans that were to the detriment of the investors of the Fund.

100. Plaintiffs, as investors and representative of the Fund, seek restitution from the Defendants, and requests an order of this Court disgorging all profits, benefits, and other compensation obtained by these Defendants, from their wrongful conduct and fiduciary breaches.

THIRD CAUSE OF ACTION
(Fraud)

101. Plaintiffs incorporate by reference and reallege each and every allegation contained above as though fully set forth herein.

102. As detailed above, Leimel and Sechrist, acting on behalf of themselves, their related entities, and the General Partnership, made material and fraudulent omissions by failing to disclose and actively conceal their personal interest in the entities that received the off market Related Party Loans.

103. Defendants had knowledge (i) of their personal interest in the entities that received the Related Party Loans from the Fund; and (ii) that all loans were subject to the Pelorus loan review process required by the Management Operating Agreement.

104. Due to their position of trust and fiduciary duties owed to the Fund and the Fund's investors, Defendants had a legal duty to disclose their personal interest in the recipients of the Related Party Loans. They defrauded the Fund by failing to do so.

105. Defendants intentionally concealed the RPLs from the Fund's investors, including fraudulently omitting the fact that Leimel and Sechrist had taken $52,000,000 of Fund investment and loaned it to themselves for failing projects, several of which are now in default and were foreclosed on.

106. Defendants intentionally concealed the fact that Leimel redeemed substantial amounts of his investments in the Fund just prior to gating the Fund and thereby preventing all of the other

investors of the fund from redemption.

107. Defendants intended to induce the Fund's investors from acting to protect their investments, make redemptions, or take other legal action against Defendants.

108. As also detailed above, Leimel and Sechrist also made a number of fraudulent misrepresentations to investors, including their false assertions in investor updates that they obtained a successful restructuring of an RPL when, in reality, they had merely divided the loan into twelve pieces and took investor capital to increase the size of the loan.

109. Plaintiffs reasonably and justifiably relied on Defendants' promises contained in the governing Fund documents that Defendants would fulfill their fiduciary duties, act with integrity, and make investment decisions that were in the best interest of the Fund and not in their personal benefit with respect to the Related Party Loans. Defendants failed to satisfy those duties and misled, lied to, and omitted crucial material facts from the Fund's investors.

110. As a result of Leimel and Sechrist's fraudulent scheme Plaintiffs have suffered damages in amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Removing Daniel Leimel and James Robert Sechrist as managers of Pelorus Fund, LLC and appointing a qualified manager;

B. Awarding the Fund monetary damages caused by Defendants' breaches of fiduciary duties, breach of contract, and fraud;

C. Awarding the Fund punitive and exemplary damages, pursuant to California Civil Code § 3294, for Defendants' breaches of fiduciary duty and fraud;

D. Awarding the Fund restitution from the Defendants and ordering disgorgement of all improper profits, benefits and other compensation received by the Defendants;;

E. Awarding Plaintiffs their reasonable attorneys' fees, costs, and expenses incurred in prosecuting this action;

F. Entering an order enjoining Defendants from advancing legal fees from the Fund in connection with their defense of this suit and directing them to return any such fees and costs that have been expended; and

G. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

111. Plaintiffs demand a trial by jury.

Dated: June 24, 2025

BAKER HOSTETLER LLP

By: */s/ Marco Molina*

Marco Molina
Baker Hostetler
600 Anton Boulevard
Suite 900
Costa Mesa, CA 92626
Telephone: 1714.966.8833
Email: mmolina@bakerlaw.com

Attorney for Plaintiffs, Derivatively on behalf of Pelorus Capital Fund, LLC

VERIFICATION

I have read the foregoing Verified Shareholder Derivative Complaint and know its contents. I am the Plaintiff Travis Goad a party to this action. I am authorized to make this verification for and on behalf of Plaintiffs and make this verification for that reason. The matters stated in the foregoing Complaint are true to my own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at New York NY this 24th day of June, 2025.

Travis Goad

Travis Goad

EXHIBIT 1

THIRD AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT

of

Pelorus Fund, LLC

A California Limited Liability Company

THE LIMITED LIABILITY COMPANY INTERESTS OF PELORUS FUND, LLC HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), THE SECURITIES LAWS OF ANY STATE IN THE UNITED STATES OR ANY OTHER APPLICABLE SECURITIES LAWS IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. INTERESTS MUST BE ACQUIRED FOR INVESTMENT ONLY AND ARE SUBJECT TO SIGNIFICANT RESTRICTIONS ON TRANSFERABILITY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH THE SECURITIES ACT, ANY APPLICABLE STATE SECURITIES LAWS AND ANY OTHER APPLICABLE SECURITIES LAWS AND THE TERMS AND CONDITIONS OF THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT. THEREFORE, PURCHASERS OF INTERESTS WILL BE REQUIRED TO BEAR THE RISK OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

THIRD AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
PELORUS FUND, LLC

This Third Amended and Restated Limited Liability Company Operating Agreement ("Agreement") of PELORUS FUND, LLC (hereinafter referred to as the "Company" or "Fund"), a California limited liability company, is made as of October 1, 2021 (the "Effective Date"), by and among Pelorus Management Group, LLC, a California limited liability company (the "Initial Member" or "Manager"), and each additional Member of the Company.

RECITALS

WHEREAS, on March 25, 2010, the Company was formed as a limited liability company under the California Revised Uniform Limited Liability Company Act, Cal. Corp. Code §17701, *et seq.*, as amended from time to time;

WHEREAS, the Manager and the Members previously entered into that certain Limited Liability Company Operating Agreement dated January 15, 2018, as amended and restated by that certain Amended and Restated Limited Liability Company Operating Agreement, as amended and restated by that certain Second Amended and Restated Limited Liability Company Operating Agreement dated January 1, 2021 (the "Prior Agreement");

WHEREAS, the Manager and the Members now desire to enter into this Agreement upon the terms and conditions set forth herein to amend and restate the Prior Agreement in its entirety and to continue the Company without dissolution;

WHEREAS, the parties intend by this Agreement to define their rights and obligations with respect to the Company's governance and affairs and to set forth in detail their respective rights and obligations relating to the Company; and

WHEREAS, in consideration of the premises and mutual covenants set forth herein and for good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties intending to be legally bound, agree as follows:

ARTICLE 1: DEFINITIONS

1.1 **Scope.** For purposes of this Agreement, unless the language or context clearly indicates that a different meaning is intended; capitalized terms have the meanings specified in this Article.

1.2 **Defined Terms.**

(a) "Accounting Period" means for each Fiscal Year the period beginning on the 1st of January and ending on the 31st of December or, if earlier, the date the Company terminates during such Fiscal Year pursuant to the provisions of this Agreement; *provided, however*, that the first Accounting Period commenced on the date of formation of the Company; and *provided, further*, that, at the election of the Manager, a new Accounting Period shall commence on any date on which a new Member is admitted to the Company or a Member ceases to be a Member for any reason.

(b) "Act" means the California Revised Uniform Limited Liability Company Act § 17701, *et seq.*, as amended from time to time.

(c) "Admission Date" has the meaning set forth in Section 4.1(b).

(d) "Affiliate" means, with respect to any Person, (1) a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the subject Person, (2) a Person who owns or controls at least ten percent (10%) of the outstanding voting interests of the subject Person, (3) a Person who is an officer, director, manager or general partner of the subject Person, or (4) a Person who is an officer, director, manager, general partner, trustee or owner of at least ten percent (10%) of the outstanding voting interests of a subject Person described in clauses (1) through (3) of this sentence.

(e) "Agreement" means this Third Amended and Restated Limited Liability Company Operating Agreement, including any amendments hereto.

(f) "Articles" means the Articles of Organization filed with the Secretary of State of the State of California to organize the Company as a limited liability company, including any amendments.

(g) "Asset Management Fee" has the meaning set forth in Section 5.7(a).

(h) "Assets Under Management" means the total Company assets, including notes (at book value), real estate owned (at the lower of cost or fair market value), accounts receivable, advances made to protect loan security, unamortized organizational expenses, cash and any other Company assets valued at fair market value.

(i)

(j) "Bankruptcy" means the filing of a petition seeking liquidation, reorganization, arrangement, readjustment, protection, relief or composition in any state or federal bankruptcy, insolvency, reorganization or receivership proceeding.

(k) "Capital Account" of a Member means the capital account maintained for such Member. The balance of the Capital Account of a Member, determined as set forth in Section 4.6 below, shall herein be referred to as the "Capital Account Balance."

(l) "Capital Contribution" means anything of value that a Member contributes to the Company as a prerequisite for, or in connection with, membership including any combination of cash, property, services rendered, a promissory note or any other obligation to contribute cash or property or render services.

(m) "Capital Proceeds" means, with respect to any Person for any period, the total gross cash proceeds received by such Person arising from a Capital Transaction, less any cash from the foregoing source which is applied to (i) the payment of third party transaction costs and expenses related to such Capital Transaction, (ii) the repayment of any financing that is required to be repaid upon the consummation of such Capital Transaction, and (iii) the establishment of reserves.

(n) "Capital Transaction" means with respect to any Person, the sale, financing, refinancing or similar transaction of or involving, directly or indirectly, any Investment other than in the ordinary course of business, and any condemnation awards, payment of title insurance proceeds or payment of casualty loss insurance proceeds (other than business interruption or rental loss insurance proceeds)

received by such Person to the extent not used for reconstruction, restoration or replacement of all or any portion of the Investments.

(o) "Carrying Value" means with respect to any Company asset, the asset's adjusted basis for U.S. federal income tax purposes, except that, in accordance with the rules set forth in Treasury Regulations Section 1.704-1(b)(2)(iv)(f):

(a) the Carrying Value of any asset contributed or deemed contributed by a Member to the Company shall be the fair market value of such asset at the time of contribution as determined by agreement of the Members;

(b) the Carrying Value of any asset distributed or deemed distributed by the Company to any Member shall be adjusted immediately prior to such distribution to equal its fair market value at such time; and

(c) the Carrying Values of all Company assets shall be adjusted to equal their respective fair market values except as otherwise provided herein:

(i) immediately prior to the date of the acquisition of any additional Membership Interest by any new or existing Member in exchange for a Capital Contribution, other than for a de minimis Capital Contribution;

(ii) immediately prior to the date of the distribution of more than a de minimis amount of Company property (other than a pro rata distribution) to a Member;

(iii) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); or

(iv) in connection with the grant of a Membership Interest (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company or a subsidiary of the Company (if any) by an existing Member acting in a partner capacity, or by a new Member acting in a partner capacity or in anticipation of becoming a Member;

provided, that, an adjustment described in sub-clauses (i), (ii) or (iv) of this clause (c) shall be made only if the Manager reasonably determines that such adjustment is necessary to reflect the collective economic interests of the Members in the Company.

In the case of any asset that has a Carrying Value determined pursuant to sub-clauses (i), (ii) or (iv) above, depreciation or deductions shall be computed based on the asset's Carrying Value as so determined, and not on the asset's adjusted tax basis, as more fully described under the definition of Net Income and Net Loss below.

(p) "Code" means the Internal Revenue Code of 1986, as amended, together with the regulations promulgated thereunder.

(q) "Confidential Information" means all information relating to the Company, the REIT Subsidiary, any other subsidiaries, the Investments, the Members, or the business or operations of the Manager or any of its Affiliates (including, without limitation, processes, plans, data, reports, documents, business secrets, financial information or information of any other kind) other than information that (i) was publicly known or otherwise known to a Member prior to the time it was disclosed pursuant to this

Agreement or in connection with the purchase of a Membership Interest or any Units and was not otherwise known to a Member prior to the time it was disclosed pursuant to or in connection with the purchase of a Membership Interest or any Units and was not otherwise subject to any obligation of confidentiality or restriction on disclosure by such Member, (ii) subsequently becomes publicly known through no act or omission by a Member or any Person acting on the Member's behalf, or (iii) becomes known to the Member (other than through disclosure by the Company or the Manager) without breach of this Agreement or any other contractual, legal or fiduciary obligation and is not otherwise subject to any obligation of confidentiality or restriction on disclosure by the Member.

(r) "Distribution" means the Company's direct or indirect distribution of money or other property to a Member pursuant to this Agreement with respect to its Membership Interest.

(s) "Dissociation" means a complete termination of a Member's membership in the Company due to an event described in Section 3.6 hereof.

(t) "Effective Date" means the effective date of this Agreement, as stated in the preamble to this Agreement.

(u) "Entity" means an association, relationship or artificial person through or by means of which an enterprise or activity may be lawfully conducted, including, without limitation, a partnership, trust, limited liability company, corporation, joint venture, cooperative or association or an unincorporated association other than a nonprofit association.

(v) "Excess Units" has the meaning specified in Section 3.3(a)(4).

(w) "Excess Units Provisions" has the meaning specified in Section 3.3(a)(4).

(x) "Family" with respect to a Member, means individuals who are related to the Member by blood, marriage or adoption. For the purposes of this definition, an individual is related to the Member by marriage if the person is related by blood or adoption to the Member's current spouse.

(y) "Fiscal Year" means the period from January 1 to December 31 of each year, or as otherwise required by the Code or the Treasury Regulations thereunder, or as determined by the Manager in its sole discretion.

(z) "Initial Member" has the meaning ascribed to it in the preamble to this Agreement.

(aa) "Investments" means, with respect to any Person, all investments made by and property owned by such Person whether real or personal, tangible or intangible and whether owned directly or indirectly.

(bb) "Loans" has the meaning set forth in Section 2.4.

(cc) "Lock-Up Period" has the meaning set forth in Section 3.2(a).

(dd) "Manager" means a Person who is vested with authority to manage the Company in accordance with Article 5.

(ee) "Member" means the Initial Member and any Person listed as a member of the Company in the Company's books and records and who has been admitted as a member of the Company

in accordance with the terms of this Agreement and any Person who has been admitted to the Company as a substituted or additional member in accordance with the terms of this Agreement.

(ff) "Membership Interest" means the entire membership interest of a Member in the Company at any particular point in time, including the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of each Member to comply with all terms and provisions of this Agreement.

(gg) "Memorandum" shall mean the Private Placement Memorandum of the Company, dated as of October 1, 2021.

(hh) "Net Assets Under Management" means the total Company assets, including notes (at book value), real estate owned (at the lower of cost or fair market value), accounts receivable, advances made to protect loan security, unamortized organizational expenses, cash and any other Company assets valued at fair market value, less Company liabilities.

(ii) "Net Asset Value" or "NAV" has the meaning set forth in Section 5.9.

(jj) "Net Cash Flow" means, with respect to any Person for any period, the amount by which Operating Revenues exceed Operating Expenses for such period.

(kk) "Net Income" and "Net Loss" means, for each Accounting Period, an amount equal to the Company's taxable income or loss for such Accounting Period, determined in accordance with Code Section 703(a) (it being understood that for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in such taxable income or loss) and determined in accordance with the accounting method used by the Company for U.S. federal income tax purposes with the following adjustments:

(a) all items of income, gain, loss or deduction allocated pursuant to Section 4.7 shall not be taken into account in computing such taxable income or loss;

(b) any income of the Company that is exempt from U.S. federal income taxation and not otherwise taken into account in computing Net Income and Net Loss shall be added to such taxable income or loss;

(c) if the Carrying Value of any asset differs from its adjusted tax basis for U.S. federal income tax purposes, any gain or loss resulting from a disposition of such asset shall be calculated with reference to such Carrying Value;

(d) upon an adjustment to the Carrying Value of any asset pursuant to the definition of Carrying Value (other than an adjustment in respect of depreciation), the amount of the adjustment shall be included as gain or loss in computing such taxable income or loss;

(e) if the Carrying Value of any asset differs from its adjusted tax basis for U.S. federal income tax purposes the amount of depreciation, amortization or cost recovery deductions with respect to such asset for purposes of determining Net Income and Net Loss shall be an amount which bears the same ratio to such Carrying Value as the U.S. federal income tax depreciation, amortization or other cost recovery deductions bears to such adjusted tax basis (*provided* that if the U.S. federal income tax depreciation, amortization or other cost recovery deduction is zero, the Manager may use any reasonable method for purposes of determining depreciation, amortization or other cost recovery deductions in calculating Net Income and Net Loss, *provided further* that with respect to any asset to which the remedial allocation is

applicable, depreciation, amortization or other cost recovery shall be determined under Treasury Regulations Section 1.704-3(d)(2)); and

(f) except for items set forth in clauses (a) through (e) above, any expenditures of the Company not deductible in computing taxable income or loss, not properly capitalizable and not otherwise taken into account in computing Net Income and Net Loss pursuant to this definition shall be treated as deductible items.

(ll) "Net Profits" means with respect to any Person, the gain on sale realized by such Person upon the sale or other disposition of any Investment after deducting (i) the payment of documented transaction costs and expenses related to such sale or disposition, (ii) the repayment of any indebtedness relating to such Investment that is required to be repaid upon the consummation of such sale of disposition, and (iii) the establishment of any reserves with respect to such Investment.

(mm) "Nonrecourse Deductions" shall be as defined in Treasury Regulations Section 1.704-2(b). The amount of Nonrecourse Deductions for a Fiscal Year shall be determined according to the provisions of Treasury Regulations Section 1.704-2(c).

(nn) "Offering" has the meaning set forth in Section 2.4.

(oo) "Operating Account" has the meaning set forth in Section 4.1(b).

(pp) "Operating Expenses" means, with respect to any Person for any period, the total gross cash expenditures of such Person for such period, determined in accordance with sound accounting principles consistently applied, including (i) amounts required to be contributed to any subsidiary to fund operating expenses of the subsidiary, debt service on financings and any capital expenditures not paid from capital contributions or the proceeds of any financings, (ii) Asset Management Fees and other fees and expenses payable or reimbursable by such Person to any other Person, including to the Manager and/or its Affiliates, and (iii) any reserves actually funded by such Person during such period, but excluding (x) any non-cash expenses such as depreciation or amortization and (y) any such cash expenditures funded from such Person's reserves, but specifically excluding any items deducted in determining Capital Proceeds.

(qq) "Operating Revenues" means, with respect to any Person for any period, the total gross cash revenues of such Person arising from the direct or indirect ownership of the Investments, any other subsidiaries and other property owned by such Person during such period, including proceeds of any business interruption or rental loss insurance maintained by such Person or any subsidiary from time to time and amounts released from reserves previously established by such Person from amounts that would have otherwise constituted Operating Revenues, but specifically excluding Capital Proceeds, capital contributions and proceeds of any financing.

(rr) "Other Investment Vehicles" has the meaning set forth in Section 5.5(c).

(ss) "Other JV Investment Vehicles" has the meaning set forth in Section 5.5(c).

(tt) "Other Sponsor Investment Vehicles" has the meaning set forth in Section 5.5(c).

(uu) "Partner Nonrecourse Debt Minimum Gain" means an amount with respect to each partner nonrecourse debt (as defined in Treasury Regulations Section 1.704-2(b)(4)) equal to the Partnership Minimum Gain that would result if such partner nonrecourse debt were treated as

a nonrecourse liability (as defined in Treasury Regulations Section 1.752-1(a)(2)) determined in accordance with Treasury Regulations Section 1.704-2(i)(3).

(vv) "Partner Nonrecourse Deductions" shall be as defined in Treasury Regulations Section 1.704-2(i)(2).

(ww) "Partnership Minimum Gain" shall be as defined in Treasury Regulations Section 1.704-2(b)(2) and 1.704-2(d).

(xx) "Permitted Transferee" with respect to a Member, means another Member, a member of the Member's Family, or a trust for the benefit of the Member or a member of the Member's Family.

(yy) "Person" means a natural person or an Entity.

(zz) "Preferred Return" means, with respect to any Member, an amount equal to the product of (i) eight percent (8%), and (ii) the average daily balance of the Unreturned Capital of such Member during the Preferred Return Period, such return compounding annually and accruing on a cumulative basis until the end of the Preferred Return Period.

(aaa) "Preferred Return Period" means, with respect to any Member, the period that begins on the Effective Date and ends on the date when the Member's Unreturned Capital is reduced (or otherwise equal) to zero. If the Preferred Return is calculated for any partial year, such amount shall be prorated.

(bbb) "Price Per Unit" has the meaning set forth in Section 4.1(b).

(ccc) "Prior Agreement" has the meaning set forth in the Recitals to this Agreement.

(ddd) "Redeemable Price Per Unit" means the price per unit determined by the Manager that shall fluctuate monthly based on the GAAP Net Asset Value less accumulated net unrealized gains, other than accumulated net unrealized gains derived from REOs.

(eee) "Redemption Effective Date" has the meaning set forth in Section 3.2(a).

(fff) "Regulations" means proposed, temporary or final regulations promulgated under the Code by the U.S. Department of the Treasury, as amended.

(ggg) "REIT Subsidiary" means Pelorus Fund REIT, LLC, a Delaware limited liability company.

(hhh) "REIT Subsidiary Operating Agreement" means the Amended and Restated Limited Liability Company Operating Agreement of the REIT Subsidiary, as the same may be amended, amended and restated or otherwise modified from time to time.

(iii) "REO" has the meaning set forth in Section 2.4.

(jjj) "Securities Act" has the meaning set forth in Section 3.3(a).

(kkk) "Servicer" means the servicer of the Loans.

(lll) "Sponsor Group" means Pelorus Equity Group, Inc., a California corporation, the Manager and their respective Affiliates.

(mmm) "Subscription Account" has the meaning set forth in Section 4.1(b).

(nnn) "Subscription Agreement" means the subscription agreement form relating to the subscription for Membership Interests in such form as may be acceptable to the Manager from time to time.

(ooo) "Taxable Year" means the Company's taxable year as determined in Article 6.

(ppp) "Transfer" as a noun, means a transaction or event by which ownership of any Unit is changed or encumbered, whether voluntarily or involuntarily, whether of record, constructively or beneficially and whether by operation of law or otherwise, including, without limitation, a sale, exchange, abandonment, gift, pledge or foreclosure. "Transfer" as a verb, means to effect a Transfer.

(qqq) "Transferee" means a Person who acquires any Units by Transfer from a Member or another Transferee not admitted as a Member in accordance with Article 3.

(rrr) "Units" has the meaning set forth in Section 4.1(b).

(sss) "Unreturned Common Capital" means, with respect to a Member at any given time, the amount by which (A) the aggregate Capital Contributions made by such Member in exchange for Units exceeds (B) all distributions made to such Member with respect to its Units under (or by reference to) Section 3.2 or Section 7.2(b)(ii), as the case may be.

(ttt) "Valuation Date" has the meaning set forth in Section 5.9(a).

ARTICLE 2: THE COMPANY

2.1 **Status.** The Company is a California Limited Liability Company organized under the Act.

2.2 **Name.** The Company's name is PELORUS FUND, LLC.

2.3 **Term.** The Company was formed as a limited liability company pursuant to the Act by virtue of the filing of the Articles with the Office of the Secretary of State of the State of California on March 25, 2010 and its existence shall continue until it is dissolved in accordance with the terms of this Agreement. This Agreement is entered into by and among the Members to amend and restate the Prior Agreement in its entirety and is for the exclusive benefit of the Company, its Members, the Manager and their respective successors and permitted assigns. The Members hereby agree that during the term of the Company, the rights and obligations of the Members with respect to the Company will be determined in accordance with the terms and conditions of this Agreement and the Act. To the extent that the rights, powers, duties, obligations and liabilities of any Members or Manager are different by reason of any provisions of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

2.4 **Purpose.** The purpose of the Company is to engage in any lawful act or activity for which a limited liability company may be organized under the Act; provided that, subject to the foregoing, the Company presently intends to raise money through the offering of Membership Interests (the "Offering") in order to: (1) to originate, make, purchase, otherwise acquire, manage and/or sell loans ("Loans") secured by interests in real or personal property, including properties operating in the cannabis industry, across the United States; and (2) acquire, manage, remodel, develop, lease, repair and/or sell real estate owned

properties ("REO") throughout the United States. The REOs will primarily be obtained in connection with the Company's lending activities. The Company shall pursue these endeavors in accordance with and pursuant to all applicable state, county and local laws and regulations. The Company shall have the power to do any and every act and thing necessary, proper, convenient or incidental to the accomplishment of its purpose and the furtherance of its business and affairs.

2.5 **Principal Place of Business.** The Company's principal place of business and mailing address is located at: 124 Tustin Ave. #200, Newport Beach, CA 92663. The Company may change its principal place of business at any time for any reason (or no reason).

2.6 **Registered Agent and Registered Office.** The Company's registered agent for service of process in the State of California is Geraci Legal Corporation, a California corporation, located at 90 Discovery, Irvine, California, 92618. The Company may change its registered agent or office at any time for any reason (or no reason).

ARTICLE 3: MEMBERSHIP

3.1 **Identification.**

(a) Membership. The initial Members have been admitted to the Company prior to the Effective Date of this Agreement. The Manager may choose to invest capital into the Company. Nothing contained herein shall be deemed to prohibit the Manager from increasing its interest in the Company on the same basis as any other Person.

(b) Additional and Substitute Members. The Company may admit additional or substitute Members with the sole approval of the Manager. Except as set forth herein, the Manager may withhold approval of the admission of any Person for any or no reason. The Manager will not permit any person to become a Member until such person has agreed to be bound by all the provisions of this Agreement as amended as of the date of the proposed admission, and the terms of the Memorandum, and has delivered to the Company a completed Subscription Agreement along with a check in the amount of such investment.

(c) Rights of Additional or Substitute Members. A Person admitted as an additional or substitute Member has all the rights and powers, and is subject to all the restrictions and obligations of a Member under this Agreement and the Act.

3.2 **Redemption.**

(a) Requests for Redemption. Each Member will have the right to request redemption of its Units or any part thereof on a monthly basis commencing on the six (6)-month anniversary of the date on which the Company transfers such Member's Capital Contribution (or any portion thereof) to the Operating Account (with respect to each such Member, the "Lock-Up Period"). Following the applicable Lock-Up Period, each Member may exercise its right to request redemption under this Section 3.2 by sending written notice to the Company requesting redemption of its Units. The effective date of the redemption request shall be thirty (30) days after the date of the Company's receipt of the Member's request for redemption (the "Redemption Effective Date"). Upon the Redemption Effective Date, the redeeming Member shall cease to have any rights with respect to the Units for which the redemption request has been received (other than to receive the redemption payment therefor and the right to receive Distributions in respect of such Units until they have been redeemed) unless the redemption payment is not made as provided herein (including as a result of the application of Section 3.2(b)). The Company will use its commercially reasonable efforts to return capital after the Redemption Effective Date subject to, among

other things, the Company's then cash flow, financial condition, prospective transactions and this Section 3.2.

(b) Limitations on Redemptions. The Company will redeem Units at the applicable Redeemable Price Per Unit on the day of redemption to the extent that the Company has sufficient cash available to honor redemption requests, as determined in the sole discretion of the Manager; provided that the Company will not be obligated under any circumstances to liquidate any assets, properties or Loans, borrow funds, cease making Investments, reduce reserves, jeopardize the status of the REIT Subsidiary as a REIT (including its status as a domestically-controlled REIT) or to cause the Company to violate this Agreement in order to satisfy any redemption request. Following the Redemption Effective Date, the return of a Member's capital will be limited to redemption of the greater of $50,000 or approximately 8.333% of such Member's Units per month such that it may take up to twelve (12) months for the Company to redeem all of a Member's Units; provided, however, that the maximum aggregate amount of capital that the Company will return to the Members, is as follows: (1) up to two percent (2%) per month of Net Assets Under Management; (2) up to five percent (5%) per quarter of Net Assets Under Management; and (3) up to twenty percent (20%) per fiscal year of Net Assets Under Management.

The payment of redemption proceeds is subject to the Manager's right, in its sole discretion, to establish holdbacks or reserves for estimated accrued expenses (including Asset Management Fees), pending or anticipated liabilities, investments, claims and contingencies relating to the Fund. Any amounts distributed to a Member may be reduced by the amount of applicable tax withholding.

After giving effect to the limitations above, if sufficient cash is not available to redeem all Units for which redemption requests have been received as determined by the Manager in its sole discretion, the Company will redeem the Units of all Members that have requested redemption at least thirty (30) days prior to the end of such calendar month out of available cash on a first come, first served basis; provided that redemptions on a non–first come, first served basis may be made in order to (i) preserve the status of the REIT Subsidiary (including the status as a domestically-controlled REIT), (ii) avoid assets of the Company becoming "plan assets" of any plan, account or arrangement for purposes of the U.S. Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Code or any applicable similar law, whether or not the withdrawing Member is subject to ERISA, the Code or any similar law, (iii) to comply with applicable laws, orders or regulations or (iv) give effect to certain mandatory or voluntary redemptions pursuant to this Agreement, or for such other reasons as may be determined by the Manager in good faith. Notwithstanding the foregoing, the Manager may, in its sole and absolute discretion, waive or modify such withdrawal requirements or withdrawal prioritization, at any time for any reason (or no reason), including, if a Member is experiencing undue hardship. Acceptability of the Member's hardship will be determined by the Manager in its sole and absolute discretion.

(c) Early Redemption Requests. Members who wish to have their Units redeemed during the Lock-Up Period ("Early Redemption") can only have their Membership Interests redeemed if the Member produces evidence of undue hardship, and the Manager permits Early Redemption, in its sole and absolute discretion. Acceptability of a Member's hardship will be determined by the Manager, in its sole and absolute discretion. Members who request Early Redemption will be subject to a fee of five percent (5%) of the Member's redemption proceeds (the "Early Redemption Fee"). The Manager may, in its sole discretion, waive the Early Redemption Fee.

(d) Suspension of Redemptions. The Manager may at any time and from time to time suspend the redemption of Units by the Company, upon the occurrence of any of the following circumstances: (i) whenever, as a result of events, conditions or circumstances beyond the control or responsibility of the Manager or the Company, disposal of the assets of the Company is not reasonably practicable without being detrimental to the interests of the Company or its Members, determined in the

sole and absolute discretion of the Manager; (ii) it is not reasonably practicable to determine the Net Asset Value of the Company on an accurate and timely basis; or (iii) if the Manager has determined to dissolve the Company. The Manager may also suspend the redemption privilege, and the determination of the Company's Net Asset Value, if it determines, in its sole discretion, that such suspension is warranted for certain reasons, including, without limitation when one or more redemptions would result in violation of any agreement, law, regulation or policy applicable to the Company or the Manager or any of their respective Affiliates or adverse tax implications for any of the foregoing. Notice of any suspension will be given within ten (10) business days from the time the decision was made to suspend distributions to any Member who has submitted a redemption request and to whom full payment of the redemption proceeds has not yet been remitted. If a redemption request is not rescinded by a Member following notification of a suspension, the redemption request will be effective as of the end of first calendar quarter after the date the suspension is lifted and will be processed for payment in accordance with the Company's monthly redemption process on the basis of the Net Asset Value of the Company at that time and in the order determined by the Manager in its sole and absolute discretion.

(e) Manager's Right to Redeem Units. Notwithstanding any of the withdrawal restrictions described herein, the Manager reserves the right to return part or all of any Member's Units, at its sole and absolute discretion, at any time during the investment for any reason, including without limitation, if the Manager suspects the Member has violated federal or state law, rules or regulations or the Member is under investigation by federal, state, and/or local authorities.

(f) Manager Buyout of all Members. The Manager may elect to redeem all of the Units held by the Members (or otherwise purchase all of the Investments directly from the Company or the REIT Subsidiary) at any time at a price and on terms and conditions that have been approved by a majority-in-interest of the Members.

3.3 **Restrictions on Transfer.**

(a) Restrictions on Transfer. A Member may Transfer his, her or its Membership Interest only in compliance with this Article. Restrictions have been placed upon the ability of Members to resell or otherwise dispose of any Membership interests purchased hereunder including, without limitation, the following:

(1) The Membership Interests have not been registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), in reliance upon the exemptions provided for under Section 4(a)(2) and Regulation D thereunder.

(2) There is no public market for the Membership Interests and none is expected to develop in the future. Even if a potential buyer could be found, Membership Interests may not be resold or transferred without satisfying certain conditions designed to comply with applicable tax and securities laws, including, without limitation, provisions of the Securities Act, Rule 144 thereunder, and the requirement that certain legal opinions be provided to the Manager with respect to such matters. A transferee must meet the same investor qualifications as the Members admitted pursuant to the Offering. Any potential buyer must be capable of bearing the economic risks of an investment in the Units with the understanding that Units may not be liquidated by resale or redemption and should expect to hold their Units as a long-term investment.

(3) A legend will be placed upon any instruments evidencing ownership of Units in the Company stating that the Units have not been registered under the Securities Act of 1933, as amended, and set forth the foregoing limitations on resale. Notations regarding these limitations shall be made in the appropriate records of the Company with respect to all Units issued hereunder. If a Member

Transfers its Units to more than one person, except transferees who will hold title together, the Transfer to each person will be considered a separate Transfer.

(4) Each Member acknowledges that the REIT Subsidiary Operating Agreement includes certain restrictions on direct and indirect transfers and ownership of equity interests in the REIT Subsidiary and the circumstances in which equity interests in the REIT Subsidiary will be converted into another class of ownership owned by a charitable trust ("Excess Units" and such provisions, the "Excess Units Provisions"). Notwithstanding any other provision of this Agreement, in the event (A) that the REIT Subsidiary Operating Agreement would apply to cause the units in the REIT Subsidiary held by the Company to be converted into Excess Units as a result of a breach by a Member of the representations, warranties and/or covenants contained in this Agreement or its completed Subscription Agreement, any waiver granted by the REIT Subsidiary Operating Agreement or the REIT Subsidiary (as applicable) or otherwise as a result of a Member's Membership Interest (or portion thereof), or (B) any Member's actual or constructive ownership of any person providing services to the Subsidiary REIT or any subsidiary thereof would cause such Person to fail to qualify as an "independent contractor" (as defined in Section 856 of the Code), then immediately prior to such event described in either of subclauses (A) or (B) and prior to the operation of the Excess Units Provisions, the Excess Units Provisions shall be incorporated into this Agreement, *mutatis mutandis*, and shall apply to the Membership Interest (or such portion thereof) instead of to the units in the REIT Subsidiary held by the Company, and for the avoidance of doubt, a Member's ownership (taking into account the constructive ownership rules under Section 856(d)(5) of the Code) of any contractor or tenant or subsequent acquisition of any contractor or tenant shall be considered an event that could trigger the Excess Units Provisions (for purposes of incorporating the Excess Units Provisions into this Agreement). Any such conversion shall be subject to any provisions in the REIT Subsidiary Operating Agreement that allow the REIT Subsidiary to waive the application of the Excess Units Provisions, *mutatis mutandis*.

(b) Null and Void. An attempted Transfer of Units that is not in compliance with this Article will be null and void. No Units may be transferred if, in the judgment of the Manager, a Transfer would jeopardize the availability of exemptions from the registration requirements of federal securities laws, jeopardize the U.S. federal income tax classification of the Company as a partnership or, cause a termination of the Company for federal income tax purposes. For the avoidance of doubt, any attempted Transfer of Units will be null and void if the Manager determines in its sole discretion that such transaction will either cause the Company to be classified as a "publicly traded partnership" within the meaning of Code Section 7704(b) or will materially increase the risk that the Company will so be classified. In particular and without limiting the foregoing, no Transfer shall be permitted, given effect or otherwise recognized, and such Transfer (or purported Transfer) shall be void ab initio, if at the time of such Transfer (or as a result of such Transfer) Units are (or would become) traded on an "established securities market" (within the meaning of Treasury Regulation Section 1.7704-1(b)) or are (or would become) "readily tradable on a secondary market or the equivalent thereof" (within the meaning of Treasury Regulation Section 1.7704 1(c)).

(c) Permitted Transfers. A Member may at any time Transfer all or any portion of its Units to a Permitted Transferee if, as of the date the Transfer takes effect, the Company is reasonably satisfied that all of the following conditions are met:

(1) the conditions listed in this Section 3.3 above have been met;

(2) the Transferee is an "accredited investor" as that term is defined in Regulation D promulgated under the Securities Act and the Transferee has not been subject to any event specified in Rule 506(d)(1) of the Securities Act or any proceeding or event that could result in any such disqualifying event ("Disqualifying Event") that would either require disclosure under the provisions of

Rule 506(e) of the Securities Act or result in disqualification under Rule 506(d)(1) of the Company's use of the Rule 506 exemption;

(3) the Transfer, alone or in combination with other Transfers, will not result in the Company's termination for federal income tax purposes;

(4) the Transfer is the subject of an effective registration under, or is exempt from the registration requirements of, applicable state and federal securities laws; and

(5) the Company receives from the Transferee the information and agreements reasonably required to permit it to file federal and state income tax returns and reports.

(d) Transferor's Membership Status. If a Member Transfers less than all of his, her, or its Units, the Member's rights with respect to the transferred Units, including the right to vote or otherwise participate in the Company's governance and the right to receive Distributions in each case in respect of such transferred Units, will terminate as of the effective date of the Transfer. However, the Member will remain liable for any obligation with respect to the transferred Units that existed prior to the effective date of the Transfer, including any costs or damages resulting from the Member's breach of this Agreement. If the Member Transfers all of his, her or its Units, the Transfer will constitute an Event of Dissociation.

(e) Transferee's Status.

(1) Admission as a Member. A Member who Transfers its Units or any part thereof has no power to confer on the Transferee the status of a Member. A Transferee may be admitted as a Member only in accordance with the provisions of this Article. A Transferee who wishes to become a Member must make application in writing to the Company and provide evidence, as requested by the Company, of compliance with all conditions to admission, as set forth above. Prior to admission, each proposed member must execute and deliver a counterpart of this Agreement, as amended to date, or a separate written agreement agreeing to be bound by the terms of this Agreement. The Company shall not without cause refuse the application for membership of a Transferee who has complied with all the terms and conditions of this Agreement.

(2) Rights of Non-Member Transferee. A Transferee who is not admitted as a Member in accordance with the provisions of this Article: (i) has no right to vote or otherwise participate in the Company's governance; (ii) is not entitled to receive information concerning the Company's affairs or inspect the Company's books and records; (iii) with respect to the transferred Units, is entitled to receive the Distributions to which the Member would have been entitled had the Transfer not occurred; and (iv) is subject to the restrictions imposed by this Article to the same extent as a Member. Any provision of the Agreement permitting or requiring the Members to take action by vote or written approval of a specified percentage of the Membership Interests or Units shall be deemed to mean only Membership Interests and Units then owned by Members.

3.4 **Expulsion of a Member.** At any time there are more than two (2) Members, the Company may expel a Member, but only for cause. Cause for expulsion exists if the Member has materially breached this Agreement, is unable to perform the Member's material obligations under this Agreement, or if the Manager suspects the Member has violated federal or state law, rules, and regulations or the Member is under investigation by the federal, state, and/or local authorities, subject to the sole and absolute discretion and notwithstanding any of the withdrawal restrictions described herein. If a Member is expelled, that Member forfeits any and all rights to any accrued Distribution during the interim month. A Member's expulsion from the Company will be effective upon the Member's receipt of written notice of the expulsion.

3.5 **Return of Capital.** Subject to the terms contained herein, the Company may return all or a portion of a Member's capital at the Manager's discretion at any time for any reason, including without limitation, if the Manager suspects the Member has violated federal or state law, rules, and regulations or the Member is under investigation by federal, state, and/or local authorities. Any such return of capital would not be considered a Distribution and would not be included in the determination of such Member's return on investment. However, any such return of capital would reduce the Member's Membership Interest in the Company. Thus, if Manager elects to return all of any Member's capital, such Member shall no longer be a Member in the Company and the Member would be considered to have withdrawn or to have elected to have its entire Membership Interest redeemed by the Company.

3.6 **Upon Dissociation.** Dissociation from the Company occurs upon a Member's expulsion, Transfer or request for redemption of the Member's entire Membership Interest, withdrawal or resignation (each, an "Event of Dissociation"). Upon the occurrence of an Event of Dissociation: (1) the Member's right to participate in the Company's governance, receive information concerning the Company's affairs and inspect the Company's books and records will terminate; and (2) unless the Dissociation resulted from the Transfer of the Member's Membership Interest or the Member's expulsion pursuant to Section 3.4, the Member will be entitled to receive the Distributions to which the Member would have been entitled as of the effective date of the Dissociation had the Dissociation not occurred. The Member will remain liable for any obligation to the Company that existed prior to the effective date of the Dissociation, including any costs or damages resulting from the Member's breach of this Agreement. Under most circumstances, the Member will have no right to any return of his or her capital prior to the termination of the Company unless the Manager elects to return capital to a Member. The effect of such Dissociation (other than Dissociation as a result of a Member Transferring its Membership Interest) on the remaining Members will be to increase their percentage share of the remaining assets of the Company, and thus their proportionate share of its future earnings, losses and Distributions. The reduction in the outstanding Membership Interests will also increase the relative voting power of remaining Members.

3.7 **Verification of Membership Interests.** Within thirty (30) days after receipt of a Member's written request, the Company will provide such Member with a statement evidencing his, her, or its Membership Interest in the Company.

3.8 **Manner of Action by Members.**

(a) Meetings.

(1) Right to Call. The Manager, or any combination of Members holding in the aggregate more than twenty-five percent (25%) of the Membership Interests, may call a meeting of Members by giving written notice to all Members not less than thirty (30), or more than sixty (60) days prior to the date of the meeting. The notice must specify the date, time and place of the meeting and the nature of any business to be transacted. A Member may waive notice of a meeting of Members orally, in writing, or by attendance at the meeting.

(2) Time and Place. Unless otherwise specified in the notice of meeting, all meetings shall be held at 2:00 p.m. on a regular business day of the Company, at the Company's principal place of business. No meeting may be held on a Sunday or legal holiday; at a time that is before 7:30 a.m. or after 9:00 p.m.; or at a place more than sixty (60) miles from the Company's principal place of business.

(3) Proxy Voting. A Member may act at a meeting of Members through a Person authorized by signed proxy.

(4) Quorum. Members whose aggregate holdings exceed a majority of the outstanding Membership Interests will constitute a quorum at a meeting of Members. No action may be taken in the absence of a quorum.

(5) Required Vote. Except with respect to matters for which a greater minimum vote is required by the Act or this Agreement, the vote of Members present whose aggregate holdings exceed a majority of the outstanding Membership Interests will constitute the act of the Members at a meeting of Members.

(b) Written Consent. The Members may act without a meeting by written consent describing the action and signed by Members whose aggregate holdings of the Membership Interest equal or exceed the minimum that would be necessary to take the action at a meeting at which all Members were present.

3.9 **Limitation on Individual Authority.** A Member who is not also the Manager has no authority to bind the Company. A Member whose unauthorized act obligates the Company to a third party will indemnify the Company for any costs or damages the Company incurs as a result of the unauthorized act.

3.10 **Negation of Fiduciary Duties.** A Member who is not also the Manager owes no fiduciary duties to the Company or to the other Members solely by reason of being a Member.

ARTICLE 4: CAPITAL CONTRIBUTIONS; UNITS; ALLOCATIONS; DISTRIBUTIONS

4.1 **Capital Contributions; Units.**

(a) Initial Members. The initial Members have been admitted to the Company prior to the Effective Date of this Agreement. Nothing contained herein shall be deemed to prohibit the Manager from increasing or decreasing its interest in the Company on the same basis as any other person or entity.

(b) Units; Additional Members. The Company may admit additional or substitute Members with the sole approval of the Manager. Except as set forth herein, the Manager may withhold approval of the admission of any Person for any or no reason. The Manager will not permit any person to become a Member until such Person has agreed to be bound by all the provisions of this Agreement, as amended as of the date of the proposed admission, and the terms of the Memorandum, and has delivered to the Company a completed Subscription Agreement along with a check in the amount of such subscription. If accepted by the Manager, each investor's subscription funds will be temporarily deposited into a call account (the "Subscription Account"). While an investor's subscription funds are held in the Subscription Account, the investor will not be considered a Member of the Company, and the investor's subscription funds will not accrue any interest from the Company. Each investor will be admitted as a Member to the Company when the investor's completed Subscription Agreement is accepted and the investor's subscription funds (in whole or in part) are deposited into the Company's operating account ("Operating Account") from the Subscription Account (the "Admission Date"). In the event interest accrues on an investor's subscription funds while being held in the Subscription Account, such interest shall not be payable to the investor. The Manager will transfer the investor's subscription funds from the Subscription Account into the Operating Account as a Capital Contribution to the Company on a first in, first out basis when capital is needed by the Company (in the Manager's sole and absolute discretion). The Membership Interest of each Member in the capital and profits of the Company will be in the form of units ("Units"). The Company will sell Units at a price per unit (the "Price Per Unit") that shall fluctuate monthly based on the Net Asset Value. In connection with each Capital Contribution, a Member will be issued a number of Units at a Price Per Unit based on the Net Asset Value at the time of such Capital Contribution divided by

the number of Units outstanding immediately prior to the Capital Contribution. Except as expressly provided in this Agreement, the Net Asset Value will not take into account undrawn subscription funds.

As soon after the Admission Date as is practicable, the Company shall issue Units to the investor at the prevailing Price Per Unit for any and all amounts transferred into the Operating Account from the Subscription Account and notify the investor of any amounts it intends to let remain in the Subscription Account based on the Company's financial position or projected yields at the time, or for other reasons in the Manager's sole discretion. Notwithstanding the previous paragraph, should the process from depositing an investor's subscription funds into the Subscription Account and admission as a Member take longer than ninety (90) days, the investor may request in writing that the Company return his, her or its subscription funds. If, upon receipt of such request in writing, the Manager has not yet admitted the investor as a Member, then the Manager may, in its sole and absolute discretion, return the investor's subscription funds to the investor and revoke the investor's completed Subscription Agreement within ten (10) business days of receipt of such request from the investor.

(c) Additional Capital Contributions. The Company may authorize additional Capital Contributions at such times and on such terms and conditions as it determines to be in its best interest. Absent the Company's authorization, no Member is permitted to make additional Capital Contributions.

(d) Capital Contributions Not Interest Bearing. A Member is not entitled to interest or other compensation with respect to any Capital Contribution the Member makes to the Company.

4.2 **Allocations of Net Income and Net Loss**. Subject to Sections 4.7 and 4.8 below, Net Income and Net Losses, and, to the extent necessary, individual items of income, gain, loss or deduction, of the Company for each Fiscal Year (or other Accounting Period) shall be allocated among the Members in proportion to their Capital Account Balances during the applicable tax reporting period.

4.3 **Tax Allocations.** For income tax purposes only, each item of income, gain, loss and deduction of the Company shall be allocated in the same manner as the corresponding items of Net Income and Net Loss and specially allocated items are allocated for Capital Account purposes; provided that in the case of any Company asset the Carrying Value of which differs from its adjusted tax basis for U.S. federal income tax purposes, income, gain, loss and deduction with respect to such asset shall be allocated solely for income tax purposes in accordance with the principles of Code Section 704(c) so as to take account of the difference between the Carrying Value and adjusted tax basis of such asset.

4.4 **Distributions.**

(a) Distribution of Net Cash Flow. The Company will make pro rata distributions of Net Cash Flow to the Members on a monthly basis (and prorated for any month in which a Member was a Member or owned any Units for only part of the month), as determined by the Manager from time to time in its sole and absolute discretion. Any distribution of Net Cash Flow shall be distributed ratably among the holders of Units in proportion to the respective number of Units owned by such holders; provided, however, that no cash distributions shall be made to any Member to the extent that it has elected to participate in the Company's reinvestment plan pursuant to Section 4.5. Net Cash Flow shall be distributed after all expenses and fees are paid to the Manager, and to the extent cash is available and distributions will not impact the continuing operation of the Company, subject to the sole and absolute discretion of the Manager. Commencing as of the Effective Date, the Manager shall calculate and distribute Net Cash Flow to the Members and the Manager in the following order of priority:

(i) First, 100% to the Members, pro rata until each Member has received, pursuant to this Section 4.4(a)(i), an amount equal to its accrued and unpaid Preferred Return; and

(ii) Thereafter, (i) 80% to the Members, pro rata, and (ii) 20% to the Manager.

(b) By the end of the Company's fiscal year, the Manager will use commercially reasonable efforts to have distributed to each Member the amount of Net Income or Net Loss that will be allocated to that Member on the Schedule K-1 that he, she, or it receives for income tax reporting. However, the amount of income reported to each Member on his, her, or its Schedule K-1 may differ somewhat from the actual cash Distributions made during the fiscal year covered by the Schedule K-1 due to, among other things the reserves and factors unique to the tax accounting of partnerships, such as the treatment of investment expense.

4.5 **Reinvestment Election.** Each Member must elect to (a) receive cash with respect to the monthly Distributions from the Company in the amount of such Member's pro rata share of Net Cash Flow available for distribution, or (b) allow the reinvestment through purchase of additional Units with respect to the monthly Distributions from the Company in the amount of such Member's pro rata share of Net Cash Flow available for distribution pursuant to Section 4.4(a). Members may participate in a reinvestment plan under which all of any Distributions will be automatically reinvested in additional Units. The number of Units (or fractional Units) issued under the reinvestment plan will be based on the Price Per Unit as of each reinvestment date. Members must elect to receive cash or reinvest all of their monthly Distributions. No partial reinvestment is permitted. If no election is made, then the monthly Distribution will be a cash disbursement.

An election to reinvest the monthly Distributions is revocable at any time upon a written request to revoke such election. Members may change their election at any time upon thirty (30) days written notice to the Company. Upon receipt of such thirty (30) day notice, the Member's election shall be changed and reflected on the first day of the following month in which the Member is entitled to receive a Distribution. Notwithstanding the foregoing, the Manager reserves the right to commence making cash Distributions (in lieu of allowing reinvestment) at any time to any Member(s) in order for the Company to remain exempt from the ERISA plan asset regulations. The Manager has the right to suspend or terminate the reinvestment program, at any time, without notice, in the Manager's sole discretion.

4.6 **Capital Accounts.**

(a) A separate Capital Account shall be established and maintained for each Member in all respects in accordance with Code Section 704 and the Treasury Regulations issued thereunder. The Capital Account of each Member shall be credited with such Member's Capital Contributions to the Company (net of any liabilities secured by any contributed property that the Company is considered to assume or take subject to), all Net Income and items of gross income allocated to such Member pursuant to Section 4.2 and any items of income or gain which are specially allocated pursuant to Section 4.7; and shall be debited with all Net Losses and items of deduction or expense allocated to such Member pursuant to Section 4.2, any items of loss or deduction of the Company specially allocated to such Member pursuant to Section 4.7, and all cash and the Carrying Value of any property (net of liabilities assumed by such Member and the liabilities to which such property is subject) distributed by the Company to such Member. To the extent not provided for in the preceding sentence, the Capital Accounts of the Members shall be adjusted and maintained in accordance with the rules of Treasury Regulations Section 1.704-1(b)(2)(iv), as the same may be amended or revised. Any references in any section of this Agreement to the Capital Account of a Member shall be deemed to refer to such Capital Account as the same may be credited or debited from time to time as set forth above. In the event of any Transfer of any Membership Interest in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Membership Interest. Whenever the Company would be permitted to adjust the Capital Accounts of the Members pursuant to Treasury Regulations Section 1.704-

1(b)(2)(iv)(f) to reflect revaluations of Company property, the Manager shall adjust the Capital Accounts of the Members if it determines that doing so would be appropriate. If Code Section 704(c) applies to Company property, the Capital Accounts of the Members shall be adjusted in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g) for allocations of depreciation, depletion, amortization and gain and loss, as computed for book purposes, with respect to such property. The Capital Accounts shall be maintained for the sole purpose of determining the allocation of items of income, gain, loss and deduction among the Members for tax purposes and shall have no effect on the amount of any Distributions to any Members in liquidation or otherwise.

(b) No Member shall be required to pay to the Company or to any other Member the amount of any negative balance which may exist from time to time in such Member's Capital Account.

(c) The requirements of this Article are intended and will be construed to ensure that the allocations of the Company's income, gain, losses, deductions and credits have substantial economic effect under the Regulations promulgated under Code Section 704(b).

4.7 S**pecial Allocation Provisions**. Notwithstanding any other provision in this Agreement:

(a) Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain or Partner Nonrecourse Debt Minimum Gain (determined in accordance with the principles of Treasury Regulations Sections 1.704 2(d) and 1.704 2(i)) during any Company taxable year, the Members shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to their respective shares of such net decrease during such year, determined pursuant to Treasury Regulations Sections 1.704 2(g) and 1.704 2(i)(5). The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704 2(f). This Section 4.7(a) is intended to comply with the minimum gain chargeback requirements in such Treasury Regulations Sections and shall be interpreted consistently therewith; including that no chargeback shall be required to the extent of the exceptions provided in Treasury Regulations Sections 1.704 2(f) and 1.704 2(i)(4).

(b) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulation Section 1.704 1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit balance in its Capital Account (in excess of the amounts described in clauses (i) and (ii) of Section 4.7(c) below) created by such adjustments, allocations or distributions as promptly as possible. This Section 4.7(b) is intended to constitute a "qualified income offset" when the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

(c) Limitation on Net Losses. If any allocation of Net Loss or an item of deduction, expenditure or loss to be made pursuant to Section 4.2 or this Section 4.7 for any Fiscal Year or other Accounting Period would cause a deficit in any Member's Capital Account (or would increase the amount of any such deficit) in excess of the sum of (i) the amount such Member is obligated to restore, if any, pursuant to any provision of this Agreement, and (ii) the amount that such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Section 1.704 2(g)(1) and 1.704 2(i)(5), then such Net Loss or item of deduction, expenditure or loss shall be allocated to the Members that have positive Capital Account balances (in excess of the amounts described in clauses (i) and (ii) of this section for such Member) in proportion to the respective amounts of such positive balances until all such positive balances have been reduced to zero.

(d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore, if any, pursuant to any provision of this Agreement, and (ii) the amount such Member is deemed to

be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Section 1.704 2(g)(1) and 1.704 2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible; provided that an allocation pursuant to this Section 4.7(d) shall be made only if and to the extent that a Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article have been tentatively made as if Section 4.7(c) and this Section 4.7(d) were not in this Agreement.

(e) Nonrecourse Deductions. Nonrecourse Deductions shall be allocated in accordance with the number of Units held by each Member and in the same manner as if such Nonrecourse Deductions were taken into account in determining Net Income and Net Loss for such Accounting Period or Fiscal Year.

(f) Partner Nonrecourse Deductions. Partner Nonrecourse Deductions for any taxable period shall be allocated to the Member who bears the economic risk of loss with respect to the liability to which such Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704 2(j).

(g) Change in Interests. If there is a change in any Member's percentage of Membership Interest in the Company during any Fiscal Year, the principles of Code Section 706(d) shall apply in allocating Net Income and Net Loss and items thereof for such Fiscal Year to account for the variation. For purposes of applying Code Section 706(d), the Manager may adopt any method or convention permitted under applicable Treasury Regulations. If there is a change in the Membership Interest of any Member, then for purposes of applying Section 4.2 with respect to the Fiscal Year ending on the date of change, the hypothetical liquidating distributions under Section 4.2 shall be made on the basis of the percentage of the Member's Membership Interest in the Company as applied before giving effect to such change.

4.8 **Curative Allocations**. If the Manager determines, after consultation with counsel experienced in income tax matters, that the allocation of any item of Company income, gain, loss, deduction or credit is not specified in this Article (an "unallocated item"), or that the allocation of any item of Company income, gain, loss, deduction or credit hereunder is clearly inconsistent with the Members' economic interests in the Company (determined by reference to the general principles of Treasury Regulation Section 1.704-1(b) and the factors set forth in Treasury Regulation Section 1.704-1(b)(3)(ii)) (a "misallocated item"), then the Manager may allocate such unallocated items, or reallocate such misallocated items, to reflect such economic interests; provided that no such allocation shall have any effect on the amounts distributable to any Member (other than tax distributions), including the amounts to be distributed upon the complete liquidation of the Company.

ARTICLE 5: MANAGEMENT AND OPERATIONS

5.1 **Representative Management.** The Company will be managed by one (1) Manager. By execution of this Agreement, and without prejudice to the right of the Members to remove the Manager as set forth in Article 5, the Members and each Person hereafter admitted as a Member, other than Transferees, shall be deemed to have elected such Manager. The initial manager of the Company shall be: Pelorus Management Group, LLC, a California limited liability company.

5.2 **Time Devoted to Business.** The Manager will devote to the Company's activities the amount of time reasonably necessary to discharge the Manager's responsibilities.

5.3 **Powers and Authority.**

(a) General Scope. Except for matters on which the Members' approval is required by the Act or this Agreement, the Manager has full power, authority and discretion to manage and direct the Company's business, affairs and properties, including, without limitation, the specific powers referred to in paragraph (b), below.

(b) Specific Powers.

(1) The Manager is authorized on the Company's behalf to make all decisions as to (i) the development, sale, lease or other disposition of the Company's assets; (ii) the origination and purchase of loans or any other assets of all kinds; (iii) the acquisition, purchase, leasing, and/or sale of properties or any other assets of all kinds; (iv) the management of all or any part of the Company's assets and business; (v) the borrowing of money and the granting of security interests and liens in the Company's assets (including loans from Members) as, and only if, provided for in the Memorandum; (vi) the prepayment, refinancing or extension of any mortgage affecting the Company's assets; (vii) the compromise or release of any of the Company's claims or debts; (viii) the employment of Persons for the operation and management of the Company's business; and (ix) all elections available to the Company under any federal or state tax law or regulation.

(2) The Manager on the Company's behalf may execute and deliver (i) all contracts, conveyances, assignments, leases, subleases, franchise agreements, licensing agreements, management contracts and maintenance contracts covering or affecting the Company's assets; (ii) all checks, drafts and other orders for the payment of the Company's funds; (iii) all loan documents including, without limitation, promissory notes, mortgages, deeds of trust, security agreements and other similar documents; (iv) all articles, certificates and reports pertaining to the Company's organization, qualification and dissolution; (v) all tax returns and reports; and (vi) all other agreements and instruments of any kind or character relating to the Company's affairs.

5.4 **Required Member Approval.** Except as specifically provided herein, without the approval of the Members holding a majority of the issued and outstanding Membership Interests, the Company may not take any action with respect to: (a) the Company's merger with or conversion into another Entity; (b) causing the Company to incur debt which would exceed the amount provided for in the Memorandum; or (c) a transaction, not expressly permitted or contemplated by this Agreement or the Memorandum, involving a conflict of interest between the Manager and the Company.

5.5 **Duties of Manager.**

(a) Fiduciary Duty. The Manager shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the Company, whether or not in the Manager's possession or control. Except as expressly permitted herein, or by subsequent approval of the Members, the Manager shall not employ, or permit another to employ Company funds or assets in any manner except for the exclusive benefit of the Company or in the ordinary course of the Company's business.

