

**DATED 30 SEPTEMBER 2016**

**IA CAPITAL STRUCTURES (IRELAND) PLC**

**Prodigy Network AKA Wall Street Recap - 84 William Street (Series 87) Notes due 2021**

**issued under its € 5,000,000,000 Secured Note Programme**

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**SERIES MEMORANDUM**

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## General

This Series Memorandum (as used herein, this "**Series Memorandum**") is prepared in connection with the EUR 5,000,000,000 Secured Note Programme (the "**Programme**") of IA Capital Structures (Ireland) plc (the "**Issuer**") and is issued in conjunction with, and incorporates by reference the contents of, the Programme Memorandum dated 15 March 2012 relating to the Programme (the "**Programme Memorandum**").

Neither this Series Memorandum nor the Programme Memorandum constitutes a prospectus for the purposes of the Prospectus Directive.

This document should be read in conjunction with the Programme Memorandum and the Master Conditions (March 2014 Edition). Save where the context otherwise requires, terms defined in the Programme Memorandum have the same meaning when used in this Series Memorandum.

Subject as set out below the Issuer accepts responsibility for the information contained in this Series Memorandum other than the information in sections (i) *Information relating to the Arranger, Placing Agent, Sale Agent and the Calculation Agent*; and (ii) *the information contained in the Prodigy Private Offering Memorandum (as defined herein and which is attached hereto as Appendix 1)*. To the best of the knowledge and belief of the Issuer (which has taken all reasonable care to ensure that such is the case), such information for which it accepts responsibility contained in this Series Memorandum is in accordance with the facts and does not omit anything likely to affect the import of such information. The Issuer confirms that the information in the sections referred to in (i) to (ii) above has been accurately reproduced from information provided by (a) the Arranger, Placing Agent, Sale Agent and Calculation Agent, and (b) the Borrower, and as far as the Issuer is able to ascertain, no facts have been omitted which would render the reproduced information inaccurate or misleading.

This Series Memorandum does not constitute, and may not be used for the purposes of, an offer or solicitation by anyone in any jurisdiction in which such offer or solicitation is not authorised or to any person to whom it is unlawful to make such offer or solicitation, and no action is being taken to permit an offering of the Notes or the distribution of this Series Memorandum in any jurisdiction where such action is required.

No person has been authorised to give any information or to make representations other than those contained in this Series Memorandum in connection with the issue or sale of the Notes and, if given or made, such information or representations must not be relied upon as having been authorised by the Issuer, the Arranger, the Trustee or any of them. Neither the delivery of this Series Memorandum nor any sale made in connection herewith shall, under any circumstances, create any implication that there has been no change in the affairs of the Issuer since the date hereof.

Sanne Fiduciary Services Limited (the "**Trustee**") has not independently verified the information contained herein. Accordingly, no representation, warranty or undertaking is made, whether express or implied, and no responsibility or liability is accepted by the Trustee as to the accuracy, completeness or nature of the information contained in this Series Memorandum, the *Prodigy Private Offering Memorandum (as defined herein)* or with respect to the legality of investment in the Notes by any prospective investor or purchaser under applicable legal investment or similar laws or regulations.

Full information on the Issuer and the offer of the Notes is only available on the basis of the combination of the provisions set out within this Series Memorandum and the Programme Memorandum.

For as long as the Notes remain outstanding, copies of the following documents will be available for inspection in physical form during usual business hours on any weekday (Saturdays, Sundays and public holidays excepted) at the registered office of the Issuer:

- (i) This Series Memorandum and the Programme Memorandum;
- (ii) The Master Documents;
- (iii) The Constituting Instrument dated the Issue Date; and
- (iv) The Certificate of Incorporation and the Memorandum and Articles of Association of the Issuer.
- (v) The Loan Transaction Documents.

***The Notes, which are described in this Series Memorandum, have not been, and will not be, registered under the United States Securities Act of 1933, as amended (the "Securities Act") or the securities laws of any of the States of the United States. Accordingly, the Notes are being offered and sold only in bearer form pursuant to the exemption afforded by Regulation S promulgated under the Securities Act solely outside of the United States and solely to non-U.S. persons and in specific reliance upon the representations by each Noteholder that (1) at the time of the offer and sale of the Notes to Noteholder, the Noteholder was not a U.S. Person as defined in Regulation S promulgated under the Securities Act, and (2) at the time of the offer and sale of the Notes to Noteholder and, as of the date of the execution and delivery of the purchasing or subscription agreement by the Noteholder, the Noteholder was outside of the United States. The Notes may not be offered or sold in the United States or to U.S. Persons (as defined in Regulation S) unless the securities are registered under the Securities Act, or an exemption from the registration requirements of the Securities Act is available. The Notes are subject to certain United States tax law requirements.***

***Purchasers of Notes should conduct such independent investigation and analysis regarding the Issuer, the Loan Transaction Documents, the Borrower and the Notes as they deem appropriate to evaluate the merits and risks of an investment in the Notes, as the Notes described in this Series Memorandum may not be suitable for all purchasers of Notes. Purchasers of Notes should have sufficient knowledge and experience in financial, taxation, accounting, capital treatment and business matters, and access to, and knowledge of, appropriate analytical resources, to evaluate the information contained in this Series Memorandum and the merits and risks of investing in the Notes in the context of their financial and regulatory position and circumstances. This Series Memorandum does not describe all of the risks and investment considerations applicable to an investment in the Notes. The risks and investment considerations identified in this Series Memorandum are provided as general information only and the Issuer disclaims any responsibility to advise purchasers of Notes of the risks and investment considerations associated with the purchase of the Notes as they may exist at the date hereof or as they may from time to time alter.***

The following legend will appear on all Temporary or Permanent Global Notes and any Receipts, Coupons or Talons in respect thereof:

**"ANY UNITED STATES PERSON WHO HOLDS THIS OBLIGATION WILL BE SUBJECT TO LIMITATIONS UNDER THE UNITED STATES INCOME TAX LAWS, INCLUDING THE LIMITATIONS PROVIDED IN SECTIONS 165(j) AND 1287(a) OF THE U.S. INTERNAL REVENUE CODE."**

The sections of the U.S. Internal Revenue Code referred to in the foregoing legend provide that, with certain exceptions, a United States taxpayer will not be entitled to deduct any loss, and will not be entitled to capital gains treatment in respect of any gain realised, on any sale, disposition or payment of a Note, Receipt, Coupon or Talon for U.S. federal income tax purposes.

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "**Relevant Member State**"), an offer of Notes to the public has not and may not be made in that Relevant Member State.

The Notes are illiquid investments, the purchase of which involves substantial risks. Any investor investing in the Notes should fully consider, understand and appreciate those risks.

**PARTICULAR ATTENTION IS DRAWN TO THE SECTION OF THIS SERIES MEMORANDUM HEADED "RISK FACTORS".**

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### **Documents incorporated by reference**

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The Programme Memorandum is incorporated in, and shall be taken to form part of this Series Memorandum. This Series Memorandum must be read and construed in conjunction with the Programme Memorandum and shall be deemed to modify and supersede the contents of such document to the extent that a statement contained herein is inconsistent with such contents.

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## Risk factors

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### General

The purchase of the Notes involves substantial risks. Each prospective purchaser of the Notes should be familiar with instruments having characteristics similar to the Notes and should fully understand the terms of the Notes and the nature and extent of its exposure to risk of loss.

Before making an investment decision prospective purchasers of the Notes should conduct such independent investigation and analysis regarding the Issuer, the Borrower, the Charged Assets (including the Loan Transaction Documents), the Notes and all other relevant persons and such market and economic factors as they deem appropriate to evaluate the merits and risks of an investment in the Notes. As part of such independent investigation and analysis, prospective purchasers of Notes should consider carefully all the information set forth in this Series Memorandum and in the Programme Memorandum and the considerations set out below.

Investment in the Notes is only suitable for investors who have the knowledge and experience in financial and business matters necessary to enable them to evaluate the information contained in this Series Memorandum and in the Programme Memorandum and the merits and risks of an investment in the Notes in the context of the investor's own financial circumstances and investment objectives.

Investment in the Notes (or a participation therein) is only suitable for investors who:

- (1) are capable of bearing the economic risk of an investment in the Notes (or a participation therein) for a period up to and until the redemption of the Notes;
- (2) are acquiring an interest in the Notes (or a participation therein) for their own account for investment, not with a view to resale, distribution or other disposition of such interest (subject to any applicable law requiring that the disposition of the investor's property be within its control); and
- (3) recognise that it may not be possible to make any transfer of the Notes (or a participation therein) for a substantial period of time, if at all.

Each of the Issuer and the Arranger may, in its discretion, disregard interest shown by a prospective investor even though that investor satisfies the foregoing suitability standards.

**Each prospective investor should ensure that it fully understands the nature of the transaction into which it is entering and the nature and extent of its exposure to the risk of loss of all or a substantial part of its investment. Attention is drawn, in particular, to the sections of the Programme Memorandum entitled "Conditions of the Notes - Security" and "Conditions of the Notes - Enforcement and Limited Recourse" and the section in this Series Memorandum entitled "Information relating to the Charged Assets".**

## Risks relating to the Issuer and Transaction Parties

### *Special purpose company*

The Issuer is a special purpose company and has been established for the purpose of issuing multiple Series of secured Notes under the Programme. The Issuer has issued share capital only in the amount of EUR 38,100. Should any unforeseen expenses or liabilities (which have not been provided for) arise, the Issuer may be unable to meet them, leading to an Event of Default under the Notes.

There is no certainty that Noteholders will recover any amounts payable under the Notes. Due to the limited recourse nature of the Notes (see "*Limited recourse*" below), claims in respect of the Notes are limited to the proceeds of enforcement of the Mortgaged Property and after the deduction of any applicable expenses. In addition, if a claim is brought against the Issuer (whether under statute, common law or otherwise) which is not subject to such contractual limited recourse provisions, the only assets available to meet such claim would be the proceeds of the issuance of the Issuer's ordinary shares and any transaction fees (see "*Fees*" below), to the extent any remain as at the date of such claim and are available to meet such claim. The only other assets of the Issuer will be the assets on which each Series is secured, which will be subject to the prior security interests of the relevant Noteholders and any other secured parties under that Series.

### *Limited recourse*

The Notes will be limited recourse obligations of the Issuer secured on the Mortgaged Property (including the Charged Assets) and are not or will not (as the case may be) be obligations or responsibilities of, or guaranteed by, any other person or entity. **For the avoidance of doubt, none of the Trustee, the Arranger, any other Agent appointed by the Issuer or any other person has any obligation to any Noteholder for payment of any amount by the Issuer in respect of the Notes. There is no person that guarantees to Noteholders that they will recover any amounts payable under the Notes.**

The ability of the Issuer to meet its obligations in respect of the Notes will be dependent on the receipt by the Issuer of moneys due to it under the Mortgaged Property (including the Charged Assets comprised therein). The Noteholders shall have no recourse to the Issuer beyond the moneys derived by or on behalf of the Issuer in respect of the Mortgaged Property. To the extent that investment by the Issuer in the Charged Assets held by the Issuer results in such investment being less than the obligations of the Issuer under the Notes, the Issuer will have insufficient funds available to meet its obligations in respect of the Notes. In such event, any shortfall would be borne by the Noteholders in accordance with the priorities specified in the Conditions. See "*Nature of the investment*" below.

The ability of the Borrower to make payments is dependent on it having sufficient net assets after liquidation of its assets and the payment of its then current obligations. If the net assets of the Borrower are not sufficient to make distributions sufficient to repay the principal and all interest due under the Loan Transaction Documents, the Note Holders may not recover all amounts due under the Note. See "*Nature of the investment*" below.

For the avoidance of doubt, Notes are not, and do not represent or convey any interest in the Charged Assets nor do they confer on the Noteholder any right (whether in respect of voting, dividend or other distribution) which a holder of any Charged Assets may have had. The Issuer is not an agent of the Noteholder for any purpose.

### *No Loan Guarantor*

There is no Loan Guarantor guaranteeing the payment of principal or interest under the Loan Transaction Documents.

### *Liability for the obligations of other Series*

The Issuer has undertaken not to incur any obligations with respect to any other Series of Notes unless recourse in respect of such obligations is limited to the proceeds of enforcement of the Security over the assets of the Issuer on which such obligations are secured (which assets shall exclude the Mortgaged Property securing any other Series of Notes). Nevertheless, to the extent there are any creditors with respect to a Series of Notes whose recourse is not so limited Noteholders may be exposed to risks incurred for the account of other Series.

## **Risks relating to the Notes**

### *Nature of the investment*

These Notes are not principal protected and are a high-risk investment in the form of a debt instrument. The Noteholders are neither assured of repayment of the capital invested nor are they assured of payment of a stated rate of interest. The Notes give Noteholders exposure to the Series Assets.

Any payments to be made on the Notes depend on the value of the Charged Assets held by the Issuer, which is the value of the amounts received by the Issuer in respect of the Charged Assets. Should the Charged Assets decrease in value, Noteholders will incur a partial or total loss of their investment.

In certain circumstances, described in the Conditions of the Notes, the Notes will be redeemed early pursuant to a Mandatory Redemption Event, an Additional Mandatory Redemption Event or a redemption event pursuant to Condition 2(c)(A)(1) and Noteholders shall be entitled to receive only such amount as is available following the sale or redemption of the Charged Assets, or a proportion of such Charged Assets, as the case may be, subject to the provisions of the Notes described under "*Limited recourse*" above.

**In general, redemption payments to be made on the Notes are calculated with reference to the value of the Charged Assets. However, if and to the extent that the amount payable by the Issuer in accordance with the Notes to the Noteholders is greater than the amount received by the Issuer in respect of the redemption of the Charged Assets, the Noteholder shall be entitled to receive only its *pro rata* share of such amount as is received by the Issuer under the Charged Assets after deduction of any applicable costs and expenses.**

### *Change of law, tax and administrative practice*

The structure of the transaction and, inter alia, the issue of the Notes are based on law, tax and administrative practice in effect at the date hereof, and having due regard to the expected tax treatment of all relevant entities under such law and practice. No assurance can be given that law, tax or administrative practice will not change after the Issue Date or that such change will not adversely impact the structure of the transaction and the treatment of the Notes.

### *Fees*

In addition to the fees due to the Trustee and any Agents, and any other transaction related fees incurred by the Issuer in respect of the issuance of the Notes, the amounts payable under the Notes are based on the performance of the Charged Assets after deduction of certain fees, which is further described in Special Condition (XI) of the Notes. The fees will be applied in calculating the value of the Portfolio and therefore will result in a reduction in the value of the Notes.

In connection with the offer and sale of the Notes, the Arranger or any of its associated companies may, directly or indirectly, pay fees in varying amounts to third parties or, as the case may be, receive fees (including but not limited to distribution fees and retrocessions) in varying amounts, including, from third parties (which may include any Transaction Participants as defined below). Each Noteholder acknowledges that the Arranger or any of its associated companies may retain all or part of such fees.

### *Foreign exchange risk*

The Notes are denominated in USD. The Charged Assets may be denominated in U.S dollars, euro, or any other currencies. The Issuer will effect foreign exchange transactions to convert amounts received in respect of the Charged Assets into USD in order to meet its payment obligations under the Notes. In order to mitigate the foreign exchange risk the Issuer may enter into foreign exchange hedging transactions with such banks and other providers of treasury products ("**Derivatives Counterparties**") as may in the sole discretion of the Issuer be appropriate given the Charged Assets and the obligations of the Issuer under the Notes. Accordingly, the Issuer and the Noteholders may be exposed to credit risk of such Derivatives Counterparties providing foreign exchange hedging to the Issuer.

### *Optional Redemption by the Noteholder*

Noteholders have no right to request the Issuer to redeem the Notes at any time prior to their Scheduled Maturity Date.

### *Optional Redemption by the Issuer*

Investors in the Notes should be aware that the Issuer has the option to redeem any amount of the Notes at their Optional Redemption Amount on the Optional Redemption Payment Date, by giving not less than ten (10) Business Days' prior notice to the Noteholders, the Trustee and the Principal Paying Agent. Such notice may be revoked by the Issuer at any time prior to the Optional Redemption Date.

### *Optional Redemption by the Arranger*

Investors in the Notes should further be aware that the Arranger has the option, without limitation, at any time to redeem any amount of the Notes at their Optional Redemption Amount on the Optional Redemption Payment Date. The Arranger would redeem Notes if it is the holder of such Notes, pursuant to the Conditions of the Notes. While the Arranger may actively become involved in the

secondary market in the Notes (if any), such participation would be at the Arranger's sole discretion and the Arranger shall not have any obligation to make a secondary market. See "*Liquidity*" below.

#### *Restrictions on Transfer*

The Notes are subject to restrictions on transfer, as described in section "SUBSCRIPTION AND SALE" in the Programme Memorandum and "SELLING RESTRICTIONS" in this Series Memorandum. In particular, the Notes have not been registered under the Securities Act, under any U.S. state securities or "Blue Sky" laws or under the securities laws of any other jurisdiction and are being issued and sold in reliance upon exemptions from registration provided by such laws. No Note may be sold, assigned, participated, pledged or transferred unless such sale, assignment, participation, pledge or transfer (a) is exempt from the registration requirements of the Securities Act (for example, the exemption provided by Rule 144A under the Securities Act or the exemption provided by Regulation S under the Securities Act and applicable state securities laws) and (b) is in compliance with the transfer restrictions and certification requirements described in the section entitled "SUBSCRIPTION AND SALE" in the Programme Memorandum and "SELLING RESTRICTIONS" in this Series Memorandum.

#### *Arranger default*

The Notes will be redeemed if the Arranger is dissolved or becomes unable to perform its obligations in relation to the Notes unless a substitute arranger (the "**Substitute Arranger**") is appointed by the Issuer within 90 days of such event.

#### *Payments*

On a redemption of Notes, payments under the Notes will only be made after receipt of the Realisable Value by the Issuer. The date of payment of the redemption amount under the Notes is therefore not fixed. Payment of redemption amounts under the Notes depends on the realisation of (including repayment of principal and interest in full by the Borrower) or the liquidation of the Charged Assets. It may take a considerable period of time to redeem the Charged Assets, in particular in the case of a redemption pursuant to Early Redemption. Noteholders may only receive payment of the relevant redemption amount under the Notes significantly later than the specified redemption date of the Notes.

#### *Liquidity*

No secondary market for the Notes currently exists. Prospective purchasers of the Notes should therefore recognise that, they may not be able to liquidate their investment in the Notes or transfer the Notes for a substantial period of time, if at all. Investment in the Notes is therefore only suitable for investors who are capable of bearing the economic risk of an investment in the Notes for an indefinite period of time and are not acquiring the Notes with a view to a potential resale, distribution or other disposition at some future date.

Application has been made to list the Notes on the Third Market of the Vienna Stock Exchange. Listing is expected to take place on or about the Issue Date but no assurance can be given that such application will be granted. Even if the Notes are listed, there is no assurance that a secondary trading market or liquidity will develop.

Notwithstanding the foregoing, the Arranger may provide a secondary market with a monthly dealing frequency and monthly purchases and sales by investors. The Arranger will not provide a secondary market in circumstances where the Calculation Agent is unable to calculate the Net Asset Value of the Portfolio for any reason, such as an event of default on the Charged Assets or due to the illiquidity or suspension of trading of any of the Series Assets comprising the Portfolio. The Arranger does not have

and will not assume any liability, whether legal or otherwise, *vis-à-vis* the Noteholders to provide a market for the Notes or with regard to the level of the applicable prices nor how they are determined. To the extent that the Arranger purchases Notes in a secondary market provided by the Arranger, the Arranger will impose a EUR 500 fee in respect of its administration expenses.

#### *Extended Maturity Date*

The term of the Notes may be extended for further periods of up to ten years, provided that, at the request of the Issuer, the Calculation Agent, on behalf of the Issuer, has given a notice (the "**Extension Notice**") to the Trustee, the Principal Paying Agent and the Noteholders three (3) calendar months prior to the Scheduled Maturity Date or the anniversary thereof in each subsequent year, if applicable, stating that such extension shall take place in respect of the Notes. If no Extension Notice, or no further Extension Notices (if applicable) are delivered by the Calculation Agent, the Notes shall be redeemed on the Scheduled Maturity Date or the anniversary thereof in accordance with the final Extension Notice (such date being the "**Extended Maturity Date**").

#### *Market and Legal Risk*

The Notes will constitute secured, limited recourse obligations of the Issuer, recourse in respect of which will, in effect, be limited to the proceeds of the Mortgaged Property (which principally comprises the Charged Assets) relating to the Notes and no other assets of the Issuer will be available to satisfy claims of Noteholders. The Issuer's obligations to the Noteholders are solely funded by, and primarily secured on, the Charged Assets. Therefore, to the extent that the value of the Charged Assets falls, payment under the Charged Assets is not made, the Charged Assets cannot be sold or if the relevant security arrangements would not be enforceable, a loss of principal under the Notes will result. Noteholders therefore assume the market and legal risk of the Charged Assets.

None of the Transaction Participants (as defined below) nor any affiliate of any of them or other person on their behalf has made any investigation of, or makes any representation or warranty, express or implied, as to the financial or other condition of the Charged Assets.

None of the Issuer, the Arranger, the Trustee, the Principal Paying Agent, the Calculation Agent, the Sale Agent or any other Agent (together, the "**Transaction Participants**") nor any affiliate of any of them (or any person on their behalf) assume any responsibility *vis-à-vis* the Noteholders for the economic success or lack of success of an investment in the Notes, or the performance, the value or terms of the Charged Assets. No Transaction Participant will have any responsibility or duty to make any such investigations, to keep any such matters under review, to provide the Noteholders, or prospective purchasers of the Notes, with any information in relation to such matters or to advise as to the attendant risks.

#### *Independent review and advice*

Each prospective purchaser of Notes must determine, based on its own independent review and such legal, financial and tax advice as it deems appropriate under the circumstances, that its acquisition of the Notes (i) is fully consistent with its financial needs, objectives and condition, (ii) complies and is fully consistent with all investment policies, guidelines, authorisations and restrictions (including as to its capacity) applicable to it, (iii) has been duly approved in accordance with all applicable laws and procedures and (iv) is a fit, proper and suitable investment for it, undertaken for a proper purpose.

#### *Legality of purchase*

None of the Transaction Participants or any affiliate of any of them or other person on their behalf has or assumes responsibility for the lawfulness of the acquisition of the Notes by a prospective purchaser

of the Notes, whether under the laws of the jurisdiction of its incorporation or the jurisdiction in which it operates (if different), or for compliance by that prospective purchaser with any law, regulation or regulatory policy applicable to it.

#### *No reliance*

The Transaction Participants and all affiliates of any of them disclaim any responsibility to advise purchasers of the Notes of the risks and investment considerations associated with the purchase of the Notes as they may exist at the date hereof or from time to time hereafter.

#### *No restrictions on activities*

Any of the Transaction Participants and any affiliate of any of them or other person on their behalf may have existing or future business relationships (including depository, lending, advisory or any other kind of commercial or investment banking activities or other business) with any of the other Transaction Participants and any affiliate of any of them or other person on their behalf and may purchase, sell or otherwise deal in any assets or obligations of, or relating to, any such party. Any of the Transaction Participants and any affiliate of any of them or other person on their behalf may act with respect to any such business, assets or obligations without regard to any possible consequences for the Issuer, the Notes or any Noteholder (or the impact of any such dealing on the interests of any Noteholder) or otherwise.

#### *No Operating History by the Borrower*

The Borrower has limited performance history. Noteholders may not have sufficient historical information to serve as a basis for making a more informed investment decision.

#### *Provision of information*

Any of the Transaction Participants or any affiliate of any of them or any other person acting on their behalf may at the date hereof or at any time hereafter be in possession of information in relation to the other Transaction Participants or any affiliate of any of them or any other person acting on their behalf or on behalf of the Charged Assets (which may or may not be publicly available or confidential). None of such persons shall be under any obligation to make any such information available to Noteholders or any other party other than as provided in the Conditions of the Notes.

#### *Taxation*

Each Noteholder will assume and be solely responsible for any and all taxes of any jurisdiction or governmental or regulatory authority, including, without limitation, any state or local taxes or other like assessment or charges, that may be applicable to any payment to it in respect of the Notes. Neither the Issuer nor any other person will pay any additional amounts to the Noteholders to reimburse them for any tax, assessment or charge required to be withheld or deducted from payments in respect of the Notes by the Issuer or by the Principal Paying Agent (or any other Paying Agent), although such requirement will give rise to an obligation to redeem the Notes early in the circumstances described in Condition 2 as amended by Special Condition IV of the Conditions of the Notes set out below.

#### *Legal opinions*

No legal opinions will be obtained with respect to any applicable laws, including the laws governing the Charged Assets or as to the validity, enforceability or binding nature of the Charged Assets.

### *Conflict of interests*

Any of the Transaction Participants or any affiliate of any of them or any other person acting on their behalf may from time to time, as principal or agent, have positions in, or may buy or sell, or make a market in any securities (including shares in a Transaction Participant), currencies, financial instruments or other assets owned by a Transaction Participant. Any trading and/or hedging activities of Transaction Participants or any affiliate of any of them or any other person acting on their behalf related to this transaction may have an impact on the price of the underlying assets. It should also be noted that FlexFunds Ltd. acts as both the Arranger of the issue of the Notes and as Calculation Agent in respect of the Charged Assets.

### *Clearing systems*

The Notes will be represented by one or more Temporary Global Notes and Permanent Global Notes. Such Global Notes will be deposited with a common depository for Euroclear and Clearstream, Luxembourg. Except in the circumstances described in the relevant Global Note, investors will not be entitled to receive definitive Notes. Euroclear and Clearstream, Luxembourg will maintain records of the beneficial interests in the Global Notes. While the Notes are represented by one or more Global Notes, investors will be able to trade their beneficial interests only through Euroclear and Clearstream, Luxembourg.

While the Notes are represented by one or more Global Notes the Issuer will discharge its payment obligations under the Notes by making payments to the common depository for Euroclear and Clearstream, Luxembourg for distribution to their account holders. A holder of a beneficial interest in a Global Note must rely on the procedures of Euroclear and Clearstream, Luxembourg to receive payments under the Notes. The Issuer has no responsibility or liability for the records relating to, or payments made in respect of, beneficial interests in the Global Notes.

Holders of beneficial interests in the Global Notes will not have a direct right to vote in respect of the relevant Notes. Instead, such holders will be permitted to act only to the extent that they are enabled by Euroclear and Clearstream, Luxembourg to appoint appropriate proxies.

### *Limitations of the ability to grant security over Notes while in global form*

Because transactions in the Notes will be effected only through Euroclear or Clearstream, Luxembourg, direct or indirect participants in their respective book-entry-systems and certain banks, the ability of a Noteholder to pledge such interests to persons or entities that do not participate in the Euroclear or Clearstream systems, or otherwise to take actions in respect of such interests, may be limited due to the lack of physical security representing such interest.

## **Risks relating to the Charged Assets**

### *Investment in Series Assets*

The Issuer intends to use the proceeds of the issuance of the Notes to (i) invest, on or as soon as practicable after the Issue Date, in Class B common stock (the “**Common Stock**”) of 84 William Street NewCo, Inc. (the “Borrower”), a Delaware corporation with registered office at 160 Greentree Drive Suite 101 Street, in the city of Dover County of Kent, 19904 and (ii) make a secured loan to the Borrower pursuant to the Loan Transaction Documents (as defined below) between, amongst others, the Issuer and the Borrower.

The Borrower indirectly owns an equity interest in 84 William Street (the "Property"), an approximately 110-year-old building that was recently renovated into 137 luxury extended-stay residences operated by AKA, a Korman Communities brand. The equity interest in the Property is currently subordinate to \$96 million of debt and it is anticipated that the debt will be increased to \$110 million prior to the Final Closing as detailed in the Prodigy Private Offering Memorandum.

***Prospective purchasers of the Notes should conduct their own independent investigation and analysis regarding the Issuer, the Common Stock, the Loan Transaction Documents, the Borrower and the Notes as they deem appropriate to evaluate the merits and risks of an investment in the Notes.***

It is important to note that, while it is the Issuer's intent, there is no certainty as at the Issue Date that the Issuer will enter into the Loan Transaction Documents, or what the timing of entry into of the Loan Transaction Documents will be. Therefore, neither the Issuer, the Arranger, the Trustee nor any other party makes any representation regarding the possibility or timing of entry into the Loan Transaction Documents.

The Notes will be redeemed early in full upon the termination or liquidation of the Loan Transaction Documents for any reason, including but not limited to, the completion of the Loan term, early prepayment of the Loan, if the Loan is not made at all, as per the above, following any event of default by the Borrower, or as agreed from time to time by the Issuer and Borrower and notified to the Calculation Agent and the Sale Agent.

The following is a description of the Property as stated in the Prodigy Private Offering Memorandum:

"The subject property is situated on a 7,488 square foot, irregularly shaped site located on the northeast corner of William Street and Maiden Lane. Prior to ownership's acquisition of the property, the site was improved with a 17-story building leased to the New School, which used the building as a student housing facility. There were also several retail tenants located in ground floor suites. Ownership acquired the property at the termination of the lease with the New School and vacated the building including the retail tenants. Ownership has converted the building to an extended stay property containing a total of 137 units with a total net rentable area of 87,981 square feet. The apartments range from studios to two-bedroom units with an average unit size of 642 square feet. In addition to the residential units, the property contains a 3,300 square foot retail suite which will be occupied by Blue Ribbon Federal Grill. As part of the conversion, ownership has added two penthouse levels to the top of the building. The building has an above grade gross building area of 120,540 square feet.

Each of the units features wide-plank, oak hardwood flooring and is fully furnished. Furnishings include HD televisions with a cable package that includes HBO, DVD player, and stereo, as well as phone, linen, flatware, and stemware. Kitchens feature stainless steel appliances, stainless steel countertops, Carrara marble backsplashes and custom made cabinets. Bathrooms feature Carrara marble flooring and walls, walk-in glass showers, and Grohe fixtures.

Amenities include a 24-hour doorman/concierge, conference room/business center, cinema room, fitness center, valet services, housekeeping, complimentary wireless internet, an outdoor rooftop terrace, laundry room, and complimentary coffee as amenities to its tenants."

Additional details for the Property are more particularly set out in the Prodigy Private Offering Memorandum, attached as appendix to this Series Memorandum.

Prodigy Shorewood Investment Management, LLC, a Delaware limited liability company with registered office in 40 Wall St, 31st Floor, The Trump Building, New York, NY, USA, shall serve as the Investment Manager (the "Prodigy Investment Manager") of the Borrower. Summaries of the backgrounds and experience of the Prodigy Investment Manager's personnel are included in the

Prodigy Private Offering Memorandum, a copy (or copies) of which is appended to this Series Memorandum.

*'Covenant-lite' Loan Transaction Documents*

The Loan Transaction Documents do not contain financial covenants which the Borrower is required to maintain. The Loan Transaction Documents do not have "maintenance tests" which are reviewed periodically in order to determine whether the Borrower's operating performance is satisfactory and which provide lenders with greater control over the quality of their investment by requiring the borrower to more strictly preserve its credit quality. The lack of maintenance tests may result in a higher risk of loss and may hinder the Issuer's ability to restructure the Loan in order to mitigate the Issuer's exposure to loss.

*Insolvency of the Borrower could reduce or eliminate the return to the Issuer on the Loan Transaction Documents and so may impair payments on the Notes*

There is a significant risk that the Borrower may enter bankruptcy proceedings. Such proceedings may result in, among other things, a substantial reduction in the interest rate and a substantial write down of the principal of the Loan Transaction Documents. Various laws enacted in the Borrower's home jurisdiction for the protection of debtors or creditors could adversely affect the Issuer's ability to recover amounts owed.

