

ORIGINAL



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Arizona Corporation Commission  
**DOCKETED**

OCT 7 2010

DOCKETED BY	
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*Attorneys for Respondents Tom Hirsch, Diane Rose Hirsch, Berta Walder, Howard Walder, Harish P. Shah, Madhavi H. Shah and Horizon Partners, LLC*

**BEFORE THE ARIZONA CORPORATION COMMISSION**

In the matter of:

**DOCKET NO. S-20660A-09-0107**

RADICAL BUNNY, L.L.C., an Arizona limited liability company,

HORIZON PARTNERS, L.L.C., an Arizona limited liability company,

**NOTICE OF FILING  
COMPLETE EXHIBITS**

TOM HIRSCH (aka TOMAS N. HIRSCH) and DIANE ROSE HIRSCH, husband and wife;

BERTA FRIEDMAN. WALDER (aka BUNNY WALDER, a married person,

HOWARD EVAN WALDER, a married person,

HARISH PANNALAL SHAH and MADHAVI H. SHAH, husband and wife,

Respondents.

DOCKET CONTACT

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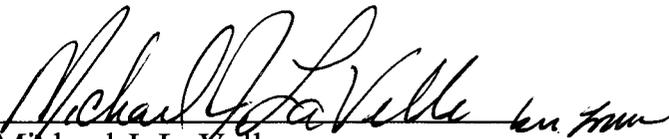
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Respondents hereby give their Notice of Complete Exhibits. During the copying process, exhibits bates stamped RAD00061 through RAD00074 were not

1 copied double sided making them incomplete. Attached hereto are the complete,  
2 double sided copies bates stamped RAD00061 through RAD00074.

3  
4 RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of October, 2010.

5 **LAVELLE & LAVELLE, PLC**

6  
7 By:   
8 Michael J. LaVelle

9 2525 East Camelback Road, Suite 888  
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11 *Attorneys for Respondents Tom Hirsch, Diane Rose Hirsch, Berta Walder,  
Howard Walder, Harish P. Shah, Madhavi H. Shah and Horizon Partners,  
LLC*

12 ORIGINAL and 13 COPIES filed this  
13 7<sup>th</sup> day of October, 2010 with:

14 **ARIZONA CORPORATION COMMISSION**  
15 Securities Division  
16 1300 West Washington, Third Floor  
17 Phoenix, Arizona 85007

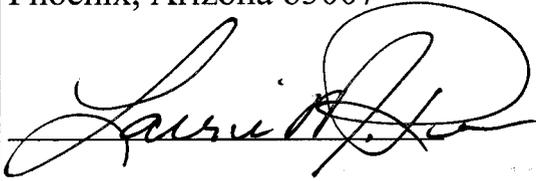
18 COPY of the foregoing HAND DELIVERED this  
19 7<sup>th</sup> day of October, 2010 to:

20 Lyn Farmer  
21 Chief Administrative Law Judge  
22 **ARIZONA CORPORATION COMMISSION**  
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## PRIVATE OFFERING MEMORANDUM

\_\_\_\_\_, 2007

### **BABY BUNNY L.L.C.,** an Arizona Limited Liability Company

#### **\$500,000,000 of Membership Interests**

Baby Bunny L.L.C. (the "Company") was formed by Radical Bunny L.L.C., an Arizona limited liability company (the "Manager"), to acquire all or portions of loans ("Loans") to various persons, corporations, limited liability companies, partnerships, and other entities ("Borrowers") secured by deeds of trust or mortgages on residential, commercial, and industrial real estate. Substantially all the Loans will be secured by real estate located in Arizona. The Manager has the exclusive right to manage the business and affairs of the Company. All of the Loans will be acquired from Mortgages Ltd. (the "Originator"), an unaffiliated mortgage banker, pursuant to a loan origination and servicing agreement.

#### **Minimum Initial Investment - \$50,000**

The Company is offering, to "accredited investors" as defined in Regulation D under the Securities Act of 1933, as amended (the "Securities Act") up to \$500,000,000 in Membership Interests ("Interests") in the Company (the "Offering"). The Offering will continue until terminated by the Company.

The currently anticipated range of yields on the Interests is from 9% to 11% per annum. There is no assurance that this or any other return will be achieved.

**AN INVESTMENT IN THESE SECURITIES IS HIGHLY SPECULATIVE AND INVOLVES SUBSTANTIAL RISKS. SEE "RISK FACTORS," BEGINNING ON PAGE \_\_\_\_.**

**THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED OR RECOMMENDED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY OTHER REGULATORY AUTHORITY NOR HAS THE SECURITIES AND EXCHANGE COMMISSION NOR ANY OTHER REGULATORY AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ADEQUACY OR ACCURACY OF THIS PRIVATE OFFERING MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

**THESE SECURITIES ARE BEING OFFERED WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER, OR THE SECURITIES LAWS OF ANY STATE AND ARE BEING OFFERED AND SOLD IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4(2) AND RULE 506 OF REGULATION D PROMULGATED THEREUNDER BY THE SECURITIES AND EXCHANGE COMMISSION, AND STATE SECURITIES LAWS. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION, OR EXEMPTION THEREFROM.**

	Offering Price	Selling Commissions (1)	Net Proceeds to Company (2)
Minimum per Person (3)	\$ 50,000	\$ -0-	\$ 50,000
Total Offering	\$500,000,000	\$ -0-	\$500,000,000

- (1) The Interests will be offered through Mortgages Ltd. Securities, L.L.C. ("MLS"), an affiliate of the Originator, on a best efforts basis. Neither the Members nor the Company will be required to pay MLS a securities commission.
- (2) The Manager will pay all offering expenses, including legal fees, printing costs, and filing fees, currently estimated at \$50,000.
- (3) The Company and MLS, in their sole discretion, may change or adjust the minimum investment per person, at any time.

THE INTERESTS ARE BEING OFFERED AND SOLD IN RELIANCE ON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933 AND STATE SECURITIES LAWS. THE COMPANY RESERVES THE RIGHT, IN ITS SOLE AND ABSOLUTE DISCRETION, TO REJECT ANY SUBSCRIPTION.

PROSPECTIVE INVESTORS SHOULD NOT CONSTRUE THE CONTENTS OF THIS MEMORANDUM OR ANY PRIOR OR SUBSEQUENT COMMUNICATIONS FROM THE COMPANY OR THE MANAGER, OR ANY OF THEIR OFFICERS, EMPLOYEES, OR REPRESENTATIVES AS LEGAL OR TAX ADVICE OR AS INFORMATION NECESSARILY APPLICABLE TO A PROSPECTIVE INVESTOR'S INDIVIDUAL FINANCIAL SITUATION. EACH INVESTOR SHOULD CONSULT THE INVESTOR'S OWN FINANCIAL ADVISOR, COUNSEL, AND ACCOUNTANT AS TO TAX AND RELATED MATTERS CONCERNING THE INVESTOR'S INVESTMENT.

NO DEALER, SALESMAN, OR OTHER PERSON IS AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATION IN CONNECTION WITH THE OFFERING OTHER THAN AS SET FORTH IN THIS MEMORANDUM, AND IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MUST NOT BE RELIED UPON AS BEING AUTHORIZED. THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER OR SOLICITATION IN ANY JURISDICTION IN WHICH SUCH OFFER OR SOLICITATION IS NOT AUTHORIZED, OR IN WHICH THE PERSON MAKING SUCH AN OFFER IS NOT QUALIFIED TO DO SO, OR TO ANY PERSON TO WHOM SUCH OFFER WOULD BE UNLAWFUL.

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- EXHIBIT A: Operating Agreement of Company
- EXHIBIT B: Subscription Agreement
- EXHIBIT C: Purchaser Representative Questionnaire
- EXHIBIT D: Subscription for Additional Interests for Existing Members Only

## WHO MAY INVEST

### Investor Suitability Requirements

An investment in Interests involves a high degree of risk and is suitable only for persons of substantial financial means that have no need for liquidity in their investments. Interests will be sold only to investors that (1) buy at least \$50,000 of Interests, subject to certain exceptions, in the discretion of the Company and MLS, and (2) represent in writing that they meet the investor suitability requirements established by the Company and required under federal or state law.

The written representations you make will be reviewed to determine your suitability. The Company and MLS may, in their sole and absolute discretion, refuse an offer to purchase Interests in whole or in part if either believes that an investor does not meet the applicable investor suitability requirements, or Interests are otherwise an unsuitable investment for the investor, or for any other reason.