(b) Standard of Care.

(1) Exculpation. The Manager will not be liable to the Company or any Member for an act or omission done in good faith to promote the Company's best interests, unless the act or omission constitutes gross negligence, fraud, bad faith, intentional misconduct, or a knowing violation of law. The Manager shall exercise its rights and discharge its duties under this Agreement and the Act in a manner consistent with the contractual obligation of good faith and fair dealing. Any right exercised or duty discharged by the Manager pursuant to the advice of the Company's attorneys, accountants or other professional advisors shall be deemed to satisfy such contractual obligation.

(2) Justifiable Reliance. The Manager may rely on the Company's records maintained in good faith and on information, opinions, reports or statements received from any Person pertaining to matters the Manager reasonably believes to be within the Person's expertise or competence.

(c) Competing Activities. The Manager may participate in any business or activity without accounting to the Company or the Members. Each Member waives the benefit of the corporate opportunity doctrine, on his or her own behalf and on behalf of the Company, and agrees that the Manager may deal in other real estate transactions for its own account and/or for the accounts of others without any requirement to account to the Company for such dealings. The Manager and its Affiliates will make the Company its primary commingled diversified private investment vehicle having as its primary investment objective the making of investments in loans secured by interests in real or personal property, primarily properties owned by or leased to, or occupied by, state-licensed operators of state-regulated cannabis businesses in states where such activities are legal under state laws. To the extent that other investment funds, managed accounts and/or other similar arrangements advised, managed or operated by the Manager or any of its Affiliates ("Other JV Investment Vehicles") have investment objectives or guidelines similar to or that overlap with those of the Company, in whole or in part, investment opportunities that fall within such common objectives or guidelines will generally be allocated among the Company and such Other JV Investment Vehicles on a basis that the Manager determines to be fair and reasonable in its sole discretion. The Manager or any of its Affiliates may engage in transactions on its own behalf in the same type of Investments as the Company and/or sponsor, manage, advise or operate other funds, managed accounts or investment vehicles which may have investment objectives or guidelines that are the same or similar to or that overlap with those of the Company (collectively, "Other Sponsor Investment Vehicles" and together with the Other JV Investment Vehicles, the "Other Investment Vehicles"). Each of the Manager and its Affiliates will determine in its sole discretion whether an investment opportunity that would be appropriate for the Company will be allocated instead to the Manager and/or any of its Affiliates and/or any Other Sponsor Investment Vehicles. In light of the foregoing, there can be no assurance that any opportunity will be allocated to the Company by the Manager or any of its Affiliates (including any of their respective affiliates, associates, directors, officers, stockholders, members and other related parties).

(d) Self-Dealing. In addition to the transactions expressly permitted by this Agreement, the Manager and its Affiliates may enter into (i) business transactions with the Company and/or its subsidiaries, including without limitation selling loans to, and buying loans from, the Company and/or any of its subsidiaries, and (ii) contracts to provide certain services to the Company and/or its subsidiaries that would otherwise be provided by a third party from time to time. Pursuant to such business transactions and/or contracts, the Manager and/or any of its Affiliates may receive and/or pay transaction consideration pursuant to such business transactions and/or fees for one or more of such services and such transaction consideration and fees will not be shared with the Company and will not offset Asset Management Fees in any respect. The terms of any such transactions and fees for services will be on terms and at rates that are no less favorable to the Company or such subsidiary than could be obtained from an unaffiliated third party in a similar transaction or an unaffiliated third party service provider providing comparable services, in each case as determined in good faith by the Manager.

(e) Specific Transactions. Without limiting the generality of the foregoing, it is hereby acknowledged and agreed that the Manager and/or its Affiliates, as applicable, shall be permitted to bargain for and enter into the following transactions in connection with the business of the Company, subject to the terms of any other agreement among the Members:

(1) Equity Participations. The Company may make Loans, including cannabis Loans, where it agrees to participate indirectly pursuant to the Manager acquiring an interest in the equity in the sponsor or the property securing the Loan made by the Company. Such equity participations may

include, but are not limited to, sharing in the proceeds from the sale of the equity in the sponsor or the property or properties securing the Loan. Any net proceeds and gains derived from such equity participations shall be shared between the Company and the Manager as follows: fifty percent (50%) of net proceeds shall be payable to the Company and fifty percent (50%) shall be payable to the Manager.

(2) Net Profits Realized on Dispositions on Investments. Any Net Profits realized upon the sale or other disposition of any Investments including, without limitation any REO acquired in connection with the foreclosure of any Loan, shall be shared between the Company and the Manager as follows: fifty percent (50%) of such Net Profits shall be payable to the Company and fifty percent (50%) shall be payable to the Manager.

(3) Loan Servicing. The Manager shall retain the services of a third party to serve as loan servicer for the Company's loans. To the extent applicable, the Manager will oversee the activities and performance of the Servicer. Notwithstanding the foregoing, the Manager reserves the right to serve as Loan Servicer, or have an Affiliate service the Loans, in its sole and absolute discretion at any time for any reason (or no reason).

(4) Reimbursement of Operating and Administrative Expenses. The Manager and/or its Affiliates will be reimbursed by the Company for the Company's operating and administrative expenses incurred by the Manager and/or its Affiliates, provided, however, the amount of such reimbursement shall not exceed one-half of one percent (0.5%) per annum of the Company's aggregate capital. This operating expense reimbursement will be calculated as of the first day of the month with regard to the aggregate capital in the Company as of that day and paid out as of the first day of the following month. Notwithstanding the foregoing, the Manager may waive or defer reimbursement of operating and administrative expenses in its sole and absolute discretion. If the Manager defers or assigns to the Company any of its respective reimbursement, the Manager shall only be entitled to recover the same at a later time if it is within the same calendar year.

5.6 **Indemnification of Manager.** Except as limited by law, the Company shall indemnify the Manager and each of its Affiliates and its and their respective members, partners, directors, officers, employees, agents or certain other persons who serve at the request of the Manager or any other member of the Sponsor Group on behalf of the Company (collectively, the "Indemnitees") for all expenses (including, without limitation, legal fees and costs), losses, liabilities and damages any Indemnitee actually and reasonably incurs in connection with the defense or settlement of any action arising out of or relating to the conduct of the Company's activities, except an action with respect to which such Indemnitee is adjudged to be liable for fraud, bad faith, willful misconduct, and/or breach of a fiduciary duty owed to the Company or the Members under the Act or this Agreement. Therefore, Members may have a more limited right of action than they would have absent these provisions in the Operating Agreement. The Company shall advance the costs and expenses of defending actions against the Indemnitees arising out of or relating to the management of the Company, provided it first receives the written undertaking of such Indemnitee to reimburse the Company if ultimately found not to be entitled to indemnification. A successful indemnification of any such Indemnitee or any litigation that may arise in connection with the Indemnitee's indemnification could deplete the assets of the Company. Members who believe any such Indemnitee has engaged in conduct resulting in fraud, willful misconduct, bad faith, or breach of any such Indemnitee's fiduciary duty, if any, should consult with their own legal counsel.

5.7 **Compensation to Manager and Affiliates.** The Company will compensate the Manager and/or its Affiliates, as applicable, as follows for services rendered to or on behalf of the Company:

(a) Asset Management Fee. The Manager shall earn an annual asset management fee ("Asset Management Fee") of one and one-half of one percent (1.5%) of Assets Under Management,

calculated and payable on a monthly basis. The Asset Management Fee will typically be paid on the last day of each calendar month with respect to Assets Under Management as of the last day of such month.

(b) Licensing Fee for Proprietary Data Platform. The Company will pay a monthly licensing fee to Pelorus Data Project, LLC, an Affiliate of the Manager, initially in an amount equal to $1,000 per state, plus associated third party fees and expenses for the use of Pelorus Data Project, LLC's proprietary data platform.

(c) Equity Participations. The Company may make Loans, including cannabis Loans, where it agrees to participate indirectly pursuant to the Manager acquiring an interest in the equity in the sponsor or the property securing the Loan made by the Company. Such equity participations may include, but are not limited to, sharing in the proceeds from the sale of the equity in the sponsor or the property or properties securing the Loan, or including additional exit fees upon Loan repayment. Any net proceeds and gains derived from equity participations shall be shared between the Company and the Manager as follows: fifty percent (50%) of net proceeds shall be payable to the Company and fifty percent (50%) shall be payable to the Manager.

(d) Net Profits Realized on Dispositions on Investments. Any Net Profits realized upon the sale or other disposition of any Investments including, without limitation any REO acquired in connection with the foreclosure of any Loan, shall be shared between the Company and the Manager as follows: fifty percent (50%) of such Net Profits shall be payable to the Company and fifty percent (50%) shall be payable to the Manager.

(e) Loan Servicing Fee. Any loan servicing fees payable to the Servicer shall be calculated as an expense to the Company. At any time, at the sole and absolute discretion of the Manager, in an effort to maintain an effective cost structure or for any other reason (or no reason), the Manager may decide to service the Loans at such time as conditions warrant. While the Manager shall not receive a loan servicing fee, it shall be reimbursed for any costs and expenses incurred as a result of servicing the Loans.

(f) Reimbursement of Operating and Administrative Expenses. The Manager and/or its Affiliates will be reimbursed by the Company for the Company's operating and administrative expenses incurred by the Manager and/or its Affiliates, provided, however, the amount of such reimbursement shall not exceed one-half of one percent (0.5%) per annum of the Company's aggregate capital. This operating expense reimbursement will be calculated as of the first day of the month with regard to the aggregate capital in the Company as of that day and paid out as of the first day of the following month. Notwithstanding the foregoing, the Manager may waive or defer reimbursement of operating and administrative expenses at its sole and absolute discretion. If the Manager defers or assigns to the Company any of its respective reimbursement, the Manager shall only be entitled to recover the same at a later time if it is within the same calendar year.

(g) Asset-Level Services. Members of the Sponsor Group may enter into contracts with the Company and its subsidiaries to provide certain services that would otherwise be provided by a third party from time to time. Pursuant to such contracts, the applicable member of the Sponsor Group may receive fees for one or more of such services and such fees will not be shared with the Company and will not offset Asset Management Fees in any respect. Fees for asset-level services will be at rates that are no less favorable to the Company or such subsidiary than could be obtained from an unaffiliated third party service provider providing comparable services, as determined in good faith by the Manager.

(h) Tax Preparation, Accounting and Audit Expenses. The Company will bear the cost of the annual tax preparation of the Company's tax returns, any state and federal income tax due, and the

Company's accounting and auditing expenses including, without limitation, any required independent audit reports required by agencies governing the business activities of the Company.

(i) Manager's Fees. "Manager's Fees" includes all of the fees described in "Compensation to Manager and Affiliates".

(j) The Manager may, but has no obligation to, defer all or a portion of the Manager's Fees. In such event, the Manager will be entitled to recover the deferred fees at a later time.

5.8 **Tenure.**

(a) Term. The Manager will serve until the earlier of (1) the Manager's resignation; (2) the Manager's removal; (3) the Manager's Bankruptcy; (4) as to a Manager who is a natural person, the Manager's death or adjudication of incompetency; and (5) as to a Manager that is an Entity, the Manager's dissolution. In any such event, a majority of the Members, shall promptly elect a successor as Manager; provided, however if the then Manager desires to appoint an Affiliate as the new Manager, then such Affiliate shall become the Manager without Member approval.

(b) Resignation. The Manager at any time may resign by written notice delivered to the Members at least thirty (30) days prior to the effective date of the resignation.

(b) Removal. The Members may remove the Manager if: (1) the Manager is convicted or found liable for an act of gross negligence or fraud which materially lowers the Net Asset Value of the Company, or (2) the holders of at least a majority of the outstanding Membership Interests vote in favor of such removal. A successor manager of the Company may only be elected by the Members, provided that if the then-current Manager appoints an Affiliate as the successor Manager then no vote or consent of the Members shall be required unless expressly mandated by applicable California law.

5.9 **Net Asset Value of the Company**.

(a) The net asset value of the Company (the "Net Asset Value" or "NAV") on any valuation date ("Valuation Date") shall mean the value of the Company's assets less an amount equal to the Company's liabilities (including reserves established by the Manager as at such Valuation Date (without regard to subscriptions or redemptions on such Valuation Date and after deducting or excluding the value of the interest of the Manager)) as determined in accordance with the provisions of this Section 5.9.

(b) At any time and from time to time, but no less frequently than as of the last day of each calendar month, the Net Asset Value of the Company shall be determined by the Manager who shall make such determination in accordance with the terms of this Agreement. The Manager will develop and utilize a consistent methodology to calculate the Net Asset Value on an ongoing basis at the end of each calendar month. Each Investment will be valued internally by the Manager typically at the time of origination or acquisition and on a monthly basis or at such other intervals as the Manager may determine in its sole discretion. The Manager may, but is not obligated to consult with any advisor retained by the Manager for such purpose including the auditor of the Company. The Manager will use methodologies that it deems reasonable based on various valuation practices commonly used in similar businesses in the industry including broker price opinions, comparative market analyses, appraisals, comparable sales of other assets similar to the Investments, historical data and trends from actual sales, disposition, or performance of the Investments, cash balances (in the case of cash assets) and other such methodologies generally used and accepted in the market. The Manager may, but is not obligated to have the Investments appraised by a third party appraiser, it being understood that the Manager will calculate the value of the Investments based on such information as it deems appropriate and which may include any of the

methodologies listed above. The Net Asset Value of the Company shall be determined by the Manager in its sole discretion. The Manager, however, shall establish and follow a methodology for determining the Net Asset Value and may modify, alter, or improve from time to time the methodologies it utilizes in its sole discretion.

(c) For the purposes of calculating the Net Asset Value, (i) Units in respect of which an investor's completed Subscription Agreement has been accepted by the Manager but the related subscription funds have not yet been deposited in the Company's Operating Account are not deemed to be existing; (ii) Units to be redeemed are treated as existing and, until the redemption amount therefor is paid, such redemption amount is deemed to be a liability of the Company; (iii) effect must be given as at any Valuation Date to any originations, acquisitions, purchases or sales of loans or investments of the Company, the REIT Subsidiary or any other subsidiary irrevocably committed for by the Company, the REIT Subsidiary or any other subsidiary on that Valuation Date, to the extent practicable; and (iv) the value of the interest of the Manager, as determined by the Manager, shall be allocated to the Manager and not included in (or deducted from to the extent otherwise included in) the computation of the Net Asset Value, and shall, in the event that the Valuation Date is other than the date of the fiscal year end, include such amount in respect of such interest of the Manager, if any, for the portion of the fiscal year up to and including such Valuation Date, as determined by the Manager.

(d) In no event shall the Manager or any of its Affiliates incur any liability or responsibility for any determination made or other action taken or omitted by any of them in good faith pursuant to the provisions of this Section 5.9.

ARTICLE 6: RECORDS AND ACCOUNTING

6.1 Maintenance of Records.

(a) Required Records. The Company will maintain, at its principal place of business in California, such books, records and other materials as are reasonably necessary to document and account for its activities, including without limitation, those required to be maintained by the Act.

(b) Member Access. Subject to the terms of this Section 6.1, a Member and the Member's authorized representative will have reasonable access to, and may inspect and copy, all books, records and other materials pertaining to the Company or its activities at the Company's principal place of business during normal business hours so long as it does not violate another member's right to privacy or confidentiality. The exercise of such rights will be at the requesting Member's expense.

(c) Confidentiality. Subject to any disclosure expressly permitted by this Section 6.1(c), each Member agrees (i) to maintain in confidence all Confidential Information received by such Member, (ii) to use such Confidential Information only for the purpose of monitoring such Member's investment in the Company, (iii) not to use any Confidential Information for any other purpose, including, without limitation, use in conducting or furthering such Member's own business or that of any of its affiliates or any competing business, (iv) to cooperate in any appropriate action that the Manager may decide to take to prevent or minimize the disclosure of such Confidential Information, and (v) that the misappropriation or unauthorized disclosure of Confidential Information by a Member is likely to cause substantial and irreparable damage to the Company, the REIT Subsidiary or any other subsidiary, and/or the Manager and/or its Affiliates, such that damages may not be an adequate remedy for breach of this Section 6.1(c). Accordingly, the Company, the Manager and/or their respective Affiliates shall be entitled to injunctive and other equitable relief, in addition to all other remedies available to them at law or at equity, and no proof of special damages shall be necessary for the enforcement of this Section 6.1(c).

The obligations of limited use and nondisclosure contained in this Section 6.1(c) shall not (i) restrict the disclosure of Confidential Information to a Member's attorneys, tax advisors, financial advisors, lenders, collateral lenders, investment managers, accountants or other professional advisors or consultants who have a reason to have access to such Confidential Information in connection with their duties and responsibilities to such Member relating to administering such Member's investment in the Company so long as such Persons are under an obligation of confidentiality consistent with the terms of Section 6.1(c), (ii) restrict the disclosure of Confidential Information by a Member to the extent such disclosure is required by applicable law, stock exchange rules or to comply with a request of any governmental agency or self-regulatory agency; provided that, to the extent permitted by law, such Member promptly notifies the Manager when such requirement to disclose arises to enable the Manager to seek an appropriate protective order and to make known to such governmental or regulatory authority or court the proprietary nature of the Confidential Information and to make any applicable claim of confidentiality in respect thereof, and provided, further, that such party shall only make such disclosure to the extent it is required to do so by applicable law, (iii) restrict the disclosure of Confidential Information to such Members' underlying investors, such underlying investors' beneficial owners, prospective investors, financing sources, and stakeholders, to lenders and prospective lenders of the Company, the REIT Subsidiary or any other subsidiary so long as such Persons are under an obligation of confidentiality consistent with the terms of Section 6.1(c), (v) restrict the disclosure of Confidential Information to any bona fide potential buyers in connection with the sale of Membership Interests, all or any portion of the Investments, assets of the Company, the REIT Subsidiary or any other subsidiary, or (vi) restrict the disclosure of Confidential Information by such Member to the extent permitted with the written consent of the Manager.

6.2 **Financial Accounting.**

(a) Accounting Method. The Company will account for its financial transactions using the accrual basis method of accounting. The Manager reserves the right to change such method of accounting upon written notice to Members.

(b) Taxable Year. The Company's Taxable Year is the Fiscal Year.

6.3 **Reports.**

(a) Members. Annual reports concerning the Company's business affairs will be furnished to each Member. The Company's annual income tax return and quarterly unaudited reports reviewing the Company's performance, including the number of outstanding Units in the Company, and the number and value of the Units in the Company attributable to such Member will be furnished to Members who request them in writing. Each Member will receive his, her, or its respective K-1 Form as required by applicable law. The Manager may, at its sole and absolute discretion, designate any Person to provide tax and accounting advice to the Company, at any time and for any reason.

(b) Periodic Reports. The Company will complete and file any periodic reports required by the Act or the law of any other jurisdiction in which the Company is qualified to do business.

6.4 **Tax Compliance.**

(a) Withholding. The Company shall at all times be entitled to make payments with respect to any Member in amounts required to discharge any obligation of the Company to withhold or make payments to any governmental authority with respect to any federal, state, local, or other jurisdictional tax liability of such Member arising as a result of such Membership Interest in the Company. If the Company is required by law or regulation to withhold and pay over to a governmental agency any part or all of a Distribution or allocation of Net Income to a Member:

(1) the amount withheld will be considered a Distribution to the Member; and

(2) if the withholding requirement pertains to a Distribution in kind or an allocation of Net Income, the Company will pay the amount required to be withheld to the governmental agency and promptly take such action as it considers necessary or appropriate to recover a like amount from the Member, including offset against any Distributions to which the Member would otherwise be entitled.

(b) Partnership Representative.

(i) The Members hereby agree that: (i) the Manager (or an individual designated by the Manager) will be designated the initial "partnership representative" within the meaning of Code Section 6223(a) (the "Partnership Representative") and the Manager shall be authorized to take any actions necessary under Treasury Regulations or other guidance to cause such person to be designated as such; (ii) if an entity is designated as Partnership Representative, the Manager shall simultaneously designate an individual who will act for the entity Partnership Representative; (iii) the Partnership Representative may be removed and replaced at any time by the Manager; (iv) the Company and each Member agree that they shall be bound by the actions taken by the Partnership Representative, as described in Code Section 6223(b); (v) the Members hereby consent to the election set forth in Code Section 6226(a) and agree to take any action, and furnish the Partnership Representative with any information necessary, to give effect to such election if the Manager decides to make such election; (vi) any imputed underpayment of tax imposed on the Company pursuant to Code Section 6232 (and any related interest, penalties or other additions to tax) that the Manager reasonably determines is attributable to one or more Members (including any former Member) in the Manager's sole discretion; and (vii) the Partnership Representative will be considered indemnified and the provisions of Section 5.6 shall apply to the Partnership Representative. The Partnership Representative shall be authorized to take any of the foregoing actions (or any similar actions), to the extent necessary to allow the Company to comply with the partnership audit provisions of the Bipartisan Budget Act of 2015.

(ii) Regarding the potential obligation of a former Member under this paragraph, the following shall apply: (i) each Member agrees that notwithstanding any other provision in this Agreement if it is no longer a Member it shall nevertheless be obligated for any responsibilities under Section 6.5, as if it were a Member prior to withdrawal from the Company and/or transfer of its interest; and (ii) as applicable, the Manager will not be required to consent to the transfer of interest of any Member unless the transferee receiving such interest agrees that in the event the transferor of such interest does not fulfill its obligation under the preceding clause (i) within 20 business days following written demand by the Manager, such transferee shall be jointly and severally liable with such transferor for such obligation and the Manager may thereafter treat the transferee as the relevant Member for purposes of this Subsection. The Partnership Representative will provide prompt written notification to each Member in the event of any audit of the Company by the United States Internal Revenue Service and provide all information reasonably requested by any Member regarding such audit and associated proceedings. The provisions of this Section 6.5 will not apply to any taxable year of the Company for which the Company has made a valid election out of Subchapter C of Chapter 63 of the Code pursuant to Code Section 6221.

ARTICLE 7: DISSOLUTION

7.1 **Events of Dissolution.** The Company will continue until (a) dissolved pursuant to this Article 7, unless sooner dissolved or terminated under the Act or as otherwise described herein; (b) the sale or other disposition of all or substantially all the assets of the Company or the REIT Subsidiary; (c) any event that makes the Company ineligible to conduct its activities as a limited liability company under the Act; or (d) otherwise by option of law.

7.2 **Effect of Dissolution.**

(a) Appointment of Liquidator. Upon the Company's dissolution, the Manager (unless unwilling or unable to serve as such) shall serve as liquidator, and as such will wind up and liquidate the Company in an orderly, prudent and expeditious manner in accordance with the following provisions of this Article. While serving as liquidator, the Manager shall have the same authority, powers, duties and compensation as before dissolution, except that the liquidator shall not acquire any additional assets for the Company, and shall use its best efforts to liquidate the Company's existing assets as rapidly as is consistent with receiving the fair market value thereof. If the Manager is unwilling or unable to serve as liquidator, or has resigned or been removed, the Members shall elect another person, who may be a Member, to serve as liquidator.

(b) Distributions Upon Dissolution. The Company will not cease to exist immediately upon the occurrence of an event of dissolution, but will continue until its affairs have been wound up. Upon dissolution of the Company, the Manager will wind up the Company's affairs by liquidating the Company's assets as promptly as is consistent with obtaining the fair market value thereof, either by sale to third parties or by collecting loan payments under the terms of the loan(s) until a suitable sale can be arranged. All funds received by the Company shall be applied to satisfy or provide for Company debts and liabilities and the balance, if any, shall be distributed in the following order of priority:

(i) First, to each Member, pro rata until each Member has received an amount equal to its accrued and unpaid Preferred Return;

(ii) Second, to each Member, pro rata until the Unreturned Capital of each such Member has been reduced to zero; and

(iii) Thereafter, (i) 80% to the Members, pro rata and (ii) 20% to the Manager.

(c) Time for Liquidation. The Company will not immediately cease to exist upon the occurrence of an event causing its dissolution, but will continue until its affairs have been wound up. It is acknowledged and agreed that the assets of the Company are illiquid, and will take time to sell. The liquidator shall liquidate the Company's assets as promptly as is consistent with obtaining the fair market value thereof, either by sale to third parties or by collecting loan payments under the terms of the loans. Due to high prevailing interest rates or other factors, the Company could suffer reduced earnings (or losses) if a substantial portion of its loan portfolio remains and must be liquidated quickly during the winding up period. Members who sell their Membership Interests prior to any such liquidation will not be exposed to this risk. Conversely, if prevailing interest rates have declined at a time when the loan portfolio must be liquidated, unanticipated profits could be realized by those Members who remained in the Company until its termination.

(d) Final Accounting. The liquidator will make proper accountings, (1) to the end of the month in which the event of dissolution occurred, and (2) to the date on which the Company is finally and completely liquidated.

(e) Duties and Authority of Liquidator. The liquidator will make adequate provision for the discharge of all of the Company's debts, obligations and liabilities. The liquidator may sell, encumber or retain for distribution in kind any of the Company's assets. Any gain or loss recognized on the sale of assets will be allocated to the Members' Capital Accounts in accordance with the provisions of Article 4. With respect to any asset the liquidator determines to retain for distribution in kind, the liquidator will

allocate to the Members' Capital Accounts the amount of gain or loss that would have been recognized had the asset been sold at its fair market value.

(f) Final Distribution. The liquidator will distribute any assets remaining after the discharge or accommodation of the Company's debts, obligations and liabilities to the Members in proportion to their Capital Accounts. The liquidator will distribute any assets distributable in kind to the Members in undivided interests as tenants in common. A Member whose Capital Account is negative will have no liability to the Company, the Company's creditors or any other Member with respect to the negative balance.

(g) Required Filings. The liquidator will file with the appropriate Secretary of State such statements, certificates and other instruments, and take such other actions, as are reasonably necessary or appropriate to effectuate and confirm the cessation of the Company's existence.

ARTICLE 8: GENERAL PROVISIONS

8.1 **Amendments.** Except as otherwise provided herein, the Manager or any Member may propose, for consideration and action, an amendment to this Agreement or to the Articles. Except as otherwise provided herein, a proposed amendment will become effective at such time as it is approved by the Members holding a majority of the outstanding Membership Interests. Notwithstanding the foregoing, the Manager shall have the authority to amend or modify this Agreement without any vote or other action by any other Member: (a) to reflect the admission, substitution, termination, or withdrawal of any Member, in each case in accordance with the terms of this Agreement; (b) to reflect a change that does not adversely affect the rights and obligations of any Members in any material respect, to cure any ambiguity, correct any error, or supplement any provision in this Agreement that is incomplete or inconsistent with any other provision hereof, or make other changes with respect to matters arising under this Agreement that will not be inconsistent with law (excluding for such purposes any federal cannabis laws that contradict applicable state cannabis laws) or with any other provisions of this Agreement; (c) to make changes negotiated with Members admitted at a subsequent Unit closing so long as such changes do not adversely affect the rights and obligations of any existing Members in any material respect; (d) to add to the representations, duties or obligations of the Manager or surrender any right or power (but not responsibilities) granted to the Manager in this Agreement; (e) to satisfy any requirements, conditions, or guidelines contained in any order, directive, opinion, ruling, or regulation of a federal, state, or local agency or contained in federal, state, or local law (excluding for such purposes any federal cannabis laws that contradict applicable state cannabis laws); (f) to amend this Agreement as necessary to comply or conform with any applicable laws, rules and/or regulations governing the Company or any of its subsidiaries, or to address regulatory issues, developments and/or changes in tax, regulatory or other similar legislation; (g) to reflect amendments or other actions undertaken by the Manager to cause the Company to create and issue a class of limited liability company interests that has fewer voting rights than the Membership Interests; (h) to amend this Agreement as may be necessary or desirable in connection with the adoption and implementation of an equity incentive plan for the Company’s directors and consultants; and/or (i) to change the name of the Company in accordance with this Agreement. The Manager may execute and file any amendment to the Articles required by the Act. If any such amendment results in inconsistencies between the Articles and this Agreement, this Agreement will be considered to have been amended in the specifics necessary to eliminate the inconsistencies.

8.2 **Power of Attorney.** Each Member appoints the Manager, with full power of substitution, as the Member's attorney-in-fact, to act in the Member's name to execute and file (a) all certificates, applications, reports and other instruments necessary to qualify or maintain the Company as a limited liability company in the states and foreign countries where the Company conducts its activities, (b) all instruments relating to the admission, withdrawal, substitution or redemption of any Member pursuant to

the terms of this Agreement, (c) all instruments that effect or confirm changes or modifications of the Company or its status, including, without limitation, all amendments to the Articles and to this Agreement in accordance with the terms of Section 8.1, (c) all instruments of transfer and other instruments necessary to effect the Company's dissolution and termination, and (d) any document of an administrative nature necessary to be filed with appropriate governmental bodies or authorities in connection with the business and affairs of the Company. The power of attorney granted by this Article is irrevocable, coupled with an interest and shall survive the incapacity, death, dissolution, termination or Bankruptcy of the Member and the assignment of such Member of the whole or any part of its Units an extends to the legal representatives and successor and assigns of such Member. Each Member agrees to be bound by a representation or action made by or taken by the Manager pursuant to such power of attorney.

8.3 **Binding Arbitration;** Any dispute under this Agreement will be resolved under the then prevailing rules of the American Arbitration Association in the county of the Company's principal place of business.

8.4 **Notices.** Notices contemplated by this Agreement may be sent by any commercially reasonable means, including hand delivery, first class mail, facsimile, e-mail or private courier. The notice must be prepaid and addressed as set forth in the Company's records. The notice will be effective on the date of receipt or, in the case of notice sent by first class mail, the fifth (5^{th}) day after mailing.

8.5 **Resolution of Inconsistencies.** If there are inconsistencies between this Agreement and the Articles, the Articles will control. If there are inconsistencies between this Agreement and the Act, this Agreement will control, except to the extent the inconsistencies relate to provisions of the Act that the Members cannot alter by agreement. If there are inconsistencies between this Agreement and the Memorandum, this Agreement will control. Without limiting the generality of the foregoing, unless the language or context clearly indicates a different intent, the provisions of this Agreement pertaining to the Company's governance and financial affairs and the rights of the Members upon Dissociation and dissolution will supersede the provisions of the Act relating to the same matters.

8.6 **Provisions Applicable to Transferees.** As the context requires and subject to the restrictions and limitations imposed by the provisions of this Agreement pertaining to the rights and obligations of a Member also govern the rights and obligations of the Member's Transferee.

8.7 **Additional Instruments.** Each Member will execute and deliver any document or statement necessary to give effect to the terms of this Agreement or to comply with any law, rule or regulation governing the Company's formation and activities.

8.8 **Computation of Time.** In computing any period of time under this Agreement, the day of the act or event from which the specified period begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday or legal holiday, in which case the period will run until the end of the next day that is not a Saturday, Sunday or legal holiday. For purposes of this paragraph, a day shall be deemed to end at 5:00 p.m. in the time zone where the Company then maintains its principal place of business.

8.9 **Entire Agreement.** This Agreement and the Articles comprise the entire agreement among the parties with respect to the Company. This Agreement and the Articles supersede any prior agreements or understandings with respect to the Company. No representation, statement or condition not contained in this Agreement or the Articles has any force or effect. Notwithstanding the provisions of this Agreement, including Section 8.1 or of any subscription agreement, it is hereby acknowledged and agreed that the Manager, on its own behalf or on behalf of the Company, without the approval of any Members or any other person, may enter into a side letter or similar agreement with a Member that has the effect of

establishing rights under, or altering or supplementing the terms of this Agreement or of any subscription agreement. The parties hereto agree that any terms contained in a side letter or similar agreement with a Member shall govern with respect to Member notwithstanding the provisions of this Agreement or of any subscription agreement.

8.10 **Waiver.** No right under this Agreement may be waived, except by an instrument in writing signed by the party sought to be charged with the waiver.

8.11 **General Construction Principles.** Words in any gender are deemed to include the other genders. The singular is deemed to include the plural and vice versa. The headings and underlined paragraph titles are for guidance only and have no significance in the interpretation of this Agreement.

8.12 **Binding Effect.** Subject to the provisions of this Agreement relating to the transferability of Membership Interests and the rights of Transferees, this Agreement is binding on and will inure to the benefit of the Company, the Members and their respective distributees, successors and assigns.

8.13 **Governing Law.** California law governs the construction and application of the terms of this Agreement.

8.14 **Severability**. If any provision of this Agreement shall be deemed invalid, unenforceable or illegal, then notwithstanding such invalidity, unenforceability or illegality, the remainder of this Agreement shall continue in full force and effect.

8.15 **Counterparts; Facsimile.** This Agreement may be executed in counterparts, each of which will be considered an original as to the party signing it. Facsimile signatures shall have the same legal effect as original signatures.

[*Signature Page to this Agreement follows*]

[*Signature Page to the Agreement*]

PELORUS FUND, LLC,
a California Limited Liability Company

By: _____
James Robert Sechrist, Manager of
Pelorus Management Group, LLC,
Manager of the Company

BY PURCHASING MEMBERSHIP INTERESTS IN THE COMPANY AND EXECUTING A SUBSCRIPTION AGREEMENT, EACH MEMBER AGREES TO THE TERMS AND PROVISIONS OF THIS AGREEMENT, THE SUBSCRIPTION AGREEMENT AND THE MEMORANDUM.

EXHIBIT 2

PELORUS CAPITAL GROUP, LLC

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY OPERATING AGREEMENT

DATED AS OF JANUARY 3, 2023

THE UNITS ISSUED PURSUANT TO THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT (THIS "AGREEMENT") HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT AN EFFECTIVE REGISTRATION UNDER SUCH ACT AND SUCH OTHER LAWS OR EXEMPTION THEREFROM AND COMPLIANCE WITH THE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY SET FORTH IN THIS AGREEMENT. SUCH UNITS ARE ALSO SUBJECT TO THE ADDITIONAL RESTRICTIONS ON TRANSFER AND MANDATORY SALE PROVISIONS SET FORTH IN THIS AGREEMENT.

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AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
PELORUS CAPITAL GROUP, LLC

This AMENDED AND RESTATED LIMITED LIABILITY OPERATING COMPANY AGREEMENT (this "Agreement") of PELORUS CAPITAL GROUP, LLC (the "Company"), made as of January 3, 2023 (the "Effective Date"), is by and among Lost Winds Capital, Inc, a California corporation ("Lost Winds"), JRS Capital USA, Inc., a California Corporation, ("JRS"), TGCA PEL LLC, a Florida limited liability company ("TGCA"), and Covenant Capital, LLC, a Wyoming limited liability company ("Covenant"), who constitute all of the Members of the Company as of such date.

RECITALS

WHEREAS, the Company was formed as a Delaware limited liability company by the filing of a Certificate of Formation on June 24, 2022 with the Secretary of the State of Delaware. The Company was operated as a single-member limited liability company pursuant to its original limited liability company agreement, dated as of June 24, 2022 (the "Original Agreement"). Before the date of this Agreement, the sole Member of the Company was Lost Winds;

WHEREAS, Pursuant to that certain Contribution Agreement, dated as of January 3, 2023, by and among Lost Winds, JRS, TGCA (collectively, the "Contributing Members") and the Company, each of the Contributing Members contributed all of its right, title and interest in the membership interest such Contributing Member owned in Pelorus Management Group, LLC, a California limited liability company ("PMG"), to the capital of the Company in exchange for its respective Membership Interest in the Company;

WHEREAS, the undersigned desire to amend and restate in its entirety the Original Agreement with this Agreement to, among other things, admit JRS, TGCA and Scatterday (the latter effective upon the issuance of the initial Profits Interest Units of the Company pursuant to the terms of the applicable Grant Agreement) as Members of the Company, and to make other changes to the Original Agreement, which they deem to be necessary and proper.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises of the parties, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and the Members agree as follows:

ARTICLE I
DEFINITIONS

1.1 "**Act**" means the Delaware Limited Liability Company Act (Title 6, Subtitle II, Chapter 18), as amended from time to time.

1.2 "**Additional Contribution**" shall have the meaning set forth in Section 6.3.

1.3 "**Additional Contribution Notice**" shall have the meaning set forth in Section 6.3.

1.4 "**Additional Member**" means any Person admitted to the Company as a Member after the Effective Date pursuant to Section 6.2 by virtue of having received such Person's Membership Interest from the Company and not from any other Member or Assignee.

1.5 **"Affiliate**" means any Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a Person specified. The term "control" (including the terms "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of at least fifty (50%) of the voting securities, by contract or otherwise.

1.6 "**Agreement**" shall have the meaning set forth in the preamble.

1.7 "**Annual Budget**" means, collectively, an annual budget and business plan for the Company.

1.8 "**Assignee**" means any Transferee that is not a Member hereunder, to whom or which a Member or another Assignee has Transferred all or a portion of such Member's or Assignee's Membership Interest in the Company in accordance with the terms of this Agreement.

1.9 "**Assumed Tax Rate**" means the highest combined marginal effective rate of U.S. federal, state and local income tax applicable to an individual resident of, or a corporation doing business in, Newport Beach, California or New York, New York, whichever is highest, including pursuant to Section 1411 of the Code, in each case, taking into account the character of the income and any allowable deductions in respect of such state and local taxes in computing federal income taxes (taking into account any phase-outs related thereto; provided, that, for so long as the limitation set forth in Section 164(b)(6)(B) of the Code as of the date hereof (or a similar successor provision) remains applicable, it shall be assumed that no portion of any state or local taxes is deductible) and making an appropriate adjustment for any rate changes that take place during the applicable period. For the avoidance of doubt, the Assumed Tax Rate shall be the same for all Members.

1.10 "**Bankruptcy**" means, with respect to any Person, the occurrence of any of the following events: (a) the filing of an application by such Person for, or a consent to, the appointment of a trustee or custodian of such Person's assets, (b) the filing by such Person of a voluntary petition in bankruptcy or the seeking of relief under Title 11 of the United States Code, as now constituted or hereafter amended, or the filing of a pleading in any court of record admitting in writing such Person's inability to generally pay such Person's debts as they become due, (c) the failure of such Person to pay such Person's debts as such debts become due, (d) the making by such Person of a general assignment for the benefit of creditors, (e) the filing by such Person of an answer admitting the material allegations of, or such Person's consenting to, or defaulting in answering, a bankruptcy petition filed against such Person in any bankruptcy proceeding or petition seeking relief under Title 11 of the United States Code, as now constituted or as hereafter amended, or (f) the entry of an order, judgment or decree by any court of competent jurisdiction adjudicating such Person as bankrupt or insolvent or for relief in respect of such Person or

appointing a trustee or custodian of such Person's assets and the continuance of such order, judgment or decree unstayed and in effect for a period of sixty (60) consecutive calendar days.

1.11 "**Board**" and "**Board of Managers**" shall have the respective meanings set forth in Section 5.1(a).

1.12 "**Business**" means the business of providing underwriting, origination, advisory, asset management and loan servicing services relating, directly or indirectly, to debt and equity investments that are cannabis-related or investments related to the cannabis industry.

1.13 "**Business Day**" means any day other than a Saturday, Sunday, or day on which commercial banks in Newport Beach, California and New York, New York are authorized or required to close.

1.14 "**Call Event**" shall have the meaning set forth in Section 9.2(a).

1.15 "**Call Group**" shall have the meaning set forth in Section 9.2(a).

1.16 "**Call Notice**" shall have the meaning set forth in Section 9.2(a)

1.17 "**Call Option**" shall have the meaning set forth in Section 9.2(a).

1.18 "**Call Period**" shall have the meaning set forth in Section 9.2(a).

1.19 "**Call Securities**" shall have the meaning set forth in Section 9.2(a).

1.20 "**Call Securities Fair Market Value**" means the fair value of the Call Securities based on the amount that the Call Securities would receive (if any) in connection with a sale of all of the assets of the Company and its Subsidiaries at fair value (which determination shall not apply any discount for (i) lack of liquidity of any of the Call Securities including with respect to any restrictions or other limitations contained in this Agreement or otherwise or (ii) any discount for minority interests) and distribution of the portion of such proceeds available to the Company's and such Affiliates' equity holders (e.g. after repayment of indebtedness and payment of expenses) through the priority of distributions described in Section 7.2 of this Agreement and the equivalent provisions of the governing documents of such Subsidiaries.

1.21 "**Capital Account**" shall have the meaning set forth in Section 1.2 of Exhibit 8.

1.22 "**Capital Contribution**" means any cash or, with the consent of the Board, the Fair Market Value of other property that a Member contributes to the Company with respect to any Unit or other Equity Interests issued pursuant to Article VI (net of liabilities assumed by the Company or to which such property is subject).

1.23 "**Cash Reserves**" means, with respect to any period of the Company, the amount reasonably determined by the Members acting by Majority Approval to be necessary or advisable to provide a reasonable reserve for working-capital needs or any other needs or contingencies of the Company.

1.24 "**Cause**" means, except as otherwise set forth in the Grant Agreement or any other written agreement with such Member, with respect to any Member, such Member or its affiliated Service Member: (A) has been convicted or plead nolo contendere to a felony or any other crime involving fraud or dishonesty or involving moral turpitude; (B) has materially breached the obligations under the this Agreement or any other operating agreement of any member of the Company Group, which breach remains uncured for a period of thirty (30) days after written notice of such breach from any Manager (such notice to specify the nature of the claimed breach and the manner in which the Board requires such breach to be cured), or any consulting or employment agreement or other material agreement between such Member (or such affiliated Service Member) and a member of the Company Group; (C) has committed gross negligence or willful misconduct which materially adversely damages any member of the Company Group; (D) has engaged in acts or omissions or course of conduct that constitute fraud, embezzlement or other misappropriation of funds; (E) has engaged in a violation of any law, rule, or regulation affecting the securities industry which results in any injunction, disciplinary action, order, judgment, decree or regulatory restriction imposed upon such Member (or such affiliated Service Member) by any government, state or other entity exercising executive, legislative, judicial regulatory or administrative functions; (F) has refused to perform the reasonable, lawful and proper business directives of the Board or the executive(s) to whom the Member (or such affiliated Service Member) reports or has otherwise failed to perform, in a reasonable manner, such Member's (or such affiliated Service Member's) duties, if not cured within thirty (30) days following receipt by such individual from the Company of written notice thereof; (G) commits an act of dishonesty or bad faith with respect to any member of the Company Group; (H) uses alcohol, drugs or other similar substances in a manner that adversely affects such Member's (or such affiliated Service Member's) work performance or (I) engages in any material misconduct in violation of any member of the Company Group's written policies regarding ethical standards, conduct in workplace or safety; provided, that if, within one hundred and eighty (180) days subsequent to any termination of employment or services for any reason other than for Cause, it is determined that Cause existed with respect to such Member or its affiliated Service Member, such Member or its affiliated Service Member's employment or services shall be deemed to have been terminated for Cause retroactively to the date upon which the events giving rise to such Cause occurred.

1.25 "**Certificate of Formation**" means the Company's Certificate of Formation, as filed with the State, as the same may be amended from time to time.

1.26 "**Change in Control**" means (a) the sale or other disposition (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company and its direct and indirect Subsidiaries on a consolidated basis (including through the sale of a Subsidiary of the Company) to any Person (or group of Persons acting in concert), or (b) a merger of the Company or any of its Subsidiaries, recapitalization of the Company or other sale (in one transaction or a series of related transactions) of equity interests or voting power of the Company to a Person or group of Persons acting in concert that were not previously Members, in each case, that results in any Person (or group of Persons acting in concert) beneficially owning more than 50% of the equity interests or voting power of the Company (or any resulting entity (or ultimate parent thereof) after such transaction); provided, that none of a stock dividend or distribution, stock split or any other similar capital structure change shall, in and of itself, constitute a Change in Control, unless such event qualifies as a Change in Control under clauses (a) or (b) above.

1.27 "**Code**" means the Internal Revenue Code of 1986, as amended from time to time.

1.28 "**Company**" shall have the meaning set forth in the preamble to this Agreement.

1.29 "**Company Group**" means the Company and its direct and indirect Subsidiaries and Affiliates.

1.30 "**Company Sale**" means the consummation of a transaction, whether in a single transaction or in a series of related transactions, that results in a Change in Control.

1.31 "**Company Sale Notice**" shall have the meaning set forth in Section 9.5(a).

1.32 "**Competitor**" means any Person engaged in, or proposing to engage in, (a) any business that competes with any product offering of the Company or any of its Subsidiaries as of any time of determination or (b) any other business contemplated to be conducted by the Company or any of its Subsidiaries as of any time of determination.

1.33 "**Contract**" means any contract, agreement, lease, license, sales order, purchase order, indenture, mortgage, note, bond, guaranty, or other arrangement, whether written or oral.

1.34 "**Contribution Due Date**" shall have the meaning set forth in Section 6.3.

1.35 "**Contributing Member**" shall have the meaning set forth in the recitals to this Agreement.

1.36 "**Cost Price**" means, with respect to any Unit, the Capital Contribution made, if any, to the Company in respect of such Unit, less the amount of any Distributions made in respect thereof (which amount shall not be less than $0). The Cost Price of a Profits Interest Unit is $0.00.

1.37 "**Covenant**" shall have the meaning set forth in the preamble to this Agreement.

1.38 "**Covered Persons**" shall have the meaning set forth in Section 5.8(g).

1.39 "**Decision Notice**" shall have the meaning set forth in Section 9.3(b).

1.40 "**Defaulting Member**" shall have the meaning set forth in Section 6.3(a).

1.41 "**Disabled**" or "**Disability**" means, except as otherwise set forth in the Grant Agreement or any other written agreement with such Member (or its affiliated Service Member), if by reason of illness, physical or mental incapacity, its affiliated Service Member is determined by a qualified professional to be incapable of materially performing such Service Member's duties with respect to the Company Group or is actually incapable of performing his duties with respect to the Company Group for a period of either three (3) consecutive months or for a cumulative period of five (5) months in any consecutive twelve (12) month period. Disability, for purposes of this Agreement, shall be deemed to occur on the date that said determination is made or the inability to perform duties for the relevant period occurs.

1.42 "**Disqualification Event**" shall have the meaning set forth in Section 4.17.

1.43 "**Distribution**" means each distribution after the Effective Date made by the Company to a Member, whether in cash, property or securities of the Company, pursuant to, or in respect of, Article VII or Article X; provided, that, for the avoidance of doubt, Distributions shall not include cash, property or other securities paid in connection with any redemption, repurchase or other similar transaction pursuant to Section 9.2 or Section 9.5.

1.44 "**Distribution Period**" shall have the meaning set forth in Section 7.1.

1.45 "**Economic Interest**" means the right to allocations of Profits and Losses and items of income, gain, loss, deduction, credit or similar items and the right to Distributions of cash and other property as provided in Article VII and Article X of this Agreement and the Act, but shall not include any right to participate in the management or affairs of the Company (including the right to vote in the election of the Board or vote on, consent to or otherwise participate in any decision of the Members) or any right to receive information concerning the business and affairs of the Company, in each case, except as expressly otherwise provided in this Agreement or required by the Act.

1.46 "**Effective Date**" shall have the meaning set forth in the preamble to this Agreement.

1.47 "**Equity Interests**" means any (a) partnership interests, (b) membership interests or units, (c) shares of capital stock, (d) other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing entity, (e) subscriptions, calls, warrants, options, or commitments of any kind or character relating to, or entitling any Person or entity to purchase or otherwise acquire membership interests or units, capital stock, or any other equity securities, (f) securities convertible into or exercisable or exchangeable for partnership interests, membership interests or units, capital stock, or any other equity securities, or (g) other interest classified pursuant to applicable Law as an equity security of a Person.

1.48 "**Exchange Act**" " means the United States Securities Exchange Act of 1934 and applicable rules and regulations thereunder. Any reference herein to a specific section, rule or regulation of the Exchange Act shall be deemed to include any corresponding provisions of future law.

1.49 "**Exempted Securities**" means any Equity Interests issued:

(a) to or otherwise for the benefit of employees or directors of, or consultants or advisors to, the Company pursuant to the Pelorus Fund, LLC 2022 Omnibus Equity Incentive Plan or any other plan, agreement or arrangement approved in accordance with this Agreement;

(b) as a Distribution in accordance with Article VII in respect of outstanding Units;

(c) in connection with any redemption, repurchase or other similar transaction pursuant to Section 9.2;

(d) in connection with any split, dividend, combination, reclassification, recapitalization or similar reorganization of the Company;

(e) by a Subsidiary to the Company or to another Subsidiary of the Company;

(f) upon (i) the exercise of options, or (ii) the conversion or exchange of convertible securities, in each case either existing as of the date hereof or approved thereafter in accordance with this Agreement; provided such issuance is pursuant to the terms of such option or convertible security;

(g) to any Person which, in connection with such issuance, concurrently enters into a significant business transaction (including debt or equity financings or acquisitions of businesses or assets) with or involving the Company or any of its Subsidiaries; and

(h) pursuant to the acquisition of another company by the Company by merger, purchase of substantially all of the assets or other reorganization.

1.50 "**Extraordinary Transaction**" shall have the meaning set forth in the definition of "Liquidity Event" in this Article I.

1.51 "**Fair Market Value**" means, with respect to (a) any asset or (b) any security (other than any Unit), as of any date of determination, the fair market value of such asset or security, as between a willing buyer and a willing seller in an arm's length transaction occurring on such date of determination, taking into account all relevant factors as determined by the Board in good faith.

1.52 "**Fiscal Year**" means, as of the Effective Date, the calendar year, and, with respect to the last year of the Company, the portion of the calendar year ending with the date of the final liquidating distributions.

1.53 "**Founder Members**" mean James Robert Sechrist, Daniel Leimel, Jr., Lost Winds, JRS, and each of their respective Affiliates and Permitted Transferees, in each case for so long as such Person is a Member.

1.54 "**GAAP**" means generally accepted accounting principles as in effect from time to time in the United States of America, consistently applied, as of the date of application.

1.55 "**Governmental Authority**" means any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity, in each case, having jurisdiction over the Company or any of its Subsidiaries or any of the property or other assets of the Company or any of its Subsidiaries.

1.56 "**Grant Agreement**" of any Member means the grant agreement pursuant to which such Member receives Profits Interest Units.

1.57 "**Gross Cash Receipts**" means the gross cash receipts of the Company from all sources, excluding Net Capital Proceeds.

1.58 "**Guaranteed Payments**" shall have the meaning set forth in Section 5.7.

1.59 "**Indebtedness**" means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money, loans, or advances, (b) all indebtedness for the deferred purchase price of properties, assets, or services (including all earn-out obligations), (c) all obligations evidenced by notes, bonds, debentures, or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement, (e) all obligations under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) all reimbursement, payment, or similar obligations, contingent or otherwise, under any banker's acceptance, letter of credit, or similar facility, (g) all obligations under surety bonds and performance bonds, (h) all obligations under any interest rate, currency, or other derivative, hedging, swap, or similar instrument, and (i) all Liabilities of any other Person described in clauses (a) through (h) above that such Person has, directly or indirectly, guaranteed or assumed, or that is otherwise its legal obligation. The amount of such Person's Indebtedness shall include the aggregate principal amount thereof, all accrued and unpaid interest thereon, and any premiums or penalties, including any prepayment penalties, relating thereto.

1.60 "**Initial Managers**" shall have the meaning set forth in Section 5.2.

1.61 "**Instrument of Joinder**" means an instrument of joinder substantially in the form of Exhibit 9.2(a).

1.62 "**Investment Committee**" shall have the meaning set forth in Section 5.6 (a).

1.63 "**Issue Date**" shall have the meaning set forth in Section 6.7(a).

1.64 "**JRS**" shall have the meaning set forth in the preamble to this Agreement.

1.65 "**Law**" means any law, statute, regulation, ordinance, rule, code, requirement, or rule of law (including common law) enacted, promulgated, issued, released, or imposed by any Governmental Authority.

1.66 "**Lending Member**" shall have the meaning set forth in Section 6.3(b).

1.67 "**Liability**" means any debt, liability, commitment, or obligation of any nature, whether pecuniary or not, asserted or unasserted, accrued or unaccrued, absolute or contingent, matured or unmatured, liquidated or unliquidated, determined or determinable, incurred or consequential, known or unknown, and whether due or to become due, including those arising under any Contract, Law, or Order.

1.68 "**Liquidation Value**" means, with respect to any Unit and as of any date of determination, the amount of cash that would be distributed to a Member in respect of such Unit if the Company sold all of its assets as a going concern for an amount of cash equal to their aggregate Fair Market Value and distributed the proceeds pursuant to Section 10.2.

1.69 "**Liquidating Representative**" shall have the meaning set forth in Section 10.2.

1.70 "**Liquidity Event**" means any of the following with respect to the Company:

(a) any transaction or series of related transactions resulting in the consummation of a merger, combination, consolidation or other reorganization of the Company with or into any third party;

(b) any transaction or series of related transactions resulting in the consummation of the sale, lease, exclusive or irrevocable licensing or other transfer of all or substantially all of the assets of the Company and its Subsidiaries (on a consolidated basis) to a third party; or

(c) any transaction or series of related transactions resulting in the transfer or issuance, whether by merger, combination, consolidation or otherwise, of the Company's securities to a Person or group if, after such transfer or issuance, such Person or group would hold fifty percent (50%) or more of the voting power of (i) the Company's outstanding securities or (ii) if the surviving or resulting entity is a wholly-owned subsidiary of another entity immediately following such transaction(s), the parent entity of such surviving or resulting entity; provided, however, that a "Liquidity Event" shall not include any merger, combination, consolidation, reorganization, sale, lease, exclusive or irrevocable licensing or transfer (each, an "Extraordinary Transaction") following which the holders of equity interests in the Company immediately prior to such Extraordinary Transaction continue to directly or indirectly hold more than fifty percent (50%) of the voting power of the outstanding securities of the Company or the surviving or acquiring entity (or the direct or indirect parent entity thereof); provided that, a Liquidity Event shall not be deemed to include any sale of the Company's Equity Interests that would constitute a Permitted Transfer hereunder.

1.71 "**Losses**" shall have the meaning set forth in Section 1.11 of Exhibit 8.

1.72 "**Lost Winds**" shall have the meaning set forth in the preamble to this Agreement.

1.73 "**Majority Approval**" means, with respect to the vote or consent of the Members, the Participating Members or the Managers in respect of any matter, that such matter is approved by Lost Winds in its capacity as a Member, Participating Member or Manager, as applicable, voting in person or by proxy at a meeting of Members, Participating Members or Managers or at any adjournment thereof, or by resolution that is signed by Lost Winds in accordance with the terms of this Agreement.

1.74 "**Management Investors**" means, initially, each of TGCA and Covenant.

1.75 "**Management Member**" means any Member (a) who is (or, if an entity, which is controlled by) an employee, director, consultant or other service provider of the Company or any of its Subsidiaries or (b) who was (or, if an entity, which is controlled by an individual who was) an employee, director, consultant or other service provider of the Company or any of its Subsidiaries at the time when the Company issued Units to such Member, and includes as of the date hereof, each of the Management Investors.

1.76 "**Manager**" means any Person who becomes a Manager under the terms of this Agreement until such Person shall cease to be a Manager as provided herein.

1.77 "**Managing Partner**" shall have the meaning set forth in Section 5.5(h).

1.78 "**Member**" means a Member identified on the signature pages attached hereto, or an Additional Member or an Assignee who is admitted as a Member in accordance with the terms of this Agreement and the Act, for so long as such Person continues to hold an Economic Interest in any of the Units. The Members as of the Effective Date are set forth on Exhibit 4.1 hereto. Additional Members may be admitted as provided in this Agreement and will be designated as such on Exhibit 4.1 or reflected in the Company's records.

1.79 "**Membership Interest**" means, in respect of a Member, the limited liability company interest of such Member in the Company, represented in each case by the Units held by such Member, including the right of such Member to any and all the benefits to which such Member may be entitled as provided in this Agreement and in the Act, together with the obligations of such Member to comply with all the provisions of this Agreement and of the Act. The initial Membership Interest of each Member shall be the Membership Interest set forth on Exhibit 4.1, which Membership Interest is expressed as a percentage determined by dividing (a) the number of Units (other than any unvested Units) held by such Member at such time by (b) the total number of Units (other than any unvested Units) collectively held by all Members at such time. The Membership Interests of the Members may change from time to time. Changes in Membership Interests after the Effective Date, including those necessitated by the issuance or vesting of additional Units and Transfers of Units, will be reflected in the Company's records.

1.80 "**Member Loan**" shall have the meaning set forth in Section 6.3(a).

1.81 "**Net Capital Proceeds**" means the net cash proceeds received by the Company in connection with any Terminating Capital Transaction after (i) payment of all loans from Members, including the interest thereon, (ii) payment of such other debt or obligations required to be paid as a result of such Terminating Capital Transaction or which the Board elects to repay out of the proceeds of such Terminating Capital Transaction, including, without limitation, the accrued interest and premium, if any, thereon, (iii) payment of the costs and expenses incurred in connection with such Terminating Capital Transaction, including, without limitation, any sales commissions or other costs and expenses due and payable to any Person in connection with such Terminating Capital Transaction, and (iv) creation of reasonable reserves for contingencies and other matters as may be determined by the Members acting by Majority Approval. Any and all reserves established under this definition which are from time to time released shall in all circumstances at and after the time of release constitute Net Capital Proceeds and not Net Cash Flow.

1.82 "**Net Cash Flow**" means, for each Distribution Period or other period of the Company for which Net Cash Flow is calculated, the Gross Cash Receipts for such Distribution Period or other period, less all Operating Expenses paid by or for the account of the Company during the same Distribution Period or other period, and less any increase in the amount of Cash Reserves for such period. Net Cash Flow shall be determined in accordance with the cash receipts and disbursements method of accounting and otherwise in accordance with GAAP. Net Cash Flow shall not be reduced by depreciation, amortization, cost recovery deductions, depletion, similar allowances or other non-cash items, but shall be increased by any reduction of Cash Reserves

previously established under this definition which are from time to time released. Net Cash Flow shall not include Net Capital Proceeds.

1.83 "**New Equity Interests**" shall have the meaning set forth in Section 6.7(a).

1.84 "**New Equity Offering**" shall have the meaning set forth in Section 6.7(a).

1.85 "**New Issuance Exercise Period**" shall have the meaning set forth in Section 6.7(a)(i).

1.86 "**New Issuance Notice**" shall have the meaning set forth in Section 6.7(a).

1.87 "**New Member**" shall have the meaning set forth in Section 6.7(d).

1.88 "**Non-Defaulting Member**" shall have the meaning set forth in Section 6.3(a).

1.89 "**Notice**" shall have the meaning set forth in Section 11.6.