*Lack of diversification*

To the extent that all of the proceeds arising from the issue of the Notes are invested in the Common Stock and the Loan, such assets may be more susceptible to a single adverse economic or regulatory occurrence, and lead to greater fluctuations in the value of Notes than may have been the case when investing in a diversified pool of assets.

*Redemption and transfer of the Charged Assets*

Realisation of the Charged Assets may in certain circumstances be deferred in accordance with their relevant terms. The period of deferral may be significant. Therefore in certain circumstances, including where the Security for the Notes (and any Further Notes) becomes enforceable, there may be a significant delay in payments under the Notes and/or it may be impossible to transfer the Charged Assets as a means of realising their value.

*Security may be declared invalid*

The Issuer will grant security interests in favour of the Trustee for itself and for the benefit of the Noteholders in the Mortgaged Property pursuant to the Trust Deed and the Charging Instrument (as defined below). However, if the security interest of the Trustee in the Mortgaged Property was determined to be invalid or unperfected, Noteholders would be unsecured creditors and would rank on a *pari passu* basis with other unsecured creditors (if any) of the Issuer. Each of the foregoing factors may delay or reduce investors' return on their Notes and investors may suffer a loss (including a total loss) on their investment.

*Not a bank deposit*

Any investment in the Notes does not have the status of a bank deposit in Ireland and is not within the scope of the deposit protection scheme operated by the Central Bank of Ireland. The Issuer is not regulated by the Central Bank of Ireland by virtue of the issue of the Notes.

## **Risks Related to the Borrower and its operations**

*The performance and realisation of the Series Assets, and thereby, of the Notes, is dependent on the overall performance, operations and financial condition of the Borrower*

*NEITHER THE ISSUER, THE TRUSTEE NOR ANY OF THE AGENTS HAVE REVIEWED THE OVERALL PERFORMANCE, OPERATIONS AND FINANCIAL CONDITION OF THE BORROWER OR ANY OTHER CONDITIONS OF THE BORROWER AT THE TIME OF THE ISSUE DATE AND DO NOT GUARANTEE OR MAKE ANY RECOMMENDATIONS OR WARRANTIES, IN ANY FORM, AS TO THE SUITABILITY OF ANY INVESTMENT, INCLUDING THROUGH PURCHASE OF THE NOTES, THE PERFORMANCE OF WHICH IS DEPENDENT ON THE BORROWER OR ANY OF ITS OPERATIONS.*

*During the term of the Notes the Borrower's operating results may fluctuate.*

The Borrower's operating results may fluctuate due to a number of factors, including the risks described in this Series Memorandum.

*Any adverse effect on the Borrower may, through the Loan Transaction Documents, affect the performance of the Notes and the Issuer's ability to meet its obligations in respect of the Notes.*

The performance of the Notes is tightly linked to the ability of the Borrower to meet its obligations under the Series Assets. Therefore, any adverse effect on the Borrower's financial results, performance, and / or growth prospects may subsequently, through the Series Assets, adversely affect the performance of the Notes and the ability by the Issuer to meet its obligations in respect of the Notes, which will be dependent on the receipt by the Issuer of moneys due to it under the Mortgaged Property (Including the Series Assets).

## **Summary of Principal Underlying Investment Risks**

As with any investment, you could lose all or part of your investment in the Notes, and the Notes' performance could trail that of other investments. The Notes are subject to the principal risks noted below (either directly or through its investments in the Series Assets), any of which may adversely affect the Net Asset Value of the Portfolio held in respect of the Notes and the Notes' trading price, yield, total return and ability to meet its investment objective.

**Asset Class Risk:** Securities in an underlying portfolio may underperform in comparison to the general securities markets or other asset classes.

**Concentration Risk:** To the extent that the Notes' underlying investments are concentrated in a particular issuer, region, country, market, industry or asset class, the Notes may be susceptible to loss due to adverse occurrences affecting that issuer, region, country, market, industry or asset class.

**Counterparty Risk:** The Issuer bears the risk that the counterparty to a derivative or other contract with a third party may default on its obligations or otherwise fail to honor its obligations. If a counterparty defaults on its payment obligations the Issuer will lose money and the value of an investment in the Notes may decrease. In addition, the Issuer may engage in such investment transactions with a limited number of counterparties.

**Currency Exchange Rate Risk:** Changes in currency exchange rates and the relative value of non-U.S. currencies may affect the value of the Issuer's investment and the value of the Notes. Currency exchange rates can be very volatile and can change quickly and unpredictably. As a result, the value of an investment in the Notes may change quickly and without warning and you may lose money.

**Credit Risk:** The financial condition of an issuer of securities may cause it to default or become unable to pay interest or principal due or otherwise fail to perform. The Issuer cannot collect interest

and principal payments on securities if the issuer defaults. While the Issuer attempts to limit credit exposure in a manner consistent with its investment objective, the value of an investment in the Notes may change quickly and without warning in response to issuer defaults and changes in the credit ratings of the Issuer's portfolio investments.

**Interest Rate Risk:** Interest rate risk is the risk that fixed income securities will decline in value because of changes in interest rates and other factors, such as perception of an issuer's creditworthiness.

**Issuer-Specific Risk:** Issuer-specific events relating to the underlying issuer of securities, including changes in the financial condition of any such issuer, can have a negative impact on the value of the Notes.

**Investment Risk:** As with all investments, an investment in the Notes is subject to investment risk. Noteholders could lose money, including the possible loss of the entire principal amount of an investment, over short or long periods of time.

**Liquidity Risk:** The Issuer may invest in the Series Assets which may be less liquid than other types of investments. The derivatives in which the Issuer invests may not always be liquid. This could have a negative effect on the Issuer's ability to achieve its investment objective and may result in losses to holders of the Notes.

**Non-Diversification Risk:** The Portfolio is considered to be non-diversified, which means that it may invest more of its assets in the securities of a single issuer or a smaller number of issuers than if it were a diversified Portfolio. To the extent the Issuer invests a significant percentage of its assets in a limited number of issuers, the Issuer is subject to the risks of investing in those few issuers, and may be more susceptible to a single adverse economic or regulatory occurrence. As a result, changes in the market value of a single security could cause greater fluctuations in the value of the Notes than would occur in a diversified note.

### ***Security for the Notes***

As the Series Assets held in respect of the Notes are held in, and governed by New York law, the Issuer will grant security interests over the Series Assets pursuant to a New York law governed Supplemental Security Agreement entered into between the Issuer and the Trustee dated on or about the Issue Date. See "*Description in relation to the Security Arrangements in respect of the Notes*" below.

**AS WITH ANY INVESTMENT YOU COULD LOSE ALL OR PART OF YOUR INVESTMENT IN THE NOTES AND THE NOTES' PERFORMANCE COULD TRAIL THAT OF OTHER INVESTMENTS. YOUR ATTENTION IS DRAWN TO THE PRODIGY PRIVATE OFFERING MEMORANDUM AS DEFINED BELOW AND ATTACHED AS APPENDIX OR APPENDIXES TO THIS SERIES MEMORANDUM. IN PARTICULAR PROSPECTIVE INVESTORS SHOULD NOTE THE SECTION OF THE PRODIGY PRIVATE OFFERING MEMORANDUM ENTITLED "CERTAIN RISK FACTORS". PROSPECTIVE INVESTORS SHOULD NOT INVEST IN THE NOTES WITHOUT TAKING INDEPENDENT ADVICE ON THE RISKS SET OUT THEREIN.**

**THE CONSIDERATIONS SET OUT ABOVE ARE NOT, AND ARE NOT INTENDED TO BE, A COMPREHENSIVE LIST OF ALL CONSIDERATIONS RELEVANT TO A DECISION TO PURCHASE OR HOLD ANY NOTES. THE ATTENTION OF INVESTORS IS ALSO DRAWN TO THE SECTIONS HEADED "RISK FACTORS" IN THE PROGRAMME MEMORANDUM.**

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## Summary of the Transaction

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The following summary of the transaction does not purport to be complete and is qualified in its entirety by the more detailed information contained elsewhere in this Series Memorandum including, without limitation, the Conditions of the Notes. Words and expressions used but not expressly defined in this summary of the transaction shall have the meanings given to them in the Conditions.

<b>Issuer:</b>	IA Capital Structures (Ireland) plc, a special purpose company incorporated for the sole purpose of carrying out the activities described in the Programme Memorandum. See " <i>Information relating to the Issuer</i> " below.
<b>Programme:</b>	The Notes are issued pursuant to the Issuer's €5,000,000,000 Secured Note Programme.
<b>Arranger:</b>	FlexFunds Ltd.
<b>Calculation Agent:</b>	FlexFunds Ltd.
<b>Placing Agent:</b>	Both GWM Group, Inc. and GWM LTD.
<b>Sale Agent:</b>	Both GWM Group, Inc. and GWM LTD.
<b>Issue Agent:</b>	Citibank N.A., London Branch.
<b>Principal Paying Agent:</b>	Citibank N.A., London Branch.
<b>Trustee:</b>	Sanne Fiduciary Services Limited.
<b>Principal Amount:</b>	USD 25,000,000 (subject to the provisions of Further Notes and Redemptions below).
<b>Currency:</b>	USD.
<b>Authorised Denomination:</b>	USD 1,000
<b>Issue Price:</b>	95% of the Authorised Denomination.
<b>Interest:</b>	Interest is determined based on the total return of the Portfolio, such that an amount in respect of Interest shall be payable in respect of each Note on the Interest Payment Date equal to the greater of:  (a) Distribution Net Proceeds; and  (b) Zero.
<b>Interest Payment Date:</b>	Any Business Day determined by the Calculation Agent or the Issuer which falls within fifteen (15) Business Days of the Issuer receiving an interest payment, distribution or similar payment in respect of the Series Assets.

<b>Issue Date:</b>	30 September 2016.
<b>Charged Assets:</b>	The Series Assets and the Related Rights. See " <i>Information relating to the Charged Assets</i> " below.
<b>Series Assets:</b>	The Prodigy Transaction Documents, the Loan, the Common Stock, the Cash Reserve Account, any loan agreement and/or promissory note entered into between the Issuer and Borrower from time to time and all monies, credit balances, assets or related contracts and deposit accounts, to the extent any of the foregoing is held by the Issuer in relation to the Notes.
<b>Fees:</b>	<p>The amounts payable under the Notes are based on the performance of the Charged Assets after deduction of fees due to the Arranger. Such fees are in addition to the fees due to the Trustee and any Agents, and any other transaction related fees incurred by the Issuer in respect of the issuance of the Notes as determined by the Calculation Agent.</p> <p>All fees are payable prior to any amounts being payable in respect of the Notes to any Noteholders. The fees will be applied in calculating the value of the Portfolio and therefore will result in a reduction in the value of the Notes.</p>
<b>Scheduled Maturity Date:</b>	29 September 2021
<b>Reports:</b>	<p>The Arranger will publish a summary of the NAV Report received from the Calculation Agent on Bloomberg and will disseminate the NAV to SIX Financial Information USA Inc. and to the Vienna Stock Exchange</p> <p>See Special Condition V below.</p>
<b>Redemption Amount:</b>	<p>Unless previously redeemed the Notes will be redeemed by a payment in respect of each Note on the Final Maturity Payment Date of an amount in USD (the "<b>Redemption Amount</b>") equal to the Net Proceeds.</p> <p>See "<i>Limited recourse</i>" below.</p> <p>The Final Maturity Payment Date may be significantly later than the Maturity Date. See "<i>Risk Factors – Payments</i>" above.</p>
<b>Optional Redemption by the Noteholder:</b>	Noteholders have no right to request the Issuer to redeem the Notes at any time prior to their Scheduled Maturity Date.
<b>Optional Redemption by the Issuer:</b>	The Issuer may, on giving not less than ten (10) Business Days' prior notice to Noteholders, redeem any amount of the Notes by a payment to the holders of the Notes that are so redeemed on the Optional Redemption Payment Date of an amount equal to the Early Redemption Amount.

- Early Redemption:**
- (a) If the Notes become due and repayable in accordance with Condition 2(b)(1), the Notes will be redeemed by a payment in respect of each Note on the Early Redemption Payment Date of an amount in USD equal to the Net Proceeds of the Charged Assets.
  - (b) If the Notes become due and repayable in accordance with Condition 2(b)(2) or Condition 2(c) (as the case may be), the Notes will be redeemed at the applicable Early Redemption Amount by a payment in respect of each Note on the Early Redemption Payment Date of an amount in USD equal to the Early Redemption Amount.
- Early Redemption Amount:** Subject to the provisions of Special Condition (IV) below, the Early Redemption Amount shall be determined as an amount equal to the Redemption Amount as if the Early Redemption Date was the Final Maturity Payment Date.
- Net Proceeds:** An amount determined by the Calculation Agent being the *pro rata* share of the Realisable Value of the Charged Assets in respect of one Note; less the *pro rata* share in respect of one Note of any redemption and settlement costs and expenses in respect of the Charged Assets; less the *pro rata* share in respect of one Note of any fees, costs or expenses owing to the Trustee and the Agents in connection with the Notes; and less the *pro rata* share in respect of one Note of any fees payable to the Arranger and the Portfolio Manager pursuant to the Conditions of the Notes, less the *pro rata* share in respect of one Note of USD 1,000 per annum to be retained by the Issuer.
- Realisable Value:** An amount determined by the Calculation Agent being: (a) the proceeds of sale or other means of realisation of the Charged Assets (including for the avoidance of doubt any repayments or prepayments of principal under the Loan Transaction Documents) or any proportion thereof as determined by the Calculation Agent; *less* (b) any costs, expenses, taxes and duties incurred in connection with the disposal, transfer or other realisation of the Charged Assets by the Sale Agent or any agent of the Issuer. For the avoidance of doubt Realisable Value shall only be in respect of Charged Assets or any part of Charged Assets purchased with the proceeds of issue of the Notes of this Series.
- Distribution Proceeds:** An amount determined by the Calculation Agent being: (a) the proceeds of a dividend or other distribution in respect of the Charged Assets (including an interest payment under the Loan); less (b) any costs, expenses, taxes and duties incurred in connection with the receipt of such dividend or other revenue.
- Distribution Net Proceeds:** An amount determined by the Calculation Agent being the *pro rata* share of the Distribution Proceeds of the Charged Assets in respect of one Note; less the *pro rata* share in respect of one Note of any redemption and settlement costs and expenses in respect of the

Charged Assets; less the *pro rata* share in respect of one Note of any fees, costs or expenses owing to the Trustee and the Agents in connection with the Notes; and less the *pro rata* share in respect of one Note of any fees payable to the Arranger pursuant to the Conditions of the Notes.

**Security:**

The Security for the Notes will be constituted by the Constituting Instrument, a Trust Deed entered into by the execution of a Constituting Instrument dated the Issue Date between the Issuer and the Trustee, amongst others (the "**Trust Deed**") and the Charging Instrument as described in the Conditions of the Notes. See "*Description of the Security Arrangements in respect of the Notes*" below.

**Priority on Enforcement of Security:**

On enforcement of Security in respect of the Notes the Trustee will apply the enforcement proceeds in the following order of priority:

1. payment of the fees, costs, charges, expenses (including legal fees), liabilities, indemnity payments and all other amounts payable to the Trustee or incurred by the Trustee or by any receiver, custodian or other person appointed by it in connection with the performance of its duties and obligations;
2. *pro rata* and *pari passu* according to the respective amounts thereof payment of the fees, costs, charges, expenses (including legal fees), liabilities, indemnity payments and all other amounts payable to the respective Agents in connection with the performance of their respective duties and obligations;
3. payment of any unpaid taxes or other governmental duties or charges owing by the Issuer;
4. in meeting the amounts due to Noteholders *pari passu* and rateably; and
5. in payment of the balance (if any) to the Issuer.

**Events of Default:**

The Security in respect of the Notes will become enforceable in the circumstances described in Condition 4 relating to Events of Default. The Events of Default include, without limitation, unremedied defaults by the Issuer relating to the payment of amounts due on the Notes and the insolvency of the Issuer. Upon the occurrence of an Event of Default the Trustee may at its discretion (or, in certain cases, shall) deliver a notice to the Issuer and others declaring the Notes to be immediately due and payable and the amount payable in respect of each Note is set out in Condition 2(e)(2). See also Conditions 4 and 5.

**Form:**

The Notes will initially each be represented by beneficial interests in a temporary global note (the "**Temporary Global Note**") in bearer form. Pursuant to the Conditions of the Notes, each Temporary Global Note may be exchanged for a permanent global note in bearer form (the "**Permanent Global Note**"). Except in limited circumstances, bearer

definitive Notes will not be issued in exchange for beneficial interests in the Permanent Global Notes.

- Status:** The Notes are limited recourse obligations of the Issuer secured in the manner described herein.
- Use of Proceeds:** The entire net proceeds from the issue of Notes will be paid into the Cash Reserve Account on or about the Issue Date and, on or prior to the Recapitalization Date, used to purchase the Series Assets as further described in the 'Use of Proceeds' section of this Series Memorandum.
- Further Notes:** Further Notes may be issued which will be consolidated and form a single series with the Notes.
- Listing:** Application has been made to list the Notes on the Third Market of the Vienna Stock Exchange. Listing is expected to take place on or about the Issue Date but no assurance can be given that such application will be granted.
- Rating:** The Notes will not be rated.
- Business Days:** New York, Dublin and London
- Governing Law:** The Notes and all non-contractual obligations and any other matters arising from them will be governed by, and construed in accordance with, the laws of Ireland. The courts of Ireland shall have non-exclusive jurisdiction in respect of any dispute. The New York Security is governed by New York law and New York State and / or Federal Courts may have jurisdiction over any dispute or enforcement proceedings relating thereto.
- Placing Agreement:** The Issuer has entered into the Placing Agreement with the Placing Agent, whereby the Placing Agent agreed to place the Notes with investors, subject to the selling restrictions.
- The Issuer, after prior consultation with the Arranger, reserves the right to modify the total nominal amount of the Notes to which investors can subscribe.
- Risk Factors:** The Notes are not principal protected and involve significant risks. The attention of prospective Noteholders is drawn to the section "*Risk Factors*" in the Programme Memorandum and in this Series Memorandum and the section "*Information Relating to the Charged Assets*" of this Series Memorandum.

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## Conditions of the Notes

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### Prodigy Network AKA Wall Street Recap - 84 William Street (Series 87) Notes due 2021

The Noteholders should note that words and expressions not otherwise defined below shall have the meanings respectively ascribed to them by Special Condition (I) below.

The Notes designated as above (the "**Notes**") shall have the following terms and conditions which shall complete, modify and amend the Master Conditions (March 2014 Edition), which shall apply to the Notes as so completed, modified and amended. References to "**Conditions**" or "**Condition**" shall mean references to the Conditions of the Notes as modified herein.

The Issuer intends that any Further Notes which are issued pursuant to Condition 16 as amended by Special Condition (VI) (as defined herein) shall (save in respect of the relevant issue date) have the same Conditions as, and form a single Series with, the Notes of this Series.

1. (i) Issuer: IA Capital Structures (Ireland) plc.  
(ii) Arranger: FlexFunds Ltd.
2. (i) Series Number: 87.  
(ii) Tranche Number: 1.
3. Principal Amount: USD 25,000,000.  
  
The Principal Amount of the Notes may be increased, at the discretion of the Issuer, by the issue of Further Notes from time to time (without requiring the consent of Noteholders) which shall be consolidated and form a single Series with the Notes of this Series, subject as provided in Special Condition (VI).
4. Issue Price: 95% of the Authorised Denomination.
5. Authorised Denomination: USD 1,000
6. (i) Issue Date: 30 September 2016  
(ii) Interest Commencement Date: Not applicable.
7. Maturity Date: The later of (i) 29 September 2021 (the "**Scheduled Maturity Date**"); (ii) any Extended Maturity Date, and (iii) the date that all of the Notes are fully redeemed.
8. Extended Maturity Date: The date to which the term of the Notes may be extended under Special Condition (XIII)
9. Interest Basis: Variable Coupon Amount.

10. Status of the Notes:
- (i) Status of the Notes: Secured and limited recourse obligations of the Issuer ranking *pari passu* without any preferences amongst themselves secured as set out under Security below and subject to the priority set out under Priority below.
- (ii) Priority: Counterparty Priority applies.
11. Listing: An application has been made for admission of the Notes to the official list of the Third Market of the Vienna Stock Exchange. Such listing is expected to take place on or about the Issue Date. However, no assurance is given that approval of such application will be granted.
12. Fixed Rate Note Provisions: Not applicable.
13. Floating Rate Note Provisions: Not applicable.
14. Zero Coupon Note provisions: Not applicable.
15. Dual Currency Note Provisions: Not applicable.
16. Variable Coupon Amount Note Provisions: Applicable.
- (i) Interest Period: As regards the first interest period, the period from and including the Issue Date to and excluding the first Interest Determination Date and as regards all subsequent interest periods the period from and including an Interest Determination Date to and excluding the next Interest Determination Date or to and including the Scheduled Maturity Date or an Extended Maturity Date as applicable.
- (ii) Interest Determination Date: Any Business Day at the discretion of the Arranger, or the Issuer following receipt of an interest payment, dividend, distribution or similar payment in respect of the Series Assets.
- (iii) Interest Rate: The Notes shall receive a total return based on the performance of the Portfolio during the Interest Period.
- (iv) Interest Amounts: The greater of:
- (a) Distribution Net Proceeds; and
- (b) Zero.

- (v) Interest Payment Date: Any Business Day determined by the Calculation Agent or the Issuer which falls within fifteen (15) Business Days of the Issuer receiving an interest payment, distribution or similar payment in respect of the Series Assets.
- (vi) Business Day Convention: Following Business Day Convention in Dublin, London, and New York.
17. Optional Redemption: Condition 2(f)(2) applies as amended by Special Condition (III).
18. Redemption Amount: Special Condition (II) applies.
19. Early Redemption Amount: Special Condition (IV) applies.
20. Redemption Amount on redemption for taxation: Condition 2(c)(A)(1) shall apply as amended by Special Condition (IV).
21. Form of Notes: Bearer Notes:
- (i) The Notes will initially be represented by: Temporary Global Note.
- (ii) Applicable TEFRA exemption: D Rules
- (iii) Temporary Global Note exchangeable for Permanent Global/Definitive Bearer/Registered Notes: Condition 10(a) applies.
- (iv) Permanent Global Note exchangeable for Definitive Bearer/ Registered Notes: Permanent Global Note is exchangeable for Definitive Notes in the limited circumstances specified in the Permanent Global Note.
- (v) Registered Notes: Not applicable.
22. Additional Financial Centre(s) or other special provisions relating to Payment Dates: Not applicable.
23. Talons for future Coupons or Receipts to be attached to Definitive Notes (and dates on which such Talons mature): No.
24. Details relating to Instalment Notes: amount of each instalment, date on which each payment is to be made: Not applicable.
25. Redenomination applicable: Not applicable.

26. Portfolio Management:

- (i) Portfolio Manager: Not applicable.
- (ii) Portfolio Management Agreement: Not applicable.
- (iii) Investment Objective: Not applicable.
- (iv) Management Criteria: Not applicable.
- (v) Portfolio: Not applicable.

27. Security:

- (i) Charged Assets: The Charged Assets shall be the Series Assets and the Related Rights.

On the Issue Date, or as soon as practicable thereafter, the Issuer shall invest in the Series Assets set out in the section "*Information relating to Charged Assets*" below, (such Series Assets, together with the Related Rights applicable thereto, the "**Original Charged Assets**").

If the Issuer issues Further Notes pursuant to Condition 16 as amended by Special Condition (VI) with the intention that such Further Notes be consolidated and form a single Series with the Notes issued on the Issue Date (and all other Further Notes issued from time to time) the Issuer shall, in connection with each such issue of Further Notes, invest in further assets which shall be combined with the Series Assets (such further assets, together with the Related Rights applicable thereto, referred to as the "**Further Charged Assets**") with the issue proceeds of the relevant Further Notes such that the Notes and the Further Notes from time to time so issued shall be secured collectively on the Original Charged Assets and all of the Further Charged Assets. All references to "*Charged Assets*" shall be to the Original Charged Assets and the Further Charged Assets from time to time so purchased by the Issuer.

The assets comprising the Portfolio will be registered in the name of the Issuer and certificates in respect of the Charged Assets will be held by the Issuer subject to the security constituted by the Constituting Instrument and the Charging Instrument.

(ii)	Charging Instrument	Pursuant to a supplemental security agreement in respect of the Series Assets entered into between the Issuer and the Trustee dated on the date of the purchase of the relevant Charged Assets (the " <b>Charging Instrument</b> ") the Issuer will grant in favour of the Trustee, as security for itself, and the Secured Parties, a security interest governed under the law of New York over the Issuer's interest in the Charged Assets from time to time (such security the " <b>New York Security</b> ").
(iii)	Depository Account	Not applicable.
(iv)	Charged Agreement:	Not applicable.
(v)	Swap Counterparty:	Not applicable.
28.	Securities Lending Agreement:	Not applicable.
29.	Portfolio Administrator:	Not applicable.
30.	Fees:	Special Condition (XI) applies.
31.	Additional selling restrictions	As set out in " <i>Selling Restrictions</i> " below.
32.	ISIN Code:	XS1495638576
33.	Common Code:	149563857
34.	Alternative Clearing System:	Not applicable.
35.	Delivery:	Free of payment.
36.	Principal Paying Agent:	Citibank N.A., London Branch.
37.	Sub-Custody:	Not applicable.
38.	Calculation Agent:	FlexFunds Ltd.

The Calculation Agent shall provide the NAV Report to the Arranger on each NAV Report Date.

The Arranger will publish a summary of the NAV Report received from the Calculation Agent on Bloomberg and will disseminate the NAV to SIX Financial Information USA Inc. and to the Vienna Stock Exchange.

All determinations made by the Calculation Agent hereunder shall, in the absence of manifest error, be final and conclusive. Whenever a Calculation Agent is required to act or to exercise judgment in any way, it will do so in good faith and in a

commercially reasonable manner. Furthermore, each party agrees that the Calculation Agent is not acting as a fiduciary for or as an advisor to such party in respect of its duties as Calculation Agent in connection with any determinations hereunder.

39. Exchange of Permanent Global Note: The Permanent Global Note will be exchangeable, in whole but not in part, for a definitive Bearer Note if:
- (i) Euroclear or Clearstream, Luxembourg or any other clearing system in which the Permanent Global Note is for the time being deposited is closed for business for a period of 14 days (other than by reason of holidays statutory or otherwise) or announces an intention to permanently cease business or to cease to make its book-entry system available for settlement of beneficial interests in such Permanent Global Note or does in fact do either of such things and no alternative clearing system, satisfactory to the Trustee and the Principal Paying Agent is available, or
  - (ii) the Notes become due and payable in accordance with Condition 4 and payment is not made on due presentation of the Permanent Global Note for payment.

40. Governing law: The Notes and all non-contractual obligations and any other matters arising from it will be governed by and construed in accordance with the laws of Ireland. The courts of Ireland shall have non-exclusive jurisdiction in respect of any dispute. The New York Security is governed by New York law and New York State and / or Federal Courts may have jurisdiction over any dispute or enforcement proceedings relating thereto. .

### **Admission to trading, public offer and listing**

Application has been made to list the Notes on the Third Market of the Vienna Stock Exchange.

The Notes will not be offered to the public in any jurisdiction. See "*Selling Restrictions*" below and in the Programme Memorandum.

GWM Group, Inc. and GWM LTD, in their capacity as the Placing Agent, will be solely responsible for the placing of the Notes with prospective investors.

## Special Conditions:

### (I) Definitions

Words set out in italics in these Conditions do not form part of the definitions for the purpose of the Constituting Instrument and the documents constituted thereby. In the event of a conflict between the Conditions and the Special Conditions, the Special Conditions shall prevail.

**"Additional Mandatory Redemption Event"** means, for the purpose of Condition 2(b)(2) (as amended), the occurrence of any of the following:

- (i) the Calculation Agent determines that there is a termination or liquidation of the Loan Transaction Documents, for any reason, including but not limited to, the completion of the Loan term, prepayment of the Loan in full, any event of default by the Borrower, or as agreed from time to time by the Issuer and Borrower and notified to the Calculation Agent and the Sale Agent.
- (ii) the Issuer determines that its obligations under the Notes at any time become illegal.

**"Agents"** means, the Principal Paying Agent, the Issue Agent, the Sale Agent, the Placing Agent and the Calculation Agent.

**"Arranger Default"** means if any of the follow events occur (in the sole discretion of the Issuer) in respect of the Arranger. If the Arranger:

- (iii) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (iv) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (v) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (vi) (A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof;
- (vii) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (viii) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (ix) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced

or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter;

- (x) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) above (inclusive);
- (xi) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or
- (xii) becomes unable to, or fails to within 10 days of receiving notice from the Trustee or the Issuer, perform its duties under the Notes.

**"Borrower"** means 84 William Street NewCo, Inc.

**"Business Day"** means a day on which banks are generally open for business in New York, Dublin and London.

**"Calculation Agent"** means FlexFunds Ltd. and any successor appointed by the Issuer (with the prior approval of the Trustee) in accordance with the provisions of the Agency Agreement.

**"Cash Reserve Account"** means a United States dollar denominated interest bearing account in the name of the Issuer and which shall be opened by GWM LTD with Interactive Brokers LLC.

**"Class B Subscription Agreement"** means the subscription agreement for the subscription of the purchase of Class B Common Stock with 84 William Street NewCo, Inc, Prodigy Shorewood Investment Management, LLC and NESF Fund Services Corp.

**"Collateral Default"** means either (i) a compulsory redemption (howsoever described) of the Charged Assets; or (ii) a distribution or return of capital and / or assets to holders of the Charged Assets following the winding up or liquidation of the Common Stock, Borrower and / or event of default under the Loan Transaction Documents.

**"Common Stock"** or **"Class B Common Stock"** means the Class B Common Stock of the Borrower purchased by the Issuer using the proceeds of issue of the Notes.

**"Distribution Date"** means a date on which the Issuer receives an interest payment, dividend, distribution or similar payment in respect of the Series Assets.

**"Distribution Proceeds"** means an amount determined by the Calculation Agent being: (a) the proceeds of a dividend or other distribution in respect of the Charged Assets (including an interest payment under the Loan); less (b) any costs, expenses, taxes and duties incurred in connection with the receipt of such dividend or other revenue.

**"Distribution Net Proceeds"** means an amount determined by the Calculation Agent being the *pro rata* share of the Distribution Proceeds of the Charged Assets in respect of one Note; less the *pro rata* share in respect of one Note of any redemption and settlement costs and expenses in respect of the Charged Assets; less the *pro rata* share in respect of one Note of any fees, costs or expenses owing to the Trustee and the Agents in connection with the Notes; and less the *pro rata* share in respect of one Note of any fees payable to the Arranger pursuant to the Conditions of the Notes.

**"Early Redemption Date"** means in relation to Conditions 2(b) or 2(c), the date specified in the notice given by or on behalf of the Issuer to the Noteholders in accordance with the Conditions.

**"Early Redemption Payment Date"** means five (5) Business Days following the day that the Issuer receives the aggregate Realisable Value pursuant to Special Condition (IV). The Early Redemption Payment Date may be significantly later than the Early Redemption Date. See "*Risk Factors – Payments*".

**"Extended Maturity Date"** means the date to which the term of the Notes may be extended under Special Condition (XIII).