You must represent in writing that you meet, among others, all of the following requirements:

- you have read and fully understand this Memorandum and are basing your decision to invest on the information contained in this Memorandum;
- you have relied only on the information contained in this Memorandum and have not relied on any representations made by any other person;
- except as not required by the Company or MLS, you are an “accredited investor” as defined in Rule 501(a) of Regulation D under the Securities Act. An accredited investor is an investor that meets any of the following tests:
  - any natural person who has (i) an individual net worth, or joint net worth with his or her spouse, of more than \$1,000,000; or (ii) individual income in excess of \$200,000, or joint income with his or her spouse in excess of \$300,000, in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year;
  - any corporation, Massachusetts or similar business trust, partnership, or organization described in Section 501(c)(3) of the Internal Revenue Code, not formed for the specific purpose of acquiring Interests, with total assets over \$5,000,000;
  - any trust, with total assets over \$5,000,000, not formed for the specific purpose of acquiring Interests and whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of an investment in Interests as described in Rule 506(b)(2)(ii) under the Securities Act;
  - any broker-dealer registered under Section 15 of the Securities Exchange Act of 1934, as amended;
  - any investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940;
  - any small business investment company licensed by the Small Business Administration under Section 301(c) or (d) or the Small Business Investment Act of 1958;

- any employee benefit plan within the meaning of ERISA, if the investment decision is made by a plan fiduciary (as defined in Section 3(21) of ERISA), which is either a bank, savings and loan association, insurance company, or registered investment advisor, or if such employee benefit plan has total assets over \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons who are accredited investors;
- any private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;
- any bank as defined in Section 3(a)(2) of the Securities Act, 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, or any insurance company as defined in Section 2(13) of the Securities 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 of more than \$5,000,000;
- any executive officer of the Company; or
- any entity in which all of the equity owners are accredited investors.

For purposes of calculating your net worth, "net worth" is defined as the difference between total assets and total liabilities, including home, home furnishings, and personal automobiles. In the case of fiduciary accounts, the net worth and income suitability requirements must be satisfied by the beneficiary of the account, or by the fiduciary, if the fiduciary directly or indirectly provides funds for the purchase of Interests.

- you are acquiring Interests for your own account and for investment purposes only and have no present intention, agreement, or arrangement for the distribution, transfer, assignment, resale, or subdivision of Interests;
- you have such knowledge and experience in financial and business matters that you are capable of evaluating the merits and risks of investing in Interests and have the ability to protect your own interests in connection with such investment or are utilizing the services of a "purchaser representative" that has such knowledge and experience;
- you understand that an investment in Interests is highly speculative and involves substantial risks, and you are fully cognizant of and understand all of the risks relating to an investment in Interests, including those risks discussed under "Risk Factors";
- your overall commitment to investments that are not readily marketable is not disproportionate to your individual net worth, and your investment in Interests will not cause such overall commitment to become excessive;
- you have adequate means of providing for your financial requirements, both current and anticipated, and have no need for liquidity in this investment; and
- you can bear and are willing to accept the economic risk of losing your investment in the Interests you are purchasing.

## SUMMARY

The following summary is qualified in its entirety by the more detailed information appearing elsewhere in this Memorandum. Prospective purchasers and their attorneys, accountants, or business advisors should thoroughly review this entire Memorandum prior to the purchase of Interests.

### **The Company and the Manager.**

The Company is an Arizona limited liability company formed in November 2007.

The manager of the Company (the "Manager") is Radical Bunny LLC, an Arizona limited liability company. The Manager has the exclusive right to manage the business and affairs of the Company in accordance with the operating agreement of the Company (the "Operating Agreement"), a copy of which is attached hereto as Exhibit A.

The principal offices of the Company and the Manager are located at 2222 East Camelback Road, Phoenix, Arizona 85016; telephone (602) 682-5150, and facsimile (602) 682-5156.

### **The Originator**

Mortgages Ltd. (the "Originator"), an Arizona licensed mortgage banker, will originate, select, and service all Loans in which the Company acquires an interest pursuant to an Origination and Servicing Agreement. Scott M. Coles is the Chairman and Chief Executive Officer of Originator.

### **Objectives of the Company.**

The Company's primary objectives are (1) to preserve the Company's capital; (2) to provide its Members with monthly cash distributions from interest payments on the loans in which the Company owns an interest; and (3) to return the Members' investments upon the winding up of the Company. The Company cannot assure that these objectives will be met.

### **Investments of the Company.**

The Company will acquire all or a portion of loans ("Loans") to various persons, corporations, limited liability companies, partnerships, and other entities ("Borrowers") secured by deeds of trust or mortgages on residential, commercial, and industrial real estate. It is anticipated that all of the Loans will be secured by real estate located in Arizona.

### **Securities Offered.**

The Company is offering up to \$500,000,000 in Interests (the "Offering"). The Offering will continue until terminated by the Company.

The currently anticipated range of yields on the Interests is from 9% to 11% per annum. There is no assurance that this or any other return will be achieved.

The Interests will be offered through Mortgages Ltd. Securities, L.L.C. ("MLS"), which is an affiliate of the Originator, on a best efforts basis. MLS is a member of the National Association of Securities Dealers ("NASD"). Neither the Members nor the Company will be required to pay MLS a securities commission. *Once an investment has been accepted, it may not be revoked.* Upon the acceptance of a subscription, the investor will be admitted as a Member. The Company and MLS, in their discretion,

may accept subscriptions for less than \$50,000 and may accept subscriptions for fractional Interests above \$50,000.

#### **Method of Subscription.**

Each person or entity desiring to purchase Interests must execute and deliver the following to MLS:

- a Subscription Agreement substantially in the form of Exhibit B;
- a Purchaser Representative Questionnaire, if applicable, substantially in the form of Exhibit C; and
- a check or wire transfer payable to "Baby Bunny L.L.C." in an amount equal to the purchase price of the Interests to be purchased in the initial minimum amount of \$50,000. After making an initial investment of at least \$50,000, an investor may thereafter invest additional funds with the Company, with each such additional investment to be for a minimum of at least \$5,000.

A purchase is subject to timely receipt of the required documents, the full payment of the subscription price, and the Company's review and acceptance of the documents. The Company and MLS, in their absolute discretion, may reject any subscription for Interests in whole or in part.

#### **Suitability of Interests.**

The purchase of Interests is suitable only for investors of substantial means that have no need for liquidity in their investments. Interests will be sold only to "accredited investors" as defined in Regulation D under the Securities Act, except in the sole discretion of the Company and MLS in very limited circumstances.

#### **Cash Distributions.**

The Company will distribute 100% of its Cash Available for Distribution to the Members on a monthly basis in proportion to their respective ownership interests ("Participation Percentages") at the time of the distribution. Cash Available for Distribution generally means the interest payments received by the Company on Loans less the sum of (1) amounts used to pay the Company's operating expenses, including fees and compensation to the Manager, and (2) amounts used to pay debts and liabilities of the Company. The Company generally intends to reinvest the proceeds from principal payments on Loans in new Loans.

The Company may also allow Members the option to elect to reinvest the monthly distributions that the Member would otherwise receive from the Company as additional Capital Contributions (the "Reinvestment Option"). Any reinvested distributions will be credited to a Member's Account with the Company on the first day of the following month. Therefore, a Member's Participation Percentage in the Company will be recalculated each month based upon the proportion that that Member's Account balance bears to the aggregate balances of all Members' Capital Accounts that month. Once the Reinvestment Option is elected, it can be revoked with 30 days advance written notice. Subject to the availability of funds and the sole discretion of the Company, a Member can elect annually to receive a return of all or a portion of the funds of the Member that were reinvested over the preceding year, provided written notice is received by the Company by February 15. Distributions will occur by April 15.

#### **Allocation of Profits and Losses.**

The Company's Profits and Losses will be allocated 100% to the Members in proportion to their respective Participation Percentages at the time of the allocation. A Member's Participation Percentage may fluctuate each month due to the Reinvestment Option, the admission of new Members, and permitted redemptions.

**Interest Rates on the Loans.**

The interest rate payable to the Company on each Loan in which the Company acquires an interest will be at a rate determined at the time of the Company's acquisition. Interest payments generally will be due monthly. The Loans will bear fixed interest rates throughout their term.

**Principal Payments on the Loans.**

Some of the Loans will be "interest only" loans while other Loans will be "amortizing" Loans. An interest only Loan has no principal repayment requirements during its term with a balloon of the full principal obligation due upon the Loan's maturity. An amortizing Loan may either have periodic principal payments, such that the principal is repaid in full by such periodic reductions by the Loan's maturity date, or periodic principal reductions that result in a partially reduced principal amount by maturity, requiring a "balloon" payment of less than the original principal amount, such as in the case of a loan with principal payments based on a 20-year amortization but only a three-year term.

**Security for the Loans.**

Each Loan will be secured by a deed of trust or mortgage on residential, commercial, or industrial real estate. The deed of trust or mortgage may be subordinate or subject to one or more existing liens or encumbrances on the real estate. The Company generally will not receive an appraisal of the real estate certified by an independent appraiser.