1.90 "**Notice of Exercise**" shall have the meaning set forth in Section 6.7(a)(i).

1.91 "**Officer**" or "**Officers**" shall have the meaning set forth in Section 5.5(a).

1.92 "**Operating Expenses**" means, with respect to any Distribution Period or other period of the Company for which Operating Expenses are calculated, all costs, expenses and other amounts paid by or for the account of the Company during such period (including, without limitation, payments of principal and interest on any Company indebtedness and any expenses reimbursed to the Members during such period but excluding any costs and expenses included in the calculation of Net Capital Proceeds).

1.93 "**Order**" means any order, judgment, decree, injunction, stipulation, settlement, or consent order of or with any Governmental Authority.

1.94 "**Original Agreement**" shall have the meaning set forth in the recitals to this Agreement.

1.95 "**Participating Members**" means Lost Winds, JRS and TGCA.

1.96 "**Partnership Representative**" shall have the meaning set forth in Section 11.4.

1.97 "**Permitted Transfer**" shall mean a Transfer to a Permitted Transferee or otherwise effected strictly in compliance with the terms of Article IX.

1.98 "**Permitted Transferee**" means, (a) with respect to any Member who is an individual or is controlled by an individual, such Member's spouse, parents or children (whether natural, step or by adoption), or a trust, partnership, corporation, limited liability company or other estate planning vehicle controlled by such individual (for so long as such individual is alive and not Disabled) and established solely for the benefit of such Persons or for legitimate estate planning purposes, and which remain subject to applicable vesting, transfer and forfeiture restrictions; (b)

with respect to any Member that is a trust, all the beneficiaries of such trust or the grantor of the trust; and (c) with respect to any Member that is an entity, any Affiliate of such Member.

1.99 "**Person**" means and includes an individual, proprietorship, trust, estate, partnership, joint venture, association, company, corporation, limited liability company or other entity, regardless of the form of organization and whether organized for profit or otherwise.

1.100 "**PMG**" shall have the meaning set forth in the recitals to this Agreement.

1.101 "**Pre-Emptive Right**" shall have the meaning set forth in Section 6.7(a)(i).

1.102 "**Principals**" mean Lost Winds, JRS and TGCA.

1.103 "**Proceeding**" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal.

1.104 "**Profits**" shall have the meaning set forth in Section 1.11 of Exhibit 8.

1.105 "**Profits Interest Units**" means a Unit having the rights and obligations specified with respect to the Profits Interest Units set forth in this Agreement. Prior to vesting, the Profits Interest Units shall be non-voting and, except as expressly provided to the contrary herein, shall not have any Pre-Emptive Rights or Tag-Along Rights for any purposes hereunder or be entitled to any distributions under Article VII.

1.106 "**Prohibited Transfer**" means any Transfer of any Equity Interests of the Company (other than in connection with a Company Sale) to a Person which (a) may not be effected without registering the securities involved under the Securities Act, (b) would result in the assets of the Company constituting "Plan Assets" (as such term is defined in the Department of Labor regulations promulgated under the Employee Retirement Income Security Act of 1974, as amended), (c) would cause the Company to be controlled by or be under common control with an "investment company" for purposes of the Investment Company Act of 1940, as amended, or to register as an investment company under such Act, (d) would require any securities of the Company to be registered under the Exchange Act, (e) would cause the Company to be a publicly traded partnership within the meaning of Code Section 7704 (and the Regulations promulgated thereunder), (f) would violate any federal securities laws or any state securities or "blue sky" laws (including any investor suitability standards) applicable to the Company or the interest to be Transferred, (g) would cause the Company to have more than one hundred (100) members (within the meaning of Regulations Section 1.7704-1(h), including the look-through rule in Regulations Section 1.7704-1(h)(3)), or (h) is in violation of this Agreement.

1.107 "**Property**" means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

1.108 "**Proposed Transfer Notice"** shall have the meaning set forth in Section 9.3(a).

1.109 "**Regulations**" means the Treasury Regulations issued under the Code, (whether temporary, proposed, or final) as amended from time to time. Reference to any particular provision

of the Regulations shall mean that provision of the Regulations on the date of this Agreement and any succeeding provision of the Regulations.

1.110 "**Related Party**" means any (a) any officer, director, manager, employee, direct or indirect equity holder or Affiliate of the Company, its Subsidiaries or any of the Members, (b) any parent, sibling, child, grandchild or spouse of any individual listed in clause (a), or any trust, partnership or corporation in which any of such Person has or has had an economic interest, or (c) any Affiliate of the foregoing Persons.

1.111 "**Representative**" means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

1.112 "**Rule 506(d) Related Party**" means, with respect to any Member, any other Person that is a beneficial owner of such first Person's securities for purposes of Rule 506(d) of the Securities Act.

1.113 "**Scatterday**" means Rick Scatterday.

1.114 "**Securities Act**" means the United States Securities Act of 1933 and applicable rules and regulations thereunder. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future law.

1.115 "**Selling Member**" shall have the meaning set forth in Section 9.3(a).

1.116 "**Selling Notice**" shall have the meaning set forth in Section 9.3(b).

1.117 "**Service**" means the United States Internal Revenue Service.

1.118 "**Service Member**" The Service Members and their affiliated Management Members are as follows:

Service Member:	Affiliated Management Member:
Travis Goad	TGCA
Rick Scatterday	Covenant

1.119 "**Sharing Ratio**" means, with respect to any Member, the percentage in which such Member participates in the Distributions of Net Cash Flow. The initial Sharing Ratio of each Member is set forth on Exhibit 4.1, which Sharing Ratio may change from time to time. Changes in Sharing Ratios after the Effective Date, including those necessitated by the forfeiture, issuance, or vesting of additional Units and Transfers of Units, will be calculated by the Mangers and reflected in the Company's records.

1.120 "**State**" means the State of Delaware.

1.121 "**Subsidiary**" means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which, (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity (other than a corporation), if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any managing member, general partner or analogous controlling Person of such limited liability company, partnership, association or other business entity. For purposes hereof, references to a "Subsidiary" of any Person shall be given effect only at such times that such Person has one or more Subsidiaries and, unless otherwise indicated, the term "Subsidiary" refers to a Subsidiary of the Company.

1.122 "**Substituted Member**" means any Person admitted to the Company as a Member pursuant to Section 9.7 by virtue of such Person's (a) receiving all or a portion of a Membership Interest from a Member or its Assignee (and not from the Company) and (b) having complied with the requirements of Section 9.7.

1.123 "**Successor in Interest**" means any (a) trustee, custodian, receiver or other Person acting in any Bankruptcy or reorganization proceeding with respect to, (b) assignee for the benefit of the creditors of, (c) trustee or receiver, or current or former officer, director or partner, or other fiduciary acting for or with respect to the dissolution, liquidation or termination of, or (d) other Transferee, executor, administrator, committee, legal representative or other successor or assign of any Member, whether by operation of law or otherwise (including any Person acquiring (whether by merger, consolidation, sale, exchange or otherwise) all or substantially all of the assets or Equity Interests of the Company and its Subsidiaries).

1.124 "**Tag-Along Expiration Date**" shall have the meaning set forth in Section 9.4(a).

1.125 "**Tag-Along Interests**" shall have the meaning set forth in Section 9.4(a).

1.126 "**Tag-Along Members**" shall have the meaning set forth in Section 9.4(a).

1.127 "**Tag-Along Notice**" shall have the meaning set forth in Section 9.4(a).

1.128 "**Tag-Along Right**" shall mean the tag-along right described in Section 9.4.

1.129 "**Tag-Along Sale**" shall have the meaning set forth in Section 9.4(a).

1.130 "**Tax Distribution**" shall have the meaning set forth in Section 7.4.

1.131 "**Tax Distribution Conditions**" shall have the meaning set forth in Section 7.4.

1.132 "**TCA**" shall have the meaning set forth in Section 8.1.

1.133 "**Terminating Capital Transaction**" means, (i) the sale of all or substantially all of the Company's assets outside the ordinary course, (ii) the dissolution of the Company, (iii) the sale of all the equity interests in the Company or the merger or consolidation of the Company by the Company to or with any Person where the proceeds of such sale, merger or consolidation are paid to the Company, or (iv) any equivalent transaction as determined by the Members acting by Majority Approval, in each case with the intent to liquidate the Company; provided that to the extent that a transaction constitutes a Terminating Capital Transaction and a Liquidity Event then such transaction shall be considered solely a Terminating Capital Transaction for purposes of Article VII hereof.

1.134 "**TGCA**" shall have the meaning set forth in the preamble to this Agreement.

1.135 "**Third Party Subscriber**" shall have the meaning set forth in Section 6.7(b).

1.136 "**Threshold Value**" means, with respect to any Profits Interest Unit, (a) the aggregate Liquidation Value of all Units outstanding immediately prior to the issuance of such Profits Interest Unit, as set forth in the applicable Grant Agreement, or (b) such other amount set forth in the applicable Grant Agreement evidencing the issuance of such Profits Interest Unit (provided, that, for the avoidance of doubt, such amount will be no less than the amount determined pursuant to clause (a)). The Threshold Value with respect to all Profit Interests Units granted as of, or promptly following, the Effective Date, shall be based on the Liquidation Value of all Units as of the Effective Date.

1.137 "**Transfer**" means any direct or indirect sale, transfer, assignment, pledge, mortgage, exchange, hypothecation, grant of a security interest or other disposition or encumbrance of an interest, in whole or in part (whether with or without consideration, whether voluntarily or involuntarily or by operation of law or otherwise). The terms "Transferee," "Transferor," "Transferred," and other forms of the word "Transfer" shall have the correlative meanings.

1.138 "**Unit Pool**" shall have the meaning set forth in Section 6.1(c).

1.139 "**Unit**" shall have the meaning set forth in Section 6.1(a).

ARTICLE II
FORMATION, NAME AND TERM

2.1 **Formation; Continuation**. The Members agree that the Company has continued without division or dissolution and that it will be governed by this Agreement, which restates and supersedes in its entirety the Original Agreement. The Members hereby execute this Agreement for the purpose of establishing and continuing the affairs of the Company and the conduct of its business in accordance with the provisions of the Act. The Members hereby agree that during the term of the Company, the rights and obligations of the Members with respect to the Company will

be determined in accordance with the terms and conditions of this Agreement and the Act. To the extent that the rights, powers, duties, obligations and liabilities of any Members are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

2.2 **Name, Office and Registered Agent**. The name of the Company shall be "Pelorus Capital Group, LLC." The principal office and place of business of the Company shall be 124 Tustin Ave., Suite 200, Newport Beach, CA 92663. The name of the registered agent and the registered office of the Company, for purposes of the Act is as set forth in the Certificate of Formation. The Board may at any time change the location of the principal office or the registered agent, provided the Board gives notice to all Members of any such change. The Company may have such other offices as the Board may from time to time designate.

2.3 **Powers; Purposes**.

(a) *General Powers*. The Company shall have all of the powers of a Delaware limited liability company, including the power to engage in any lawful act or activity for which limited liability companies may be organized under the Act.

(b) *Purposes*. The nature of the initial activities or purposes to be conducted or promoted by the Company is to acquire, own and/or dispose of Equity Interests of PMG and its Subsidiaries. The Company may engage in any and all activities necessary, desirable or incidental to the accomplishment of the foregoing and any other activities to the extent not prohibited by applicable law.

(c) *Limitation*. Notwithstanding anything herein to the contrary, nothing set forth herein shall be construed as authorizing the Company to possess any purpose or power, or to do any act or thing, forbidden by law to a limited liability company organized under the laws of the State of Delaware.

2.4 **Term**. The term of the Company shall continue perpetually, unless sooner terminated as provided in Article X.

2.5 **Qualification in Other States**. If the business of the Company is carried on or conducted in states in addition to Delaware, then the Members severally agree to execute such other and further documents as may be required or requested by the Board to qualify the Company in such states.

ARTICLE III
BUSINESS OF THE COMPANY

The Company is formed to transact the Business and any other lawful business not required to be stated specifically in this Agreement and for which limited liability companies may be formed under the Act.

ARTICLE IV
RIGHTS AND OBLIGATIONS OF MEMBERS

4.1 **Members**. The Members of the Company are those Persons listed on the attached Exhibit 4.1, and the business and notice address of each such Member is set forth on Exhibit 4.1. The Board will update Exhibit 4.1 and/or reflect in its records whenever necessary to reflect the names and addresses of each Member and the Membership Interests and Sharing Ratios thereof.

4.2 **Authority of the Members**. Except as otherwise expressly provided in this Agreement, no Member will have any authority to act for, or to assume any obligations or responsibility on behalf of, or bind any other Member or the Company. Each of the Members agrees that it will not represent to any third party with whom such Member is in contact concerning the affairs or the business of the Company that such Member has any authority to act for, or to assume any obligations or responsibilities on behalf of, the Company unless expressly authorized by the Board of Managers.

4.3 **Books and Records; Place; Access**. In accordance with Section 11.3, the Company shall maintain, and shall cause its Subsidiaries to maintain, books and records at the Company's principal office or such other place as may be designated by the Board. Upon providing ten days prior written notice to the Company, setting forth in reasonable detail the reasons therefor, any Member or its designated Representative will have the right, during normal business hours, pursuant to Section 18-305 of the Act, to have access to and inspect, at its sole cost and expense, such books and records.

4.4 **Annual and Quarterly Reports**. Subject to the terms of Section 5.9, the Company shall furnish to each Member:

(a) as soon as reasonably practical after the end of each Fiscal Year, an unaudited consolidated balance sheet of the Company and its Subsidiaries as of the end of such Fiscal Year and unaudited consolidated statements of income and cash flows of the Company and its Subsidiaries for the Fiscal Year then ended, prepared in each case in accordance with the cash receipts and disbursements method of accounting and setting forth in each case in comparative form the comparable figures for the previous Fiscal Year; and

(b) as soon as reasonably practical after the end of each fiscal quarter, the unaudited consolidated balance sheet of the Company at the end of such quarter and the consolidated statements of income and cash flows of the Company and its Subsidiaries for such quarter, all in reasonable detail and all prepared in accordance with the cash receipts and disbursements method of accounting, subject to year-end adjustments.

4.5 **No Right to Withdraw**. Except as set forth in this Agreement or in an agreement between the Member and the Company, no Member shall have any right to withdraw or resign voluntarily as a member (as defined in the Act) from the Company without the unanimous written consent of the Board.

4.6 **Places of Meetings**. All meetings of the Members shall be held at such place, either within or without of the State, as from time to time may be fixed by the Board. A Member may

attend in person or by conference call or other means where each participant can hear and be heard. For purposes of this Agreement, such telephonic attendance shall be deemed in person attendance at any such meeting.

4.7 **Regular Meetings**. Regular meetings of the Members, for the transaction of such business as may come before the meeting, may be held on a quarterly or other more or less frequent basis as may be determined by the Board of Managers.

4.8 **Special Meetings**. A special meeting of the Members for any purpose or purposes may be called at any time by the Board or by any Member holding at least 25% of the Membership Interests in accordance with Section 4.9 below. At a special meeting no business shall be transacted, and no action shall be taken other than that stated in the notice of the meeting.

4.9 **Notice of Meetings**. The Board or Member(s) calling the regular or a special meeting will use reasonable efforts to provide all Members with adequate written (which may be by email) notice, which shall not be less than five (5) Business Days prior to such meeting unless otherwise agreed by the Members.

4.10 **Voting and Form of Proxy; Waiver of Notice**. Except as otherwise provided in the Act:

(a) At any meeting, whether regular or special, of the Members, each Member entitled to vote on any matter coming before the meeting may authorize another Person or Persons to act for him, her or it by proxy by an instrument executed in writing and filed with an appropriate Officer of the Company or the Board of Managers. If any such instrument designates two or more Persons to act as proxies, any proxy may exercise all of the powers conferred by such written instrument unless the instrument otherwise provides. No proxy will be valid for more than one year from the date of its execution. Subject to the above, any proxy may be revoked if an instrument revoking it or a proxy bearing a later date is filed with an Officer of the Company or the Board of Managers.

(b) The vote of the Members present constituting Majority Approval hereunder shall constitute the act of the Members, unless a greater or lesser vote is required by the Act or this Agreement.

(c) Notice of any regular or special meeting may be waived either before, at or after such meeting in writing signed by the Member entitled to the notice. Attendance by a Member at a meeting will constitute a waiver of notice of such meeting, unless the Member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened.

4.11 **Quorum; Adjourned Meetings**. The presence, in person or by proxy, of Members constituting Majority Approval hereunder will constitute a quorum for the transaction of business at any regular or special meeting of the Members. If a quorum is not present at a meeting, the Members present will adjourn to such day as they will agree upon by a vote of the Members present who hold a majority of the Membership Interests held by the Members who are present. Notice of any adjourned meeting need not be given if the date, time and place thereof are announced at

the meeting at which the adjournment is taken. At adjourned meetings at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally noticed. A quorum must always be present for the Members to transact business at any regular or special meeting of the Members

4.12 **Conference Communications**. To the fullest extent permitted under the Act, one or more Members may attend any meeting of the Members by conference telephone, video conference, or similar means of communication by which all Persons participating in the meeting can hear each other for the entire discussion of the matter(s) to be voted upon. For the purposes of establishing a quorum and taking any action at the meeting, Members participating pursuant to this Section 4.12 will be deemed present in person at the meeting.

4.13 **Organization**. At each meeting of the Members, the Board of Managers will select who will act as chair; and the Secretary or, in his or her absence, any Person whom the chair of the meeting will appoint, will act as secretary of the meeting.

4.14 **Order of Business**. The order of business at each meeting of the Members will be determined by the chair of the meeting, but such order of business may be changed by the vote of the Members present who hold a majority of the Membership Interests held by the Members who are present.

4.15 **Action Without a Meeting**. Any action required to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting with a written consent (which written consent can be delivered by email). Such consent shall set forth the action so taken with the signature of the requisite Members required to act at a meeting, whether before or after such action. Such consent shall have the same force and effect as a requisite vote of the Members, and the Board may so describe it as such in any article or document filed with the Secretary of State of the State or otherwise.

4.16 **Liability of Members**.

(a) *No Personal Liability*. Except as otherwise required by the Act or as expressly set forth in this Agreement (including in Section 4.16(b)), no Member shall have any personal liability whatsoever in such Member's capacity as a Member, whether to the Company, to any of the other Members, to the creditors of the Company or to any other third party for the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise (including those arising as a Member or an equity holder, an owner or a shareholder of another Person). Each Member shall be liable only to make such Member's Capital Contribution to the Partnership, if applicable, and any other payments provided for expressly herein. Without limiting the foregoing, to the fullest extent permitted by applicable law, no Member (in its capacity as such) shall have any duty (including fiduciary duty), or any liability for breach of duty (including fiduciary duty), to any member of the Company Group or any other Member; it being understood that any Management Member that is an officer, employee or other service provider to any member of the Company Group shall owe to the Company and its Subsidiaries and the other Members such duties of the type owed by such officers, employees or other service providers under applicable law.

(b) *Return of Distributions*. Under the Act, a Member may, under certain circumstances, be required to return amounts previously distributed to such Member. It is the intent of the Members that no Distribution to any Member pursuant to Article VII or Article X shall be deemed to constitute money or other property paid or distributed in violation of the Act, and the Member receiving such Distribution shall not be required to return to any Person any such money or property, except as otherwise expressly set forth herein or the Act. If, however, it is required pursuant to the Act or any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Member is obligated to make any such payment, such obligation shall be the obligation of such Member and not of the other Members.

4.17 **Investment Representations of Members**. Each Member hereby represents, warrants and acknowledges to the Company that: (a) such Member has such knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of an investment in the Company and is making an informed investment decision with respect thereto; (b) such Member has had an opportunity to ask the Company and its representatives questions and receive answers thereto concerning the terms and conditions of the interests to be acquired by such Member hereunder and has had full access to such other information concerning the Company and its Subsidiaries as such Member may have requested in making such Person's decision to invest in the Company; (c) such Member is acquiring interests in the Company for investment only and not with a view to, or for resale in connection with, any distribution to the public or public offering thereof; (d) the execution, delivery and performance of this Agreement have been duly authorized by such Member and will not (with or without the giving of notice, the lapse of time, or both) result in a violation or breach of, conflict with, or require approval, consent or authorization under any Law or Contract applicable to such Member and (e) such Member (other than, if applicable, an individual Member that is an employee or service provider of the Company and/or its Subsidiaries all of whose Units were received in connection with a compensatory plan) is an accredited investor as such term is defined in Regulation D promulgated pursuant to Section 4(2) of the Securities Act and none of the "bad actor" disqualifying events described in Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act (a "Disqualification Event") is applicable to such Member or any of its Rule 506(d) Related Parties, except, if applicable, for a Disqualification Event as to which Rule 506(d)(2) or (d)(3) is applicable. Each Member acknowledges and agrees that the interests in the Company have not been registered under the Securities Act or under any other applicable securities laws and that such interests may not be sold, assigned, pledged or otherwise disposed of at any time without effective registration under the Securities Act and such other laws or exemption therefrom and compliance with the other substantial restrictions on transferability set forth in this Agreement.

ARTICLE V
DUTIES OF BOARD OF MANAGERS

5.1 **Board of Managers**.

(a) *Managers' Authority*. Except as otherwise specifically provided in this Agreement or the Act, the Board of Managers of the Company (the "Board of Managers" and also sometimes referred to herein as the "Board"), in its sole and absolute discretion, shall have complete authority and exclusive control to conduct any business on behalf of the Company without the consent of any Member, which authority may be delegated in part as provided in

Section 5.5. Unless otherwise specifically set forth in this Agreement, at all meetings of the Board, a majority of the voting Managers then in office shall be necessary and sufficient to constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the Board, a majority of the Managers thereat may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum shall be present. Unless otherwise set forth herein, the vote, consent, approval or ratification of at least a per capita majority of the Managers at a meeting where a quorum is present shall be required in order to constitute the action of the Board, including with respect to those matters listed in Section 5.1(b). In such case, no Manager (in his or her capacity as such) shall cause the Company to become bound to any contract, agreement or obligation, and no Manager shall take any other action on behalf of the Company, unless such matter has received the vote, consent, approval or ratification as required pursuant to the foregoing sentence. No Member (by sole virtue of such Person's capacity as a Member) has the actual or apparent authority to cause the Company to become bound to any contract, agreement or obligation, and no Member shall take any action purporting to be on behalf of the Company.

(b) *Limitations on Authority; Matters Requiring Majority Approval*. Notwithstanding anything to the contrary herein, the Company will not take and no Member, Manager or Officer, (or any Person to whom the Managers or an Officer has delegated authority) shall have authority to, or cause the Company or any Subsidiary to, do any of the following unless such action has been approved by the Members acting by Majority Approval:

(i) incur any expenditures, liabilities or debt, on behalf of the Company in excess of Fifty Thousand Dollars ($50,000), whether as part of a single transaction or plan or in multiple transactions in any thirty (30) day period;

(ii) negotiate, execute, consent and/or otherwise approve any contract binding the Company which exceeds fifty thousand dollars ($50,000), whether as part of a single transaction or plan or in multiple transactions in any thirty (30) day period;

(iii) enter into any transaction, contract or arrangement with any Related Party unless each of the terms of such transaction, contract or arrangement, as the case may be, is at least as favorable to such member of the Company Group as could have been obtained by such member of the Company Group from a third party in an arm's length transaction;

(iv) incur, increase, modify, consolidate or extend any Indebtedness other than as set forth in the Annual Budget in excess of $50,000, whether secured or unsecured, affecting the Company;

(v) sell or otherwise dispose of all or substantially all of the Company's business and/or assets, whether as part of a single transaction or plan or in multiple transactions, except in the orderly liquidation and winding up of the Company's business upon its duly authorized dissolution;

(vi) merge or combine the Company with another entity;

(vii) enter into a Contract with any Officer or other member of the senior executive team;

(viii) purchase or otherwise acquire any securities or other ownership interests in any Person or otherwise make any investment in any Person;

(ix) approve an Annual Budget;

(x) confess any judgment against the Company

(xi) commence, defend or settle any legal action;

(xii) file any petition or consent to the filing of any petition that would subject the Company or any member of the Company Group to a Bankruptcy;

(xiii) prepay any Indebtedness of the Company or any Subsidiary if such prepayment would require additional Capital Contributions to be called under this Agreement, or to call Capital Contributions to fund repayment of any such Indebtedness at maturity except to the extent refinancing is not available on commercially reasonable terms to fund such repayment.

5.2 **Managers**. The initial number of Managers on the Board shall be two (2) Managers (each of whom shall have one vote). The initial Managers (the "Initial Managers") of the Board shall be:

Appointed by	Manager
Lost Winds	Lost Winds
JRS	JRS

Each Manager shall serve until such Manager's death, resignation or removal by the Member that appointed such Manager. Any Member may at any time and from time to time remove and replace its appointed Manager by providing no less than three (3) days prior written notice to the other Members.

5.3 **Duties; Right to Rely; Limitation of Liability**.

(a) *Right to Rely*. In performing its duties, each Manager and Officer shall be entitled to rely in good faith on the provisions of this Agreement and on information, opinions, reports or statements (including financial statements and information, opinions, reports or statements as to the value or amount of the assets, liabilities, profits or losses of the Company and its Subsidiaries or any facts pertinent to the existence and amount of assets from which Distributions to Members might properly be made), of the following other Persons or groups: (i) one or more officers or employees of any of the Company's Subsidiaries, (ii) any attorney, independent accountant or other Person employed or engaged by the Company or any of its Subsidiaries, or (iii) any other Person who has been selected with reasonable care by or on behalf of the Company or any of its Subsidiaries, in each case, as to matters which such relying Person reasonably believes to be within such other Person's professional or expert competence.

(b) *No Personal Liability*. No individual who is a director, manager, officer, employee, member or direct or indirect owner of equity interests in the Company, the Managers or any of their respective Affiliates, or any combination of the foregoing, shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation or liability of the Company, whether that liability or obligation arises in contract, tort or otherwise solely by reason of being a director, manager, officer, employee, member or direct or indirect owner of the Company, the Managers or any of their respective Affiliates or any combination of the foregoing.

(c) *Limitation of Liability*. Notwithstanding any other provision to the contrary in this Agreement, no Manager, Officer, employee, member, or direct or indirect owner of any Manager or any of its Affiliates shall be liable, responsible or accountable in damages or otherwise to the Company or to any Member for any loss, damage, cost, liability or expense incurred by reason of or caused by any act or omission performed or omitted by such Manager, Officer, employee, member, or direct or indirect owner of any Manager or any of its Affiliates, whether alleged to be based upon or arising from errors in judgment, negligence, or breach of duty, except for: fraud, willful misconduct, or gross negligence (as defined under Delaware law) in the conduct of such Person's office. Without limiting the foregoing, in no event will any Manager or Officer be liable for: (A) the failure to take any action not specifically required to be taken by the Managers or Officers under the terms of this Agreement; or (B) any mistake, misconduct, negligence, dishonesty or bad faith on the part of any other Officer or other agent of the Company appointed in good faith by the Manager.

(d) *Applicability to Persons whom the Manager has Delegated Authority*. The Board may, but is not required to, provide for the limitation of liability in excess of any limitation granted by the Act for Persons to whom the Board delegates management authority.

5.4 **Actions of the Managers**.

(a) Managers may attend any meeting of the Board by conference telephone, video conference, or similar means of communication by which all Persons participating in the meeting can hear each other for the entire discussion of the matter(s) to be voted upon, and all Managers so attending shall be deemed present at the meeting for all purposes, including the determination of whether a quorum is present.

(b) The vote, consent, approval or ratification of a Manager with respect to any matter may be given at a meeting of the Board or may be given in writing in lieu of an actual meeting (which writing may be delivered by email). The proceedings and deliberations of the Board need not be in writing. A meeting of the Board may be called by any Manager on at least two (2) Business Days' notice to the other Managers, either personally or by telephone, express delivery service (so that the scheduled delivery date of the notice is at least two (2) Business Days in advance of the meeting) or electronic mail, or on five (5) Business Days' notice by mail (effective upon deposit of such notice in the mail). The notice need not describe the purpose of the meeting but shall indicate the date, time and place of the meeting.

(c) Any action required to be taken at a meeting of the Board, or any action which may be taken at a meeting of the Board, may be taken without a meeting with a written consent (which written consent can be delivered by email). Such consent shall set forth the action

so taken with the signature of the requisite Managers required to act at a meeting, whether before or after such action. Such consent shall have the same force and effect as a requisite vote of the Board, and the Board may so describe it as such.

5.5 **Officers**.

(a) *Appointment of Officers*. The Board may at any time appoint such officers of the Company that the Board considers appropriate (each, an "Officer" and collectively, the "Officers"), provided that such appointee shall have the relevant experience and expertise to perform the functions of such office. Any Manager may also be appointed as an Officer and any two or more offices may be held by the same Person.

(b) *Removal of Officers*. Any Officer may be removed summarily with or without cause, at any time, by the Board.

(c) *Vacancies.* Vacancies, including a vacancy caused by the death, disability, resignation, or removal of any Officer, may be filled by the Board.

(d) *Duties*. The Officers shall have such powers and duties as are hereinafter provided or as from time to time shall be conferred upon them by the Board. The Board shall have the power to delegate any of its authority hereunder to any Officer, Officers, one Person, several Persons or a committee of Persons (with such titles as the Board shall elect), including with respect to the management of the day-to-day operations of the Company and its Subsidiaries, subject in all cases to Section 5.1(b). Delegation of any powers pursuant to this Section 5.5(d) shall not of itself create an employment agreement or any other contract right. The Board, in its sole discretion, may withdraw any powers delegated pursuant to this Section 5.5(d) at any time and from time to time for any reason or no reason. The delegation of authority by the Board pursuant to this Section 5.5(d) shall not relieve the Managers from their duties and responsibilities set forth in the Act or in this Agreement.

(e) *Limitation on Authority*. Notwithstanding anything to the contrary in this Agreement or the Act, without the consent of the affected Member, the Managers or Officers may not undertake any act that would cause the Member to incur personal liability for the Company's obligations.

(f) *Compensation of Officers*. The compensation of the Officers of the Company and all policies pertaining thereto shall be established by the Board.

(g) *Limitation on Liability of Officers*. Each Officer shall be liable only to the extent of, and indemnified as provided in, Section 5.8.

(h) *Managing Partner; Duties*. The Managers hereby appoint Travis Goad as the "Managing Partner" of the Company. The Managing Partner shall assist the Company with its investment and lending activities as set forth herein, including, without limitation, managing, overseeing, facilitating, and participating in the Company's and its Affiliates' investment contracts, including, warrants, options, convertible debt instruments, or otherwise.

(i) *Consultation Rights*. The Managers and Managing Partner shall use commercially reasonable efforts to consult with each other in connection with the following matters:

(i) any matters involving a material actual or potential conflicts of interest with the Company, any member of the Company Group and any other Affiliates thereof;

(ii) market developments and potential adjustments to the Business, based on the market conditions;

(iii) investments or potential real estate, financing, or other Business strategies and opportunities; and

(iv) the determination of the amount and timing of Net Cash Flow and Net Capital Proceeds Distributions by the Company and the annual rate of Guaranteed Payments payable to the Managers and Managing Director by the Company and any modifications to such Guaranteed Payments.

5.6 **Investment Committee; Additional Committees**.

(a) *Investment Committee*. The Board hereby establishes an Investment Committee (the "Investment Committee") which shall have exclusive authority over investment and credit decisions with respect to each member of the Company Group. The Investment Committee will initially be comprised of two (2) members, one of which shall be a Manager and the other shall be the Managing Partner. The initial members of the Investment Committee will be Daniel Leimel and Travis Goad.

(b) *Additional Committees*. The Board, as it deems necessary or appropriate, may create any one or more additional committees, including, without limitation, an advisory committee, audit committee, compensation committee or executive committee, and appoint any two or more Managers and/or Officers to serve as members of any such committee, and delegate to such committee any power or responsibility not exclusively reserved to the Board in this Agreement, the Act or the Certificate of Formation

(c) *Committee Meetings*. Regular and special meetings of any committee established pursuant to this Section 5.6 may be called and held subject to the same requirements with respect to time, place and notice as are specified in this Agreement for regular and special meetings of the Board.

(d) *Quorum and Vote Required*. A majority of the members of any committee serving at the time of any meeting thereof (which must include Mr. Leimel) shall constitute a quorum for the transaction of business at such meeting. Every act or decision done or made by the approval of a majority of the members of any committee present at a meeting duly held at which a quorum is present, which must include the approval of Mr. Leimel, shall constitute the act of such committee. The members of the committee shall be elected as above provided and shall hold office until their successors are appointed by the Board or until such committee is dissolved by the Board. Any member of a committee may resign at any time by giving written notice of its

intention to do so to the Board. Any vacancy occurring in a committee resulting from any cause whatsoever may be filled by the Board.

5.7 **Compensation of Managers and Managing Partner**. The Managers and Managing Partner shall be entitled to receive guaranteed payments (the "Guaranteed Payments") in such amount as may be determined from time to time by Majority Approval of the Members; provided, however, except as otherwise provided in the Managing Partner's Grant Agreement, in no event shall the annual Guaranteed Payment payable to the Managing Partner be less than the annual Guaranteed Payment paid to any Manager. The Guaranteed Payments shall be payable in accordance with the ordinary payroll practices of the Company. All Guaranteed Payments made to the Managers and the Managing Partner pursuant to this Section 5.7 shall be treated as advance Distributions to each such Person's affiliated Member and shall be taken into account in determining and shall reduce the amount subsequently distributable to such affiliated Member under Section 7.1 and Section 7.2 (including by virtue of Section 10.2(c)).

5.8 **Indemnification**.

(a) *Nature of Indemnity*. Each Member, Manager and Officer who was or is made a party (or is threatened to be made a party) to or is involved in any Proceeding by reason of the fact that he, or a Person of whom he is the legal representative, is or was, or has agreed to be, a Member, Manager or Officer of the Company or any Subsidiary thereof, or is or was serving at the request of the Company or any Subsidiary thereof as a manager, officer, employee, trustee, fiduciary, or agent of, or in any other capacity with another Person, including, without limitation, any Affiliate of the Company, shall be indemnified and held harmless by the Company, unless prohibited from doing so by the Act (but, in the case of any amendment of the Act, only to the extent that such amendment permits the Company to provide broader indemnification rights than the Act permitted the Company to provide prior to such amendment) from and against all expense, liability and loss (including reasonable attorneys' fees actually and reasonably incurred by such Manager or Officer in connection with such Proceeding) and such indemnification shall inure to the benefit of his or her heirs, legatees, devisees, executors, administrators, trustees, personal representatives, successors and assigns; provided, that any Person entitled to indemnification from the Company hereunder shall first seek recovery under any insurance policies by which such Person is covered and shall obtain the written consent of the Board prior to entering into any compromise or settlement that would result in an obligation of the Company to indemnify such Person, such consent not to be unreasonably withheld, conditioned or delayed. The right to indemnification conferred in this Section 5.8(a), subject to Sections 5.8(b) and (c), shall include the right to be paid by the Company the expenses incurred in defending any such Proceeding in advance of its final disposition. The Company may, by action of the Manager, provide indemnification to employees and agents of the Company with the same scope and effect as the foregoing indemnification of Managers and Officers. Notwithstanding the forgoing, unless the Board otherwise consents (excluding any Manager being indemnified if applicable):

(i) no Person shall be indemnified for any damages suffered that are attributable to actions or omissions by an Person or its Affiliates to the extent the act or omission was attributable to such Person's or its Affiliates' (excluding, for purposes hereof, the Company's and its Subsidiaries') fraud, gross negligence or willful misconduct, or constitutes a violation of the implied contractual covenant of good faith and fair dealing, in each case as determined by a

final judgment, order or decree of an arbitrator or a court of competent jurisdiction (which is not appealable or with respect to which the time for appeal therefrom has expired and no appeal has been perfected) or for any present or future breaches of any representations, warranties or covenants by such Person or its Affiliates' (excluding, for purposes hereof, the Company's and its Subsidiaries'), employees, agents or representatives contained herein or in any other agreement with the Company; and

(ii) no Person shall be entitled to indemnification hereunder with respect to a proceeding initiated by such Person or with respect to a proceeding between such Person, on the one hand, and any of the Company or any other member of the Company Group, on the other hand.

(b) *Procedure for Indemnification of Managers and Officers*. Any indemnification of a Member, Manager or Officer of the Company under Section 5.8(a) or advance of expenses under Section 5.8(e) shall be made promptly, and in any event within thirty (30) days, upon the written request of the Member, Manager or Officer upon receipt of an undertaking by or on behalf of such Person (in form and substance reasonably acceptable to the Board) to repay such amount if it shall ultimately be determined that such Person is not entitled to be indemnified by the Company. If a determination by the Company that the Member, Manager or Officer is entitled to indemnification pursuant to this Section 5.8 is required under the terms of this Agreement, and the Company fails to make such determination within sixty (60) days from receipt by the Company of a written request from the Member, Manager or Officer seeking indemnification, the Company shall be deemed to have approved the request. If the Company denies a written request for indemnification or the advancement of expenses, in whole or in part, or if payment in full pursuant to such request is not made within thirty (30) days from the receipt of the request or such approval (whether approved or deemed to have been approved), as the case may be, the right to indemnification or advances as granted by this Section 5.8 shall be enforceable by the Member, Manager or Officer in any court of competent jurisdiction. Such Member's, Manager's or Officer's costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or part, in any such action also shall be indemnified by the Company. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any Proceeding in advance of its final disposition where the undertaking required by Section 5.8(e), if any, has been tendered to the Company) that the claimant has not met the standards of conduct which make it permissible under this Agreement for the Company to indemnify the claimant for the amount claimed, but the burden of proving by a preponderance of the evidence that such defense is available to the Company shall be on the Company. Neither the failure of the Company (including the Board or its independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in this Agreement, nor an actual determination by the Company (including the Board or independent legal counsel) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(c) *Section Not Exclusive*. The rights to indemnification and the payment of expenses incurred in defending a Proceeding in advance of its final disposition conferred in this Section 5.8 shall not be exclusive of any other right which any Member, Manager or Officer may

have or hereafter acquire under the Act or other applicable Law, provisions of the Certificate of Formation, this Agreement, vote of the disinterested Members or disinterested Managers or otherwise.

(d) *Insurance.* The Company shall purchase and maintain, with financially sound and reputable insurers directors and officers insurance in an amount and on other terms and conditions customary for companies in the same industries on its own behalf and behalf of any Person who is or was a Manager, Officer, employee, fiduciary, or agent of the Company or was serving at the request of the Company, any Subsidiary or other Affiliate thereof as a manager, officer, employee or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, whether or not the Company would have the power to indemnify such Person against such liability under this Section 5.8. No insurance policy obtained in accordance with this Section 5.8(d) shall be cancelable by the Company without prior approval of the Board, unless it is replaced by another policy that satisfies the requirements of the immediately preceding sentence.

(e) *Expenses.* Expenses incurred by any Member, Manager or Officer described in Section 5.8(a) in defending a Proceeding shall be paid by the Company in advance of such Proceeding's final disposition upon receipt of a written undertaking by or on behalf of the Member, Manager or Officer to repay such amount if ultimately it shall be determined that he or she is not entitled to be indemnified by the Company. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

(f) *Employees and Agents.* Persons who are not covered by the foregoing provisions of this Section 5.8 and who are or were employees or agents of the Company, or who are or were serving at the request of the Company as employees or agents of another Person, may be indemnified to the extent authorized at any time or from time to time by the Board.

(g) *Contract Rights*. The provisions of this Section 5.8 shall be deemed to be a contract right between the Company and each Member, Manager or Officer (or any other Person entitled to indemnification under the terms contained in, and in accordance with, this Section 5.8), who serves in any such capacity at any time while this Section 5.8 and the relevant provisions of Act, the Certificate of Formation, or other applicable Law are in effect, and any repeal or modification of this Section 5.8 or any such Law shall not affect any rights or obligations then existing with respect to any state of facts or Proceeding then existing. The indemnification and other rights provided for in this Section 5.8 shall inure to the benefit of the heirs, executors and administrators of any Person entitled to such indemnification. The Company shall indemnify any such Person seeking indemnification in connection with a Proceeding initiated by such Person only if such Proceeding was authorized by the Board. It is the express intention of the parties hereto that the provisions of this Article V for the indemnification and exculpation of Persons covered thereunder ("**Covered Persons**") may be relied upon by such Covered Persons and may be enforced by such Covered Persons (or by the Company on behalf of any such Covered Person; provided, that the Company shall not have any obligation to so act for or on behalf of any such Covered Person) against the Company pursuant to this Agreement or to a separate indemnification agreement, as if such Covered Persons were parties hereto.

(h) *Merger or Consolidation.* For purposes of this Section 5.8, references to "the Company" shall include, in addition to the resulting Company, any constituent company (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, members, managers, officers, and employees or agents, so that any Person, who is or was a director, member, manager, officer, employee or agent of such constituent company, or is or was serving at the request of such constituent company as a director, member, manager, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Section 5.8 with respect to the resulting or surviving Company as he or she would have had with respect to such constituent company, if its separate existence had continued.

(i) *No Member Recourse*. Notwithstanding anything contained herein to the contrary, any indemnity by the Company relating to the matters covered in this Section 5.8 shall be provided out of and to the extent of Company assets only and no Member (unless such Member otherwise agrees in writing or is found in a final decision of a court of competent jurisdiction to have personal liability on account thereof) shall have personal liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity of the Company.

5.9 **Financial Statements and Reports**. The Company shall provide to each Member (i) unaudited financial statements of the Company and its Subsidiaries and (ii) unaudited quarterly financial statements of the Company and its Subsidiaries as provided by Section 4.4; provided, that, in each case, each Member agrees to hold any information regarding the Company or its Subsidiaries received pursuant to this Agreement and the information rights contained in this Agreement in confidence in accordance with Section 11.18 below; provided, further, that unless otherwise agreed by the Company and the Member in writing, the rights provided under this Section 5.9 and Section 4.4 shall cease immediately as to any Member that becomes employed by, or otherwise provides services to, a Competitor.

5.10 **Reimbursement of Business Expenses**. The Company shall pay its own general administrative and operating expenses. It shall reimburse the Members and Managers for any expenses incurred by the Members or Managers, as the case may be, that are properly considered ordinary and reasonable business expenses of the Company, including without limiting the generality of the foregoing, accounting and legal fees related to the Company's business, employment costs and other ordinary and reasonable business expenses.

ARTICLE VI
CAPITAL CONTRIBUTIONS, MEMBERSHIP INTERESTS AND FINANCIAL OBLIGATIONS OF MEMBERS

6.1 **Capitalization**.

(a) *Units; Initial Capitalization*. Each Member's interest in the Company, including such Member's interest, if any, in the capital, income, gains, losses, deductions and

expenses of the Company and the right to vote, if any, on certain Company matters as provided in this Agreement, shall be represented by units of limited liability company interest (each, a "Unit"). The Company shall initially have the authorized classes of Units described herein. The ownership by a Member of Units shall vest such Member with the Economic Interest therein (except to the extent Transferred to an Assignee as permitted by this Agreement) and the governance rights set forth in this Agreement. For purposes of this Agreement, Units held by the Company or any of its Subsidiaries shall be deemed not to be outstanding. The Company may issue fractional Units, and all Units shall be rounded to the fourth decimal place.

(b) *Issuance of Additional Units*. Subject to the provisions of Section 6.7, the Participating Members acting by Majority Approval shall have the right to cause the Company to issue at any time after the Effective Date, and for such amount and form of consideration as they may determine, (i) additional Units (of existing classes or new classes) or other Equity Interests of the Company (including creating other classes or series thereof having such powers, designations, preferences and rights as may be determined by the Participating Members acting by Majority Approval), (ii) obligations, evidences of indebtedness or other securities or interests convertible or exchangeable into Units or other Equity Interests of the Company and (iii) warrants, options or other rights to purchase or otherwise acquire Units or other Equity Interests of the Company, and in connection therewith, and, subject to the provisions of Section 11.23, the Participating Members acting by Majority Approval shall have the power to make amendments to this Agreement as they deem necessary or appropriate in their discretion in order to give effect to such additional issuance. In addition, the Participating Members acting by Majority Approval may from time to time establish such vesting, repurchase and other criteria for any newly created series or class of Units as they determine in their discretion.

(c) *Additional Terms of Profits Interest Units*.

(i) Profits Interest Units may be issued from time to time to employees, officers, directors and other service providers of the Company and its Subsidiaries as determined by the Board. The Company shall initially reserve Units representing initially 15% of the fully-diluted Membership Interests of the Company outstanding immediately following the Effective Date for issuance to employees, officers, directors and other service providers of the Company and its Subsidiaries (the "Unit Pool") and on the terms set forth in one or more Grant Agreements, or on such other terms, including vesting or repurchase, as the Board may determine in its sole discretion. Notwithstanding any other provision of this Section 6.1(c)(i) to the contrary, the Board may determine, in its sole discretion, the vesting criteria for any Profits Interest Units issued to an employee, officer, director or service provider of the Company and its Subsidiaries and any repurchase rights with respect to such Profits Interest Units. Each holder of any Profits Interest Unit shall make and duly file with the IRS an election under Code Section 83(b) within thirty (30) days of grant of any Profits Interest Unit with respect to such Unit, in the form attached to the Grant Agreement, and provide the Company with a copy of such election and proof of filing. Any Profits Interest Units that have been issued and that are subsequently forfeited, or repurchased without payment of any consideration, may be (but shall not be required to be) reissued as Profits Interest Units at the discretion of the Board.

(ii) The Company and each Member agree that the Profits Interest Units are intended to be "profits interests" for U.S. federal income tax purposes, as such term is used in

Revenue Procedures 93-27, 2001-43 and IRS Notice 2005-43 or the corresponding requirements of any subsequent guidance promulgated by the IRS or other applicable law. Neither the Company nor any Member will take any tax reporting position contrary to the previous sentence, except as otherwise required by a "determination" within the meaning of Code Section 1313, and the provisions of this Agreement shall be interpreted in accordance with such treatment. In the event that the Company issues any Profits Interest Units or other Equity Interest intended to be a "profits interest" after the date hereof, the Board may take such actions (including making appropriate adjustments to the terms of any such Profits Interest Unit or other Equity Interest or otherwise amending the terms of this Agreement) in order for such Profits Interest Unit or other Equity Interest to be treated as a "profits interest" as described in the immediately preceding sentence, including (A) establishing a Threshold Value, (B) authorizing a new series of Units or other Equity Interests and establishing a Threshold Value applicable to all Profits Interest Units or other Equity Interests issued as part of such series or (C) requiring that the recipient thereof pay the Company an amount per Profits Interest Unit or other Equity Interest at least equal to the Liquidation Value thereof. Except as otherwise determined by the Board, any Member who receives Profits Interest Units shall make a timely and effective election under Code Section 83(b) with respect to such Profits Interest Units. The Company and all Members shall (x) treat such Profits Interest Units as outstanding for Tax purposes, (y) treat such Member as a partner of the Company for U.S. federal income tax purposes with respect to such Profits Interest Units and (z) file all tax returns and reports consistently with the foregoing (except for non-U.S. federal returns or reports for which a different tax treatment is required by applicable law), and neither the Company nor any of its Members will deduct any amount (as wages, compensation or otherwise) for the fair market value of such Profits Interest Units for U.S. federal income tax purposes. In the event of any change in the Company's capital structure, the Board may equitably adjust the Threshold Value of the outstanding Profits Interest Units to the extent necessary (in the Board's good faith judgment) to prevent such capital structure change from impeding the economic results intended by this Agreement, including, if applicable, that any Units that are granted to executives of, or other service providers to, the Company in exchange for services provided or to be provided to the Company or any Subsidiary thereof are intended to be "profits interests" when issued for U.S. federal income tax purposes. Unless otherwise determined by the Board, the Profits Interest Units issued hereunder, and the Grant Agreements executed in connection therewith, are in connection with and a part of the compensation and incentive arrangements among the Company, its Subsidiaries and the holder thereof, and such equity agreements, together with any related provisions of this Agreement, are intended to be a "compensatory benefit plan" within the meaning of Rule 701 of the Securities Act, and all Profits Interest Units issued hereunder are intended to qualify for an exemption from the registration requirements under the Securities Act pursuant to Rule 701 promulgated pursuant thereto and under applicable state securities laws. All interpretations made by the Board, which interpretations shall be made in the Board's good faith discretion, with regard to any question arising with respect to Profits Interest Units, whether under any such equity agreements or the related provisions of this Agreement, shall be binding and conclusive on the holders of Profits Interest Units and the Company.

(d) *Recapitalization or Exchange of Units*. Any recapitalization or exchange of Units (by Unit split or otherwise) or combination (by reverse Unit split or otherwise) of any particular class or series of outstanding Units shall be made contemporaneously to all classes and series of outstanding Units. In the event of any change in the Company capital structure due to a

subdivision, split, combination, reverse split or similar transaction in respect of any class of Units, the Board shall correspondingly adjust the number of Profits Interest Units and the Threshold Value of each such Unit to the extent necessary (in the Board's good faith judgment) to prevent such capital structure change from changing the economic rights represented by any Profits Interest Unit in a manner that is disproportionately favorable or unfavorable in relation to the economic rights of other Units and to prevent unintended tax consequences to the holder of any Profits Interest Units. The Board shall have the ability, in its good faith judgment, to adjust the operation of this Section 6.1(d) and Section 7.1 to achieve the economic results intended by this Agreement, including that the Profits Interest Units are treated as "profits interests" for U.S. federal income tax purposes.

6.2 **Additional Members**. Subject to Section 6.7, the Participating Members acting by Majority Approval shall have the right to admit Additional Members. A Person may be admitted to the Company as an Additional Member upon furnishing to the Company (i) an Instrument of Joinder pursuant to which such Person agrees to be bound by all the terms and conditions of this Agreement, and (ii) such other documents or instruments as may be necessary or appropriate to effect such Person's admission as a Member (including entering into an investor representation agreement or such other documents as the Company may deem appropriate). Such admission shall become effective on the date on which the Participating Members acting by Majority Approval determine that such conditions have been satisfied and when any such admission is shown on the books and records of the Company. Upon the admission of an Additional Member, Exhibit 4.1 attached hereto and any other schedule of Members shall be updated to reflect the name, address and Units and other interests in the Company, as applicable, of such Additional Member.

6.3 **Additional Contributions**. In the event the Managers determine additional capital contributions (the "Additional Contribution") are needed to enable the Company to meet the operating expenses of the Company and/or its Subsidiaries, the Managers shall provide the Members with at least thirty (30) days' written notice before the date the Additional Contribution is due (the "Additional Contribution Notice"); provided, that the Members shall not be required to make Additional Contributions (or any other Capital Contributions) in excess of $1,000,000 in the aggregate for any calendar year of the Company. The Additional Contribution Notice shall set forth the following: (i) the total amount of additional capital required and each Member's proportionate share thereof (which shall be based on the Membership Interests or the Sharing Ratios of the Members, as determined by the Managers); (ii) the reason the Additional Contribution is required; and (iii) the date on which the additional capital must be contributed, which shall be no sooner than thirty (30) days from the date of the Additional Contribution Notice (the "Contribution Due Date"). In consideration for the contribution by each Member of its proportionate share of any Additional Contribution, the Company shall issue to each such Member a corresponding number of Units in respect of its proportionate share of such Additional Contribution.

(a) *Failure to Pay the Additional Contribution*. If any Member fails to make the requested Additional Contribution as required in Section 6.3 by the Contribution Due Date, such Member shall be considered a "Defaulting Member". "Non-Defaulting Member(s)" shall refer to a Member or Members who are not in default and have contributed their proportionate shares of the Additional Contribution as set forth in the Additional Contribution Notice. When a

Defaulting Member fails to contribute his, her or its proportionate share of the requested Additional Contribution to the Company as required in Section 6.3 by the Contribution Due Date, the Non-Defaulting Members shall have the option to advance the non-contributed portion of the Additional Contribution on behalf of the Defaulting Member to the Company as loan(s) (each a "Member Loan").

(b) *Member Loan Terms*. The amount of any Member Loan shall be considered a debt of the Defaulting Member, and each Member who advances a Member Loan to the Company shall be referred to as a "Lending Member". Member Loans shall be made on the terms set forth in this Section 6.3(b) below.

(i) *Interest; Security*. Interest shall be payable on the principal amount of the Member Loan and shall accrue from the date of the advance of the Member Loan at an annual rate of twelve percent (12%). Interest shall accrue on the Member Loan until it is repaid in full to the Member(s) who advanced the Member Loan(s) to the Company. Payments made to the Lending Members with respect to a particular Defaulting Member shall be made on a pro-rata basis in proportion to the amounts owed to the Lending Members (and shall be applied first to accrued interest and thereafter to unpaid principal). Each Member Loan shall be secured by the Defaulting Member's Membership Interest. Member Loans and interest owing thereon shall be repaid from any Distributions otherwise distributable to the Defaulting Member(s) in accordance with Sections 7.1, 7.2, 7.3 and 10.2 hereof until all of such Member Loans are repaid in full (and any amounts of Distributions so applied shall be deemed distributed to the Defaulting Member and paid by the Defaulting Member in respect of its Member Loans).

(ii) *Defaulted Member Loan.* If a Member Loan is not repaid in-full to a Lending Member or Lending Members within twelve (12) months from the date such Lending Member(s) advanced a Member Loan to the Company, then, upon the written election of such Lending Member(s), the Defaulting Member's Membership Interest in the Company shall be reduced based on the following calculation: the outstanding balance of the applicable Member Loan(s) as of such date divided by the fair market value of the Defaulting Member's Membership Interest. Such calculated percentage shall reduce the Defaulting Member's Membership Interest in the Company and increase the Lending Member(s)' Membership Interests on an equivalent basis (with the increase in Membership Interests of the Lending Members being shared by them pro rata in proportion to the amounts owing with respect to their Member Loans). The fair market value of the Defaulting Member's Membership Interest shall be determined by a third-party independent appraiser mutually agreed upon by the Defaulting Member(s) and the Lending Member(s) or in absence of such agreement a third-party independent appraiser designated by the Managers. Following such Adjustment to the Membership Interests of the Defaulting Member and the Lending Member(s), the applicable Member Loan(s) shall be deemed satisfied in-full.

6.4 **No Interest on Contributions**. Except as provided in this Agreement, no Member shall be entitled to interest on his or its Capital Contribution.

6.5 **Return of Capital Contributions**. No Member shall be entitled to withdraw any part of his or its Capital Contribution or Capital Account or to receive any distribution from the Company, except as specifically provided in this Agreement. Except as otherwise provided in this

Agreement, there shall be no obligation to return to any Member or withdrawn Member any part of such Member's Capital Contribution for so long as the Company continues in existence.

6.6 **No Liability**. Notwithstanding anything to the contrary contained in this Agreement, except as expressly agreed to in writing by such Member, no Member, as such, shall be liable for any of the debts of the Company. Except as expressly provided to the contrary in this Article VI, no Member shall be required to contribute any additional capital to the Company.

6.7 **Pre-Emptive Rights**.

(a) If the Participating Members acting by Majority Approval determine to issue any additional Units or other ownership interests in the Company other than Exempted Securities and other than in respect of Additional Contributions ("New Equity Interests" and such offering, a "New Equity Offering"), the Company will send a written notice (a "New Issuance Notice") to each Member at least thirty (30) Business Days prior to the proposed date on which such New Equity Interests will be issued and sold (the "Issue Date"), and each Member will have the right, but not the obligation, to purchase the New Equity Interests as set forth in this Section 6.7. The New Issuance Notice will state the principal terms of the proposed issuance including: the number of New Equity Interests proposed to be issued and sold in the New Equity Offering; the terms of such New Equity Interests; the proposed purchase price of the New Equity Interests and the other material terms and conditions of the issuance; and the proposed closing date of the New Equity Offering.

(i) Each Member will have the right (the "Pre-Emptive Right") to participate in an issuance of New Equity Interests on a *pro rata* basis determined in accordance with its Membership Interest. Within ten (10) Business Days following receipt of a New Issuance Notice (the "New Issuance Exercise Period"), each Member may elect to exercise its Pre-Emptive Right by delivering written notice (a "Notice of Exercise") to the Company and each of the other Members of the number of New Equity Interests it wishes to subscribe for pursuant to the exercise of its Pre-Emptive Right, such Notice of Exercise to constitute an irrevocable offer to subscribe for that number of New Equity Interests on and subject to the terms and conditions set forth in the New Issuance Notice.

(b) To the extent that Members do not elect to purchase all of the New Equity Interests proposed to be issued pursuant to a New Equity Offering, the Company may, subject to approval of the Participating Members acting by Majority Approval, issue and sell such New Equity Interests to any Person (a "Third Party Subscriber") on terms and conditions that are not more favorable in any material respect to such Third Party Subscriber than those set forth in the New Issuance Notice; *provided*, that:

(i) if the Company provides any representations or warranties to the Third Party Subscriber, or agrees to indemnify a Third Party Subscriber for any breach of those representations and warranties, the Company will provide the same representations and warranties and rights of indemnification to each Member that has elected to participate in the New Equity Offering; and

(ii) if the proposed issuance of New Equity Interests to the Third Party Subscriber is not completed within ninety (90) days following the Issue Date, the Company shall not proceed with the issuance of New Equity Interests to the Third Party Subscriber without the written approval of each Member.

(c) If a Person acquires New Equity Interests pursuant to this Section 6.7, the amount paid to the Company in consideration for such New Equity Interests will constitute a Capital Contribution and be credited to such Person's Capital Account.

(d) Notwithstanding any other provision of this Agreement, the Company shall not issue New Equity Interests to any Person that is not already a Member (the "New Member") unless:

(i) the proposed issuance of New Equity Interests to the New Member is permitted pursuant to the terms of, and will not result in a breach of, any third party financing agreements relating to Indebtedness of the Company or its Subsidiaries;

(ii) the proposed issuance of New Equity Interests to the New Member will not have any adverse tax consequences on the Company or the other Members; and

(iii) the New Member executes and delivers an Instrument of Joinder.

6.8 **Dilution**. Except as otherwise set forth in the Grant Agreement or any other written agreement with any Member (but only with respect to such Member):

(a) any dilution from the issuance of Profits Interests Units will be shared by the Members as follows: (i) for purposes of calculating the Membership Interests of the Members hereunder, any dilution shall be shared by the Participating Members (other than TGCA) who will share such dilution in proportion to their respective Membership Interests, and (ii) there shall be no dilution of the Members' respective Sharing Ratios as a result of such issuance; and

(b) to the extent that any portion of the Membership Interest or Sharing Ratio of any holder of Profits Interest Units is forfeited, any resultant increase in Membership Interests and Sharing Ratios shall be allocated to and shared by the Participating Members (other than TGCA) who will share such increase in proportion to their respective Membership Interests and Sharing Ratios, respectively.