**"Final Maturity Payment Date"** means, subject as provided in Special Condition (VII), five (5) Business Days following the day that the Issuer receives the aggregate Realisable Value pursuant to Special Condition (II). The Final Maturity Payment Date may be significantly later than the Scheduled Maturity Date or the Extended Maturity Date, as applicable. See "*Risk Factors – Payments*".

**"Loan"** means the loan made by the Issuer to the Borrower, pursuant to the Loan Transaction Documents.

**"Loan and Security Agreement"** means the amended and restated loan and security agreement between, amongst others, the Issuer, the Borrower and Prodigy Shorewood Investment Management, LLC (as agent) to amend and restate that certain loan and security agreement dated 18 October 2013 between the Borrower, Prodigy Shorewood Investment Management, LLC (as agent) and the lenders set out therein, in relation to, inter alia, the advance of a loan to the Borrower (as may be amended, restated, supplemented, varied, assigned, novated, or otherwise from time to time).

**"Loan Transaction Documents"** means together the Loan and Security Agreement and Promissory Note.

**"Mandatory Redemption Event"** means any of the events described in Conditions 2(b)(1), (2) or (3).

**"Monthly NAV High"** means a Net Asset Value calculated per Note (by dividing the Net Asset Value by the number of Notes outstanding) as at a NAV Report Date which is higher than the previous highest Net Asset Value calculated per Note as at a NAV Report Date, provided that the first Monthly NAV High shall be the Net Asset Value calculated per Note as at the Issue Date.

**"NAV Report"** means a report provided to the Issuer by the Calculation Agent setting out the calculation of the Net Asset Value of the Portfolio (net of any fees as described under Special Condition (XI) below).

**"NAV Report Date"** means the last Business Day of each calendar month.

**"Net Asset Value"** means the value for each component of Series Assets (net of any fees as described under Special Condition (XI) below), as provided by the Calculation Agent to the Issuer, as the case may be, on or before the NAV Report Date, and **"Net Asset Value of the Portfolio"** means the aggregate of the Net Asset Value of each component (net of any fees as described under Special Condition (XI) below) comprised in the Portfolio.

**"Net Proceeds"** means an amount determined by the Calculation Agent being the *pro rata* share of the Realisable Value of the Charged Assets in respect of one Note; less the *pro rata* share in respect of one Note of any redemption and settlement costs and expenses in respect of the Charged Assets; less the *pro rata* share in respect of one Note of any fees, costs or expenses owing to the Trustee and the Agents in connection with the Notes; and less the *pro rata* share in respect of one Note of any fees payable to the Arranger and the Portfolio Manager pursuant to the Conditions of the Notes, less the *pro rata* share in respect of one Note of USD 1,000 per annum to be retained by the Issuer.

**"New York Security"** means the security interests governed by New York law created by the Charging Instrument dated the Issue Date between the Issuer and the Trustee pursuant to which the Issuer has granted in favour of the Trustee for itself and as trustee for the Secured Parties a security interest over the Charged Assets.

**"Optional Redemption Date"** means the date specified in an Optional Redemption Notice given by the Issuer or the Arranger pursuant to Condition 2(f)(2), as amended by Special Condition (III) (*Optional Redemption by the Issuer*).

**"Optional Redemption Payment Date"** means five (5) Business Days following a day that the Issuer receives the aggregate Realisable Value pursuant to Special Condition (III). The Optional Redemption Payment Date may be significantly later than the Optional Redemption Date. See "*Risk Factors – Payments*".

**"Placing Agent"** means both GWM Group, Inc. and GWM LTD.

**"Portfolio"** means the Series Assets.

**"Prodigy Private Offering Memorandum"** means the Amended and Restated Confidential Private Offering Memorandum (dated 21 September 2016) of Realty Associates, Prodigy Shorewood New York REP Co., appended to the Series Memorandum.

**"Prodigy Transaction Documents"** means the Class B Subscription Agreement, the Stockholders Agreement and the Loan Transaction Documents.

**"Promissory Note"** means the amended and restated promissory note executed and delivered by the Borrower in connection with the Loan and Security Agreement.

**"Realisable Value"** means an amount determined by the Calculation Agent being the *pro rata* share of the proceeds of sale or other means of realisation of the Charged Assets (including for the avoidance of doubt any repayments or prepayments of principal under the Loan Transaction Documents) or any proportion thereof, as determined by the Calculation Agent, in respect of one Note less any costs, expenses, taxes and duties incurred in connection with the disposal or transfer of the Charged Assets by the Sale Agent or any Agent of the Issuer. For the avoidance of doubt Realisable Value shall only be in respect of Charged Assets or any part of Charged Assets purchased with the proceeds of issue of the Notes of this Series.

**"Recapitalization Date"** shall have the meaning given to such term in the Prodigy Private Offering Memorandum.

**"Related Rights"** means all rights of the Issuer derived from or connected to the Series Assets and the Charged Assets including, without limitation, any rights to receive additional shares or

other securities, assets or rights or any offers in respect thereof (whether by way of bonus issue, option rights, exchange, substitution, conversion or otherwise) or to receive monies (whether by way of redemption, return of capital, interest, dividend, distribution, income or otherwise) in respect of the Series Assets and the Charged Assets.

**"Sale Agent"** means both GWM Group, Inc. and GWM LTD.

**"Series Assets"** means the Prodigy Transaction Documents, the Loan, the Common Stock acquired or held by the Issuer, the Cash Reserve Account, any loan agreement and/or promissory note entered into between the Issuer and Borrower from time to time and any and all investments, monies, credit balances, assets or related contracts and deposit accounts, trading positions or beneficial interests in any assets to the extent any of the foregoing is:

(i) held, carried and / or maintained by the Issuer and / or any of the Agents, in relation to the Notes, or

(ii) established, agreed or obtained by the Issuer in relation to the Notes.

*See "Information relating to the Charged Assets" below.*

**"Security"** means the Charging Instrument and the security constituted by the Trust Deed entered into by the execution of the Constituting Instrument dated the Issue Date between the Issuer and the Trustee, amongst others.

**"Stockholders Agreement"** means the Stockholders Agreement of 84 William Street NewCo, Inc. between the Borrower, the holders of Class A common stock in the Borrower, the holders of Class B common stock in the Borrower and the Borrower.

(II) **Redemption Amount**

Unless previously redeemed the Notes will be redeemed by a payment in respect of each Note on the Final Maturity Payment Date of an amount in USD (the "**Redemption Amount**") equal to the Net Proceeds.

No interest or other amount shall accrue or be payable in respect of the Notes in respect of the period from and including the Scheduled Maturity Date, to and including the Final Maturity Payment Date.

(III) **Optional Redemption**

The amount payable in respect of any Notes pursuant to an Optional Redemption by the Issuer or an Optional Redemption by the Arranger will be an amount in USD determined by the Calculation Agent equal to the Early Redemption Amount (the "**Optional Redemption Amount**").

*Optional Redemption by the Issuer*

Condition 2(f)(2) shall apply to the Notes.

The Issuer:

(A) may, on giving not less than ten (10) Business Days' prior notice to the Trustee and the Noteholders (in accordance with Condition 7);

(B) shall, at any time after receipt of a notice pursuant to this Special Condition (III) from the Arranger,

(such notice an "**Optional Redemption Notice**") redeem any amount of the Notes at their Optional Redemption Amount on the Optional Redemption Payment Date. The provisions of Condition 2(f)(2) is hereby amended accordingly.

*Optional Redemption by the Arranger*

The Issuer shall, subject to compliance with all relevant laws, regulations and directives, at the option of the Arranger, where the Arranger is the holder of any Note, redeem such Note on the Optional Redemption Date.

To exercise such option the Arranger must deposit the relevant Note with any Paying Agent (in the case of Bearer Notes) or the Registrar or any Transfer Agent (in the case of Registered Notes) at their respective specified offices, together with a duly completed notice of redemption ("**Redemption Notice**") in the form obtainable from any Paying Agent (in the case of Bearer Notes) or from the Registrar or any Transfer Agent (in the case of Registered Notes) not more than 30 nor less than 2 Business Days prior to the relevant date for redemption and provided that, in the case of any Note represented by a Global Note or a Global Registered Certificate registered in the name of a nominee for Euroclear or Clearstream, Luxembourg or an Alternative Clearing System, the Arranger must deliver such Redemption Notice together with an authority to Euroclear or Clearstream, Luxembourg or the relevant Alternative Clearing System (in each case, as appropriate) to debit such Arranger's account accordingly and provided that, in the case of any Note represented by a Global Registered Certificate registered in the name of any other person, the Arranger must deliver such Redemption Notice together with an instruction to such person to amend its records accordingly. No Note (or authority) so deposited may be withdrawn (except as provided in the Constituting Instrument) without the prior written consent of the Issuer.

(IV) **Early Redemption Amount**

Condition 2(c)(B) shall apply to the Notes.

(A) The Early Redemption Amount of the Notes (in respect of principal and interest (if applicable)) shall be determined in accordance with Condition 2(e)(2) read with this Special Condition (IV) as follows:

- (i) In the event the Notes become due and payable pursuant to Condition 2(b)(1), the Sale Agent shall, on behalf of the Issuer sell or procure the sale or other means of realisation of the Charged Assets in accordance with the Master Charged Assets Sale Terms. The applicable Early Redemption Amount payable in respect of each Note pursuant to Condition 2(b)(1) will be the Net Proceeds; or
- (ii) If the Notes become due and repayable in accordance with Conditions 2(b)(2) or 2(c),

then the applicable Early Redemption Amount shall be determined as an amount equal to the Redemption Amount had the Early Redemption Date been the Final Maturity Payment Date.

The Early Redemption Amount shall be payable on the Early Redemption Payment Date and shall not exceed the Net Proceeds of the Charged Assets. In the event that such Early Redemption Amount is less than the Net Proceeds of the Charged Assets, Noteholders shall receive such lesser amount.

- (B) Subject as provided in Special Condition (VII), the Early Redemption Amount will be paid on the Early Redemption Payment Date. No interest or other amount shall accrue or be payable in respect of the Notes in respect of the period from and including the Early Redemption Date to and including the Early Redemption Payment Date.
- (C) The Early Redemption Payment Date may be significantly later than the Early Redemption Date, see "*Risk Factors – Payments*".
- (D) For the avoidance of doubt, reference in Condition 4 and Condition 2(e) to the Early Redemption Amount payable pursuant to an Event of Default shall mean the amount payable on redemption of each Note upon its becoming due and payable as provided in Condition 4 being the lesser of (i) the outstanding principal amount of such Note and (ii) the amount available by applying the portion available to the Noteholders pursuant to Condition 3(d) of the Net Proceeds of the enforcement of the Security in accordance with Condition 3 *pari passu* and rateably between the Notes.

(V) **Calculations, determinations and notifications**

Following receipt by the Arranger of the NAV Report from the Calculation Agent on the NAV Report Date, the Arranger will publish a summary of the NAV Report on Bloomberg, and will disseminate the NAV to SIX Financial Information USA Inc. and to the Vienna Stock Exchange

The NAV Report and the summary thereof will be an estimated valuation of the Series Assets and shall not be interpreted as an indication of expected redemption values of the Notes. The NAV Report and the summary thereof shall take account of any fees, expenses or charges that apply to the Notes, and is subject to amendments and / or corrections at any time without giving notice to any person.

Whenever any matter falls to be determined, considered or otherwise decided upon by the Calculation Agent or any other person (including where a matter is to be decided by reference to the Calculation Agent's or such other person's opinion), unless otherwise stated, that matter shall be determined, considered or otherwise decided upon by the Calculation Agent or such other person, as the case may be, in its sole and absolute discretion. The Calculation Agent has agreed in the Constituting Instrument to comply with its obligations set out in these Conditions.

Each of the Issuer, the Principal Paying Agent and the Trustee shall be entitled to rely on any certification, notification, calculation or determination of the Calculation Agent given or copied to it as being true and accurate for all purposes and none of them shall be obliged to make any investigation or enquiry into any such certification, notification, calculation or determination or into the basis on which such certification, notification, calculation or determination was prepared, given or made.

The Calculation Agent is entitled to rely on any certification, notification, calculation, determination or announcement made by or on behalf of Prodigy Investment Manager and / or any agent of Prodigy Shorewood New York REP Fund, LP in connection with the Prodigy

Private Offering Memorandum and shall not be obliged to make any investigation or enquiry into, and shall incur no liability to any person for relying on, any such certification, notification, calculation, determination or announcement reasonably believed by it to be genuine and made by or on behalf of Prodigy Investment Manager and / or any agent of Prodigy Shorewood New York REP Fund, LP.

The Calculation Agent shall consider the value of Series Assets which do not have a valuation provided to remain at cost and shall not be required to modify the recorded value of such Series Assets until provided with supported valuation by Prodigy Investment Manager and / or any agent of Prodigy Shorewood New York REP Fund, LP. The Calculation Agent is entitled to rely on any certification, notification, calculation, determination or announcement made by or on behalf of Prodigy Investment Manager and / or any agent of Prodigy Shorewood New York REP Fund, LP in connection with the Series Assets.

(VI) **Further Notes**

Pursuant to Condition 16 as amended and supplemented by this Special Condition (VI), the Issuer shall be at liberty to issue Further Notes with the express intention that such Further Notes be consolidated and form a single series with the Notes (and with any subsequent Further Notes so issued) provided that:

- (A) the net proceeds of the issue of such Further Notes shall be used to acquire further assets (such further assets and the Related Rights applicable thereto being the Further Charged Assets);
- (B) each of the Further Notes that the Issuer may issue from time to time, together with the Notes, are secured collectively on the Issuer's right, title and interest in and to the Original Charged Assets and each of the Further Charged Assets such that the Security for the Notes and any Further Notes shall be the identical and all references to "*Charged Assets*" shall be to the Original Charged Assets and the Further Charged Assets from time to time;
- (C) the Conditions of each of the Further Notes are identical to the Conditions of the Notes (save in respect of their date of issue);
- (D) each issue of Further Notes will be constituted and secured by a supplement to the Constituting Instrument in the form substantially set out in the Constituting Instrument (or in such other form as is legally effective to constitute and secure the Further Notes) (the "**Further Constituting Instrument**") and so that upon the execution by the Issuer of the Further Constituting Instrument, all references to the Constituting Instrument shall be construed as being to such document as supplemented from time to time; and
- (E) the security interests granted by the Issuer in such Further Constituting Instrument are granted to the Trustee for all the Noteholders of the consolidated Series on a *pari passu* basis.

(VII) **Collateral Default and Arranger Default**

- (A) If the Calculation Agent determines in its sole discretion that a Collateral Default or a Charged Assets Default has occurred then it shall give notice as soon as practicable thereafter to the Issuer, the Trustee, the Principal Paying Agent and the Noteholders (in accordance with Condition 7) of the occurrence of such event. The Issuer shall

redeem the Notes in full by payment to each Noteholder of the Net Proceeds (5) Business Days following the day on which the Issuer receives the Realisable Value.

- (B) If the Issuer (in its sole discretion) determines that an Arranger Default has occurred then it shall give notice as soon as practicable thereafter to the Trustee, the Principal Paying Agent and the Noteholders (in accordance with Condition 7) of the occurrence of such event. The Issuer shall redeem the Notes in full by payment to each Noteholder of the Net Proceeds five (5) Business Days following the day on which the Issuer receives the Realisable Value.

(VIII) **Purchase**

Condition 2(g) shall apply subject as amended by this Special Condition (VIII). In determining what proportion of Charged Assets corresponds to the proportion of Notes to be purchased, the Issuer shall be entitled to rely on advice given to it by the Calculation Agent. The Issuer has absolute discretion to designate which part of the Series Assets to select in order to fulfil its obligations pursuant to Condition 2(g) as hereby amended.

(IX) **The Trustee**

The Trustee shall not be responsible for, or be obliged to monitor or verify or investigate:

- (A) the performance, operation or calculation of the Portfolio or other element of the calculation thereof but shall be entitled to rely absolutely on any calculation thereof by the Calculation Agent;
- (B) the performance, operations or financial condition of the Portfolio or the terms of the Charged Assets or the calculation of amounts payable in respect thereof;
- (C) the performance by the Issuer of any agreement relating to, or in connection with, the Portfolio and shall be entitled to assume that the Issuer is in compliance with the terms thereof unless and until expressly notified to the contrary in writing by the Issuer or the Calculation Agent;
- (D) whether or not any Additional Mandatory Redemption Event or other event referred to in Special Condition (IV), any Event of Default or any Collateral Default and shall be entitled to assume that no such event has occurred unless and until expressly notified to the contrary in writing by the Issuer or the Calculation Agent; or
- (E) save to the extent caused by its own negligence or wilful default the Trustee shall not be responsible or liable for any failure to sell, realise or redeem the Charged Assets and the Mortgaged Property or any delay in doing so nor for any loss suffered or incurred by any person as a result of the Net Proceeds, the Realisable Value or any other proceeds of sale, realisation or redemption of the Charged Assets or the Mortgaged Property being insufficient to discharge any Redemption Amount, Early Redemption Amount or Optional Redemption Amount in full.

(X) **Sale Agent**

The Sale Agent shall, on behalf of the Issuer, sell or procure the sale or other means of realisation of the Charged Assets and shall be entitled to deduct any costs, expenses, taxes and duties incurred in connection with any disposal, realisation or transfer of such Charged Assets.

In the event of an Early Redemption Event or Mandatory Redemption Event, at the discretion of the Issuer and the Arranger, the Sale Agent may enter into agreements with third parties for the purpose of liquidation, realisation, disposal or transfer of Charged Assets, and shall be entitled to deduct any costs, expenses, taxes, duties and / or interest due and incurred in connection with such liquidation, realisation, disposal or transfer.

The Sale Agent may sell or procure the sale or other means of realisation of the Charged Assets in such manner and to and/or involving such person as it thinks fit and shall be entitled to sell and procure the sale or other means of realisation of the Charged Assets at such price in its sole discretion. The Sale Agent shall not be responsible or liable for any failure to sell or realise the Charged Assets or any delay in doing so nor for any loss suffered or incurred by any person as a result of their sale or other means of realisation.

(XI) **Fees**

In addition to the fees due to the Trustee and any Agents, and any other transaction related fees incurred by the Issuer in respect of the issuance of the Notes, as determined by the Calculation Agent, the Issuer has agreed to pay certain fees to the Arranger, which shall be paid by Prodigy Investment Manager or Prodigy Shorewood New York REP Fund, LP. In the event that Prodigy Investment Manager or Prodigy Shorewood New York REP Fund, LP fails to make such payments the fees will be deducted from the Portfolio when determining the Redemption Amount.

The following fees shall be determined by the Calculation Agent as at the date expected to be two Business Days immediately prior to the following: (i) each NAV Report Date, (ii) the Final Maturity Payment Date, and (iii) any Optional Redemption Payment Date or Early Redemption Payment Date (any such date, a "**Fees Determination Date**"):

1) The fees payable to the Arranger:

- a. 0.40% per annum of the Net Asset Value of the Portfolio as at the most recent NAV Report Date (the "**Arranger Fee**")

The Arranger Fee is subject to an aggregate minimum payment of USD 1,500 per month.

The Issuer will incur fees in relation to the issuance of the Notes, which shall be met by Prodigy Investment Manager or Prodigy Shorewood New York REP Fund, LP. In the event that Prodigy Investment Manager or Prodigy Shorewood New York REP Fund, LP fails to make such payments the fees will be deducted from the Portfolio when determining the Redemption Amount. Such fees will include, but shall not be limited to:

(A) any fees, costs and expenses payable by the Issuer which are directly attributable to the Notes, including:

- (1) costs incurred in connection with the issuance, listing, clearing of the Notes and/or the performance of obligations in relation thereto;
- (2) any commissions, fees, costs and expenses payable by the Issuer pursuant to the Constituting Instrument and the Series Documents as defined therein;
- (3) any fees, costs and expenses of the administrator of the Issuer payable by the Issuer or the Arranger in respect of the Notes; and

(4) any legal fees and disbursements payable by the Issuer, the Arranger or the Trustee to Mason Hayes & Curran or to A&L Goodbody or any other legal advisers to the Issuer, Arranger or Trustee in respect of the issuance of the Notes; and

(B) in relation to any realisation of the Charged Assets, all commissions, fees, charges and expenses (including, without limitation, any stamp duty, documentary or transfer or other taxes or duties payable in respect of the sale or other realisation of any such Charged Assets) incurred or payable by the Sale Agent in respect of such sale or other realisation, as certified by the Sale Agent to the Issuer and the Trustee.

Any amounts payable under the Notes are based on the performance of the Charged Assets net of the fees described above. The fees will be applied in calculating the value of the Portfolio and therefore will result in a reduction in value of the Notes.

Estimated fees include a set-up fee of €20,000 (euro) and other Administration fees estimated at €8,300 (euro) per year.

## 2) Fees payable in respect of the underlying investment

Investors in the Notes should take note of the fees payable to Prodigy Investment Manager (or its designee) and any other fees payable in respect of the underlying investment. Details of the fees payable to Prodigy Shorewood New York REP Fund, LP are set out in the Prodigy Private Offering Memorandum (a copy (or copies) of which is appended to the Series Memorandum).

## (XII) **Interest**

The Calculation Agent or the Issuer may, from time to time, on a Business Day determined by the Issuer but no later than fifteen (15) calendar days after a Distribution Date, nominate any Business Day as an Interest Payment Date. The Interest Determination Date shall be any Business Day at the discretion of the Arranger, the Calculation Agent or the Issuer. On the Interest Determination Date the Calculation Agent shall calculate the amount of Interest owing on the Notes and shall inform the Trustee, Paying Agent and Issuer of the amount payable and interest shall be paid in accordance with the Conditions and the Agency Agreement.

## (XIII) **Extended Maturity Date**

The term of the Notes may be extended for further periods of up to ten (10) years, provided that, at the request of the Issuer, the Calculation Agent, on behalf of the Issuer, has given a notice (the "**Extension Notice**") to the Trustee, the Principal Paying Agent and the Noteholders three (3) calendar months prior to the Scheduled Maturity Date or the anniversary thereof in each subsequent year, if applicable, stating that such extension shall take place in respect of the Notes. If no Extension Notice, or no further Extension Notices (if applicable) are delivered by the Calculation Agent, the Notes shall be redeemed on the Scheduled Maturity Date or on the date stated in the final Extension Notice (such date being the "**Extended Maturity Date**").

## (XIV) **Cash Reserve Account**

The Cash Reserve Account shall be closed by the Issuer promptly after any funds standing to the credit thereof have been transferred to purchase Charged Assets.

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## **Use of Proceeds**

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The entire net proceeds from the issue of Notes will be paid into the Cash Reserve Account on or about the Issue Date. On or prior to the Recapitalization Date a minimum of 95% of such net proceeds will be applied to purchase the Loan and the Common Stock in such proportion as may be determined by the Calculation Agent pursuant to the provisions of the Subscription Agreement specifying how the commitment under the Loan and Security Agreement for each subscriber shall be determined. Up to 5% of such net proceeds may be payable to the Prodigy Investment Manager to satisfy certain placement fees.

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## Information relating to the Charged Assets

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### General

The Issuer intends to use the proceeds of the issuance of the Notes to (i) invest, on or as soon as practicable after the Recapitalization Date, in the Class B Common Stock and (ii) make a secured loan to the Borrower pursuant to the Loan Transaction Documents.

The Borrower indirectly owns an equity interest in 84 William Street (the "Property"), an approximately 110-year-old building that was recently renovated into 137 luxury extended-stay residences operated by AKA, a Korman Communities brand. The equity interest in the Property is currently subordinate to \$96 million of debt and it is anticipated that the debt will be increased to \$110 million prior to the Final Closing as detailed in the Prodigy Private Offering Memorandum.

The following is a description of the Property as stated in the Prodigy Private Offering Memorandum:

"The subject property is situated on a 7,488 square foot, irregularly shaped site located on the northeast corner of William Street and Maiden Lane. Prior to ownership's acquisition of the property, the site was improved with a 17-story building leased to the New School, which used the building as a student housing facility. There were also several retail tenants located in ground floor suites. Ownership acquired the property at the termination of the lease with the New School and vacated the building including the retail tenants. Ownership has converted the building to an extended stay property containing a total of 137 units with a total net rentable area of 87,981 square feet. The apartments range from studios to two-bedroom units with an average unit size of 642 square feet. In addition to the residential units, the property contains a 3,300 square foot retail suite which will be occupied by Blue Ribbon Federal Grill. As part of the conversion, ownership has added two penthouse levels to the top of the building. The building has an above grade gross building area of 120,540 square feet.

Each of the units features wide-plank, oak hardwood flooring and is fully furnished. Furnishings include HD televisions with a cable package that includes HBO, DVD player, and stereo, as well as phone, linen, flatware, and stemware. Kitchens feature stainless steel appliances, stainless steel countertops, Carrara marble backsplashes and custom made cabinets. Bathrooms feature Carrara marble flooring and walls, walk-in glass showers, and Grohe fixtures.

Amenities include a 24-hour doorman/concierge, conference room/business center, cinema room, fitness center, valet services, housekeeping, complimentary wireless internet, an outdoor rooftop terrace, laundry room, and complimentary coffee as amenities to its tenants."

Additional details for the Property are more particularly set out in the Prodigy Private Offering Memorandum, attached as appendix to this Series Memorandum.

Prodigy Shorewood Investment Management, LLC, a Delaware limited liability company with registered office in 40 Wall St, 31st Floor, The Trump Building, New York, NY, USA, shall serve as the Investment Manager (the "Prodigy Investment Manager") of the Borrower. Summaries of the backgrounds and experience of the Prodigy Investment Manager's personnel are included in the Prodigy Private Offering Memorandum, a copy (or copies) of which is appended to this Series Memorandum.

On the Issue Date, the Original Charged Assets will consist of the Class B Subscription Agreement, the Cash Reserve Account and the Related Rights.

## **The Common Stock**

For a detailed description of the Common Stock see the **PRODIGY PRIVATE OFFERING MEMORANDUM**, a copy (or copies) of which is appended to this Series Memorandum.

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## Description of security arrangements in respect of the Notes

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### Introduction

The Notes will be secured, limited recourse obligations of the Issuer. The purpose of this section is to provide further information in respect of these important features of the Notes, which are included in the Conditions. However, the following description is a summary only of certain aspects of the security arrangements and is subject in all respects to the terms of the Trust Deed and the Conditions of the Notes, of which Noteholders are deemed to have notice and by which they are bound.

The Issuer will, pursuant to the provisions of the Trust Deed, grant the Security described below to the Trustee as continuing security for the payment of all sums due under the Trust Deed and the Notes. The Trustee shall hold such Security on behalf of itself, the Agents and the Noteholders.

### Security arrangements

The Notes will be secured by a charge over the Series Assets.

Under the Trust Deed, as amended by the terms of the Constituting Instrument, the Issuer, in favour of the Trustee for itself and as trustee for the Secured Parties, and as continuing Security, will:

- (A) assign by way of fixed security assignment in favour of the Trustee for itself and as trustee for the Secured Parties all of the Issuer's rights, title, benefit and interest in, to and under the Series Assets;
- (B) charge by way of fixed charge and assign by way of fixed security assignment in favour of the Trustee for itself and as trustee for the Secured Parties all of the Issuer's rights, title, benefit and interest in and to all funds and any other assets now or thereafter standing to the credit of the account of the Principal Paying Agent in respect of the Notes, the Further Notes and the debts represented by such moneys;
- (C) assign by way of fixed security assignment in favour of the Trustee for itself and as trustee for the Secured Parties all of the Issuer's rights, title, benefit and interest in, to and under the Agency Agreement and the Placing Agreement and all sums and any other assets derived therefrom; and
- (D) charge by way of fixed charge and assign by way of fixed security assignment in favour of the Trustee for itself and as trustee for the Secured Parties all of the Issuer's rights with respect to (a) the Charged Assets and (b) any moneys and/or assets received in respect of such Charged Assets (including for the avoidance of doubt, any assets received by it upon conversion of all or any part of the Charged Assets),

in each case on terms that the Trustee shall hold the proceeds of such Security for itself and on trust for itself, and the Secured Parties (and the holders of any Further Notes in accordance with the terms of the Trust Deed).

### Charging Instrument

Pursuant to the Charging Instrument the Issuer will grant a New York law governed security interest over the Charged Assets obtained with the net proceeds of the issue of the Notes and all rights of the

Issuer derived from or connected to the Charged Assets as security in favour of the Trustee for itself and as trustee for the Secured Parties.

### **Enforcement of the Mortgaged Property**

The Mortgaged Property may become enforceable if the Notes or any of them have become due and repayable (for example, due to acceleration following the occurrence of a Tax Event, Mandatory Redemption Event, Additional Mandatory Redemption Event or an Event of Default) and have not been repaid.

In such circumstances the Trustee may at its discretion, and upon being indemnified, secured and/or prefunded to its satisfaction and shall if so requested or directed by the relevant parties (as more fully described in Condition 7), realise the Charged Assets. In realising the Charged Assets the Trustee may, but shall not be obliged to, procure the sale of the Charged Assets or may request the redemption of the Charged Assets.

### **Priority of claims and potential for insufficient security on sale of Charged Assets and/or on enforcement**

In the event that any Charged Assets are required to be sold pursuant to the Conditions or the Security constituted by the Trust Deed; the Constituting Instrument and the Charging Instrument becomes enforceable in accordance with the Conditions, the net sums realised could be insufficient to pay all the amounts due to the Noteholders under the Notes. The sums realised from any such sale of the Charged Assets will be subject to deduction of the costs and expenses associated with such sale. In addition, all costs and expenses incurred by the Trustee in enforcing the Security (including any costs of a receiver or similar official) and amounts due to the Agents will be deducted from the proceeds of such enforcement before such proceeds are paid to the Noteholders. After taking action to enforce the Security as provided in the Conditions, the Trustee shall not be entitled to take any further steps against the Issuer to recover any sum still unpaid and no debt shall be owed by the Issuer in respect of such sum. In particular, no Agent or Noteholder may petition or take any other step for the winding-up of the Issuer nor shall any of them have any claim in respect of any sum over or in respect of any assets of the Issuer which are security for any other liability of the Issuer.

### **Limited recourse provisions**

The Trustee, the Agents and the Noteholders (in each case to the extent that their claims are secured) shall have recourse only to the Mortgaged Property. If, the Trustee having realised the Mortgaged Property, the proceeds thereof are insufficient for the Issuer to make all payments then due to all such parties, the obligations of the Issuer will be limited to such proceeds of realisation of the Mortgaged Property and no other assets of the Issuer will be available to meet such shortfall; the Trustee, the Agents, the Noteholders or anyone acting on behalf of any of them shall not be entitled to take any further steps against the Issuer to recover any further sum and no debt shall be owed to any such persons by the Issuer. The Trustee and the Agents, shall rank prior to the Noteholders in the application of all moneys received in connection with the realisation or enforcement of the Security. In particular, none of the Trustee and the Agents or any holder of the Notes may petition or take any other step for the winding-up of the Issuer, and none of them shall have any claim in respect of any sum arising in respect of the Mortgaged Property for any other Series.

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## Information relating to the Arranger and Calculation Agent

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FlexFunds Ltd. is the Arranger in respect of the Notes and has been appointed as Calculation Agent, and as such is responsible for certain management and administrative functions in relation to the Notes.

FlexFunds Ltd. is an exempted company incorporated in the Cayman Islands with limited liability. The company administers the Note program with all participants and prepares the notes for issuance and calculation of NAV.

FlexFunds Ltd. has a presence in the Cayman Islands.