In certain cases, the only collateral securing the Loan will be the real estate or other property underlying the Loan. In other cases, the Loan will be secured by personal or corporate guarantees or may be secured by one or more items of real or personal property in addition to the property constituting the primary security for the Loan. Nevertheless, the primary security for a Loan in most cases will be the property underlying the Loan. The ability of the Borrower to pay the outstanding balance of a Loan (particularly a non-amortizing Loan) upon maturity will depend primarily upon the Borrower's ability to obtain sufficient funds by the refinancing, sale, or other disposition of the underlying property.

**Terms of the Loans.**

The length of maturity of the Loans generally will range between one and three years although certain Loans may have shorter or longer maturities.

**Principal Amount of Loans; Loan Advances.**

Other than the funding in connection with certain specialized loan programs, each Loan will be in a principal amount equal to the funds advanced at the time the Loan is originated, including any interest reserve; any amounts advanced for costs incurred in connection with the acquisition, financing, or refinancing of the underlying property; and title insurance fees, escrow fees, casualty insurance premiums, and other such items. Except for specialized loan programs, such as delayed funding construction loans and certain revolving loan plans, in which funds may be drawn upon in periodic amounts, the entire principal amount will be funded at the closing of the Loan and will earn interest at the agreed upon rate from such date. Although construction loans may be acquired, the Company will fund a draw to a Borrower under such a Loan for payment to a contractor or subcontractor only after the Originator, on behalf of the Company, has a lien waiver executed by the Borrower, general contractor, or subcontractor, as appropriate, and the Originator, on behalf of the Company, has authorized the release of the funds.

In addition, the Borrower may prepay a Loan in whole or in part, at any time, without any prepayment penalties to the Company.

In connection with the sale of the property that secures a Loan, the Originator, on behalf of the Company, may consent to the sale subject to the Loan or may make a new Loan to the purchaser of the property. In other cases, a Loan may require payment upon sale of all or a portion of the property. The Originator, on behalf of the Company, may qualify its "due on sale" clause by providing release provisions, so that a portion of the collateral may be released from the related deed of trust or mortgage by payment of an agreed upon principal portion of a Loan. In determining whether to allow partial releases to a Borrower on a particular Loan, the Originator, on behalf of the Company, generally will allow such releases upon payment of a sum equal to 130% or more of the pro-rata portion of the principal amount of the Loan secured by the released property although the release price may be a lesser pro-rata portion in certain instances.

#### **Title Insurance on the Loans.**

The Originator requires title insurance for all newly originated Loans in accordance with industry standards. Title insurance endorsements are obtained to insure against title risks when appropriate. In most cases, the Originator requires an insured first lien position for the subject property. A second lien position is permitted in certain circumstances.

#### **Hazard Insurance on the Loans.**

Each Borrower will be obligated to maintain hazard insurance for a Loan secured by improved property, insuring the underlying property against risk of loss or damage by fire or other hazards in an amount not less than the full insurable replacement value of the property, exclusive of land and other items normally excluded under a standard hazard insurance policy. No earthquake, flood, or other insurance will be maintained on the property unless such insurance is available and is required by applicable laws and regulations. Any hazard losses not covered by standard hazard insurance will not be insured and, therefore, will be borne directly by the Borrower and may result in default or delinquency under the Loan.

#### **Compensation of the Manager.**

The Manager will receive certain compensation for services rendered regardless of the amount of sums distributed to the Members. See "Compensation to the Manager and its Affiliates" and "Conflicts of Interest." The compensation to be received by the Manager has been determined by the Manager without arms'-length negotiations with the Company. The Manager will receive an Administration Fee payable by the Company at an annual rate (payable in equal monthly installments) equal to 2% of each Loan in which the Company acquires an interest for providing management, accounting, and other services to the Company.

#### **Conflicts of Interest.**

There will be various conflicts of interest in connection with the Manager's management and operation of the Company. See "Conflicts of Interest."

#### **Liquidity.**

A Member may request that the Member's Interests be redeemed in whole or in part without penalty upon 60 days prior notice given at any time after the first anniversary of the purchase of such Interests (the "Minimum Investment Period"), subject to a minimum redemption request of \$50,000, thereby requiring a one-year holding period for any Interests before they can be redeemed without penalty. The Company will use its best efforts to satisfy redemption requests promptly. The period to

fulfill redemption requests at any time, however, may be affected by the levels of redemption requests received at that time, the amount of cash then held by the Company, the then principal payments on Loans as a result of Loan maturities and prepayments, and the ability of the Manager at that time to sell Loans without a loss to provide funds for redemptions. In fulfilling redemption requests, the Manager, in its sole discretion, may effect such redemption requests with a combination of cash and fractional undivided interests in Loans valued at their unpaid principal balances. The fractional undivided interests may include non-performing Loans held by the Company. Any distribution of non-performing Loans to a redeeming Member must be in the same percentage of the total non-performing Loans that the redeeming Member's interest in the Company bears to the total of all Members' interests in the Company. The Company will have the right, in its sole discretion, to redeem all Interests held by a member to the extent a redemption request would leave the Member with a total balance in the Member's Account of less than \$50,000.

Any requests for redemption prior to the end of the Minimum Investment Period will be satisfied only in the sole discretion of the Company and the payment by the Member of an early withdrawal fee in an amount equal to the greater of 2% of the redemption proceeds or \$5,000 (the "Early Withdrawal Fee"). The Company will subtract the Early Withdrawal Fee from the redeemed proceeds prior to distributing the redeemed proceeds to the electing Member. In exercising its discretion whether or not to honor a redemption request prior to the end of the Minimum Investment Period, the Company may consider, among other factors, the amount of cash held by the Company, the Company's Loan portfolio, and other redemption requests by Members.

A return of a portion of a Member's balance in the Member Account will result in a recalculation of such Member's Participation Percentage in the Company. The Member would then receive distributions attributable to such recalculated Participation Percentage.

#### **Voting Rights of the Members.**

The Manager will control the operations of the Company. The Members will have the right to vote only on certain matters affecting the Company, including (with the approval of the Manager) the amendment of the Operating Agreement, the removal of the Manager for cause, and the election of a successor Manager. Voting rights are based upon the Participation Percentage held by each Member at the time of the vote. See "Summary of the Operating Agreement."

#### **Limited Liability of Members.**

Members will not be liable for any debts of the Company beyond the amount of their investment and, in certain circumstances, distributions. See "Summary of Operating Agreement."

#### **Term of the Company.**

The Company will commence dissolution, winding up, and termination on the earliest of December 31, 2032, the determination of the Manager, or the sale of substantially all its assets. The Company currently anticipates that it will terminate no later than December 31, 2032. See "Summary of the Operating Agreement."

#### **Risk Factors.**

An investment in Interests is speculative and involves a high degree of risk. See "Risk Factors."

#### **Fiscal Year of the Company.**

The fiscal year of the Company will be January 1 to December 31.

## **RISK FACTORS**

The purchase of Interests is speculative and involves a high degree of risk. In addition to the general investment risks described throughout this Memorandum, a prospective investor should carefully consider the risk factors set forth below. Prospective investors should realize, however, that factors other than those set forth below may ultimately affect their investment in Interests.

### **Income Tax Risks**

#### **Circular 230 Notice.**

The following was not intended or written to be used, and it cannot be used, for the purpose of avoiding U.S. federal, state, or local tax penalties that may be imposed on a Member. This Memorandum was written to support the promotion or marketing of the transaction or matter addressed in this Memorandum. A prospective Member should seek advice based on the Member's particular circumstances from an independent tax advisor.

#### **General.**

The following is a brief summary of what the Company believes are the most significant federal income tax risks involved in an investment in Interests. An unfavorable outcome with respect to any tax risk factor may have an adverse effect on an investment in Interests.

The tax considerations involved in an investment in the Company that should be significant to Members are discussed under "Federal Income Tax Consequences." Those considerations involve additional tax risks not discussed below. Each prospective investor is urged to review that material and to discuss with the investor's own tax advisor the tax consequences to the investor of an investment in Interests.

#### **Tax Liabilities in Excess of Cash Distributions.**

Generally, each Member will be required to pay federal and state income taxes at the Member's individual rate on the Member's allocable share of the Company's taxable income. In some situations, the cash distributions received by a Member may be less than the tax attributable to the Member's Interests. Such a situation can occur for three reasons. First, it can occur because the amount of Profits allocated to a Member in a Fiscal Year may exceed the amount of cash distributed to that Member in that same Fiscal Year. Second, it can occur if the Company has phantom income with respect to any Fiscal Year. For example, the original issue or market discount rules may require the Company to report interest income with respect to a Loan in a Fiscal Year when such interest is not received by the Company in that Fiscal Year.