Any calculations of any adjustment to Membership Interests and/or Sharing Ratios hereunder shall be made by the Participating Members acting by Majority Approval.

6.9 **Loans**. Subject to Section 5.1(b) hereof, the Managers may cause the Company to borrow funds from one or more Persons (including one or more Members or their Affiliates) upon such terms and conditions as the Managers shall determine to be appropriate in their reasonable discretion.

ARTICLE VII
DISTRIBUTIONS

7.1 **Net Cash Flow Distributions**. Distributions of Net Cash Flow will be made from time to time as determined by the Participating Members acting by Majority Approval; provided that Distributions of available Net Cash Flow shall be made no less frequently than quarterly, subject to cash availability as determined by the Participating Members acting by Majority Approval (each period for which Distributions are calculated being a "Distribution Period"). Subject to the further provisions hereof, Distributions of Net Cash Flow with respect to any Distribution Period shall be made to the Participating Members on a *pro rata* basis in accordance with their Sharing Ratios; except to the extent that at any time any such Distributions would cause the Company to be in violation § 18-607 of the Act. Each Participating Member acknowledges that any such Distributions will be made to such Participating Member only after any Shortfalls have been recovered by the Company from such Participating Member's share of Gross Cash Receipts in future Distribution Periods. For purposes hereof, "Shortfall" means with respect to a Participating Member the excess of such Participating Member's share of Operating Expenses for any Distribution Period over the Participating Member's share of Gross Cash Receipts for such Distribution Period; provided that, in calculating the Shortfall of a Participating Member hereunder any Shortfall in a Distribution Period shall be carried forward into future Distribution Periods and added to the Operating Expenses for such future Distribution Periods until fully offset by Gross Cash Receipts for such future Distribution Periods. For purposes hereof, any Shortfalls hereunder shall be calculated based on the Participating Members' Sharing Ratios of Gross Cash Receipts and Operating Expenses for any Distribution Period hereunder. In calculating the Distributions payable to the Participating Members hereunder Operating Expenses shall be calculated without regard to any Guaranteed Payments payable to Affiliates of the Participating Members and any Guaranteed Payments received by an Affiliate of a Participating Member shall offset and reduce any Distributions otherwise payable to such Participating Member hereunder. Any calculations of Distributions to the Participating Members hereunder, including any calculation of Shortfalls and the effect of any Guaranteed Payments shall be made by the Participating Members acting by Majority Approval.

7.2 **Terminating Distributions**. In the event of a Terminating Capital Transaction (other than a Liquidity Event), the Board shall cause the Company to distribute Net Capital Proceeds to the Members in the following order of priority:

(a) first, towards the satisfaction of all outstanding debts and other obligations of the Company (including to Members) in the priority required by Law; and

(b) the balance to the Members, *pro rata*, in accordance with their Membership Interests;

provided, however, that no holder of Profits Interest Unit shall be entitled to any distributions under this Section 7.2 with respect to such Profit Interest Unit until the aggregate amount distributed by the Company on and following the issuance of such Profits Interest Unit equals the sum of (x) the Threshold Value of such Profit Interest Unit plus (y) the aggregate Capital Contributions made to the Company following the issuance of such Profits Interest Unit; and provided, further, that in the case of TGCA and its Profit Interest Units, immediately following the

time at which the aggregate distributions by the Company equal the Threshold Value set forth in the Grant Agreement of TGCA, 100% of all distributable amounts shall be distributed to TGCA until such time as TGCA shall have received the amount of distributions TGCA would have received had the Threshold Value set forth in the Grant Agreement of TGCA equaled $0.00.

Any distributions pursuant to this Section 7.2 shall be made by the end of the taxable year in which the liquidation occurs (or, if later, within ninety (90) days after the date of the liquidation). The Profits and Losses incurred in the winding up of the affairs of the Company will be credited or charged to the Members' Capital Accounts in accordance with Section 1.3 of Exhibit 8. The value of property distributed in kind shall be determined by the Board in its reasonable discretion. Any property distributed in kind shall be treated as though the property was sold for its value at the time of distribution and the cash proceeds were distributed. The difference between the value of property distributed in kind and its previous value shall be treated as Profits or Losses on sale of the property and shall be credited or charged to the Members' Capital Accounts in accordance with their interests in such Profits or Losses pursuant to Section 1.3 of Exhibit 8.

7.3 **Liquidity Event Distributions**. In the event of a Liquidity Event (that is not a Terminating Capital Transaction), the Board shall cause the Company to distribute the Net Cash Flow of the Company (and other net proceeds) attributable to such Liquidity Event to the Members in accordance with the provisions of Section 7.2 hereof.

7.4 **Tax Distributions**. Subject to the Act, any other applicable law and any restrictions contained in any agreement to which the Company or any of its Subsidiaries is bound, to the extent that the Company has cash on hand available therefor (after paying Company expenses and setting aside reserves for anticipated liabilities, obligations and commitments of the Company as determined by the Participating Members acting by Majority Approval) (collectively, "Tax Distribution Conditions"), and notwithstanding the provisions of Section 7.1, for each calendar quarter of each Fiscal Year (prior to the calendar quarter in which a Terminating Capital Transaction occurs), the Company shall use commercially reasonable efforts to make a Distribution in cash (each, a "Tax Distribution") to each Member in quarterly installments in proportion to, and to the extent of, an amount determined in the good faith discretion of the Participating Members acting by Majority Approval equal to the excess, if any, of (a) the product of (i) the aggregate cumulative net taxable income for all taxable periods allocated by the Company to such Member (including, for this purpose, any income treated as a guaranteed payment under Section 707(c) of the Code for the use of capital), determined (A) without regard to any adjustment of the tax basis of the Company's assets pursuant to Code Section 732(d), 734(b), 743(b) or 754, (B) excluding any adjustments to taxable income in respect of Section 704(c) of the Code and (C) reducing such taxable income by net taxable losses of the Company allocated to such Member for prior taxable periods to the extent that such losses are of a character (ordinary or capital) that would permit the losses to be deducted by such Member against the current taxable income of the Company allocable to such Member for such calendar quarter and have not previously been taken into account in determining such Member's Tax Distributions, in each case, based upon (I) the information returns filed by the Company, as amended or adjusted to date, and (II) estimated amounts, in the case of periods for which the Company has not yet filed information returns, multiplied by (ii) the Assumed Tax Rate for such Fiscal Year, over (b) all prior Distributions made during such Fiscal Year to such Member pursuant to this Section 7.4 and pursuant to Section 7.1.

The Board shall be entitled to adjust subsequent Tax Distributions up or down to reflect any variation between its prior estimate of quarterly Tax Distributions and the Tax Distributions that would have been computed under this Section 7.4 based on subsequent information. In the event that due to the Tax Distribution Conditions, the funds available for any Tax Distribution to be made hereunder are insufficient to pay the full amount of the Tax Distribution that would otherwise be required under this Section 7.4, the Company shall use its commercially reasonable efforts to distribute to the Members the amount of funds that are available after application of the Tax Distribution Conditions on a *pro rata* basis (according to the amounts that would have been distributed to each Member pursuant to this Section 7.4 if available funds (after application of the Tax Distribution Conditions) existed in a sufficient amount to make such Tax Distribution in full). At any time thereafter when additional funds of the Company are available for Distribution after application of the Tax Distribution Conditions, the Company shall use its commercially reasonable efforts to immediately distribute such funds to the Members on a *pro rata* basis (according to the amounts that would have been distributed to each Member pursuant to this Section 7.4 if available funds (after application of the Tax Distribution Conditions) would have existed in a sufficient amount to make such Tax Distribution in full). All Tax Distributions made to a Member pursuant to this Section 7.4 shall be treated as advance Distributions and shall be taken into account in determining and reduce the amount subsequently distributable to such Member under Section 7.1 and Section 7.2 (including by virtue of Section 10.2(c)). For the avoidance of doubt, distributions pursuant to this Section 7.4 shall be made only with respect to income of the Company allocated to the Members (as opposed to income recognized by any Members with respect to the issuance or vesting of such Member's Units).

ARTICLE VIII
TAX MATTERS

8.1 **Tax Compliance Addendum**. Certain provisions and definitions regarding and allocations of the Company's income, as well as other tax-related matters, are set forth in the Tax Compliance Addendum ("TCA") attached as Exhibit 8. The provisions of the TCA are hereby incorporated in their entirety into this Agreement. Section references in the TCA shall be to Sections of the TCA unless specified otherwise therein.

8.2 **Tax Treatment**. The Members intend to form a partnership for U.S. federal income tax purposes and applicable state and local income tax purposes to engage in the Business. The Members and the Company, and their respective Affiliates shall report and file tax returns in all respects and for all purposes consistent with this Section 8.2 and shall not take any position (whether in proceedings, audits, tax returns or otherwise) that is inconsistent with this Section 8.2 unless required to do so by a "determination", as defined in Section 1313 of the Code.

ARTICLE IX
TRANSFERS AND THE ADDITION, SUBSTITUTION AND WITHDRAWAL OF MEMBERS

9.1 **Restrictions on Transfers**.

(a) Except as otherwise expressly provided in this Article IX, no Member (other than Lost Winds and JRS) may Transfer any Membership Interests of the Company. No Transfer

or attempt to Transfer any Membership Interests of the Company in violation of the preceding sentence shall be effective or valid for any purpose. Notwithstanding any other provision of this Agreement, no Transfer of Membership Interests of the Company shall be effective or valid hereunder if such Transfer constitutes a Prohibited Transfer. In addition, no Transfer shall be effective or valid hereunder unless the transferee is at such time a party to this Agreement or has previously executed and delivered to the Company an Instrument of Joinder. Any Transfer or attempted Transfer of a Membership Interest in violation of, or without full compliance, as applicable, with, this Agreement shall be null and void *ab initio,* and shall not operate to Transfer any Economic Interest in any Units to the purported transferee. Any Transfer not in accordance with this Agreement while void, as herein provided, shall nevertheless give rise to a cause of action on the part of the Company and/or the other Members against the purported transferor for breach of this Agreement. The Members acknowledge and agree that the restrictions on Transfer imposed by this Agreement are reasonable.

(b) Notwithstanding Section 9.1(a), a Transfer of a Membership Interest (or any Equity Interests of the Company or its Subsidiaries issued in respect thereof) may be effectively and validly made by a Member if such Transfer is (i) to a Permitted Transferee; (ii) effected through Section 9.2, Section 9.3, Section 9.4, Section 9.5 or Section 9.6; or (iii) made with the prior written consent of the Board and subject to the provisions of Section 9.4. The restrictions on Transfer set forth in this Article IX shall terminate upon the consummation of a Company Sale.

(c) Notwithstanding anything to the contrary contained in this Agreement, each Member agrees not to Transfer all or any part of its Membership Interest (or take or omit to take any action, filing, election, or other action which could result in a deemed Transfer) if such Transfer, including any Permitted Transfer (either considered alone or in the aggregate with prior Transfers by other Members) would result in the termination of the Company for federal income tax purposes (provided that, this condition regarding termination of the Company for federal income tax purposes may be waived in the discretion of the Managers) or a change in the tax status of the Company.

9.2 **Call by the Company**.

(a) *Call Option*. If, as it relates to any time-vested Units, a Management Member's (or its affiliated Service Member's) employment by, or provision of services to, a member of the Company Group is terminated, for any or no reason (including, for the avoidance of doubt, as a result of such Management Member's (or its affiliated Service Member's) resignation, but excluding a termination for Cause or at a time when grounds for a Cause termination exist, in which case all of such Management Member's time-vested Units and other interests and rights pertaining to the Company and its Affiliates will be forfeited effective as of such termination, without any further action required of any Person and without payment of any consideration) (any such termination event, a "Call Event"), then the Company and the Founder Members (pursuant to the Founder Members' rights under Section 9.2(g)) shall have the right (but not the obligation) to purchase (the "Call Option"), by delivery of one or more written notices (each, a "Call Notice") to such Management Member no later than three hundred and sixty five (365) days after the date of the Call Event, or such longer period as may be necessary to avoid changing the accounting treatment for the acquisition of the Call Securities (as defined below) being repurchased from equity-based accounting treatment

(as contemplated by FASB ASC Topic 718) (the "Call Period"), and such Management Member and such Management Member's direct and indirect Transferees (a "Call Group") shall be required to sell, such Units and other interests and rights pertaining to the Company and its Affiliates as specified by the Company (all such securities and interests to be repurchased hereunder being referred to collectively as "Call Securities").

(b) *Repurchase Price*. The purchase price payable for the Call Securities shall be an amount equal to the Call Securities Fair Market Value as of the date of the applicable Call Notice which shall be agreed between the Company and the Call Group. In the event the Company and the Call Group cannot reach an agreement as to the Call Securities Fair Market Value, the Call Securities Fair Market Value shall be determined by a third-party appraiser jointly selected by the Company and the Call Group at the expense of the Company and the Call Group, in equal proportions. If the Company and the Call Group do not agree on an appraiser, the Call Securities Fair Market Value shall be conducted by two appraisers who specialize in valuing U.S. entities and businesses similar to the Company, one of whom shall be appointed by the Company (at the Company's sole cost and expense) and one of whom shall be appointed by the Call Group (at the Call Group's sole cost and expense). In the event the two original appraisers each make a different determination of the Call Securities Fair Market Value and the difference between the two amounts is twenty-five percent (25%) or less of the higher amount, the differing amounts shall be averaged to determine the Call Securities Fair Market Value. In the event the two original appraisers each make a different determination of the Call Securities Fair Market Value and the difference between the two amounts is more than twenty-five percent (25%) of the higher amount, the two appraisers shall appoint a third appraiser who shall select one of the first two appraisals as the Call Securities Fair Market Value, and whose determination shall be final and binding. The cost of the third appraiser shall be borne by the Company and the Call Group in equal proportions.

(c) The closing of any repurchase of Call Securities by the Company (or a Subsidiary or Affiliate thereof) from a Call Group pursuant to this Section 9.2 shall take place at the principal office of the Company as soon as reasonably practicable, but not later than ninety (90) days, after the determination of the Call Securities Fair Market Value as described in Section 9.2(b), on such date as may be mutually agreed to by the Company and the Call Group. At such closing, the members of the Call Group shall deliver, against payment for the Call Securities in accordance with Section 9.2(d) hereof, to the Company, certificates and/or other instruments representing, together with limited liability company membership interest or other appropriate powers duly endorsed and instruments of transfer and assignment, as the Company may reasonably request with respect to, the Call Securities, free and clear of all Liens. All of the foregoing deliveries will be deemed to be made simultaneously and none shall be deemed completed until all have been completed.

(d) The Company may pay for the Call Securities being repurchased by delivering to the respective members of the Call Group a wire transfer of immediately available funds, a check or a customary promissory note ranking junior to any senior debt of the Company Group (a "Subordinated Promissory Note") (which Subordinated Promissory Note shall bear interest at a per annum rate equal to the average per annum rate payable on the senior debt of the Company Group plus one percent (1%) and shall become due and payable on the consummation of a Company Sale), or any combination of the foregoing forms of consideration, in each case, in an amount equal to the applicable purchase price for such Call Securities under this Section 9.2;

provided, however, that in the event that a Management Member's (or its affiliated Service Member's) employment or service (as applicable) is terminated due to such Management Member's (or its affiliated Service Member's) death or Disability, the Company shall, to the extent the Company exercises its Call Option hereunder with respect to any of such Management Member's Units and other interests and rights pertaining to the Company or its Affiliates, acquire such Management Member's Call Securities by delivering to the respective members of his or her Call Group a wire transfer of immediately available funds in an amount equal to the purchase price for such Call Securities. Following the delivery of payment for the Call Securities in cash or through a Subordinated Promissory Note in accordance with this Section 9.2(d), the applicable holder shall cease to have any right to Distributions with respect to such Call Securities. At such closing, the Management Member shall (i) sell such Management Member's repurchased Call Securities pursuant to a purchase agreement customary for transactions of a similar nature, which purchase agreement shall include customary indemnities, releases and representations and warranties of such Management Member for such a transaction, including representations that such Management Member has good and marketable title to the Call Securities to be Transferred, free and clear of all liens, claims and other encumbrances, and (ii) deliver reasonably requested Transfer documentation in connection with such repurchase (including any Unit certificates and powers).

(e) Notwithstanding anything to the contrary contained in this Agreement, if, at any time after the repurchase of any Call Securities, the Company determines that grounds existed for terminating the Management Member's (or its affiliated Service Member's) employment or engagement for Cause (regardless of the original reason for such termination), then promptly following the Company's provision of written notice thereof to such Management Member, the Management Member will repay 100% of the repurchase price in excess of the Cost Price, with (A) any such excess portion of the repurchase price previously paid by the Company for such Call Securities in cash to be repaid in cash, and (B) any such excess portion of the repurchase price previously paid by the Company for such Call Securities with a Subordinated Promissory Note to be repaid by the Company canceling such excess portion of such Subordinated Promissory Note for no consideration.

(f) If the Company and its assignees elect not to exercise the Call Option and deliver a Call Notice within the Call Period, then the Call Option provided for in this Section 9.2 shall terminate, but the Management Member and such Management Member's Call Group shall continue to hold such Call Securities pursuant to all of the other provisions of this Agreement.

(g) The Company may assign, from time to time, any or all of its rights under this Section 9.2 to the Founder Members, provided, that, such assignment shall automatically be deemed to occur upon the earlier to occur of (i) the thirtieth (30th) day prior to the expiration of the Call Period (to the extent the Company has not elected to exercise the Call Option prior to such date) and (ii) the date any Founder Member provides notice to the Company of the Founder Members' intention to exercise the Call Option. For the avoidance of doubt, the assignment by the Company of any or all of its rights under this Section 9.2 to the Founder Members in any one instance shall not preclude the Company from exercising its rights in a subsequent instance (including exercising the Company's right pursuant to this Section 9.2(g)).

(h) At the closing of the repurchase of Call Securities by the Company from a Call Group hereunder any Member Loans owing by the Members of the Call Group shall mature and shall be due and payable in full (and the Company may offset a portion of the payment due to the Call Group or reduce the applicable Subordinated Promissory Note by the amounts owing with respect to such Member Loans).

(i) For purposes of this Section 9.2, (i) the termination of employment or the services of an Service Member with a member of the Company Group shall be deemed to be a termination of employment with respect to its affiliated Management Member, (ii) the occurrence of any act or event constituting Cause with respect to an Service Member shall be deemed to be Cause with respect to its affiliated Management Member and (iii) the occurrence of any such event described in the foregoing clauses (i) and (ii) with respect to an Service Member shall be treated for all purposes hereunder in the same manner as if such event occurred with respect to its affiliated Management Member.

(j) The foregoing provisions of this Section 9.2 (other than the provisions of Section 9.2(g)) shall expire upon the consummation of a Company Sale.

9.3 **Right of First Refusal**.

(a) *Right of First Refusal*. In the event that any Member (or any of its Transferees following a Permitted Transfer) proposes to effect or permit a Transfer (except with respect to a Permitted Transfer) of all or any portion of its Membership Interest, such Member (the "Selling Member") shall first give written notice (the "Proposed Transfer Notice") and offer to sell such Membership Interest to all other Members (on a *pro rata* basis based on the percentage of Membership Interests held by such Members) at the then fair market value of the Selling Member's Membership Interest. In the event that the Selling Member and non-Selling Members cannot agree on the fair market value of the Membership *Interest*, the price of the Membership Interest shall be determined by a mutually acceptable, neutral third-party appraiser at the expense of the Selling Member. For the avoidance of doubt, no Transfer (other than a Permitted Transfer) may be effected by the Selling Member without first complying with this Section 9.3; provided, however, that this Section 9.3 shall not apply to a Permitted Transfer.

(b) *Notice of Sale*. The Selling Member must provide written notice to the non-Selling Member(s) of his, her, or its intent to sell the Membership Interest (the "Selling Notice"). The Selling Notice must include the following: (i) the Membership Interest and Sharing Ratio, if any, represented by the Membership Interest offered for sale, and (ii) the price of the Membership Interest, provided that such price shall be determined as set forth in Section 9.3(a) above. The non-Selling Member(s) shall have ten (10) calendar days from the date of the Selling Notice to provide notice to the Selling Member of their decision to buy (or not to buy) the Membership Interest (the "Decision Notice"). The non-Selling Members shall have forty-five (45) calendar days from the date of the Decision Notice to exercise their option to purchase the Membership Interest. Each Member shall have the option to purchase the Membership Interest offered in proportion to his, her, or its respective Membership Interest in the Company, or as otherwise agreed among the Members. In the event there is more than one (1) non-Selling Member and at least one (1) of such non-Selling Members elects not to purchase its *pro rata* share of the Membership Interest offered for sale, the other non-Selling Member(s) shall have the right to purchase such *pro rata* portion of

the Membership Interest offered for sale in total or on a *pro rata* basis, if applicable. In the event that any non-Selling Member fails to purchase its *pro rata* share of the Membership Interest (other than as a result of a breach by the Selling Member), such non-Selling Member shall be deemed to have waived (in that particular instance only) its right to purchase its *pro rata* share of such Membership Interest.

(c) *Entire Membership Interest Not Purchased by Non-Selling Members*. Notwithstanding the foregoing, if the non-Selling Members do not exercise their option to purchase or after exercising their option, fail to purchase the entire Membership Interest offered for sale, the Selling Member may then offer the remaining portion of such Membership Interest for sale to a Third Party Subscriber, provided that such offer(s) and sale(s) otherwise complies with this Article IX in its entirety.

(d) *Member Loans*. Upon any sale of a Membership Interest pursuant to this Section 9.3, any outstanding Member Loans relating to the transferred Membership Interest shall mature and be payable in-full from the proceeds of such sale.

9.4 **Tag-Along Rights**.

(a) Subject to Section 9.4(e), if at any time any Selling Member(s) proposes a Transfer of (i) in the case of any Member other than the Founder Members, Membership Interests representing more than fifty percent (50%) of the outstanding Membership Interests of the Company in a single transaction or series of related transactions, or (ii) in the case of any Founder Member, all or any portion of its Membership Interest in a single or series of related transactions, in each case other than any Permitted Transfer (either such Transfer, a "Tag-Along Sale"), and the non-Selling Member(s) and Selling Member(s) elect not to exercise their Right of First Refusal and Drag-Along Rights, respectively, pursuant to Sections 9.4 or 9.6, as the case may be, then in either such case, each non-Selling Member (the "Tag-Along Members") shall have the option, exercisable in his or its sole discretion, to participate in the Tag-Along Sale at a price (subject to the further provisions hereof) and on the offered terms set forth in the selling notice, by providing written notice (the "Tag-Along Notice") to the Selling Member(s) on or before the thirtieth (30th) day following the expiration of the Drag-Along Option Period (the "Tag-Along Expiration Date"). Each Tag-Along Member shall be entitled to include in the Tag-Along Sale each such Tag-Along Member's *pro rata* share (the "Tag-Along Interests"), determined by multiplying the Membership Percentage of such Tag-Along Member by a fraction, the numerator of which is the aggregate Membership Interest(s) proposed to be transferred by the Selling Member(s), and the denominator is the aggregate Membership Interest held by the Selling Member(s). The purchase price payable to the Selling Member(s) and the electing Tag-Along Members shall be apportioned and allocated among the Selling Members and the electing Tag-Along Members (and any different classes of Units held by them) taking into account the Distribution priorities in Article VII as determined in good faith by the Board.

(b) Upon receipt of any Tag-Along Notice from a Tag-Along Member, the Selling Member(s) shall cause the potential purchaser to purchase the Tag-Along Interest from each such Tag-Along Member. If the aggregate Membership Interest proposed to be transferred by the Selling Member(s) and all Tag-Along Members exceeds the maximum Membership Interest that the potential purchaser is willing to purchase, then each of the Selling Member(s) and the Tag-

Along Members shall reduce, to the extent necessary, the Membership Interest to be transferred pursuant to this Section on a pro-rata basis. At the time of consummation of the Tag-Along Sale, the Selling Member(s) shall cause the potential purchaser to remit directly to each such Tag-Along Member that portion of the sale proceeds to which such Tag-Along Member is entitled by reason of such Tag-Along Member's participation in the Tag-Along Sale.

(c) In furtherance, and not in limitation, of the foregoing, in connection with any Tag-Along Sale, each Tag-Along Member will take such other action in support of such Tag-Along Sale as may be reasonably requested by the Company or the Selling Member(s) including, without limitation, (i) voting in favor of such Tag-Along Sale, and (ii) executing and delivering all agreements, instruments, certificates and documents, in each case containing consistent terms and conditions as those executed by the Selling Member(s) that are reasonably necessary to effect the transaction; provided, however, that (1) the liability of the Selling Member(s) and the Tag-Along Members shall be several and not joint, (2) no Selling Member(s) or Tag-Along Members shall have any liability to the Company or any other Member for any breaches of the representations, warranties or covenants of any other Member, (3) any obligations of the Selling Member(s) or any Tag-Along Members under the agreement governing such transaction and any related escrow agreement shall be borne *pro rata* among such Members based on the proceeds and assets payable to such Members in such transaction (other than any such obligations that relate specifically to a particular Member's Membership Interest, which obligations shall be borne solely by such Member) and shall in no event exceed the actual proceeds and assets received by each such Member in such transaction, (4) if any Member is given an option as to the form of consideration to be received, all other Members shall be given the same option on the same terms, and (5) no Selling Member shall be required to agree to any non-competition provision that extends past the second anniversary of the closing of the Tag-Along Sale.

(d) If a Tag-Along Member fails to deliver a Tag-Along Notice before the Expiration Date, then such Tag-Along Member shall forfeit the right to participate in such Tag-Along Sale. The Selling Member(s) shall have one hundred-eighty (180) days after the Tag-Along Expiration Date to consummate the proposed transaction identified in the Tag-Along Notice at the offered price and on the offered terms set forth in such Tag-Along Notice, provided, that if the Selling Member(s) desires to transfer such Membership Interest for a price that is higher than the offered price or on material terms and conditions that are more favorable to the Selling Member(s) than the offered terms, or if the Selling Member(s) desires to transfer such Membership Interest following the expiration of such one hundred-eighty (180) day period, the Selling Member(s) shall be required to first comply with this Section anew.

(e) It shall be a condition to a Selling Member or a Tag Along Member selling its Membership Interest hereunder that any Member Loans relating to its Membership Interest shall mature and shall be paid in-full by such Member upon or prior to the consummation of such sale.

(f) The provisions of this Section 9.4 shall not apply to any (i) Transfer pursuant to Section 9.2 hereof, or (ii) Transfers to Permitted Transferees.

9.5 **Company Sale**.

(a) Lost Winds shall have the right, by notice to the Board (a "Company Sale Notice"), to cause a Company Sale at any time from and after the Effective Date. If Lost Winds delivers a Company Sale Notice, the Board shall authorize the Company Sale (an "Approved Company Sale") and shall authorize Lost Winds to initiate a Company Sale process and direct and control all decisions in connection therewith (including the hiring or termination of any investment bank or professional adviser and making all decisions regarding valuation and consideration) and, subject to Section 9.5(b) and Section 9.5(c), each Member shall consent to and raise no objections against such Approved Company Sale or the sale process associated therewith. If such Approved Company Sale is structured as a sale of assets, merger or consolidation, then each Member shall consent to, vote in favor of, and waive any dissenter's rights, appraisal rights or similar rights in connection with, such sale, merger or consolidation. If such Approved Company Sale is structured as a Transfer of Units, then each Member shall Transfer all Units (and rights to acquire any Units) of the Company held by such Member (or, if Lost Winds is selling less than all of its Units of the Company, then the same percentage of such Member's Units of the Company as Lost Winds is selling in the aggregate) that are requested to be Transferred by Lost Winds in the contemplated Approved Company Sale, upon the terms and subject to the conditions approved by Lost Winds. In such event, each Member shall deliver its membership certificate(s), if any, and a duly executed assignment or other instrument of Transfer representing the Membership Interest, free and clear of any and all liens and encumbrances, to the Company or to an agent designated by the Company for the purpose of effectuating the Transfer of the Membership Interest to the purchaser and the disbursement of the proceeds of such transaction to the Members. The Company may, at its option, deposit the consideration payable for the Membership Interests with a depository designated by it, and thereafter each membership certificate, if any, shall represent only the right to receive the consideration payable in the transaction. In furtherance, and not in limitation of the foregoing, in connection with any Approved Company Sale, each Member shall take all actions in connection with the consummation of such Approved Company Sale as may be reasonably requested by Lost Winds, including the execution of agreements, instruments, certificates and documents, in each case containing consistent terms and conditions as those executed by Lost Winds that are reasonably necessary to effect the transaction and other actions reasonably necessary to provide customary representations, warranties, indemnities and escrow arrangements, in all cases, to the extent Lost Winds enters into or provides the same in connection with such Approved Company Sale; provided, however, that (1) the liability of the Members shall be several and not joint, (2) no Members shall have any liability to the Company or any other Member for any breaches of the representations, warranties or covenants of any other Member, and (3) no Member shall be required to agree to any non-competition provision that extends past the second anniversary of the closing of the Approved Company Sale. The provisions of this Section 9.5 shall be in lieu of appraisal rights under the Act.

(b) The obligations of the Members with respect to an Approved Company Sale are subject to the satisfaction of the following conditions: (i) upon the consummation of such Approved Company Sale, each Member, to the extent such Member is receiving any consideration, shall receive the same form of consideration for such class of Unit (after giving effect to the relative distribution rights described in Article VII) as each other Member, and subject to Section 9.5(d) hereof, the aggregate consideration payable upon consummation of such Approved Company Sale to all Members in respect of their Units shall be apportioned and distributed (subject to adjustment for Company expenses, purchase price adjustments, escrow amounts, purchase price holdbacks,

indemnity obligations and other similar items which shall be applied on a proportionate basis taking into account the Distribution provisions of Article VII) as between the different classes of Units in accordance with the Distribution priorities set forth in Article VII, as in effect immediately prior to such Approved Company Sale, after taking into account any Units that are not being Transferred in the Approved Company Sale and giving effect to all prior Distributions, and as between holders of Units of a particular class, ratably based on the Units of such class actually Transferred in the Approved Company Sale; and (ii) if any holders of a class of Units are given an option as to the form and amount of consideration to be received, each holder of such class of Units shall be given the same option, and each holder of each other class of Units entitled to receive any consideration shall be given the same option (other than with respect to any rollover opportunity for a Management Member). A Management Member may be required to enter into reasonably and customary non-competition, non-hire and/or non-solicitation arrangements or similar restrictive covenants which survive the closing of such Approved Company Sale (provided that the term of any such non-competition provisions shall not extend past the second anniversary of the closing of the Approved Company Sale). Each Member acknowledges and agrees that depending upon the aggregate consideration to be distributed in connection with the Approved Company Sale, certain classes of Units may receive less consideration per Unit than other classes of Units, and certain classes may receive no consideration in the Approved Company Sale.

(c) Each Member that is Transferring Units pursuant to this Section 9.5 shall pay its *pro rata share* (based upon the consideration received in connection with the applicable Approved Company Sale) of the expenses incurred on behalf of the Members in connection with such Transfer (to the extent not paid by the Company or any of its Subsidiaries) and shall be obligated to join in its *pro rata share* (based upon the consideration received in connection with the applicable Approved Company Sale) of any indemnification or other obligations that the Company and/or Lost Winds agree to provide in connection with such Approved Company Sale (other than any such obligations that relate specifically to a particular Member, such as indemnification with respect to representations and warranties given by a Member regarding such Member's non-contravention, title and ownership of, and authority to sell, such Units); provided, that the liability resulting from any such indemnity or similar obligation with respect to any Member shall be the lesser of (i) except with respect to any obligations, representations and warranties that relate specifically to such Member, such liability on a several, and not joint, basis as it applies to the Member indemnitors and (ii) the net cash proceeds paid to such Member in connection with such Approved Company Sale; provided, further, that each Member agrees to sign a contribution agreement among all of the Members participating in such Approved Company Sale pursuant to which such Member agrees to contribute such Member's *pro rata share* (based upon the consideration received in connection with the applicable Approved Company Sale) of such losses (subject to the cap in the foregoing clauses (i) and (ii)) to any other Member who may bear greater than such other Member's *pro rata share* (based upon the consideration received in connection with the applicable Approved Company Sale) of such losses.

(d) Upon consummation of any Company Sale pursuant to this Section 9.5, any outstanding Member Loans shall mature and all or a portion of the proceeds of such Company Sale payable to a Defaulting Member shall instead be paid to the Lending Member(s) as needed to repay the applicable Member Loans in full.

(e) Lost Winds shall, in its sole discretion, decide whether or not to pursue, consummate, postpone or abandon any Approved Company Sale and the terms and conditions thereof, subject to compliance with the terms of this Section 9.5. Neither Lost Winds nor any of its Affiliates shall have any liability to any other Members arising from, relating to or in connection with the pursuit, consummation, postponement, abandonment or terms and conditions of any such Approved Company Sale.

9.6 **Drag-Along Rights**.

(a) If at any time (1) any Selling Member or Selling Members shall propose to undertake a sale that would result in a Transfer of more than fifty percent (50%) of the outstanding Membership Interests of the Company in a single transaction or series of related transactions, or (2) Lost Winds shall propose to undertake a sale of its outstanding Membership Interest in a single transaction or series of related transactions, then in either such case, each Member shall sell all of their Membership Interests in such transaction on the same terms and for the same *pro rata* consideration (the "Drag-Along Rights"). Such Selling Member(s) shall give written notice (the "Drag-Along Notice") of the exercise of his/their Drag-Along Rights to all other Members (the "Drag-Along Members") within thirty (30) days of the expiration of the Decision Notice for the Right of First refusal set forth above (the "Drag-Along Option Period"), and shall specify the terms and conditions and closing date of the proposed sale in such Drag-Along Notice, which shall be scheduled to occur at least ninety (90) days from the date the last Drag-Along Member is served with the Drag-Along Notice. Upon the proper service of such Drag-Along Notice, each Drag-Along Member shall have the obligation to sell his/her Membership Interest on the same terms and conditions in accordance with the instructions set forth in said Drag-Along Notice (the "Drag-Along Sale"), provided that (i) such Drag-Along Sale shall occur not later than one hundred eighty (180) days after the giving of such notice to each Drag-Along Member, and (ii) the purchase price payable to the Selling Member(s) and the Drag-Along Members shall be apportioned among the Selling Member(s) and the Drag-Along Members (and any different classes of Units held by them) taking into account the Distribution priorities in Article VII as determined in good faith by the Board. In such event, each Drag-Along Member shall deliver his membership certificate(s), if any, and a duly executed assignment or other instrument of Transfer representing the Membership Interest, free and clear of any and all liens and encumbrances, to the Company or to an agent designated by the Company for the purpose of effectuating the Transfer of the Membership Interest to the purchaser and the disbursement of the proceeds of such transaction to the Member(s). The Company may, at its option, deposit the consideration payable for the Membership Interests with a depository designated by it, and thereafter each membership certificate, if any, shall represent only the right to receive the consideration payable in the transaction.

(b) In furtherance, and not in limitation, of the foregoing, in connection with any Drag-Along Sale, each Drag-Along Member will take such other action in support of such Drag-Along Sale as may be reasonably requested by the Company or the Selling Member(s) including, without limitation, (i) voting in favor of such Drag-Along Sale and refraining from exercising any dissenter's rights or rights of appraisal under applicable Law at any time with respect to such Drag-Along Sale, and (ii) executing and delivering all agreements, instruments, certificates and documents, in each case containing consistent terms and conditions as those executed by the Selling Member(s) that are reasonably necessary to effect the transaction;

provided, however, that (1) the liability of the Selling Member(s) and the Drag-Along Members shall be several and not joint, (2) no Selling Member(s) or Drag-Along Members shall have any liability to the Company or any other Member for any breaches of the representations, warranties or covenants of any other Member, (3) any obligations of the Selling Member(s) or any Drag-Along Members under the agreement governing such transaction and any related escrow agreement shall be borne *pro rata* among such Members based on the proceeds and assets payable to such Members in such transaction (other than any such obligations that relate specifically to a particular Member's Membership Interest, which obligations shall be borne solely by such Member) and shall in no event exceed the actual proceeds and assets received by each such Member in such transaction, (4) if any Member is given an option as to the form of consideration to be received, all other Members shall be given the same option on the same terms, and (5) no Drag Along Member shall be required to agree to any non-competition provision that extends past the second anniversary of the closing of the Drag-Along Sale. The provisions of this Section 9.6 shall be in lieu of appraisal rights under the Act.

(c) In connection with any Drag-Along Sale, any outstanding Member Loans of the selling Members shall mature and the proceeds of such Drag-Along Sale otherwise payable to any Defaulting Member shall instead be paid to the Lending Members as needed to pay the applicable Member Loans in-full.

9.7 **Substituted Member**. Each Person to whom any Unit is Transferred in accordance with the provisions of this Article IX shall agree in writing to be bound by the provisions of this Agreement as a holder of such Units by execution of an Instrument of Joinder. Upon compliance with this Section 9.7 (or waiver thereof by the Board) and entry into such Instrument of Joinder, such Person shall become a Substituted Member entitled to all the rights of a Member with respect to such Unit, and Exhibit 4.1 attached hereto and any other schedule of Members shall be updated to reflect the name, address and Units of such Substituted Member and to eliminate the name and address of and other information relating to the Transferee with regard to the Transferred Units.

9.8 **Effect of Transfer**. Following a Transfer of any Unit that is permitted under this Article IX, the Transferee of such Unit shall (a) be treated as having made all of the Capital Contributions in respect of, and received all of the Distributions received in respect of, such Unit, (b) receive allocations and Distributions under Article VII and Article X in respect of such Unit as if such Transferee were a Member, and (c) succeed to the Capital Account of the applicable transferor to the extent attributable to the Transferred Unit.

9.9 **Transfer Fees and Expenses**. Other than any Transfer pursuant to Sections 9.2, 9.3, 9.4, 9.5 or 9.6, the Transferor and Transferee of any Units or other interest in the Company shall be jointly and severally obligated to reimburse the Company for all reasonable expenses (including attorneys' fees and expenses) incurred by or on behalf of the Company in connection with any Transfer or proposed Transfer, whether or not consummated.

9.10 **Effective Date of Transfers**. Any Transfer and any related admission of a Person as a Member in compliance with this Article IX shall be deemed effective on such date that the Transferee or Successor in Interest complies with the requirements of this Agreement.

9.11 **Effect of Death or Incapacity**. Except as otherwise provided herein, the death or incapacity of a Member shall not dissolve or terminate the Company. In the event of such death or incapacity, the executor, administrator, guardian, trustee or other personal representative of the deceased or incapacitated Member shall be deemed to be the assignee of such Member's interest and may, subject to the terms and conditions set forth in Section 9.7, become a Substituted Member.

9.12 **Board Consent**. The Board hereby consents to a Transfer of Units to any Persons to whom a Transfer of Units is expressly permitted by the terms of this Agreement.

ARTICLE X
DISSOLUTION, LIQUIDATION AND TERMINATION

10.1 **Dissolution, Liquidation, and Termination Generally**. The Company shall be dissolved only upon the first to occur of any of the following:

(a) The sale or disposition of all of the assets of the Company and the receipt in cash, of all consideration therefor;

(b) The termination of the legal existence of the last remaining Member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining Member of the Company unless the business of the Company is continued in a manner permitted by this Agreement or the Act;

(c) Without limiting the waiver set forth in the last paragraph of this Section 10.1, the entry of a decree of judicial dissolution under the Act; and

(d) The approval of the Board to dissolve the Company.

Upon the occurrence of any event that causes the last remaining Member of the Company to cease to be a member of the Company, to the fullest extent permitted by law, the personal representative of such Member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such Member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute Member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining member of the Company in the Company.

Notwithstanding any other provision of this Agreement, any Bankruptcy with respect to any Member shall not cause such Member to cease to be a member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in the Act.

To the fullest extent permitted by applicable law but subject to the terms of this Agreement, each Member (on behalf of itself and any person or entity that may claim for or on behalf of such Member) does hereby irrevocably waive any and all other rights that it (or any such person or entity) may have to maintain any action for or otherwise cause (a) a dissolution, liquidation or termination of the Company or any Subsidiary or (b) a sale or partition of, or appointment of a receiver for, any or all of the assets of the Company or any Subsidiary, except pursuant to this Section 10.1.

10.2 **Liquidation and Termination**. Upon dissolution of the Company, unless it is continued as provided above, the Board shall appoint one Manager or alternatively, a representative appointed by the Board (the "Liquidating Representative"), whom the Company shall compensate and indemnify as the Board determines, and whom shall determine the time, manner and terms of any sale or sales of Company property pursuant to such winding up; however, if there is no Board at the time of dissolution, the Liquidating Representative shall be one or more Persons selected in writing by the Lost Winds Capital Member. The Liquidating Representative shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein. The costs of liquidation shall be a Company expense. Until final distribution, the Liquidating Representative shall continue to operate the Company properties with all of the power and authority of the Board hereunder. The steps to be accomplished by the Liquidating Representative are as follows:

(a) as promptly as possible after dissolution and again after final liquidation, the Liquidating Representative shall cause a proper accounting to be made by a firm of certified public accountants reasonably acceptable to the Members of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution shall occur or the final liquidation shall be completed, as applicable;

(b) the Liquidating Representative shall satisfy (whether by payment or reasonable provision for payment) all of the debts and liabilities of the Company (including all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the Liquidating Representative may reasonably determine); and

(c) after payment or provision for payment of all of the Company's liabilities has been made in accordance with Section 10.2(b), all remaining assets of the Company shall be distributed in accordance with Section 7.2 (taking into account, if applicable, the provisions of Section 7.4), after giving effect to all prior Distributions, and a final allocation of all items of Income, gain, Loss, expense and credit shall be made in accordance with Exhibit 8 in such a manner that, immediately before distribution of such remaining assets, the positive balance of the Capital Account of each Member shall, to the greatest extent possible, be equal to the net amount that would be distributed to such Member in accordance with Section 7.2 (after satisfaction of any financial obligations of each Member to the Company under any provisions of this Agreement); and

(d) any non-cash assets will first be written up or down to their Fair Market Value, thus creating hypothetical gain or loss (if any), which hypothetical gain or loss shall be allocated to the Members' Capital Accounts in accordance with the requirements of Regulations

Section 1.704-1(b) and other applicable provisions of the Code and this Agreement. In making such allocations, the Liquidating Representative shall allocate each type of asset (e.g., cash or cash equivalents, securities or other property) among the Members ratably based upon the aggregate amounts to be distributed with respect to the Units held by each such Member.

10.3 **Deficit Capital Accounts**. No Member shall be required to pay to the Company, to the other Member or to any third party any deficit balance which may exist from time to time in such Member's Capital Account.

10.4 **Cancellation of Certificate**. On completion of the distribution of Company assets, the Board (or such other Person as the Act may require or permit) shall file a certificate of cancellation with the Secretary of State of Delaware, cancel any other filings made pursuant to Section 2.5 or otherwise pursuant to this Agreement that are or should be canceled, and take such other actions as may be necessary to terminate the existence of the Company. The Company shall be deemed to continue in existence for all purposes of this Agreement until it is terminated pursuant to this Section 10.4.

10.5 **Reasonable Time for Winding Up**. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to Section 10.2 to minimize any losses otherwise attendant upon such winding up.

10.6 **Return of Capital**. The Liquidating Representative shall not be personally liable for the return of Capital Contributions or any portion thereof to the Members (it being understood that any such return shall be made solely from Company assets).

10.7 **Termination**. Except as set forth in Section 11.17, this Agreement shall terminate with respect to any Member at the time at which such Member ceases to own any Units, except that such termination shall not affect (a) rights perfected or obligations incurred by such Member under this Agreement prior to such termination and (b) rights or obligations expressly stated to survive such cessation of ownership of Units (including the applicable provisions of Section 9.2).

ARTICLE XI
MISCELLANEOUS

11.1 **Reports; Tax Filings**. As soon as reasonably practicable after the close of each taxable year, the Company will prepare and furnish to each Member its IRS Schedule K-1 for such taxable year. Each Member is a "partner" for income tax purposes and not an employee of the Company. Each Member acknowledges and agrees that it (a) is responsible for all federal or state income taxes, and all other taxes resulting from allocations to them under this Agreement, (b) will pay all such taxes in a timely manner and file all returns and reports consistent with its status as a partner, and (c) will cooperate fully with the Board of Managers with respect to tax matters, and upon written request to do so it will provide all documents reasonably necessary to confirm to the Board of Managers that it has paid all taxes deriving from its Membership Interest.

11.2 **Bank Accounts: Checks, Notes and Drafts**.

(a) The Board will select an account or accounts of a type, form, and name and in a bank(s) or other financial institution(s) in which to deposit funds of the Company. The Board shall arrange for the appropriate maintenance of such accounts. Funds may be withdrawn from such accounts only for Company purposes and may from time to time be invested in such short-term securities, money market funds, certificates of deposit, or other liquid assets as the Board deems appropriate in the exercise of its discretion.

(b) The Members acknowledge that the Board may maintain Company funds in accounts, money market funds, certificates of deposit, other liquid assets and that the Managers shall not be accountable or liable for any loss of such funds resulting from failure or insolvency of a depository institution.

(c) Checks, notes, drafts and other orders for the payment of money shall be signed by such Officers or other Persons as the Board from time to time may authorize. When the Board so authorizes, however, the signature of any such Officer or other Person may be a facsimile, or electronic transmission (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g. Docusign).

11.3 **Books and Records**. At all times during the term of the Company, the Board shall maintain at the Company's principal office the information and records that the Members are entitled to obtain from the Company pursuant to Section 18-305(a) of the Act. Each Member or its designated Representative shall have access to, and the right to review such financial books, records, and documents during reasonable business hours, and the Company will make available all documents referred to in the preceding sentence within ten days after the Board's receipt of a written request for such access and review, setting forth in reasonable detail the reasons therefor. Each Member acknowledges that this provision regarding access and review of financial books, records and documents are reasonable and in accordance with the provisions of § 18-305(9) of the Act.

11.4 **Partnership Representative**. The Managers, or a Person designated by the Managers, shall have the right to act as the "Partnership Representative" of the Company within the meaning of such term as set forth in Section 6223 of the Code. If the Partnership Representative must act in such capacity, it shall have the right to take all actions on behalf of the Company, which the Code authorizes or requires for a partnership representative. The Managers shall be entitled to designate any individual to act on behalf of the partnership representative as provided in the Treasury Regulations promulgated under Section 6223 of the Code. In the event the Company is liable for any imputed underpayment (including interest and penalties) with respect to Company related items attributable to a Member for the applicable year, such Member shall promptly reimburse the Company for such amount and such reimbursement shall not be considered a Capital Contribution to the Company by such Member. The foregoing sentence shall apply even if the applicable Member is no longer a member of the Company at the time the Company becomes liable for such imputed underpayment. The expenses, if any, that the Partnership Representative (in its capacity as the Partnership Representative or its designated individual) incurs pursuant to this Section 10.4 shall be the expenses of the Company.

11.5 **Withholding**. Each Member hereby authorizes the Company to withhold from or pay on behalf of or with respect to such Member any amount of U.S. federal, state, local, or foreign taxes that the Board determines that the Company is required to withhold or pay with respect to any allocations of Profits and Losses or any cash or property distributable, allocable or otherwise transferred to such Member pursuant to this Agreement, including, without limitation, any taxes required to be withheld or paid by the Company pursuant to Section 1441, 1442, 1445, or 1446 of the Code. Any amount paid on behalf of or with respect to a Member shall constitute a loan by the Company, to such Member, which loan shall be repaid by such Member within fifteen (15) days after notice from the Board that such payment must be made unless (a) the Company withholds such payment from a distribution which would otherwise be made to the Member or (b) the Board determines, in its sole and absolute discretion, that such payment may be satisfied out of the available funds of the Company which would, but for such payment, be distributed to the Member. Any amounts withheld pursuant to the foregoing clauses (a) or (b) shall be treated as having been distributed or otherwise paid to such Member. Each Member hereby unconditionally and irrevocably grants to the Company a security interest in such Member's Membership Interest to secure such Member's obligation to pay to the Company any amounts required to be paid pursuant to this Section 10.5. Any amounts payable by a Member hereunder shall bear interest at the base rate on corporate loans at large United States money center commercial banks, as published from time to time in The Wall Street Journal, plus four (4) percentage points (but not higher than the maximum rate that may be charged under Law) from the date such amount is due (i.e., fifteen (15) days after demand) until such amount is paid in full. Each Member shall take such actions as the Board shall request to perfect or enforce the security interest created hereunder.

11.6 **Notices**. Any notice required under this Agreement ("Notice") shall be given in writing, enclosed in an envelope addressed to: (a) the Member to whom or which the Notice is to be given at such Member's address set forth on Exhibit 4.1, or (b) the Company at its principal place of business. The Company or any Member may designate a different address for notice by a Notice to the Board and all other Members in accordance with the provisions of this Section 10.6. Notices shall be by hand delivery or by mailing, certified mail, return receipt requested, postage prepaid and addressed to the recipient of any such Notice; or if sent by facsimile or electronic mail, upon confirmation of receipt. The Company (in care of its Board), if it is not the party to which Notice is being given, shall be sent a copy of all Notices related to this Agreement by certified mail, return receipt requested with postage prepaid; or by electronic mail. The date on which Notice shall be deemed to have been given shall be the date on which the Company receives such Notice, or a copy of such Notice, as the case may be.

11.7 **Binding Effect**. Subject in all respects to the limitations concerning the transfer of Membership Interests in the Company contained in this Agreement, and except as otherwise herein expressly provided, the provisions of this Agreement shall be binding upon and inure to the benefit of the Company, the Members, and their respective heirs, legatees, devisees, executors, trustees, administrators, personal representatives and successors and assigns. This Agreement shall not be construed to provide any rights to third parties (other than Covered Persons), including, without limitation, the creditors of the Company or of the Members, it being the intent of the parties to this Agreement that (other than Covered Persons) there shall be no third party beneficiaries of this Agreement.

11.8 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall for all purposes constitute one agreement, which is binding on the Company and all of the Members. This Agreement also may be executed by the use of counterpart signature pages. The execution of this Agreement by any of the parties may be evidenced by way of an electronic transmission of such party's signature, or a photocopy of such electronic transmission, and such electronic signature shall be deemed to constitute the original signature of such party hereto.

11.9 **Section Headings**. Section titles or captions contained in this Agreement are inserted as a matter of convenience and for reference only and shall not be construed in any way to define, limit, or extend or describe the scope of this Agreement or the intention of its provisions.

11.10 **Exhibits**. The terms of the Exhibits to this Agreement are made a part of this Agreement by reference as though such Exhibits were fully set forth in this Agreement.

11.11 **Interpretive Matters**. In this Agreement, unless otherwise specified or where the context otherwise requires:

(a) words importing any gender shall include other genders;

(b) words importing the singular only shall include the plural and vice versa;

(c) the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation";

(d) the words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement;

(e) references to "Articles," "Exhibits," "Sections" or "Schedules" shall be to Articles, Exhibits, Sections or Schedules of or to this Agreement;

(f) references to any Person include the successors and permitted assigns of such Person;

(g) the use of the words "or," "either" and "any" shall not be exclusive;

(h) wherever a conflict exists between this Agreement and any other agreement, this Agreement shall control but solely to the extent of such conflict;

(i) references to "$" or "dollars" means the lawful currency of the United States of America;

(j) references to any agreement, contract or schedule, unless otherwise stated, are to such agreement, contract or schedule as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof;

(k) if any action is required or permitted to be taken hereunder on a day which is not a Business Day, such action shall be taken on the next succeeding day which is a Business Day with the same force and effect as if made on such scheduled date; and

(l) the parties hereto have participated jointly in the negotiation and drafting of this Agreement; accordingly, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any provisions of this Agreement.

11.12 **Severability**. Each provision of this Agreement is intended to be severable, and the invalidity or illegality of any portion of this Agreement shall not affect the validity or legality of the remainder.

11.13 **Entire Agreement**. This Agreement (and, in the case of a Member with respect to which a Grant Agreement has been entered into, taken together with such Grant Agreement) constitutes the entire agreement of the parties concerning the matters set forth in this Agreement (and, as applicable,, such Grant Agreement) and supersedes any understanding or agreement, oral or written, made before this Agreement including the Original Agreement; provided, however, that in the case of a Member with respect to which a Grant Agreement has been entered into, such Grant Agreement shall govern with respect to such Member notwithstanding anything to the contrary contained in this Agreement.

11.14 **Applicable Law**. This Agreement shall be governed by, and construed in accordance with, the Laws of the State without regard to conflicts of law rules of the State.

11.15 **Forum**. Subject in all respects to Section 11.21, any action by one or more Members against the Company, its Managers, its Officers or any of their respective Affiliates or by the Company, its Managers, its Officers or any of their respective Affiliates against one or more Members or their respective Affiliates, which arises under, or in any way relates to this Agreement, the sale of the Membership Interests or actions taken or failed to be taken or determinations made or failed to be made by the Company, the Managers, the Officers, the Members or their respective Affiliates or otherwise relating to the Company or the products or services that it or its Affiliates provide or joint activities or other transactions in which it engages with third parties, including, without limitation, transactions permitted hereunder, or otherwise related in any way to the Company, the Managers, the Officers, the Members or the Affiliates of any of them, shall be brought only in the United States District Court sitting in Wilmington, Delaware or in the courts of record of the State sitting in Wilmington, Delaware, and each party hereto hereby irrevocably waives any right that it may have to challenge such jurisdiction or the laying of venue in any such courts or the right to assert any inconvenience of the forum in connection with any such proceeding. **EACH PARTY HERETO ALSO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY SUCH ACTION**. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED

TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.15.

11.16 **Power of Attorney.** Each Member hereby constitutes and appoints the Managers and the liquidators, to be effective with respect to such Member solely to the extent that such Member does not promptly deliver any agreement, certificate or other instrument reasonably requested by the Managers, with full power of substitution, as such Member's true and lawful agent and attorney-in-fact, with full power and authority in such Member's name, place and stead, to execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (i) this Agreement, all certificates and other instruments and all amendments thereof in accordance with the terms hereof that the Managers deem appropriate or necessary to form, qualify, or continue the qualification of, the Company as a limited liability company in the State of Delaware and in all other jurisdictions in which the Company may conduct business or own property, (ii) all instruments that the Managers deem appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms, (iii) all conveyances and other instruments or documents that the Managers or the liquidators deem appropriate or necessary to reflect the dissolution and liquidation of the Company pursuant to the terms of this Agreement, including a certificate of cancellation and (iv) all instruments relating to the admission, withdrawal or substitution of any Member pursuant to Article VI or Article VII. The foregoing power of attorney is irrevocable and coupled with an interest, and shall survive the death, disability, incapacity, dissolution, Bankruptcy, insolvency or termination of any Member and the Transfer of all or any portion of such Member's Units and shall extend to such Member's heirs, successors, assigns and personal representatives.

11.17 **Survival.** Each of Sections 1.1, 4.16, 5.3, 5.8, Article VIII, 11.4, 11.5, 11.6, 11.11, 11.13, 11.14, 11.15, 11.16, 11.17, 11.18, 11.19, 11.21 shall survive and continue in full force and effect in accordance with its terms, notwithstanding any termination of this Agreement or the dissolution of the Company. Without limiting the foregoing, each of Sections 9.2 and 11.16 shall survive and continue in full force in accordance with its terms, notwithstanding any termination of the applicable Member, the cessation of an applicable Member to own any Units, any termination of this Agreement or the dissolution of the Company.

11.18 **Confidentiality**.

(a) The Company shall not, nor shall it permit any Subsidiary to, disclose any Member's name or identity as an investor in the Company in any press release or other public announcement, without the prior written consent of such Member, which shall not be unreasonably withheld or delayed, unless such disclosure is otherwise required by applicable law or by order of a court of competent jurisdiction, in which case, prior to making such disclosure, the Company shall give written notice to such Member describing in reasonable detail the proposed content of such disclosure and shall permit such Member to review and comment upon the form and substance of such disclosure.

(b) Each Member expressly agrees to (i) maintain the confidentiality of, and not to disclose to any Person other than the Company (and any successor of the Company or any Person acquiring (whether by merger, consolidation, sale, exchange or otherwise) all or a material portion of the assets or Equity Interests of the Company or any of its Subsidiaries), another

Member or a Person designated by the Company or any of their respective financial planners, accountants, attorneys or other advisors, any information relating to the business, financial structure, financial position or financial results, business relations or affairs of the Company or any of its Subsidiaries that shall not be generally known to the public (including the terms of this Agreement) (the "Confidential Information"), except (A) information that is or has been independently developed or conceived by such Member without use of the Company's information (as demonstrated by such Member's records), (B) information that is or has been made known or disclosed to such Member by a third party without a breach of any obligation (whether contractual, fiduciary or other legal obligation) of confidentiality such third party may have to the Company, (C) as otherwise required by applicable law or by any regulatory or self-regulatory organization having jurisdiction or by order of a court of competent jurisdiction, in which case (except with respect to disclosure that is required in connection with the filing of federal, state and local tax returns) prior to making such disclosure, if permitted by applicable law, such Member shall give written notice to the Company describing in reasonable detail the proposed content of such disclosure and shall permit the Company to review and comment upon the form and substance of such disclosure and allow the Company to seek confidential treatment therefor, and (D) in the case of any Member who is employed by or otherwise provides services to the Company or any of its Subsidiaries, in the ordinary course of such Member's duties to the Company or any of its Subsidiaries, and (ii) not make use of any Confidential Information except for the specific purpose of monitoring its investment in the Company and in any event to not use any such Confidential Information in any manner that would reasonably be expected to be detrimental to the Company or any other member of the Company Group in any material respect; provided, that the Managers, and each of their respective Affiliates may provide general information about the Company and the Company Group (including performance-related information) in connection with their respective fund-raising, marketing, informational, operational or reporting activities; provided, further, that a Member may disclose information (I) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company, and (II) to its employees, consultants, agents, representatives, officers, directors, partner, member, stockholder, direct or indirect parent entities or wholly-owned Subsidiaries of such Member in the ordinary course of business**;** provided, that in each such case, the disclosing Member informs such Person that such information is confidential and directs such Person to maintain the confidentiality of such information and to comply with the use restrictions set forth in clause (ii) above. Notwithstanding the provisions of this Section 11.18 to the contrary, if any holder of Units desires to undertake any Transfer of its Units permitted by this Agreement, such holder may, upon the execution of a confidentiality agreement (in form reasonably acceptable to the Company's legal counsel) by any *bona fide* potential Transferee, disclose to such potential Transferee information of the sort otherwise restricted by this Section 11.18 if such holder reasonably believes such disclosure is necessary for the purpose of Transferring such Units to the *bona fide* potential Transferee.