As Calculation Agent, FlexFunds Ltd. is responsible for determining the Interest Payment Date and any Extended Maturity Date in addition to calculating interest payment on the Notes.

The Calculation Agent may at any time resign and the Issuer may at any time terminate its appointment, subject to giving 60 days' prior written notice. In such case the Issuer would, with the prior written consent of the Trustee, appoint a successor.

The holder of the Notes will have claims against the Issuer only, and shall not have any rights directly against the Arranger or any Agent of the Issuer.

### **Fees**

The fees payable to FlexFunds Ltd. as the Arranger are described in Special Condition (XI) of the Notes.

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## **Information relating to the Sale Agent and Placing Agent**

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GWM Group, Inc. and GWM LTD have been appointed as Sales Agent and Placing Agent, and as such are responsible for certain management and administrative functions in relation to the Notes.

GWM Group, Inc. is a full service broker dealer based in Stamford, and a member of the Financial Industry Regulatory Authority and the Securities Investor Protection Corporation. Its clients' accounts are introduced on a fully disclosed basis to Interactive Brokers, LLC.

GWM Group, Inc. offers execution services to clients ranging from retail clients to institutional investment firms, and services ranging from wealth management services to custody and clearing services. The company also offers investment solutions, such as fee-based programs, retirement products and programs, asset management accounts, margin borrowing, mutual fund solutions, and wealth management.

GWM Group, Inc. has a presence in Connecticut and Miami.

GWM LTD was incorporated in Bermuda in December 2014 and is licensed to conduct investment business by the Bermuda Monetary Authority.

The Bermuda Monetary Authority granted approval to GWM LTD for a license under section 16 of the Investment Business Act 2003.

As Placing Agent, GWM Group, Inc. and GWM LTD have agreed to comply with all duties and responsibilities set out in the Conditions of the Notes, and to strictly adhere to the Selling Restrictions.

As Sales Agent, GWM Group, Inc. and GWM LTD are responsible to the Issuer for taking any steps in order to realise the Charged Assets as required for the purposes of the Notes.

The holder of the Notes will have claims against the Issuer only, and shall not have any rights directly against the Arranger or any Agent of the Issuer.

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## Information relating to the Issuer

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### General

The Issuer was incorporated in Ireland as a public limited liability company on 29 August 2011, with registration number 502865 under the name IA Capital Structures (Ireland) plc, under the Companies Acts 1963 – 2013.

The registered office of the Issuer is at 22 Clanwilliam Square, Grand Canal Quay, Dublin 2, Ireland. The telephone number of the Issuer is +353 1 609 9184. The authorised share capital of the Issuer is EUR 100,000,000 divided into 100,000,000 Ordinary Shares of EUR 1 each (“**Shares**”). The Issuer has issued 38,100 Shares all of which are fully paid. The issued Shares are held by a Jersey-incorporated company, Sanne Trustee Services Limited (the “**Share Trustee**”), on trust for charitable purposes. The Share Trustee has, inter alia, undertaken not to exercise its voting rights to wind up the Issuer unless and until it has received written confirmation from the Directors of the Issuer that the Issuer does not intend to carry on further business.

The Issuer has been established as a special purpose vehicle. The principal activities of the Issuer are the issuance of financial instruments, the acquisition of financial assets and the entering into of other legally binding arrangements.

The Issuer is not, and will not be, regulated by the Central Bank of Ireland (the “Central Bank”) by virtue of the issue of the Notes. Any investment in the Notes does not have the status of a bank deposit and is not subject to the deposit protection scheme operated by the Central Bank.

The Issuer has not underwritten and will not underwrite the issue of, place, offer, or otherwise act in respect of the Notes, otherwise than in conformity with the provisions of all laws applicable in the jurisdiction in which the Notes are offered.

### Directors and company secretary

The Directors of the Issuer are as follows:

- Wendy Merrigan
- Rory Williams

The Company Secretary is Sanne Capital Markets Ireland Limited.

Sanne Capital Markets Ireland Limited is the administrator of the Issuer. Its duties include the provision of certain administrative, accounting and related services. The appointment of the administrator may be terminated forthwith if the administrator commits any material breach of the corporate service agreement between the Issuer and the administrator, or if the administrator is unable to pay its debts as they fall due or if the administrator becomes subject to insolvency or other related proceedings. The administrator may retire upon 90 days’ written notice subject to the appointment of an alternative administrator on similar terms to the existing administrator. The business address of the administrator is 22 Clanwilliam Square, Grand Canal Quay, Dublin 2, Ireland.

The auditors of the Issuer are PricewaterhouseCoopers who are chartered accountants qualified to practice in Ireland.

**Financial statements**

The Issuer has published financial statements for up to 30 June 2015.

**Authorisation**

The issue of the Notes was authorised by a resolution of the board of directors of the Issuer passed on 30 September 2016.

**Litigation**

There are no legal, governmental or arbitration proceedings (including any such proceedings which are pending or threatened of which the Issuer is aware) which may have or have had a significant effect on the Issuer's financial position.

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## Selling restrictions

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In addition to the Selling Restrictions set out in the Programme Memorandum the restrictions set out below shall apply.

The Notes have not been and will not be registered under the U.S Securities Act of 1933, as amended, and may not be directly or indirectly offered or sold in the United States or to or for the benefit of any U.S person (as defined in Regulation S) unless the securities are registered under the Securities Act of 1933, or an exemption from the registration requirements of the Securities Act of 1933 is available.

Where:

**“U.S person”** means a *“US person”*, as the term is defined in Regulation S under the Securities Act of 1933 (as amended from time to time) and more particularly are references to: (i) any natural person that resides in the U.S; (ii) any entity organised or incorporated under the laws of the U.S; (iii) any entity organised or incorporated outside the U.S that was formed by a U.S. person principally for the purpose of investing in securities not registered under the Securities Act of 1933, unless it is organised or incorporated, and owned, by accredited investors (as defined in Section 501 of Regulation D promulgated under the Securities Act of 1933) who are not natural persons, estates or trusts; (iv) any estate of which any executor or administrator is a US person ; (v) any trust of which any trustee is a U.S person; (vi) any agency or branch of a foreign entity located in the U.S; or (vii) any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person; and (viii) any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organised, incorporated, or resident in the U.S. For the purposes hereof, the term **“U.S person”** shall not include any discretionary or non-discretionary account (other than an estate or trust) held for the benefit or account of a non-U.S person by a dealer or other professional fiduciary organised or incorporated in the US. The term **“U.S person”** includes entities that are subject to the U.S Employee Retirement Income Securities Act of 1974, as amended, or other tax-exempt investors or entities in which substantially all of the ownership is held by U.S persons.

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a **“Relevant Member State”**), an offer of Notes to the public has not and may not be made in that Relevant Member State.

No action has been taken in any jurisdiction that would permit a public offering of any of the Notes, or possession or distribution of the Programme Memorandum, this Series Memorandum or any part thereof or any other offering material, in any country or jurisdiction where action for that purpose is required.

NO OFFER, SALE OR DELIVERY OF THE NOTES, OR DISTRIBUTION OR PUBLICATION OF ANY OFFERING MATERIAL RELATING TO THE NOTES, MAY BE MADE IN OR FROM ANY JURISDICTION EXCEPT IN CIRCUMSTANCES WHICH WILL RESULT IN COMPLIANCE WITH ANY APPLICABLE LAWS AND REGULATIONS. ANY OFFER OR SALE OF THE NOTES SHALL COMPLY WITH THE SELLING RESTRICTIONS AS SET OUT IN THE ISSUER'S OFFERING DOCUMENTS AND ALL APPLICABLE LAWS AND REGULATIONS.

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## General Information

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For so long as the Notes remain outstanding, the following documents will be available in physical form from the date hereof during usual business hours on any weekday (Saturdays, Sundays and public holidays excepted) for inspection at the registered office of the Issuer and the specified office of the Principal Paying Agent in London:

- (a) the Master Documents which are incorporated by reference by the Constituting Instrument so as to constitute the Trust Deed, Agency Agreement, Placing Agreement and Charged Assets Sale Agreement with respect to the Notes (to the extent not otherwise amended, modified and/or supplemented by the Constituting Instrument);
- (b) any deed or agreement supplemental to the Master Documents;
- (c) the Programme Memorandum;
- (d) the Certificate of Incorporation and the Memorandum and Articles of Association of the Issuer; and
- (e) the Constituting Instrument

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**APPENDIX 1 – PRODIGY PRIVATE OFFERING MEMORANDUM**

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***THIS CONFIDENTIAL PRIVATE OFFERING MEMORANDUM IS QUALIFIED IN ITS ENTIRETY BY THE INFORMATION SET FORTH IN THE APPLICABLE SUPPLEMENT TO THIS CONFIDENTIAL PRIVATE OFFERING MEMORANDUM, WHICH MAY MODIFY OR SUPPLEMENT ANY OF THE STATEMENTS SET FORTH HEREIN.***

**AMENDED AND RESTATED  
CONFIDENTIAL PRIVATE OFFERING MEMORANDUM**

of

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**84 WILLIAM STREET REALTY  
ASSOCIATES LLC**

*a Delaware limited liability company*

**Preferred and Common Membership Interests**

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**PRODIGY SHOREWOOD NEW  
YORK REP Co.**

*a Cayman Islands exempted limited company*

**4,999,900 Participating Shares**

and

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**84 WILLIAM STREET NEW Co, INC.**

*a Delaware corporation*

**Class B Common Stocks**

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*Investment Manager:*

**Prodigy Shorewood  
Investment Management, LLC**  
40 Wall Street, 17<sup>th</sup> Floor  
The Trump Building  
New York, NY 10005

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September 21, 2016

## AMENDED AND RESTATED

### CONFIDENTIAL PRIVATE OFFERING MEMORANDUM

This Amended and Restated Confidential Private Offering Memorandum (the “Base”) and any supplement to the Base (each a “Supplement” and together with the Base, the “Memorandum”) of 84 William Street Realty Associates LLC, a Delaware limited liability company (the “Master Fund”), Prodigy Shorewood New York REP Co., a Cayman Islands exempted limited company (the “Feeder Fund”), and 84 William Street NewCo, Inc., a Delaware Corporation (“NewCo” and together with the Master Fund and the Feeder Fund, collectively, the “Fund”), and all related information, including marketing materials and Organizational Documents (as defined below) that are approved by the Fund or Prodigy Shorewood Investment Management, LLC, a Delaware limited liability company (“PSIM” and in its capacity as the investment manager, the “Investment Manager”), and furnished in connection with the offering of the Interests (as defined below) (collectively, “Related Information”) are being furnished on a confidential basis solely to selected qualified investors considering the purchase of (a) preferred and common membership interests in the Master Fund, (b) shares in the Feeder Fund and/or (c) Class B Common Stock of NewCo (as defined below) (each, an “Interest,” and collectively, the “Interests,” as the context requires). This Memorandum and the Related Information are not to be reproduced or distributed to others, at any time, without the prior written consent of the Investment Manager, and all recipients agree they will keep confidential all information contained herein or therein not already in the public domain and will use this Memorandum and the Related Information for the sole purpose of evaluating a possible investment in the Fund. The Interests are offered subject to the right of the Fund to reject any subscription in whole or in part. Notwithstanding the foregoing, each prospective investor (and each employee, representative or other agent of each prospective investor) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of an investment in the Fund and all materials of any kind (including opinions or other tax analyses) that are provided to each prospective investor relating to such tax treatment or tax structure. For this purpose, “tax structure” is limited to facts relevant to the U.S. federal and state income tax treatment of the transaction and does not include information relating to the identity of the parties, their affiliates, agents or advisors. Acceptance of this Memorandum by prospective investors constitutes an agreement to be bound by the foregoing terms.

Prospective investors are not to construe the contents of this Memorandum as legal, tax, investment or other advice. Each prospective investor should consult its own advisors as to legal, business, tax, ERISA (defined herein) and other related matters concerning an investment in the Interests. Each prospective investor is invited to meet with representatives of the Fund and to discuss with, ask questions of and receive answers from such representatives concerning the terms and conditions of this offering and to obtain any additional information, to the extent that such representatives possess such information or can acquire it without unreasonable effort or expense, necessary to verify the information contained herein.

Potential investors are asked to pay particular attention to the information in “*Section XVI Tax Considerations*,” which is a summary of some of the tax rules and considerations affecting the investors, the Fund and the Fund’s operations and does not purport to be a complete analysis of all relevant tax rules and considerations, nor does it purport to be a complete listing of all potential tax risks inherent in purchasing or holding Interests. Each prospective investor is urged to consult its tax advisor in order to understand fully the U.S. federal, state, local and any non-U.S. tax consequences of such an investment in its particular situation.

In making an investment decision, investors must rely on their own examination of the Fund and the terms of the offering, including the merits and risks involved. Qualified investors must (a) have such knowledge and experience in business and financial matters as will enable them to evaluate the merits and risks of a proposed investment in the Interests and (b) be able to bear the economic risk of this investment. The Fund

will be the sole judge as to whether or not a prospective investor possesses these qualifications. Each investor will be required to make certain representations to the Fund, including (but not limited to) representations as to investment intent, degree of sophistication, access to information concerning the Fund and ability to bear the economic risk of the investment.

There is no active secondary market for the Interests. An investment in the Interests involves significant risks. Potential investors should pay particular attention to the information in “*Section II Certain Risk Factors*.” No assurance can be given that the Fund’s investment objectives will be achieved or that investors will receive a return of their capital.

The Interests have not been approved or disapproved by the U.S. Securities and Exchange Commission (the “SEC”) or by the securities regulatory authority of any state of the United States or of any other jurisdiction, nor has the SEC or any such securities regulatory authority passed upon the accuracy or adequacy of this Memorandum. Any representation to the contrary is a criminal offense.

The Interests have not been registered under the Securities Act, the securities laws of any state in the U.S. or the securities laws of any other jurisdiction, nor is such registration contemplated. The Interests will be offered and sold only (i) to “accredited investors,” as such term is defined under Rule 501(a) of Regulation D (“Regulation D”) under the U.S. Securities Act of 1933, as amended (the “Securities Act”), pursuant to the exemption provided by Rule 506(c) of Regulation D under the Securities Act, or (ii) to persons that are not “U.S. persons” in “offshore transactions” in reliance upon (and as such terms are defined in) Regulation S under the Securities Act (“Regulation S”). None of the Master Fund, Feeder Fund or NewCo will be registered as an investment company under the U.S. Investment Company Act of 1940, as amended (the “Investment Company Act”) in reliance on an exemption under Section 3(c)(5)(C) of the Investment Company Act for certain companies primarily engaged in the business of purchasing or otherwise acquiring mortgages or other liens on and interests in real estate. There is no public market for the Interests and no such market is expected to develop in the future. The Interests may not be sold or transferred except as permitted under the Organizational Documents.

The distribution of this Memorandum and the offer and sale of the Interests in certain jurisdictions may be restricted by law. This Memorandum does not constitute an offer to sell or the solicitation of an offer to buy in any state in the U.S. or, other jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such state or jurisdiction. Interests that are acquired by persons not entitled to hold them are subject to compulsory redemption.

The Interests are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act and any applicable U.S. state or other securities laws, pursuant to registration or an exemption therefrom. The transferability of the Interests will be further restricted by the terms of the Organizational Documents (defined herein) of the Fund. Investors should be aware that they will be required to bear the financial risks of an investment in the Interests for an extended period of time. There will be no public market for the Interests, and there is no obligation on the part of any person to register the Interests under the Securities Act or any state securities laws.

As the Feeder Fund is closed-ended, it is not considered to be a mutual fund for the purposes of the Cayman Islands Mutual Funds Law (2009 Revision), as amended from time to time (the “Mutual Funds Law”). Accordingly, the Feeder Fund is not regulated by the Cayman Islands Monetary Authority (the “Authority”). The Feeder Fund will not be subject to supervision in respect of its investment activities or the constitution of its investment assets by the Authority or any other governmental authority in the Cayman Islands. Neither the Authority nor any other governmental authority in the Cayman Islands has passed upon or approved the terms or merits of this Memorandum. There is no investment compensation scheme available to investors in the Cayman Islands.

The Feeder Fund is prohibited from making any invitation to the public of the Cayman Islands to subscribe for Interests. Non-resident or exempted companies and certain other non-resident or exempted entities established in the Cayman Islands and engaged in offshore business may, however, be permitted to subscribe. The Feeder Fund does not intend to undertake business with the public in the Cayman Islands other than so far as may be necessary for the carrying on of the business of the Fund exterior to the Cayman Islands.

In order to comply with regulations aimed at the prevention of money laundering in any applicable jurisdictions, the Fund may require prospective investors to provide evidence to verify their identity and the source of their funds. Accordingly, the Fund reserves the right to request such information as it considers necessary to verify the identity of a prospective investor and the source of such prospective investor's funds. The Fund may refuse to accept any subscription application if a prospective investor delays in producing or fails to produce any information required by the Fund for the purpose of verification or based on the information provided, and, in any such event, the funds received by the Fund will be returned without interest to the account from which the moneys were originally debited.

If any person resident in the Cayman Islands knows or suspects that a payment to the Feeder Fund (by way of subscription or otherwise) contains the proceeds of criminal conduct, the person will be required to report such belief or suspicion pursuant to the Proceeds of Crime Law, 2008, as amended from time to time ("Proceeds of Crime Law").

As the Interests of the Master Fund are offered pursuant to Rule 506(c) under Regulation D of the Securities Act, the Investment Manager may prepare and generally distribute marketing or advertising materials in connection with the offer of Interests of the Master Fund. No person has been authorized to give any information or to make any representation concerning the Master Fund or the offering of the Interests of the Master Fund that is contrary or inconsistent with the information contained in this Memorandum and the Related Information, and if such contrary or inconsistent information is given or made, such information or representation must not be relied upon. This Memorandum supersedes all prior versions, and, in the event of any inconsistency between this Memorandum and any prior version or any Related Information that are marketing or presentational materials, this Memorandum controls.

As the Interests of NewCo are offered pursuant to Rule 506(c) under Regulation D or Regulation S of the Securities Act, the Investment Manager may prepare and generally distribute marketing or advertising materials in connection with the offer of Interests of NewCo. No person has been authorized to give any information or to make any representation concerning NewCo or the offering of the Interests of NewCo that is contrary or inconsistent with the information contained in this Memorandum and the Related Information, and if such contrary or inconsistent information is given or made, such information or representation must not be relied upon. This Memorandum supersedes all prior versions, and, in the event of any inconsistency between this Memorandum and any prior version or any Related Information that are marketing or presentational materials, this Memorandum controls.

The Directors (defined herein) of the Feeder Fund whose names appear in this Memorandum accept responsibility for the information contained in this Memorandum. To the best of the knowledge and belief of the Directors (who have taken all reasonable care to ensure that such is the case) the information contained in this Memorandum is in accordance with the facts and does not omit anything likely to affect the import of such information. The Directors accept responsibility accordingly.

This Memorandum does not purport to be, and should not be construed as, a complete description of the Organizational Documents of the Fund, the investment management agreement entered into between the Fund and the Investment Manager (the "Investment Management Agreement"), or the administration agreement (the "Administration Agreement") entered into between the Fund and the Administrator (as

defined herein). To the extent of any inconsistency between this Memorandum, the Investment Management Agreement and the Administration Agreement, the terms of the Investment Management Agreement or the Administration Agreement, as the case may be, shall control.

Statistical data and other factual statements contained in this Memorandum have been obtained from publicly available documents, or other sources considered to be generally reliable. There is no representation or warranty, expressed or implied, as to the accuracy, adequateness or completeness of any of such information used in this Memorandum. This Memorandum does not include information relating to events occurring subsequent to its date, except as expressly indicated. The delivery of this Memorandum does not imply that information contained herein is correct as of any time subsequent to the date hereof. This Memorandum does not include information relating to the past performance of funds previously managed or currently managed by the Investment Manager.

Certain information contained in this Memorandum constitutes “forward-looking statements,” which can be identified by the use of forward-looking terminology such as “may,” “will,” “shall,” “should,” “expect,” “anticipate,” “project,” “estimate,” “intend,” or “believe” or the negatives thereof or other variations thereon or comparable terminology. Due to various risks and uncertainties, including those described in “*Section II Certain Risk Factors*,” actual events or results or the actual performance of the Fund may differ materially from those reflected or contemplated in such forward-looking statements.

None of the Fund, the Directors, the Investment Manager, the governing body of any entity included within the Fund or their respective affiliates or any of their respective partners, members, officers, employees, managers, consultants, associates or agents has any obligation to update or otherwise revise any projections, including any revisions to reflect changes in economic conditions or other circumstances arising after the date hereof or to reflect the occurrence of unanticipated events, even if the underlying assumptions do not come to fruition.

All references herein to “Dollars” or “\$” shall mean the lawful currency of the United States.

All references to “Business Day” shall mean any day other than (i) a Saturday or a Sunday or (ii) a day on which commercial banks are authorized or required by applicable law, regulation or executive order to close in New York, New York and, with respect to references to the Feeder Fund, the Cayman Islands.

#### **NOTICE TO RESIDENTS OF THE CAYMAN ISLANDS**

No offer or invitation may be made to the public in the Cayman Islands to subscribe for Interests in the Feeder Fund. Non-resident or exempted companies and certain other non-resident or exempted entities established in the Cayman Islands and engaged in offshore business may however be permitted to subscribe.

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## **I. SUMMARY OF INVESTMENT TERMS**

*This Summary of Investment Terms summarizes the principal terms of an investment in the Fund and is subject, and qualified in its entirety by reference, to the Amended and Restated Memorandum and Articles of Association of the Feeder Fund, as amended from time to time (the "Feeder Fund's Articles"), the By-Laws of NewCo ("NewCo's By-Laws"), and the Amended and Restated Operating Agreement of the Master Fund dated as of September 20, 2016, as amended from time to time (the "Master Fund's Operating Agreement"); and, collectively with the Feeder Fund's Articles, NewCo's By-Laws, the Stockholders Agreement (as defined below), the Loan and Security Agreement (as defined below), the "Organizational Documents") copies of which will be given to each prospective investor upon request. To the extent that the terms summarized herein are inconsistent with or contrary to the Organizational Documents, the Organizational Documents shall control.*

### **The Fund**

The Master Fund, NewCo and the Feeder Fund are collectively referred to herein as the "Fund." The Investment Manager may form additional feeder funds, parallel funds and/or alternative investment vehicles ("Related Investment Vehicles") if it determines that, for legal, tax, regulatory or other reasons, such additional entities are, in the aggregate, in the best interests of some or all of the Investors (defined herein).

### **Master Fund**

84 William Street Realty Associates LLC is a Delaware limited liability company (the "Master Fund").

As of the date hereof, (a) the preferred membership interests in the Master Fund ("Preferred Interests") are held approximately 77% by NewCo, 1.5% by PSIM 84 William, LLC ("PSIM 84") and 21.5% by certain Investors who had contributed capital to the Master Fund to be used for certain Fund Expenses (defined herein), purchase deposit on the Property (defined herein) and related purposes of the Fund ("Deposit Investors") and (b) the common membership interests in the Master Fund ("Common Interest", and together with the Preferred Interests, the "Master Interests") are held approximately 80.04% by PSIM 84 and 19.96% by various other Investors.

By the Recapitalization Date (defined herein), the Property is expected to be valued at approximately \$185,000,000 based on an appraised value that was issued by a third party appraisal firm. In order to reflect the appreciation in the value of the Master Fund, as an indirect owner of the Property, effective as of the Recapitalization Date, each holder of Preferred Interests and Common Interests in the Master Fund will be deemed to have made a capital contribution to the Master Fund as of the Recapitalization Date in an amount equal to (a) such Investor's entitlement to distributions from the Master Fund in its capacity as a holder of Preferred Interests or Common Interests, as the case may be, pursuant to the Existing Priority of Distributions (defined herein) assuming the liquidation of each of the Property, 84 William Street Property Owner LLC ("PropCo"), 84 William Street MezzCo LLC ("MezzCo"), 84 William Street JV LLC ("JV") and the Master Fund as of the Recapitalization Date *minus* (b) such Investor's capital contribution (including deemed capital contribution) with respect to Preferred Interests or Common Interests, as the case may be, and in each case, immediately prior to the Recapitalization Date (the result of the foregoing calculation with respect

to the applicable Investor in the Master Fund, the “Booked-Up Amount” and such Investor’s total capital contributions to the Master Fund on the Recapitalization Date after giving effect to the Booked-Up Amount, the “Booked-Up Capital Contribution”).

On or prior to November 1, 2016, each existing Investor in the Master Fund prior to the Recapitalization Date is required to provide to the Investment Manager a written direction (in such form as provided by the Investment Manager) (each such written direction, a “Master Election Notice”) with respect to 100% of its Booked-Up Capital Contribution in the Master Fund. In such written direction, each Investor in the Master Fund shall irrevocably direct the Investment Manager to:

(a) reflect in the Investment Manager’s records that the Investor will continue to hold 100% of its Preferred Interests and Common Interests as of the Recapitalization Date, in each case, in an amount equal to the applicable Booked-Up Capital Contribution in connection with such Interests;

(b) (1) cause the Master Fund to redeem on the Recapitalization Date 100% of the Preferred Interests and Common Interests held by the Investor immediately prior to the Recapitalization Date in amounts equal to the Booked-Up Capital Contribution related to such Preferred Interests and Common Interests, respectively, and (2) deposit or cause to be deposited all proceeds in connection with the redemption of such Preferred Interests and Common Interests to an escrow account to be reinvested in a project managed and sponsored by Prodigy Network, LLC (an affiliate of the Investment Manager) for the acquisition, renovation, management and operation of the real property located in the Borough of Manhattan in New York City at 331 Park Avenue South (the “Park Ave S. Project”);

(c) (1) cause the Master Fund to redeem on the Recapitalization Date 100% of the Preferred Interests and Common Interests held by the Investor immediately prior to the Recapitalization Date in amounts equal to the Booked-Up Capital Contribution related to such Preferred Interests and Common Interests, respectively, and (2) deposit or cause to be deposited all proceeds in connection with the redemption of such Preferred Interests and Common Interests to an account specified by the Investor; or

(d) (1) cause the Master Fund to redeem on the Recapitalization Date a portion of the Preferred Interests and/or Common Interests held by such Investor immediately prior to the Recapitalization Date in amounts equal to the percentage of such Preferred Interests and/or Common Interests, as the case may be, to be sold multiplied by the Booked-Up Capital Contribution with respect to such Preferred Interests and Common Interests and to deposit or cause to be deposited all or a portion of the proceeds of such redemption to an escrow account to be reinvested in the Park Ave S. Project and/or to an account specified by the Investor and (2) reflect in the Investment

Manager's records that the Investor will continue to hold the remaining portion of Preferred Interests and/or Common Interests, if any, in amounts equal to the Investor's Recapitalization Date Amount with respect to Preferred Interests and Common Interests, respectively.

"Recapitalization Date Amount" means, with respect to an existing Investor in the Master Fund on or prior to the Recapitalization Date, the remaining portion of such Investor's Booked-Up Capital Contribution with respect to Preferred Interests or Common Interests, as applicable, on the Recapitalization Date after giving effect to the redemption of such Investor's Interests in the Master Fund pursuant to the applicable Master Election Notice plus any additional capital contribution made by such Investor to the Master Fund on the Recapitalization Date with respect to Preferred Interests or Common Interests, as the case may be.

On the Recapitalization Date, NewCo is expected to purchase from the Master Fund additional Preferred Interests in an amount at least sufficient for the Master Fund to effect the redemption of the Preferred Interests and/or Common Interests held by the Master Fund's Investors that have elected for such redemption pursuant to a Master Election Notice. Upon receiving such capital contribution from NewCo, the Master Fund will use such funds to redeem Preferred Interests and/or Common Interests held by the Master Fund's Investors that have elected for such redemption pursuant to a Master Election Notice.

To the extent reflected in the applicable Subscription Agreement with respect to an Investor in the Master Fund and/or the books and records of the Investment Manager, certain Investors in the Master Fund may receive an additional distribution factor with respect to its Preferred Interests and/or Common Interests under the Master Priority of Distributions in an amount no greater than five percent (5%) of such Investor's Recapitalization Date Amount with respect to Preferred Interests and Common Interests, respectively (such distribution factor with respect to an Investor's Preferred Interests, the "Master Preferred Discount"; such distribution factor with respect to an Investor's Common Interests, the "Master Common Discount"; and the Master Preferred Discount and the Master Common Discount, collectively, the "Master Discount"). Investors in the Master Fund that receive Master Discounts may be entitled to receive additional distributions pursuant to the Master Priority of Distributions as compared to Investors in the Master Fund that are not entitled to such Master Discounts. Neither the Master Fund nor the Investment Manager has any obligation to issue to any Investor in the Master Fund any Master Discount.

**NewCo**

84 William Street NewCo, Inc. is a Delaware corporation. NewCo has previously issued 100 shares of uncertificated capital stock to Feeder Fund and has received a loan from the Feeder Fund pursuant to that certain Loan and Security Agreement, dated as of October 18, 2013, among NewCo, as borrower, Prodigy Shorewood Investment Management, LLC, as administrative agent, and lenders from time to time party thereto (as amended, supplemented and amended and restated from time to time, the "Loan and Security Agreement"). As of the date hereof, the Feeder Fund holds 100% of all issued and outstanding capital stock of NewCo and is the sole lender to NewCo under the Loan and Security Agreement.

Prior to the Recapitalization Date, NewCo will (a) issue a single share of Class A Common Stock (voting share) ("Class A Common Stock") to PSIM 84 and (b) reclassify the 100 shares of uncertificated capital stock previously issued to the Feeder Fund as Class B Common Stock (non-voting shares) (such stock of NewCo, "Class B Common Stock" and together with Class A Common Stock, the "NewCo Stock").

On the Recapitalization Date NewCo will (a) issue to the Feeder Fund additional shares of Class B Common Stock (non-voting shares) without receiving additional cash capital contribution from the Feeder Fund and (b) issue to each other person or entity that becomes an Investor in NewCo on or after the Recapitalization Date (such person or entity, "New NewCo Investor") Class B Common Stock (non-voting shares) at the then estimated value of such Class B Common Stock (as determined by the Investment Manager in its reasonable discretion) or, if specified in the applicable Subscription Agreement, at a discount of up to five percent (5%) of such estimated value. Each Investor in NewCo will be required to enter into a Stockholders Agreement with each other shareholders of NewCo (such agreement, the "Stockholders Agreement"). The terms of the equity investments made or to be made by Investors in NewCo will be subject to the organizational documents of NewCo as well as the Stockholders Agreement. The Stockholders Agreement will set forth, among other things, each Investor's entitlement to distributions as a shareholder of NewCo.

Each New NewCo Investor will be required to become a party to the Loan and Security Agreement and make a loan commitment thereunder (a) with respect to New NewCo Investors that are or are becoming an Investor of NewCo on or prior to the Recapitalization Date, in an amount equal to the product of (i) such Investor's subscription for equity investment in NewCo pursuant to the applicable Subscription Agreement (defined herein) and (ii) a fraction (x) the numerator of which is the total outstanding Loan (as defined in the Loan and Security Agreement) under the Loan and Security Agreement immediately prior to the Recapitalization Date and (y) the denominator of which is the value of the total equity in NewCo immediately prior to the Recapitalization Date and (b) with respect to New NewCo Investors that are becoming an Investor of NewCo after the Recapitalization Date, in an amount set forth in the applicable Subscription Agreement.

As of the Recapitalization Date, PSIM will be the only Investor in NewCo that holds voting common stock issued by NewCo.