Finally, a situation in which a Member's share of taxable income exceeds the Member's share of cash distributions can occur if a deduction of the Company is disallowed for use by a Member. For example, the Internal Revenue Code of 1986, as amended (the "Code") limits the deductibility by an individual of miscellaneous itemized deductions, including expenses incurred indirectly through a pass-through entity, such as the Company. Such deductions, which include expenses incurred for the production of income, are deductible only to the extent that they exceed 2% of the individual's adjusted gross income. Because the Company believes it will not be regarded as being engaged in a trade or business, substantially all or all of its operating expenses are likely to be classified as expenses incurred for the production of income. A pro rata portion of such expenses will be allocated to the Members to be deducted to the extent permissible. Although it is possible that a Member's tax liability with respect to the Company may exceed cash distributions, the Company does not anticipate that this will occur.

### **Investment by Tax-Exempt Entities.**

A tax-exempt holder of Interests, including IRAs, Keogh Plans, and other qualified retirement plans ("Tax-Exempt Entities"), should understand that its allocable share of the Company's taxable income may result in such Tax-Exempt Entity having unrelated business taxable income ("UBTI") if such income and any other unrelated business income or debt-financed income of the exempt entity exceeds \$1,000 in any year.

### **Characterization of Certain Fees and Expenses.**

No opinion has been or will be received with respect to the deductibility of fees paid by the Company. Although the Company believes the amount of fees that will be charged will be reasonable based on the services to be provided, no assurance can be given that the IRS will not seek to treat the fees as constituting an allocation of income or a distribution of capital of the Company, rather than as a capitalizable or deductible expense of the Company. Expenses of organizing the Company and of promoting the sale of Interests must be capitalized by the Company. Although the Company may elect to treat certain organizational expenses (but not offering expenses) as deferred expenses and amortize them over a period of 180 or more months, some of the expenses that will be incurred by the Company will be difficult to classify under the treasury regulations. Accordingly, no opinion has been or will be received regarding the capitalization, deduction, or amortization of the various organizational and offering fees.

### **Potential Dealer Status.**

If the Company sells Loans, it could be characterized as a "dealer" with respect to such Loans. In that event, income from the sale of the Loan would be ordinary income. The characterization of the Company as a dealer for federal income tax purposes would have an adverse effect on Tax-Exempt Entities that are Members because any gain resulting from the disposition of Loans would constitute unrelated business income to such Tax-Exempt Entities. Such a characterization also could affect the application of the passive activity rules to taxable investors. Although the Manager does not intend to sell Loans to the extent that such sales could cause the Company to be characterized as a dealer, no opinion will be received regarding the status of the Company as a dealer and no assurance can be given that the Company will not be deemed to be a dealer in Loans.

### **Investment in the Company by qualified plans may result in the Company's assets being treated as plan assets under ERISA.**

The Company's assets may be "plan assets" as such term is used in the U.S. Department of Labor regulations under the Employee Retirement Income Security Act of 1974 ("ERISA") for purposes of the prohibited transaction rules set forth in Section 406 of ERISA and Internal Revenue Code Section 4975.

### **If an investor is investing through a pension or profit-sharing trust, the investor needs to consider the ERISA Regulations.**

In considering an investment in Interests with a portion of the assets of a qualified pension, profit-sharing, or other retirement trust, a fiduciary, taking into account the facts and circumstances of such trust, should consider, among other things, (1) the definition of "plan assets" under ERISA and the labor regulations regarding the definition of "plan assets"; (2) whether the investment satisfies the diversification requirements of Section 404(a) of ERISA; and (3) whether the investment is prudent, considering the nature of an investment in Interests. The fiduciary should also consider the fact that there is not expected to be a market created in which to sell or otherwise dispose of Interests. See "ERISA Aspects of the Offering."

### **Investments in the Company by qualified plans are subject to Department of Labor Regulations.**

If investing through a Qualified Plan, the investor should be aware that, under certain circumstances, the U.S. Department of Labor or others could contend that the assets of the Company will be treated as assets of the Qualified Plan for purposes of testing compliance with the fiduciary responsibility provisions of ERISA. The Department of Labor has adopted regulations pursuant to ERISA concerning the definitions of plan assets and concerning the fiduciary obligations of Qualified Plan trustees. Although there are exemptions from the application of such regulations, in the event the exemptions do not apply to an investor, the investor's investment in the Interests could result in various ERISA violations and in penalties being levied against the Qualified Plan fiduciaries, and/or suits being brought by Qualified Plan participants or by the Department of Labor against the Qualified Plan or its fiduciaries. See "ERISA Aspects of the Offering."

### **Investment Risks**

#### **Investors must be willing to rely on the Manager and the Originator.**

The Manager will have the right to make all decisions with respect to the management and operation of the business and affairs of the Company. The Originator will have the right to make all decisions about the Loans, including selecting, evaluating, negotiating, acquiring, making, servicing, and disposing of Loans and operating, holding, and disposing of any properties acquired upon default and foreclosure of any Loans. Among other things, the Originator will have the right to revise the terms of outstanding Loans regardless of their performance, which may include increasing the principal amount, modifying the interest rate and payment terms, changing the collateral, adding fees and costs to the principal balance, or substituting borrowers. Under the Operating Agreement, the Members will have no right or power to take part in the management of the Company, except for certain voting rights that may arise under extraordinary circumstances. See "Summary of the Operating Agreement." Accordingly, no investor should purchase Interests unless such investor is willing to entrust all aspects of the management of the Company to the Manager and all determinations with respect to the Loans to the Originator. See "Manager."

#### **Investors will not be able to evaluate the merit of the Loans in which the Company subsequently acquires an interest.**

Investors should not purchase Interests unless willing to entrust the management and operation of the Company to the Manager and the selection, negotiation, and consummation of investments in Loans to the Originator. Investors must be willing to bear the risk that the terms of the Loans in which the Company may acquire an interest cannot be identified at this time. Therefore, investors will not be able to evaluate the merits of the individual Loans in which the Company may acquire an interest in the future. In particular, the rate of return on such Loans is not known. There can be no assurance that the Company will be able to acquire interests in Loans on terms that are advantageous to the Company. The Company's inability to acquire interests in suitable Loans may result in delays in investment of the Company's assets and a reduction in the rate of return to the Members.

#### **The profitability of the Company depends on its acquiring interests in favorable Loans.**

The success of the Company in large part will depend upon its ability to keep its assets continuously invested in Loans with favorable terms. The failure of the Company to keep its assets so invested may result in lower rates of return to the Members.

#### **The Company and the Originator will compete with other entities for Loans.**

The Company and the Originator will compete for lending opportunities with many others engaged in real estate financing that have similar objectives, including banks, insurance companies, savings and loan associations, mortgage bankers, pension funds, real estate investment trusts, investment

bankers, and other lenders. The Company's competitors may also include Affiliates of the Manager and the Originator. Some of those competitors have greater marketing, financial, and other resources than the Company and the Originator and may have longer and stronger relationships than the Company and the Originator with potential borrowers. Such competition may impede the Company's ability to acquire interests in favorable Loans. Moreover, an increase in the availability of funds for lending may increase competition for Loans and reduce the yields available therefrom.

**The risk of the Company's Loans will increase with any increases in their loan-to-value ratios.**

The risk of a Loan will increase with any increase in the ratio of the amount of the Loan to the value of the property securing such Loan because the property will possess less protective equity in the event of a default by the Borrower. The Originator will make an assessment of the loan-to-value ratio prior to making or acquiring a Loan. In making its assessment of the value of the property to secure a Loan, the Originator may review any available appraisals of the property by qualified appraisers, the purchase price of the property, recent sales of comparable properties, and a wide variety of other factors. The Originator generally will not retain an independent third party to conduct a formal appraisal, but will rely on its own assessment of the value of a property. It should be noted that appraisals are estimates of value and not a measure of true worth or realizable value. The Originator is not a real estate appraiser, however, and the absence of an independent appraisal removes an independent estimate of value. There can be no assurance that the Originator's estimated values will be comparable or bear any relation to the actual market value of a property or the amount that could be realized upon the refinancing, sale, or other disposition of a property. As a result, the amount realized in connection with the refinancing, sale, or other disposition of the property in the ordinary course of business or at or following a foreclosure sale may not equal the then outstanding balance of the related Loan.

**The Company may not have adequate security for certain Loans.**

Certain Loans may be made on a nonrecourse basis. In such a case, the Company will be required to rely for its security solely on the value of the underlying property and will not have any right to make any claims for repayment personally against the Borrower. Other Loans may be full recourse loans, may be secured by personal or corporate guarantees, or may be secured by one or more items of real or personal property in addition to the property constituting the primary security for the Loan. Nevertheless, the property underlying the Loan in most cases will be the primary source for repayment of the Loan upon maturity or in the event of a default. The ability of the Borrower to pay the outstanding balance of a Loan (particularly a non-amortizing Loan) at maturity will depend primarily upon the Borrower's ability to obtain sufficient funds by refinancing, sale, or other disposition of the underlying property.

If the Company acquires the property underlying a Loan, there can be no assurance that the amount realized in connection with the sale of the property in the ordinary course of business or at a foreclosure sale will equal the Company's assessment of the value of the property or the then outstanding principal amount of the related Loan.