11.19 **Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company, the Members or any of their respective Affiliates, and no creditor who makes a loan to the Company, the Members or any of their respective Affiliates may have or acquire (except pursuant to the terms of a separate agreement or security agreement executed by the Company in favor of such creditor) at any time as a result of making

the loan any direct or indirect interest in Company profits, losses, Distributions, capital or property other than as a secured creditor.

11.20 **Delivery by Email**. This Agreement, the agreements referred to herein, and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent signed and delivered by means of email with scan attachment, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of email as a defense to the formation or enforceability of a contract, and each such party forever waives any such defense.

11.21 **Binding Arbitration**. ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE BREACH, TERMINATION, ENFORCEMENT, INTERPRETATION OR VALIDITY THEREOF, INCLUDING (WITHOUT LIMITATION) THE DETERMINATION OF THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, OR ANY OTHER DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF ANY INTERACTION BETWEEN THE COMPANY AND A MEMBER, SHALL BE BROUGHT WITHIN ONE YEAR OF ITS ACCRUAL AND BE DETERMINED BY ARBITRATION IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, BEFORE ONE ARBITRATOR. THE ARBITRATION SHALL BE ADMINISTERED BY JAMS PURSUANT TO ITS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES (IF THE AMOUNT IN CONTROVERSY EXCEEDS $250,000) OR ITS STREAMLINED ARBITRATION RULES AND PROCEDURES (IF THE AMOUNT IN CONTROVERSY IS LESS THAN OR EQUAL TO $250,000). IF THE ARBITRATION IS A CLASS ARBITRATION, THE AGGREGATE AMOUNT, OF THE PURPORTED CLAIMS OF ALL PUTATIVE CLASS MEMBERS, SHALL BE USED TO DETERMINE WHICH RULES APPLY. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THIS CLAUSE SHALL NOT PRECLUDE PARTIES FROM SEEKING PROVISIONAL REMEDIES IN AID OF ARBITRATION FROM A COURT OF APPROPRIATE JURISDICTION. THE PREVAILING PARTY IN ANY DISPUTE, CLAIM OR CONTROVERSY HEREUNDER SHALL BE ENTITLED TO RECOVER ITS COSTS OF ARBITRATION AND REASONABLE ATTORNEYS' FEES THEREFOR.

Initials: DS_____

Initials: DS_____

Initials: _____

Initials: _____

11.22 **Computation of Time**. In computing any period of time under this Agreement, the day of the act or event from which the specified period begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday or legal holiday, in which case the period will run until the end of the next day that is not a Saturday, Sunday or legal holiday. For

LIMITATION) THE DETERMINATION OF THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, OR ANY OTHER DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF ANY INTERACTION BETWEEN THE COMPANY AND A MEMBER, SHALL BE BROUGHT WITHIN ONE YEAR OF ITS ACCRUAL AND BE DETERMINED BY ARBITRATION IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, BEFORE ONE ARBITRATOR. THE ARBITRATION SHALL BE ADMINISTERED BY JAMS PURSUANT TO ITS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES (IF THE AMOUNT IN CONTROVERSY EXCEEDS $250,000) OR ITS STREAMLINED ARBITRATION RULES AND PROCEDURES (IF THE AMOUNT IN CONTROVERSY IS LESS THAN OR EQUAL TO $250,000). IF THE ARBITRATION IS A CLASS ARBITRATION, THE AGGREGATE AMOUNT, OF THE PURPORTED CLAIMS OF ALL PUTATIVE CLASS MEMBERS, SHALL BE USED TO DETERMINE WHICH RULES APPLY. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THIS CLAUSE SHALL NOT PRECLUDE PARTIES FROM SEEKING PROVISIONAL REMEDIES IN AID OF ARBITRATION FROM A COURT OF APPROPRIATE JURISDICTION. THE PREVAILING PARTY IN ANY DISPUTE, CLAIM OR CONTROVERSY HEREUNDER SHALL BE ENTITLED TO RECOVER ITS COSTS OF ARBITRATION AND REASONABLE ATTORNEYS' FEES THEREFOR.

Initials:_____

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11.22 **Computation of Time**. In computing any period of time under this Agreement, the day of the act or event from which the specified period begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday or legal holiday, in which case the period will run until the end of the next day that is not a Saturday, Sunday or legal holiday. For purposes of this paragraph, a day shall be deemed to end at 5:00 p.m. in the time zone where the Company then maintains its principal place of business.

11.23 **Amendments**.

The terms and provisions of this Agreement may be amended, waived or terminated by the Members acting by Majority Approval, subject to the following:

(a) Any amendment or modification that would (A) have an adverse and disproportionate effect on the rights of a Member or group of Members to Distributions or allocations of Profits or Losses relative to the holders of the same class of Units (in each case, other than as a result of such adversely affected Members electing not to exercise any rights granted to such Members pursuant to the terms of this Agreement (including, without limitation, Section 6.7 hereof)) (B) disproportionately and adversely affect or eliminate any of the rights, privileges, protections, preferences or priorities of a Member, or (C) disproportionately and adversely affect or eliminate the right to exculpation, indemnification or advancement of expenses, granted to such Member pursuant to this Agreement; shall require the written consent of the Members holding a majority in interest of such Units that are so disproportionately and adversely affected, or, if the

purposes of this paragraph, a day shall be deemed to end at 5:00 p.m. in the time zone where the Company then maintains its principal place of business.

11.23 **Amendments**.

The terms and provisions of this Agreement may be amended, waived or terminated by the Members acting by Majority Approval, subject to the following:

(a) Any amendment or modification that would (A) have an adverse and disproportionate effect on the rights of a Member or group of Members to Distributions or allocations of Profits or Losses relative to the holders of the same class of Units (in each case, other than as a result of such adversely affected Members electing not to exercise any rights granted to such Members pursuant to the terms of this Agreement (including, without limitation, Section 6.7 hereof)) (B) disproportionately and adversely affect or eliminate any of the rights, privileges, protections, preferences or priorities of a Member, or (C) disproportionately and adversely affect or eliminate the right to exculpation, indemnification or advancement of expenses, granted to such Member pursuant to this Agreement; shall require the written consent of the Members holding a majority in interest of such Units that are so disproportionately and adversely affected, or, if the Members so disproportionately and adversely affected are Management Members, the written consent of the Managing Partner of the Company so long as its affiliated Management Member continues to be a Member; provided however that if the amendment or modification in clause (A) or clause (B) above is in connection with the admission of a new Member or Members or the issuance or sale of additional Units or Membership Interests otherwise approved and conducted in accordance with the terms of this Agreement (including, without limitation, as a result of the sale of Units with rights or preferences senior to or *pari passu* with those of the Units held by such Member(s)), and all similar interests held by the other Members immediately prior to such transaction (e.g. Membership Interests and/or Sharing Ratios) are similarly and proportionately modified, this Agreement may be amended by Majority Approval in connection with such sale and issuance without the consent of any such Member.

(b) In addition to other rights of the Board set forth herein but subject to Section 11.23(a), the Board is authorized, without the consent of any Member, to make amendments to this Agreement: (A) to add to its duties or obligations (but not its powers or rights) or surrender any right or power granted to the Board herein for the benefit of the Members; (B) to preserve the status of the Company as a "partnership" for federal income tax purposes; (C) to correct any drafting errors or inconsistencies, and (D) to update any schedule or exhibit hereto to reflect the issuance, repurchase or Transfer of Units (including the vesting or forfeiture of any Units and the establishment of any Threshold Value) and the admission or withdrawal of Members as authorized by this Agreement, which updates shall not be considered amendments to this Agreement. Prompt notice of each amendment to this Agreement shall be delivered to each Member.

(c) Any amendment, modification, termination or waiver affected pursuant to and in accordance with the requirements of this Section 11.23 shall be binding upon the Company, all Members and all of their respective successors and permitted assigns in accordance with the terms of this Agreement, whether or not such party, assignee or other Member entered into or approved such amendment, modification, termination or waiver. Except as otherwise set forth herein, Consent of any class or series of Members shall not be required for any amendment,

modification, termination or waiver if such amendment, modification, termination or waiver does not apply to such class or series of Members.

(d) All amendments made in accordance with this Section 11.23 shall be evidenced by a writing executed by the Participating Members acting by Majority Approval or, as applicable, the Board and a copy of such written amendments shall be provided to each Member and kept at the principal place of business of the Company.

[*Signatures follow on next page*.]

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date.

THE COMPANY:

PELORUS CAPITAL GROUP, LLC,
a Delaware limited liability company

By:_____
Daniel Leimel, Jr.
Manager

By:_____
James Robert Sechrist
Manager

MEMBERS:

LOST WINDS CAPITAL, INC.,
a California corporation

By:_____
Daniel Leimel, Jr.
Chief Executive Officer

JRS CAPITAL USA, INC.,
a California corporation

By:_____
James Robert Sechrist
Chief Executive Officer

TGCA PEL LLC,
a Florida limited liability company

By:_____
Travis Goad
President

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date.

THE COMPANY:

PELORUS CAPITAL GROUP, LLC,
a Delaware limited liability company

By:_____
Daniel Leimel, Jr.
Manager

By:_____
James Robert Sechrist
Manager

MEMBERS:

LOST WINDS CAPITAL, INC.,
a California corporation

By:_____
Daniel Leimel, Jr.
Chief Executive Officer

JRS CAPITAL USA, INC.,
a California corporation

By:_____
James Robert Sechrist
Chief Executive Officer

TGCA PEL LLC,
a Florida limited liability company

By: Travis Goad
Travis Goad
President

[Signature page to Amended and Restated Limited Liability Company Operating Agreement of Pelorus Capital Group, LLC]

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COVENANT CAPITAL, LLC,
a Wyoming limited liability company

Rick Scatterday

By:_____
Name: Rick Scatterday
Its:

[Signature page to Amended and Restated Limited Liability Company Operating Agreement of Pelorus Capital Group, LLC]

EXHIBIT 4.1

Status as of the Effective Date

Member's Name and Business/Notice Address	Units Owned	Membership Interest (%)	Sharing Ratio (%)
Lost Winds Capital, Inc. 124 Tustin Ave., Suite 200 Newport Beach, CA 92663	46	46%	48%
JRS Capital USA, Inc. 124 Tustin Ave., Suite 200 Newport Beach, CA 92663	29	29%	32%
TGCA PEL LLC 2500 Weston Road Suite 311 Weston, FL 33331	20	20%	20%
Covenant Capital, LLC 124 Tustin Ave., Suite 200 Newport Beach, CA 92663	5	5%	0%

EXHIBIT 8

TAX COMPLIANCE ADDENDUM

1.1 Definitions.

Adjusted Capital Account means the Capital Account maintained for each Member as of the end of each fiscal year or other period (i) increased by any amounts which such Member is obligated to restore pursuant to any provision of the Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) and (ii) decreased by the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

Adjusted Capital Account Deficit means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant allocation year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is deemed obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) Debit to such Capital Account the items described in Regulations Sections 1.704-1(b)(2)(ii)(*d*)(*4*), 1.704-1(b)(2)(ii)(*d*)(*5*), and 1.704-1(b)(2)(ii)(*d*)(*6*).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(*d*) and shall be interpreted consistently therewith.

Adjusted Property means any property the Carrying Value of which has been adjusted pursuant to this Exhibit 8.

Agreed Value means (i) in the case of any Contributed Property, the Section 704(c) Value of such property as of the time of its contribution to the Company, reduced by any liabilities either assumed by the Company upon such contribution or to which such property is subject when contributed as determined under Section 752 of the Code and the Regulations thereunder; and (ii) in the case of any property distributed to a Member by the Company, the Company's Carrying Value of such property at the time such property is distributed, reduced by any indebtedness either assumed by such Member upon such distribution or to which such property is subject at the time of distribution.

Capital Account shall have the meaning set forth in Section 1.2 hereof.

Carrying Value means (i) with respect to a Contributed Property or Adjusted Property, the Section 704(c) Value of such property reduced (but not below zero) by all Depreciation with respect to such Contributed Property or Adjusted Property, as the case may be, charged to the Members' Capital Accounts and (ii) with respect to any other Company property, the adjusted basis of such property for federal income tax purposes, all as of the time of determination. The Carrying Value of any property shall be adjusted from time to time in accordance with this Exhibit 8, and to reflect changes, additions (including capital improvements thereto) or other adjustments to the Carrying Value for dispositions and acquisitions of Company properties, as deemed appropriate by the Board.

Company Minimum Gain has the meaning set forth in Regulations Section 1.704-2(b)(2), and the amount of Company Minimum Gain, as well as any net increase or decrease in Company Minimum Gain, for a fiscal year or other period shall be determined in accordance with the rules of Regulations Section 1.704-2(d).

Contributed Property means each property or other asset contributed to the Company, in such form as may be permitted by the Act, but excluding cash contributed or deemed contributed to the Company. Once the Carrying Value of a Contributed Property is adjusted pursuant to this Exhibit 8, such property shall no longer constitute a Contributed Property for purposes of this Exhibit 8, but shall be deemed an Adjusted Property for such purposes.

Depreciation means, for each fiscal year or other period, an amount equal to the U.S. federal income tax depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such year, except that if the Carrying Value of an asset differs from its adjusted basis for U.S. federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Carrying Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year bears to such beginning adjusted tax basis; *provided*, that if the U.S. federal income tax depreciation, amortization, or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such beginning Carrying Value using any reasonable method selected by the Board.

Member Minimum Gain means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

Member Nonrecourse Debt has the meaning set forth in Regulations Section 1.704-2(b)(4).

Member Nonrecourse Deductions has the meaning set forth in Regulations Section 1.704-2(i), and the amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a fiscal year shall be determined in accordance with the rules of Regulations Section 1.704-2(i)(2).

Nonrecourse Deductions has the meaning set forth in Regulations Section 1.704-2(b)(1), and the amount of Nonrecourse Deductions for a fiscal year or other period shall be determined in accordance with the rules of Regulations Section 1.704-2(c).

Nonrecourse Liability has the meaning set forth in Regulations Section 1.752-1(a)(2).

Profits and Losses shall have the meaning set forth in Section 1.11 hereof.

Regulatory Allocations shall have the meaning set forth in Section 1.4 hereof.

Section 704(c) Value of any Contributed Property means the fair market value of such property at the time of contribution as determined by the Board using such reasonable method of valuation as it may adopt; *provided*, the Board shall, in its sole and absolute discretion, use such method as it deems reasonable and appropriate to allocate the aggregate of the Section 704(c) Value of Contributed Properties in a single or integrated transaction among each separate property on a basis proportional to its fair market value.

Unrealized Gain attributable to any item of Company property means, as of any date of determination, the excess, if any, of (i) the fair market value of such property as of such date, over (ii) the Carrying Value of such property (prior to any adjustment to be made pursuant to this Exhibit 8) as of such date.

Unrealized Loss attributable to any item of Company property means, as of any date of determination, the excess, if any, of (i) the Carrying Value of such property (prior to any adjustment to be made pursuant to this Exhibit 8) as of such date, over (ii) the fair market value of such property as of such date.

All terms not defined in this Exhibit 8 shall have the meanings of those terms as provided in the Agreement.

1.2 Capital Accounts.

(a) The Company shall maintain for each Member a separate capital account ("Capital Account") in accordance with the rules of Regulations Section 1.704-1(b)(2)(iv). Such Capital Account shall be increased by (i) the amount of all Capital Contributions and any other deemed contributions made by such Member to the Company pursuant to the Agreement and (ii) all Profits and items of Company income and gain (including income and gain exempt from tax) computed in accordance with Section 1.11 hereof and allocated to such Member pursuant to Section 1.3 hereof, and decreased by (x) the amount of cash or Agreed Value of property actually distributed or deemed to be distributed to such Member pursuant to the Agreement and (y) all Losses and items of Company deduction and loss computed in accordance with Section 1.11 hereof and allocated to such Member pursuant to Section 1.3 hereof.

(b) A transferee of a Membership Interest shall succeed to a *pro rata* portion of the Capital Account of the transferor in accordance with Regulations Section 1.704-1(b)(2)(iv)(1).

(c) (i) Consistent with the provisions of Regulations Section 1.704-1(b)(2)(iv)(f), and as provided in Section 1.2(c)(ii) hereof, the Carrying Values of all Company assets shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property, as of the times of the adjustments provided in Section 1.2(c)(ii) hereof, as if such Unrealized Gain or Unrealized Loss had been recognized

on an actual sale of each such property and allocated pursuant to Section 1.3 hereof.

(ii) Such adjustments shall be made as of the following times: (A) immediately prior to the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (B) immediately prior to the distribution by the Company to a Member of more than a de minimis amount of property as consideration for an interest in the Company; (C) immediately prior to the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); and (D) the Company grants a Membership Interest (other than a de minimis Membership Interest) as consideration for the provision of services to or for the benefit of the Company to an existing Member acting in a Member capacity, or to a new Member acting in a Member capacity or in anticipation of being a Member, *provided, however*, that adjustments pursuant to clauses (A) and (B) above shall be made only if the Board determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company.

(iii) In accordance with Regulations Section 1.704- 1(b)(2)(iv)(e), the Carrying Value of Company assets distributed in kind shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property, as of the time any such asset is distributed.

(iv) In determining Unrealized Gain or Unrealized Loss for purposes of this Exhibit 8, the aggregate cash amount and fair market value of all Company assets (including cash or cash equivalents) shall he determined by the Manager using such reasonable method of valuation as it may adopt, or in the case of a liquidating distribution pursuant to Section 7.2 of the Agreement, shall be determined and allocated by the Liquidating Representative using such reasonable methods of valuation as it may adopt. The Board, or the Liquidating Representative, as the case may be, shall allocate such aggregate fair market value among the assets of the Company in such manner as determines in its sole and absolute discretion to arrive at a fair market value for individual properties.

(d) The provisions of the Agreement (including this Exhibit 8 and the other Exhibits to the Agreement) relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Board shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or the Members) are computed in order to comply with such Regulations, the Board may make such modification without regard to Section 11.23 of the Agreement, provided that it is not likely to have a material effect on the amounts distributable to any Person pursuant to Section 7.2 of the Agreement upon the division or dissolution of the Company. The Board also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the

Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause the Agreement not to comply with Regulations Section 1.704-1(b).

1.3 Allocation of Profits and Losses.

(a) Except as otherwise provided in this Exhibit 8, Profits and Losses (or items thereof) for any Fiscal Year (or applicable portion thereof), shall be allocated to the Members such that, as of the end of such Fiscal Year, each Member's Capital Account equals to (i) the amount such Member would be distributed if the Company were dissolved, its affairs wound up and all of its assets sold for cash equal to their book value and then distributed the proceeds after paying all liabilities pursuant to Section 7.2 of the Agreement, minus (ii) such Member's share of Company Minimum Gain and Member Minimum Gain, computed immediately prior to the hypothetical sale of assets. In making allocations of Profits and Losses hereunder the Managers (i) shall take into account the Members' respective shares of distributions pursuant to Article VII and Article X hereof and the nature of the underlying income or loss (including whether the Profits or Losses relate to transactions resulting in Net Capital Proceeds or Net Cash Flow); and (ii) may make special allocations of Profits and Losses and items of income, gain, loss or deduction in order to properly reflect the Members' shares of such items as reflected in Article VII and Article X hereof.

(b) If a net decrease occurs in Company Minimum Gain during any Company fiscal year or other period, each Member shall be allocated items of income and gain for such fiscal year or other period to the extent, in the manner, and at the time required under Section 1.704-2(f) of the Regulations. This Section is intended to comply with the minimum gain chargeback requirements under Section 1.704-2(f) of the Regulations and shall be interpreted consistently with such intent.

(c) If a net decrease occurs in Member Minimum Gain attributable to a Member Nonrecourse Debt pursuant to Section 1.704-2(i)(4) of the Regulations, then any Member with a share in such Member Minimum Gain shall be allocated items of Company income and gain for such fiscal year or other period or, if necessary, for the next fiscal years or periods to the extent required under Section 1.704-2(i) of the Regulations. This Section is intended to comply with requirements regarding Member Nonrecourse Debt in Section 1.704-2(i) of the Regulations and shall be interpreted consistently with such intent.

(d) If any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6), then the Company shall specially allocate to such Member items of Company income and gain in an amount and manner sufficient to eliminate, to the extent required by such Treasury Regulations, such Member's deficit in its Adjusted Capital Account as quickly as possible. This Section is intended to constitute a "qualified income offset" within the meaning of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently with such intent.

(e) Except as may otherwise be expressly provided by the Board, Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Members in accordance with their respective Membership Interests. If the Board determines in its good faith discretion that the Company's Nonrecourse Deductions must be allocated in a different ratio to satisfy the

safe harbor requirements of the Regulations promulgated under Section 704(b) of the Code, the Board is authorized, upon notice to the Members, to revise the prescribed ratio for such fiscal year or other period to the numerically closest ratio which would satisfy such requirements.

(f) Any Member Nonrecourse Deductions for any fiscal year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Sections 1.704-2(b)(4) and 1.704-2(i).

(g) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) or 743(h) of the Code is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such item of gain or loss shall be specially allocated to the Member in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

1.4 Compliance with the Regulations. The allocations set forth in Section 1.3(b), (c), (d), (e), (f) and (g) of this Exhibit 8 (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations including Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations may not be consistent with the manner in which the Members intend to divide Company distributions. Accordingly, the Board is authorized to cause the Company to allocate future Profits, Losses, and other items among the Members so as to prevent the Regulatory Allocations from distorting the manner in which Company distributions will be divided among the Members pursuant to the Agreement to the extent permitted under the Regulations. The allocations and distributions provided for in the Agreement are intended to result in the Capital Account of each Member immediately prior to the distribution of the Company's assets pursuant to Section 7.2 of the Agreement being equal to the amount distributable to such Member pursuant to Section 7.2 of the Agreement, and the Board is authorized to make allocations of Profits, Losses, gains, and any items contained therein to the Members to make the Capital Accounts of the Members equal such amounts.

1.5 Proration of Allocations. If additional Members are admitted to the Company on different dates during any fiscal year or other period, the Profits or Losses allocated to the Members for such fiscal year or other period shall be allocated during such fiscal year in accordance with Section 706 of the Code using a proration method unless the Board determines another permitted convention would give materially more equitable results.

1.6 Accrual of Items. For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any other items shall be determined on a daily, monthly, or other basis, as the Board shall determine using any permissible method under Section 706 of the Code and its Regulations.

1.7 Separate Items. Except as otherwise provided in the Agreement, all items of Company income, gain, loss, deduction, and any other allocations not otherwise provided for shall be divided among the Members in the same proportions as they share Profits or Losses, as the case may be, for the fiscal year or other period.

1.8 Recapture and Other Section 751 Items. Once Profits are allocated pursuant to the other provisions of this Exhibit 8, the character of such Profits as ordinary income or capital gain shall be determined by allocating the recapture of capital cost recovery deductions required by Section 751, 1245, or 1250 of the Code, and any other items required by Section 751 of the Code to be recaptured as ordinary income, to the Members to the extent and in chronological order based upon the allocations of the tax items giving rise to the recapture or other items.

1.9 Intentionally Omitted.

1.10 Section 704(c) Allocations. Income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Carrying Value. If the Carrying Value of any Company asset is adjusted pursuant to that Section, later allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted tax basis of such asset for federal income tax purposes and its Carrying Value in the same manner as under Section 704(c) of the Code and the Regulations under Sections 704(c) and 704(b) of the Code. The Board shall make any elections or other decisions relating to such allocations in any manner that reasonably reflects the purpose and intention of the Agreement. Allocations pursuant to this Section are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or its share of Profits, Losses, or distributions pursuant to any provision of the Agreement. Except as otherwise set forth in the Agreement or required by the Code or the Regulations, tax items shall be allocated in the same manner as book items.

1.11 Definitions of Profits and Losses. "Profits and Losses" shall mean, for each fiscal year or other period of the Company, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Section 703(a) of the Code and taking into account Section 8.2 of the Agreement (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(a) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this Section shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Section 705(a)(2)(B) of the Code or which are deemed expenditures under such Section pursuant to Section 1.704-1(b)(2)(iv)(i) of the Regulations and not otherwise taken into account in computing Profits or Losses pursuant to this Section shall be deducted in computing Profits or Losses;

(c) if the Carrying Value of any Company asset is adjusted pursuant to Section 1.2(c) of this Exhibit 8, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) gain or loss resulting from any disposition of Company assets with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to

the Carrying Value of such Company assets, notwithstanding that the adjusted tax basis of such property differs from its Carrying Value;

(e) in lieu of the depreciation, amortization, and other cost recovery deductions, if any, taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period; and

(f) notwithstanding any other provision of this Section, any items that are specially allocated pursuant to the Regulatory Allocations shall not be taken into account in computing Profits or Losses.

1.12 Tax Elections.

(a) All elections required or permitted to be made by the Company under the Code or any applicable state or local tax law shall be made by the Board in its sole and absolute discretion.

(b) In the event of a transfer of all or any part of the Membership Interest of any Member, the Company, at the option of the Board, may elect pursuant to Section 754 of the Code to adjust the basis of the Company's properties. Notwithstanding anything contained in this Exhibit 8, any adjustments made pursuant to Section 754 shall affect only the successor in interest to the transferring Member and in no event shall be taken into account in establishing, maintaining or computing Capital Accounts for the other Members for any purpose under the Agreement. Each Member shall furnish the Company with all information necessary to give effect to such election.

EXHIBIT 9.2(a)

INSTRUMENT OF JOINDER

The undersigned, _____, in order to become the owner of a Membership Interest in Pelorus Capital Group, LLC, a Delaware limited liability company (the "Company"), hereby agrees to, and does, become a party to, and bound by, all of the terms and conditions of that certain Amended and Restated Limited Liability Company Agreement of the Company, dated as of January 3, 2023, as the same may have been previously and may hereafter be amended from time to time, and for all purposes thereunder, shall hereafter be deemed a substitute "Member" of the Company. This Instrument of Joinder shall take effect, and become a part of said Amended and Restated Limited Liability Company Agreement, immediately upon execution by the undersigned and by the Company.

Executed under seal as of the date set forth below under the laws of the State of Delaware.

_____

Name:_____

Address for Notice Purposes:

_____

_____

Date:_____

ACKNOWLEDGED AND ACCEPTED

AS OF THIS _____ DAY OF _____, 20__:

PELORUS CAPITAL GROUP, LLC,

a Delaware limited liability company

By:_____
Name:
Its:

EXHIBIT 3

Memorandum No. _____

Pelorus Fund, LLC

a California limited liability company

124 Tustin Ave. #200
Newport Beach, CA 92663

PRIVATE PLACEMENT MEMORANDUM

$250,000,000

Minimum Investment Amount: $100,000

January 1, 2021

Pelorus Fund, LLC (hereinafter referred to as the "Fund" or "Company") is a California limited liability company. The Company is offering (the "Offering") by means of this Private Placement Memorandum (the "Memorandum") limited liability company membership interests ("Membership Interests" or "Interests") on a "best efforts" basis to qualified investors who meet the Investor Suitability standards set forth below. (See "Investor Suitability" below). The Company will be managed by Pelorus Management Group, LLC, a California limited liability company (hereinafter referred to as the "Manager").

As further described in the Memorandum, the Company has been organized to engage in the following business: (1) to originate, make, purchase, otherwise acquire, manage and/or sell loans (the "Loans") secured by interests in real or personal property, including properties operating in the cannabis industry, across the United States, with a primary focus in California; and (2) acquire, manage, remodel, develop, lease, repair and/or sell real estate owned properties ("REO") throughout the United States, with a primary focus in California. The REOs will be derived from the Company's lending activities. (See "Property Acquisition Guidelines and Policies" below).

In addition, the Fund intends to provide financing to companies in the legalized cannabis (marijuana) industry through Loans, equity investments, or a combination of both. (See "Lending Standards and Policies" below). The Company shall pursue these endeavors in accordance with and pursuant to state, county and local laws and regulations governing medical and/or recreational cannabis.

As of April 1, 2020, the Company intends to establish a real estate investment trust ("REIT") in the form of a subsidiary (the "Sub-REIT"). There are substantial benefits in establishing a REIT, as set forth below. (See "Terms of the Offering" below). Establishing and maintaining a REIT involves additional risks,

including tax and investment risks, which will be detailed later in this Memorandum. (See "Income Tax Considerations" and "Risk Factors" below).

Prospective investors ("Investors") who execute a subscription agreement ("Subscription Agreement") to invest in the Company will become a member of the Company ("Member") once the Manager deposits the Investor's investment into the Company's main operating bank account and subject to terms and conditions in the Memorandum and Subscription Agreement. An investment in the Company is subject to restrictions on withdrawal (See "Summary of Operating Agreement – Withdrawal" below). Subject to the terms and conditions provided herein, Members will have the option to either receive their income distributions from the Company or reinvest their distributable share of Company earnings back into the Company. (See "Terms of the Offering – Cash Distributions; Election to Reinvest" below). The Manager will receive a variety of compensation and income from the Company and is subject to certain conflicts of interest. (See "Risk Factors", "Manager's Compensation" and "Conflicts of Interest" below). There are material income tax risks associated with investing in the Company that prospective Investors should consider. (See "Income Tax Considerations" below).

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS PRIVATE PLACEMENT MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THIS OFFERING IS MADE IN RELIANCE ON AN EXEMPTION FROM REGISTRATION WITH THE SECURITIES AND EXCHANGE COMMISSION PROVIDED BY SECTION 4(2) OF THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND RULE 506(C) OF REGULATION D PROMULGATED THEREUNDER.

THIS INVESTMENT INVOLVES A DEGREE OF RISK THAT MAY NOT BE SUITABLE FOR ALL PERSONS. ONLY THOSE INVESTORS WHO HAVE NO NEED FOR LIQUIDITY AND CAN BEAR THE LOSS OF A SIGNIFICANT PORTION (OR ALL) OF THEIR INVESTMENT SHOULD PARTICIPATE IN THE INVESTMENT. (SEE "RISK FACTORS" BELOW).

CERTAIN TERMS OF THE OFFERING

	Price to Investors [1]	Selling Commissions [2]	Fund Proceeds [3]
Amount to be Raised Per Interest	$1,000	$0	$1,000
Minimum Offering Amount [4]	$100,000	$0	$100,000
Maximum Offering Amount [5]	$250,000,000	$0	$250,000,000

1. The offering price to Investors was arbitrarily determined by the Manager.

2. Membership Interests will be offered and sold directly by the Fund, Manager and the Fund's and Manager's respective officers and employees. No commissions for selling Membership Interests will be paid to the Fund, Manager or the Fund's or Manager's respective officers or employees. The Fund or Manager may also sell Membership Interests through the services of independent broker/dealers who are member firms of the Financial Industry Regulatory Authority ("FINRA") and who will be entitled to receive commissions of up to Eight Percent (8%) of the gross proceeds received for the sale of Membership Interests. Furthermore, independent broker/dealers may be entitled to receive trailing commissions of up to Four Percent (4%) of the original investment amount per Investor annually payable at the broker/dealer discretion. These commissions will be paid by the Manager.

3. Net proceeds to the Company are calculated before deducting organization and Offering expenses. The expenses relating to this Offering are estimated to be approximately One Hundred Thousand Dollars ($100,000) (including, without limitation, legal, organizational, printing, binding and miscellaneous expenses). The remaining Offering proceeds will be available for investments pursuant to the business plan of the Company. The Manager will receive its compensation from a variety of sources, including,

without limitation, a management fee assessed to the Company and a share of the Company profits. (See "Manager's Compensation" below).

4. Assumes the sale of the Minimum Offering Amount. Notwithstanding the foregoing, the Fund and Manager reserve the right, in its sole and absolute discretion, to at any time, and for any reason or no reason, accept subscriptions in a lesser amount or to require a higher amount or to reject any subscription(s).

5. Assumes sale or ownership of the Maximum Offering Amount. It is possible that the Company will sell less than the Maximum Offering Amount but more than the Minimum Offering Amount.

THIS PRIVATE PLACEMENT MEMORANDUM HAS BEEN PREPARED SOLELY FOR THE BENEFIT OF AUTHORIZED PERSONS INTERESTED IN THE OFFERING. IT CONTAINS CONFIDENTIAL INFORMATION AND MAY NOT BE DISCLOSED TO ANYONE OTHER THAN AUTHORIZED PERSONS SUCH AS ACCOUNTANTS, FINANCIAL PLANNERS OR ATTORNEYS RETAINED FOR THE PURPOSE OF RENDERING PROFESSIONAL ADVICE RELATED TO THE PURCHASE OF SECURITIES OFFERED HEREIN. IT MAY NOT BE REPRODUCED, DIVULGED OR USED FOR ANY OTHER PURPOSE UNLESS WRITTEN PERMISSION IS OBTAINED FROM THE FUND. THIS PRIVATE PLACEMENT MEMORANDUM DOES NOT CONSTITUTE AN OFFER OR SOLICITATION TO ANY PERSON EXCEPT THOSE PARTICULAR PERSONS WHO SATISFY THE SUITABILITY STANDARDS DESCRIBED HEREIN.

THE SALE OF MEMBERSHIP INTERESTS COVERED BY THIS PRIVATE PLACEMENT MEMORANDUM HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON THE EXEMPTIONS FROM SUCH REGISTRATION REQUIREMENTS SET FORTH IN SECTION 4(2) OF THE ACT AND RULE 506(C) OF REGULATION D THEREUNDER. THESE SECURIITES HAVE NOT BEEN QUALIFIED OR REGISTERED IN ANY STATE IN RELIANCE UPON THE EXEMPTIONS FROM SUCH QUALIFICATION OR REGISTRATION UNDER STATE LAW. THESE SECURITIES ARE "RESTRICTED SECURITIES" AND MAY NOT BE RESOLD OR OTHERWISE DISPOSED OF UNLESS A REGISTRATION STATEMENT COVERING DISPOSITION OF SUCH MEMBERSHIP INTERESTS IS THEN IN EFFECT OR AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

THERE IS NO PUBLIC MARKET FOR THE MEMBERSHIP INTERESTS AND NONE IS EXPECTED TO DEVELOP IN THE FUTURE. ANY SUMS INVESTED IN THE FUND ARE ALSO SUBJECT TO SUBSTANTIAL RESTRICTIONS UPON WITHDRAWAL AND TRANSFER. THE INTERESTS OFFERED HEREBY SHOULD BE PURCHASED ONLY BY INVESTORS WHO HAVE NO NEED FOR LIQUIDITY IN THEIR INVESTMENT.

NO PERSON HAS BEEN AUTHORIZED IN CONNECTION WITH THIS OFFERING TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS OTHER THAN THAT INFORMATION AND THOSE REPRESENTATIONS SPECIFICALLY CONTAINED IN THIS PRIVATE PLACEMENT MEMORANDUM; ANY OTHER INFORMATION OR REPRESENTATIONS SHOULD NOT BE RELIED UPON. ANY PROSPECTIVE PURCHASER OF THE INTERESTS WHO RECEIVES ANY OTHER INFORMATION OR REPRESENTATIONS SHOULD CONTACT THE FUND IMMEDIATELY TO DETERMINE THE ACCURACY OF SUCH INFORMATION AND REPRESENTATIONS. NEITHER THE DELIVERY OF THIS PRIVATE PLACEMENT MEMORANDUM NOR ANY SALES HEREUNDER SHALL, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE FUND OR IN THE INFORMATION SET FORTH HEREIN SINCE THE DATE OF THIS PRIVATE PLACEMENT MEMORANDUM SET FORTH ABOVE.

PROSPECTIVE INVESTORS SHOULD NOT REGARD THE CONTENTS OF THIS PRIVATE PLACEMENT MEMORANDUM OR ANY OTHER COMMUNICATION FROM THE FUND AS A SUBSTITUTE FOR CAREFUL AND INDEPENDENT TAX AND FINANCIAL PLANNING. EACH POTENTIAL INVESTOR IS ENCOURAGED TO CONSULT WITH HIS, HER OR ITS OWN INDEPENDENT LEGAL COUNSEL, ACCOUNTANT AND OTHER PROFESSIONALS WITH RESPECT TO THE LEGAL AND TAX ASPECTS OF THIS INVESTMENT AND WITH SPECIFIC REFERENCE TO HIS, HER OR ITS OWN TAX SITUATION, PRIOR TO SUBSCRIBING FOR THE MEMBERSHIP INTERESTS.

THE PURCHASE OF MEMBERSHIP INTERESTS BY AN INDIVIDUAL RETIREMENT ACCOUNT (IRA), KEOGH PLAN OR OTHER QUALIFIED RETIREMENT PLAN INVOLVES SPECIAL TAX RISKS AND OTHER CONSIDERATIONS THAT SHOULD BE CAREFULLY CONSIDERED. INCOME EARNED BY QUALIFIED PLANS AS A RESULT OF AN INVESTMENT IN THE FUND MAY BE SUBJECT TO FEDERAL INCOME TAXES, EVEN THOUGH SUCH PLANS ARE OTHERWISE TAX EXEMPT. (SEE "INCOME TAX CONSIDERATIONS" AND "ERISA CONSIDERATIONS BELOW").

THE MEMBERSHIP INTERESTS ARE OFFERED SUBJECT TO WITHDRAWAL OR CANCELLATION OF THE OFFERING AT ANY TIME FOR ANY REASON (OR NO REASON) AND WITHOUT ANY NOTICE THEREOF TO PROSPECTIVE INVESTORS. THE FUND RESERVES THE RIGHT, AT ITS SOLE AND ABSOLUTE DISCRETION, TO REJECT ANY SUBSCRIPTIONS IN WHOLE OR IN PART FOR ANY REASON (OR NO REASON) AT ANY TIME.

THE FUND WILL MAKE AVAILABLE TO ANY PROSPECTIVE INVESTOR AND HIS, HER OR ITS ADVISORS THE OPPORTUNITY TO ASK QUESTIONS AND RECEIVE ANSWERS CONCERNING THE TERMS AND CONDITIONS OF THE OFFERING, THE FUND, THE MANAGER OR ANY OTHER RELEVANT MATTERS, AND TO OBTAIN ANY ADDITIONAL INFORMATION TO THE EXTENT THAT THE FUND POSSESSES SUCH INFORMATION.

THIS OFFERING INVOLVES SIGNIFICANT RISKS WHICH ARE DESCRIBED IN DETAIL HEREIN. FEES WILL BE PAID TO THE MANAGER AND ITS AFFILIATES, WHO ARE SUBJECT TO CERTAIN CONFLICTS OF INTEREST. PROSPECTIVE INVESTORS OF MEMBERSHIP INTERESTS SHOULD READ THIS PRIVATE PLACEMENT MEMORANDUM CAREFULLY AND IN ITS ENTIRETY.

THE INFORMATION CONTAINED IN THIS PRIVATE PLACEMENT MEMORANDUM HAS BEEN SUPPLIED BY THE MANAGER AND THE FUND. THIS PRIVATE PLACEMENT MEMORANDUM CONTAINS SUMMARIES OF CERTAIN DOCUMENTS NOT CONTAINED IN THIS PRIVATE PLACEMENT MEMORANDUM, WHICH ARE BELIEVED BY THE MANAGER AND FUND TO BE ACCURATE. HOWEVER, ALL SUCH SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCES TO THE ACTUAL DOCUMENTS. COPIES OF DOCUMENTS REFERRED TO IN THIS PRIVATE PLACEMENT MEMORANDUM, BUT NOT INCLUDED HEREIN AS AN EXHIBIT, WILL BE MADE AVAILABLE TO QUALIFIED PROSPECTIVE INVESTORS UPON REQUEST.

FOR RESIDENTS OF ALL STATES. THE PRESENCE OF A LEGEND FOR ANY GIVEN STATE REFLECTS ONLY THAT A LEGEND MAY BE REQUIRED BY THAT STATE AND SHOULD NOT BE CONSTRUED TO MEAN AN OFFER OR SALE MAY BE MADE IN ANY PARTICULAR STATE. THIS MEMORANDUM MAY BE SUPPLEMENTED BY ADDITIONAL STATE LEGENDS. IF YOU ARE UNCERTAIN AS TO WHETHER OR NOT OFFERS OR SALES MAY BE LAWFULLY MADE IN ANY GIVEN STATE, YOU ARE ADVISED TO CONTACT THE FUND FOR A CURRENT LIST

OF STATES IN WHICH OFFERS OR SALES MAY BE LAWFULLY MADE. AN INVESTMENT IN THIS OFFERING IS SPECULATIVE AND INVOLVES A HIGH DEGREE OF FINANCIAL RISK. ACCORDINGLY, PROSPECTIVE INVESTORS SHOULD CONSIDER ALL OF THE RISK FACTORS DESCRIBED BELOW.

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE FUND AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

IRS CIRCULAR 230 NOTICE

PURSUANT TO U.S. INTERNAL REVENUE SERVICE CIRCULAR 230, THE STATEMENTS SET FORTH HEREIN WITH RESPECT TO FEDERAL TAX ISSUES, AS DEFINED BELOW, WERE NOT INTENDED NOR WRITTEN TO BE USED, AND SUCH STATEMENTS CANNOT BE USED BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING ANY PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER UNDER THE U.S. INTERNAL REVENUE CODE. SUCH STATEMENTS WERE WRITTEN TO SUPPORT THE MARKETING OF THE MEMBERSHIP INTERESTS OR MATTERS ADDRESSED HEREIN. IT IS POSSIBLE THAT ADDITIONAL ISSUES MAY EXIST THAT WOULD AFFECT THE FEDERAL TAX TREATMENT OF AN INVESTMENT IN THE FUND AND THE STATEMENTS CONTAINED HEREIN DO NOT CONSIDER OR PROVIDE ANY CONCLUSIONS WITH RESPECT TO SUCH ADDITIONAL ISSUES. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR. A "FEDERAL TAX ISSUE" IS A QUESTION CONCERNING THE FEDERAL TAX TREATMENT OF ANY ITEM OF INCOME, GAIN, LOSS, DEDUCTION OR CREDIT, THE EXISTENCE OR ABSENCE OF A TAXABLE TRANSFER OF PROPERTY, OR THE VALUE OF PROPERTY FOR PURPOSES OF ANY TAX IMPOSED BY OR PURSUANT TO THE U.S. INTERNAL REVENUE CODE. (SEE "INCOME TAX CONSIDERATIONS" BELOW).

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EXHIBIT A **LIMITED LIABILITY COMPANY OPERATING AGREEMENT**
EXHIBIT B **SUBSCRIPTION AGREEMENT**
EXHIBIT C **COMPANY PERFORMANCE**

SUMMARY OF THE OFFERING

The following information is only a brief summary of, and is qualified in its entirety by, the detailed information appearing elsewhere in this Private Placement Memorandum. This Private Placement Memorandum, together with the exhibits attached including, but not limited to, the Limited Liability Company Operating Agreement of the Fund (the "Operating Agreement"), a copy of which is attached hereto as Exhibit A, should be carefully read in its entirety before any investment decision is made. If there is a conflict between the terms contained in this Private Placement Memorandum and the Operating Agreement, the Operating Agreement shall prevail and control.

THE FUND AND ITS OBJECTIVES	Pelorus Fund, LLC, is a California limited liability company, located at 124 Tustin Ave. #200, Newport Beach, CA 92663. The Fund will raise money through this Offering of Membership Interests to: (1) to originate, make, purchase, otherwise acquire, manage and/or sell Loans secured by interests in real or personal property, including properties operating in the cannabis industry, across the United States, with a primary focus in California; and (2) acquire, manage, remodel, develop, lease, repair and/or sell real estate owned properties ("REO") throughout the United States, with a primary focus in California. The REOs will be derived from the Company's lending activities. (See "Property Acquisition Guidelines and Policies" below). The Fund also intends to provide financing to companies in the legalized cannabis (marijuana) industry through Loans, equity investments, or a combination of both. (See "Lending Standards and Policies" below).
THE MANAGER	The Manager of the Fund is Pelorus Management Group, LLC, a California limited liability company, located at 124 Tustin Ave. #200, Newport Beach, CA 92663.
THE OFFERING	The Fund is hereby offering to Investors an opportunity to purchase Membership Interests in the Fund in the maximum aggregate amount of Two Hundred and Fifty Million Dollars ($250,000,000). The minimum investment amount per Investor is One Hundred Thousand Dollars ($100,000); provided, however, that the Manager reserves the right to accept subscriptions in a lesser amount or require a higher amount.
COMPENSATION TO MANAGER	The Manager will receive a variety of fees for managing the Fund, including (without limitation) an Asset Management Fee as further described below. (See "Manager's Compensation" below).
PRIOR EXPERIENCE	The officers and directors of the Manager have extensive prior experience in the real estate and mortgage industry. (See "The Manager" below).

SUITABILITY STANDARDS	Membership Interests are offered exclusively to certain individuals, Keogh plans, individual retirement accounts (IRAs) and other qualified Investors who meet certain minimum standards of income and/or net worth. Each Investor must execute a Subscription Agreement and an Investor Questionnaire making certain representations and warranties to the Fund, including, but not limited to, such purchaser's qualifications as an "Accredited Investor" as defined by the Securities and Exchange Commission in Rule 501(a) of Regulation D. (See "Investor Suitability" below).
SIDE LETTER	The Manager may, without any further act, approval, or vote of any of the limited liability company, enter into side letters or other similar arrangements with one or more Members that have the effect of establishing rights, or altering, supplementing, or modifying the terms of the Operating Agreement, including, the rights and terms which are more favorable to the recipients of such side letters ("Side Letter"). These side letters are typically reserved for Investors who have committed or otherwise contributed larger capital with the Fund. Side letter arrangements may vary depending on circumstances, economics, and agreements between the Fund and its Investors. However, such Side Letters shall not adversely affect the economic benefits of any other Member of the Fund.
CAPITALIZATION	The Fund will be funded with equity of a minimum of One Hundred Thousand Dollars ($100,000) (the "Minimum Offering Amount") and a maximum Offering amount of Two Hundred and Fifty Million Dollars ($250,000,000) (the "Maximum Offering Amount"). The Fund may, at its sole and absolute discretion, at any time during the period of the Offering, increase or decrease the Minimum Investment Amount and/or the Maximum Offering Amount.
COMMISSIONS FOR SELLING MEMBERSHIP INTERESTS	Membership Interests will be offered and sold directly by the Fund, Manager and the Fund's and Manager's respective officers and employees. No commissions for selling Membership Interests will be paid to the Fund, Manager or the Fund's or Manager's respective officers or employees. The Fund or Manager may also sell Membership Interests through the services of independent broker/dealers who are member firms of FINRA and who will be entitled to receive commissions of up to Eight Percent (8%) of the gross proceeds received for the sale of Membership Interests. Furthermore, independent broker/dealers may be entitled to receive trailing commissions of up to Four Percent (4%) of the original investment amount per Investor annually, payable at the broker/dealer's discretion. These commissions will be paid by the Manager.
NO LIQUIDITY	There is no public market for the Membership Interests and none is expected to develop. Additionally, there are substantial restrictions on transferability of Membership Interests. (See "Risk Factors" below).
INVESTMENT ORIGINATOR AND MANAGER	The Manager or its Affiliates, including Pelorus Equity Group, Inc., a California corporation, may originate and/or broker the Loans (and investment opportunities in Loans) as a licensed California Finance Lender

	or broker. The Manager shall retain the services of a third party to serve as loan servicer for the Fund's Loans. To the extent applicable, the Manager will oversee the activities and performance of the Servicer. Notwithstanding the foregoing, the Manager reserves the right to serve as Loan servicer, or have an Affiliate service the loans, at its sole and absolute discretion at any time for any reason (or no reason). The loan servicer, whether the Manager, an Affiliate, or a third party, shall be referred to as the "Servicer". "Affiliate" or "affiliate" shall mean any of the following: (1) a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Manager, (2) a Person who, directly or indirectly, owns or controls at least Ten Percent (10%) of the outstanding voting interests of the Manager, (3) a Person who is an officer, director, manager or member of the Manager, or (4) a Person who is an officer, director, manager, member, general partner, trustee or owns at least Ten Percent (10%) of the outstanding voting interests of a Person described in clauses (1) through (3) of this sentence. The term "Person" shall mean a natural person or Entity. The term "Entity" shall mean an association, relationship or artificial person through or by means of which an enterprise or activity may be lawfully conducted, including, without limitation, a partnership, trust, limited liability company, corporation, joint venture, cooperative or association.
PROPERTY ORIGINATOR AND MANAGER	The Manager and/or an Affiliate will originate the acquisition opportunities for REO properties and may manage the properties or use a third-party property manager to manage the properties. (See "Manager's Compensation" below).
RECOVERY OF DEFERRED COMPENSATION	If the Manager or Servicer defers or assigns to the Fund any of their respective compensation, the Manager and/or Servicer may elect, in the sole and absolute discretion of the Manager, to recover the same at a later time provided it is within the same calendar year only. Notwithstanding the foregoing, the Manager and/or Servicer have no obligation to waive, defer, or assign to the Fund any portion of such compensation at any time.
LEVERAGING THE PORTFOLIO	The Fund may borrow funds from a third-party lender to fund a portion of the Fund's investments. These loans would be secured by the assets held by the Fund. Leveraging involves additional risks that are detailed later in this Memorandum. (See "Risk Factors – Business Risks – Risks of Leveraging the Fund" below).
DISTRIBUTION OF NET PROFITS	Following the first full quarter after the Minimum Offering Amount is raised hereunder, Members will generally be eligible to receive regular monthly cash distributions of the Fund's Net Profits. Accordingly, Net Profits distributions will begin at the end of the first full month after the Minimum Offering Amount is raised by the Company. (See "Terms of the Offering – Cash Distributions; Election to Reinvest" below).
REINVESTMENT	Each Member has the option to receive cash distributions for his, her or its share of Net Profits (as defined below) that is payable to the Member, or

	having such amount(s) credited to his, her or its capital accounts and reinvested in the Company at the then current price of Membership Interests. (See "Cash Distributions; Election to Reinvest" below). Notwithstanding the foregoing, the Manager reserves the right to commence making cash distributions at any time to any Member(s) in order for the Fund to remain exempt from the ERISA plan asset regulations. (See "ERISA Considerations" and "Summary of Operating Agreement" below).
RETURN OF CAPITAL	The Manager reserves the right, at its sole and absolute discretion and notwithstanding any of the withdrawal restrictions described herein, to return part or all of the Member's capital investment to the Member at any time during the investment for any reason and/or to expel any Member for cause, including without limitation, if the Manager suspects the Member has violated federal or state law, rules, and/or regulations, or the Member is under investigation by federal, state, and/or local authorities. (See "Summary of Operating Agreement – Redemption Policy and Other Events of Disassociation" below).
LOSS RESERVE	A loss reserve may be maintained by the Fund. This loss reserve is intended to reflect estimated losses expected to be incurred and/or inherent in the Fund's investment portfolio. The loss reserve will be evaluated and established on a case-by-case basis, at the sole and absolute discretion of the Manager. This loss reserve is intended to temporarily protect Members from potential unrecoverable losses from the Fund's business and operating activities. Although the loss reserve will help reduce the impact of defaults and other losses temporarily, ultimate repayment/resale of the Loans or properties will be jeopardized to the extent that any Loans that are in default and are not eventually repaid or resold, whether by the applicable borrower or by the Fund, to protect available collateral. Depending on reserve overages and the weighted risk levels of the portfolio, reserve amounts may be reduced, eliminated or increased accordingly in the sole and absolute discretion of the Manager.
WITHDRAWAL	Members who invest in the Fund may not withdraw their capital until they have been members of the Fund for at least Twelve (12) months. Members who have been members of the Fund for a period longer than Twelve (12) months may request withdrawal from the Fund in writing and must give the Fund at least Thirty (30) days' written notice prior to expecting to be withdrawn from the Fund. The effective date of withdrawal shall be Thirty (30) days after the date of receipt of the Member's written withdrawal request. The Fund will use its best efforts to return capital subject to, among other things, the Fund's then cash flow, financial condition, and prospective transactions. Notwithstanding any of the withdrawal restrictions described herein, the Manager reserves the right to return part or all of the Member's capital investment to the Member, at its sole and absolute discretion, at any time during the investment for any reason, including without limitation, if the Manager suspects the Member has violated federal or state law, rules, and regulations or the Member is under investigation by federal, state, and/or local authorities.

	The Manager is not, under any circumstances, obligated to liquidate any assets, properties or Loans to accommodate or facilitate any Member(s)' request for withdrawal or redemption from the Fund. Following the effective date of a Member's withdrawal, the return of capital will be limited to 8.333% of such Member's capital account balance per month such that it will take at least Twelve (12) months for a Member to withdraw his, her, or its total investment in the Fund; provided, however, that the maximum aggregate amount of capital that the Fund will return to the Members, as follows: (1) up to Two Percent (2%) per month of the Fund's Assets Under Management[1]; (2) up to Five Percent (5%) per quarter of such Assets Under Management; and (3) up to Twenty Percent (20%) per fiscal year of such Assets Under Management. Withdrawal requests will be processed by the Fund on a first-come, first-served basis. Notwithstanding the foregoing, the Manager may, in its sole and absolute discretion, waive or modify such withdrawal requirements or withdrawal prioritization, at any time for any reason (or no reason), including, if a Member is experiencing undue hardship. Acceptability of the Member's hardship will be determined by the Manager in its sole and absolute discretion. Members who wish to withdraw before they have been Members for Twelve (12) months ("Early Withdrawal") can only withdraw if the Member produces evidence of undue hardship, and the Manager permits Early Withdrawal, in its sole and absolute discretion. Acceptability of a Member's hardship will be determined by the Manager, in its sole and absolute discretion. Members who request Early Withdrawal will be subject to a penalty of Five Percent (5%) of the Member's withdrawal proceeds. The Manager may, at its sole discretion, waive an Early Withdrawal penalty. The Manager may at any time suspend the withdrawal of funds from the Fund, upon the occurrence of any of the following circumstances: (i) whenever, as a result of events, conditions or circumstances beyond the control or responsibility of the Manager or the Fund, disposal of the assets of the Fund is not reasonably practicable without being detrimental to the interests of the Fund or its Members, determined in the sole and absolute discretion of the Manager; (ii) it is not reasonably practicable to determine the net asset value of the Fund on an accurate and timely basis; or (iii) if the Manager has determined to dissolve the Fund. Notice of any suspension will be given within Ten (10) business days from the time the decision was made to suspend distributions to any Member who has submitted a withdrawal request and to whom full payment of the redemption proceeds has not yet been remitted. If a redemption request is not rescinded by a Member following notification of a suspension, the redemption will be effective within Ninety (90) days from the date the

[1] "Assets Under Management" means the total Fund assets, including notes (at book value), real estate owned (at the lower of cost or fair market value), accounts receivable, advances made to protect loan security, unamortized organizational expenses, cash and any other Fund assets valued at fair market value.

	suspension is lifted, on the basis of the net asset value of the Fund at that time and in the order determined by the Manager in its sole and absolute discretion. All prospective Investors should understand that the average term of loans is expected to range from One (1) to Five (5) years, and accordingly, the cash flow and access to cash availability of the Fund is likely to be limited on an ongoing basis (i.e. most of the Fund's available resources will be committed to pending loans or invested in existing loans and/or properties for significant periods of time). Further, prospective Investors should understand the loans are illiquid and the ability to sell Loans or properties (even if the Fund was inclined to do so) may be limited, and accordingly, any investment made in or through this Offering should be considered highly illiquid. (See "Summary of the Operating Agreement" below).

FORWARD LOOKING STATEMENTS

Investors should not rely on forward-looking statements because they are inherently uncertain. Investors should not rely on forward-looking statements in this Memorandum. This Memorandum contains forward-looking statements that involve risks and uncertainties. We use words such as "anticipated", "projected", "forecasted", "estimated", "prospective", "believes", "expects", "plans", "future", "intends", "should", "can", "could", "might", "potential", "continue", "may", "will", and similar expressions to identify these forward-looking statements. Investors should not place undue reliance on these forward-looking statements, which may apply only as of the date of this Memorandum.

TERMS OF THE OFFERING

This Offering is made to qualified Investors to purchase Membership Interests in the Company. The minimum purchase per Investor (the "Minimum Investment Amount") is One Hundred Thousand Dollars ($100,000). (See "Investor Suitability" below). While the Offering is still open, Members that have subscribed for at least the Minimum Investment Amount may purchase additional Membership Interests in increments of One Thousand Dollars ($1,000). The Manager reserves the sole right, but has no obligation, to adjust the purchase price per Membership Interest at any time and for any reason (or no reason) and thereby require either a higher or lesser amount.

The Investor's funds may be deposited into the Fund's main operating bank account and the Offering will continue until it (1) is terminated by the Fund, (2) expires, or (3) has raised the Maximum Offering Amount. At such time, the Offering will be deemed closed. The Fund may, at its sole and absolute discretion, at any time during the period of the Offering, increase or decrease the Minimum Investment Amount or the Maximum Offering Amount.

Notwithstanding the foregoing in "Terms of the Offering", the Fund reserves the right, in its sole and absolute discretion to, at any time, and for any reason or no reason, accept subscriptions in a lesser amount or to require a higher amount or to reject any subscription(s) in whole or in part.

Establishment of Real Estate Investment Trust

The Fund intends to establish a Sub-REIT, provided that the Sub-REIT qualifies and maintains its status as a REIT under the Internal Revenue Code of 1986, as amended (the "Code"). Establishing a REIT will allow the Fund and certain Members to benefit from the Tax Cuts and Jobs Act of 2017 (the "Tax Act").

The Manager and the Fund have been advised that the Members will benefit from the provisions of the Tax Act that allow for the deduction of up to Twenty Percent (20%) of qualifying business taxable income from federal income tax. The Manager and the Fund have also been advised that the REIT structure to be utilized by the Sub-REIT may eliminate potential unrelated business taxable income ("UBTI") to the Members. (See "Income Tax Considerations" below).