Proceeds of capital contributions made by New NewCo Investors to NewCo and Structurally Subordinated Debts made by New NewCo Investors to NewCo may be (a) used by NewCo to purchase from each Investor in the Master Fund the applicable portion of the Preferred Interests held by such Investor that has elected for such sale pursuant to a Master Election Notice, (b) used by NewCo to repay all or a portion of existing Structurally Subordinated Debt made by the Feeder Fund to NewCo pursuant to the Loan and Security Agreement, (c) used by NewCo to redeem Class B Common Stock (including existing Class B Common Stock), and/or (d) contributed by NewCo to the Master Fund for the acquisition of additional Preferred Interests and/or Common Interests.

On the Recapitalization Date, NewCo will use the capital contributions received from New NewCo Investors to (a) purchase from each Investor in the Master Fund the applicable portion of the Preferred Interests held by such Investor that has elected for such sale pursuant to a Master Election Notice, and (b) repay the Structurally Subordinated Debt made by the Feeder Fund to NewCo in an amount sufficient for the Feeder Fund to effect the redemption of the Feeder Fund Shares at the Recapitalization Feeder Share Price held by the Feeder Fund's Investors that have elected for such redemption pursuant to a Feeder Election Notice.

Income of NewCo received from the Master Fund, less (a) cash expenditures for all costs and expenses in connection with the business of NewCo, including all of its Fund Expenses; (b) payments of principal of and interest on any loans or other obligations of NewCo (other than Structurally Subordinated Debts made by NewCo's Investors pursuant to the Loan and Security Agreement); and (c) such reserves for and to meet anticipated expenses as the Investment Manager of NewCo (including taxes), will be used to repay obligations of NewCo under the Loan and Security Agreement. Pursuant to the Loan and Security Agreement, all interests and principal payments received from NewCo, net of fees and expenses, will be allocated by PSIM, in its capacity as the administrative agent, in accordance with the NewCo Loan Priority of Distributions (as defined herein). After the repayment and full satisfaction of NewCo's obligations under the Loan and Security Agreement, remaining net income of NewCo will be distributed to its Investors in accordance with the NewCo Sale Proceeds Priority of Distributions (defined herein).

As a holder of Master Preferred Discounts, NewCo is entitled to receive certain distributions in connection with such Master Preferred Discounts pursuant to the Master Priority of Distributions. NewCo's Master Preferred Discount will be reflected in the records of the Investment Manager. Such records shall be binding and conclusive absent manifest error. The Investment Manager may from time to time grant additional Master Discounts to one or more other Persons. The amount of such Master Discounts may be greater than or less than the discount extended to NewCo in respect of its Preferred Interests.

**Feeder Fund**

Prodigy Shorewood New York REP Co. is a Cayman Islands exempted company limited by shares pursuant to the Companies Law of the Cayman Islands, as amended from time to time. The Feeder Fund has issued participating (non-voting) shares (the “Participating Shares”) to its Investors. The Feeder Fund has made investments in the Master Fund through NewCo. Specifically, the Feeder Fund has made a Structurally Subordinated Debt to NewCo pursuant to the Loan and Security Agreement and has purchased 100 shares of capital stock previously issued by NewCo. NewCo, in turn, contributed to the Master Fund such loan proceeds and capital contributions received from the Feeder Fund for the acquisition of Preferred Interests. References to the “Feeder Fund” in this Memorandum, except as otherwise discussed, will also include NewCo.

On or prior to November 1, 2016, each existing Investor in the Feeder Fund prior to the Recapitalization Date is required to provide to the Investment Manager a written direction (in such form as provided by the Investment Manager) (each such written notice, a “Feeder Election Notice”) with respect to 100% of its shares in the Feeder Fund (such shares, “Feeder Fund Shares”). In such written direction and/or the applicable subscription agreement entered into or to be entered into between Investors in the Feeder Fund and the Investment Manager, each Investor in the Feeder Fund shall irrevocably direct the Investment Manager to:

(a) (1) cause the Feeder Fund to redeem on the Recapitalization Date 100% of the Investor’s Feeder Fund Shares at the then estimated value of such Feeder Fund Shares reasonably calculated by the Investment based on the liquidation value of the Feeder Fund as of the Recapitalization Date assuming the liquidation of each of the Property, PropCo, MezzCo, JV, the Master Fund, NewCo and the Feeder Fund (such price for the Feeder Fund Shares on a per share basis, the “Recapitalization Feeder Share Price”) and (2) use 100% of such redemption proceeds (which may be in the form of a credit) to repurchase new Feeder Fund Shares on the Recapitalization Date at the Recapitalization Feeder Share Price (or, if specified in the applicable Subscription Agreement, at a discount of up to five percent (5%) of the Recapitalization Feeder Share Price) in accordance with the applicable Subscription Agreement among such Investor, the Investment Manager and the Administrator;

(b) (1) cause the Feeder Fund to redeem on the Recapitalization Date 100% of the Investor’s Feeder Fund Shares at the Recapitalization Feeder Share Price and (2) deposit or cause to be deposited all such redemption proceeds to an escrow account to be reinvested in the Park Ave S. Project;

(c) (1) cause the Feeder Fund to redeem on the Recapitalization Date 100% of the Investor’s Feeder Fund Shares at the Recapitalization Feeder Share Price and (2) deposit or cause to be deposited all such redemption proceeds to an account specified by the Investor; or

(d) (1) cause the Feeder Fund to redeem on the Recapitalization Date 100% of the Investor's Feeder Fund Shares at the Recapitalization Feeder Share Price and (2)(x) use a specified portion of such redemption proceeds (which may be in the form of a credit) to repurchase Feeder Fund Shares on the Recapitalization Date at the Recapitalization Feeder Share Price (or, if specified in the applicable Subscription Agreement, at a discount of up to five percent (5%) of the Recapitalization Feeder Share Price) and (y) deposit or cause to be deposited all remaining redemption proceeds, if any, to an escrow account to be reinvested in the Park Ave S. Project and/or to an account specified by the Investor.

On the Recapitalization Date, NewCo is expected to repay the Feeder Fund all or a portion of the Structurally Subordinated Debt. On the Recapitalization Date, the Feeder Fund will use such proceeds to redeem the Feeder Fund Shares held by the Feeder Fund's Investors that have elected for such redemption for cash pursuant to a Feeder Election Notice at the Recapitalization Feeder Share Price.

Neither the Feeder Fund nor the Investment Manager has any obligation to issue to any Investor in the Feeder Fund entitlements to the indirect benefits of Master Preferred Discounts received by NewCo. Investors in the Feeder Fund that are entitled to receive indirect benefits from Master Preferred Discounts received by NewCo may receive higher distributions than Investors in the Feeder Fund who are not entitled to receive such benefits.

**Investment Manager**

Prodigy Shorewood Investment Management, LLC, a Delaware limited liability company, shall serve as the Investment Manager. As of the date hereof, (a) the Investment Manager holds all of the management shares of the Feeder Fund and (b) PSIM 84 (an affiliate of the Investment Manager) holds approximately 80.04% of the Common Interests and approximately 1.5% of the Preferred Interests.

The Investment Manager is not registered, nor is it required to be registered, as an investment adviser under the U.S. Investment Advisers Act of 1940, as amended, or under any U.S. state law. The Investment Manager may assign and transfer to an affiliate its rights and obligations under the Amended and Restated Investment Management Agreement.

The Investment Manager is authorized to treat itself as having made cash contributions ("Deemed Capital Contribution") to NewCo, the Feeder Fund, and/or the Master Fund, as applicable, without actually contributing any cash on such terms and conditions as the Investment Manager may determine in its discretion (including with respect to the vesting of the interests); *provided*, the aggregate amount of Deemed Capital Contribution to NewCo, the Feeder Fund and the Master Fund from the Investment Manager shall not exceed, in the aggregate, 2% of the Recapitalization Target.

Incremental taxes (in excess of those which would have been borne by NewCo had no deemed capital contributions been made) which are borne by NewCo with respect to income and gain associated with such Deemed Capital Contributions shall be solely for the account of those persons treated as making such deemed capital contributions with respect to NewCo and accordingly shall reduce, dollar for dollar, amounts otherwise distributable to such persons.

**Directors/Managing  
Member of the Fund**

James Macfee and Andre Slabbert serve as directors of the Feeder Fund (the “Directors”). There are no directors of the Master Fund, as it is controlled by the Investment Manager, the Master Fund’s managing member. Directors of NewCo are employees of the Investment Manager. Further, the Investment Manager will be the sole holder of all voting stock of NewCo.

**Investment Objective  
and Strategy**

A summary narrative description of the property (the “Property”) located at 84 William Street, New York, New York 10038 is attached to this Memorandum as Exhibit A.

The Master Fund entered into a joint venture for the redevelopment of the Property and the marketing of the Property’s extended-stay residences with an affiliate of Korman, KCI 84 William LLC (“JV Partner”) prior to closing on the Property in October of 2013. The JV Partner and the Fund formed the JV in connection with the joint venture. The Master Fund currently owns approximately 90% of the membership interests of JV and JV Partner owns approximately 10% of the membership interests of JV. JV formed MezzCo in order to incur the Mezz Debt. JV is the sole member of MezzCo. MezzCo has in turn formed PropCo for purposes of acquiring and owning the Property. MezzCo is currently the sole member of PropCo.

The redevelopment of the Property was substantially completed in June 2016 and its 137 extended-stay residences are now available for lease. The Property now consists of approximately 88,000 net sf of residential space and 3,700 sf of commercial space, with such commercial space expected to open in January 2017 as Blue Ribbon Federal Grill.

**The operating agreement of JV provides for certain circumstances where the Master Fund’s investment in JV may be diluted. See “*The Operating Agreement of the JV May Restrict the Availability of Distributions or Significantly Dilute the Master Fund’s Percentage Interest in the JV.*”**

PropCo acquired the Property on October 22, 2013 and has since substantially completed the redevelopment of the Property as of June 1, 2016. PropCo's strategy is to hold and operate the Property as extended-stay residences during the Investment Period (defined herein), and to recapitalize or sell the Property as a whole or as bifurcated condominiums at the end of the Investment Period. The Fund has used (1) the equity investment (the "Feeder Equity Investment") and loan (the "Structurally Subordinated Debt") proceeds from the Feeder Fund, which is made through NewCo (collectively, the "Feeder Investment"); (2) investment proceeds from direct investors in the Master Fund (the "Direct Investment," and together with the Feeder Investment, the "Investment"); (3) the proceeds of a loan to PropCo from Canadian Imperial Bank of Commerce (CIBC) secured by a first lien mortgage on the Property (the "Senior Debt") and (4) the proceeds of a loan to MezzCo by Emmes & Co. (the "Mezz Debt") to acquire and redevelop the Property. The Fund has redeveloped the Property into a residential rental property with approximately 137 residential units and 3,700 square feet of commercial space.

PropCo intends to secure a new loan prior to the Recapitalization Date (the "Refinancing Debt") in order to pay down the existing Senior Debt and Mezz Debt under more favorable terms. It is anticipated that the amount of proceeds from the Refinancing Debt will be approximately \$105,000,000 to \$110,000,000 at a rate of LIBOR plus 5%.

The income from the Property's operations and the proceeds from the sale of the Property are expected to repay the then due and payable principal of and interest on the Refinancing Debt. Distributions from the Master Fund to its members (including direct investors and indirectly to the Feeder Fund through NewCo) will only be made if all then due and payable principal of and interest on the Refinancing Debt are paid in full. See: "*Distributions*" below.

#### **Recapitalization Date**

Recapitalization Date ("Recapitalization Date") will occur on the date sufficient funds have been raised by NewCo in connection with the recapitalization of the Property to allow NewCo to (a) contribute to the Master Fund funds in an amount sufficient for the Master Fund to effect the redemption of the Preferred Interests and/or Common Interests held by the Master Fund's Investors that have elected for such redemption pursuant to a Master Election Notice, and (b) pay or distribute to the Feeder Fund funds in an amount sufficient for the Feeder Fund to effect the redemption of the Feeder Fund Shares held by the Feeder Fund's Investors that have elected for such redemption pursuant to a Feeder Election Notice (of the applicable subscription agreement entered into or to be entered into between such Investors in the Feeder Fund and the Investment Manager) at the Recapitalization Feeder Share Price.

**Recapitalization Target**

In connection with the recapitalization, NewCo is targeting capital commitments of approximately \$250,000 through the issuance of Class A Common Stock to PSIM 84 (or another affiliate of PSIM or PSIM), the issuance of Class B Common Stock to New NewCo Investors and incurring additional Structurally Subordinated Debts from such New NewCo Investors pursuant to the Loan and Security Agreement in an aggregate amount equal to approximately \$70,000,000. The aggregate capital targeted described in this paragraph, the “Recapitalization Target”.

**Offering of Interests**

With respect to (i) the Feeder Fund, the term “Interests” shall refer to the Participating Shares, (ii) NewCo, the term “Interests” shall refer to the Class B Common Stock of NewCo, and (iii) the Master Fund, the term “Interests” shall refer to the Preferred Interests and/or Common Interests in the Master Fund. The term “Investor” shall refer to a holder of Interests.

NewCo is authorized to issue 5,000 shares of stock with a par value of \$0.01 per share. As of the date hereof, NewCo has issued 100 shares of capital stock to the Feeder Fund, which will be converted to 100 shares of Class B Common Stock as of the Recapitalization Date.

NewCo is inviting qualified investors to subscribe for the purchase of Class B Common Stock in order to effect the recapitalization of the Property. The minimum subscription amount for NewCo in connection with the recapitalization shall be at least 100 shares of Class B Common Stock at \$1,000/share or such other number of shares or price per share as the Investment Manager may determine.

To the extent reflected in the applicable Subscription Agreement with respect to an Investor in NewCo, certain Investors in NewCo may purchase Class B Common Stock at a discount; provided such discount will not exceed five percent (5%) of the then liquidation value of the Class B Common Stock (as reasonably determined by the Investment Manager) assuming the liquidation of PropCo, MezzCo, JV, the Master Fund and NewCo. Neither NewCo nor the Investment Manager has any obligation to issue to any Investor in NewCo any such discount.

Proceeds received from New NewCo Investors in connection with such issuances of Class B Common Stock will be used by NewCo on or after the Recapitalization Date to (a) purchase from each current Investor in the Master Fund the applicable portion of the Preferred Interests held by such Investor that has elected for such redemption pursuant to a Master Election Notice, and (b) pay or distribute to the Feeder Fund in an amount sufficient for the Feeder Fund to effect the redemption of the Feeder Fund Shares held by the Feeder Fund’s Investors that have elected for such redemption pursuant to a Feeder Election Notice at the Recapitalization Feeder Share Price. Upon receiving such proceeds from NewCo, the Feeder Fund will use such proceeds to redeem the Feeder Fund Shares held by the Feeder Fund’s Investors that have elected for such redemption pursuant to a Feeder Election Notice.

The Investment Manager reserves the right to decline any and all new subscriptions at any time and to modify the foregoing minimum subscription amounts in its sole discretion.

**Capital Contributions  
for New NewCo  
Investors**

Any potential New NewCo Investor subscribing to NewCo will make a capital contribution equal to its entire capital commitment (including both equity and loan commitment) no later than the earlier of (x) ten (10) days after notice by the Investment Manager that an Investor's subscription agreement ("Subscription Agreement") has been approved and (y) the Recapitalization Date.

Each contribution by a New NewCo Investor in NewCo shall be deposited to an account maintained with the Bank in the name of NewCo (such account, the "NewCo Account"). Contributions will be held by the Bank until the Recapitalization Date. Upon the occurrence of the Recapitalization Date, all such funds will be used by NewCo to (a) purchase from each current Investor in the Master Fund the applicable portion of the Preferred Interests held by such Investor that has elected for such redemption pursuant to a Master Election Notice, and (b) pay or distribute to the Feeder Fund sufficient funds to allow the Feeder Fund to effect the redemption of the shares held by the Feeder Fund's Investors that have elected for such redemption pursuant to a Feeder Election Notice at the Recapitalization Feeder Share Price.

**Investor Suitability**

Preferred Interests were offered to the Investment Manager and its officers, directors, managers and similar management personnel, and direct investors that are accredited investors, as defined in Regulation D under the Securities Act. Participating Shares and Class B Common Stock will be offered to (i) non-U.S. persons and (ii) permitted U.S. persons (e.g., U.S. tax-exempt entities) that are accredited investors, as defined in Regulation D under the Securities Act.

**Investment Period**

The Fund's "Investment Period") shall commence on the Recapitalization Date and end upon the earliest of (i) the fifth (5<sup>th</sup>) anniversary of the Recapitalization Date (provided, the Investment Manager may, in its sole discretion, extend such period for up to three (3) additional years), or (ii) such time as there is a change in law or business conditions that, in the sole discretion of the Investment Manager, makes termination of the Investment Period necessary or advisable.

**Fees**

As compensation for the management of the Fund, Investment Manager (or an affiliate thereof) will receive a management fee (the “Management Fee”) semi-annually, in advance of each Semiannual Distribution Date, in an amount equal to 0.25% (i.e., an aggregate of one-half percent (0.5%) per annum) of the Property Value; provided, the Investment Manager may, in its sole discretion, charge less than 0.25% or defer such Management Fee in which case the shortfall amount shall accrue and shall be paid to the Investment Manager at such time that there is sufficient available cash flow and/or sales proceeds to pay the deferred fee. “Property Value” means the greater of (x) PropCo’s cost basis in the Property (as determined in accordance with generally accepted accounting practices in the United States of America) and (y) the appraised value of the Property as determined by a reputable third party appraisal firm.

Additionally, on the Recapitalization Date, the Fund will pay the Investment Manager (or an affiliate thereof) an acquisition fee (“Acquisition Fee”) equal to one percent (1%) of the Property Value as of the Recapitalization Date; provided the Investment Manager may, in its sole discretion defer such Acquisition Fee until such time that there is sufficient available cash flow and/or sales proceeds to pay such deferred Acquisition Fee.

**Distributions**

Distributions of PropCo’s operational cash flow and cash flow upon the sale of the Property, net of deductions (including, but not limited to, (i) payments due to any credit provider under any financing agreement, including the Senior Debt, (ii) other existing or reasonably foreseeable expenses of PropCo and (iii) amounts reserved by the Investment Manager in its sole discretion to establish reserves for PropCo’s operations and/or liabilities), will be made to MezzCo. Distributions of MezzCo’s net cash flow, net of deductions (including, but not limited to, (i) payments due to any credit provider under any financing agreement, including the Mezz Debt, (ii) other existing or reasonably foreseeable expenses of MezzCo and (iii) amounts reserved by the Investment Manager in its sole discretion to establish reserves for MezzCo’s liabilities), will be made to the JV. Distributions of JV’s net cash flow, net of deductions (including, but not limited to, (i) payments due to any credit provider under any financing agreement, (ii) other existing or reasonably foreseeable expenses of the JV and (iii) amounts reserved by the Investment Manager in its sole discretion to establish reserves for the JV’s liabilities), will be made to the Master Fund and the JV Partner pursuant to the Partnership Agreement of the JV.

Distributions of the Master Fund’s net cash flows (as described below), if any, will be made semiannually on December 31 and June 30 (or, if such day is not a Business Day, the immediately preceding Business Day, each, a “Semiannual Distribution Date”) beginning on the first such Semiannual Distribution Date following the Recapitalization Date.

Distributions of the Master Fund's net cash flow (other than cash flow related to the disposition of the Property or any portion thereof), net of deductions (including, but not limited to, (i) payments due to any credit provider under any financing agreement, (ii) other existing or reasonably foreseeable expenses of the Master Fund and (iii) amounts reserved by the Investment Manager in its sole discretion to establish reserves for the Master Fund's liabilities), will be made to the holders of Common Interests and Preferred Interests as follows (such portion of the cash flow of the Master Fund, the "Available Operating Cash") in accordance with the following distribution priorities and calculations ("Operating Cash Priority of Distributions"):

- (i) First, 100% to the holders of Preferred Interests until each such holder has received, pursuant to this clause (i) and/or clause (iii) of the Sale Proceeds Priority of Distributions (including, in each case, distributions on prior Semiannual Distribution Dates), an amount equal to a 7% pre-tax annual compounded return on the sum of (x) its Capital Contribution (defined herein) with respect to Preferred Interests and (y) its Master Preferred Discount calculated from the date of such Capital Contributions to the date on which such compounded return amount has been fully distributed pursuant to this clause (i) and/or clause (iii) of the Sale Proceeds Priority of Distributions, and as among the holders of such Preferred Interests *pro rata* in proportion to their relative entitlement to such compounded return not previously distributed under this clause (i) and/or clause (iii) of the Sale Proceeds Priority of Distributions;
- (ii) Second, 100% to the holders of Common Interests until each such holder has received, pursuant to this clause (ii) and/or clause (iv) of the Sale Proceeds Priority of Distributions (including, in each case, distributions on prior Semiannual Distribution Dates), an amount equal to a 7% pre-tax annual compounded return on the sum of (x) its Capital Contribution with respect to Common Interests and (y) its Master Common Discount calculated from the date of such Capital Contributions to the date on which such compounded return amount has been fully distributed pursuant to this clause (ii) and/or clause (iv) of the Sale Proceeds Priority of Distributions, and as among the holders of such Common Interests *pro rata* in proportion to their relative entitlement to such compounded return not previously distributed under this clause (ii) and/or clause (iv) of the Sale Proceeds Priority of Distributions; and
- (iii) Third, to each holder of Preferred Interests on and Common Interests *pro rata* in accordance with the sum of their respective Capital Contribution and Master Discount.

"Capital Contribution" means (a) with respect to each Investor of the Master Fund on the Recapitalization Date, the Recapitalization Date Amount applicable to such Investor on the Recapitalization Date plus any additional cash received or deemed received by the Master Fund with

respect to such Investor after the Recapitalization Date and (b) with respect to each person that becomes an Investor of the Master Fund raised by the Master Fund after the Recapitalization Date, the amount of cash received or deemed received by the Master Fund with respect to such Investor. It is anticipated that Capital Contributions for Preferred Interests in the Fund will be approximately \$70,000,000 and that Capital Contributions for Common Interests in the Fund will be approximately \$10,000,000 as of the Recapitalization Date, understanding that such amounts may vary depending on the actual occurrence of the Recapitalization Date and other variables such as the value of the Property.

Distributions of the Master Fund's net cash flow related to the disposition of the Property or any portion thereof, net of deductions (including, but not limited to, (i) payments due to any credit provider under any financing agreement, (ii) other existing or reasonably foreseeable expenses of the Master Fund and (iii) amounts reserved by the Investment Manager in its sole discretion to establish reserves for the Master Fund's liabilities), will be made to the holders of Common Interests and Preferred Interests as follows (such portion of the cash flow of the Master Fund, the "Sale Proceeds") in accordance with the following distribution priorities and calculations ("Sale Proceeds Priority of Distributions" and together with the Operating Cash Priority of Distributions, the "Master Priority of Distributions"):

- (i) First, 100% to the holders of Preferred Interests until each such holder has received, pursuant to this clause (i) and/or clause (iii) of the Operating Cash Priority of Distributions (including distributions on all prior Semiannual Distribution Dates), the sum of its Capital Contributions with respect to Preferred Interests and its Master Preferred Discount, and as among the holders of such Preferred Interests *pro rata* in proportion to their relative entitlement to distributions under this clause (i);
- (ii) Second, 100% to the holders of Common Interests until each such holder has received, pursuant to this clause (ii) and/or clause (iii) of the Operating Cash Priority of Distributions (including distributions on all prior Semiannual Distribution Dates), the sum of its Capital Contributions with respect to Common Interests and its Master Common Discount, and as among the holders of such Common Interests *pro rata* in proportion to their relative entitlement to distributions under this clause (ii);
- (iii) Third, 100% to the holders of Preferred Interests until each such holder has received, pursuant to this clause (iii) and/or clause (i) of the Operating Cash Priority of Distributions (including, in each case, distributions on prior Semiannual Distribution Dates), an amount equal to a 7% pre-tax annual compounded return on the sum of (x) its Capital Contributions with respect to Preferred Interests and (y) its Master Preferred Discount calculated from the date of such Capital Contributions to the date on which such compounded return amount has been fully distributed pursuant to

this clause (iii) and/or clause (i) of the Operating Cash Priority of Distributions, and as among the holders of such Preferred Interests *pro rata* in proportion to their relative entitlement to such compounded return not previously distributed under this clause (iii) and/or clause (i) of the Operating Cash Priority of Distributions;

- (iv) Fourth, 100% to the holders of Common Interests until each such holder has received, pursuant to this clause (iv) and/or clause (ii) of the Operating Cash Priority of Distributions (including, in each case, distributions on prior Semiannual Distribution Dates), an amount equal to a 7% pre-tax annual compounded return on the sum of (x) its Capital Contributions with respect to Common Interests and (y) its Master Common Discount calculated from the date of such Capital Contributions to the date on which such compounded return amount has been fully distributed pursuant to this clause (iv) and/or clause (ii) of the Operating Cash Priority of Distributions, and as among the holders of such Common Interests *pro rata* in proportion to their relative entitlement to such compounded return not previously distributed under this clause (iv) and/or clause (ii) of the Operating Cash Priority of Distributions; and
- (v) Fifth, to each holder of Preferred Interests on and Common Interests *pro rata* in accordance with the sum of their respective Capital Contributions and Master Discount; provided, 30% of the distributions otherwise allocable to the holders of Preferred Interests pursuant to this clause (v) will be paid to the Investment Manager as an incentive management fee.

For purposes of the Master Priority of Distributions, the date of Capital Contributions for (a) Capital Contributions made by Investors on or prior to the Recapitalization Date shall be the Recapitalization Date and (b) for Capital Contributions made after the Recapitalization Date shall be the date the Fund receives such Capital Contributions from such Investors.

Within five (5) Business Days following each Semiannual Distribution Date, the Investment Manager will cause NewCo to distribute to PSIM, in its capacity as the administrative agent under the Loan and Security Agreement, all distributions received by NewCo from the Master Fund on the applicable Semiannual Distribution Date, if any, less (a) cash expenditures for all costs and expenses in connection with the business of NewCo, including all of its Fund Expenses; (b) payments of principal of and interest on any loans or other obligations of NewCo (other than Structurally Subordinated Debts made by NewCo's Investors pursuant to the Loan and Security Agreement); and (c) amounts reserved by the Investment Manager in its sole discretion to establish reserves for NewCo's liabilities (including taxes). PSIM will apply such collections in the following priority (the "NewCo Loan Priority of Distributions"):

- (i) First, pay and/or reserve for any current or anticipated fees and/or expenses (including taxes) payable by NewCo under the Loan and Security Agreement;
- (ii) Second, distribute to the lenders under the Loan and Security Agreement accrued and unpaid interests based on their pro rata entitlement thereto; and
- (iii) Third, distribute to the lenders the unreturned principal based on the sum of their relative unpaid principal balance of the loan.

After the repayment and full satisfaction of NewCo's obligations under the Loan and Security Agreement, remaining net income of NewCo received from the Master Fund will be distributed to NewCo's Investors in accordance with the following distribution priorities and calculations ("NewCo Sale Proceeds Priority of Distributions"):

- (i) First, 100% to the holders of NewCo Stock until each such holder has received, pursuant to this clause (i) (including distributions on prior distribution dates), the sum of the liquidation value of its NewCo Stock at the time such shares were purchased by such Investor (as reasonably determined by the Investment Manager), and as among the holders of such NewCo Stock, pro rata in proportion to their relative entitlement to distributions under this clause (i);
- (ii) Second, 100% to the holders of NewCo Stock until each such holder has received, pursuant to this clause (ii) (including distributions on prior distribution dates), an amount equal to a 7% pre-tax annual compounded return on the sum of the liquidation value of its NewCo Stock at the time such shares were purchased by such Investor (as reasonably determined by the Investment Manager) calculated from the date such NewCo Stock were purchased to the date on which such compounded return amount has been fully distributed pursuant to this clause (ii), and as among the holders of such NewCo Stock pro rata in proportion to their relative entitlement to such compounded return not previously distributed under this clause (ii); For the avoidance of doubt the 7% pre-tax annual compounded return set forth above reflects the gross return of NewCo and that the Investor's actual rate of return may be less after giving effect of the payment or withholding of taxes of NewCo or Investors in NewCo; and
- (iii) Third, to each holder of NewCo Stock pro rata in accordance with their relative ownership of NewCo Stock.

Within five (5) Business Days of Feeder Fund's receipt of distributions from NewCo, the Investment Manager will cause Feeder Fund to distribute to its Investors all such distributions received by Feeder Fund from NewCo, if any, net of deductions, including (but not limited to) (i) payments due to any credit provider under any financing agreement, (ii) other existing or reasonably foreseeable expenses of Feeder Fund (including taxes) and (iii) amounts reserved by the Investment Manager in its sole discretion to establish reserves for Feeder Fund's liabilities, in accordance with the following distribution priorities and calculations:

(a) With respect to funds received by NewCo from the Master Fund pursuant to the Operating Cash Priority of Distributions that are subsequently distributed by NewCo to the Feeder Fund ("Feeder Fund Operating Cash Priority of Distributions"):

- (i) First, 100% to the holders of Feeder Fund Shares until each such holder has received, pursuant to this clause (i) (including distributions on prior Semiannual Distribution Dates), an amount equal to a 7% pre-tax annual compounded return on the sum of the liquidation value of its Feeder Fund Shares at the time such shares were purchased by such Investor (as reasonably determined by the Investment Manager), and as among the holders of such Preferred Interests pro rata in proportion to their relative entitlement to such compounded return not previously distributed under this clause (i); For the avoidance of doubt the 7% pre-tax annual compounded return set forth above reflects the gross return of NewCo and that the Investor's actual rate of return may be less after giving effect of the payment or withholding of taxes of NewCo and the Feeder Fund;
- (ii) Second, 100% to the holders of Feeder Fund Shares until each such holder has received, pursuant to this clause (ii) (including distributions on all prior distribution dates), the sum of the liquidation value of its Feeder Fund Shares at the time such shares were purchased by such Investor (as reasonably determined by the Investment Manager), and as among the holders of such Feeder Fund Shares *pro rata* in proportion to their relative entitlement to distributions under this clause (i); and
- (iii) Third, to each holder of Feeder Fund Shares pro rata in accordance with their relative ownership of Feeder Fund Shares.

(b) With respect to funds received by NewCo from the Master Fund pursuant to the Sale Proceeds Cash Priority of Distributions that are subsequently distributed by NewCo to the Feeder Fund ("Feeder Fund Sale Proceeds Priority of Distributions"):

- (i) First, 100% to the holders of Feeder Fund Shares until each such holder has received, pursuant to this clause (i) (including distributions on all prior distribution dates), the sum of the liquidation value of its Feeder Fund Shares at the time such shares

were purchased by such Investor (as reasonably determined by the Investment Manager), and as among the holders of such Feeder Fund Shares *pro rata* in proportion to their relative entitlement to distributions under this clause (i);

- (ii) Second, 100% to the holders of Feeder Fund Shares until each such holder has received, pursuant to this clause (ii) (including distributions on prior Semiannual Distribution Dates), an amount equal to a 7% pre-tax annual compounded return on the sum of the liquidation value of its Feeder Fund Shares at the time such shares were purchased by such Investor (as reasonably determined by the Investment Manager), and as among the holders of such Preferred Interests *pro rata* in proportion to their relative entitlement to such compounded return not previously distributed under this clause (ii); For the avoidance of doubt the 7% pre-tax annual compounded return set forth above reflects the gross return of NewCo and that the Investor's actual rate of return may be less after giving effect of the payment or withholding of taxes of NewCo and the Feeder Fund; and
- (iii) Third, to each holder of Feeder Fund Shares *pro rata* in accordance with their relative ownership of Feeder Fund Shares.