**Balloon payment Loans entail greater risks than amortizing Loans.**

The ability of a Borrower to repay the outstanding principal amount of a Loan that does not provide for the payment of all or any part of its principal prior to maturity will depend primarily upon the Borrower's ability to obtain, by refinancing, sale, or other disposition of the underlying property or otherwise, sufficient funds to pay the outstanding principal balance of the Loan at a time when such funds may be difficult to obtain, with the result that the Borrower may default on its obligation to repay the amount of the Loan in accordance with its terms. In addition, a substantial reduction in the value of the property securing a Loan could precipitate or otherwise result in the Borrower's default. Any such default could result in a loss to the Company of all or part of the principal or interest on such Loan.

**Development and construction Loans involve greater risk than conventional Loans.**

Any development and interim construction Loans in which the Company acquires an interest will be subject to substantial risk because the ability of the Borrower to complete or dispose of the project being developed or constructed on the underlying property, and the repayment of the Loan may be affected by various factors described below relating to the risks of real estate, including adverse changes in general economic conditions, changes in interest rates, the availability of permanent mortgage funds, and local conditions, such as excessive building resulting in an excess supply of real estate, a decrease in employment reducing the demand for real estate in the area, and the Borrower's ability to control costs and to conform to plans, specifications, and time schedules, which will depend upon the Borrower's management and financial capabilities and which may also be affected by strikes, adverse weather, and other conditions beyond the Borrower's control. Such contingencies and adverse factors could deplete the Borrower's funds and working capital and could result in substantial deficiencies precluding compliance with specified conditions of commitments for permanent mortgage funds relied on as a primary source of repayment of the Loan.

**Loans on leasehold interests are subject to the termination of the ground leases.**

A default under a Loan secured by a lien on a leasehold interest in a property that gives the Borrower the right to develop or use the underlying property under a ground lease gives the owner of the property the right to terminate the ground lease. Any termination of a ground lease on the property underlying a Loan generally would leave the Company as an unsecured creditor of the Borrower. The risk is increased if the landlord under the leasehold Loan does not agree to give the Originator, on behalf of the Company, notice of any default in the ground lease and afford the Originator, on behalf of the Company, the right to cure, on behalf of the Borrower, any default under the ground lease.

**Uninsured losses may adversely affect the properties underlying the Loans.**

Although the Originator will require Borrowers to carry comprehensive insurance, including liability, fire, and extended coverage for the properties underlying the Loans, there are certain types of losses, such as earthquakes, floods, wars, or terrorism, that are either uninsurable or not economically insurable. Inflation, changes in building codes and ordinances, environmental considerations, and other factors also may make it unfeasible to use insurance proceeds to replace a property if damaged or destroyed.

**Partial releases will reduce the security for Loans.**

The Originator generally allows partial releases of portions of a property underlying a Loan upon prepayment of a sum typically equal to at least 130% of the pro rata portion of the principal amount of the Loan. By allowing partial releases, there is a risk that over time the remaining collateral securing the Loan may not be as valuable as the remaining unpaid balance of the Loan.

**Junior Loans entail greater risks of default than senior Loans.**

The Company may hold a relatively small number of junior mortgage Loans, which generally entail greater risks than a senior mortgage Loan on the same property. In the event of default under a senior Loan, the holder of a junior Loan may be forced to cure the default on the senior Loan in order to prevent the sale of the underlying property or to discharge the senior Loan entirely by paying the entire amount of principal and interest then outstanding in the event of the acceleration of the senior Loan. There can be no assurance that the Company will have sufficient funds to pay amounts owing on the related senior Loan to prevent default, to discharge the senior Loan entirely, or to dispose of the Loan without incurring a significant loss. If the Company decides to cure a default under a senior mortgage Loan or purchases an underlying property at a foreclosure or trustee's sale, the Company will be subject to the risks of ownership of real property.

**Joint venture Loans entail special risks.**

Although not typical, the Company may enter into joint ventures, partnerships, and loan participations with third parties other than the Originator or its Affiliates for the purpose of acquiring interests in Loans, which entail special risks. Joint ventures, partnerships, and loan participations involve the potential risk of impasse on decision making in situations in which no single party fully controls the Loan with the result that neither the Company nor any other party will be able to exercise full authority with respect to the protection of the investment in the Loan. In addition, although the Company or another party to the transaction often will have the right to purchase the interest of any other party in the Loan, the party seeking to acquire the interest of another party may not have sufficient funds to do so. There also is a risk that the Company will become a tenant in common with its joint venture partners following a foreclosure and that disagreements may arise regarding the disposition of the property.

**There will be a lack of geographic diversity of the properties underlying the Loans.**

It is anticipated that all of the Loans will be secured by properties located in the state of Arizona, resulting in a geographically concentrated Loan portfolio. Any downturn in the economy or the real estate market in Arizona may reduce the value of the properties securing the Loans and increase the default rate of the Loans. Such circumstances would reduce the return on the Loans.

**There will be a concentration of Loans among Borrowers.**

The Company's portfolio of Loans can be expected to be to a relatively small number of Borrowers as a result of the amount of funds available to the Company. Therefore, the Company may be subject to an increased degree of risk to the extent that a single Borrower or a small number of Borrowers default with respect to Loans.

**Loans may permit prepayments, which could affect the Company's return.**

In the event that a Borrower prepays all or a portion of the principal amount of a Loan before its maturity, the amount of interest that the Company will receive in the future may decrease if an appropriate reinvestment is not made, thereby reducing the amount of the return to the Members.

**The absence of sinking funds may adversely affect Loans.**

No sinking fund generally will be provided by a Borrower for repayment of a Loan. Therefore, the sources for repayment of a specific Loan will depend primarily upon the economic viability of a Borrower or the successful refinancing, sale, or other disposition of the underlying property. No assurance can be given that a Borrower will remain economically viable or that a refinancing, sale, or other disposition can be accomplished at a time when the principal amount of a Loan is required to be paid on terms that will permit its repayment or that a Borrower will have sufficient funds to satisfy its obligation under a Loan from other sources.

**The presence or absence of a due on sale clause may affect the ability to sell a property underlying a Loan.**

A due on sale clause in a Loan may make the underlying property less marketable, thereby making it more difficult for a Borrower to repay the Loan. The absence of a due on sale provision will enable a Borrower to sell the underlying property subject to the lien of the Company's deed of trust or mortgage, which may subject the Company to the risk that the knowledge, experience, and financial resources of the new purchaser are not equal to that of the original Borrower, thereby affecting the potential successful refinancing, sale, or other disposition of the underlying property or otherwise impairing the chances of repayment of the Loan.

**The interest rates on the Loans will be subject to ceilings under usury statutes.**

State and federal usury laws govern the rate of interest and the amount and types of fees, including maximum interest charges, that lenders may charge borrowers. Certain ambiguities in the language and structure of the usury laws make it unclear whether certain charges and fees that may be imposed in connection with a Loan constitute violations of such laws. If a Loan were found to be usurious or in violation of usury laws, the Company might be subject to certain penalties and liabilities under such laws, including restitution of excess interest and unenforceability of the Loan. Such penalties would reduce the Company's return on the Loan and therefore the return on Interests. The Manager does not intend to acquire loans on behalf of the Company at usurious rates, but uncertainties in determining the legality of rates of interest and other borrowing charges may result in inadvertent violations.

**The policy of the Company of reselling defaulted Loans may adversely affect the Company's returns.**

The Originator, on behalf of the Company, typically sells for its unpaid principal amount any Loan in which the Company owns an interest that is in default in the payment of principal or interest. As a result, the Company will not have the opportunity to receive interest at a default interest rate or to make a profit as a result of a sale of the underlying property at a foreclosure sale. While such sales are intended to protect the Company's capital, there is no assurance that any sale of such Loan can be made at a price equal to the unpaid principal amount.