To commence the Sub-REIT operations and achieve the intended benefits associated with the creation, the Fund intends to transfer or assign substantially all of the Fund's assets and liabilities to the Sub-REIT as of commencement of its operations. The commencement date of Sub-REIT is currently anticipated at April 1, 2020, which may be extended upon Manager's sole and absolute discretion. In addition, in the taxable year immediately following commencement of operations, the Sub-REIT intends to be owned by One Hundred (100) or more investors. The Company expects to be the sole initial owner of the Sub-REIT until such time as One Hundred (100) or more investors become equity owners of the Sub-REIT. The Company intends that the One Hundred (100) shareholder requirement will be satisfied by selling a nominal interest in the form of preferred membership interests or units to investors who will become equity owners of the Sub-REIT. These One Hundred (100) shareholders must be admitted to the Sub-REIT during the its second taxable year and must be present for at least 335 days of a taxable year of Twelve (12) months (or during a proportionate part of a taxable yar of less than Twelve (12) months). The proceeds of sale may be distributed to the Fund and its Members as a return of capital, or used by the Company and/or Sub-REIT for their business purposes. A copy of the private placement memorandum in connection offer for sale of securities to the One Hundred (100) shareholders is available for review upon the Member's request.

Upon commencement of operations of the Sub-REIT, it is intended that substantially all of the lending activity conducted by the Fund shall be conducted by the Sub-REIT. The Sub-REIT shall adhere to the lending policies and procedures of the Fund and shall be governed by the same internal compliance procedures as applicable to the Fund. (See "Lending Standards and Policies" below). Provisions described herein that restrict or govern the Fund's business operations shall apply jointly to the Fund and the Sub-REIT.

Like the Fund, the Sub-REIT will rely upon the Manager and its Affiliates, and their principals, officers, directors, managers, and other staff members, to carry out the Sub-REIT's business activities. Compensation to the Manager or an Affiliate shall be identical to compensation payable to the Fund for similar services, subject to requirements under the Code, including specifically, Sections 856 through 860. Expenses related to establishment of Sub-REIT will be paid by the Fund.

Although the risks associated with Sub-REIT are generally similar to that of the Fund, there are unique and additional risks in establishing and maintaining a REIT that are detailed later in this Memorandum. (See "Risk Factors – Risk Factors related to Real Estate Investment Trust" and "Income Tax Considerations" below). Distributions payable to Members are not expected to be adversely affected because the Sub-REIT expects to comply with REIT tax rules that require distribution of substantially all of its net income to its equity holders. After tax returns to taxable Members who are individuals, trusts or estates, and subject to US federal income tax, are expected to be greater following commencement of operations by the Sub-REIT than would be the case if the Sub-REIT did not exist.

Subscription Agreements; Admission to the Company

To subscribe with the Fund and purchase any Membership Interests, an Investor must meet certain eligibility and suitability standards, some of which are set forth below. (See "Investor Suitability" below). Additionally, an Investor who wishes to become a Member of the Company must sign and execute a subscription agreement ("Subscription Agreement") in the form attached hereto as Exhibit B (together with a check in the amount of the purchase price payable to the Fund), which shall be accepted or rejected by

the Manager in its sole and absolute discretion. By executing the Subscription Agreement, an Investor makes certain representations and warranties upon which the Manager will rely on in accepting the Investor's subscription funds. Investors are encouraged to read the Subscription Agreement carefully and in its entirety. INVESTORS SHOULD CAREFULLY READ AND COMPLETE THE SUBSCRIPTION AGREEMENT (WITH POWER OF ATTORNEY) AND INVESTOR QUESTIONNAIRE.

The Manager may reject an Investor's Subscription Agreement for any reason or no reason at all. If accepted by the Manager, the Investor's capital contribution will be temporarily deposited into a call account (the "Subscription Account"). While an Investor's contribution is held in the Subscription Account, the Investor will not be considered a Member of the Fund, and the Investor's contribution will not accrue any interest from the Fund. An Investor shall become a Member of the Fund when the Investor's contribution is deposited into the Fund's operating account ("Operating Account") from the Subscription Account. In the event interest accrues on an Investor's capital contribution while being held in the Subscription Account, such interest shall not be payable to the Investor. The Manager will transfer the Investor's contribution from the Subscription Account into the Fund's main Operating Account on a first in, first out basis when capital is needed by the Fund (in the Manager's sole and absolute discretion) to make or purchase Loans and/or invest in properties.

Notwithstanding the previous paragraph, should the process from depositing an Investor's funds into the Subscription Account and admission as a Member take longer than One Hundred and Eighty (180) days, the Investor may request in writing to recover his, her or its investment funds. If, upon receipt of such request in writing, the Manager has not yet admitted the Investor as a Member, then Manager may, in its sole and absolute discretion, return the Investor's funds to the Investor and revoke the Subscription Agreement within Ten (10) business days of receipt of such request from the Investor.

Subscription Agreements are non-cancelable and irrevocable by the Investor and subscription funds are non-refundable for any reason, except with the express written consent of the Manager or as expressly set forth herein or in the Subscription Agreement.

AN INVESTOR SHALL OWN MEMBERSHIP INTERESTS IN THE FUND IF AND ONLY IF THE INVESTOR'S SUBSCRIPTION FUNDS ARE TRANSFERRED INTO THE FUND'S MAIN OPERATING ACCOUNT.

Cash Distributions; Election to Reinvest

Cash Distributions

Following the first full quarter after the Minimum Offering Amount is raised by the Fund, Net Profits shall be distributable to the Members on a monthly basis (and pro-rated within any month in which a Member was a member for only part of the month), as follows: One Hundred Percent (100%) of the Net Profits of the Fund shall be distributed to the Members on a pro-rata basis. No Net Profits shall be distributed to the Manager. Net Profits shall be distributed after all expenses and fees are paid to the Manager. All cash distributions will be made on a monthly basis, in arrears.

Net Profits distributions will begin at the end of the first full quarter after the Minimum Offering Amount is raised by the Company. "Net Profits" shall mean the Fund's monthly gross income less (1) the Fund's monthly liabilities and operating expenses (including administrative costs, legal and accounting fees) and (2) payment of the Asset Management Fee to the Manager and an allocation of income for a loss reserve.

Distribution of Net Profits are not a guaranteed. Net Profits shall only be distributed to the extent cash is available and provided that distributions will not impact the continuing operation of the Fund, subject to the sole and absolute discretion of the Manager.

Election to Reinvest

Each Member has the option of receiving cash distributions for his, her or its share of distributions of the Fund that is payable to the Member or having such amount(s) credited to his, her or its capital accounts and reinvested in the Fund at the then current price of Membership Interests. However, the Manager reserves the right to commence making cash distributions at any time to any Member(s) in order for the Company to remain exempt from the ERISA plan asset regulations. (See "ERISA Considerations" and "Summary of Operating Agreement" below).

Members must elect to (a) receive cash with respect to the monthly income distributions from the Fund in the amount of that Member's share of cash available for distribution, or (b) allow the reinvestment through purchase of additional Membership Interests with respect to monthly income distributions from the Fund in the amount of that Member's share of cash available for distribution. No partial reinvestment will be allowed.

An election to reinvest all or a portion of the monthly income distribution is revocable at any time upon a written request to revoke such election. If no election is made, then the monthly income distribution will be a cash disbursement. Members may change their election at any time upon Thirty (30) days written notice to the Fund. Upon receipt and after the Thirty (30) day notice has occurred, the Member's election shall be changed and reflected on the following first day of the monthly in which the Member is entitled to receive a distribution. Notwithstanding the preceding sentences, the Manager may at any time immediately commence with income distributions in cash only (hence, suspending the reinvestment option for such Member(s)) to any Member(s) in order for the Company to remain exempt from the ERISA plan asset regulations. (See "ERISA Considerations" and "Summary of Operating Agreement" below).

Minimum and Maximum Offering

The Maximum Offering Amount of this Offering is Two Hundred and Fifty Million Dollars ($250,000,000) and the Minimum Offering amount is One Hundred Thousand Dollars ($100,000). The Fund may, at its sole and absolute discretion, at any time during the period of the Offering, increase or decrease the Maximum Offering Amount or the Minimum Investment Amount.

In addition, the maximum gross proceeds will be the Maximum Offering Amount which will comprise, subject to adjustments as described elsewhere in this Memorandum, the total capitalization of the Fund. This Offering may, however, be terminated at the sole option of the Manager at any time and for any reason (or no reason) before the Maximum Offering Amount is received.

Restrictions on Transfer

As a condition to this Offering, restrictions have been placed upon the ability of Members to resell or otherwise transfer any Membership Interests purchased hereunder. Specifically, no Member may resell or otherwise transfer any Membership Interests without the satisfaction of certain conditions designed to ensure compliance with applicable tax and securities laws including, without limitation, the requirement that certain legal opinions be provided to the Fund with respect to such matters and the requirement that any transfer of Membership Interests to a transferee does not violate any state or federal securities laws. Notwithstanding the foregoing, no Member may resell or otherwise transfer any Membership Interests

without the prior written consent of the Manager, whose consent may be withheld in its sole and absolute discretion. (See "Summary of Operating Agreement — Transfer Restrictions" below).

To the extent required by applicable law or in the sole and absolute discretion of the Manager, legends shall be placed on all instruments or certificates evidencing ownership of Membership Interests in the Company stating that the Membership Interests have not been registered under the federal securities laws and setting forth limitations on resale, and notations regarding these limitations shall be made in the appropriate records of the Fund with respect to all Membership Interests offered through this Offering.

Any Member who transfers, upon the Manager's consent, any Membership Interests to another person shall, subject to the sole and absolute discretion of the Manager, pay the Manager a transfer fee of at least Five Hundred Dollars ($500) to cover administrative costs related thereto.

INVESTOR SUITABILITY

This investment is appropriate only for Investors who have no need for immediate liquidity in their investments and who have adequate means of providing for their current financial needs, obligations and contingencies, even if such investment results in a total loss. Investment in the Membership Interests involves a high degree of risk and is suitable only for an Investor whose business and investment experience, either alone or together with a purchaser representative, renders the Investor capable of evaluating each and every risk of the proposed investment. CAREFULLY READ THE ENTIRE "RISK FACTORS" SECTION OF THIS PRIVATE PLACEMENT MEMORANDUM.

Each Investor seeking to acquire Membership Interests will be required to represent that he, she or it is purchasing for his, her or its own account for investment purposes and not with a view to resale or distribution. The Fund will sell Membership Interests to an unlimited number of "Accredited Investors" only. To qualify as an "Accredited Investor" an Investor must meet ONE of the following conditions:

1. Any natural person who had an individual income in excess of Two Hundred Thousand Dollars ($200,000) in each of the two most recent years or joint income with that person's spouse or spousal equivalent in excess of Three Hundred Thousand Dollars ($300,000) in each of those years and who has a reasonable expectation of reaching the same income level in the current year;

2. Any natural person whose individual net worth or joint net worth, with that person's spouse or spouse equivalent, at the time of their purchase exceeds One Million Dollars ($1,000,000) (excluding the person's primary residence);

3. A natural person holding one or more professional certifications or designations administered by the Financial Regulatory Authority, Inc., and in good standing: the Licensed General Securities Representative (Series 7), Licensed Investment Adviser Representative (Series 65), and Licensed Private Securities Offering Representative (Series 82);

4. A natural person holding, and in good standing, of one or more professional certifications or designations or other credentials from an accredited educational institution that the Commission has designated as qualifying an individual for accredited investor status;

5. A natural persons who is considered a "knowledgeable employee" of a private fund as defined by Rule 3c-5(a)(4) under the Investment Company Act of 1940, including trustees and advisory board members, or person serving in a similar capacity of a fund relying on an exemption under Investment Company Act of 1940 Section 3(c)(1) or 3(c)(7), or an affiliated person of the fund that oversees the fund's

investments, and employees of the private fund (other than employees performing solely clerical, secretarial, or administrative functions);

6. Any family office, as defined in rule 202(a)(11)(G)-1under the Investment Advisers Act of 1940: with assets under management in excess of $5,000,000, that is not formed for the specific purpose of acquiring the securities offered, and whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risk of the prospective investment;

7. Any family client, as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940, of a family office meeting the requirements in paragraph (a)(12) of this section and whose prospective investment in the issuer is directed by such family office pursuant to paragraph (a)(12)(iii);

8. Any bank as defined in Section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act, whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to Section 15 of the Securities and Exchange Act of 1934 (the "Exchange Act"); any investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940 or registered pursuant to the laws of a state; any investment adviser relying on the exemption from registering with the Commission under section 203(l) or (m) of the Investment Advisers Act of 1940; any insurance company as defined in Section 2(13) of the Exchange Act; any investment company registered under the Investment Fund Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; any Small Business Investment Fund (SBIC) licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; any Rural Business Investment Company as defined in section 384A of the Consolidated Farm and Rural Development Act; any plan established and maintained by a State, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of Five Million Dollars ($5,000,000); any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment advisor, or if the employee benefit plan has total assets in excess of Five Million Dollars ($5,000,000) or, if a self-directed plan, with investment decisions made solely by persons who are Accredited Investors;

9. Any private business development company as defined in Section 202(a)(22) of the Investment Advisors Act of 1940;

10. Any organization described in Section 501(c)(3)(d) of the Internal Revenue Code of 1986, as amended (the "Code"), corporation, Massachusetts or similar business trust, partnership, or limited liability company, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of Five Million Dollars ($5,000,000);

11. Any director or executive officer, or Fund of the issuer of the securities being sold, or any director, executive officer, or Fund of a Fund of that issuer;

12. Any trust, with total assets in excess of Five Million Dollars ($5,000,000), not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Section 506(b)(2)(ii) of the Code;

13. Any entity not listed above which was not formed for the specific purpose of acquiring the securities offered, owning investments in excess of Five Million Dollars ($5,000,000); or

14. Any entity in which all the equity owners are accredited investors as defined above.

Verification

The Fund will require that the Investor verify the Investor's status as an Accredited Investor through any reasonable means and steps deemed necessary or suitable by the Fund. A non-exhaustive list of verification steps that the Fund may use for, or require from, an Investor is noted in the Subscription Agreement. Every Investor is required to cooperate in the Fund's verification steps and methods before being permitted to invest in the Offering. The Fund may use differing or varied verification steps or methods for each Investor as the facts and circumstances surrounding any particular Investor's financial situation would likely be different from any other Investor.

Investor Contributions

The Fund may accept Investor capital contributions in the form of cash and/or from Investors whose proceeds that may have been derived from businesses operating in the recreational and/or medical cannabis industries. (See "Risk Factors; Investment Risks" below). If the Fund accepts Investor proceeds that may have been derived from businesses operating in the cannabis industry, the Fund shall ensure that said Investor is operating or has operated in accordance with and pursuant to state, county and local laws and regulations governing medical and/or recreational cannabis. In addition, such Investors will be required to provide the following information to the Fund at the time of subscription: (i) a valid business license; (ii) entity charter documents demonstrating the entity is in good standing (as applicable); (iii) copies of the Investor's most recent tax returns or sworn affidavit under penalty of perjury by Investor or Investor's CPA that the Investor's contributions have been properly accounted for and are a post-tax investment (meaning Investor has paid any and all applicable taxes payable on the contributions prior to investing those proceeds in the Fund); (iv) a letter from a Certified Public Accountant ("CPA") attesting that the Investor's contributions have been properly reported and the Investor is in compliance with applicable state, local and federal tax regulations and laws; (v) to the extent that it is applicable, a letter from a CPA certifying that the investment funds are not directly derived from cannabis related activities; and/or (vi) a letter from an attorney representing that the Investor is in compliance with all state and local regulations governing medical and/or recreational cannabis, or any other industries, as applicable. The Fund shall obtain the documents in order for the Fund to ensure the Investor has or is not violating or poses a risk to violate Anti-Money Laundering laws and tax regulations. Said Anti-Money Laundering laws and regulations shall be deemed to include the USA Patriot Act of 2001, Pub. L. No. 107-56 (the "Patriot Act"), the Bank Secrecy Act, the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et seq., and the sanction regulations promulgated pursuant thereto by the Office of Foreign Assets Control ("OFAC"). (See "Risk Factors – Investments Risks" below).

USE OF PROCEEDS

	Maximum Offering Amount	Percentage of Gross Offering Proceeds
Gross Offering Proceeds	$250,000,000	100%
Commissions Payable by the Fund[(1)]	$0	0%
Deployable Proceeds[(2)]	$250,000,000	100%

[(1)] Membership Interests will be offered and sold directly by the Fund, Manager and the Fund's and Manager's respective officers and employees. No commissions for selling Membership Interests will be paid to the Fund, Manager or the Fund's or Manager's respective officers or employees. The Fund or Manager may also sell Membership Interests through the services of independent broker/dealers who are member firms of the FINRA and who will be entitled to receive commissions of up to Eight Percent (8%) of the gross proceeds received for the sale of Membership Interests. Furthermore, independent broker/dealers may be entitled to

receive trailing commissions of up to Four Percent (4%) of the original investment amount per Investor annually payable at the broker/dealer's discretion but not later than annually. These commissions will be paid by the Manager.

(2) Deployable proceeds to the Company are calculated before deducting organization and Offering expenses. The expenses relating to this Offering are estimated to be approximately One Hundred Thousand Dollars ($100,000) (including, without limitation, legal, organizational, printing, binding and miscellaneous expenses). The remaining Offering proceeds will be available for investments pursuant to the business plan of the Company. The Manager will receive its compensation from a variety of sources, including, without limitation, a management fee assessed to the Company and a share of the Company profits. (See "Manager's Compensation" below).

LENDING STANDARDS AND POLICIES

The Fund will seek to originate, make, purchase, otherwise acquire, manage and/or sell Loans secured by interests in real or personal property, including properties operating in the cannabis industry. Loans secured by properties operating in the cannabis business will include, without limitation, commercial real estate intended to be used for the growth, manufacturing, distribution, production and/or extraction of recreational and/or medical cannabis. The Fund's Loans will not be guaranteed by any governmental agency or private entity, but may be guaranteed by members, shareholders, Affiliates, and/or associates of the underlying borrowers. The Fund will select Loans according to the standards provided below:

1. Lien Priority. The deeds of trusts and mortgages securing the Loans will be primarily first lien positions. The Company may also fund loans secured by (a) second deeds of trust or mortgages, (b) a pledge of the ownership interest in the borrowing entity ("Mezzanine loans"), and/or (c) a preferred equity interest in the borrowing entity ("Preferred Equity"), provided that, the aggregate loan-to-value ratios (as stated in Section 4 below) and certain technical REIT requirements will be met.

2. Location of Real Property Securing Loans. Deeds of trusts and mortgages will be secured by real property located across the United States, with a primary focus in California.

3. Type of Property. Loans will be secured primarily by commercial real property, including without limitation, the following: retail, office, warehouses, industrial, hospitality, and improved land.

4. Loan-to-Value Ratio. A Loan by the Company will generally not exceed the Loan-to-Value percentage ratio set forth below. The Loan-to-Value ratio is calculated by taking the amount of the Company's Loan, dividing that by the value of the real property securing the deed of trust or mortgage and multiplying that figure by One Hundred (100) to come to a percentage. "Value" shall be determined by an independent certified appraiser or non-certified appraiser doing an appraisal on the real property or the Manager or commercial real estate broker giving his, her, or its opinion of value of the real property. Notwithstanding the foregoing, the Company may exceed the below stated Loan-to-Value ratio if the Manager determines in its business judgment that a higher loan amount is warranted by the circumstances of that particular loan, such as being able to secure multiple properties, called "cross-collateralization", personal guaranties, prior loan history with the borrower, market conditions, if mortgage insurance is obtained, or other compensating factors that would support the Manager in making its decision in the best interest of the Company.

Type of Real Property Securing the Loan	Target and Maximum LTV Ratios
Commercial*	Target: 50% to 65%; Maximum: 70%
Construction Loans**	Target: 65% to 65%; Maximum: 75%
Unimproved Land	Target: 55%; Maximum: 55%

* Commercial includes retail, office, industrial, warehouses, self-storage, and specialized commercial properties (e.g. churches, synagogues, etc., if alternative use is viable). In addition, when lending to borrowers in the cannabis industry, the Fund will seek to secure the Loan with the following types of properties: commercial, industrial and warehouse.

** Determined on an "as completed" value

Upon analysis in approximately Twenty-Four (24) months, the Manager may re-evaluate the portfolio and Loan-to-Value ratio maximums set by the Company and may revise the Loan-to-Value ratio maximums at that time if it considers it to be in the best interests of the Company. The Manager will inform Members of the new Loan-to-Value ratios when and if the Manager re-evaluates them.

The Fund will seek to maintain a weighted Loan-to-Value ratio for the Fund of approximately Sixty Five Percent (65%) to Seventy Percent (70%); provided that the maximum LTV ratio for the Fund shall not exceed Seventy Five Percent (75%), unless the Manager determines in its sole discretion that it is in the best interests of the Fund to exceed such ratio in any single or multiple instances. The foregoing Loan-to-Value ratio does not apply to purchase-money financing offered by the Company. Examples of these types of loans may be, but are not limited to, real estate owned by the Company whereby the Company decides to sell the property and carry back a loan on the property to make it cash flow positive.

5. Cannabis Lending. The Fund will provide financing to companies in the cannabis industry. These loans would be secured by commercial real estate used in the recreational and/or medical cannabis industry ("Cannabis Loans"). Borrowers may use Cannabis Loan proceeds to engage in one of the following: (i) cultivation, growth, production, distribution and/or sale of medical cannabis; (ii) cultivation, growth, production, distribution and/or sale of recreational cannabis; and (iii) providing equipment, products and services to business engaged in cannabis cultivation, production, sale and distribution. (See "Risk Factors – Risks Associated with the Fund's Business in the Cannabis Industry" below). In addition, in order to mitigate the risks involved with cannabis lending, the Fund will request each borrower to verify the following: (i) that borrower has obtained a conditional use permit ("CUP") from applicable local authorities to develop and operate its business; (ii) that the borrower has a valid business license and is properly licensed and in good standing with the relevant state authorities; (iii) and request periodic reporting requirements.

6. Terms of Company Loans. The terms of the Loans, including Cannabis Loans, will vary. Loans will generally have a term between Six (6) months and Five (5) years, but may have loan terms exceeding Five (5) years. Most Loans originated or acquired by the Fund will generally provide for monthly payments of principal and/or interest and a "balloon" payment payable in full at the end of the term. At the end of the term, the Company will require the borrower to pay the loan in full, to refinance the loan, or to sell the real property to pay back the loan. Loans whose term exceeds the life of the Fund will be sold, at the best prevailing rate, on the open market upon the dissolution of the Fund. In addition, the Company may allow Six to Twelve (6-12) month extensions and may charge an extension fee to the borrower. Finally, the Company may also charge exit fees on loans based on the existing Loan balance at maturity. These exit fees may range from Zero Percent (0%) to Ten Percent (10%) of the remaining loan balance at maturity.

7. Title Insurance. Satisfactory title insurance coverage will be obtained for all Loans and will usually be paid by the borrower. The title insurance policy will name the Company as the insured and provide title insurance in an amount not less than the principal amount of the Loan unless there are multiple forms of security for the Loan, in which case the Manager shall use its business judgment in determining whether and to what extent title insurance shall be required. Title insurance insures only the validity and priority of the Company's deed of trust or mortgage, and does not insure the Company against loss from other causes, such as diminution in the value of the secured property, loan defaults, and other such losses.

8. Fire and Casualty Insurance. Satisfactory fire and casualty insurance will be obtained for all improved real property loans which insurance will name the Company as its loss payee in the amount equal to the improvements on the real property. (See "Business Risks – Uninsured Losses" below).

9. Mortgage Insurance. The Manager does not intend to, but may if the property otherwise qualifies, arrange for mortgage insurance, which would afford some protection against loss if the Company foreclosed on a loan and there existed insufficient equity in the security property to repay all sums owed.

10. Acquiring Loans from Other Lenders. The Fund may also participate in Loans with other lenders (including other businesses organized by business partners or Affiliates of the Fund or the Manager), by providing funds for or purchasing a fractional undivided interest in a loan meeting the requirements set forth above. In the event the Company acquires loans from other lenders, the Company will receive assignments of all beneficial interest in any Loans purchased.

11. Purchase of Loans from Affiliates. The Company may purchase loans from the Manager or Affiliates so long as it meets the lending requirements set forth above. For the purposes hereof, the term "Affiliates" shall mean any of the following: (1) a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Manager, (2) a Person who, directly or indirectly, owns or controls at least Ten Percent (10%) of the outstanding voting interests of the Manager, (3) a Person who is an officer, director, manager or member of the Manager, or (4) a Person who is an officer, director, manager, member, general partner, trustee or owns at least Ten Percent (10%) of the outstanding voting interests of a Person described in clauses (1) through (3) of this sentence. The term "Person" shall mean a natural person or Entity. The term "Entity" shall mean an association, relationship or artificial person through or by means of which an enterprise or activity may be lawfully conducted, including, without limitation, a partnership, trust, limited liability company, corporation, joint venture, cooperative or association.

12. Fractionalized Interests. The Company may also invest in fractionalized interests in promissory notes secured by real property with other lenders (including other entities organized by the Manager), by providing funds for or by purchasing a fractional undivided interest in a Loan that meets the requirements set forth above.

13. Equity Participation and Mezzanine Positions. The Company may fund mezzanine Loans at lower than market interest rates in order to obtain an equity interest in the underlying real property in which the Company funds the loan. Generally, a Mezzanine loan is a type of subordinate real estate financing that is secured by a pledge of One Hundred Percent (100%) of the equity ownership interests in the entity that owns the real property. The Company may also make loans where it agrees to participate in the equity of the property securing the loan made by the Company. Such equity participation may include, but is not limited to, sharing in the proceeds from the sale price of the property or properties securing the Loan, or including additional exit fees upon loan repayment. The Manager will only authorize the Company to make such a loan if the Manager believes in its business judgment that it is in the best interests of the Company to do so.

14. Warrants. From time to time, the Company may engage in a warrant with a borrower, tenant, or a third-party, which gives the Company the right, but not the obligation, to buy or sell, a certain security of the counterparty at a certain price before expiration of the warrant. Such contract negotiations may be in connection with the making of the loans. Income from the exercise of a warrant and/or sale of the underlying security therefrom, will be part of the income to the Company and distributed to the Members in accordance with the waterfall. The Company will engage in a warrant to the extent that it will remain being exempted from registration under the Investment Company Act. (See "Risk Factors – Investment Company Act" below). There may be a potential tax implication to the Members, including, phantom income. (See "Risk Factors – Phantom Income" below).

15. Operating Expenses. The Company will pay for and/or reimburse the Manager for any and all costs and expenses incurred by the Company or Manager relating to, or in connection with, the

review, evaluation, analysis, structuring, negotiation and/or execution of any investment/acquisition opportunities in Loans.

Credit Evaluations

The Fund may consider the income level and general creditworthiness of a borrower to determine his, her or its ability to repay the Fund Loan according to its terms in addition to considering the loan-to-value ratios and sources of security for repayment. Loans may be made to borrowers who do not have sources of income that would be sufficient to qualify for loans from other lenders such as banks or savings and loan associations. In addition, the Fund may require each borrower to verify that the borrower has approved plans and permits for the development of the property, has prior real estate experience and a minimum FICO score of 650, and verify that borrower has no record of prior bankruptcies or foreclosures. Notwithstanding the foregoing, the Manager reserves the right to adjust baselines for credit evaluations and worthiness if there are justifying factors to do so, at its sole and absolute discretion.

While the Fund will consider the income level and general credit worthiness of borrowers, it intends to focus on the value of the real estate collateral securing the loans made by the Fund.

Loan Packaging

The Manager or its Affiliates will assemble and/or obtain all necessary information required to make a funding decision on each Loan request. For those Loans funded by the Fund, the documents assembled and obtained for the purpose of making the funding decision will become the property of the Fund.

Loan Servicing

It is presently anticipated that all Fund loans will be serviced (i.e., loan payments collected and other services relating to the loan) by a third-party Servicer. The Servicer will be compensated by the Fund and/or borrowers for such loan servicing activities, as is agreed upon by the Manager and Servicer. To the extent applicable, the Manager will oversee the activities and performance of the Servicer. (See "The Manager and Affiliates" below). At any time, at the sole and absolute discretion of the Manager, in an effort to maintain an effective cost structure or for any other reason (or no reason), the Manager may decide to service the loans at such time as conditions warrant. While the Manager shall not receive a loan servicing fee, it shall be reimbursed for any costs and expenses incurred as a result of servicing the Loans. (See "Manager's Compensation" below).

The Fund will generally require the Servicer to adhere to the following Payment, Delinquency, Default and Foreclosure practices, procedures and policies:

1. **Payment.** Generally, payments will be payable monthly, on the First (1st) day of each month. Interest is generally prorated to the First (1st) day of the month following the closing of the loan escrow.
2. **Delinquency.** Generally, Loans will be considered delinquent if no payment has been received within Ten (10) days of the payment due date. Borrower will be notified of delinquency by mail on the Twelfth (12th) day after the payment due date and a late charge will be assessed. The Servicer will refer to and rely upon the late charge provisions in the applicable loan documents for each loan.

3. **Default.** A Loan will be considered in default if no payment has been received within Thirty (30) days of the payment due date. Foreclosure will usually be initiated shortly after the Thirty-First (31st) day after a default, with the exact timing to be determined in each instance in the business judgment of the Fund, which could be delayed several months depending on borrower circumstances and loan to

value ratio of the security. Any costs of this process are to be posted to the borrower's account for reimbursement to the Fund.

4. **Foreclosure.** Statutory guidelines for foreclosures in each state are to be followed by the Servicer until the underlying property is liquidated and/or the account is brought current. Any costs of this process are to be posted to the borrower's account for reimbursement to the Fund. If a Loan is completely foreclosed upon and the property reverts back to the Fund, the Fund will be responsible for paying the costs and fees associated with the foreclosure process, maintenance and repair of the property, service of senior liens and resale expenses.

Sale of Loans

The Company does not plan on investing in Loans for the primary purpose of reselling such Loans in the course of business. However, the Company may sell Loans, or fractional interests in such Loans, when the Manager determines that it appears to be advantageous for the Company to do so, based upon then current interest rates, the length of time that the Loan has been held by the Company and the overall investment objectives of the Company.

Leveraging the Fund/Borrowing/Hypothecation

The Company may employ leverage and borrow funds from a third-party lenders or financial institutions to finance the Fund's investments in Loans. The Fund may assign all or a portion of its Loan portfolio as security for such loan(s). The Fund anticipates engaging in this type of transaction when the interest rate at which the Fund can borrow funds is significantly less than the rate that can be earned by the Fund on its Loans, giving the Fund the opportunity to earn a profit as a "spread." For purposes of illustration, these transactions will typically be loans secured by one or a series of loans belonging to the Fund. Such a transaction involves certain elements of risk and also entails possible adverse tax consequences. (See herein "Risk Factors", "Income Tax Considerations", and "ERISA Considerations" below). The Fund may also in its sole discretion elect to finance other Fund's investments with borrowed funds. Leveraging involves additional risks that are detailed later in this Memorandum. (See "Risk Factors – Business Risks – Risks of Leveraging the Company" below).

PROPERTY ACQUISITION GUIDELINES AND POLICIES

General Standards for Purchasing Properties

The Company will acquire, manage, remodel, develop, lease, repair and/or sell real estate owned properties ("REO") throughout the United States, with a primary focus in California. These REOs will be derived from the Company's lending activities. Properties may be acquired from individuals, entities, institutional investors, financial institutions, governmental agencies and other sellers of real or personal property. At least part of the Fund's capital invested in acquiring properties will be directed towards purchasing properties at a discount to current (or projected) fair market value and reselling these properties for a profit.

1. **Loan-to-Value Ratio.** The Fund may use the same standards as the Loan-to-Value Ratios set forth above to determine the maximum amount of leverage the Fund will incur when investing in a property. In other words, the Manager may generally seek to limit the total amount of debt, loans, or financing (i.e. leverage) to acquire a property to a maximum of Seventy Five Percent (75%) of a property's market value. The Manager, at its sole and absolute discretion, may exceed the below ratios dependent on the investment opportunity. Upon analysis in approximately Twenty-Four (24) months, the Manager may re-evaluate the portfolio and purchase price to market value ratio maximums set by the Fund and may revise

them at that time if it considers it to be in the best interests of the Fund. The Manager will inform Members of the new Loan-to-Value ratios when and if the Manager re-evaluates them.

2. Location of Real Property Securing Loans. Properties will be located throughout the United States, with a primary focus in California.

3. Sale of Properties Operating in the Cannabis Business. The Fund's primary focus, as it applies to the acquisition of properties in the cannabis industry, will be to sell these properties to qualified buyers, and secondarily lease them to cannabis operators and/or businesses. A "qualified buyer" is an experienced operator who has prior experience operating cannabis growth facilities with high revenues, and has not been subject to federal and/or state action.

4. Fire and Casualty Insurance. Satisfactory fire and casualty insurance will be obtained for all properties and will name the Company as its loss payee. (See "Business Risks – Uninsured Losses" below).

5. Title Insurance. Satisfactory title insurance coverage will be obtained for all properties. The title insurance policy will name the Fund as the insured and provide title insurance in an amount not less than the principal amount of the value of the property.

6. Environmental Reports. Environmental reports will not typically be ordered on Properties purchased or otherwise acquired by the Fund.

7. Third Party Servicers. It is presently anticipated that all Fund properties will be managed by the Manager. The Manager, at its sole and absolute discretion, may engage or partner with third party servicers to manage the acquisition, development, construction, leasing, management and sale of the various properties acquired by the Fund. The Manager will oversee these third-party servicers. These third-party servicers will be compensated by the Fund. The Fund will not be responsible for any sub-servicers engaged by the third part servicers to assist in performing their servicing activities.

8. Leverage. The Fund employ leverage and borrow funds from a third-party lenders or financial institutions to finance the Fund's investments in properties. Leverage usually involves a third-party loan in which the Fund's entire asset portfolio is provided as security to the lender for such loan(s). Leveraging involves additional risks that are detailed later in this Memorandum. (See "Risk Factors – Business Risks – Risks of Leveraging the Company" below).

9. Operating Expenses. The Fund will pay for and/or reimburse the Manager for any and all costs and expenses incurred by the Fund or Manager relating to, or in connection with, the review, evaluation, analysis, structuring, negotiation and/or execution of any investment or acquisition opportunities in properties.

10. Distressed Properties. The Fund may, when commercially reasonable, acquire distressed properties. The Fund intends to acquire and otherwise invest in distressed properties for purposes of holding, developing, remodeling, rehabilitating, improving, renting and selling the associated and secured properties. Distressed properties are typically properties secured by non-performing notes, or properties impacted by specific issues such as, but not limited to, dilapidation, physical damage, devaluation caused by rezoning, and environmental contamination. The primary intent of the Fund is to purchase, invest, or otherwise acquire the distressed properties and properties tied to nonperforming notes and remodel, improve, develop, rehabilitate, hold and rent, and subsequently sell the properties for profit. The Fund will use an opportunistic investment strategy to identify and invest in distressed properties, unless the Manager, in its sole and absolute discretion, determines it is no longer in the best interests of the Fund.

11. Other Investment Vehicles. The Company may enter into joint venture agreements, acquire securities in entities, and other investment opportunities, including participating in partnerships, purchasing membership interests in other LLCs, and/or forming single purpose entities across the United States, to acquire, develop, manage rent, and/or sell properties. These properties may also include properties leased and/or sold for specific industrial uses related to or associated with the recreational and/or medical cannabis industry including, without limitation, indoor cannabis growth facilities, cannabis/marijuana manufacturing, and extraction facilities. The investments will likely be debt and equity investments primarily in the area of cannabis and real estate. This will involve negotiating, purchasing, and otherwise acquiring ownership interests, equity, and other forms of securities to be owned by the Company. Any fees, expenses and/or costs associated with these joint ventures or arrangements shall be paid by the Company. The Company will only make invest in investment funds to the extent the Company remains exempt under the Investment Company Act of 1940.

COMPANY PERFORMANCE

As of December 31, 2020, the Company holds Twenty-Five (25) loans in total aggregate amount of $83,015,364. The loan terms range between 12 months to 24 months with a weighted note rate of 15.27%. Further, the annualized income from such loans is approximately $16,088,730. Please refer to Exhibit C for more details on the Company's performance.

THE MANAGER

The Manager will manage and direct the affairs of the Company. The Manager of the Fund is Pelorus Management Group, LLC, a California limited liability company. The Manager is owned by Lost Winds Capital Inc., a California corporation, and JRS Capital USA Inc., a California corporation. The principals, officers, and directors of the Manager, and their biographies, are as follows:

Daniel Leimel Jr., *manager of Pelorus Management Group, LLC, Manager of the Fund*

Dan is the CEO of Pelorus Equity Group and the Managing Director of the Pelorus Fund. He has more than 32 years of extensive industry experience including operating, owning and managing several corporations, loan servicing entities and a real estate fund.

Over his career, Dan has successfully underwritten and closed thousands of real estate transactions by raising capital for both debt and equity. His vast transactional experience is invaluable when underwriting complicated scenarios and structuring solution based terms to satisfy a broad spectrum of situations.

Dan possesses deep experience in risk mitigation and has expertly navigated adverse market conditions while still maintaining a fully transparent and equitable upside for the investor. His primary investment philosophy is to focus on capital preservation and mitigating risk in every transaction.

Dan finds that the balance of his faith and his family are what motivates and drives him. He has been married for 22 years and has three beautiful children.

James Robert Sechrist, *manager of Pelorus Management Group, LLC, Manager of the Fund*

Rob is the Co-Founding President of Pelorus Equity Group and Co-Manager of the Pelorus Fund (a cannabis-focused CRE debt fund) with more than nineteen years of experience in the real estate finance industry. Since the formation of Pelorus in 2010, he has raised more than $300,000,000 in secured real estate transactions. Rob's primary role at Pelorus Equity Group is the development of strategic alliances with both private and institutional investors, the formation of equity partnerships, coordinating the company's growth into new markets. Today Pelorus funds several million a month through the Pelorus Fund, syndications with family offices and other various debt and equity partnerships. Rob earned a BA from San Diego State University. Licenses include California Real Estate Broker's License, NMLS License, and designated expert witness as an asset-based lender. He is also the CEO of JRS Capital USA, Inc., a real estate and technology investment firm based out of Newport Beach, California. Currently a member of Gen Next and a donor to the Gen Next Foundation. Rob is married and has a son.

MANAGER'S COMPENSATION

The following discussion summarizes some important areas of compensation to be received by the Manager and its Affiliates, and in certain instances, the Servicer. If the Manager or Servicer defers or assigns to the Fund any of their respective compensation, the Manager and/or Servicer will be entitled to recover same at a later time, provided that it is within the same calendar year only. Notwithstanding the foregoing, the Manager and/or Servicer have no obligation to waive, defer, or assign to the Fund any portion of such compensation at any time.

FORM OF COMPENSATION	ESTIMATED AMOUNT OR METHOD OF COMPENSATION
ASSET MANAGEMENT FEE	The Manager shall earn an annual asset management fee ("Asset Management Fee") of One Percent (1%) of Net Assets Under Management, calculated and payable on a monthly basis. As used herein, "Net Assets Under Management" means the total Fund assets, including notes (at book value), real estate owned (at the lower of cost or fair market value), accounts receivable, advances made to protect loan security, unamortized organizational expenses, cash and any other Fund assets valued at fair market value, less Fund liabilities. The Asset Management Fee will typically be paid on the last day of each calendar month with respect to Net Assets Under Management as of the first day of such month.
LOAN ORIGINATION FEES	Loan origination fees are generally collected from borrowers by the Manager on behalf of the Fund and shall be shared between the Manager (or an Affiliate of the Manager, including without limitation, Pelorus Equity Group, Inc., a California corporation) and the Fund as follows: Seventy-Five Percent (75%) of loan origination fees shall be payable to the Manager (or an Affiliate of the Manager) and Twenty-Five Percent (25%) shall be payable to the Fund. Such fees average between One to Six Percent (1-6%) but could be as low as Zero Percent (0%) or as high as Fifteen Percent (15%) depending on market conditions. Loan origination fees consist of loan processing fees, underwriting fees, document preparation fees, escrow fees, disbursement fees, warehousing fees, administration fees and other similar charges.
EQUITY PARTICIPATION LOANS	The Fund may also make Loans, including Cannabis Loans, where it agrees to participate in the equity of the property securing the loan made by the Fund. Such equity participation may include, but is not limited to, sharing in the proceeds from the sale price of the property or properties securing the Loan, or including additional exit fees upon loan repayment. One Hundred Percent (100%) of the fees derived from equity participation Loans shall be payable to the Manager. Any proceeds and gains derived from equity participation Loans shall be shared between the Fund and Manager or as follows:

	Fifty Percent (50%) of proceeds shall be payable to the Manager and Fifty Percent (50%) shall be payable to the Fund.
ACQUISITION FEES	Acquisition fees of Two Percent to Four Percent (2% to 4%) of the value of Loans acquired by the Fund may be payable by the Company, on a case-by-case basis, to the Manager. Such acquisition fees are considered part of the Manager's compensation.
LOAN EXTENSION AND MODIFICATION FEES	Loan extension and modification fees collected from borrowers shall be shared between the Manager and the Fund as follows: Twenty-Five Percent (25%) of Loan extension and modification fees shall be payable to the Manager and Seventy-Five Percent (75%) shall be payable to the Fund. Such fees are typically between One and Three Percent (1-3%) of the original Loan amount but could be higher or lower depending on market rates and conditions. Fees collected by the Company are collected on the Manager's behalf and are considered part of the Manager's compensation.
EXIT FEES	Any Loan exit fees collected from borrowers by the Manager on behalf of the Fund shall be shared between the Manager and the Fund as follows: Twenty-Five Percent (25%) of Loan exit fees shall be payable to the Manager and Seventy-Five Percent (75%) shall be payable to the Fund. Such fees will be based on the prevailing market rate at the time such fees are charged to the borrowers.
LOAN PROCESSING, LOAN DOCUMENTATION AND OTHER SIMILAR FEES	Loan processing, documentation and other similar fees are collected from the borrower and payable to the Manager at prevailing industry rates as part of the Manager's compensation.
OTHER LOAN FEES	All other fees paid by borrowers on account of Loans will be shared between the Fund and the Manager as follows: Fifty Percent (50%) of all other fees shall be payable to the Manager and Fifty Percent (50%) shall be payable to the Fund. These fees include, without limitation, all forbearance fees, collection fees, default interest, and all other similarly related fees incurred by borrowers (including, but not limited to, other fees authorized by loan documents for work performed regarding the subject loan). Notwithstanding the foregoing, some of the aforementioned fees may be payable or assignable to the Servicer (and not the Fund).
LATE FEES AND PREPAYMENT PENALTIES	Any late fees, late charges, and prepayment penalties paid by borrowers on account of Loans will be shared between the Fund and the Manager as follows: Fifty Percent (50%) of all late fees, late charges, and prepayment penalties shall be payable to the Fund and Fifty Percent (50%) shall be payable to the Manager.

LOAN SERVICING FEE	Any loan servicing fees payable to the Servicer shall be calculated as an expense to the Fund. In addition. while the Manager shall not receive a loan servicing fee, it shall be reimbursed for any costs and expenses incurred as a result of servicing the Loans.
PURCHASE OF EXISTING LOANS	When the Company purchases an existing loan (or pool of loans) from a third party, the Manager or Affiliate will be paid a fee comparable to a loan origination fee.
REIMBURSEMENT OF OPERATING AND ADMINISTRATION FEES	The Manager may be reimbursed by the Fund for the Fund's operating and administrative expenses, provided, however, the amount of such reimbursement shall not exceed One-Half of One Percent (0.5%) per annum of the Fund's aggregate capital. This operating expense reimbursement fee will be calculated as of the first day of the month with regards to the aggregate capital in the Fund as of that day and paid out as of the first day of the following month. Notwithstanding the foregoing, the Manager may waive or defer reimbursement of operating and administrative expenses at its sole and absolute discretion. If the Manager defers or assigns to the Fund any of its respective reimbursement, the Manager shall only be entitled to recover the same at a later time if it is within the same calendar year.
REAL ESTATE COMMISSIONS	Additional sources of income to the Company will be from the potential purchase, remodeling, development, and resale of Company owned properties. Real estate commissions to list and sell real estate that the Company has acquired shall be shared between the Fund and the Manager as follows: Fifty Percent (50%) of real estate commissions shall be retained by the Fund and Fifty Percent (50%) shall be payable to the Manager. Notwithstanding the foregoing, the Manager may also hire brokers to sell the property and shall receive a portion of the commission paid to such brokers in consideration for assisting the brokers with the marketing process. In either case, the total commission paid by the Company shall not exceed the lesser of Six Percent (6%), or the rate then prevailing in the area where the property is located.
PROPERTY RENTAL	The Company may lease a portion of the properties it acquires and will earn income derived from the lease payments made by tenants on a monthly basis. Profits from the lease of any properties held by the Company shall be shared between the Manager and the Company as follows: Fifty Percent (50%) shall be retained by the Company and Fifty Percent (50%) shall be payable to the Manager.
PROPERTY MANAGEMENT FEE	A monthly property management fee shall generally be computed as a specified numerical percentage (which percentage shall be set by the Manager on a case-by-case basis for each subject property) multiplied by monthly gross rents for the property. Generally, the Manager expects to receive a property management fee between

	Four Percent and Ten Percent (4-10%). Notwithstanding the foregoing, the Fund may retain the services of a third-party property manager. Any fees charged by such third-party property manager shall be considered an expense to the Fund.

FIDUCIARY RESPONSIBILITY OF THE MANAGEMENT COMPANY

Under applicable law, the Manager is generally accountable to the Company as a fiduciary, which means that the Manager is required to exercise good faith and integrity with respect to Company affairs and sound business judgment. This is a rapidly developing and changing area of the law, and Members should consult with their own legal counsel in this regard. The fiduciary duty of the Manager is in addition to the other duties and obligations of, and limitations on, the Manager set forth in the Operating Agreement of the Company. Investors should consult with their own independent counsel in this regard.

The Company has not been separately represented by independent legal counsel in its formation or in the dealings with the Manager, and Members must rely on the good faith and integrity of the Manager to act in accordance with the terms and conditions of this Offering.

The Operating Agreement provides that the Manager will not have any liability to the Company for losses resulting from errors in judgment or other acts or omissions unless the Manager is guilty of fraud, bad faith or willful misconduct. The Operating Agreement also provides that the Company will indemnify the Manager against liability and related expenses (including, without limitation, legal fees and costs) incurred in dealing with the Company, Members, or third parties against any potential government action, criminal procedures, civil claim and/or administrative procedure as long as no fraud, bad faith, or willful misconduct on the part of the Manager is involved. Therefore, Members may have a more limited right of action than they would have absent these provisions in the Operating Agreement. A successful indemnification of the Manager or any litigation that may arise in connection with the Manager's indemnification could deplete the assets of the Company. Members who believe that a breach of the Manager's fiduciary duty has occurred should consult with their own legal counsel in the event of fraud, willful misconduct or bad faith. It is the position of the U.S. Securities and Exchange Commission that indemnification for liabilities arising from, or out of, a violation of federal securities law is void as contrary to public policy. However, indemnification will be available for settlements and related expenses of lawsuits alleging securities law violations if a court approves the settlement and indemnification, and also for expenses incurred in successfully defending such lawsuits if a court approves such indemnification.

RISK FACTORS

Although the Fund will attempt to comply with requests for the early withdrawal of the Membership Interests if the financial position of the Fund can accommodate it (See "Summary of Operating Agreement-Withdrawal" below), any investment in the Interests involves a significant degree of risk and is suitable only for Investors who have NO NEED FOR LIQUIDITY in their investments. When analyzing this Offering, prospective Investors should carefully consider each of the following risks and should also carefully consider the matters discussed herein under the captions "Manager's Compensation", "Conflicts of Interest," "Income Tax Considerations" and "ERISA Considerations."

INVESTMENT RISKS

No Registration: Limited Governmental Review

This Offering has not been registered with, or reviewed by, the U.S. Securities and Exchange Commission or any state agency or regulatory body, nor is registration contemplated.

Limited Transferability of Membership Interests

Although the Fund will attempt to redeem Membership Interests when possible (see "Summary of Operating Agreement - Withdrawal" below), there is no public market for the Membership Interests and none is expected to develop in the future. Even if a potential buyer could be found, the transferability of these Membership Interests is also restricted by the provisions of the Securities Act of 1933 and Rule 144 promulgated thereunder, and by the provisions of the Operating Agreement. Unless an exemption is available, these Membership Interests may not be sold or transferred without registration under the Securities Act of 1933 and the prior written consent of applicable state securities regulators and agencies. Any sale or transfer of these Membership Interests also requires the prior written consent of the Fund. (See herein "Summary of Operating Agreement" below). Members possess very limited rights to withdraw from the Fund or to otherwise recover any of their invested capital. (See "Summary of Operating Agreement – Withdrawal" below). Investors must be capable of bearing the economic risks of this investment with the understanding that these Interests may not be liquidated by resale or redemption and should expect to hold their Membership Interests as a long-term investment.

Size of the Offering

There is no assurance that the Fund will obtain capital investments equal to the amount required to close the Offering. In addition, receipt of capital investments of less than the Maximum Offering Amount will reduce the ability of the Fund to spread investment risks through diversification of its investment portfolio.

Speculative Nature of Investment

Investment in these Membership Interests is speculative and, by investing, each Investor assumes the risk of losing the entire investment. The Fund has limited operations as of the date of this Private Placement Memorandum and will be solely dependent upon the Fund and the Fund's asset portfolio, both of which are subject to the risks described herein. Accordingly, only Investors who are able to bear the loss of their entire investment and who otherwise meet the Investor suitability standards should consider purchasing these Membership Interests. (See "Investor Suitability" above).

Target Return Not a Guarantee or Estimate

The returns mentioned herein are only a target and is in no way a financial projection, estimated result, guarantee, warranty, representation or promise of the Fund. The Fund and Manager have no way of knowing or predicting whether such target return is realistic and achievable or whether such return will ever be realized for any Investor. (See "Description of Business – Investment Profile and Target Return" above).

Conflicts of Interest

There are several areas in which the interests of the Manager may conflict with those of the Company. (See "Conflicts of Interest" below).

Investors and Fund Not Independently Represented

The Company has not been represented by independent legal counsel for its organization and dealings with the Manager. In addition, the attorneys who have performed services for the Company have also represented the Manager but have not represented the interests of the Investors or Members of the Company. (See "Conflicts of Interest" below).

Investment Delays

There may be a delay between the time the Investor submits the Subscription Agreement to the Manager and the time the Minimum Offering Amount is reached, at which time the Company can commence making or investing in Loans or properties. After the Minimum Offering Amount is reached, there may be a delay between the time Membership Interests are sold and the time the proceeds of this Offering are invested by the Fund. During these periods, the Company may invest these proceeds in short-term certificates of deposit, money-market funds or other liquid assets with FDIC-insured and/or NCUA-insured banking institutions which will not yield a return as high as the anticipated return to be earned on Company Loans and property investments.

Lack of Regulation

The Manager and the Company are not supervised or regulated by any federal or state authority, except to the extent that the Fund's and Manager's lending and brokerage activities are also regulated and supervised by applicable authorities in at least the state of California.

Reliance on Manager

The Manager will participate in all decisions with respect to the management of the Company, including (without limitation) determining which Loans and properties to purchase and originate, and the Company is dependent to a significant degree on its continued services. In the event of the dissolution, death, retirement or other incapacity of the Manager or its principals, the business and operations of the Company may be adversely affected. The Members will then elect a new Manager, or the Manager shall appoint a new Manager pursuant to the Operating Agreement.

Speculative Nature of Investment

Each prospective member who invests in the Company must understand that investment in the Membership Interests is speculative. By investing, Members understand that they may lose their entire investment in investing with the Company.

Tax and ERISA Risks

Investment in the Company involves certain tax risks of general application to all Investors in the Fund, and certain other risks specifically applicable to Keogh accounts, Individual Retirement Accounts and other tax-exempt investors. (See "Income Taxation Considerations" and "ERISA Considerations" below)

Unidentified Assets

None of the specific assets in which the Company will invest in are identified at this time. Therefore, any potential Investor is unable to evaluate the Company's Loans or properties portfolio to determine whether to invest in the Company. However, the general business goals of the Company are to invest and/or make Loans and acquire properties as further described herein. Upon commencing operations, the Company may later have specific, identifiable portfolio data which Members may review upon their request to the Manager.

Members and the Fund will have Little or no Recourse Against the Manager

There are very limited circumstances in which the Manager of the Fund can be held liable to the Fund. Generally, the Manager is not liable to the Fund, unless the Manager is guilty of fraud, bad faith or willful

misconduct, that had a material adverse effect on the interests of the Members. In addition, the Company will indemnify the Manager against liability and related expenses (including, without limitation, legal fees and costs) incurred in dealing with the Company, Members, or third parties against any potential government action, criminal procedures, civil claim and/or administrative procedure, as long as no fraud, bad faith, or willful misconduct on the part of the Manager is involved. Accordingly, the Manager may be entitled to advancement of expenses from the Fund prior to a final determination as to whether it is entitled to indemnification. The assets of the Fund will be available to satisfy any such indemnification obligations, should they arise.

Investment Profile and Mix May Change

The Manager reserves the right, in its sole and absolute discretion, to modify, change or revise its typical investment profile and the mix of properties and Loans that the Fund invests in, and accordingly, Members have no guarantee, and should not assume, that the investment mix and profile of the Fund will not change substantially over time. (See "Description of Business – Investment Profile and Target Return" above).

Risks Associated with Accepting Investment Contributions Derived from Cannabis Related Businesses

The Fund may accept capital contributions from Investors who may use proceeds derived from recreational and/or medical cannabis businesses to purchase Membership Interests. The Fund may accept contributions in accordance with and pursuant to state, county and local laws, including regulations governing medical and/or recreational cannabis.

Although many states in the United States have approved the cultivation, sale, and distribution of cannabis and cannabis related products for recreational and/or medicinal uses, the federal government still classifies marijuana and cannabis as a Class 1 controlled substance. The Fund may accept investment funds from Investors whose investment contributions may be indirectly or directly derived from cannabis related activities including the cultivation, distribution, product processing and/or retail of cannabis (for recreational or medical use). This means that the Fund and the owners and employees of such dispensaries, retail stores, cultivation sites and infused product companies could face criminal prosecution, fines or jail time if found in violation of federal and/or state and local laws and regulation, including the Federal Controlled Substances Act. While the Fund will take steps to mitigate any risks involved therein, including without limitation, ensuring Investor contributions are confirmed by a CPA not to be directly derived from cannabis operations and that such contributions are in compliance with applicable local and federal regulations, any fines imposed to the Fund as a result of accepting contributions from Investors who may have derived their investment funds from cannabis-related business activities, could impact the Fund's profitability and distributions to Members. Although unlikely, if the Fund becomes subject to prosecution or forfeiture action by the federal government, the Fund, the Manager, and potentially the Members may become subject to civil, criminal and/or administrative action brought by the United States Department of Justice.

In addition, due to banking regulations, the Fund may have difficulty securing bank accounts because many banks continue to deny access to businesses that are related to the cannabis industry. Banks and financial institutions may not provide services to the Fund as it relates receiving money originated in cannabis related businesses. For these reasons the Fund's operations may face delays which may diminish the Manager's ability to manage the Fund, pay taxes, and may subject the Fund to significant public safety issues (such as robbery, burglary, etc).. The Fund will use its best efforts to ensure it secures and maintains bank accounts to diminish this risk, this includes filing necessary paperwork with the applicable financial institutions, engaging depository processors that operate in compliance with federal banking and U.S. Treasury Department regulations, and ensuring that Investor contributions are confirmed by a licensed CPA to not

have been directly derived from cannabis operations and to be post-tax proceeds in compliance with applicable local and federal tax regulations.

Cannabis regulations vary from state to state and are subject to change. State (and local) marijuana zoning laws, regulations and local ordinances may change so as to diminish the Fund's ability accept Investors contributions derived from cannabis related businesses. Even in states where recreational use of cannabis is legal, local city ordinances may not allow such use and may not allow business industries to operate within their city boundaries. Similarly, a city may initially allow cannabis related businesses to operate but later on change its zoning laws and local ordinances to forbid such operation thereby requiring the business to immediately cease operations until further notice. Any changes to state or local regulations can subject the Fund to delays, potential civil, criminal or administrative liability and thereby negatively impact distributions of Net Profits to Members. The Fund will exercise due caution to diminish this risk by ensuring Investors who are affiliated or operating their businesses in the cannabis industry are compliant with local and state regulations by requesting the aforementioned documents (See "Investor Suitability" – "Investor Contributions" above). Further, the Fund intends to monitor local regulations, and Investor compliance by regularly requesting compliance documentation.

Compliance with Anti-Money Laundering Requirements

The Fund may be subject to certain provisions of the USA PATRIOT Act of 2001 ("the Patriot Act"), including, but not limited to, Title III thereof, the International Money Laundering and Abatement and Anti-Terrorist Financing Act of 2001 ("Title III"), certain regulatory and legal requirements imposed or enforced by the Office of Foreign Assets Control ("OFAC") and other similar laws of the United States. In response to increased regulatory concerns with respect to the sources of the Fund's capital used in investments and other activities, the Manager may request that Investors provide additional documentation verifying, among other things, such Investor's identity and source of funds to be used to purchase the Membership Interests. The Manager may decline to accept a subscription from an Investor if this information is not provided or on the basis of the information that is provided. Requests for documentation and additional information may be made at any time during which a Member holds Membership Interests in the Fund. The Manager may be required to report this information, or report the failure to comply with such requests for information, to appropriate governmental authorities, in certain circumstances without informing a Member that such information has been reported.

The Manager will take such steps as it determines are necessary to comply with applicable law, regulations, orders, directives, or special measures, including, but not limited to, those imposed or enforced by OFAC, the Patriot Act, and Title III. This includes, without limitation, prohibiting a Member from making further contributions of capital to the Fund, or causing the withdrawal of such Investor from the Fund.

Investment Company Act Risks

The Company intends to avoid becoming subject to the Investment Company Act of 1940, as amended (the "**1940 Act**"); however, the Company cannot assure prospective Investors that under certain conditions, changing circumstances or changes in the law, the Company may not become subject to the 1940 Act in the future as a result of the determination that the Company is an "investment company" within the meaning of the 1940 Act that does not qualify for an exemption as set forth below. Becoming subject to the 1940 Act could have a material adverse effect on the Company. Additionally, the Company could be terminated and liquidated due to the cost of registration under the 1940 Act. In general, the 1940 Act provides that if there are 100 or more investors in a securities offering, then the 1940 Act could apply unless there is an exemption; however, the 1940 Act generally is intended to regulate entities that raise monies where the entity itself "holds itself out as being engaged primarily, or purposes to engage primarily, in the business of investing, reinvesting or trading in securities" (Section 3(a)(1)(A) of the 1940 Act).