For purposes of the NewCo Sale Proceeds Priority of Distributions, Feeder Fund Operating Cash Priority of Distributions and Feeder Fund Sale Proceeds Priority of Distributions, the date of purchase of NewCo Stock and Feeder Fund Shares, as applicable, for (a) purchases made on or prior to the Recapitalization Date shall be the Recapitalization Date and (b) for purchases made after the Recapitalization Date shall be the date NewCo or the Feeder Fund receives such purchase price from the applicable Investor.

### **Fund Expenses**

The Fund shall bear all fees, costs and expenses incurred in connection with the organization and funding of the Fund, including (i) the negotiation, establishment and operation of the Master Fund, the Feeder Fund, and NewCo, (ii) the issuance of the Interests, (iii) the ongoing management activities of the fund, and (iv) marketing and selling expenses associated with the capital raising effort.

Additionally, the Fund is required to pay the following expenses: (i) insurance expenses, (ii) legal, accounting, auditing, consulting and other similar fees and expenses, (iii) costs, expenses and liabilities of the Master Fund, the Feeder Fund and/or NewCo, as the case may be (including, without limitation, litigation and indemnification costs and expenses, judgments and settlements), (iv) any taxes, fees and other governmental charges levied against the Master Fund, the Feeder Fund and/or NewCo, as applicable, (v) salaries and bonuses due to employees of the Investment Manager and/or affiliates of the Investment Manager that provide services on behalf of the Fund (such salaries and bonuses will not exceed 2% of the Recapitalization Target), as well as any overhead associated with providing such services, (vi) expenses connected with communications to members of the Fund and other bookkeeping and clerical work necessary to

maintaining relations with such members and in complying with the continuous reporting and other requirements of governmental bodies or agencies, (vii) costs associated with any computer software or hardware, electronic equipment or purchased information technology services from third-party vendors that is used for the Fund, (viii) expenses incurred by directors, officers, personnel and agents of the Investment Manager for work conducted on behalf of the Fund, and (viii) placement fees to third party agents that are negotiated on arm's-length basis with agents unaffiliated with the Investment Manager and its affiliates and are anticipated not to exceed 5% of the total capital contributions actually received by the Fund.

In addition to the foregoing, the Fund and/or JV may engage and pay fees to the Investment Manager, JV Manager, any member or any Affiliate thereof for services rendered or goods provided to the Fund to the extent that the fees paid to such persons or entities do not exceed the prevailing market rates for fees that would be payable to an independent responsible third party that is willing to perform such services or provide such goods. Such fees may include, without limitation, property management fees, financing procurement fees, due diligence costs, lease negotiation fees, and disposition fees.

**Redemptions**

An Investor may not voluntarily redeem its Interest.

**Event of Default**

An Investor that defaults (the "Defaulting Investor") on any required capital contribution in respect to its capital commitment when due shall remain liable in respect of its capital commitment and be subject to certain remedies set forth in the Organizational Documents, including (i) acceptance by the Fund of such Investor's capital contribution after the due date therefor with interest thereon at eight percent (8%) per annum (or such lower rate as may be required by applicable law) plus expenses incurred in connection with such Investor's failure to timely make its capital contribution; (ii) commencement of legal proceedings against such Investor to collect the due and unpaid capital contribution plus interest thereon (as described in clause (i)) and the expenses of collection, including reasonable attorneys' fees; (iii) prohibiting such Investor from making further capital contributions; (iv) declaring the unpaid capital commitment of such Investor released; (v) offering such Investor's Interests to other Investors (which may be for a reduced price); (vi) reducing such Investor's entitlement to subsequent distributions by one half (1/2) of the amount that such Investor would otherwise be entitled to under the Organizational Documents (with the excess apportioned to the remaining Investors pro rata in proportion to their relative entitlements to distributions); or (vii) pursuing any other remedy that the Investment manager and/or Directors, as applicable, deem advisable. Non-defaulting Investors may be required to contribute their *pro rata* share in proportion to their respective capital commitments to the Fund of the amount that was to have been paid by the Defaulting Investor; provided that a non-defaulting Investor shall not be required to fund amounts in excess of its unpaid capital commitment. The Investment Manager may offer some or all of a Defaulting Investor's Interest to a third party.

**Compulsory Redemption**

The Investment Manager reserves the right, with or without cause, to compel the redemption of any Investor's Interests on not less than ten (10) days' prior written notice. In particular, the Fund may compulsorily redeem an Investor's Interest in the event of delay or failure by an Investor to produce any information required for anti-money laundering verification purposes or compliance with the U.S. Foreign Account Tax Compliance Act of 2010, as amended ("FATCA"), or if any answer provided or documentation required under the Subscription Agreement is found to be false, forged or misleading. The Fund may charge any such Investor any legal, accounting or administrative costs associated with such compulsory redemptions. In the event of a compulsory redemption, the redemption price will be determined as of the close of business of the immediately following Valuation Day (as defined below) after the ten-day period of notice for such compulsory redemption. An Investor whose Interests are compulsorily redeemed will have no rights as an Investor in the Fund after the close of business on the date on which the notice of compulsory redemption was issued. The Investment Manager may also, by written notice to the Investor, suspend the distribution of amounts payable thereto, if the Investment Manager deems it necessary to do so to comply with applicable anti-money laundering laws or FATCA. An Investor shall have no claim against the Fund, the Investment Manager or their respective affiliates for any form of damages as a result of forced redemption.

**Transfers**

Investors in the Master Fund may not sell, assign, transfer or pledge ("Transfer") their Preferred Interests without the prior written consent of the Investment Manager; Investors in NewCo may not Transfer their Class B Common Stock without the prior written consent of the Investment Manager; and Investors in the Feeder Fund may not Transfer their Participating Shares without the prior written consent of the Directors. Transferees of any Interest must satisfy the "Investor Suitability" requirements hereof (however, in no event will the Fund's Interests be registered or distributed pursuant to a public offering within the meaning of the Securities Act) and otherwise in compliance with the requirements of this Memorandum and the Organizational Documents. The Investment Manager may select one or more placement agents to assist Investors interested in the sale, assignment or other transfer of their Interests. It is expected that a commission fee of approximately five percent (5%) plus any transactions fees, costs and expenses will be paid by the transferor and/or transferee to those placement agents.

**Indemnification**

The Investment Manager, the Directors and their affiliates, and, as applicable, their members, partners, managers, stockholders, officers, directors and employees (each, an “Indemnified Person”) shall not be liable, in damages or otherwise, to the Fund or to any of the Investors for any act or omission performed or omitted by such Indemnified Person, including losses due to the negligence of agents of the Fund, unless such losses result from an Indemnified Person’s fraud, willful misconduct, gross negligence, bad faith or a willful violation of applicable securities laws. The Fund shall indemnify each Indemnified Person for any loss, damage or expense incurred by such Indemnified Person or to which such Indemnified Person may be subject by reason of its activities on behalf of the Fund or in furtherance of the interest of the Fund or otherwise arising out of or in connection with the Fund and its investments, except that this indemnity shall not apply to losses arising from such Indemnified Person’s own fraud, willful misconduct, gross negligence, bad faith or willful violation of applicable securities laws. Investors will be obligated to return amounts distributed to them to fund indemnity obligations, subject to certain limitations set forth in the Organizational Documents. The Investment Manager may, in its discretion, reserve assets in the Fund to meet future indemnification costs, irrespective of the time, amount or other limitations set forth herein with respect to redemptions and liquidations.

**Net Asset Valuation**

In general, the Investment Manager will calculate the Net Asset Value (defined herein) of the Fund and the Fund’s administrator (the “Administrator”) will verify the Net Asset Value.

Investors should carefully review the discussion in “*Section XIII Valuation of the Fund.*”

**Removal of the Investment Manager**

The Investment Manager may not be removed except for (Cause”), which means: (i) the conviction of the Investment Manager or any of its managers, members or officers of a felony or a material violation of federal or state securities laws or (ii) a judicial determination that the Investment Manager or any of its managers, members or officers has committed fraud or an intentional breach of fiduciary duty with respect to the Fund. Cause will not be deemed to occur if the Investment Manager terminates the involvement of the person or persons who committed the action giving rise to a Cause event. The removal of the Investment Manager will not be effective unless a successor Investment Manager has been appointed. See *Section VI The Investment Manager* below.

**Fiscal Year**

The Fund has a fiscal year ending on December 31 of each calendar year.

**Functional Currency**

The results of the Fund will be reported in Dollars. A subscription may be transacted only in Dollars and redemptions will be transacted in Dollars.

**Reports to Investors**

The Fund will furnish to its Investors as soon as practicable or at the latest six (6) months after the end of each fiscal year annual reports containing unaudited financial statements, the Net Asset Value of their respective holdings in the Fund and annual newsletters.

<b>Waivers for Certain Investors</b>	The Investment Manager shall have the discretion to agree with an Investor to waive or modify the application of any provision of the terms herein with respect to such Investor without obtaining the consent of any other Investor (other than an Investor whose rights are materially and adversely changed by such waiver or modification).
<b>Tax Status</b>	Investors should carefully review the discussion in “ <i>Section XVI Tax Considerations</i> .”
<b>ERISA Considerations</b>	<p>Prospective Investors and subsequent transferees of Interests will be required to make certain representations regarding their compliance with ERISA, and to assist the Feeder Fund in monitoring the status of the Feeder Fund under ERISA so that the Feeder Fund’s assets are not deemed to be “plan assets,” (as described in “<i>Section XVII ERISA Considerations</i>”). The Feeder Fund does not intend to accept subscriptions from Investors, if after such subscriptions, the Feeder Fund’s assets may be deemed to be “plan assets.” If the Interests held by Benefit Plan Investors (as defined in “<i>Section XVII ERISA Considerations</i>”) equals or exceeds the 25.0% limit (as described in “<i>Section XVII ERISA Considerations</i>”) or if the Feeder Fund did not qualify for another exception provided under ERISA or regulations thereunder, the Feeder Fund’s assets may be considered “plan assets” under ERISA, which could result in adverse consequences to the Fund, the Investment Manager, the Directors and the fiduciaries of Benefit Plan Investors. See “<i>Section XVII ERISA Considerations</i>.”</p> <p><i>Any ERISA plan fiduciary that seeks to cause an employee benefit plan to invest in the Feeder Fund is advised to consult with its own counsel regarding the applicability of the fiduciary and prohibited transaction provisions of applicable law in connection with an investment in the Feeder Fund.</i></p>
<b>Risk Factors</b>	See “ <i>Section II Certain Risk Factors</i> ” for a discussion of certain factors that should be considered in connection with an investment in the Fund.
<b>Administrator</b>	NESF Fund Services Corp. (“ <u>NESF</u> ”)
<b>Bank</b>	J.P. Morgan Chase Bank, N.A.
<b>U.S. Legal Counsel to the Fund</b>	Winston & Strawn LLP (“ <u>Winston</u> ”). In connection with this offering of Interests and ongoing advice to the Fund, Winston is not representing Investors of the Fund. No independent counsel has been retained to represent Investors of the Fund.
<b>U.S. Legal Counsel to the Investment Manager</b>	Winston & Strawn LLP
<b>Cayman Legal Counsel to the Fund</b>	Appleby (Cayman) Ltd.

## **II. CERTAIN RISK FACTORS**

**An investment in the Fund involves substantial risks. Prospective Investors should carefully consider the following factors relating to investment risks and potential conflicts of interest. Additional risks and uncertainties not presently known to the Investment Manager or that the Investment Manager currently deems immaterial may also impair a prospective Investor's investment. As a result of these factors, as well as other risks inherent in any investment, an investment in the Fund is not appropriate for all Investors. There can be no assurance that the Fund will meet its investment objectives or otherwise be able to successfully carry out its investment program. If any of the following events or circumstances identified as risks or other factors or conditions that are not anticipated actually occur or materialize, an Investor's investment could be materially and adversely affected. This Memorandum also contains forward looking statements that involve risks and uncertainties. Actual results could differ materially from those anticipated in these forward looking statements as a result of certain factors, including the risks described below and elsewhere in this Memorandum.**

### **General Risk Factors**

#### ***No Protection under the Investment Company Act and Absence of Regulatory Oversight***

While the Feeder Fund and the Master Fund may be considered similar to an investment company, each is not required to register as an investment company and has not registered as such under the Investment Company Act. Therefore, the provisions of the Investment Company Act (which may provide certain regulatory safeguards to Investors) are not applicable to each of the Feeder Fund and the Master Fund. In addition, there is no national or international agency whose duty is the regulatory supervision of the Fund.

#### ***General Solicitation and Bad Actors***

The Interests of the Feeder Fund will be offered and sold only to "accredited investors," as such term is defined under Rule 501(a) of Regulation D under the Securities Act, pursuant to the exemption provided by Rule 506(c) of Regulation D under the Securities Act. Rule 506(c) permits the Interests of the Feeder Fund to be generally solicited and advertised, as long as the requirements of the rule are satisfied. Accordingly, the Investment Manager must (i) make reasonable efforts to verify that each prospective investor in the Feeder Fund is an accredited investor and must have a reasonable belief that each prospective investor in the Feeder Fund is an accredited investor at the time of such prospective investor's investment in the Feeder Fund; (ii) prepare and file Form D in a timely manner; and (iii) ensure that there are no "bad actors," as defined in Rule 506(d) of Regulation D under the Securities Act, associated with the Investment Manager, the Fund, their affiliates or the offering of Interests of the Feeder Fund. In the event that any of the requirements of Rule 506(c) are not satisfied, the Feeder Fund would not be able to rely on 506(c) or any other exemption under Regulation D.

#### ***No Guarantee of Future Results***

***There is no guarantee of future results of the Fund or of an investment in the Fund. Also, the past performance of investments made by the Investment Manager in properties like any one or more of***

***the Properties is no guarantee of future results of the Fund or of an investment in the Fund. There can be no assurance that the Fund will achieve its investment objective.***

***Limited Liquidity***

The Fund represents a highly illiquid investment. There is no secondary market for the Interests, and it is unlikely that any such market will develop. No individual or entity is under any obligation to make a market in the securities of the Fund. Consequently, an investor must be prepared to hold the Fund's securities for an indefinite period of time or until termination of the Fund.

The Interests are not freely transferable. Unless otherwise provided in the applicable Supplement, the consent of the related Investment Manager will be required in connection with any transfer of an Interest. Transfers of Interests may be restricted by federal, state and foreign securities laws.

An investment in the Fund is suitable only for certain Investors. Prospective Investors are required to represent that they will be acquiring their Interests for investment purposes only and not with a view to resale or distribution. The Interests have not been registered under the Securities Act, any U.S. state securities laws or the securities laws of any other jurisdiction, and therefore are subject to restrictions on transfer under the Securities Act and/or under certain states' securities laws. Accordingly, the related Investment Manager may require an opinion of counsel satisfactory to it that a proposed transfer of Interests is exempt from registration prior to consenting to any such transfer. It is not anticipated that a market for the Interests will ever develop.

***Because of the Complex Tax Considerations Surrounding an Investment in the Fund, Investors Must Consult With Their Own Tax Advisors***

Special tax considerations may apply to certain types of taxpayers. Prospective Investors must consult with their own tax advisors to determine any U.S. federal, state, local, or non-U.S. tax implications of this investment.

***Differential Returns between the Fund and Parallel Vehicles and the Feeder Fund***

Because of structural, legal, regulatory or other reasons, Investors subscribing to different entities comprising the Fund may receive unequal returns and profits.

**Risks Involving the Nature of the Investments**

***Speculative Nature of Investment Will Include a Variety of Risks***

The Investment is subject to credit, liquidity, interest rate and other types of risks. The Investment is speculative in nature and the possibility of partial or total loss of capital will exist. Investors should not subscribe to or invest in the Fund unless they can readily bear the consequences of such loss.

***Generally***

The acquisition of the Property by the Master Fund was a highly leveraged investment. While the portion of the Investment made by the Feeder Fund in the form of a loan to NewCo was secured by a pledge of the equity interests of NewCo, such pledge will be actually or effectively subordinate to the mortgage in the Property granted to the holders of the Senior Debt and the Mezz Debt.

The Investment is a limited recourse obligation of or investment in the Fund payable solely from the income, payments and proceeds of the Property. Consequently, the Fund must rely solely on the income, payments and proceeds of the Property for payment in respect of the Investment. If the income, payments and proceeds of the Property are insufficient to make payments on or in respect of the Investment, no other Property or properties will be available for payment of the deficiency, and following disposition of the Property the obligations of the Fund to pay any further amounts in respect of the Investment will be extinguished.

The Investments will not be rated by any rating agency.

### ***Illiquidity of Investment***

Because the Investment is illiquid, a price for such Investment may be difficult or impossible to obtain and it may be impossible to sell or to liquidate such Investment on economic terms or at all. To the extent a price may be obtained for the Investment, that price may fluctuate due to a variety of factors that are inherently difficult to predict, including, but not limited to, changes in interest rates, prevailing credit spreads, general economic conditions, financial market conditions, domestic and international economic or political events, developments or trends in any particular industry, and the financial performance or condition of the Property.

The lack of an established, liquid secondary market for the Investment will have an adverse effect on the market value of the Investment and on the Fund's or the applicable Investor's ability to dispose of the Investment, if necessary. Because of the provision to holders of the Investment of confidential information relating to the Fund and the Property, and the unique and customized nature of the Investment, the Investment is not as easily purchased or sold as a publicly traded security. Historically, the trading volume in the loan market has been small relative to the high yield debt market and the trading volume in the restricted equity market has been relatively small to the public equities market. Additionally, the Investment will be subject to transfer restrictions that may contribute to illiquidity. Therefore, if the Fund or an Investor decides to dispose of the Investment, no assurance can be given that it will be able to dispose of the Investment at the prevailing market price. Such illiquidity may adversely affect the price and timing of liquidations of the Investment by the Fund or an Investor.

### ***Concentration Risk***

The concentration of the Investment in one (1) Property and with a limited number of potential tenants or purchasers of the residential units and/or commercial units at Property, subjects the Investment to a greater degree of risk with respect to the lease or purchase of the Property, and the concentration of the Investment subjects it to a greater degree of risk with respect to economic downturns relating to such location.

### ***Risks Particular to Real Estate***

The Investment is subject to significant additional and varying risks, such as repayment of capital contributions only from proceeds of the Property, as and when received by the Master Fund and distributed to the Feeder Fund, rather than regular amortization of principal; the inability to refinance any balloon payments on the Senior Debt or the Mezz Debt; the type and use of the Property; volatility of the value of the Property and net operating income (if any) being sufficient to cover debt service on the Senior Debt, the Mezz Debt and/or the Investment; dependence on the successful operation of the Property rather than upon the liquidation value of the Property; local economic conditions and/or specific industry segments; declines in real estate values; declines in rental or occupancy rates; increases in interest rates, real estate tax rates and other operating expenses; changes in governmental rules,

regulations and fiscal policies; the presence of undetected physical and other defects; the need for unanticipated expenditures in connection with environmental matters; adverse changes in laws; changes in economic conditions affecting real estate ownership directly or the demand to own or rent real estate; unavailability of certain types of insurance; increases in insurance costs; changes in tax rates and other operating expenses; and, terrorist threats and attacks and social unrest and civil disturbances. Net operating income of an income-producing property can be affected by, among other things, success of occupancy and rental rates, property management decisions (including responding to changing market conditions, planning and implementing rental or pricing structures and causing maintenance and capital improvements to be carried out in a timely fashion), property location and condition, competition from comparable types of properties, changes in laws that increase operating expense or limit rents that may be charged, any need to address environmental contamination at the property and the occurrence of any uninsured casualty at the property. The sales price of a property can be affected by, among other things, success of prior units at the property, property management decisions (including fees for maintenance and capital improvements), property location and condition, competition from comparable types of properties, any need to address environmental contamination at the property and the occurrence of any uninsured casualty at the property.

The value of any property may be adversely affected by risks generally incident to interests in real property, including various events which may not be predictable or controllable, such as: changes in general or local economic conditions and/or specific industry segments; declines in real estate values; declines in rental or occupancy rates; increases in interest rates, real estate tax rates and other operating expenses; changes in governmental rules, regulations and fiscal policies, including environmental legislation; acts of God; environmental hazards; and social unrest and civil disturbances. Furthermore, the value of an income-producing Property is directly related to the net operating income derived from such property. Additional risks may be presented by the type and use of a particular commercial property. For instance, retail chains are often operated pursuant to franchise, management or operating agreements which may be terminable by the franchisor or operator.

Additionally, the Property may not readily be converted to an alternative use in the event that the operation of the Property for its original purpose becomes unprofitable for any reason. In such cases, the conversion of the Property to an alternative use would generally require substantial capital expenditures. Thus, if the Fund becomes unable to meet its obligations under the Senior Debt, the Mezz Debt and/or the Investment, the liquidation value of the Property may be substantially less, relative to the amount outstanding on the Senior Debt, the Mezz Debt and/or the Investment, than would be the case if the Property were readily adaptable to other uses.

#### ***Risks Associated with Dependence on and Concentration of Tenants or Purchasers***

No assurance can be given that tenants of the Property will continue making payments under their leases or that such tenants will not file for bankruptcy protection in the future or, if any tenants file for bankruptcy protection, that they will thereafter continue to make rental payments in a timely manner. In addition, a commercial tenant may, from time to time, experience a downturn in its business, which may weaken its financial condition and result in a reduction of rental payments or failure to make rental payments when due. Also, a purchaser of a residential unit or a commercial unit at the Property may default under its purchase agreement for the purchase of a unit at the Property (including as a result of the unavailability of mortgage financing). If a tenant defaults in its obligations to the Master Fund (including a subsidiary of the Master Fund), the Master Fund may experience delays in enforcing its rights as lessor and may incur substantial costs and experience significant delays associated with protecting its investment, including costs incurred in renovating and reletting the property. Additionally, the Master Fund may be required to mitigate any damages or claims that it may have against a tenants that has breached its obligations under its leases.

No assurance can be provided that there will be any interested purchasers of the Property. There may be a limited universe of interested purchasers of the Property resulting in a purchase on terms and conditions less favorable to the Fund than anticipated. Also, a purchaser of the Property may default in its obligations under its purchase agreement to the Master Fund (or a Subsidiary thereof), resulting in delays in the sale of the Property and substantial costs and expense in enforcing the purchase agreement with that purchaser or identifying a new purchaser for the Property. There can be no assurance that a subsequent purchaser of the Property will be identified. If a subsequent purchaser of the Property is identified, that purchaser of the Property may acquire the Property on terms and conditions less favorable than the terms and conditions under the purchase agreement with the defaulting purchaser and may require various concessions. Each of the foregoing may result in a loss on the Investment of the Investors or a dilution in the expected return on the Investment.

***Disruptions in the Property Management Relationship May Have an Adverse Effect on the Property***

On or about October 18, 2013, PropCo and Korman entered into a property management agreement (the “Property Management Agreement”). Pursuant to the Property Management Agreement, Korman is the manager of the Property for the purpose of performing only those services set forth in the Property Management Agreement, including, without limitation, marketing and leasing the units, collecting rents and security deposits, employing personnel for the operation and maintenance of the Property, maintaining books and records for transactions related to the Property, proposing period business plans and budgets, and paying the Property’s operating and maintenance expenses. Korman is responsible for the implementation of the decisions of PropCo with respect to the Property and for conducting the ordinary and usual business and affairs of the Property, in accordance with the terms and conditions set forth in the Property Management Agreement. A failure by Korman to perform its obligations under the Property Management Agreement may have an adverse effect on the value of the Property and also adversely affect the Interests.

The term of the Property Management Agreement commences on or about October 18, 2013 and terminates ten (10) years following the date that Korman is notified by PropCo that the re-development of the Property has been substantially completed (including all amenities), and opened to the public for the conduct of business as a “Corporate Suite” rental in accordance with a standard and level of quality comparable to other Korman serviced residences owned and/or operated by Korman or its affiliates in Manhattan, New York. If there is a dispute with Korman concerning the standard and level of quality of the re-developed Property, there could be substantial delay in implementing the management of the Property (including the identification and appointment of a new manager), which could have an adverse effect on the value of the Property and the Interests.

The term of the Property Management Agreement will extend each year thereafter for a term of an additional year absent 90 days prior written notice by either party terminating the agreement. Subject to applicable grace periods and Korman’s right to cure certain defaults, PropCo may terminate the Property Management Agreement, at any time, without cost to PropCo if: (i) Korman fails to keep, observe or perform any covenant, agreement, term or provision of the Property Management Agreement to be kept, observed or performed by Korman, or (ii) Korman, or anyone at the direction of Korman, commits in connection with the Property any act of fraud, defalcation (that is, an act of embezzlement, theft or similar act) or willful misconduct, or (iii) a voluntary or involuntary insolvency event occurs with respect to Korman. In addition, with respect to the 4<sup>th</sup> year following the re-development of the Property and its opening to the public for the conduct of business as a “Corporate Suite” rental, and each 12 month period thereafter, PropCo shall have the right, upon 30 days’ notice to Korman, to terminate the Property Management Agreement within 120 days after the end of such period if the actual excess of gross revenues over adjusted operating expense for such period achieved by the Property for any such period is less than the amount specified in the Property Management Agreement; however, PropCo will not have the right to

terminate the Property Management Agreement if such failure is a result of (a) an extraordinary event that materially impact the Property or the operation thereof (e.g., acts of God), (b) a material reduction in occupancy resulting from an extraordinary event, a taking by eminent domain, or a casualty of all or any portion of the property, and/or (d) a default by PropCo under the Property Management Agreement, including, without limitation, any obligation imposed on PropCo to provide working capital. Also, PropCo may terminate the Property Management Agreement in connection with a sale of the Property to a third party buyer in an arms' length transaction.

Upon termination of the Property Management Agreement, Korman is required to assist PropCo in coordinating with any successor manager of the Property to ensure the smooth transition from Korman to such successor manager. There can be no assurance that Korman will honor its obligation to cooperate with the appointment of a successor manager (including in circumstances where there is a dispute with PropCo), and PropCo could experience significant delays and/or expense in connection with any such transition.

***Amounts Payable to the Property Manager Will Reduce Amounts Available for Distribution on the Interests***

In consideration of Korman's services under the Property Management Agreement, Korman will receive the following fees under the Property Management Agreement: (x) from and after the "soft opening" of the Property, a monthly management fee (the "Base Fee") equal to three percent (3%) of the gross revenues collected that month, a monthly marketing fee (the "Marketing Fee") (1) from and after the "soft opening" of the Property and each month during the first two years after the opening of the Property, a fee equal to two percent (2%) of gross revenues collected that month, and (2) for each year thereafter, a fee equal to three percent (3%) of gross revenues collected that month, and (z) 60 days after the end of each operating year after the opening date of the Property, an incentive fee (the "Incentive Fee") equal to 15% of the amount, if any, by which the actual gross revenue minus operating expenses for such operating year achieved by the Property for any operating year after the opening date that exceeds the target net operating income for a given operating year (as set forth in the Property Management Agreement). However, notwithstanding the foregoing, that the sum of the Base Fee, the Marketing Fee and the Incentive Fee for any operating year may not exceed 9% of gross revenues collected that operating year. In addition, from and after the date of the Property Management Agreement until the opening date of the Property, Korman will receive (i) a technical services fee in the amount of 1% of the approved and budgeted hard costs (excluding any acquisition costs relating to the Property and any financing costs, but including hard costs relating to tenant improvements) and soft costs incurred in connection with the construction or renovation of any improvements on the Property (the "Technical Services Fee"), payable each month, and (ii) an integration fee of no less than \$300,000 (the "Integration Fee", and together with the Technical Services Fee being the "KCI Development Management Fees"), which Integration Fee will be payable in equal monthly installments of \$20,000.00 from the date of the Property Management Agreement until the opening date of the Property. On the opening date of the Property any remaining unpaid amount of the Integration Fee will be paid to Korman. Also, if PropCo terminates the Property Management Agreement in connection with a sale of the Property to a third party buyer, in addition to paying all accrued and unpaid amounts owing to Korman, PropCo is required to pay to Korman a sale termination fee equal to 20% of the amount, if at all, by which (x) the actual net proceeds of such sale of the Property (after satisfying all third party debt and payment of reasonable and actual closing costs and expenses) exceeds (y) the net proceeds that would have been available had the Property been sold on an all cash basis at gross sales price determined pursuant to the Property Management Agreement.

The foregoing amounts will be paid prior to the distribution of any amounts by PropCo to its member and thus will reduce the amount available for distributions to the members of the Master Fund.

Until such time as there is a default by Korman under the Property Management Agreement (following any applicable notice and cure period), Korman is authorized to debit the operating account of the Property for any operating expenses, Base Fee, Marketing Fee and Incentive Fee due to Korman for any month during the term of the Property Management Agreement on the tenth (10th) day of the following month. Only after debiting such amounts will all cash remaining on deposit in the operating account for the Property, less a working capital reserve in an amount approved by PropCo from time to time but not less than \$250,000, be transferred on the tenth (10th) day of each month to an account designated from time to time by PropCo. In the event of a dispute with Korman over its access to the operating account of the Property or amounts that may be debited from the operating account of the Property, there may be significant delays in the distribution of funds to PropCo and the ultimate distribution of those funds to the Master Fund.

***Amounts Payable to the Developer Will Reduce Amounts Available for Distribution on the Interests***

Pursuant to the Co-Development Agreement (the “Co-Development Agreement”) PropCo engaged Metro Loft Developers, LLC (“Metro Loft”) to assist with the development and rehabilitation of the building at the Property. In consideration of the performance by Metro Loft of its services under the Co-Development Agreement, Metro Loft received a construction management fee of \$800,000.

***The Senior Debt, Mezz Debt and/or Refinancing Debt Documents May Restrict the Availability of Distributions***

The direct acquisition of the Property was partially financed by the Senior Debt and Mezz Debt. The Senior Debt for the Property accrues interest at a fixed rate, has a loan term of 7-10 years, and a loan to value of approximately 70%. The Mezz Debt accrues interest at a fixed or floating rate and has a loan term of one year with a one-year extension. If an event of default were to occur under the Refinancing Debt, Senior Debt and/or Mezz Debt, or if one or more financial covenants or other conditions were to result in an event requiring greater periodic amortization, it is possible that there would be no cash available for distribution by the Master Fund to NewCo for NewCo to make payments in respect of the Investment. Also, the transaction documents for the Senior Debt provide the lender with certain rights and remedies if an event of default were to exist, including the right to foreclose upon and dispose of the related Property. Upon disposition of the Property, the proceeds remaining after repayment of the Senior Debt may not be sufficient to make any or all payments in respect of the Investment.

PropCo intends to secure Refinancing Debt in order to pay down the Senior Debt and Mezz Debt under more favorable terms.