**Real estate market conditions will affect the Loans.**

The Loans will be secured by real estate. Real estate is speculative in nature. The Company will be subject to the high degree of risks generally incident to the ownership of and investment in real estate because of the impact of such risks on the ability of a Borrower to repay a Loan and the ability to refinance, resell, or dispose of the underlying property for an amount at least equal to the Loan. These risks include the following:

- the investment climate for real estate investments;
- the availability and cost of financing in connection with the purchase, sale, or refinancing of properties;
- the demand for and supply of competing properties;
- the illiquid nature of real estate and real estate investments;
- local market conditions;
- the availability and cost of necessary utilities and services;
- real estate tax rates and other operating expenses;
- costs to maintain, renovate, refurbish, and maintain properties;
- the level of interest rates, real estate taxes, and other operating expenses in relation to revenue;
- unanticipated holding costs;
- the ratio of fixed operating expenses to those that vary with revenues;
- an increase in vacancy rates, which may result from tenants deciding not to renew existing leases or discontinuing operations;
- an increase in tenant payment defaults;
- a decline in rental rates as leases are entered into, renewed, or extended;
- a decline in the financial condition of a major, anchor, or sole tenant;
- the age, design, and construction quality of any structures on the property;
- perceptions regarding the safety, convenience, and attractiveness of the property;
- the characteristics of the neighborhood where the property is located;
- the adequacy of the property's management and maintenance;

- national, regional, or local economic conditions, including plant closings, industry slowdowns, and unemployment rates;
- customer tastes and preferences;
- retroactive changes in building codes;
- fiscal policies and governmental rules and regulations, including rent, wage, and price controls, zoning and other land use regulations, and environmental controls;
- any costs necessary to bring a property in compliance with the Americans with Disabilities Act of 1990 and the possibility of fines by the federal government or an award of damages in private litigation resulting from noncompliance;
- the treatment for federal and state income tax purposes of income derived from real estate;
- natural disasters and civil disturbances, such as earthquakes, hurricanes, floods, eruptions, or riots, including those that may result in uninsured losses; and
- other factors beyond the control of the Company.

In recent years, the presence of hazardous substances or toxic waste has adversely affected real estate values in certain circumstances and resulted in the imposition of costs and damages to real estate owners and lenders. In addition, certain expenses related to properties, such as property taxes and insurance, tend to increase over time. These and other factors could increase the cost of holding properties or adversely affect the terms and conditions upon which properties underlying Loans may be refinanced, sold, or otherwise disposed of. In addition, all mortgage loans, including the Loans, are subject to loss resulting from the priority of real estate tax liens, mechanic's liens, and materialmen's liens. Therefore, the success of the Company will depend in part upon events beyond its control.

**The types and concentrations of properties underlying the Loans in which the Company acquires an interest may subject an investment in Interests to special risks.**

The types and concentration of properties underlying the Loans in which the Company acquires interests may subject the Company to special risks in addition to the general real estate risks described above.

*Unimproved Properties.*

Factors affecting the value of unimproved properties include the following:

- the Company will be subject to a greater risk of loss in the event of delinquency or default by a Borrower on a Loan secured by a deed of trust, mortgage, or similar instrument on unimproved real property than if such Loan were secured by a deed of trust, mortgage, or similar instrument on improved real property;
- a Loan secured by unimproved real property involves a particularly high degree of risk since the property generally does not have access to utilities, such as water, sewer, electricity, or cable, and may not be zoned or subdivided for its highest and best use; and
- an unimproved property does not generate income other than as the result of a refinancing, sale, or other disposition and the Borrower's Loan payments generally will be the Company's source of cash flow on the Loan until a sale, refinancing, or other disposal of the property.

*Multifamily Rental Properties.*

Factors affecting the value and operation of a multifamily rental property include the following:

- the physical attributes of the property, such as its age, appearance, and construction quality;
- the types of amenities and services offered at the property;

- the location of the property;
- the characteristics of the surrounding neighborhood, which may change over time;
- the rents charged for dwelling units at the property relative to the rents charged for comparable units at competing properties;
- the ability of the owner to provide adequate maintenance and insurance;
- the level of mortgage interest rates, which may encourage tenants to purchase rather than lease housing;
- competition from existing or new alternative residential properties, including other apartment buildings, manufactured housing communities, mobile home parks, and single-family houses;
- the tenant mix and whether the property is primarily occupied by workers from a particular company or type of business, personnel from a local military base, or students;
- the extent to which the cost of operating the property, including the cost of utilities and required capital expenditures, may increase;
- the extent to which increases in operating costs may be passed through to tenants;
- local, regional, or national economic conditions, which may limit the amount that may be charged for rents and may result in a reduction in timely rent payments or a reduction in occupancy levels;
- state and local regulations, which may impose rent controls or otherwise affect the property owner's ability to increase rents;
- the extent to which the property is subject to land use restrictive covenants or contractual covenants that require that units be rented to low income tenants; and
- the applicability of state "Unfair and Deceptive Practices Acts" and other general consumer protection statutes for coercive, abusive, or unconscionable leasing and sales practices.

#### *Condominiums.*

Factors affecting Loans on a condominium project include the following:

- a default on a Loan on a condominium will not allow the holder of the Loan the same flexibility in realizing on its collateral as is generally available with respect to multifamily rental properties that are not condominiums; and
- the rights of other unit owners, the governing documents of the condominium owners' association, and the state and local laws applicable to condominiums must be considered and respected.

#### *Cooperatively Owned Apartment Buildings.*

Factors affecting cooperatively owned apartment buildings include the following:

- the rights of a tenant/shareholder to occupy a particular apartment unit under a long-term lease or occupancy agreement;
- a cooperative corporation's ability to meet debt service obligations on a Loan secured by, and to pay all other operating expenses of, the cooperatively owned property depends primarily upon the receipt of maintenance payments from the tenant/shareholders and any rental income from units or commercial space that the cooperative corporation might control;
- the ability of a cooperative corporation to impose special assessments on the tenant/shareholders in order to pay unanticipated expenditures; and
- the existence of any non-eviction plan, allowing a tenant at the time of conversion who chooses not to purchase shares to reside in the unit as a subtenant of the owner of the shares allocated to the apartment unit.

### *Retail Properties.*

The success of a retail property depends on a number of factors, including the following:

- the ability to attract and retain tenants, particularly significant tenants that are able to meet their lease obligations;
- the number and type of customers that tenants will be able to attract;
- competition from other retail properties;
- perceptions regarding the safety, convenience, and attractiveness of the property and the surrounding area;
- demographics of the surrounding area;
- the strength and stability of the local, regional, and national economies;
- traffic patterns and access to major thoroughfares;
- the visibility of the property;
- the availability of parking;
- the particular mix of the goods and services offered at the property;
- customer tastes, preferences, and spending patterns; and
- the drawing power of other tenants.

### *Office Properties.*

Factors affecting the value and operation of an office property include the following:

- the number and quality of the tenants, particularly significant tenants, at the property;
- the physical attributes of the building in relation to competing buildings, including age, condition, and design;
- the location of the property with respect to the central business district or population centers;
- demographic trends within the metropolitan area to move away from or towards the central business district;
- social trends combined with space management trends, which may change towards options, such as telecommuting or "hoteling," to satisfy space needs;
- tax incentives offered to businesses or property owners by municipalities adjacent to or near where the property is located;
- local competitive conditions, such as the supply of office space or the existence or construction of new competitive office buildings;
- vacancy levels;
- the quality of property management;
- access to mass transportation;
- changes in zoning laws;
- competitive factors affecting office properties, including rental rates; and
- amenities offered to tenants, including sophisticated building systems, such as fiber optic cables, satellite communications, or other technological features.

### *Hospitality Properties.*

Factors affecting the economic performance of a hospitality property include the following:

- the location of the property and its proximity to major population centers or attractions;
- the seasonal nature of business at the property;
- the level of occupancy and room rates relative to those charged by competitors;

- local, regional, and national economic conditions, which may limit the amount that can be charged for a room and may result in a reduction in occupancy levels;
- the existence or construction of competing hospitality properties;
- the nature and quality of the services and facilities;
- the financial strength and capabilities of the owner and operator;
- the need for continuing expenditures for modernizing, refurbishing, and maintaining existing facilities;
- increases in operating costs, which may not be offset by increased room rates;
- the property's dependence on business and commercial travelers and tourism;
- changes in travel patterns caused by changes in economic conditions, vacation patterns, energy prices, labor strikes, the relocation of highways, the construction of additional highways, and other factors; and
- in the case of a franchised property, the strength and reputation of the franchisor and the ability of the franchisee to operate the property in accordance with the franchise agreement, including operating standards, maintenance, and capital improvement requirements.

#### *Casino Properties.*

Factors affecting the economic performance of a casino property include the following:

- the location of the property, including proximity to or easy access from major population centers;
- appearance;
- local, regional, and national economic conditions, which may limit the amount of disposable income that potential patrons may have for gambling;
- the ability to attract patrons by providing alternate forms of entertainment, such as performers and sporting events, and offering low-priced or free food and lodging;
- the existence or construction of competing casinos;
- dependence on tourism;
- local or state governmental regulation covering various matters, such as requirements to maintain or transfer necessary licenses; and
- the need to modernize, refurbish, and maintain existing facilities.

#### *Health Care-Related Properties.*

Factors affecting the economic performance of a health-care related facility include the following:

- the dependence for a substantial portion of revenues from government reimbursement programs, primarily Medicaid and Medicare;
- governmental cost-containment measures that affect payments to health care providers;
- regulations under federal, state, and local law that can increase the cost of operation, limit growth, and, in extreme cases, require or result in suspension or cessation of operations,
- federal and state licensing requirements, facility inspections, rate setting, and reimbursement policies; and
- laws relating to the adequacy of medical care, distribution of pharmaceuticals, use of equipment, personnel operating policies, and maintenance of and additions to facilities and services.