The second key definition of an "investment company" under the 1940 Act considers the nature of an entity's assets. Section 3(a)(1)(c) of the 1940 Act defines "investment company" as any issuer that: "...is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Section 3(b)(1) of the 1940 Act provides that a company is not an "investment company" within the meaning of the 1940 Act if it is: "[An] issuer primarily engaged, directly or through a wholly-owned subsidiary or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities..."

Section 3(c) of the 1940 Act provides for the following relevant exemptions: "Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this title: (1) Any issuer whose outstanding securities (other than short- term paper) are beneficially owned ***by not more than one hundred persons*** [emphasis added] and which is not making and does not presently propose to make a public offering of its securities. Such issuer shall be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 12(d)(1) governing the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer. For purposes of this paragraph: (A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, and is or, but for the exception provided for in this paragraph or paragraph (7), would be an investment company, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper). (B) Beneficial ownership by any person who acquires securities or interests in securities of an issuer described in the first sentence of this paragraph shall be deemed to be beneficial ownership by the person from whom such transfer was made, pursuant to such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title, where the transfer was caused by legal separation, divorce, death, or other involuntary event. (5) Any person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of the following businesses: (A) Purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services; (B) making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance, and services; and (C) ***purchasing or otherwise acquiring mortgages and other liens on and interests in real estate*** [emphasis added]."

Based upon the above, the Company has been advised that the Offering is exempt under the 1940 Act and that the 3(c)(1) and/or 3(c)(5) exemptions will apply. However, there are no assurances that this will ultimately be the case.

BUSINESS RISKS

Competition

The Company will be competing for mortgage Loans, investment opportunities and property acquisitions with other mortgage funds, private investors, institutional lenders and investors and others engaged in the mortgage lending and property acquisition businesses. These other lenders and investors may have greater financial resources and experience than the Company and the Manager.

Fluctuations in Interest Rates

Mortgage interest rates are subject to abrupt and substantial fluctuations and the purchase of Membership Interests are a relatively illiquid investment. If prevailing interest rates rise above the average interest rate being earned by the Company's portfolio, Members may wish to liquidate their investment to take advantage of higher available returns but may be unable to do so due to restrictions on transfer and withdrawal.

Pandemic Risks

In December 2019, the virus SARS-CoV-2, which causes the coronavirus disease known as COVID-19, surfaced in Wuhan, China. The disease spread around the world, resulting in the temporary closure of many corporate offices, retail stores, and manufacturing facilities across the globe, as well as the implementation of travel restrictions and remote working and "shelter-in-place" or similar policies by numerous companies and national and local governments. These actions caused the disruption of manufacturing supply chains and consumer demand in certain economic sectors, resulting in significant disruptions in local and global economies. The short-term and long-term impact of COVID-19 on the operations of the Fund and its performance is difficult to predict. Any potential impact on such operations and performance will depend to a large extent on future developments and actions taken by authorities and other entities to contain COVID-19 and its economic impact. These potential impacts, while uncertain, could adversely affect the performance of the Fund's lending activities.

Litigation Risks

The Manager will act in good faith and use reasonable judgment in selecting borrowers and making, purchasing, and managing the Loans and investing in, purchasing and managing properties. However, as a lender, the Manager and the Company are exposed to the risk of litigation by a borrower for any warranted or unwarranted allegations by a borrower regarding the terms of the Loans or the actions or representations of the Manager in making, managing or foreclosing on subject properties. It is impossible to foresee the allegations borrowers will bring against the Manager or the Company, but the Manager will use its best efforts to avoid litigation if, in the Manager's sole discretion, it is in the best interests of the Company. If the Company is required to incur legal fees and costs to respond to the lawsuit, the costs and fees could have an adverse impact on the Company's profitability.

Loan Defaults and Foreclosures

The Company will invest in Loans and take the risk that borrowers will default on those loans and other risks that lenders typically face, many of which are detailed in this Offering. Company Loans may be made to borrowers who do not qualify for loans from more traditional sources of financing, such as banks and savings and loans associations. Company loans may generally provide for a monthly payment from the borrower followed by a "balloon" payment at the loan's maturity. Many borrowers may be unable to pay such a balloon payment and are compelled to refinance the balloon amount into a new loan. Fluctuations in the interest rates, unavailability of mortgage funds, and a decrease in the value of the real property securing the loan could adversely affect the borrower's ability to refinance their loans at maturity.

The Company will generally look to the underlying property securing the Loan to determine whether to make the loan to the borrower and, to a lesser extent, the credit rating a borrower has. Nonetheless, borrowers will need to demonstrate adequate ability to meet its financial obligations under the terms of any loan which the Company originates or purchases.

To determine the fair market value of the property securing the Loan, the Company will primarily rely on an appraisal, Manager's opinion of value of the property, or other similar opinion. Appraisals are a judgment of an individual appraiser's interpretation of a property's value. Due to the differences in individual opinions, values may vary from one appraiser to another. Furthermore, the appraisal is merely the value of the real property at the time the loan is originated. Market fluctuations and other conditions could cause the value of real property to decline over time.

If the borrower defaults on the Loan, the Company may be forced to purchase the property at a foreclosure sale. If the Company cannot quickly sell the real property and the property does not produce significant income, the Company's profitability will be adversely affected.

Due to certain provisions of state law that may be applicable to all real estate loans, if real property security proves insufficient to repay amounts owing to the Company, it is unlikely that the Company will be able to recover any deficiency from the borrower.

Finally, the recovery of sums advanced by the Company in making or investing in mortgage loans and protecting its security may also be delayed or impaired by the operation of the federal bankruptcy laws or by irregularities in the manner in which the loan was made. Any borrower has the ability to delay a foreclosure sale for a period ranging from several months to several years by filing a petition in bankruptcy which automatically stays any actions to enforce the terms of the loan. It can be assumed that such delays and the costs associated therewith will reduce the Company's profitability.

General Risks of Commercial Real Estate Market

The Company will concentrate its investments in commercial real property. Concentration in commercial real property entails risks that are specific to the industry. For example, the Company may experience fluctuations in occupancy rates, rent schedules and operating expenses, among other factors, which can adversely affect operating results of the commercial real property and the borrower's ability to make payments on the loans. Operating performance will also depend on adverse changes in local population trends, market conditions, neighborhood values, national, regional or local economic and social conditions, federal, state or local regulations, controls or fiscal policies, including those affecting rents, prices of goods, fuel and energy consumption, environmental restrictions, real estate taxes, zoning and other factors affecting real property. Additionally, there may be a need for capital improvements and repairs, accounting for inflation, financial condition and profitability of tenants, uninsured losses, acts of nature such as floods and earthquakes, and other risks. Some or all of these factors may also affect the financial condition of borrower's on loans secured by commercial real property and thus their ability to make payments on these loans.

Risks Related to Tenancy and Leaseholds

There may be instances in which the Company may own and hold commercial real properties as a result of the Company's lending activities, including REOs. Although the Company intends to divest these properties as soon as practicable, that may not always be the case and the Manager (or an Affiliate or third party) may have to manage the property and lease to tenants until sold. In such instances, there are risks associated with certain aspects of leases, including, without limitation:

- Tenancy bankruptcy;
- Cost of unlawful detainer and lessor remedies, including, breach of lease agreement covenants;

- Risks of noncompliant eviction;
- Contest of leases related to businesses and/or franchisees;
- Unintended consequences of remedies provided under the lease agreements, including, in the event the borrower defaults; and
- Occupancy risks such that the real property may fail to stabilize and/or generate income.

All of the above risks will diminish the overall return to the Members.

Participation in Other Loans

The Company may participate in Loans with other lenders. When participating in loans with other lenders, the Company or its Manager may not have control over the determination of when and how to enforce a default, depending on the terms of any participation agreement with the other lenders, other lenders may have varied amounts of input into such decision-making process, including the ultimate decision-making power on if and when to enforce a default. If the Company participates with a lender affiliated with the Manager or its principals, it is possible that the Company would not be the lead lender, although the principal of the Manager who is affiliated with the other lender may be the decision-making party. There is no certainty who will be a lead lender in a situation where the Company participates in ownership of a Loan with another entity.

Risks of Government Action

While the Manager will use its best efforts to comply with all laws, including federal, state and local laws and regulations, there is a possibility of governmental action to enforce any alleged violations of mortgage lending laws which may result in legal fees and damage awards that would adversely affect the Company.

Risks of Leveraging the Company

The Company may borrow funds from a third-party lender to fund investments in Loans or properties. These loans would be secured by the Loans held by the Fund. In order to obtain such a loan, the Fund may assign part or its entire asset portfolio to the lender. Such borrowed money may bear interest at a variable rate, whereas the Fund may be making fixed rate loans. Therefore, if prevailing interest rates rise, the Company's cost of money could exceed the income earned from that money, thus reducing the Fund's profitability or causing losses. Furthermore, leveraging the Fund may also result in the receipt of some taxable income by Investors (such as ERISA plans) that are otherwise tax-exempt. (See "Income Taxation Considerations" below).

Phantom Income

The Company may engage in certain business which may result in "phantom income." In short, phantom income is the recognition of gain or loss that has not yet been realized through a cash sale or a distribution. An example of an asset which can potentially produce phantom income may be a warrant or modification/re-formation of a non-performing loan. The phantom income will be recognized and reported by the Company (and its respective Members), even if there was no cash proceed received by the Fund. In effect, the Members' rate of return may be diminished, or otherwise, incur taxes from such activities. The Members are strongly advised to consult with their tax counsel regarding phantom income.

Uninsured Losses

The Manager will arrange for title, fire, and casualty insurance on the real properties securing the Company's investments. However, there are certain types of losses, including catastrophic, war, floods, mudslides and other acts of God, which are either uninsurable or economically uninsurable. Should any such disaster occur, or if the insurance policies lapse through oversight, the Fund could suffer a loss of principal and interest on the Loan secured by the uninsured property.

Possible Repeal of Usury Exemption

Loans arranged by or through a mortgage lending licensee are generally exempt from the otherwise applicable state's usury limitation. Should this exemption be repealed, the Fund may no longer be able to originate loans in excess of the usury limit, potentially reducing its return on investment or forcing it to limit its lending or investing activities.

Risks of Real Estate Ownership

There is no assurance that the Fund's owned properties will be profitable or that cash from operations will be available for distribution to Members. Because real estate, like many other types of long-term investments, historically has experienced significant fluctuations and cycles in value, specific market conditions may result in occasional or permanent reductions in the value of property interests. The marketability and value of the Fund's properties will depend upon many factors beyond the control of the Manager and the Fund, including, without limitation:

- changes in general or local economic conditions;
- changes in supply or demand for competing properties in an area (e.g., as a result of over-building);
- changes in interest rates;
- the promulgation and enforcement of governmental regulations relating to land use and zoning restrictions, environmental protection, and occupational safety;
- condemnation and other taking of property by the government;
- unavailability of mortgage funds that may increase borrowing costs and/or render the sale of a property difficult;
- unexpected environmental conditions;
- the financial condition of tenants, ground lessees, ground lessors, buyers and sellers of properties;
- changes in real estate taxes and any other operating expenses;
- energy and supply shortages and resulting increases in operating costs or the costs of materials and construction;
- various uninsured, underinsured or uninsurable risks (such as losses from terrorist acts), including risks for which insurance is unavailable at reasonable rates or with reasonable deductibles; and

- imposition of rent controls.

Risks of Development, Renovation and Undeveloped Property

The Fund may make Loans secured by properties or acquire properties that require varying degrees of development. In addition, some properties may be under construction or under contract to be developed or redeveloped. Properties that involve development or redevelopment will be subject to the general real estate risks described above and will also be subject to additional risks, such as unanticipated delays or excess costs due to factors beyond the control of the Manager and the Fund. These factors may include (without limitation):

- strikes;
- adverse weather;
- earthquakes and other "force majeure" events;
- changes in building plans and specifications;
- zoning, entitlement and regulatory concerns, including changes in laws, regulations, elected officials and government staff;
- material and labor shortages;
- increases in the costs of labor and materials;
- changes in construction plans and specifications;
- rising energy costs;
- delays caused by the foregoing (which could result in unanticipated inflation, the expiration of permits, unforeseen changes in laws, regulations, elected officials and government staff, and losses due to market timing of any sale that is delayed); and
- Delays in completing any development or renovation project will cause corresponding delays in the receipt of operating income and, consequently, the distribution of any cash flow by the Fund with respect to such property.

U.S. States Licensing Requirements

The Manager believes that the Company or its Affiliates have either obtained the licenses necessary for (or are exempt from) participating lawfully in the lending and/or investment activities in each state in which it plans to make loans prior to commencing operations, based on current assessment of the regulatory requirements of each such state. This means that while the Company and Manager may believe that that the Company's practices in a particular state are compliant with that state's current regime, it is possible that that regime might come under question from state or other regulatory authorities, and/or be changed in such a way as to adversely affect the Company's ability to continue conducting business in that state or may prohibit continuation of Company's business activities in that state. The Company intends to monitor such regulatory activity closely, but may fail to correctly or adequately anticipate regulatory action in this developing arena.

Rise in Insurance Costs

Real estate properties are typically insured against risk of fire damage and other typically insured property casualties, but are sometimes not covered by severe weather or natural disaster events such as landslides, earthquakes, or floods. Changes in the conditions affecting the economic environment in which insurance companies do business could affect the borrower's ability to continue insuring the property at a reasonable cost or could result in insurance being unavailable altogether. Moreover, any hazard losses not then covered by the borrower's insurance policy would result in the corresponding loan becoming significantly under-secured or the property being at risk, and a Member could sustain a significant reduction, or complete elimination of, the return on investment.

Borrower Fraud

Borrowers and property developers supply a variety of information regarding the current rental income, property valuations, market data, and other information. The Company makes an attempt to verify as much information possible from the ones provided, but as a practical matter, cannot verify all of it. This may result in the use of incomplete, inaccurate or intentionally false information. Borrowers and developers may also misrepresent their intentions for the use of investment proceeds. The Company may be unable to verify any or all of the statements by applicants as to how proceeds are to be used. If a borrower or developer supplies false, misleading or inaccurate information, the Company (and its Members) may lose all or a portion of the investments.

When the Company finances a loan, its primary assurances that the financing proceeds will be properly spent by the borrower or developer are the contractual covenants agreed to by the borrower or developer, along with their business history and reputation. Should the proceeds of a financing be diverted improperly, the borrower or developer might become insolvent, which could cause the Members to lose their entire investment.

Risks Associated with Warrants

From time to time, the Company may purchase warrants issued by the Company's borrowers, tenants, and/or other third parties. The warrants have inherent risks, which may adversely impact the Company and its Members. For example, the holder of the warrant has the ability to exercise its right at a certain negotiated price, and become a shareholder of the counterparty at a future date prior to the expiration of the warrant. However, the strike price may be higher than the share price of the counterparty at the time of exercise. Specifically, after the purchase of warrants, the counterparty's valuation may decrease such that the exercise price may be higher than the counterparty's valuation. Further, in the event the counterparty becomes bankrupt or insolvent, the warrant becomes worthless, and the Company and the Members may lose the potential income derived from the warrants. In addition, the warrants are not the actual underlying shares of the counterparty. Accordingly, the Company cannot exercise its right as a shareholder, including voting rights or rights to distributions, and the Company may be adversely impacted due to these risks.

Side Letters

The Fund may from time to time enter into Side Letters with one or more Members which provide such Member(s) with additional and/or different rights (including, without limitation, with respect to access to information, incentive allocations, minimum investment amounts, and liquidity terms) than such Member(s) have pursuant to this Memorandum. As a result of such Side Letters, certain Members may receive additional benefits (including, but not limited to, reduced Asset Management Fee or incentive allocation obligations, the ability to withdraw Membership Interests on shorter notice and/or expanded

informational rights) which other Members will not receive. These Side Letter arrangements are typically reserved for those Investors who contribute or commit to a larger capital with the Fund. The Manager will not be required to notify any or all Members of any such Side Letters or any of the rights and/or terms or provisions thereof, nor will the Manager be required to offer such additional and/or different rights and/or terms to any or all Members. The Manager may enter into such Side Letters with any party as the Manager may determine in its sole and absolute discretion at any time, and the Manager shall monitor the implementation and compliance with the terms of such Side Letters. Members will have no recourse against the Fund, the Manager and/or any of their affiliates in the event that certain Members receive additional and/or different rights and/or terms as a result of such Side Letters. Such Side Letters shall not adversely affect the economic benefits of any other Member of the Fund.

Risks Associated with Loans Secured by Contaminated Properties

The Fund may make or buy Loans secured by properties with known environmental conditions. Such Loans would generally be made or purchased only where the Manager believes that the liabilities associated with loaning against such a property can be appropriately protected against through insurance, indemnification or otherwise. The Manager would plan to use contractors, consultants and service providers to help the Manager in evaluating the risks associated with contaminated properties, who will be covered under their own insurance policies.

Compliance with the Americans with Disabilities Act and Other Changes in Governmental Rules and Regulations

Under the Americans with Disabilities Act of 1990 (the "ADA"), all public properties are required to meet certain federal requirements related to access and use by disabled persons. Properties acquired by the Fund or in which the Company makes a property investment may not be in compliance with the ADA. If a property is not in compliance with the ADA, then the Company may be required to make modifications to such property to bring it into compliance, or face the possibility of imposition, or an award, of damages to private litigants. In addition, changes in governmental rules and regulations or enforcement policies affecting the use or operation of the properties, including changes to building, fire and life-safety codes, may occur which could have adverse consequences to the Fund.

Unforeseen Changes

While the Fund has enumerated certain material risk factors herein, it is impossible to know all risks which may arise in the future. In particular, Members may be negatively affected by changes in any of the following: (i) laws, rules and regulations; (ii) regional, national and/or global economic factors and/or real estate trends; (iii) the capacity, circumstances and relationships of partners of Affiliates, the Fund or the Manager; (iv) general changes in financial or capital markets, including (without limitations) changes in interest rates, investment demand, valuations or prevailing equity or bond market conditions; or (v) the presence, availability or discontinuation of real estate and/or housing incentives.

The Fund continuously encounters changes in its operating environment, and the Fund may have fewer resources than many of its competitors to continue to adjust to those changes. The operating environment of the Fund is undergoing rapid changes, with frequent introductions of laws, regulations, competitors, market approaches, and economic impacts. Future success will depend, in part, upon the ability of the Fund to address the needs of its borrowers, sponsors and clients by adapting to those changes and providing products and services that will satisfy the demands of their respective businesses and projects. Many of the competitors have substantially greater resources to adapt to those changes. The Fund may not be able to effectively react to all of the changes in its operating environment or be successful in adapting its products, services and approach.

RISKS ASSOCIATED WITH THE FUND'S BUSINESS IN THE CANNABIS INDUSTRY

Cannabis Remains Illegal Under Federal Law

Although the Company will not engage in the production, sale or distribution of cannabis itself, it will seek to provide financing to businesses that do operate in the cannabis industry, including in the cultivation, manufacturing, extraction, equipment provision and sales, real property lessors, etc. In addition, while many states in the United States have approved the cultivation, sale, and distribution of cannabis and cannabis related products for recreational and/or medicinal uses, the federal government still classifies marijuana and cannabis as a Schedule I controlled substance. Accordingly, even in jurisdictions where the medical and/or recreational use of cannabis has been legalized at the state level, its prescription and use are, technically, a violation of federal law. For instance, the United States Supreme Court has ruled in *United States v. Oakland Cannabis Buyers' Coop*., that the federal government has the right to regulate and criminalize cannabis, even for medical purposes. Therefore, federal law criminalizing the use of cannabis may preempt state laws that legalize its use for medicinal purposes. Notwithstanding the foregoing, many states are maintaining existing laws and passing new ones in this area. While the previous presidential administration made a policy decision to allow states to implement these laws and not prosecute anyone operating in accordance with applicable state law, the new administration may adopt a less favorable policy. A change in the federal policy towards enforcement could adversely affect the Company's proposed business.

In addition, the Company intends to invest in the development of commercial real estate property that may be used for cannabis cultivation, distribution, manufacture and/or extraction facilities, in order to resell or lease them to qualified buyers, which may also include the Company retaining equity in the developed property. While the Company does not intend to produce, market or sell cannabis or cannabis related products, there is a risk that the Company could be deemed to be facilitating the sale or distribution of cannabis in violation of the federal Controlled Substances Act, or be deemed to be aiding or abetting, or being an accessory to, a violation of the Controlled Substances Act. This means that the Company, the Manager, or its Members, along with the owners and employees of such cannabis business, could face criminal prosecution, fines or jail time. Any fines imposed on the Company as a result of its involvement in the business of cannabis could impact the Company's profitability, cause losses of substantial assets, and potentially lead to substantial litigation expenses, thereby affecting distribution to Members.

In addition, the Company's lending activities may subject it to enforcement actions. Enforcement actions related to the Company or a borrower could jeopardize the Company's collateral (e.g., real estate securing repayment of the Loans). Lending to businesses operating in the legalized cannabis industry is a high-risk business activity, and potential Investors should consider this before investing in the Company. Enforcement actions or other legal proceedings involving a borrower under a Company Loan or a business in which the Company makes an equity investment in could have a significant and negative impact on the Company's business, profits, and distributions to Members.

Forfeiture Action by Federal Authorities

Although the cultivation, sale and distribution of cannabis and cannabis related products for recreational and/or medical use is approved in many states, if the Company becomes subject to prosecution by the federal government, the Company's business assets could become subject to a forfeiture action. Furthermore, the Members and the Manager may potentially be subject to criminal liability for violating the federal Controlled Substances Act. Members could become subject to criminal liability under federal law and all of the assets they contribute to the Company could be subject to asset forfeiture by the federal government.

In some states, dispensaries have been raided by federal and local agents, and in some circumstances, this has resulted in the arrest of owners and employees. In the past, government officials have targeted dispensaries with no clear explanation. Landlords, such as the Company, who lease to dispensaries and cultivation clients may be forced to evict tenants or risk having their assets seized by the relevant government agency. If any of the Company's properties, or properties securing Loans, were to become subject to a raid by federal, state, and/or local authorities, the Company's business and profitability would be adversely impacted, thereby affecting distributions to Members.

Varying State Laws and Local Regulations

State and municipal governments where the recreational and/or medical cannabis use has been previously legalized may change their regulations and adopt laws and regulations to criminalize or negatively affect cannabis businesses. States that currently have laws that decriminalize or legalize certain aspects of cannabis, such as medical or adult recreational use of cannabis, could, in the future, reverse course and adopt new laws that criminalize or negatively affect the cannabis industry. Additionally, municipal and local governments in these states may have laws that adversely affect cannabis businesses, even though there are no such laws at the state level. For example, municipal governments may enact zoning laws that restrict where cannabis operations can be located, limit the manner or type of cannabis related property use permissible in certain zones, or prohibit all cannabis related property uses within that municipality's jurisdiction. These municipal laws, like federal laws, may adversely affect the Company's ability to do business, and adverse enforcement actions under these laws may lead to costly litigation and a closure of the businesses with which the Company has provided Loans or acquired, which could significantly and negatively impact the Company's business, operations and financial condition.

In addition, even in states where recreational use of cannabis is legal, local city ordinances may not allow such use and may not allow business industries to operate within their city boundaries. Similarly, a city may initially allow cannabis related businesses to operate but later on change its zoning laws and local ordinances to forbid such operation, thereby requiring the business to cease operations. Any changes to state or local regulations can negatively impact any investments and expectation of profits for the Company and thereby impact distributions of Net Profits to Members.

Tax Liability

Tax law may prohibit cannabis businesses from deducting ordinary business expenses, thus subjecting the business to contend with higher effective federal tax rates than similar companies in other industries. The effective tax rate of cannabis business will depend on the size of the ratio of nondeductible expenses to its total revenue, and in some circumstances, may be higher than Fifty Percent (50%). Should the Company become subject to this higher effective tax rate, this will impact the profitability of the Company and the amount of distributions that can be made to Members.

Banking Limitations May Negatively Impact the Company

Due to banking and federal regulations, banks and financial institutions may not accept for deposit funds from the cannabis operations, including businesses engaged in the production, sale or distribution of cannabis, as well as businesses that provide products and services to these businesses, even if these activities may be legal under applicable state law. Accordingly, the Company may not be able to secure bank accounts. Banks and financial institutions may not provide services to the Company as it relates to its business in cannabis. This means that the Company may have to partially operate on an all-cash basis which may diminish the Manager's ability to manage the Company and pay taxes, and may subject the Company to significant public safety risks (such as robbery, burglary, etc)..

Notwithstanding the foregoing, on February, 2014, the U.S. Department of the Treasury Financial Crimes Enforcement Network ("FinCEN") released guidance to banks "clarifying Bank Secrecy Act ("BSA") expectations for financial institutions seeking to provide services to cannabis-related businesses." While this is a positive development, there can be no assurance that even with the FinCEN guidance, banks will decide to do business with businesses in the legalized cannabis industry, or that, in the absence of actual legislation, state and federal banking regulators will not strictly enforce current prohibitions on banks handling funds generated from an activity that is illegal under federal law. The inability of businesses operating in the legalized cannabis industry to open accounts and otherwise use the services of banks may make it difficult for such businesses to prosper and expand, which could have a significant and negative impact on the Company's business, financial condition, and profits.

RISKS RELATED TO REAL ESTATE INVESTMENT TRUST

No Operating History of Sub-REIT

The Sub-REIT will be in its early stages of its development and has a limited operating history. Although the Fund and its Affiliates have experience in real estate investments and loans stated herein, the performance of previous investments may not be indicative of the future performance of investments related to the Sub-REIT (as well as the Fund and its Affiliates). The Sub-REIT does not yet know what its long-term loan loss experience will be.

Failure in Maintaining its Status as a REIT

In establishing the Sub-REIT, the Fund will expect to operate the Sub-REIT so as to maintain its qualification as a REIT under the Code. However, qualification as a REIT involves the application of highly technical and complex Code provisions for which only a limited number of judicial or administrative interpretations exist. Even a technical or inadvertent mistake could jeopardize the Sub-REIT's REIT status. Furthermore, new tax legislation, administrative guidance or court decisions, in each instance potentially with retroactive effect, could make it more difficult or impossible for the Sub-REIT to qualify as a REIT. If the Sub-REIT fails to qualify as a REIT in any tax year, then:

- the Sub-REIT would be taxed as a regular domestic corporation, which under current laws, among other things, means being unable to deduct distributions to its shareholders (including the Fund) in computing taxable income and being subject to federal income tax, and potentially state income tax, on its taxable income at regular corporate rates;

- unless the Sub-REIT was entitled to relief under applicable statutory provisions, it would be required to pay taxes, and thus, its cash available for distribution to the Fund and, consequently, the Members would be substantially reduced for each of the years during which the Sub-REIT did not qualify as a REIT; and

- the Sub-REIT may also be disqualified from re-electing REIT status for the four taxable years following the year during which it became disqualified. See "Failure to Qualify" below for further explanation.

Loss of Investment Opportunities as a REIT

In order to qualify a Sub-REIT as a REIT for federal income tax purposes, the Sub-REIT would be required to continuously satisfy tests concerning, among other things, its sources of income, the nature and diversification of its investments in commercial real estate and related assets, the amounts it distributes to its shareholders and the ownership of its stock. The Sub-REIT could also be required to make distributions

to its shareholders at disadvantageous times or when it does not have funds readily available for distribution. The REIT provisions of the Code could limit the Fund's ability to hedge the Sub-REIT's financial assets and related borrowings. Thus, compliance with REIT requirements could hinder the Fund's ability to operate solely with the objective of maximizing profits.

REIT Compliance Risks

In order to qualify a Sub-REIT as a REIT, the Fund would need to ensure that at the end of each calendar quarter, at least Seventy Five Percent (75%) of the value of the Sub-REIT's assets consists of cash, cash items, government securities and qualified real estate assets. The remainder of the Sub-REIT's investment in securities could not include more than Ten (10%) of the outstanding voting securities of any one issuer or Ten (10%) of the total value of the outstanding securities of any one issuer. In addition, no more than Five Percent (5%) of the value of the Sub-REIT's assets may consist of the securities of any one issuer. If the Sub-REIT were to fail to comply with these requirements, it would be required to dispose of a portion of its assets within Thirty (30) days after the end of the calendar quarter in order to come back into compliance and avoid losing its REIT status and suffering adverse tax consequences.

Investing in Taxable TRS

To qualify as a REIT, a Sub-REIT must continually satisfy various tests regarding the sources of its income, the nature and diversification of its assets, the amounts it distributes to its shareholders and the ownership of its shares of beneficial interest. To meet these tests, a Sub-REIT may be required to forego investments it might otherwise make or may be required to hold certain investments through a taxable REIT subsidiary ("TRS"). Any TRS will be fully subject to U.S. federal corporate income tax (and any applicable state and local tax). Thus, compliance with the REIT requirements may hinder the investment performance of the Sub-REIT, and in turn, the Fund. However, the Fund would not be prohibited from executing such transactions at the Fund level rather than the subsidiary level. The Fund does not currently anticipate executing any such transactions that would cause the Sub-REIT to be unable to satisfy the applicable tests regarding its sources of income, the nature and diversification of its assets, or the amounts to be distributed to the Members.

CONFLICTS OF INTEREST

The following is a list of some of the important areas in which the interests of the Manager and its Affiliates may conflict with those of the Fund. The Members must rely on the general fiduciary standards and other duties which may apply to a manager of a limited liability company to prevent unfairness by any of the aforementioned in a transaction with the Fund. (See "Fiduciary Responsibility of the Manager" above).

Loan Origination and Renewal Commissions and Forbearance Fees

The Manager will have the sole and absolute discretion to determine whether or not to make a particular Loan, invest in a particular property, or to enter into any transaction, on behalf of the Fund. None of the Manager's compensation set forth under "Manager's Compensation" was determined through arms'-length negotiations. Any increase in such charges may have a direct, adverse effect upon the interest rates that borrowers will be willing to pay the Fund, thus may reduce the overall rate of return to Members. Conversely, if the Fund reduces the loan fees charged, a higher rate of return might be obtained for the Fund and the Members. This conflict of interest will exist in connection with every transaction the Fund participates in.

Fund Management Not Required to Devote Full-Time

The Manager is not required to devote its capacities full-time to the Fund's affairs, but only such time as the affairs of the Fund may reasonably require.

Competition with Affiliates of the Fund

Though they currently have no intention to do so, there is no restriction preventing the Fund or any of its Affiliates, principals or management from competing with the Fund by investing in collateral liens or sponsoring the formation of other investment groups like the Fund to invest in similar areas. If the Fund or any of its principals were to do so, then when considering each new investment opportunity, the Fund or such Affiliate, principal or manager would need to decide whether to originate or hold the resulting transaction in the Fund, as an individual or in a competing entity. This situation would compel the Manager to make decisions that may at times favor persons other than the Fund. The Operating Agreement exonerates the Fund and its affiliates, principals and management from any liability for investment opportunities given to other persons.

Loan Transactions by Managers

The Manager and/or its principals and Affiliates may contribute loans to the Fund that otherwise meet the lending and underwriting criteria discussed herein. Such transactions would generally increase the Membership Interests or percentage ownership or interest of the Manager as a Member of the Fund, and correspondingly would dilute the ownership and percentage interests of other Members.

Loan Servicing by the Fund or Manager

The Manager has reserved the right to retain other firms in addition to, or in lieu of, the Manager acting as the loan servicer to perform the various brokerage services, loan servicing and other activities in connection with the Fund's investment portfolio that are described in this Memorandum. Such other firms may or may not be affiliated with the Fund or Manager. Loan servicing firms not affiliated with the Fund or Manager may provide comparable services on terms more favorable to the Fund. The Manager has very wide discretion in determining which entity (including, but not limited to, the Manager itself, an Affiliate of the Manager, or an unaffiliated third party) will service the loans.

Other Companies & Partnerships or Businesses

The Manager and its managers, principals, directors, officers or affiliates may engage, for their own account or for the account of others, in other business ventures similar to that of the Fund or otherwise, including any side letters, warrants, or similar arrangements between the Manager and a Member, in which neither the Fund nor any other Member shall be entitled to any interest therein. As such, there exists a conflict of interest on the part of the Manager because there may be a financial incentive for the Manager to arrange or originate transactions for private investors and other mortgage funds. Further, the Manager may be involved in creating other mortgage or real estate funds that may compete with the Fund.

The Fund will not have independent management and it will rely on the Manager and its managers, principals, directors, officers and/or affiliates for the operation of the Fund. The Manager and these individuals/entities will devote only so much time to the business of the Fund as is reasonably required. The Manager may have conflicts of interest in allocating management time, services and functions between various existing companies, the Manager and any future companies which it may organize as well as other business ventures in which it or its managers, principals, directors, officers and/or affiliates may be or

become involved. The Manager believes it has sufficient staff to be fully capable of discharging its responsibilities.

Purchase, Sale and/or Hypothecation of Loans

The Fund and its managers, principals, directors, officers and/or affiliates may sell, buy or hypothecate loans (use loans as collateral for another loan) to the Fund, provided that such loans meet the then-existing underwriting criteria of the Fund. The Fund may pay a price greater or less than the remaining balance on such loans. The price at which existing loans are bought and sold is normally a function of prevailing interest rates and the term of the loan. Therefore, the Fund or its managers, principals, directors, officers and/or affiliates, may make a profit on the sale of an existing loan from the Fund to the Fund. There will be no independent review of the value of such loans or of compliance with the conditions set forth above.

Lack of Independent Legal Representation

Investors and the Company have not been represented by independent legal counsel to date. The use of the Manager's counsel in the preparation of this Memorandum and the organization of the Fund may result in a lack of independent review. Investors are encouraged to consult with their own attorney for legal advice in connection with this Offering. Also, since legal counsel for the Manager prepared this Offering, legal counsel will not represent the interests of the Members at any time.

Conflict with Related Programs

The Manager and its managers, principals, directors, officers and/or affiliates may cause the Fund to join with other entities organized by the Manager for similar purposes as partners, joint ventures or co-owners under some form of ownership in certain loans or in the ownership of repossessed real property. The interests of the Fund and those of such other entities may conflict, and the Fund controlling or influencing all such entities may not be able to resolve such conflicts in a manner that serves the best interests of the Fund.

Other Services Provided by the Manager or its Affiliates

The Manager or its Affiliates may provide other services to persons dealing with the Company or the loans. The Manager or its Affiliates are not prohibited from providing services to, and otherwise doing business with, the persons that deal with the Company, the Membership Interests, or the Members. In addition, in the event the Fund becomes the owner of a property as a result of foreclosure on a loan or otherwise, the Fund may retain the services of its Affiliate to provide brokerage services to the Fund, such as listing/selling the property.

Sale of Real Estate to Affiliates

In the event the Company becomes the owner of any real property by reason of foreclosure on a Company Loan or otherwise, the Manager’s first priority will be to arrange for the sale of the property for a price that will permit the Company to recover the full amount of its invested capital plus accrued but unpaid interest and other charges, or so much thereof as can reasonably be obtained in light of current market conditions. In order to facilitate such a sale, the Manager may, but is not required to, arrange a sale to persons or entities controlled by it, (e.g. to another limited liability company formed by the Manager for the express purpose of acquiring foreclosure properties from lenders such as the Company). The Manager will be subject to conflicts of interest in arranging such sales since it will represent both parties to the transaction. For example, the Company and the potential buyer will have conflicting interests in determining the purchase

price and other terms and conditions of sale. The Manager's decision will not be subject to review by any outside parties. The Company may sell a foreclosed property to the Manager or an Affiliate at a price that is fair and reasonable for all parties, but no assurance can be given that the Company could not obtain a better price from an independent third party.

CERTAIN LEGAL ASPECTS OF COMPANY LOANS

Each of the Company's Loans will be secured by, among other things, a deed of trust, mortgage, leasehold deed of trust or leasehold mortgage, or security agreement. The deed of trust and the mortgage are the most commonly used real property security devices. A deed of trust has three parties: a debtor, referred to as the "trustor"; a third party, referred to as the "trustee"; and the lender, referred to as the "beneficiary." The trustor irrevocably grants the property until the debt is paid, "in trust, with power of sale" to the trustee to secure payment of the obligation. The trustee's authority is governed by law, the express provisions of the deed of trust and the directions of the beneficiary. The Company will be the beneficiary under all deeds of trust securing Company Loans. In a mortgage loan, there are only two parties: the mortgagor (borrower) and the mortgagee (lender).

In the United States, each individual state law determines how a mortgage is foreclosed. The route usually requires a judicial process, but varies from state to state. If the subject property is located outside of the United States, then the Fund will have to comply with various international filing and/or foreclosure laws in the applicable jurisdiction of the subject property.

For properties located in the United States, some states have a statute known as the "one form of action" rule, which requires the beneficiary of a collateral lien to exhaust the security under the security lien (i.e., foreclose on the property) before any personal action may be brought against the borrower. Foreclosure statutes vary from state to state. Loans by the Fund secured by mortgages will be foreclosed in compliance with the laws of the state where the real property collateral is located.

Special Considerations in Connection with Junior Encumbrances

In addition to the general considerations concerning trust deeds discussed above, there are certain additional considerations applicable to second and more junior deeds of trust ("junior encumbrances"). By its very nature, a junior encumbrance is less secure than a more senior lien. If a senior lien holder forecloses on its loan, unless the amount of the bid exceeds the senior encumbrances, the junior lien holder will receive nothing. Because of the limited notice and attention given to foreclosure sales, it is possible for a junior lien holder to be sold out, receiving nothing from the foreclosure sale, although all legal methods of recouping the Fund's investment will be exhausted. By virtue of anti-deficiency legislation, discussed above, a junior lien holder may be totally precluded from any further remedies.

Accordingly, a junior lien holder (such as the Fund in certain cases) may find that the only method of protecting its security interest in the property is to take over all obligations of the trustor with respect to senior encumbrances while the junior lien holder commences its own foreclosure, making adequate arrangements either to (1) find a purchaser for the property at a price which will recoup the junior lien holder's interest, or (2) to pay off the senior encumbrances so that the junior lien holder's encumbrance achieves first priority. Either alternative may require the Fund to make substantial cash expenditures to protect its interest. (See "Business Risks" above).

The Fund may also make wrap-around mortgage loans (sometimes called "all-inclusive loans"), which are junior encumbrances to which all the considerations discussed above will apply. A wrap-around loan is made when the borrower desires to refinance his, her, or its property but does not wish to retire the existing indebtedness for any reason, e.g., a favorable interest rate or a large prepayment penalty. A wrap-around

loan will have a principal amount equal to the outstanding principal balance of the existing secured loans plus the amount actually to be advanced by the Fund. The borrower will then make all payments directly to the Fund, and the Fund in turn will pay the holder of the senior encumbrance. The actual ultimate yield to the Fund under a wrap-around mortgage loan will likely exceed the stated interest rate on the underlying senior loan, since the full principal amount of the wrap-around loan will not actually be advanced by the Fund. State laws generally require that the Fund be notified when any senior lien holder initiates foreclosure.

If the borrower defaults solely upon his, her or its debt to the Fund while continuing to perform with regard to the senior lien, the Fund (as junior lien holder) will foreclose upon its security interest in the manner discussed above in connection with deeds of trust generally. Upon foreclosure by a junior lien, the property remains subject to all liens senior to the foreclosed lien. Thus, if the Fund were to purchase the security property at its own foreclosure sale, it would acquire the property subject to all senior encumbrances.

The standard form of deed of trust used by most institutional lenders, like the one that will be used by the Fund or its affiliates, confers on the beneficiary the right both to receive all proceeds collected under any hazard insurance policy and all awards made in connection with any condemnation proceedings, and to apply such proceeds and awards to any indebtedness secured by the deed of trust in such order as the beneficiary may determine. Thus, in the event improvements on the property are damaged or destroyed by fire or other casualty, or in the event the property is taken by condemnation, the beneficiary under the underlying first deed of trust will have the prior right to collect any insurance proceeds payable under a hazards insurance policy and any award of damages in connection with the condemnation, and to apply the same to the indebtedness secured by the first deed of trust before any such proceeds are applied to repay the loan in respect of the Fund. The amount of such proceeds may be insufficient to pay the balance due to the Fund, while the debtor may fail or refuse to make further payments on the damaged or condemned property, leaving the Fund with no feasible means to obtain payment of the balance due under its junior deed of trust. In addition, the borrower may have a right to require the lender to allow the borrower to use the proceeds of such insurance for restoration of the insured property.

The Company's forms of promissory notes and deeds of trust, like those of many lenders, contain "due-on-sale" clauses, which permits the Fund to accelerate the maturity of a loan if the borrower sells, conveys or transfers all or any portion of the property, but may or may not contain "due-on-encumbrance" clauses which would permit the same action if the borrower further encumbers the property (i.e., executes further deeds of trust). The enforceability of these types of clauses has been the subject of several major court decisions and legislation in recent years.

Foreclosure Example

In California, for example and illustration only, a statute known as the "one action" rule requires the beneficiary of a deed of trust to exhaust the security under the deed of trust (i.e., foreclose on the property) before any personal action may be brought against the borrower. There are two methods of foreclosing a deed of trust.

(a) Foreclosure of a deed of trust is accomplished in most cases by a non-judicial trustee's sale under the power of sale provision in the deed of trust. Prior to such sale, the trustee must record a notice of default and send a copy to the trustor and to any person who has recorded a request for a copy of a notice of default, and to the successor in interest to the trustor and to the beneficiary of any junior deed of trust. The trustor or any person having a junior lien or encumbrance of record may, during a Three (3) month reinstatement period, cure the default by paying the entire amount of the debt then due, exclusive of principal due only because of acceleration upon default, plus costs and expenses actually incurred in enforcing the obligation and statutorily limited attorneys' and trustee's fees. Thereafter, and at least

Twenty-One (21) days before the trustee's sale, a notice of sale must be posted in a public place and published once a week over such period. A copy of the notice of sale must be posted on the property, and sent to the trustee, to each person who has requested a copy, to any successor in interest to the trustor and to the beneficiary of any junior deed of trust, at least Twenty (20) days before the sale. Following the sale, neither the debtor/trustor nor a junior lien has any right of redemption, and the beneficiary may not obtain a deficiency judgment against the trustor.

(b) A judicial foreclosure (in which the beneficiary's purpose is usually to obtain a deficiency judgment where otherwise unavailable) is subject to most of the delays and expenses of other lawsuits, sometimes requiring up to several years to complete. Following a judicial foreclosure sale, the trustor or his, her, or its successors in interest may redeem for a period of One (1) year (or a period of only Three (3) months if the entire amount of the debt is bid at the foreclosure sale), and until the trustor redeems, foreclosed junior lien holder may redeem during successive redemption periods of Sixty (60) days following the previous redemption, but in no event later than One (1) year after the judicial foreclosure sale. The Company generally will not pursue a judicial foreclosure to obtain a deficiency judgment, except where, in the sole discretion of the Manager, such a remedy is warranted in light of the time and expense involved.

California has four principal statutory prohibitions which limit the remedies of a beneficiary under a deed of trust. Two statutes limit the beneficiary's right to obtain a deficiency judgment against the trustor following foreclosure of a deed of trust - one based on the method of foreclosure and the other on the type of debt secured.

Under one statute, a deficiency judgment is barred where the foreclosure was accomplished by means of a non-judicial trustee's sale. If foreclosure becomes necessary, it is anticipated that all of the Company's loans will be enforced by means of a non-judicial trustee's sale. Under the other statute, a deficiency judgment is barred in any event where the foreclosed deed of trust secured by a "purchase money obligation," i.e., a promissory note evidencing a loan used to pay all or part of the purchase price of a property occupied, at least in part, by the purchaser. This restriction may apply to a number of the Company's Loans.

The third statute is known as the "one action" rule, which requires the beneficiary to exhaust the security under the deed of trust by foreclosure before bringing a personal action against the trustor on the promissory note. The fourth statute which limits any deficiency judgment obtained by the beneficiary following a judicial sale to the excess of the outstanding debt over the fair market value of the property at the time of sale, thereby preventing a beneficiary from obtaining a large deficiency judgment against the debtor as a result of low bids at the judicial sale.

Other matters, such as litigation instituted by a defaulting borrower or the operation of the federal bankruptcy laws, may have the effect of delaying enforcement of the lien of a defaulted loan and may in certain circumstances reduce the amount realizable from sale of a foreclosed property. States other than California also have laws intended to limit deficiency judgments and requiring the exhaustion of the security.

Foreclosure statutes vary from state to state. Any loans by the Company secured by mortgages will be foreclosed in compliance with the laws of the state where the real property collateral is located. The above example based on California law is for illustration purposes only and is not an exhaustive summary of California law applicable to foreclosure or default or a reflection or summary of the laws of any other state or foreign jurisdiction.

Bankruptcy Laws

If a borrower files for protection under the federal bankruptcy statutes, the Fund will be initially barred from taking any foreclosure action on its real property security by an "automatic stay order" that goes into effect upon the borrower's filing of a bankruptcy petition. Thereafter, the Fund would be required to incur the time, delay and expense of filing a motion with the bankruptcy court for permission to foreclose on the real property security ("relief from the automatic stay order"). Such permission is granted only in limited circumstances. If permission is denied, the Fund will likely be unable to foreclose on its security for the duration of the bankruptcy, which could be a period of years. During such delay, the borrower may or may not be required to pay current interest on the Fund Loan. The Fund would therefore lack the cash flow it anticipated from the Loan, and the total indebtedness secured by the security property would increase by the amount of the defaulted payments, perhaps reaching a total that would exceed the market value of the property.

In addition, bankruptcy courts have broad powers to permit a sale of the real property free of the Fund's lien, to compel the Fund to accept an amount less than the balance due under the Loan and to permit the borrower to repay the Loan over a term which may be substantially longer than the original term of the loan.

Due-on-Sale Clauses

The Fund's forms of promissory notes and deeds of trust, like those of many lenders, may contain "due-on-sale" clauses, which permits the Fund to accelerate the maturity of a loan if the borrower sells, conveys or transfers all or any portion of the property, but may or may not contain "due-on-encumbrance" clauses which would permit the same action if the borrower further encumbers the property (i.e., executes further deeds of trust). The enforceability of these types of clauses has been the subject of several major court decisions and legislation in recent years.

(a) Due-on-Sale. Federal law now provides that, notwithstanding any contrary pre-existing state law, due-on-sale clauses contained in mortgage loan documents are enforceable in accordance with their terms by any lender after October 15, 1985. On the other hand, acquisition of a property by the Fund by foreclosure on one of its loans may also constitute a "sale" of the property, and would entitle a senior lien holder to accelerate its loan against the Fund. This would be likely to occur if then prevailing interest rates were substantially higher than the rate provided for under the accelerated loan. In that event, the Fund may be compelled to sell or refinance the property within a short period of time, notwithstanding that it may not be an opportune time to do so.

(b) Due-on-Encumbrance. With respect to mortgage loans on property containing four or less units, federal law prohibits acceleration of the loan merely by reason of the further encumbering of the property (e.g., execution of a junior deed of trust). This prohibition does not apply to mortgage loans on other types of property. Although many of the Fund's junior lien mortgages will be on properties that qualify for the protection afforded by federal law, some loans will be secured by properties that do not qualify for the protection, including (without limitation), commercial properties. Junior lien mortgage loans made by the Fund may trigger acceleration of senior loans on properties if the senior loans contain valid due-on-encumbrance clauses, although both the number of such instances and the actual likelihood of acceleration are anticipated to be minor. Failure of a borrower to pay off the senior loan would be an event of default and subject the Fund (as junior lien holder) to the risks attendant thereto. It will not be customary practice of the Fund to make loans on non-residential property where the senior encumbrance contains a due-on-encumbrance clause. (See "Special Considerations in Connection with Junior Encumbrances.")

Prepayment Charges

Loans may provide for certain prepayment charges to be imposed on the borrowers in the event of certain early payments on the loan. The Manager reserves the right, but has no obligation, at its business judgment to waive collection of prepayment penalties. For commercial loans there is no federal law that limits the prepayment amount charge, but applicable state laws may vary.

LEGAL PROCEEDINGS

Neither the Fund, Manager nor any of its managers, principals, directors or officers of the Fund are now, or within the past Five (5) years have been, involved in any material litigation or arbitration.

INCOME TAX CONSIDERATIONS

Federal Income Tax Aspects

The following discussion generally summarizes the material federal income tax consequences of an investment in the Fund based upon the existing provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and applicable Treasury regulations thereunder, current administrative rulings and procedures and applicable judicial decisions. However, it is not intended to be a complete description of all tax consequences to prospective Investors with respect to their investment in the Fund. No assurance can be given that the Internal Revenue Service (the "IRS") will agree with the interpretation of the current federal income tax laws and regulations summarized below. In addition, the Fund or the Investors may be subject to state and local taxes in jurisdictions in which the Fund may be deemed to be doing business.

ACCORDINGLY, ALL PROSPECTIVE INVESTORS SHOULD INDEPENDENTLY SATISFY THEMSELVES REGARDING THE POTENTIAL FEDERAL AND STATE TAX CONSEQUENCES OF PARTICIPATION IN THE COMPANY AND ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS, ATTORNEYS OR ACCOUNTANTS IN CONNECTION WITH ANY INTEREST IN THE COMPANY. EACH PROSPECTIVE INVESTOR/SHAREHOLDER SHOULD SEEK, AND RELY UPON, THE ADVICE OF THEIR OWN TAX ADVISORS IN EVALUATING THE SUITABILITY OF AN INVESTMENT IN THE COMPANY IN LIGHT OF THEIR PARTICULAR INVESTMENT AND TAX SITUATION.

Tax Law Subject to Change

Frequent and substantial changes have been made, and will likely continue to be made, to the federal and state income tax laws. The changes made to the tax laws by legislation are pervasive, and in many cases, have yet to be interpreted by the IRS or the courts.

State and Local Taxes

A description or analysis of the state and local tax consequences of an investment in the Fund is beyond the scope of this discussion. Prospective Members are advised to consult their own tax counsel and advisors regarding these consequences and the preparation of any state or local tax returns that an Investor may be required to file.

Federal Partnership Treatment

The Company is likely to be treated as a partnership under the Code. Assuming that the Company has been properly formed under California law, is operated in accordance with applicable California corporate and business law and the terms of the Operating Agreement, it is the Company's opinion (subject to the discussion regarding "Taxable Mortgage Pools" below) that, if the matter were litigated, it is more likely than not that the Company would prevail as to its classification and would be taxed as a partnership for federal income tax purposes. If the Internal Revenue Service determined that the Company was an association taxable as a corporation for federal income tax purposes, there would be significant adverse tax consequences to the Company and possibly to its investors, including (without limitation) the Company would have to pay tax on its net income and then the investor would have to pay tax on any distributions as dividends as opposed to interest income.

IRS Audits

Informational returns filed by the Company are subject to audit by the IRS. The IRS devotes considerable attention to the proper application of the tax laws to partnerships. An audit of the Company's return may lead to adjustments which adversely affect the federal income tax treatment of Membership Interests and cause Members to be liable for tax deficiencies, interest thereon and penalties for underpayment. An audit of the Company's tax return could also lead to an audit of their individual tax return that may not otherwise have occurred, and to the adjustment of items unrelated to the Company. Prospective Investors should make their determination to invest based on the economic considerations of the Company rather than any anticipated tax benefits. Furthermore, the IRS has taken the position in Temp. Reg. 1.163-9T that any interest on income taxes owed by an individual is personal interest, subject to limitations on deduction, regardless of the nature of the activity that produced the income that was the source of the tax.

If the IRS makes audit adjustments to the Company's income tax returns, it may assess and collect any taxes (including any applicable penalties and interest) resulting from such audit adjustment directly from the Company. Generally, the Company may elect to have the Members take such audit adjustment into account in accordance with their interest in the Company during the tax year under audit, but there can be no assurance that such election will be effective in all circumstances and the manner in which the election is made and implemented has yet to be determined. If the Company is unable to have the Members take such audit adjustment into account in accordance with their interests in the Company during the tax year under audit, current Members may bear some or all of the tax liability resulting from such audit adjustment, even if such Members did not own Membership Interests in the Company during the tax year under audit. If, as a result of any such audit adjustment, the Company is required to make payments of taxes, penalties and interest, cash available for distribution to Members might be substantially reduced. The Company may, at any time, during the existence of the Company or any predecessor of the Company, directly seek reimbursement of underpaid taxes, penalties, and interest from the Members who held Membership Interests during the year which is under IRS, state, or local audit examination, even if such Member has since redeemed its Membership Interest and is no longer a Member of the Company. The Company will designate the Manager to act as the partnership representative who shall have the sole authority to act on behalf of the Company with respect to dealings with the IRS under these audit procedures. The acts of the Manager in its capacity as partnership representative, including the extension of statutes of limitation, will bind the Fund and all Members. The Members will not have a right to participate in the audit proceedings.

Profit Objective of the Company

Deductions will be disallowed if they result from activities not entered into for profit to the extent that such deductions exceed an amount equal to the greater of: (a) the gross income derived from the activity; or (b) deductions (such as interest and taxes) that are allowable in any event. The applicable Treasury Department

regulations indicate a transaction will be considered as entered into for profit where there is an expectation of profit in the future, either of a recurring type or from the disposition of property. In addition, the Code provides, among other things, an activity is presumed to be engaged for profit if the gross income from such activity for Three (3) of the Five (5) taxable years ending with the taxable year in question exceeds the deductions attributable to such activity. It is anticipated that the Fund will satisfy this test.

Property Held Primarily for Sale: Potential Dealer Status

The Fund has been organized to invest in Loans primarily secured by deeds of trust or mortgages on real property and to acquire real estate properties. However, if the Company were at any time deemed for federal tax purposes to be holding one or more Loans or properties primarily for sale to customers in the ordinary course of business (a "dealer"), any gain or loss realized upon the disposition of such loans or properties would be taxable as ordinary gain or loss rather than as capital gain or loss. The federal income tax rates for ordinary income are currently higher than those for capital gains. In addition, income from sales of loans and properties to customers in the ordinary course of business would also constitute unrelated business taxable income to any Members which are tax-exempt entities. Under existing law, whether or not real property is held primarily for sale to customers in the ordinary course of business must be determined from all the relevant facts and circumstances. The Fund intends to make and hold the Company loans and properties for investment purposes only, and to dispose of Company Loans and properties, by sale or otherwise, at the discretion of the Manager and as consistent with the Company's investment objectives. It is possible that, in so doing, the Company will be treated as a "dealer" in mortgage loans and properties, and that profits realized from such sales will be considered unrelated business taxable income to otherwise tax-exempt Investors in the Company.

Taxable Mortgage Pool Rules

Notwithstanding the check-the-box provisions, the IRS may still reclassify certain partnerships as corporations for federal income tax purposes, if they meet the definition of a "taxable mortgage pool" under Internal Revenue Code Section 7701(i)(2)(A)(ii). A taxable mortgage pool is any entity whose assets consist substantially of debt instruments, who is the obligor under debt obligations with two (2) or more maturities, and where there is a relationship between the debt instruments and the debt obligations of the entity. The issue of what constitutes debt obligations with two (2) or more maturities is unclear. The regulations state that "[T]he purpose of section 7701(i) is to prevent income generated by a pool of real estate mortgages from escaping Federal income taxation when the pool is used to issue multiple class mortgage-backed securities." The Company has only one class of Membership Interests. A literal reading of this provision could lead to the conclusion that the Company would not be reclassified as a taxable mortgage pool and taxed as a corporation. In order to further explain any such interpretation, the Manager has committed that to the extent it leverages the Company assets (i.e., borrows funds from another lender for purpose of making loans and pledges one or more loans of the Company as collateral for such borrowing), the Company will try to limit the number of lines of credit it incurs at a time so that the IRS would find it difficult to make the argument that the Company has debt obligations with two (2) or more maturities. However, due to the lack of clarity with respect to this provision, there is no assurance (and no opinion of any kind can be given) that the IRS would not attempt to tax the Company as a corporation and not a partnership. Any such taxation would have an adverse effect on the Company and the return an Investor would receive on their investment in the Fund.

Portfolio Income

A primary source of the Company's income will be interest, which is ordinarily considered "portfolio income" under the Code. Similarly, Temporary Regulations issued by the Internal Revenue Service in 1988 (Temp. Reg. Section 1.469-2T(f)(4)(ii)) confirmed that net interest income from an equity-financed lending

activity such as the Company will be treated as portfolio income, not as passive income, to Members. Therefore, Members will not be entitled to treat their proportionate share of the Company's income as passive income, against which passive losses (such as deductions from unrelated real estate investments) may be offset.

Understatement Penalties

The Company will be subject to substantial understatement penalty in the event that it understates its income tax. The IRS imposes a penalty of Twenty Percent (20%) on any substantial understatement of income tax. Furthermore, the IRS can charge interest on underpayments of income tax exceeding One Hundred Thousand Dollars ($100,000) for any tax year owing by certain corporations at a rate that is higher than the normal interest rate. The Manager strongly advises prospective Investors to consult with their own tax advisor to be sure that they fully evaluate the proposed tax treatment of the Company as described herein.

Unrelated Business Taxable Income

The Fund may generate unrelated business taxable income for Members that are qualified plans such as self-directed IRA's, or tax-exempt organizations such as pension/benefit plan investors, colleges, universities, private foundations and charitable remainder trusts. Particularly if the Fund pursues a credit facility or leverage, it is highly likely that the Fund may generate unrelated business taxable income for such Members. Investors should be aware also that the issue of how the unrelated business taxable income of a qualified plan or exempt organization should be taxed is regularly under discussion by one or more committees of Congress. The Fund advises that all Members, particularly Members with qualified plans or exempt organizations, consult with their own tax advisor to be sure they fully evaluate the impact of unrelated business taxable income for Members.

TAX CONSIDERATION RELATED TO REAL ESTATE INVESTMENT TRUST

Real Estate Investment Trusts

The Fund plans to hold all or substantially all of its assets through the Sub-REIT, an entity that intends to elect to be taxable as a REIT commencing with its taxable year beginning April 1, 2020. As a REIT, the Sub-REIT generally will not be subject to U.S. federal taxes on income to the extent it currently distributes all of its income to its shareholders (including the Fund) and maintains its qualification as a REIT.

Qualification and taxation as a REIT depends on the Sub-REIT's ability to meet on a continuing basis, through actual operating results, distribution levels and diversity of share ownership, various qualification requirements imposed upon REITs by the Code. The Sub-REIT's ability to qualify as a REIT also requires that it satisfy certain asset tests, some of which depend upon the fair market values of assets owned by the Sub-REIT. Such values may not be susceptible to a precise determination. Accordingly, no assurance can be given that actual results of operations for any taxable year satisfy such requirements for qualification and taxation as a REIT.