***Mortgage Loans that Become Non-Performing Create Additional Risk***

Although the portion of the Feeder Investment that is Structurally Subordinate Debt is made in the form of a loan to NewCo, the Structurally Subordinated Debt is subordinate to payments of the obligations owing in respect of the Senior Debt and the Mezz Debt. NewCo contributes the proceeds of the Structurally Subordinated Debt to the Master Fund as a contribution to the capital of the Master Fund. Obligations in respect of the Senior Debt and the Mezz Debt are required to be paid prior to any distributions to the members of the Master Fund, which includes NewCo. In the event of an occurrence and during the continuation of an event of default under the instruments governing the Senior Debt or the Mezz Debt and certain other similar circumstances, the Investment generally is not entitled to receive any payments of principal or interest unless and until the related Senior Debt and Mezz Debt is paid in full. Additionally, any losses and expenses, including losses of principal or interest, non-recoverable advances, interest on advances and special servicing compensation, generally are borne first by the Investment and then by the Mezz Debt, followed by the Senior Debt. Further, any workout negotiations or restructuring that may occur will likely entail, among other things, a substantial increase in the interest

rate and/or a substantial increase of the principal of the mortgage loan for various obligations that cannot be paid when due (e.g., accrued and unpaid interest, attorney's fees and expenses, audits, surveys, indemnification obligations, reimbursable amounts, etc.), resulting in dilution in an Investor's expected return on its Investment. In addition, there can be no assurance that the Investment or the Senior Debt or Mezz Debt may be refinanced or assigned.

***The Operating Agreement of the JV May Restrict the Availability of Distributions or Significantly Dilute the Master Fund's Percentage Interest in the JV***

The managing member of the JV may require that each member of the JV make a contribution to the capital of the JV for additional cash required by the JV or its subsidiaries for necessary expenditures (including, without limitation, any cost overruns in the development of the Property). If the managing member of the JV requires such a contribution to capital and a member of the JV fails to timely make such contribution to capital, the other member may, as its sole remedies (i) cause the withdrawal of the notice for the additional contribution to capital and return all additional capital contributed to the JV in connection with such notice to the contributing members, (ii) contribute to the JV the amount of capital required to be contributed by the member that failed to contribute its required additional capital contribution, which contribution may be in the form of a loan to the defaulting member bearing an interest up to 15% or a contribution to the capital of the JV that reduces the defaulting member's percentage interest in the JV by up to 150% of the amount of contribution to the capital of the JV that such defaulting member failed to make. In the event that the non-defaulting member elects to make a loan to the defaulting member, the entire amount of capital contributed by the non-defaulting member to the JV (including the amount of capital that the non-defaulting member was required to contribute at the request of the managing member) will earn a priority return of up to 15% and that priority return along with the return of the entire capital contributed by the non-defaulting member to the JV will be paid from the net cash flow of the JV before any other distributions are made to the members of the JV.

In addition, the Investment Manager may seek additional capital from third parties if the Master Fund is not able to provide any additional capital required under the JV's operating agreement. Any additional capital raised through the admission of members to the Master Fund or the JV may be on terms that are more favorable than the terms and conditions of the currently contemplated investments in the Master Fund and the JV (including, without limitation, the price at which the interests in the JV or Master Fund, as the case may be, are issued). In addition, the Investment Manager may increase or raise indebtedness that would be payable prior to distributions on the Interests. The principal amount of such indebtedness, the interest rate thereon and the terms thereof may result in less available cash for distributions on or in respect of the Interests.

In addition, pursuant to an indemnity and contribution agreement entered into by Messrs. S. Lawrence Davis and Rodrigo Niño (principals of the Investment Manager), on the one hand, and Messrs. Lawrence Korman and Bradley J. Korman (principals of Korman), on the other hand, each of the foregoing person has executed certain guarantees in favor of the lenders extending the Senior Debt and the lenders extending the Mezz Debt against certain events more particularly described in those guarantees on a joint and several basis. Under the indemnity and contribution agreement, Messrs. Davis and Niño are obligated to indemnify Messrs. Lawrence Korman and Bradley J. Korman in the event that amounts payable under the guarantees (including collection costs) are caused by, to the extent arise as a direct consequence of or are directly attributable to any act or omission by either of Messrs. Davis or Niño that was not consented to by Messrs. Lawrence Korman and Bradley J. Korman. If Messrs. Davis and Niño fail to pay any such indemnification amounts, the indemnification amounts will be treated as a required capital call under the operating agreement of the JV and the terms and conditions described in the immediately preceding paragraph will apply to the Master Fund's investment in the JV. Under these circumstances, the entire amount of capital contributed and deemed contributed by the JV Partner to the

JV (including the amount of capital that the JV Partner is deemed to have loans to the Master Fund) will earn a priority return of up to 15% and that priority return along with the return of the entire capital contributed by the JV Partner to the JV will be paid from the net cash flow of the JV before any other distributions are made to the Master Fund.

***Distributions to the Members of the JV Are Limited to Net Cash Flows of the JV***

Distributions to the members of the JV will only be made to the extent that the revenues of the JV exceed its expenses and reserves.

***Distributions to a Member of the JV May Be Offset by the JV Due to that Member's Status***

If the JV is obligated to pay any amount to any governmental authority or other person or entity because of a JV member's status or otherwise specifically attributable to a JV member (including, without limitation, federal, state or local withholding taxes imposed with respect to any issuance of any JV membership interest, federal withholding taxes with respect to foreign persons or entities, state personal property taxes or state unincorporated business taxes), then such JV member is required to reimburse and indemnify the Company in full for the entire amount paid (including, without limitation, any interest, penalties and expenses incurred in respect of such payment). The amount to be indemnified will be charged against the capital account of such JV member and the JV will reduce distributions that otherwise would be made to such JV member, until the JV has recovered the amount to be indemnified.

***Environmental Risks***

Under various federal, state and local laws, ordinances and regulations, an owner or operator of real property may become liable for the costs of removal or remediation of certain hazardous substances released on or in its property. Those laws often impose that liability without regard to whether the owner or operator knew of, or was responsible for, the release of those hazardous substances. The costs of removal or remediation may equal or exceed the value of the property, and the presence of those substances, or the failure to properly remediate those substances, when released, may adversely affect the owner's ability to sell that real estate or to borrow using that real estate as collateral. An owner or operator of a facility may also be required to comply with various laws, ordinances and regulations regarding the handling, production, storage, use, discharge or disposal or regulated materials.

Prior to purchasing an interest in the Property, the Master Fund (or its related subsidiary) reviewed a Phase I environmental assessment prepared by an independent environmental consultant. A Phase I assessment typically includes an inspection of the Property and a review of public records but no sampling of soil, surface water, groundwater, or other media. If the Phase I assessment revealed cause for concern, the Master Fund (or its applicable subsidiary) would have conducted further investigation of environmental risks associated with the Property, including sampling. No assurance can be given, however, that either a Phase I assessment or subsequent investigation revealed all potential environmental liabilities.

***Casualty Losses; Uninsurable Losses***

The Fund required, prior to making an investment in the Property, that the Master Fund obtain (or cause to be obtained) suitable comprehensive liability, fire and extended coverage insurance for the property of the types and in the amounts customarily obtained for similar properties. However, there can be no assurance that insurance will be available or sufficient to cover any such risks. Insurance against certain risks, such as earthquakes or floods may be unavailable, available in amounts that are less than the full market value or replacement cost of investment properties or subject to a large deductible. In addition,

there can be no assurance the particular risks which are currently insurable will continue to be insurable on an economically feasible basis. Some losses (for example terrorism), however, may be either uninsurable or not economically insurable. Should an uninsured loss occur, the Fund could lose its Investment, including the anticipated income from the Investment.

***The Credit Crisis and Downturn in the Real Estate Market Have Adversely Affected and May Continue To Adversely Affect the Value of Real Estate***

In recent years, the real estate markets, as well as global financial markets and the economy generally, have experienced significant dislocations, illiquidity and volatility. Declining real estate values, coupled with continued high levels of public and private debt, high unemployment, large government budget deficits, significant and perhaps unsustainable entitlement obligations, aging populations, anemic economic growth and diminished availability of leverage and/or refinancings for real estate have resulted in increased delinquencies and defaults on mortgage loans. In addition, the downturn in the general economy has affected the financial strength of many residential and commercial real estate tenants and has resulted in increased rent delinquencies and decreased occupancy. Any continued downturn may lead to decreased occupancy, decreased rents or other declines in income from, or the value of, real estate, which would likely have an adverse effect on the value of real estate, including the Property. There can be no assurance that the dislocation in the real estate market will not continue to occur or become more severe. Even if the real estate market does recover, the Property may nevertheless decline in value. Any further economic downturn may adversely affect the financial resources of the Master Fund under the Senior Debt or the ability to repay the Investment (in whole or in part) or realize a return on the Investment, and may result in the inability of the Master Fund to make principal and interest payments on, or refinance, the outstanding debt when due or to sell the Property for an amount sufficient to pay off the outstanding debt when due and repay the Investment (in whole or in part) and realize any return on the Investment. In the event of default by the Master Fund under the Senior Debt or the Mezz Debt, the Fund may suffer a partial or total loss with respect to the Investment and the Investment may not realize any return thereon. Any delinquency or loss on the Senior Debt or the Mezz Debt or the Property would have an adverse effect on the distributions of income, payments and proceeds received by the Investors.

Furthermore, many state and local governments in the United States are experiencing, and are expected to continue to experience, severe budgetary strain. One or more states could default on their debt, or one or more significant local governments could default on their debt or seek relief from their debt under the Bankruptcy Code or by agreement with their creditors. Any or all of the circumstances described above may lead to further volatility in or disruption of the credit markets at any time.

Moreover, other types of events, domestic or international, may affect general economic conditions and financial markets, such as wars, revolts, insurrections, armed conflicts, terrorism, political crises, natural disasters and manmade disasters. The Investor Manager cannot predict such matters or their effect on the value or performance of the Investment.

***Investment May Be Dependent Upon Net Operating Income***

The repayment of an investment in real estate is typically dependent upon the ability of the related property to produce cash flow through the collection of rents and any ultimate disposition proceeds. Even the liquidation value of a property is determined, in substantial part, by the capitalization of the property's cash flow. However, net operating income can be volatile and may be insufficient to cover debt service on the Senior Debt, the Mezz Debt and other liabilities associated with the Property and payments in respect of the Investment at any given time.

The net operating income and property value of the Property may be adversely affected by a large number of factors. Some of these factors relate to the Property itself, such as:

- the age, design and construction quality of the Property;
- perceptions regarding the safety, convenience and attractiveness of the Property;
- the characteristics of the neighborhood where the Property is located;
- the proximity and attractiveness of competing properties;
- the adequacy of the Property's management and maintenance;
- increases in interest rates, real estate taxes and other operating expenses at the Property and in relation to competing properties;
- an increase in the capital expenditures needed to maintain the Property or make improvements;
- dependence upon a particular business or industry that may attract tenants to the Property;
- a decline in the financial condition of the neighborhood where the Property is located;
- competitive conditions that may affect the ability of the Borrower to obtain or maintain full occupancy of the Property;
- an increase in vacancy rates; and
- a decline in rental rates as leases are renewed or entered into with new tenants.

Other factors are more general in nature, such as:

- national, regional or local economic conditions, including industry slowdowns and unemployment rates;
- local real estate conditions, such as an oversupply of competing properties or new construction of competing properties in the same market;
- demographic factors;
- consumer confidence;
- consumer tastes and preferences;
- zoning laws or other governmental rules and policies (including environmental restrictions);
- retroactive changes in building codes;
- changes or continued weakness in specific industry segments;
- the public perception of safety for customers and clients; and

- civil disorder, acts of war or of terrorists, acts of God, such as floods or earthquakes, and other factors beyond the control of a borrower.

The volatility of net operating income will be influenced by many of the foregoing factors, as well as by:

- the length of tenant leases, and the ability of a tenant to terminate a lease early, including by virtue of a co-tenancy provision that allows a tenant to terminate its lease if certain conditions are not satisfied;
- the creditworthiness of tenants or any guarantor of tenants' obligations under leases;
- the creditworthiness of any guarantor and whether or not tenants have posted security deposits, letters of credit or other types of security;
- tenant defaults;
- the rate at which new rentals occur; and
- the Property's "operating leverage", which is generally the percentage of total property expenses in relation to revenue, the ratio of fixed operating expenses to those that vary with revenues, and the level of capital expenditures required to maintain the Property and to retain or replace tenants.

A decline in the real estate market or in the financial condition of the tenants (generally) will tend to have a more immediate effect on the net operating income of the Property with short-term revenue sources, such as short-term or month-to-month leases or leases with termination options, and may lead to higher rates of delinquency or defaults.

In addition, underwritten cash flows, by their nature, are speculative and are based upon certain assumptions and projections. The failure of such assumptions or projections in whole or in part could substantially affect the actual net operating income of the Property.

***Property Value May Be Adversely Affected Even When There Is No Change in Current Operating Income***

Various factors may adversely affect the value of the Property without affecting the Property's current net operating income. These factors include, among others:

- changes in governmental regulations, fiscal policy, zoning or tax laws;
- potential environmental legislation or liabilities or other legal liabilities;
- convertibility of the Property to an alternative use;
- restrictive covenants;
- tenant exclusives and rights of first refusal/offer to lease or purchase; and
- the availability of financing.

## **Other Risk Factors**

### ***The Fund Will Depend on Certain Key Personnel***

The Fund will be highly dependent on the services of certain key personnel of the Investment Manager. The loss of one or more of these individuals could have a material adverse effect on the Fund.

### ***Performance Under Property Management Agreement***

The Fund will depend on the services of Korman under the Property Management Agreement to generate revenue from the leasing of extended-stay residences at the Property. The failure of Korman to generate the expected lease revenue will have an adverse effect on operating income from the Property and may adversely affect the perceived value of the Property. Less than expected operating revenue and/or disposition proceeds of the Property may have an adverse effect on the Fund.

### ***Insolvency Considerations***

Various laws enacted for the protection of creditors may apply to the Investment. The information in this and the following paragraph is applicable with respect to U.S. persons, although similar avoidance may be available with respect to non-U.S. persons. If a court in a lawsuit brought by an unpaid creditor or representative of creditors of an issuer of securities, such as a trustee in bankruptcy, were to find that the issuer did not have fair consideration or reasonably equivalent value for incurring the indebtedness constituting such Fund assets and, after giving effect to such indebtedness, the issuer (i) was insolvent, (ii) was engaged in a business for which the remaining assets of such issuer constituted unreasonably small capital or (iii) intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they mature, such court could determine to invalidate, in whole or in part, such indebtedness as a fraudulent conveyance, to subordinate such indebtedness to existing or future creditors of the issuer or to recover amounts previously paid by the issuer in satisfaction of such indebtedness. In addition, in the event of the insolvency of an issuer of securities, payments made on such securities could be subject to avoidance as a “preference” if made within a certain period of time (which may be as long as one year under Federal bankruptcy law or even longer under state laws) before insolvency.

In general, if payments on securities are avoidable, whether as fraudulent conveyances or preferences, such payments can be recaptured either from the initial recipient (such as the Fund) or from subsequent transferees of such payments (such as the Investors). To the extent that any such payments are recaptured from the Fund, the resulting loss will be borne by the Investors. However, a court in a bankruptcy or insolvency proceeding would be able to direct the recapture of any such payment from an Investor of the Fund only to the extent that such court has jurisdiction over such Investor or its assets. Moreover, it is likely that avoidable payments could not be recaptured directly from an Investor that has given value in exchange for its Interests, in good faith and without knowledge that the payments were avoidable. Nevertheless, since there is no judicial precedent relating to a structured transaction in which the Fund invests, there can be no assurance that an Investor will be able to avoid recapture on this or any other basis.

### ***Lack of Investor Control Over Fund Policies***

The Investment Manager, which is the manager of PropCo, MezzCo and the JV, determines the management, financing, leasing and disposition policies of the Property. These policies may be changed from time to time at the discretion of the Investment Manager without the vote of the Investors; however, the Investment Manager has no present intention to make any such changes.

The Investment Manager, which is the manager of the Master Fund, determines the Fund's policies with respect to the Fund's activities, including its distributions and operating policies. To the extent permitted by the Investment Management Agreement, these policies may be changed from time to time at the discretion of the Investment Manager without the vote of the Investors of the Fund; however, the Investment Manager has no present intention to make any such changes.

***Certain Rights of the JV Partner under the Operating Agreement of the JV May Delay Certain Decisions or Be Subject to the Consent of the JV Partner***

The powers of the JV will be exercised by and under the authority of, and the affairs of the JV will be managed by, and under the direction of the Master Fund, who shall be the "manager" of the JV and shall have the right and duty to manage the day-to-day affairs of the JV and its subsidiaries and carry out all decisions made by the JV. Certain "major decisions," including the following, will require the thirty (30) days prior written notice to the JV Partner and consultation with the JV Partner:

- (a) the merger, recapitalization, sale, transfer, assignment, conveyance, exchange or other disposition of all or any part of the JV, or any direct or indirect interest of the Property;
- (b) the financing or refinancing of the Property (other than the Senior Debt and Mezz Debt);
- (c) the engagement of any general contractor and/or architect other than the pre-approved general contractor and the pre-approved architect, with respect to development of the Property;
- (d) except as expressly provided in a budget, the payment, collection, compromise, litigation or arbitration of any claim which is not covered by insurance and where the amount in controversy exceeds One Hundred Thousand and No/100 Dollars (\$100,000);
- (e) the making of any capital call contemplating capital contributions to the JV other than for necessary expenditures of the JV or its subsidiaries which are unable to be paid out of net cash flow or reserves, for (i) emergency repairs and activities for the protection of persons and property, (ii) capital expenditures required to bring the Property into compliance with applicable laws or to avoid or mitigate in any material respect the JV's or any of its subsidiaries exposure to potential liability as a result of any environmental condition at or affecting the Property, (iii) union wages and benefits, (iv) real estate taxes, (v) insurance premiums, (vi) interest, principal or other amounts then due and payable pursuant to the Senior Debt or Mezz Debt or any subsequent indebtedness, (vii) other amounts due and payable to third parties which, if not paid, could reasonably be expected to result in the loss of a material JV asset (including its interest in the Property or any material portion thereof) through foreclosure or other similar legal process, (viii) other amounts that are not within the discretion (by contract or applicable law or regulation) of the JV and/or its subsidiaries, including without limitation utilities, or (vi) expenditures which are provided for in the then prevailing budget for the Property or operating budget of the JV;
- (f) any material modification to the preliminary plans and specifications for the Property or any material work performed that is not in substantial compliance therewith;
- (g) any material modification to the budget covering all anticipated expenses that will be incurred by the JV and/or any of its subsidiaries during the period prior to the opening of the Property for leasing and use;

(h) the sale, lease or other transfer of all, or substantially all, of the Property or the JV's interest therein.

The following matters require the prior written approval of both the JV Partner and the Master Fund with respect to the JV:

(A) (i) the filing of any voluntary petition in bankruptcy on behalf of the JV or any of its subsidiaries, (ii) the consenting to the filing of any involuntary petition in bankruptcy against the JV or any of its subsidiaries, (iii) the filing of any petition seeking, or consenting to, the reorganization or relief under any applicable Federal or state law relating to bankruptcy or insolvency with respect to the JV or any of its subsidiaries, (iv) the consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the JV, any of its subsidiaries or a substantial part of its respective property, (v) the making of any assignment for the benefit of creditors, (vi) the admission in writing of the JV's or any of its subsidiaries inability to pay its debts generally as they become due, or (vii) the taking of any action by the JV or any of its subsidiaries in furtherance of any such action;

(B) any action that would expose either the JV Partner or the Master Fund (or any affiliate thereof) to personal liability (other than to a de minimis extent) with respect to any obligations guaranteed to the creditors under the Senior Debt or Mezz Debt; and

(C) any material modification to the Property after initial construction of the building has been substantially completed that would materially and adversely affect AKA Management, Inc.'s ability to operate the Property substantially in accordance with the standard set forth in the operating agreement of the JV.

No amendment or modification to any terms of the operating agreement of the JV or cancellation of the operating agreement of the JV will be valid unless in writing and signed by all of the members of the JV.

***Buy-Sell Rights of JV Partner May Deprive the Fund of Full Realization Upon the Interests***

If the managing member approves of any decision over the written objection of the JV Partner, the JV Partner will have the right to make an offer for all of the assets and properties of the JV and its subsidiaries for a cash price assuming that such assets and properties were sold free and clear of all liens, claims and encumbrances and all direct or indirect liabilities of the JV were paid in full and the balance was distributed to the members of the JV in accordance with the operating agreement of the JV. In addition, any termination of the Property Management Agreement by Korman as a result of an uncured default by PropCo or any failure by PropCo to extend the initial term of the Property Management Agreement will permit the JV Partner to trigger the foregoing buy-sell right. This would require the Master Fund, as managing member, to either (x) sell the assets and properties to the JV Partner based on the amount that would be distributed to the Master Fund in accordance with the JV operating agreement (given the foregoing) or (y) purchase all of the JV Partner's membership interests in the JV based on the amounts that would be distributed to the JV Partner in accordance with the JV operating agreement (given the foregoing). Since the Master Fund is not an operating company, additional capital would need to be raised to acquire the JV Partner's interest in the JV. Given the illiquid nature of the assets and properties of the JV and its subsidiaries and the illiquidity of the membership interests of the JV, the terms and conditions of such additional capital may be very expensive and may reduce the amount otherwise available for distribution to the Master Fund and the ultimate return on the Interests. Alternatively, if the Master Fund is unable to access additional capital to acquire the membership interests of the JV or elects to sell the assets and properties of the JV and its subsidiaries to the JV

Partner, the return on the Interests may be less than originally anticipated and/or insufficient funds may be available to return capital to holders of the Interests.

### ***Exculpation and Indemnification***

Certain exculpation and indemnification provisions contained in the Investment Management Agreement may limit the rights or actions otherwise available to the Investors and other parties against the Investment Manager or any employee or affiliate of the Investment Manager absent such limitation in the Investment Management Agreement. The indemnification provisions cover certain claims, losses, damages and expenses arising out of their activities on behalf of the Fund. Such indemnification obligations could materially affect the returns to Investors.

Additionally, if the Master Fund or the Feeder Fund is obligated to pay any amount to a governmental agency or body or to any other Person (or otherwise makes a payment) because of an Investor's status or otherwise specifically attributable to such Investor (including, without limitation, federal withholding taxes with respect to foreign Investors, state personal property taxes, state unincorporated business taxes, etc.), then, unless otherwise agreed in writing by such Investor and the applicable Investment Manager, such Investor shall indemnify the Master Fund and the Feeder Fund, as applicable, in full for the entire amount paid, as further described in "*Section I Summary of Investment Terms – Indemnification*".

An Investor's obligation to make payments to the Fund will survive the termination, dissolution, liquidation and winding up of the Fund. The Fund will be treated as continuing in existence, and each may pursue and enforce all rights and remedies it may have against each Indemnifying Member, including instituting a lawsuit to collect such payments with interest calculated at a rate equal to prime rate (as published by The Wall Street Journal) plus two percentage points per annum (or such other rate (if any) specified in any such Supplement) (but not in excess of the highest rate per annum permitted by law).

### ***Targeted Returns***

The Fund will make investments based on the Investment Manager's estimates or projections of internal rates of return and current returns. Investors have no assurance that the Fund will achieve its targeted total return on its investments. In addition, the Investment Manager may adjust targeted returns to reflect any changes in market conditions.

### ***Liability for Return of Distributions***

If the Fund is otherwise unable to meet its obligations, the Investors may, under applicable law, be obligated to return cash distributions previously received by them if such distributions are deemed to be a wrongful payment to them. In addition, an Investor may be liable under applicable federal bankruptcy or state insolvency laws to return a distribution made during or prior to the Fund's insolvency.

### ***Failure to Make Fund Subscriptions***

If Investors fail to contribute capital when due, the Fund's ability to complete its investment program or otherwise continue operations may be substantially impaired. A default by one or more Investors could leave the Fund with less than the minimum capital commitment and may preclude the Fund from making the Investment. Any Investor who defaults in making a required capital contribution will be subject to certain penalties described herein and in the Organizational Documents.

***Short-Term Interim Investments***

The net proceeds from the sale of the Interests will be invested in short-term interim investments (e.g. certificates of deposits, money markets) pending the application thereof on the Recapitalization Date. The yield from those interim investments is expected to be lower than the income generated from the Investment.

***Diverse Investors***

The Investors of the Fund may include persons or entities organized in various jurisdictions, including foreign countries, who may have conflicting investment, tax and other interests with respect to their investments in the Fund. The conflicting interests of individual Investors may relate to or arise from, among other things, the nature of the Investment, the structuring of the Investment, and the timing of repayment of the Investment. Such structuring of the Investment may result in different returns being realized by different Investors. As a consequence, conflicts of interest may arise in connection with decisions made by the Investment Manager in that any given decision may be more beneficial for one Investor than for another Investor, especially with respect to Investors' individual tax situations. In selecting and structuring the Investment, the Investment Manager will consider the investment and tax objectives of the Fund as a whole, not the investment, tax or other objectives or any Investor individually.

***Certain Tax Risks***

The tax (including, without limitation, the U.S. federal income tax) consequences arising from an Investment in the Fund are highly complex and may vary significantly depending on each Investor's specific circumstances. In particular, prospective investors should be aware that they may be taxed annually on the Fund's income and realized gains, if any, whether or not they receive any cash distributions from the Fund.

The amount of U.S. tax due, if any, with respect to gains and income of the Master Fund is determined separately for each Investor. The Master Fund will be required to file a U.S. information return on IRS Form 1065 and, following the close of the Fund's fiscal year, to provide each Investor directly investing in the Master Fund with a Schedule K-1 indicating such Investor's allocable share of the Master Fund income, gain, losses, deductions, credits and items of tax preference. Each Investor, therefore, must conduct its own analysis of the tax consequences of its investment in the Fund and is urged to consult with its own tax advisors in evaluating the tax consequences that may arise from an investment in the Fund.

***Non-U.S. Investors***

The Master Fund will be considered for U.S. federal income tax purposes to be engaged in the conduct of a trade or business within the United States (a "U.S. trade or business"). As a result, any non-U.S. Investor in the Master Fund will also be considered to be so engaged. Non-U.S. Investors will be liable for U.S. federal income tax on their distributive share of income attributable to the U.S. trade or business, and the Master Fund will be required to withhold on such allocable income. This withholding may be reduced or eliminated under certain circumstances. A non-U.S. Investor will have U.S. federal income tax return filing obligations and may have tax liability from an investment in the Master Fund that exceeds the amount of taxes withheld by the Master Fund. Non-U.S. Investors are urged to consult their own tax advisors about the tax liability and reporting obligations arising from an investment in the Master Fund.

***Legal, Tax and Regulatory Risks***

Legal, tax and regulatory changes could occur which may adversely affect the Fund. For example, the regulatory environment for the financing of real estate is evolving, and changes in the regulation of real estate financing may adversely affect the availability of purchasers for units at the Property and the ability of the Fund to pursue or realize upon its investment strategies. In addition, the regulatory and tax environment for derivative instruments is evolving, and changes in the regulation or taxation of derivative instruments may adversely affect the cost or availability of derivative instruments that may be used by the Fund to manage interest rate exposure on the Senior Debt and Mezz Debt. Similarly, the regulatory environment for leveraged investors is evolving, and changes in the direct or indirect regulation of leveraged investors may adversely affect the ability of the Fund to pursue its investment strategies. No assurance can be given that future legislation, administrative rulings or court decisions will not adversely affect the operation of the Fund.

***Tax Considerations***

The Fund may take positions with respect to certain tax issues which depend on legal conclusions not yet resolved by the courts. Should any such positions be successfully challenged by an applicable taxing authority, there could be a material adverse effect on the Fund and/or the Investors of the Fund.

*Receipt by an Investor of a Master Discount may be a taxable event for such Investor (including NewCo, thereby reducing available funds of NewCo distributable to its Investors).*

Certain Investors in the Master Fund may receive a Master Discount that may entitle them to receive additional distributions pursuant to the Master Priority of Distributions as compared to Investors in the Master Fund that have not received Master Discounts. The Master Fund does not intend to treat such Master Discount received by an Investor in the Master Fund as issued in exchange for deemed capital contributions to the Master Fund by such Investor for purposes of maintenance of the “Capital Account” (as defined in Section 4.3(a) of the Master Fund’s Operating Agreement). As a result, Master Discounts are not expected to increase the Capital Account of Investors receiving such Master Discounts as of the date of issuance of such Master Discounts. Investors receiving Master Discounts should consult their tax advisors regarding the economic and tax consequences to them of receiving such Master Discounts without a corresponding increase in their Capital Accounts as of the date of such receipt.

The IRS may take the position that the issuance by the Master Fund of Master Discounts to certain of its Investors should result in a taxable “capital shift” to such Investors in the taxable year of such Investors that includes the date of such issuance. For example, if there is a “capital shift” to NewCo as a result of receipt by NewCo of a Master Discount that is taxable in the tax year of NewCo that includes the date of such receipt, this would reduce the cash NewCo has available for distribution in such tax year. The amount and character of such taxable income is uncertain but may be as much as the sum of additional distributions received by an Investor by reason of a Master Discount pursuant to the Master Priority of Distributions as compared to Investors in the Master Fund that have not received Master Discounts. The Investors are urged to consult their tax advisors regarding the economic and tax consequences to them of receipt of Master Discounts.

*The Booked-Up Amount with respect to each Investor in the Master Fund may be taxable for such Investor (including NewCo, thereby reducing available funds of NewCo distributable to its Investors).*

The Master Fund does not intend to treat the Booked-Up Amount with respect to each Investor as issued in exchange for a deemed capital contribution by such Investor to the Master Fund for purposes of maintenance of the “Capital Account” (as defined in Section 4.3(a) of the Master Fund’s Operating Agreement). As a result, the Booked-Up Amount with respect to an Investor is not expected to increase the

Capital Account of such Investor as of the date of the Recapitalization Date. Investors should consult their tax advisors regarding the economic and tax consequences to them of receiving the Booked-Up Amount without a corresponding increase in their Capital Accounts as of the date of such receipt.

The IRS may take the position that the Booked-Up Amount with respect to each Investor should result in a taxable “capital shift” to such Investor in the taxable year of such Investor that includes the date of the Recapitalization Date. For example, if there is a “capital shift” to NewCo as a result of the Booked-Up Amount that is taxable to NewCo in the tax year of NewCo that includes the date of the Recapitalization Date, this would reduce the cash NewCo has available for distribution in such tax year. The amount and character of such taxable income for each Investor is uncertain but may be as much as the amount of the Booked-Up Amount with respect to such Investor. The Investors are urged to consult their tax advisors regarding the economic and tax consequences to them of the Booked-Up Amount.

### ***Risks to the Financial Markets Relating to Terrorist Attacks***

On September 11, 2001, the United States was subjected to multiple terrorist attacks, resulting in the loss of many lives and massive property damage and destruction in New York City, the Washington, D.C. area and Pennsylvania. Subsequently a number of thwarted planned attacks have been reported, such as the May 2010 attempted bombing in Times Square and the recent arrest of a U.S. citizen suspected of plotting to bomb police cars, postal facilities and other targets in Manhattan. It is impossible to predict whether, or the extent to which, future terrorist activities may occur in the United States. It is uncertain what effects any future terrorist activities in the United States or abroad and/or any consequent actions on the part of the United States Government and others, including military action, could have on general economic conditions, real estate markets, particular business segments (including those that are important to the performance of commercial mortgage loans) and/or insurance costs and the availability of insurance coverage for terrorist acts. Among other things, reduced investor confidence could result in substantial volatility in securities markets and a decline in real estate-related investments, in addition, reduced consumer confidence, as well as a heightened concern for personal safety, could result in a material decline in personal spending and travel. These effects could be particularly meaningful for Investors in the Fund given that the Property is located in New York City, a target for terrorists.