### *Industrial Properties.*

The success of an industrial property depends on the following:

- the demand for industrial space occasioned by conditions in a particular industry segment or by the strength of the economy;
- the location and desirability of the property, which may depend on a variety of factors, including the availability of labor services;
- proximity to supply sources and customers;
- accessibility to various modes of transportation and shipping, including railways, roadways, airline terminals, and ports;
- the quality and creditworthiness of individual tenants; and
- environmental risks depending upon the nature of the business conducted at the property.

### *Warehouse, Mini- Warehouse, and Self-Storage Facilities.*

The successful operation of a warehouse, mini-warehouse, or self-storage property depends on a variety of factors, including the following:

- building design;
- competition;
- location and visibility;
- efficient access to the property;
- proximity to potential users, including apartment complexes or commercial users;
- services provided, such as security;
- the property's age, appearance, and improvements; and
- the quality of management.

### *Restaurants and Taverns.*

Factors affecting the economic viability of an individual restaurant, tavern, or other establishment that is part of the food and beverage service industry include the following:

- the cost, quality, and availability of food and beverage products;
- perceptions by prospective customers of safety, convenience, service, and attractiveness;
- competition with the operators of comparable establishments in the area in which the property is located;
- negative publicity resulting from instances of food contamination, food-borne illness, crime, and similar events;
- changes in neighborhood demographics, consumer habits, and traffic patterns;
- the ability to provide or contract for capable management;
- retroactive changes to building codes, similar ordinances, and other legal requirements; and
- in the case of a franchised property, the strength and financial condition of the franchisor, actions and omissions of the franchisor, including management practices that adversely affect the nature of the business or that require renovation, refurbishment, expansion, or other expenditures, and the degree of support the franchisor provides or arranges.

*Manufactured Housing Communities, Mobile Home Parks, and Recreational Vehicle Parks.*

Factors that affect the successful operation of a manufactured housing community, mobile home park, or recreational vehicle park include the following:

- the number of competing properties in the local market;
- the age, appearance, and reputation of the property;
- the quality of management;
- the types of facilities and services it provides;
- competition against alternative forms of residential housing, including multifamily rental properties, cooperatively owned apartment buildings, condominium complexes, and single-family residential developments; and
- governmental regulations, including rent controls.

*Recreational and Resort Properties.*

Factors affecting a recreational or resort property include the following:

- the location and appearance of the property;
- the appeal of the recreational activities offered;
- the existence or construction of competing properties, whether or not offering the same activities;
- the need to make capital expenditures to maintain, refurbish, improve, or expand facilities in order to attract potential patrons;
- geographic location and dependence on tourism;
- changes in travel patterns caused by changes in energy prices, strikes, location of highways, construction of additional highways, and similar factors;
- the seasonality of the business, which may cause periodic fluctuations in operating revenues and expenses;
- sensitivity to weather and climate;
- local, regional, and national economic conditions; and
- statutes and government regulations that govern the use of, and construction on, rivers, lakes, and other waterways affecting a marina or other recreational or resort property located adjacent to water.

*Arenas and Stadiums.*

The success of an arena or stadium generally depends on its ability to attract patrons to a variety of events, such as sporting events, musical concerts, theatrical presentations, animal shows, and circuses, which depend on such factors as the following:

- the appeal of events at the facility;
- the cost of admission;
- perceptions by prospective patrons of the safety, convenience, services, and attractiveness of the property;
- perceptions by prospective patrons of the safety of the surrounding area;
- alternative forms of entertainment available in the particular locale; and
- the ability to attract and keep a sporting team as a tenant.

*Churches and Other Religious Facilities.*

Factors affecting a church or other religious facility include the following:

- the level of charitable donations to meet expenses and pay for maintenance and capital expenditures;
- social, political, and economic factors affecting attendance and the willingness of attendees to make donations; and
- local, regional, and national economic conditions affecting donations.

*Parking Lots and Garages.*

Factors affecting the success of a parking lot or garage include the following:

- the number of rentable parking spaces and rates charged;
- the location of the lot or garage and its proximity to places where large numbers of people work, shop, or live;
- the amount of alternative parking spaces in the area;
- the availability of mass transit; and
- perceptions of the safety, convenience, and services of the lot or garage.

**A Borrower's bankruptcy may adversely affect payment on its Loan and therefore the return on the Interests.**

The United States Bankruptcy Code ("Bankruptcy Code") and state insolvency laws may interfere with or affect a lender's ability to realize upon collateral or to enforce a deficiency judgment. For example, under the Bankruptcy Code, the filing of a petition in bankruptcy by or against a Borrower will stay the sale of the property securing a Loan, as well as the commencement or continuation of a foreclosure action. In addition, if a court determines that the value of the property securing a Loan is less than the principal balance of the Loan it secures, the court may reduce the amount of secured indebtedness to the then-value of the property. Such an action would make the Company, as the lender, a general unsecured creditor for the difference between the then-value of the property securing a Loan and the amount of the related Loan. A bankruptcy court also may take any of the following actions:

- grant a debtor a reasonable time to cure a payment default on a Loan,
- reduce monthly payments due under a Loan,
- permit the debtor to cure a loan default by paying the arrearage over a number of years,
- change the rate of interest due on a Loan, or
- extend or shorten the term to maturity or otherwise alter the Loan's repayment schedule.

Under the Bankruptcy Code, a tenant has the option of assuming or rejecting any unexpired lease. If the tenant rejects the lease, the landlord's claim for breach of the lease would be a general unsecured claim against the tenant unless there is collateral securing the claim. The claim would be limited to the following:

- the unpaid rent under the lease for the periods prior to the bankruptcy petition or any earlier surrender of the leased premises, plus
- an amount equal to the rent under the lease for the greater of one year or 15% (but not more than three years) of the remaining lease term.

Additionally, the Borrower, as debtor-in-possession, or its bankruptcy trustee has certain special powers to avoid, subordinate, or disallow debts. In certain circumstances, the claims of a secured lender, such as the Company, may be subordinated to financing obtained by a debtor-in-possession subsequent to its bankruptcy.

Under the Bankruptcy Code, a lender will be stayed from enforcing a Borrower's assignment of rents and leases. The Bankruptcy Code also may interfere with a lender's ability to enforce lockbox requirements. The legal proceedings necessary to resolve these issues can be time consuming and may significantly delay the receipt of rents. Rents also may escape an assignment to the extent they are used by a Borrower to maintain its property or for other court authorized expenses.

As a result of the foregoing, the Company's recovery, as a lender, with respect to a Borrower in bankruptcy proceedings may be significantly delayed, and the total amount ultimately collected may be substantially less than the amount owed on the Loan.

**The Company will have limited remedies upon default by a Borrower.**

Loans are subject to the risk of default, in which event the Originator, on behalf of the Company, would have the added responsibility of foreclosing and protecting Loans in which the Company owns an interest. In the state of Arizona, where it is anticipated that the overwhelming number of the properties securing the Loans will be located, the Originator, on behalf of the Company, will have a choice of two alternative and mutually exclusive remedies in the event of default by a Borrower with respect to a Loan secured by a deed of trust. In such case, the Originator, on behalf of the Company, can either proceed to cause the trustee under the deed of trust to exercise its power of sale under the deed of trust and sell the collateral at a non-judicial sale or it can choose to have the deed of trust judicially foreclosed as if it were a mortgage. In the event of default by a Borrower with respect to a Loan secured by a mortgage, the Originator, on behalf of the Company, will have no election of remedies and will be required to foreclose the mortgage judicially. Remedies in other states in which the Company may hold interests in loans could vary significantly from those available in Arizona.

A judicial foreclosure usually is a time-consuming and potentially expensive undertaking. Under judicial foreclosure proceedings, the borrower does not have a right to reinstate the loan, but can cure its default by either paying the entire accelerated sum owing under the note before the judicial sale or by redeeming the property within six months after the date of the judicial sale.

A non-judicial trustee's sale conducted under the power of sale provided to the trustee may not take place until 90 days after notice of default has been given to the borrower and a notice of sale has been recorded. Before a trustee's sale, the borrower under a deed of trust has a right to reinstate the contract and deed of trust as if no breach or default had occurred by payment of the entire amount then due, plus costs and expenses, reasonable attorney's fees actually incurred, the recording fee for a cancellation of notice of sale, and the trustee's fee. The accelerated portion of the loan balance need not be paid in order to reinstate. As a result, a borrower could repeatedly be in default under a deed of trust and use its right to reinstate the loan under successive non-judicial sale proceedings. Nonetheless, the borrower's right to reinstate a deed of trust without payment of the accelerated portion of the loan balance can be cut off upon the filing of an action to judicially foreclose the deed of trust as a mortgage.