Taxation of REITs in General

As indicated above, qualification and taxation as a REIT depends upon the Sub-REIT's ability to meet, on a continuing basis, various qualification requirements imposed upon REITs by the Code. The material qualification requirements are summarized below under "Real Estate Investment Trusts—Requirements for Qualification—General." While the Fund intends to operate the Sub-REIT so that it qualifies as a REIT, no assurance can be given that the IRS will not challenge its qualification, or that it will be able to operate in accordance with the REIT requirements in the future.

If the Sub-REIT qualifies as a REIT, it will generally be entitled to a deduction for dividends that it pays and therefore will not be subject to U.S. federal corporate income tax on taxable income that is currently distributed to its shareholders, including the Fund. This treatment substantially eliminates the "double taxation" at the corporate and shareholder levels that generally results from investment in a corporation. Rather, income generated by a REIT generally is taxed only at the shareholder level upon a distribution of dividends by the REIT.

If the Sub-REIT qualifies as a REIT, it will nonetheless be subject to U.S. federal tax in the following circumstances:

- It will be taxed at regular corporate rates on any undistributed REIT taxable income, including undistributed net capital gains.

- If the Sub-REIT has net income from prohibited transactions, which are, in general, sales or other dispositions of inventory or property held primarily for sale to customers in the ordinary course of business, other than foreclosure property, such income will be subject to a One Hundred Percent (100%) tax. See "Prohibited Transactions" and "Foreclosure Property" below.

- If the Sub-REIT elects to treat property that it acquires in connection with a foreclosure of a mortgage loan or certain leasehold terminations as "foreclosure property," it may thereby avoid a One Hundred Percent (100%) tax on gain from a resale of that property (if the sale would otherwise constitute a prohibited transaction), but the income from the sale or operation of the property may be subject to corporate income tax at the highest applicable rate (currently 21%).

- If the Sub-REIT should fail to satisfy the 75% gross income test or the 95% gross income test, as discussed below, but nonetheless maintain its qualification as a REIT because there is a reasonable cause for the failure and other applicable requirements are met, the Fund may be subject to a One Hundred Percent (100%) tax on an amount based on the magnitude of the failure adjusted to reflect the profit margin associated with its gross income.

- If the Subsidiary REIT should fail to satisfy the asset or other requirements applicable to REITs, as described below, yet nonetheless maintain its qualification as a REIT because there is reasonable cause for the failure and other applicable requirements are met, it may be subject to an excise tax. In that case, the amount of the tax will be at least Fifty Thousand Dollars ($50,000) per failure, and, in the case of certain asset test failures, will be determined as the amount of net income generated by the assets in question multiplied by the highest corporate tax rate (currently 21%) if that amount exceeds Fifty Thousand Dollars ($50,000) per failure.
- If the Fund should fail to distribute during each calendar year at least the sum of (a) 85% of its REIT ordinary income for such year, (b) 95% of its REIT capital gain net income for such year, and (c) any undistributed taxable income from prior periods, it would be subject to a non-deductible Four Percent (4%) excise tax on the excess of the required distribution over the sum of (i) the amounts actually distributed, plus (ii) certain retained amounts.

- A One Hundred Percent (100%) tax may be imposed on transactions between a REIT and a "taxable REIT subsidiary" (as defined in the Code), or TRS, that do not reflect arm's length terms.

- If the Sub-REIT acquires appreciated assets from a C corporation that is not a REIT (i.e., a corporation taxable under subchapter C of the Code) in a transaction in which the adjusted tax basis of the assets in its hands is determined by reference to the adjusted tax basis of the assets in the hands of the subchapter C corporation, it may be subject to tax on such appreciation at the highest corporate income tax rate then applicable if it subsequently recognizes gain on a disposition of any

such assets during the five-year period following their acquisition from the subchapter C corporation.

In addition, the Sub-REIT may be subject to a variety of taxes, including payroll taxes and state, local and foreign income, property and other taxes on assets and operations. The Sub-REIT could also be subject to tax in situations and on transactions not presently contemplated.

Requirements for Qualification—General

The Code defines a REIT as a corporation, trust or association:

(i) that is managed by one or more trustees or directors;

(ii) the beneficial ownership of which is evidenced by transferable shares of beneficial interest, or by transferable certificates of beneficial interest;

(iii) that would be taxable as a domestic corporation but for the special Code provisions applicable to REITs;

(iv) that is neither a financial institution nor an insurance company subject to specific provisions of the Code;

(v) the beneficial ownership of which is held by 100 or more persons;

(vi) in which, during the last half of each taxable year, not more than 50% in value of the outstanding shares of beneficial interest is owned, directly or indirectly, by five or fewer "individuals" (as defined in the Code to include specified tax-exempt entities);

(vii) that makes an election to be treated as a REIT for the current taxable year or has made an election for a previous taxable year which has not been terminated or revoked; and

(viii) which meets other tests described below, including with respect to the nature of its income and assets.

The Code provides that conditions (i) through (iv) must be met during the entire taxable year, and that condition (v) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a shorter taxable year. Conditions (v) and (vi) need not be met during an entity's initial tax year as a REIT. The Operating Agreement may contain restrictions regarding the ownership and transfer of Membership Interests, which are intended to assist the Sub-REIT in satisfying the share ownership requirements described in conditions (v) and (vi) above. However, in the event the Fund is unable to meet the ownership test, it can lead to adverse tax consequences to the Fund (and the Members).

An entity generally may not elect to become a REIT unless its taxable year is the calendar year. The Sub-REIT has adopted December 31 as its year end, and thereby satisfies this requirement.

Income Tests

To qualify as a REIT, the Sub-REIT annually must satisfy two gross income requirements. First, at least 75% of gross income for each taxable year, excluding gross income from sales of inventory or dealer property in "prohibited transactions," and certain hedging transactions generally must be derived from investments relating to real property or mortgages on real property, including interest income derived from mortgage loans collateralized by real property, "rents from real property," dividends received from other

REITs, and gains from the sale of real estate assets, as well as "qualified temporary investment income." Second, at least 95% of gross income in each taxable year, excluding gross income from prohibited transactions and certain hedging transactions, must be derived from some combination of such income from investments in real property (i.e., income that qualifies under the 75% income test described above), as well as other dividends, interest and gain from the sale or disposition of stock or securities, none of which need have any relation to real property.

The Fund believes that the Sub-REIT's investments in mortgage loans will generate income that complies with both the 75% test and the 95% test, and it intends to monitor compliance on an ongoing basis. If the Sub-REIT fails to satisfy one or both of the 75% or 95% gross income tests for any taxable year, it may still qualify as a REIT for the year if it is entitled to relief under applicable provisions of the Code. These relief provisions will be generally available if the failure to meet the gross income tests was due to reasonable cause and not due to willful neglect and the Sub-REIT files a schedule of the source of its gross income in accordance with Treasury Regulations. It is not possible to state whether the Sub-REIT would be entitled to the benefit of these relief provisions in all circumstances. If these relief provisions are inapplicable to a particular set of circumstances involving the Sub-REIT, it would not qualify as a REIT. Even where these relief provisions apply, a tax would be imposed based upon the amount by which the Sub-REIT failed to satisfy the particular gross income test.

Asset Tests

At the close of each quarter of the taxable year, the Sub-REIT must satisfy seven tests relating to the nature of its assets.

(i) At least 75% of the value of its total assets must be represented by "real estate assets," cash, cash items and government securities, as such terms are defined in the Code.

(ii) Not more than 25% of the value of its total assets may be represented by securities, other than those in the 75% asset class.

(iii) Except for certain investments in REITs, TRSs and other securities in the 75% asset class, the value of any one issuer's securities owned by the Sub-REIT may not exceed 5% of the value of its total assets.

(iv) Except for certain investments in REITs, TRSs and other securities in the 75% asset class, the Sub-REIT may not own more than 10% of the total voting power of any one issuer's outstanding securities.

(v) Except for certain investments in REITs, TRSs and other securities in the 75% asset class, the Subsidiary REIT may not own more than 10% of the total value of the outstanding securities of any one issuer, other than securities that qualify for certain debt safe harbors.

(vi) The aggregate value of all securities of TRSs held by the Sub-REIT may not exceed 20% of the value of its gross assets.

(vii) No more than 25% of the value of the Sub-REIT's total assets may consist of debt instruments issued by "publicly offered REITs" (as defined in the I Code) to the extent such debt instruments are not secured by real property or interests in real property.

Certain relief provisions are available to REITs to satisfy the asset requirements or to maintain REIT qualification notwithstanding certain violations of the asset and other requirements. One such provision allows a REIT which fails one or more of the asset requirements to nevertheless maintain its REIT

qualification if (a) it provides the IRS with a description of each asset causing the failure, (b) the failure is due to reasonable cause and not willful neglect, (c) the REIT pays a tax equal to the greater of (i) $50,000 per failure and (ii) the product of the net income generated by the assets that caused the failure multiplied by the highest applicable corporate tax rate (currently 21%), and (d) the REIT either disposes of the assets causing the failure within six months after the last day of the quarter in which it identifies the failure, or otherwise satisfies the relevant asset tests within that time period.

In the case of de minimis violations of the 10% and 5% asset tests, a REIT may maintain its qualification despite a violation of such requirements if (a) the value of the assets causing the violation does not exceed the lesser of 1.0% of the REIT's total assets and $10,000,000, and (b) the REIT either disposes of the assets causing the failure within six months after the last day of the quarter in which it identifies the failure, or the relevant tests are otherwise satisfied within that time period.

The Fund believes that the Sub-REIT's holdings of securities and other assets will comply with the foregoing REIT asset requirements, and it intends to monitor compliance on an ongoing basis. No independent appraisals will be obtained, however, to support the Fund's or the Sub-REIT's conclusions as to the value of total assets, or the value of any particular security or securities. Moreover, values of some assets may not be susceptible to a precise determination, and values are subject to change in the future. Accordingly, there can be no assurance that the Service will not contend that the Subsidiary REIT's asset holdings do not meet one or more of the REIT asset tests.

Annual Distribution Requirements

To qualify as a REIT, the Sub-REIT is required to distribute dividends, other than capital gain dividends, to its shareholders (including the Fund) in an amount at least equal to:

- the sum of
    - 90% of the Sub-REIT's "REIT taxable income," computed without regard to net capital gains and the deduction for dividends paid, and
    - 90% of the Fund's net income, if any (after tax), from foreclosure property (as described below), minus
- the sum of specified items of non-cash income.

These distributions generally must be paid in the taxable year to which they relate, or in the following taxable year if declared before the Sub-REIT timely file its tax return for the year and if paid with or before the first regular dividend payment after such declaration. For distributions to be counted for this purpose, and to give rise to a tax deduction by the Sub-REIT, they must not be "preferential dividends." A dividend is not a preferential dividend if it is pro rata among all outstanding shares of Sub-REIT within a particular class, and is in accordance with the preferences among different classes of Sub-REIT shares as set forth in the Subsidiary REIT's organizational documents.

To the extent that the Sub-REIT distributes at least 90%, but less than 100%, of its "REIT taxable income," as adjusted, the Sub-REIT will be subject to tax at ordinary corporate tax rates on the retained portion. The Sub-REIT may elect to retain, rather than distribute, its net long-term capital gains and pay tax on such gains. In this case, the Sub-REIT could elect to have its shareholders (including the Fund) include their proportionate share of such undistributed long-term capital gains in income, and to receive a corresponding credit for their share of the tax paid by the Sub-REIT. The shareholders (including the Fund) would then increase the adjusted basis of their Sub-REIT shares by the difference between the designated amounts of

capital gains from the Sub-REIT that they include in their taxable income, and the tax paid on their behalf by the Sub-REIT with respect to that income.

If the Sub-REIT should fail to distribute during each calendar year at least the sum of (a) 85% of its REIT ordinary income for such year, (b) 95% of its REIT capital gain net income for such year, and (c) any undistributed taxable income from prior periods, it would be subject to a non-deductible 4% excise tax on the excess of such required distribution over the sum of (x) the amounts actually distributed and (y) certain retained amounts.

It is possible that the Sub-REIT, from time to time, may not have sufficient cash to meet the distribution requirements due to timing differences between (a) the actual receipt of cash and (b) the inclusion of items in income by the Sub-REIT for U.S. federal income tax purposes. In the event that such timing differences occur, in order to meet the distribution requirements, it might be necessary to make distributions in the form of Sub-REIT shares or taxable in kind distributions of property.

The Sub-REIT may be able to rectify a failure to meet the distribution requirements for a year by paying "deficiency dividends" to its shareholders (including the Fund) in a later year, which may be included in the Sub-REIT's deduction for dividends paid for the earlier year. In this case, the Sub-REIT may be able to avoid losing its REIT qualification or being taxed on amounts distributed as deficiency dividends. However, the Sub-REIT will be required to pay interest and a penalty based on the amount of any deduction taken for deficiency dividends.

Failure to Qualify

If the Sub-REIT failed to satisfy one or more requirements for REIT qualification, other than the gross income tests and the asset tests, it could avoid disqualification if the failure is due to reasonable cause and not to willful neglect and the Sub-REIT pays a penalty of $50,000 for each such failure. In addition, there are relief provisions for a failure of the gross income tests and asset tests, as described above under "Income Tests" and "Asset Tests."

If the Sub-REIT failed to qualify for taxation as a REIT in any taxable year, and the relief provisions described above did not apply, it would be subject to tax on its taxable income at regular corporate rates (currently 21%). Distributions to shareholders of the Sub-REIT (including the Fund) in any year in which the Sub-REIT were not a REIT would not be deductible by it, nor would they be required to be made. In this situation, to the extent of current and accumulated earnings and profits, distributions to domestic shareholders of the Sub-REIT that are individuals, trusts and estates would generally be taxable at capital gains rates and, subject to limitations of the Code, corporate distributees may be eligible for the dividends received deduction. Unless the Sub-REIT was entitled to relief under specific statutory provisions, it would also be disqualified from re-electing to be taxed as a REIT for the four taxable years following the taxable year during which qualification was lost. It is not possible to state whether, in all circumstances, the Sub-REIT would be entitled to this statutory relief.

Prohibited Transactions

Net income derived by a REIT from a prohibited transaction is subject to a One Hundred Percent (100%) tax. The term "prohibited transaction" generally includes a sale or other disposition of property (other than foreclosure property, as discussed below) that is held primarily for sale to customers in the ordinary course of a trade or business. The Fund intends that the Sub-REIT will conduct its operations so that no asset owned by it will be held for sale to customers, and that a sale of any such asset will not be in the ordinary course of business. Whether property is held "primarily for sale to customers in the ordinary course of a

trade or business" depends, however, on the particular facts and circumstances. No assurance can be given that any property sold by the Sub-REIT will not be treated as property held for sale to customers, or that it can comply with certain safe harbor provisions of the Code that would prevent such treatment.

Foreclosure Property

Foreclosure property is real property and any personal property incident to such real property (i) that is acquired by a REIT as the result of the REIT having bid on the property at foreclosure, or having otherwise reduced the property to ownership or possession by agreement or process of law, after there was a default (or default was imminent) on a lease of the property or a mortgage loan held by the REIT and collateralized by the property, (ii) for which the related loan or lease was acquired by the REIT at a time when default was not imminent or anticipated, and (iii) for which such REIT makes a proper election to treat the property as foreclosure property. REITs generally are subject to tax at the maximum corporate rate (currently 21%) on any net income from foreclosure property, including any gain from the disposition of the foreclosure property, other than income that would otherwise be qualifying income for purposes of the 75% gross income test. Any gain from the sale of property for which a foreclosure property election has been made will not be subject to the 100% tax on gains from prohibited transactions described above, even if the property would otherwise constitute inventory or dealer property in the hands of the selling REIT. To the extent that the Sub-REIT receives any income from foreclosure property that is not qualifying income for purposes of the 75% gross income test, it intends to make an election to treat the related property as foreclosure property.

Section 199A Deduction

In December 2017, as part of the Tax Act, Section 199A was added to the Code and became effective for tax years beginning after December 31, 2017 and before January 1, 2026. Under Section 199A of the Code, subject to certain limitations, an individual taxpayer and estates and trusts may deduct 20% of their aggregate "qualified business income" ("QBI"). In general, QBI is the net amount of income, gain, loss, and deduction (other than any items of capital gain or loss and certain other enumerated investment-type items of income or deduction) that is effectively connected with the conduct of a trade or business within the United States (other than certain service businesses enumerated in Section 199A of the Code) and included or allowed in determining taxable income for the taxable year. QBI also includes the combined qualified REIT dividends, including REIT dividends earned through a pass-through entity. Qualified REIT dividends include any dividend from a REIT received during the tax year that is not (i) a capital gain dividend or (ii) qualified dividend income.

If a taxpayer is permitted to take the full QBI deduction, the maximum effective tax rate on such income will be 29.6% (as opposed to the maximum 37% tax rate generally applicable to ordinary income). Because the Fund plans to operate a significant part of its business through the Sub-REIT, the qualified REIT dividends from the Sub-REIT that are allocated to an Investor should generally be eligible for the 20% QBI deduction.

Net Investment Income Tax

In addition to all other taxes, there is imposed for each year beginning after December 31, 2012 a tax on the net investment income of every individual, other than nonresident aliens, estates and trusts. For individuals, the tax equals 3.8% of the lesser of an individual's net investment income for such taxable year or the excess, if any, of the modified adjusted gross income for such taxable year over the threshold amount. In the case of an estate or trust, the tax equals 3.8% on the lesser of the undistributed net investment income for such taxable year or the excess, if any, of the adjusted gross income over the dollar amount at which the highest tax bracket for estates and trusts begins. Generally, net investment income means the excess, if any,

of gross income from interest, dividends, annuities, royalties and rents as well as trade or business income if such trade or business is a "passive activity" to the taxpayer over the deductions which are properly allocable to such gross income or net gain. Modified adjusted income means adjusted gross income increased by certain foreign earned income while threshold amount means $250,000 for taxpayers making a joint return or surviving spouse and $200,000 in any other case. Accordingly, each Investor should consult with his or her own personal tax advisor regarding the possible application of the net investment income tax.

ERISA CONSIDERATIONS

The following is a discussion of how certain requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Code relating to Employee Benefit Plans and certain Other Benefit Arrangements (each as defined below) may affect an investment in the Membership Interests. It is not, however, a complete or comprehensive discussion of all employee benefits aspects of such an investment. If the Investors are trustees or other fiduciaries of an Employee Benefit Plan or Other Benefit Arrangement, before purchasing Membership Interests, they should consult with their own independent legal counsel to assure that the investment does not violate any of the applicable requirements of ERISA or the Code, including, without limitation, the ERISA fiduciary rules and the prohibited transaction requirements of ERISA and the Code.

ERISA Fiduciary Duties

Under ERISA, persons who serve as trustees or other fiduciaries of an Employee Benefit Plan have certain duties, obligations and responsibilities with respect to the participants and beneficiaries of such plans. Among the ERISA fiduciary duties are the duty to invest the assets of the plan prudently, and the duty to diversify the investment of plan assets so as to minimize the risk of large losses. An "Employee Benefit Plan" is a plan subject to ERISA that is an employee pension benefit plan (such as a defined benefit pension plan or a section 401(k) or 403(b) plan) or any employee welfare benefit plan (such as an employee group health plan).

Prohibited Transaction Requirements

Section 406 of ERISA and Section 4975 of the Code proscribe certain dealings between Employee Benefit Plans or Other Benefit Arrangements, on the one hand, and "parties-in interest" or "disqualified persons" with respect to those plans or arrangements on the other. An "Other Benefit Arrangement" is a benefit arrangement described in Section 4975(e)(1) of the Code (such as a self-directed individual retirement account ("IRA"), other than an Employee Benefit Plan.

Prohibited transactions include, directly or indirectly, any of the following transactions between an Employee Benefit Plan or Other Benefit Arrangement and a party in interest or disqualified person:

(a) sales or exchanges of property;

(b) lending of money or other extension of credit;

(c) furnishing of goods, services or facilities; and

(d) transfers to, or use by or for the benefit of, a party in interest or disqualified person of any assets of the Employee Benefit Plan or Other Benefit Arrangement.

In addition, prohibited transactions include any transaction where a trustee or other fiduciary of an Employee Benefit Plan or Other Benefit Arrangement:

(a) deals with plan assets for his own account,

(b) acts on the behalf of parties whose interests are adverse to the interest of the plan, or

(c) receives consideration for his own personal account from any party dealing with the plan with respect to plan assets.

The terms "party in interest" under ERISA and "disqualified person" under the Code have similar definitions. The terms include persons who have particular relationships with respect to an Employee Benefit Plan or Other Benefit Arrangement, such as:

(a) fiduciaries;

(b) persons rendering services of any nature to the plan;

(c) employers any of whose employees are participants in the plan, as well as owners of 50% or more of the equity interests of such employers;

(d) spouses, lineal ascendants, lineal descendants, and spouses of such ascendants or descendents of any of the above persons;

(e) employees, officers, directors and 10% or more owners of such fiduciaries, service providers, employers or owners;

(f) entities in which any of the above-described parties hold interests of 50% or more; and

(g) 10% or more joint ventures or partners of certain of the parties described above.

Certain transactions between Employee Benefit Plans or Other Benefit Arrangements and parties in interest or disqualified persons that would otherwise be prohibited transactions are exempt from the prohibited transaction rules due to the application of certain statutory or regulatory exemptions. In addition, the United States Department of Labor (the "DOL") has issued class exemptions and individual exemptions for certain types of transactions. Violations of the prohibited transaction rules may require the prohibited transactions to be rescinded and will cause the parties in interest or disqualified persons to be subject to excise taxes under Section 4975 of the Code.

Investments in the Fund

If any Investor is a fiduciary of an Employee Benefit Plan, the Investor must act prudently and ensure that the plan's assets are adequately diversified to satisfy the ERISA fiduciary duty requirements. Whether an investment in the Fund is prudent and whether an Employee Benefit Plan's investments are adequately diversified must be determined by the plan's fiduciaries in light of all of the relevant facts and circumstances. A fiduciary should consider, among other factors, the limited marketability of the Membership Interests.

Investors should also be aware that under certain circumstances the DOL may view the underlying assets of the Fund as "plan assets" for purposes of the ERISA fiduciary rules and the ERISA and Internal Revenue Code prohibited transaction rules. DOL regulations indicate that Fund assets will not be considered plan

assets if less than Twenty Five Percent (25%) of the value of the Membership Interests is held by Employee Benefit Plans and Other Benefit Arrangements.

The Fund anticipates that if any Investor is an Employee Benefit Plan subject to ERISA, the Fund will limit the investments by all Employee Benefit Plans and Other Benefit Arrangements to ensure that the Twenty Five Percent (25%) limit is not exceeded. Because the Twenty Five Percent (25%) limit is determined after every subscription or redemption, the Fund has the authority to require the redemption of all or some of the Membership Interests held by any Member that is an Employee Benefit Plan or Other Benefit Arrangement if the continued holding of such Membership Interests, in the sole opinion of the Fund, could result in the Fund being subject to the ERISA fiduciary rules.

If there are no Employee Benefit Plan investors in the Fund, the Fund anticipates that investments by Other Benefit Arrangements (such as self-directed IRAs) may exceed the Twenty Five Percent (25%) limit. This situation may cause the underlying assets of the Fund to be considered plan assets for purposes of the Code prohibited transaction rules. In such a case, the Other Benefit Arrangement Investors must ensure that their investments do not constitute prohibited transactions under Section 4975 of the Code. Such Investors should consult with independent legal counsel on these issues.

Special Limitations

The discussion of the ERISA fiduciary aspects and the ERISA and Code prohibited transaction rules contained in this Memorandum is not intended as a substitute for careful planning. The applicability of ERISA fiduciary rules and the ERISA or Code prohibited transaction rules to Investors may vary from one Investor to another, depending upon that Investor's situation. Accordingly, Investors should consult with their own attorneys, accountants and other personal advisors as to the effect of ERISA and the Code on their situation of a purchase and ownership of the Membership Interests and as to potential changes in the applicable law.

SUMMARY OF THE OPERATING AGREEMENT

The following is a summary of the Operating Agreement and is qualified in its entirety by the terms of the Operating Agreement itself. In the event of any conflict, misunderstanding or ambivalence between, or resulting from, the summary below and the actual terms of the Operating Agreement, the latter shall govern. Potential Investors are urged to carefully read the entire Operating Agreement, which is set forth as Exhibit A to this Private Placement Memorandum.

Accounting and Reports

Annual reports concerning the Company's business affairs, including the Company's audited financial statements and income tax returns, will be provided to Members who request them in writing. Each Member will receive his, her, or its respective K-1 Form as required by applicable law. The Manager may, at its sole and absolute discretion, designate another Person to provide tax and accounting advice to the Company, at any time and for any reason.

The Manager presently intends to maintain the Company's books and records on the accrual basis for bookkeeping and accounting purposes, and also intends to use the accrual basis method of reporting income and losses for federal income tax purposes. The Manager reserves the right to change such methods of accounting upon written notice to Members. Any Member may inspect the books and records of the Company at reasonable times.

Adjustment of Membership Interest Holdings

Allocations of profit, gain and loss in the Fund are made, as required by law, in proportion to the Members' respective capital accounts. Voting rights are based upon the number of Membership Interests each Member owns. Because some Members may choose to reinvest their share of profits, gains and losses, it is likely that the value of their capital accounts will increase relative to the capital accounts of Members who take monthly income distributions of their share of profits, gains and losses. Once the Minimum Offering Amount has been achieved by the Company, the Manager, at its discretion, may set the membership interest value for additional Membership Interests by adjusting the book value of the assets of the Fund to reflect the fair market value of those assets and determining the liabilities of the Company.

Capital Distributions

The Company may, in the sole and absolute discretion of the Manager, make distributions of capital to Members in proportion to their capital account balances as of the date the distribution is declared.

Compensation to Manager and Affiliates

The Company will compensate the Manager and Affiliates as described in "Manager's Compensation" herein.

Manager's Interest

The Manager may withdraw from the management of the Fund at any time upon Thirty (30) days' written notice to all Members, in which event the Manager would not be entitled to any termination or severance payment from the Company, except for the return of its capital account balance, if any. The Manager may also sell and transfer any Membership Interests it may own for such price as it shall determine, in its sole discretion, and neither the Company nor the Members will have any interest in the proceeds of such sale. However, a successor manager of the Company may only be elected by the Members.

Income Distributions

The Company will make all disbursements of the monthly distributions of Net Profits, as described in the "Terms of the Offering – Cash Distributions; Election to Reinvest" above.

Operating Expenses

When the assets of the Company reach One Million Dollars ($1,000,000), the Manager may be reimbursed by the Fund for its operating and administrative expenses, provided however, the Manager may only be reimbursed at a rate of One-Half of One Percent (0.5%) per annum of the Company's aggregate capital. This operating expense reimbursement fee will be calculated as of the first day of the month with regards to the aggregate capital in the Fund as of that day and paid out as of the first day of the following month. At the Manager's discretion, the Manager may also be reimbursed for all of the Fund's administrative and/or operating expenses paid by the Manager.

Profits and Losses

The Company's profit or loss for any taxable year, including the taxable year in which the Company is dissolved, will be allocated among the Members in proportion to their capital account balances that they held during the applicable tax reporting period.

Restrictions on Transfer

The Operating Agreement places substantial limitations upon transferability of Membership Interests. Any transferee must be a person that would have been qualified to purchase a Membership Interest in this offering. No Membership Interest may be transferred if, in the sole judgment of the Manager, a transfer would jeopardize the availability of exemptions from the registration requirements of federal securities laws, jeopardize the tax status of the Company as a limited liability company taxed as a partnership, or cause a termination of the Company for federal income tax purposes.

A transferee may not become a substitute Member without the consent of the Manager. Such consent may not be unreasonably withheld if the transferor and the transferee comply with all the provisions of the Operating Agreement and applicable law. A transferee who does not become a substitute Member has no right to vote in matters brought to a vote of the Members, or to receive any information regarding the Company or to inspect the Company books, but is entitled only to the share of income or return of capital to which the transferor would be entitled.

Rights and Liabilities of Members

The rights, duties and powers of Members are governed by the Operating Agreement and applicable California corporate and business law, and the discussion herein of such rights, duties and powers is qualified in its entirety by reference to them.

Investors who become Members in the manner set forth herein will not be responsible for the obligations of the Company. They may be liable to repay capital returned to them plus interest if necessary to discharge liabilities existing at the time of such return. Any cash distributed to Members may constitute, wholly or in part, return of capital.

Rights, Powers and Duties of Manager

Subject to the right of the Members to vote on specific matters, the Manager will have complete charge of the business of the Company. The Manager is not required to devote itself full-time to Company affairs but only such time as is required for the conduct of Company business. The Manager has the power and authority to act for and bind the Company. The Manager is granted the special power of attorney of each Member for the purpose of executing any document which the Members have agreed to execute and deliver.

Fund Brought to Close

The Company will not cease to exist immediately upon the occurrence of an event of dissolution, but will continue to exist until its affairs have been brought to a close. Upon dissolution of the Company, the Manager will bring to a close the Company's affairs by liquidating the Company's assets as promptly as is consistent with obtaining the fair market value thereof, either by sale to third parties or by collecting Loan payments under the terms of the loan(s) until a suitable sale can be arranged. All funds received by the Company shall be applied to satisfy or provide for Company debts and liabilities and the balance, if any, shall be distributed to Members on a pro-rata basis.

Withdrawal

Members who invest in the Fund may not withdraw their capital until they have been members of the Fund for at least Twelve (12) months. Members who have been members of the Fund for a period longer than Twelve (12) months may request withdrawal from the Fund in writing and give the Fund at least Thirty (30) days' written notice prior to expecting to be withdrawn from the Fund. The effective date of

withdrawal shall be Thirty (30) days after the date of receipt of the Member's written withdrawal request. The Fund will use its best efforts to return capital subject to, among other things, the Fund's then cash flow, financial condition, and prospective transactions.

Notwithstanding any of the withdrawal restrictions described herein, the Manager reserves the right to return part or all of the Member's capital investment to the Member, at its sole and absolute discretion, at any time during the investment for any reason, including without limitation, if the Manager suspects the Member has violated federal or state law, rules, and regulations or the Member is under investigation by federal, state, and/or local authorities.

The Manager is not under any circumstances obligated to liquidate any assets, properties or Loans to accommodate or facilitate any Member(s)' request for withdrawal or redemption from the Fund. Following the effective date of a Member's withdrawal, the return of capital will be limited to 8.333% of such Member's capital account balance per month such that it will take at least Twelve (12) months for a Member to withdraw his, her, or its total investment in the Fund; provided, however, that the maximum aggregate amount of capital that the Fund will return to the Members, as follows: (1) up to Two Percent (2%) per month of the Fund's Assets Under Management; (2) up to Five Percent (5%) per quarter of such Assets Under Management; and (3) up to Twenty Percent (20%) per fiscal year of such Assets Under Management.

Withdrawal requests will be processed by the Fund on a first-come, first-served basis. Notwithstanding the foregoing, the Manager may, in its sole and absolute discretion, waive or modify such withdrawal requirements or withdrawal prioritization, at any time for any reason (or no reason), including, if a Member is experiencing undue hardship; acceptability of the Member's hardship will be determined by the Manager in its sole and absolute discretion.

Members who wish to withdraw before they have been Members for Twelve (12) months ("Early Withdrawal") can only withdraw if the Member produces evidence of undue hardship, and the Manager permits Early Withdrawal, in its sole and absolute discretion. Acceptability of a Member's hardship will be determined by the Manager, in its sole and absolute discretion. Members who request Early Withdrawal will be subject to a penalty of Five Percent (5%) of the Member's withdrawal proceeds. The Manager may, at its sole discretion, waive an Early Withdrawal penalty.

The Manager may at any time suspend the withdrawal of funds from the Fund, upon the occurrence of any of the following circumstances: (i) whenever, as a result of events, conditions or circumstances beyond the control or responsibility of the Manager or the Fund, disposal of the assets of the Fund is not reasonably practicable without being detrimental to the interests of the Fund or its Members, determined in the sole and absolute discretion of the Manager; (ii) it is not reasonably practicable to determine the net asset value of the Fund on an accurate and timely basis; or (iii) if the Manager has determined to dissolve the Fund. Notice of any suspension will be given within Ten (10) business days from the time the decision was made to suspend distributions to any Member who has submitted a withdrawal request and to whom full payment of the redemption proceeds has not yet been remitted. If a redemption request is not rescinded by a Member following notification of a suspension, the redemption will be effective within Ninety (90) days from the date the suspension is lifted, on the basis of the net asset value of the Fund at that time and in the order determined by the Manager in its sole and absolute discretion.

All prospective Investors should understand that the average term of loans is expected to range from One (1) to Five (5) years, and accordingly, the cash flow and access to cash availability of the Fund is likely to be limited on an ongoing basis (i.e. most of the Fund's available resources will be committed to pending loans or invested in existing loans and/or properties for significant periods of time). Further, prospective Investors should understand the loans are illiquid and the ability to sell Loans or properties (even if the

Fund was inclined to do so) may be limited, and accordingly, any investment made in or through this Offering should be considered highly illiquid.

Redemption Policy and Other Events of Disassociation

The Manager may, at its sole and absolute discretion, cause the Company to repurchase Membership Interests from Members desiring to resign from membership or as a part of a plan to reduce the outstanding capital of the Company. There is no guarantee that the Company will have sufficient funds to cause the redemption of any Membership Interests. Therefore, any investment in the Fund should be considered illiquid.

In addition, the Manager reserves the right to return part or all of the Member's capital investment to the Member, at its sole and absolute discretion and notwithstanding any of the withdrawal restrictions described herein, at any time during the investment for any reason, including without limitation, if the Manager suspects the Member has violated federal or state law, rules, and regulations or the Member is under investigation by federal, state, and/or local authorities. The Fund may also expel a Member for cause if the Member has materially breached or is unable to perform the Member's material obligations under the Operating Agreement. A Member's expulsion from the Company will be effective upon the Member's receipt of written notice of the expulsion by the Company.

Upon any expulsion, transfer of all of Membership Interests, withdrawal, redemption, or resignation of any Member, an event of disassociation shall have occurred and (a) the Member's right to participate in the Company's governance, receive information concerning the Company's affairs and inspect the Company's books and records will terminate and (b) unless such disassociation resulted from the transfer of the Member's Membership Interests, the Member will be entitled to receive the distributions to which the Member would have been entitled as of the effective date of the dissociation had the dissociation not occurred. The Member will remain liable for any obligation to the Company that existed prior to the effective date of the dissociation, including, without limitation, any costs or damages resulting from the Member's breach of the Operating Agreement. Under most circumstances, the Member will have no right to any return of his or her capital prior to the termination of the Company unless the Manager elects, at its sole and absolute discretion, to return capital to a Member.

The effect of redemption or disassociation on Members who do not sell or return their Membership Interests will be an increase in each Member's respective percentage interest in the Company and therefore an increase in each Member's respective proportionate interest in the future earnings, losses and distributions of the Fund and an increase in the respective relative voting power of each remaining Member. Notwithstanding anything to the contrary herein, redemption shall be at the sole and absolute discretion of the Manager and the Manager shall not be compelled to redeem or repurchase Membership Interests at any time or for any reason.

The redemption of Membership Interests shall be subject to the Fund's availability of sufficient cash to pay the expenses of the Company, maintain any loan loss reserve and pay the redemption or withdrawal amounts to other Members who requested withdrawal or redemption in the order of the request. No redemption may be made that would render the Company unable to pay its obligations as they become due. The Fund shall not be required to sell its assets to raise cash to effectuate any redemption.

A redeeming Member shall have the rights of a transferee until such time as the Fund has actually redeemed those Membership Interests, that is, the Member shall be entitled to receive distributions, but shall not be entitled to vote. Redeemed Membership Interests revert to authorized but unissued Membership Interests and the former holder retains no interest of any kind in such Membership Interests.

LEGAL MATTERS

The Fund has retained Geraci Law Firm of Irvine, California to advise it in connection with the preparation of this Offering, the Operating Agreement, the Subscription Agreement and any other documents related thereto. Geraci Law Firm has not been retained to represent the interests of any Investors or Members in connection with this Offering. Investors that are evaluating or purchasing Membership Interest should retain their own independent legal counsel to review this Offering, the Memorandum, the Operating Agreement, the Subscription Agreement and any other documents related to this Offering, and to advise them accordingly.

ADDITIONAL INFORMATION AND UNDERTAKINGS

The Fund and Manager undertake to make available to each Investor every opportunity to obtain any additional information from them necessary to verify the accuracy of the information contained in this Memorandum, to the extent that they possess such information or can acquire it without unreasonable effort or expense. This additional information includes all the organizational documents of the Fund, recent financial statements for the Fund and all other documents or instruments relating to the operation and business of the Fund that are material to this Offering and the transactions described in this Memorandum.

EXHIBIT 4

WRITTEN CONSENT OF THE MANAGERS
OF
PELORUS MANAGEMENT GROUP, LLC

April 5, 2023

The undersigned, being all of the managers (the "**Managers**") of Pelorus Management Group, LLC, a California limited liability company (the "**Fund Manager**"), in its capacity as the sole manager of Pelorus Fund, LLC, a California limited liability company (the "**Company**"), hereby consent to and adopt the following resolutions without the holding of a meeting, such resolutions to have the same force and effect as if adopted at a meeting of the Managers that was duly called and held and at which the Managers were present and acting throughout:

Adoption of Related Party Transactions Policy

WHEREAS, the Managers have determined that it is in the best interest of the Company to adopt policies and procedures relating to related party transactions; and

WHEREAS, the Managers have determined that is in the best interest of the Company to adopt the Policy and Procedures with Respect to Related Party Transactions substantially in the form attached hereto as Exhibit A (the "**Related Party Transactions Policy**").

NOW, THEREFORE, BE IT RESOLVED, that the Related Party Transaction Policy be, and it hereby is, approved in all respects.

Omnibus Authority

RESOLVED, that the Managers are, and each of them hereby is, authorized and empowered, for and in the name and on behalf of the Fund Manager, in its capacity as the sole manager of the Company (i) to take, or cause to be taken, all such further action, (ii) to do and perform, or cause to be done and performed, all such acts and things, and (iii) to execute and deliver, or cause to be executed and delivered, all such further agreements, certificates, documents and instruments of any type and description, all of which as may be, or may be deemed to be, necessary, advisable, desirable or proper to effect the purposes and intent of the foregoing resolutions, the necessity, advisability, desirability, and propriety of which shall be conclusively evidenced by either or both of the Managers taking, or causing to be taken, any such action, doing and performing, or causing to be done or performed, any such act or thing, executing and delivering, or causing to be executed and delivered, any such agreements, certificates, documents or instruments; and the execution by either or both of the Managers of any such agreements, certificates, documents or instruments, or the doing of any act or thing directly in connection with the foregoing resolutions, shall conclusively establish its or their authority therefor for the Fund Manager, in its capacity as the sole manager of the Company, and the authorization, adoption, approval, confirmation and ratification by the Fund Manager, in its capacity as the sole manager of the Company, of any and all agreements, certificates, documents and instruments so executed and delivered and any and all action so taken, done or performed; and all actions of any nature whatsoever heretofore taken by either or both of the Managers and other representatives of the

Fund Manager directly in connection with the foregoing resolutions is, and the same hereby are, authorized, adopted, approved, confirmed and ratified in all respects; and be it further

RESOLVED, that any and all actions of the Fund Manager and actions taken by either or both of the Managers, for and on behalf of the Fund Manager individually or in its capacity as the sole manager of the Company, on or prior to the date hereof, in connection with the foregoing resolutions be, and the same hereby are, in all respects authorized, adopted, approved, confirmed and ratified as acts of the Fund Manager.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the undersigned have executed this Written Consent as of the date first above written.

MANAGERS:

LOST WINDS CAPITAL, INC.,
a California corporation

By: _____
Dan Leimel, Jr.
Chief Executive Officer

JRS CAPITAL USA, INC.,
a California corporation

By: _____
James Robert Sechrist
Chief Executive Officer

EXHIBIT A

Related Party Transactions Policy

PELORUS FUND, LLC

POLICY AND PROCEDURES WITH RESPECT TO

RELATED PARTY TRANSACTIONS

Adopted and approved April 5th, 2023

A. Policy Statement

Pelorus Fund, LLC, a California limited liability company (the "**Company**"), recognizes that Related Party Transactions (as defined below) can present a heightened risk of conflicts of interest and create the appearance that Company decisions are based on considerations other than the best interests of the Company and its members. Accordingly, the Company has adopted this Policy and Procedures with Respect to Related Party Transactions (this "**Policy**").

As a general matter, it is the Company's preference to avoid Related Party Transactions. Nevertheless, the Company recognizes that there are situations where Related Party Transactions may be in, or may not be inconsistent with, the best interests of the Company and its members, including but not limited to, situations where the Company may obtain products or services of a nature, quantity or quality, or on other terms, that are not readily available from alternative sources or when the Company provides financing or other products or services to Related Parties (as defined below) on an arm's length basis on terms comparable to those provided to unrelated third parties or on terms comparable to those provided generally by similarly situated companies. Therefore, the Company has adopted the procedures set forth below for the review, approval and/or ratification of Related Party Transactions.

Under this Policy, any "Related Party Transaction" may be consummated or shall continue only if the Conflicts Committee shall approve or ratify such transaction in accordance with the guidelines set forth in this Policy.

This Policy has been approved by Pelorus Management Group, LLC (the "**Manager**") upon the recommendation of its Managers and Managing Director (collectively, the "**Conflicts Committee**"). In the event that all the members of the Conflicts Committee are interested parties for a particular matter, a fourth disinterested member shall be added to make the decision(s) on the relevant matter. The Conflicts Committee will review and make recommendations regarding any amendments to this policy from time to time. Any amendments to this Policy must be approved by the unanimous vote of the Conflicts Committee.

B. Related Party Transactions

For the purposes of this Policy, a "**Related Party Transaction**" is a transaction, arrangement or relationship (or any series of similar transactions, arrangements or relationships), in which the Company or any subsidiary is or is to be a participant and in which any Related Party

had or will have a direct or indirect monetary interest. For purposes of this Policy, a "**Related Party**" means:

1. any person who is:

    a. a manager, managing partner or officer of Pelorus Capital Group, LLC ("**PCG**"), the Manager or the Company; or

    b. any immediate family member of such person, which includes any child, stepchild, parent, stepparent, spouse, sibling, mother-in- law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister- in-law of the manager, managing partner, officer, and any person (other than a tenant or employee) sharing the household of such manager, managing partner or officer (each, a "**Family Member**");

2. any person or entity who is or will be, at the time a transaction, arrangement or relationship occurs or exists:

    a. the beneficial owner of more than 4.9% of any class of the voting securities of PCG, the Manager or the Company; or

    b. any Family Member of such person; and

3. any entity at the time a transaction, arrangement or relationship occurs or exists:

    a. with respect to which more than 10% of any class of the voting securities of which are directly or indirectly owned in the aggregate by persons deemed Related Parties pursuant to Section B(l) and B(2) above; or

    b. is controlled by persons deemed Related Parties pursuant to Section B(l) and B(2) above.

C. Review and Approval of Related Party Transactions

Pursuant to the Company's Operating Agreement, the Manager is required to determine whether any Related Party Transaction is on terms that are no less favorable to the Company or its subsidiary than could be obtained from an unaffiliated third party in a similar transaction or an unaffiliated third party service provider providing comparable services. To fulfill its obligation under the Operating Agreement, the Manager has determined that the Conflicts Committee is best suited to review Related Party Transactions on behalf of the Manager and make recommendations to the Manager with respect to the approval, ratification or disapproval of any Related Party Transaction. It is the policy of the Company that all Related Party Transactions (other than the Pre-Approved Transactions) will be subject to review by the Conflicts Committee in accordance with the procedures set forth below and following such review, the

recommendation by the Conflicts Committee shall constitute the good faith approval, ratification or disapproval of the Manager.

Notwithstanding anything to the contrary otherwise contained in this Policy, no member of the Conflicts Committee shall participate in the review of any Related Party Transaction in respect of which he or she, any Family Member or significant investor with which he or she is affiliated is the Related Party.

Upon learning of a Related Party Transaction (other than a Pre-Approved Transaction) from the Manager, the Conflicts Committee shall review all material facts of such Related Party Transaction and advise the Manager of the approval, disapproval or ratification of such transaction by the unanimous written consent of the disinterested member(s) of the Conflicts Committee. In assessing a Related Party Transaction, the disinterested member(s) of the Conflicts Committee will determine whether the Related Party Transaction is on terms that are no less favorable to the Company or such subsidiary than could be obtained from an unaffiliated third party in a similar transaction or an unaffiliated third party service provider providing comparable services. In determining whether to approve, ratify or disapprove a Related Party Transaction the disinterested member(s) of the Conflicts Committee may take into account, among other factors they deem appropriate (i) the benefits (or lack thereof) to the Company of the transaction, (ii) the commercial reasonableness of the terms of the transaction including, without limitation, the compliance with or any deviation from the Company's customary underwriting policies and criteria, (iii) the results of an appraisal, valuation methodology or comparable transactions, (iv) the materiality of the transaction to the Company, (v) the extent of the Related Party's interest in the transaction, and (vi) the actual or apparent conflict of interest of the Related Party participating in the Transaction. The disinterested member(s) of the Conflicts Committee, in their sole discretion, may impose such conditions as they deem appropriate in connection with approval of any Related Party Transaction.

The Conflicts Committee may take into account any advice or recommendation made to it by legal counsel, or any other adviser with whom the Conflicts Committee may in its discretion consult.

The disinterested members of the Conflicts Committee shall convey the decision of whether or not to pursue the Related Party Transaction to the Manager as soon as reasonably practicable.

If a Related Party Transaction is of the type that will be ongoing, the Conflicts Committee may establish guidelines for the Company to follow in its ongoing dealings with the Related Party. Thereafter, the Conflicts Committee and the Manager, from time-to-time as the Conflicts Committee or Manager deems appropriate, shall review and assess such ongoing relationships with the Related Party to assess whether they are in compliance with the guidelines, if any, and that the Related Party Transaction remains appropriate under the circumstances when judged against this Policy.

D. Related Party Transactions Not Considered Under this Policy

After the adoption of this Policy, if the Company becomes aware of a Related Party Transaction that has occurred but was not evaluated under this Policy, the matter shall be reviewed by the Conflicts Committee.

The Conflicts Committee will consider all of the relevant facts and circumstances regarding the Related Party Transaction, including the items listed above, and will evaluate all options available to the Company, including ratification, revision or termination of the Related Party Transaction.

The Conflicts Committee may also examine the facts and circumstances pertaining to the Related Party Transaction and shall take such action as it deems appropriate.

E. Transactions Exempted from Review and Approval Requirement; Pre-Approved Transactions

The following constitutes a non-exclusive list of transactions ("**Pre-Approved Transactions**") that will not be deemed to be Related Party Transactions and, therefore, will not require Conflicts Committee review or approval pursuant to this Policy:

1. Any compensation paid to a manager, managing partner or officer of the Company if the compensation otherwise complies with the Company's contractual obligations.

2. Any transaction with a firm, corporation, or other entity with which a Related Party has a position or relationship, where such Related Party's interest in the transaction arises only from the Related Party's position as an employee (i.e., the Related Party is not the equivalent of a senior manager) or director of such firm, corporation, or other entity.

3. Any transaction with a firm, corporation, or other entity with which a Related Party has a position or relationship, where such Related Party's interest in the transaction arises only from such Related Party's direct or indirect ownership, aggregated with the direct or indirect ownership of all other persons deemed Related Parties pursuant to Section B(l) and B(2), of less than ten percent (10%) of the outstanding equity interests in such firm, corporation, or other entity (excluding a partnership).

4. Any transaction with a firm, corporation, or other entity with which a Related Party has a position or relationship, where such Related Party's interest in the transaction arises only from such Related Party's position as a limited partner in a partnership in which the Related Party and all other persons deemed Related Parties pursuant to Section B(l) and B(2), have an interest of less than ten percent

(10%), if the Related Party is not a general partner of and does not hold another position in the partnership.

5. Any transaction where the Related Party's interest arises solely from the ownership of the Company's common stock and all holders of the Company's common stock receive the same benefit on a pro rata basis (e.g. payment of distributions).

6. Expense reimbursements in compliance with Company expense reimbursement policies.

F. Disclosure

All Related Party Transactions will be disclosed in the Company's annual audited financial statements or annual report to its members.

The review, approval or ratification of a transaction, arrangement or relationship pursuant to this Policy does not necessarily imply that such transaction, arrangement or relationship is required to be disclosed except in accordance with the immediately preceding paragraph.

EXHIBIT 5

GUHA PLLC

SAMIDH GUHA
212-399-8350 PHONE
sguha@guhapllc.com EMAIL

May 29, 2024

Via electronic mail

Pelorus Capital Group, LLC
124 Tustin Avenue, Suite 200
Newport Beach, CA 92663
c/o Jason R. Outlaw
Alston & Bird
Jason.Outlaw@alston.com

Re: Travis Goad - Resignation

Dear Jason:

As you are aware, we represent Travis Goad in his personal capacity and his role as President of TGCA PEL LLC in connection with his rights, duties and obligations as a partner of and investor in Pelorus Capital Group, LLC and its affiliated entities (collectively, "PCG"). Thank you for your recent assistance in providing greater transparency to Mr. Goad regarding the ongoing SEC inquiries and concerns expressed by the Fund's current auditors

Mr. Goad has been hopeful that the issues described in this letter and the issues that we have discussed previously could be resolved in a manner that would allow him to continue to serve properly the interests of the Fund and its investors. However, at this time, it does not appear that he can do so. This letter shall serve as notice of Mr. Goad's resignation from the officer positions he holds with PCG, as defined by Section 5.5 of the Pelorus Capital Group, L.L.C. Amended and Restated Limited Liability Company Operating Agreement, dated as of January 3, 2023, effective immediately.

Mr. Goad is resigning for the reasons stated below, which are not intended to be complete recitations, either factually or legally, of the basis for his decision.

First, Mr. Goad initially became aware in either late 2021 or early 2022 of a single, personal ownership interest held by Mr. Leimel and Mr. Sechrist in an investment that utilized PCG investor capital but was not disclosed to PCG, Mr. Goad or PCG investors. Mr. Goad immediately raised his concerns to Mr. Leimel, Mr. Sechrist and outside counsel Donald Hammett and Lane Folsom, who were partners at the Dentons law firm at the time. Hammett and Folsom advised Mr. Goad that in their opinion no disclosure was needed due to the relatively small amount of PCG investor funds used. Mr. Leimel and Mr. Sechrist assured Mr. Goad that they would promptly divest their ownership interest and/or satisfy the loan in full, and they would never use investor funds for personal projects in the future

In approximately the next twelve months, Mr. Goad became aware that, contrary to their representations, Mr. Leimel and Mr. Sechrist did not divest their interest in the first loan and instead increased the amount of PCG investor capital lent to themselves without informing Mr. Goad. In addition, Mr. Goad and other PCG professionals conducted further due diligence and learned that

Mr. Leimel and Mr. Sechrist also held undisclosed ownership interests in three other investments that utilized PCG investor funds, almost all of which were substantially increased in size in 2022 (collectively with the first undisclosed related party loan, the "Related Party Loans"), also unbeknownst to Mr. Goad. None of the Related Party Loans were vetted through the PGC investment committee and subjected to its protocols, as is expected for PCG investments.

Upon learning of these additional loans and the recent increases in size, Mr. Goad and other PCG professionals conducted due diligence with respect to the Related Party Loans which demonstrated that Mr. Leimel and Mr. Sechrist unilaterally entered into the Related Party Loans on terms that were unusual and favorable to their interests over those of the Fund and its investors. By way of example only:

- The Morongo II Loan was structured by Mr. Leimel and Mr. Sechrist to include abnormally long interest reserves totaling over 40 months, exceeding the average interest reserves for other loans at this time that ranged typically from three to six months. This structure resulted in little to no personal investment required from Mr. Leimel and Mr. Sechrist.

- Initially Mr. Leimel and Mr. Sechrist obtained an appraisal for the project they intended to build that resulted in value lower than the Loan amount could support. Outside the PGC investment protocols, Mr. Leimel and Mr. Sechrist obtained a second appraisal 30 days after the initial appraisal that valued Morongo II which assumed a completed property with significantly higher quality build out than contemplated or budgeted. (There were not enough funds available to complete the higher end build out.) This new appraisal resulted in an loan to value ("LTV") reported to PCG investors that was significantly lower than the actual projected LTV. This also allowed them to structure a loan to themselves with little to no personal investment from Mr. Leimel or Mr. Sechrist. This loan has now defaulted and the property is worth less than PCG investor funds used and investors face a loss tied to this loan.

- The originated at loan to cost ratios ("LTCs") for the Related Party Loans ranged between an average between 122% and 135% LTC at time of origination. This compares unfavorably with LTCs ranging on average between, 56% and 88% for non-related party loans originated at the same time.

Upon learning of this information and consulting with other PCG professionals, Mr. Goad again raised these issues with Mr. Leimel and Mr. Sechrist without any meaningful response. Despite his consistent efforts to ensure proper treatment of the Related Party Loans, Mr. Goad remains uncomfortable that Mr. Leimel and Mr. Sechrist have honored their or the Fund's obligations with respect to the Related Party Loans.

Second, Mr. Goad persistently pressed the issues relating to the Related Party Loans with Hammett and Folsom, who had now moved to Alston & Bird ("A&B Corporate Counsel") and continued to serve as outside counsel for PCG at their new firm. Mr. Goad demanded prompt and complete disclosure to PCG investors, PCG auditors and the appropriate regulatory bodies.

A&B Corporate Counsel, in response to Mr. Goad's heightened concerns, and at his insistence, designed and implemented the PGC Related Party Committee ("RPC") in the fall of 2023 and appointed Mr. Goad as the sole unconflicted member of the RPC to address the Related Party Loans. A&B Corporate Counsel further authorized the retention of independent counsel to advise Mr. Goad and the RPC in connection with the Related Party Loans. Mr. Leimel, Mr. Sechrist and the A&B Corporate Counsel expressly approved the selection of Greenspoon Marder as RPC independent counsel and memorialized the recusal of Mr. Leimel and Mr. Sechrist from the RPC work, which commenced promptly.

The RPC, as advised by Greenspoon Marder issued a report (*Memorandum re Related Party Transactions - Pelorus Fund, LLC dated January 12, 2024*) that analyzed the out of market nature of the Related Party Loans and made initial proposals, orally and otherwise, regarding fulsome disclosure and remediation. However, Mr. Leimel and Mr. Sechrist unequivocally rejected the recommendations of the RPC and instead provided a response that contained inaccurate information and argumentative non sequiturs. (*Pelorus Conflicts Committee - Response Memorandum of Committee Majority dated January 29, 2024-c*). The RPC issued a second report to clarify the errors in the response from Mr. Lemiel and Mr. Sechrist. (*Memorandum re Response to January 29 2024 Memorandum - Conflicts Committee of Pelorus Fund LLC dated February 21, 2024*). Mr. Goad asked that these reports be shared with PGC investors and where appropriate its regulators and auditors but has not been informed whether or not such disclosures were made.

Third, Mr. Leimel and Mr. Sechrist insisted and continues to insist on retaining exclusive decision-making with respect to the Related Party Loans to the detriment of PCG and the PCG investors, despite the creation of the RPC by A&B Outside Counsel.

To the contrary, Mr. Leimel unilaterally terminated the RPC independent counsel rather than address the RPC recommendations. To this day, Mr. Leimel and Mr. Sechrist persist in making unilateral decisions with respect to the Related Party Loans over the objections of and/or without the involvement of the RPC. As but one example, Mr. Leimel and Mr. Sechrist unilaterally modified and upsized the Leave It To Beaver loan that was subject to the RPC purview, which was in default. A&O Corporate Counsel advised Mr. Leimel and Mr. Sechrist that they were acting contrary to the RPC and contrary to the opinion of A&O Corporate Counsel, an opinion that A&O Corporate Counsel memorialized by electronic mail dated March 13, 2024.

Fourth, Mr. Leimel and Mr. Sechrist, with the support and assistance of A&B, violated Section 5.5(i) by refusing to consult with Mr. Goad and the RPC. Instead, they persisted in taking actions in their own interests at the expense of PCG and PCG investors, some of which Mr. Goad learned through other PCG professionals and others through third parties.

Fifth, Mr. Leimel and Mr. Sechrist ignored Mr. Goad's demands for full disclosure of the Related Party Loans to PCG investors, PCG auditors and PCG regulators, including the RPC recommendations.

Sixth, Mr. Leimel, Mr. Sechrist and A&B Corporate Counsel affirmatively misled Mr. Goad and the RPC about representations that they collectively made to PCG investors, PCG auditors and PCG regulators.

Seventh, Mr. Leimel, Mr. Sechrist have refused to share with Mr. Goad and the RPC their efforts to resolve concerns raised by certain PCG investors. It is Mr. Goad's understanding that Mr. Leimel and Mr. Sechrist have sharply restricted A&O Corporate Counsel's ability to share information with Mr. Goad.

Eighth, Mr. Leimel and Mr. Sechrist have taken retaliatory measures against Mr. Goad for his efforts, including but not limited to efforts by Mr. Leimel to manufacture a demonstrably false record against Mr. Goad following the creation of the RPC and the issuance of its recommendations. Mr. Leimel and Mr. Sechrist have excluded Mr. Goad from the vast majority of PCG strategy and decision making since the fall of 2023. Mr. Leimel and Mr. Sechrist have taken steps to dilute Mr. Goad's vote on the investment committee in a PCG Board meeting dated February 21, 2024. Neither Mr. Leimel, Mr. Sechrist or A&B Corporate Counsel informed Mr. Goad of the change in the investment committee. Mr. Goad learned of it from documentation provided to him from an external third party in nearly a month later.

In sum, Mr. Goad cannot exercise his duties and obligations as an officer of PCG under these circumstances. Mr. Goad has advised Mr. Leimel and Mr. Sechrist directly and through A&B Corporate Counsel since the fall of 2023 of his concerns and those of the RPC to no avail. Notwithstanding his resignation, Mr. Goad will remain available to provide the requisite transparency to PCG regulators, auditors and investors to ensure fulfilment of PCG's obligations.

Mr. Goad reserves all of his rights and remedies, both on behalf of PCG and personally, with regard to these matters.

Please do not hesitate to contact us with any questions that you may have.

Sincerely,

Samidh Guha

Samidh Guha

cc: Dan Leimel, Jr. (via electronic mail)
Robert Sechrist (via electronic mail)
Donald Hammett (via electronic mail)
Lane Folsom (via electronic mail)
Roger Cowie (personal counsel to Mr. Leimel and Mr. Sechrist) (via electronic mail)