In the case of both judicial and non-judicial foreclosure, if a proceeding under the Bankruptcy Code is commenced by or against a person or other entity having an interest in the real property that secures payment of the loan, then the foreclosure will be prevented from proceeding until authorization to foreclose is obtained from the Bankruptcy Court. During the period when the foreclosure is stayed by the Bankruptcy Court, it is possible that payments, including payments from any interest reserve account, may not be made

on the loan if so ordered by the Bankruptcy Court. The length of time during which the foreclosure is delayed as a result of the bankruptcy, and during which the payments may not be made, is indefinite. In addition, under the Bankruptcy Code, the Bankruptcy Court may render a portion of the loan unsecured if it determines that the value of the real property that secures payment of the loan is less than the balance of the loan and, under other circumstances, may modify or otherwise impair the lien of the lender in connection with the defaulted mortgage or deed of trust. In addition, in certain areas, lenders can lose priority of liens to mechanics' liens, materialmen's liens, and real estate tax liens.

The Originator, on behalf of the Company, will have the right to bid on and purchase the property underlying a Loan at a foreclosure or trustee's sale following a default by the Borrower. If the Originator, on behalf of the Company, is the successful bidder and purchases a property underlying a Loan, the Company's return on such Loan will depend upon the amount of cash or other funds that can be realized by refinancing, selling, or otherwise disposing of the property. There can be no assurance that the Originator, on behalf of the Company, will be able to refinance, sell, or otherwise dispose of such a property on terms favorable to the Company, particularly in the event of unfavorable real estate market conditions. Conditions in real estate loan markets may affect the availability and cost of real estate loans, thereby making real estate financing difficult and costly to obtain and impeding the ability of real estate owners to sell their properties at favorable prices. Such conditions may adversely affect the ability of the Originator, on behalf of the Company, to sell the property securing a Loan in the event that the Originator, on behalf of the Company, deems it in the best interests of the Company to foreclose upon and purchase the property. To the extent that the funds generated by such actions are less than the amounts advanced by the Company for such Loan, the Company may realize a loss of all or part of the principal and interest on the loan. Thus, there can be no assurance that the Company will not experience financial loss upon a default by a Borrower.

**The presence of hazardous substances or toxic waste may adversely impact real estate values.**

The Company cannot provide any assurance as to the accuracy of any environmental testing conducted on the underlying property in connection with the origination of any Loan. Moreover, the Company cannot guarantee that the results of environmental testing will be accurately evaluated in all cases; that the related Borrowers have implemented or will implement all operations and maintenance plans and other remedial actions recommended by an environmental consultant that conducted the testing at the related real properties; or that any recommended remedial action will fully remediate or otherwise address all the identified adverse environmental conditions and risks.

The presence of hazardous substances or toxic waste may adversely impact property values. These and other factors could adversely affect the terms and conditions upon which a Borrower may sell, refinance, or otherwise dispose of the property and ultimately the Borrower's ability to repay the Loan.

Furthermore, if there are hazardous substances or toxic waste present on a property and an obligor defaults on its obligations under the Loan, the Company, in the event of a foreclosure on such property, may be responsible (depending on certain circumstances) for the costs of clean up of any such waste. The owner's liability for any required remediation generally is unlimited and could exceed the value of the property and/or the total assets of the owner (which could be the Company in the event of a foreclosure or the Borrower prior to a foreclosure). In addition, the presence of hazardous or toxic substances, or the failure to remediate the adverse environmental condition, may adversely affect the owner's or operator's ability to use the affected property. Contamination of the property may give rise to a lien on the property to ensure the costs of cleanup. In some states, this lien has priority over the lien of an existing mortgage. In addition, third parties may seek recovery from owners or operators of real property for personal injury associated with exposure to hazardous substances, including asbestos and lead-based paint. Persons who arrange for the disposal or treatment of hazardous or toxic substances may be liable for the costs of removal or remediation of the substances at the disposal or treatment facility.

The Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, commonly referred to as "CERCLA," together with certain other federal and state laws, provide that a secured lender, such as the Company, may be liable as an "owner" or "operator" of a property, regardless of whether the Borrower or a previous owner caused the environmental damage, under the following conditions:

- agents or employees of the lender are deemed to have participated in the management of the borrower, or
- under certain conditions, the lender actually takes possession of a borrower's property or control of its day-to-day operations, including through the appointment of a receiver or foreclosure.

Although recently enacted legislation clarifies the activities in which a lender may engage without becoming subject to liability under CERCLA and similar federal laws, that legislation has no applicability to state environmental laws. Moreover, future laws, ordinances, or regulations could impose material environmental liability.

Property owners may be liable for injuries to their tenants or third parties resulting from exposure under various laws that impose affirmative obligations on property owners of residential housing containing lead-based paint.

**The Company's method for maintaining Member Accounts may not be based on the time that the Member owns Interests.**

The Company will maintain Member Accounts in a manner that attempts to most accurately reflect each Member's proportional interest in the Company. However, certain methods used by the Company could, in certain circumstances, result in an allocation that is not based on the time a Member owns Interests. For example, if a property securing a Loan is foreclosed upon, the Member's Account will be allocated the Member's Participation Percentage of the profit or loss (as compared to the original amount of the Loan that was secured by such property) that results from resale of such property only if the Member was a Member at the time of such sale. Any purchase money debt on the property carried by the Company will not be credited to a Member's Member Account until collection (to the extent such debt reflects a purchase price in excess of the principal amount of the original Loan).

**There is no assurance that the Company will not become subject to mortgage banker regulations.**

The Company will not be subject to current regulations governing mortgage bankers. However, there can be no assurance that changes in applicable mortgage banking regulations or changes in the Company's business will not subject the Company to mortgage banking regulations in the future.

**Members may be liable to return distributions made to them in certain circumstances.**

A Member's capital contributions are subject to the risks of the Company's business. Assuming that the Company is operated in accordance with the terms of the Operating Agreement, Members generally will not be personally liable for the liabilities of the Company in excess of their capital contributions, including additional capital contributions, that the Member elects to reinvest pursuant to the Reinvestment Option and the Member's share of undistributed profits.

Despite the anticipated limited liability as a Member, a Member will be liable to repay any distributions made to the Member for one year to the extent necessary discharge the Company's liabilities to creditors that extended credit to the Company while the Member's capital was invested in the Company even though such distribution was properly made. See "Summary of the Operating Agreement."

**Transactions between the Manager, its Affiliates, and the Company may create conflicts of interest.**

The Company will be subject to various conflicts of interest arising out of the relations between the Manager, its Affiliates, and the Company. See "Conflicts of Interest."

**There is no public market for the Interests, and none is expected to develop.**

No public market for Interests currently exists or will result from the Offering. In addition, the Interests are being offered pursuant to exemptions from registration under federal and applicable state securities laws, which will subject the Interests to substantial restrictions on transfer. In addition, the Operating Agreement imposes limitations on the transfer of Interests, subject to limited redemption options. Accordingly, Interests may be transferred only under appropriate exemptions and only if the transferee provides the Company with an opinion of counsel that is satisfactory to the Company to the effect that the proposed transfer is in compliance with appropriate exemptions from the registration requirements of federal and any relevant state securities laws. Consequently, holders of Interests may not be able to liquidate their investment in the event of an emergency or for any other reason, and Interests may not be readily accepted as collateral for a loan. The purchase of Interests, therefore, should be considered only as a long-term investment. See "Restrictions on Transfer."

**The Company will not be registered as an investment company under the Investment Company Act of 1940.**

The Company will not be registered as an investment company under the Investment Company Act of 1940, but instead intends to conduct its business so as not to become regulated as an investment company under that act. Accordingly, the Company will not be subject to the rules for the protection of investors that require investment companies to have a majority of disinterested directors, that mandate segregation of securities held in custody from the securities of any other person, and that govern the relationship between an investment advisor and an investment company. The management and investment practices of the Company will not be supervised or regulated by any federal or state authority. The Investment Company Act of 1940 exempts entities that are primarily engaged in the business of purchasing or other acquiring mortgages and other liens on, and interests in, real estate. If the Company fails to qualify for this exemption, it would be unable to conduct its business as described in this Memorandum.

### SOURCE AND ESTIMATED USE OF PROCEEDS

	<u>Dollar Amount</u>	<u>Percentage of Gross Proceeds</u>
Gross Proceeds	\$500,000,000	100.00%
Offering Expenses (Legal, Accounting, Offering and Printing Expenses) (1)	\$0	.00%
Total Amount Available for Investment in Loans (2)	\$500,000,000	100.00%

- (1) The Manager will pay all expenses in connection with the Offering, estimated to be \$50,000, including legal fees, printing costs, filing fees, and other miscellaneous offering expenses.
- (2) All of the offering proceeds will be available for investment in Loans pursuant to the policies of the Company. See "Investment and Operating Policies."

While any proceeds are being held by the Company prior to investment in a Loan, prior to distribution to Members, or representing a Company reserve, the Company may invest such proceeds in short-term investments, including U.S. Treasury Bonds and Treasury Bills.