### ***Risks to the Property Relating to Terrorist Attacks and Foreign Conflicts***

The terrorist attacks in 2001 on the World Trade Center and the Pentagon, as well as a number of reported thwarted planned attacks, suggest an increased likelihood that large public areas such as the Property could become the target of terrorist attacks in the future. The possibility of such attacks could (i) lead to damage to the Property if any such attacks occur, (ii) result in higher costs for insurance premiums, particularly for large properties, which could adversely affect the cash flow at the Property, or (iii) impact shopping patterns that could adversely impact retail property traffic and percentage rent. As a result, the ability of the Property to generate cash flow may be adversely affected.

The United States continues to maintain a military presence around the Middle East and has previously taken part in military operations in Afghanistan, Iraq and Libya. It is uncertain what effect the activities of the United States or any future conflict with any other country or group will have on domestic and world financial markets, economies, real estate markets, insurance costs or business segments. Foreign or domestic conflict of any kind could have an adverse effect on the performance of the Property.

### ***Availability of Terrorism Insurance***

Following the September 11, 2001 terrorist attacks in the New York City area and Washington, D.C. area, many reinsurance companies (which assume some of the risk of policies sold by primary insurers)

eliminated coverage for acts of terrorism from their reinsurance policies. Without that reinsurance coverage, primary insurance companies would have to assume that risk themselves, which may cause them to eliminate such coverage in their policies, increase the amount of the deductible for acts of terrorism or charge higher premiums for such coverage. In order to offset this risk, Congress passed the Terrorism Risk Insurance Act of 2002, which established the Terrorism Insurance Program. On December 26, 2007, the Terrorism Insurance Program was extended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 through December 31, 2014 ("TRIPRA").

The Terrorism Insurance Program is administered by the Secretary of the Treasury and through December 31, 2014 will provide some financial assistance from the United States Government to insurers in the event of another terrorist attack that results in an insurance claim. The program applies to United States risks only and to acts that are committed by an individual or individuals as an effort to influence or coerce United States civilians or the United States Government. TRIPRA requires an investigation by the Comptroller General to study the availability and affordability of insurance coverage for nuclear, biological, chemical and radiological attacks.

In addition, no compensation will be paid under the Terrorism Insurance Program unless the aggregate industry losses relating to such act of terror exceed \$100 million. As a result, unless the Master Fund obtains separate coverage for events that do not meet these thresholds, such events would not be covered.

The Treasury Department has established procedures for the Terrorism Insurance Program under which the federal share of compensation will be equal to 85% of the portion of insured losses that exceeds an applicable insurer deductible required to be paid during each program year (which insurer deductible was fixed by TRIPRA at 20% of an insurer's direct earned premium for any program year). The federal share in the aggregate in any program year may not exceed \$100 billion (and the insurers will be liable for any amount that exceeds this cap). An insurer that has paid its deductible is not liable for the payment of any portion of total annual United States wide losses that exceed \$100 billion, regardless of the terms of the individual insurance contracts.

Through December 2015 insurance carriers are required under the program to provide terrorism coverage in their basic policies providing "special" form coverage. Any commercial property and casualty terrorism insurance exclusion that was in force on November 26, 2002 is automatically voided to the extent that it excludes losses that would otherwise be insured losses. Any state approval of such types of exclusions in force on November 26, 2002 is also voided.

Because the Terrorism Insurance Program is a temporary program, it cannot be assumed or assured that it will create any long-term changes in the availability and cost of such insurance. Moreover, it cannot be assumed or assured that subsequent terrorism insurance legislation will be passed upon TRIPRA's expiration.

If TRIPRA is not extended or renewed upon its expiration in 2014, premiums for terrorism insurance coverage will likely increase and/or the terms of such insurance may be materially amended to increase stated exclusions or to otherwise effectively decrease the scope of coverage available (perhaps to the point where it is effectively not available). In addition, to the extent that any policies contain "sunset clauses" (i.e., clauses that void terrorism coverage if the federal insurance backstop program is not renewed), then such policies may cease to provide terrorism insurance upon the expiration of TRIPRA. It cannot be assumed or assured that such temporary program will create any long term changes in the availability and cost of such insurance.

*Certain Environmental Matters*

Under various federal, state and local environmental laws, ordinances and regulations, such as the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), a current or previous owner or operator of real property may be liable for the costs of investigation, removal or remediation of hazardous or toxic substances on, under, adjacent to, or in such property. Such laws often impose liability whether or not the owner or operator knew of, or was responsible for, the presence of such hazardous or toxic substances. The cost of any required remediation and the owner's liability therefor could exceed the value of the property and/or the aggregate assets of the owner. In addition, the presence of hazardous or toxic substances, or the failure to properly remediate environmental conditions of such property, may adversely affect the owner's or operator's ability to refinance using such property as collateral or the owner's ability to sell such property. Persons who arrange for the offsite disposal or treatment of hazardous or toxic substances may also be liable for the costs of removal or remediation of such substances at the disposal or treatment facility. Certain laws impose liability for release of asbestos containing materials (“ACMs”) into the air or require the removal or containment of ACMs, and third parties may seek recovery from owners or operators of real properties for personal injury associated with ACMs or other exposure to chemicals or other hazardous substances. For all of these reasons, the presence of, or potential for contamination by, hazardous or toxic substances at, on, under, adjacent to, or in the Property can materially adversely affect the value of the Investment.

**THE FOREGOING LIST OF RISK FACTORS DOES NOT PURPORT TO BE A COMPLETE ENUMERATION OR EXPLANATION OF THE RISKS INVOLVED IN AN INVESTMENT IN THE FUND. ADDITIONAL RISK FACTORS MAY BE SET FORTH IN THE SUPPLEMENT AND SHOULD BE CAREFULLY REVIEWED. IN ADDITION, PROSPECTIVE INVESTORS SHOULD READ THIS ENTIRE MEMORANDUM AND CONSULT WITH THEIR OWN LEGAL, TAX AND FINANCIAL ADVISERS BEFORE DECIDING TO INVEST IN THE FUND.**

### **III. THE FUND**

The Fund consists of the Master Fund, NewCo and the Feeder Fund.

The Investment Manager may form feeder funds, parallel funds and/or alternative investment vehicles if the Investment Manager determines in good faith that, for legal, tax, regulatory or other reasons, such additional entities are in the best interests of some or all of the Investors.

84 William Street Realty Associates LLC, a Delaware limited liability company, is the Master Fund. All of the investment and trading activities of the Feeder Fund (as defined below) will be conducted through the Master Fund.

Prodigy Shorewood New York REP Co., a Cayman Islands exempted company limited by shares pursuant to the Companies Law of the Cayman Islands, is the Feeder Fund.

James Macfee and Andrew Slabbert serve as the Directors of the Feeder Fund. PSIM serves as the manager for the Master Fund. PSIM, also serves as the Investment Manager for the Fund. The Investment Manager will hold 100% of all voting stock of NewCo. The Investment Manager holds all of the Management Shares of the Feeder Fund. S. Lawrence Davis and Rodrigo Niño are the directors of NewCo.

Each of James Macfee and Andrew Slabbert is employed by Appleby Fund Services (Cayman) Limited, which is paid a fee for providing their services as Directors of the Feeder Fund. If additional Directors are elected, the Feeder Fund may compensate such Directors (other than the Investment Manager or any persons affiliated with the Investment Manager) with respect to services rendered in that capacity. The biographical information for James Macfee and Andrew Slabbert are set forth below.

#### **James Macfee**

James Macfee (“Macfee”) is a Manager in the Corporate team at Estera Trust (Cayman) Limited (“Estera”). He provides corporate governance services to a wide range of investment funds, with varied strategies, and corporate structures. Prior to joining Estera, Macfee was a Manager in the Restructuring & Liquidations team at KPMG in the Cayman Islands and before that as an Audit Manager at KPMG UK both in London and Manchester. Macfee’s roles have given him exposure to a wide range of industries including Financial Services, Tourism & Leisure, Manufacturing, Mining, Energy & Shipping. These roles have provided Macfee with a good understanding of various sectors and products.

Macfee’s experience in the Restructuring & Liquidations team at KPMG allowed him to become very familiar with the Cayman Islands’ Companies & Mutual Funds Laws and its compliance and regulatory framework. It also provided Macfee with unique insight into asset valuation and recovery, and investor and creditor rights and entitlements.

Macfee is a member of the Cayman Islands Directors Association, the Institute of Chartered Accountants of England and Wales and the Cayman Islands Society of Professional Accountants. Macfee holds a Bachelor of Science degree in Biochemistry from the University of Newcastle upon Tyne, UK.

#### **Andre Slabbert**

Andre Slabbert (“Slabbert”) is a Directorship Services Officer at Estera. He works on a wide range of securitizations, investment funds, insurance structures and corporate structures. In addition to Directorship Services, Slabbert specializes in Conflict Review, Accounting and Liquidation services.

Prior to joining Estera in 2014, Slabbert was Audit Manager at PKF Cape Town and Financial services Auditor at PKF Cayman where he delivered independent audit assurance services to a wide range of entities in Cayman & South Africa including regulated investment funds, holding companies, trusts, insurance structures, development and management property structures. In addition, his role involved the provision of accounting services and preparation of financial statements for investment funds and corporate structures in accordance with IFRS and US GAAP, as well as the provision of liquidation services in accordance with Cayman legal and regulatory requirements. Managing the FATCA compliance and reporting for Structured Finance Fiduciary clients.

Slabbert is a member of the Cayman Islands Directors Association and the South African Institute of Chartered Accountants. Slabbert holds a Bachelor of Accounting degree from the University of Stellenbosch in South Africa, and a Postgraduate Honors degree in Accounting from the University of South Africa.

Subject to the consent of the Investment Manager, the Directors may change any of the Feeder Fund's service providers, including the Feeder Fund's auditors, without the consent of the Investors. With the exception of the Investment Manager, the manager of the Master Fund may change any of the Master Fund's service providers including its auditors without the consent of the members. The Board of Directors of NewCo may change any of NewCo's service providers including its auditors without the consent of its Investors.

#### **IV. INVESTMENT PROGRAM**

##### **Investment Objective and Strategy**

###### *Investment Objective and Strategy*

A summary narrative description of the property located at 84 William Street, New York, New York 10038 is attached to this Memorandum as Exhibit A.

The Master Fund entered into a joint venture for the redevelopment of the Property and the marketing of the Property's extended-stay residences with an affiliate of Korman, KCI 84 William LLC ("JV Partner") prior to closing on the Property in October of 2013. The JV Partner and the Fund formed the JV in connection with the joint venture. The Master Fund currently owns approximately 90% of the membership interests of JV and JV Partner owns approximately 10% of the membership interests of JV. JV formed MezzCo in order to incur the Mezz Debt. JV is the sole member of MezzCo. MezzCo has in turn formed PropCo for purposes of acquiring and owning the Property. MezzCo is currently the sole member of PropCo.

The redevelopment of the Property was substantially completed in June 2016 and its 137 extended-stay residences are now available for lease. The Property now consists of approximately 88,000 net sf of residential space and 3,700 sf of commercial space, with such commercial space expected to open in January 2017 as Blue Ribbon Federal Grill.

The operating agreement of JV provides for certain circumstances where the Master Fund's investment in JV may be diluted. See "The Operating Agreement of the JV May Restrict the Availability of Distributions or Significantly Dilute the Master Fund's Percentage Interest in the JV."

PropCo acquired the Property on October 22, 2013 and has since substantially completed the redevelopment of the Property as of June 1, 2016. PropCo's strategy is to hold and operate the Property as extended-stay residences during the Investment Period (defined herein), and to recapitalize or sell the Property as a whole or as bifurcated condominiums at the end of the Investment Period. The Fund has used (1) the equity investment and loan proceeds from the Feeder Fund, which is made through NewCo; (2) investment proceeds from direct investors in the Master Fund; (3) the proceeds of the Senior Debt and (4) the proceeds of the Mezz Debt. The Fund has redeveloped the Property into a residential rental property with approximately 137 residential units and 3,700 square feet of commercial space.

PropCo intends to secure Refinancing Debt prior to the Recapitalization Date in order to pay down the existing Senior Debt and Mezz Debt under more favorable terms. It is anticipated that the amount of proceeds from the Refinancing Debt will be approximately \$105 to \$110 million at a rate of Libor plus 5%.

The income from the Property's operations and the proceeds from the sale of the Property are expected to repay the then due and payable principal of and interest on the Refinancing Debt. Distributions from the Master Fund to its members (including direct investors and indirectly to the Feeder Fund through NewCo) will only be made if all then due and payable principal of and interest on the Refinancing Debt are paid in full.

The Investment is not and is not expected to be rated.

### *Underwriting Process*

The Property was underwritten utilizing the Investment Manager's skills in evaluating the real estate market and property fundamentals and real estate residual values along with the guidance provided by reputable third party appraisal and diligence firms. At inception and throughout the life of the Master Fund's ownership of its Property, the Investment Manager will conduct detailed tenant credit analyses to assess, among other things, the potential for credit deterioration and lease default risk. This analysis is also used to measure the adequacy of landlord protection mechanisms incorporated into the underlying lease. The Investment Manager's process includes sub-market and property-level due diligence in order to understand downside investment risks, including quantifying the costs associated with tenant defaults and re-leasing scenarios. The property manager will perform physical inspections of the Property, review the environmental report, evaluate title and undertakes other due diligence procedures. The property manager also evaluates stress scenarios to understand refinancing risk.

### *Expected Investment Structure*

It is anticipated that the capitalization of the Master Fund will consist of approximately \$70,000,000 of Preferred Interests and \$10,000,000 of Common Interests as of the Recapitalization Date. The Master Fund owns a 90% interest in the JV and the JV indirectly owns the Property through MezzCo and PropCo. It is anticipated that the total indebtedness of MezzCo and/or PropCo on the Recapitalization Date will be approximately \$105,000,000 to \$110,000,000.

### **Investment Restrictions**

The Investment Manager may impose such restrictions and require such warranties as it considers necessary or desirable for the purpose of ensuring that no Participating Shares or Preferred Interests are held by or for the benefit of (i) any person or persons in breach of the law or requirements of any country or governmental authority or (ii) any person or persons in circumstances (whether directly or indirectly affecting such person or persons and whether taken alone or in conjunction with any other person or persons, connected or not, or any other circumstance appearing to the Investment Manager to be relevant) which in the opinion of the Investment Manager might result in the Fund incurring any liability to taxation or suffering any other pecuniary, fiscal or regulatory disadvantage which the Fund might not otherwise incur or suffer or (iii) a U.S. Investor from whom an investment would not qualify for an exemption under the Securities Act or would require the Fund to register the Participating Shares under U.S. federal or state securities laws or would cause the Fund to become subject to the Investment Company Act, or would cause the Investment Manager to become subject to the U.S. Investment Advisers Act of 1940, as amended, or any other applicable law or regulation. The Investment Manager shall have power to impose such further restrictions on the Participating Shares or the Preferred Interests as it deems necessary or desirable.

### **Risk Management**

If an event of default occurs and continues under the Senior Debt, Mezz Debt or the Refinancing Debt, the Investment Manager will use reasonable efforts to restructure or refinance the Senior Debt, Mezz Debt or the Refinancing Debt, as applicable. There can be no assurance that the Senior Debt, Mezz Debt or Refinancing Debt will be restructured or that any restructuring will not result in a dilution of the expected return on the Investment or a loss, in whole or in part, of the Investment.

In the event of a default by a tenant under a lease, the Investment Manager may, in addition to any and all other remedies which it may have at law and/or in equity, (i) terminate the lease and/or (ii) expel the tenant, remove its assets from unit at the Property and use its commercially reasonable efforts to re-let

the unit at the Property at the best possible rent obtainable. The Investment Manager shall conduct an evaluation of each prospective substitute lessee's ability to satisfy the terms of the lease, including the payment of rent, and shall not re-let a unit at the Property unless it makes a determination in good faith that the prospective substitute lessee is likely to satisfy the terms of the lease for the unit at the Property. Alternatively, the Investment Manager may elect to dispose of the Property. If an event of a default exists under the senior mortgage loan for the Property, the Investment Manager may also attempt to restructure the loan terms.

In the event that the Property may not be sold on or before the expiration of the Investment Period, the Investment Manager may continue to operate the Property as a rental property. In addition, the Investment Manager may elect to sell one or more units at the Property if it is not able to sell the Property in its entirety.

**The investment program of the Fund entails substantial risks. There can be no assurance that the Fund's investment objective will be achieved.**

## **V. MANAGEMENT**

### **Directors/Managers of the Fund**

James Macfee and Andrew Slabbert serve as directors of the Feeder Fund. The Management Shares of the Feeder Fund are owned by PSIM. PSIM is the manager for the Master Fund.

### **Investment Manager for the Fund**

PSIM is the investment manager for the Fund.

### **Board Directors of NewCo**

S. Lawrence Davis and Rodrigo Niño are the directors of NewCo.

### **Property Manager**

AKA Management, Inc. ("Korman"), an affiliate of Korman Communities, Inc., a company experienced in the leasing and management of units on a "Corporate Suite" basis (i.e., units offered with furniture, furnishings and maid service for long-term stays that are generally less than one year) including ancillary facilities, restaurant food and beverage services.

## **VI. THE INVESTMENT MANAGER**

Prodigy Shorewood Investment Management, LLC, a Delaware limited liability company, shall serve as the Investment Manager. The Investment Manager's principal office is at 40 Wall Street, 17<sup>th</sup> Floor, The Trump Building, New York, NY 10005. As of the date hereof, (a) the Investment Manager holds all of the management shares of the Feeder Fund and (b) PSIM 84 (an affiliate of the Investment Manager) holds approximately 80.04% of the Common Interests and approximately 1.5% of the Preferred Interests.

The Investment Manager is not registered, nor is it required to be registered, as an investment adviser under the U.S. Investment Advisers Act of 1940, as amended, or under any U.S. state law. The Investment Manager may assign and transfer to an affiliate its rights and obligations under the Amended and Restated Investment Management Agreement.

In addition to owning the Management Shares of the Feeder Fund and being the manager of the Master Fund, PSIM also serves as the investment manager of Fund.

The Investment Manager manages the Fund's investment in the Property pursuant to the Investment Management Agreement. The Investment Manager may assign and transfer to an affiliate its rights and obligations under the Investment Management Agreement.

The Investment Manager is authorized to treat itself as having made cash contributions to NewCo, the Feeder Fund, and/or the Master Fund, as applicable, without actually contributing any cash on such terms and conditions as the Investment Manager may determine in its discretion (including with respect to the vesting of the interests); *provided*, the aggregate amount of Deemed Capital Contribution to NewCo, the Feeder Fund and the Master Fund from the Investment Manager shall not exceed, in the aggregate, 2% of the Recapitalization Target. Incremental taxes (in excess of those which would have been borne by NewCo had no deemed capital contributions been made) which are borne by NewCo with respect to income and gain associated with such Deemed Capital Contributions shall be solely for the account of those persons treated as making such deemed capital contributions with respect to NewCo and accordingly shall reduce, dollar for dollar, amounts otherwise distributable to such persons.

The Investment Manager will not be liable for the acts and omissions of any sales agents, provided that the appointment of such agents was made in good faith by the Investment Manager.

The Investment Manager may resign upon 45 days' prior written notice to the Fund. Also, the Investment Manager may be removed for Cause upon the direction of holders of 66 2/3% of the Interests, excluding Interests beneficially owned by the Investment Manager, any affiliate thereof or any fund or investment vehicle (i) which is managed by the Investment Manager and (ii) greater than 50% of the economic interests in which are beneficially owned by its affiliates ("Manager Interests").

No termination, resignation or removal of the Investment Manager will be effective unless (a) the Fund, acting at the direction of holders of 66 2/3% of the Interests, has appointed a successor investment manager (a "Replacement Investment Manager") and the Replacement Investment Manager has agreed to assume all the duties and obligations arising out of the Investment Management Agreement, in accordance with the terms and conditions of the Investment Management Agreement, (b) the Replacement Investment Manager has agreed to receive Management Fee on terms and conditions substantially comparable to those described herein or based on then prevailing market terms and conditions, (c) the Fund gives notice of the appointment of the Replacement Investment Manager to the Administrator, and the Administrator gives notice of such appointment to the Investors, (d) such appointment has not been disapproved by holders of 66 2/3% of the Interests within 20 days of the date of such notice from the Administrator to the Investors, (e) except in the case of the appointment of a Replacement Investment Manager that is an affiliate of the Investment Manager, the Investment Manager has approved of such Replacement Investment Manager and (f) the proposed Replacement Investment Manager is not an affiliate of an Investor. For the purposes of this paragraph, Manager Interests may participate in the determination of whether the appointment of a Replacement Investment Manager will be disapproved, except in the case of the appointment of a Replacement Investment Manager that is an affiliate of the Investment Manager.

If the Investment Manager resigns or is terminated, it will be entitled to retain any fees paid to it prior to the date of such termination or resignation. If the Investment Manager resigns or is removed as Investment Manager, the Management Fee accrued and payable following such resignation or removal shall be paid to the replacement Investment Manager appointed in accordance with the terms of the Investment Management Agreement and not to the resigning or removed Investment Manager.

Each Indemnified Person shall not be liable, in damages or otherwise, to the Fund or to any of the Investors for any act or omission performed or omitted by such Indemnified Person, including losses due to the negligence of brokers or other agents of the Fund, unless such losses result from an Indemnified Person's fraud, willful misconduct, gross negligence, bad faith or a willful violation of applicable securities laws. The Fund shall indemnify each Indemnified Person for any loss, damage or expense incurred by such Indemnified Person or to which such Indemnified Person may be subject by reason of its activities on behalf of the Fund or in furtherance of the interest of the Fund or otherwise arising out of or in connection with the Fund and its investments, except that this indemnity shall not apply to (i) losses arising from such Indemnified Person's own fraud, willful misconduct, gross negligence, bad faith or willful violation of applicable securities laws; (ii) economic losses incurred by any Indemnified Person as a result of such Indemnified Person's ownership of an interest in the Fund or its portfolio companies; or (iii) expenses of the Fund that an Indemnified Person has agreed to bear. Investors will be obligated to return amounts distributed to them to fund indemnity obligations, subject to certain limitations set forth in the Organizational Documents. The Investment Manager may, in its discretion, reserve assets in the Fund to meet future indemnification costs, irrespective of the time, amount or other limitations set forth herein with respect to redemptions and liquidations.

The Investment Manager may (i) act as manager of any other entity and need not disclose to the Fund anything that comes to its attention in the course of its business in any other capacity than as Investment Manager, (ii) acquire, hold or deal with, for its own account or for the account of any other person, Interests and (iii) enter into any transactions with the Fund or any company in which the Fund invests or has an interest in any such transaction, and the Investment Manager will not be liable to account to any person for any profits earned or benefits derived in connection with such actions.

The Investment Manager may deal as principal in the Interests and is under no obligation to account to the Fund or to Investors for any profits to which it thereby becomes entitled.

The Investment Manager and its affiliates (including their respective directors, partners, officers, members and employees) may subscribe directly or indirectly for Interests.

Details of the fees payable to the Investment Manager are disclosed in "*Section XV Fees and Expenses*".

Summaries of the backgrounds and experience of the Investment Manager's personnel are included below, although such persons may not necessarily continue to be employed by Prodigy Shorewood Investment Management, LLC during the entire term of the Investment Management Agreement or, if so employed, remain responsible for the performance of the Investment Manager's obligations under the Investment Management Agreement.

#### **S. Lawrence Davis, Principal**

S. Lawrence Davis is the founder of Shorewood Real Estate Group LLC, a multi-strategy real estate investment platform that specializes in the sourcing of equity and debt opportunities on behalf of its institutional clients and partners. Since its inception in 2009 Shorewood has participated in over \$650 million of real estate transactions. The firm has extensive experience in all aspects of the real estate investment arena and provides integrated and innovative solutions to maximize the long term value of real estate assets.

Mr. Davis was a partner for 10 years at the Emmes Group of Companies, a privately-held real estate investment firm. As president of Emmes Asset Management Co., he was responsible for a nationwide portfolio of properties valued in excess of \$1 billion. With properties in each of the core asset classes (office, residential, retail and industrial) across a wide swath of geographies, he played a key role in

successfully restructuring these portfolios, many of them distressed, to achieve extraordinary returns to the respective investors.

Mr. Davis also served as President of Emmes Capital, a debt investment platform which specialized in “loan to own” investments. Emmes Capital’s strategy was to identify opportunities in which investors would receive exceptional risk-adjusted returns based on originating senior loans at high yields.

Following his tenure at Emmes, Mr. Davis was president of SDS Investments LLC, a New York-based real estate investment firm where he managed in excess of \$100 million of equity and oversaw the development of approximately \$500 million of real estate projects and platform investments. These investments included the ground-up construction of William Beaver House, a \$400 million residential condominium project in the Financial District of Manhattan.

Mr. Davis has served as an adjunct professor at New York University’s Real Estate Institute, teaching in the Master of Science program. He holds an MS in Real Estate Finance from New York University and a BS in International Finance from Georgetown University.

### **Rodrigo Niño, Principal**

Rodrigo Niño is the CEO of Prodigy Network, a real estate sales, development and equity syndication company based in New York. His firm has participated in over 30 projects in Panama, Mexico, Colombia, the Dominican Republic, Miami and New York.

Mr. Niño is the world’s leader in crowd funding. He set the record by financing Colombia’s tallest skyscraper, BD Bacata, by selling over 3,000 participations called FiDis to participants who invested more than \$165 million dollars. Mr. Niño is also developing Bacata Express, a chain of Colombian hotels, and a number of other commercial real estate properties in Colombia funded through FiDis.

Prodigy Network is also responsible for the sales and marketing of Trump SoHo, the largest hotel in downtown Manhattan with 381 rooms and over \$350 million of inventory.

## **VII. OTHER ACTIVITIES OF THE INVESTMENT MANAGER; POTENTIAL CONFLICTS OF INTEREST**

The Fund is subject to a number of actual and potential conflicts of interest.

The Investment Manager of the Fund may also serve as the investment adviser to several private investment funds which have investment strategies and investment policies substantially similar to that of the Fund. Further, the Investment Manager (and its principals) may serve as investment adviser or investment manager to other client accounts and may also invest for their own respective accounts. Such other entities or accounts (the “Other Clients”) may have investment objectives or may implement investment strategies similar to those of the Fund. The Investment Manager (or its principals) may give advice or take action with respect to the Other Clients that differs from the advice given with respect to the Fund.

Also, the Investment Manager will receive certain fees in connection with the transactions contemplated herein.

In addition, the Investment Manager, Korman and Metro Loft and/or their respective principals and affiliates may hold equity or other interests in the Master Fund. Receipt of any such interests or amounts

will be solely the property of such persons, without any credit to the Fund or any reduction in the fees payable by the Fund to such persons.

Further, the Investment Manager (and its principals) will continue to have the right to make real estate investments for their own account.

As a result of the foregoing, the Investment Manager (and its principals) may have conflicts of interest in allocating their time and activity between itself, the Fund and the Other Clients.

The Investment Manager will use its best efforts in connection with the purposes and objectives of the Fund and will devote as much of its time and effort to the affairs of the Fund as may, in its sole judgment, be necessary to accomplish the purposes of the Fund. The Investment Manager (and its principals) may conduct any other business including any business within the real estate industry, whether or not such business is in competition with the Fund. Without limiting the generality of the foregoing, the Investment Manager (and its principals) may act as investment adviser or investment manager for others, may manage funds or capital for others, may have, make and maintain investments in its own name or through other entities and may serve as an officer, director, consultant, partner or stockholder of one or more investment funds, partnerships, securities firms or advisory firms. It may not always be possible or consistent with the investment objectives of the various persons or entities described above and of the Fund for the same investment positions to be taken or liquidated at the same time or at the same price.

Winston & Strawn LLP currently serves as U.S. counsel for the Master Fund, NewCo and the Investment Manager. Winston does not represent the interests of any Investor in the Fund. Prospective investors should select their own legal, tax and financial advice before making an investment in the Fund.

#### ***Transactions with Affiliates***

The Fund may participate in transactions in which the Investment Manager or its officers, employees, principals or affiliates are directly or indirectly interested. In connection with such transactions, the Fund, on the one hand, and the Investment Manager and its affiliates, officers, employees and principals, on the other hand, may have conflicting interests.

#### ***Directors and Administrator***

The Directors and Administrator may also, from time to time, provide services to, or be otherwise involved with, other investment programs established by parties other than the Fund which may have similar objectives to those of the Fund. It is therefore possible that any of them may, in the course of business, have potential conflicts of interest with the Fund. However, the Administrator will, at all times, pay regard to its obligation to act in the best interests of the Fund, and the Directors will ensure that all such potential conflicts of interest are resolved fairly and in the interests of Investors. In addition, subject to applicable law, any of the service providers (including the Directors) may deal, as principal or agent, with the Fund, provided that such dealings are on normal commercial terms negotiated on an arm's-length basis.

From time to time, representatives of the Investment Manager may speak at conferences and programs for investors interested in investing in collective investment schemes which are sponsored by prime brokers. These conferences and programs may provide opportunities by which the Investment Manager is introduced to potential investors in the Fund and other investment vehicles which are managed by the Investment Manager or its affiliates. Generally, the prime brokers are not compensated by the Investment Manager, the Fund or the potential investors for providing such "capital introduction" opportunities.

The Fund may, from time to time and on an arm's-length basis, purchase assets from, or sell assets to, other funds or accounts managed by the Investment Manager or its affiliates, subject to complying with applicable law and obtaining the consent of the Fund and such other fund or account to the extent required by applicable law.

**THE ABOVE IS NOT NECESSARILY A COMPREHENSIVE LIST OF ALL POTENTIAL CONFLICTS OF INTEREST. NEITHER THE INVESTMENT MANAGER NOR ITS MEMBERS, OFFICERS, EMPLOYEES OR AFFILIATES IS OBLIGATED TO RESOLVE ANY CONFLICTS IN FAVOR OF THE FUND.**

### **VIII. THE ADMINISTRATOR**

The Fund has entered into an Engagement Contract (the "Administration Agreement") with NESF Fund Servicers Corp. (the "Administrator") pursuant to which the Administrator will perform certain financial, accounting, corporate, administrative and other services on behalf of the Fund.

The Administrator will receive a monthly fee from the Fund, subject to a monthly minimum fee, plus certain variable charges. Certain other out-of-pocket expenses of the Administrator, as well as applicable data, communication and technology-related charges may also be charged to the Fund in accordance with the Administration Agreement. The fee payable to the Administrator is based on its standard schedule of fees charged by the Administrator for similar services. All banking fees and charges will be paid directly by the Fund and its subsidiaries.

The Administration Agreement may generally be terminated at any time without penalty by the Fund.

Under the Administration Agreement, the Fund shall indemnify, hold harmless, protect and defend the Administrator against any and all claims by third parties for losses, damages or liabilities, including reasonable attorneys' fees and expenses ("Losses") arising in any manner out of or in connection with the Administration Agreement, unless it is finally judicially determined that such Losses resulted from the gross negligence or willful misconduct of the Administrator.

### **IX. CAPITAL STRUCTURE OF THE FUND**

#### **Capital Structure of the Feeder Fund**

The Feeder Fund has an authorized share capital of \$50,000 divided into 100 Management Shares par value \$0.01 per share and 4,999,900 Participating Shares, par value \$.01 per share. All shares of the Feeder Fund are in registered form and no share certificates will be issued. The Participating Shares generally do not carry voting rights.

All shares of the Feeder Fund shall entitle Investors in the Feeder Fund to distributions as set forth in this Memorandum and the Feeder Fund Articles.

The Management Shares shall have the following rights: as to voting: the holder of a Management Share shall (in respect of such Management Share) have the right to receive notice of, attend at and vote as a shareholder at any general meeting of the Feeder Fund; and as to capital: a Management Share shall confer upon the holder the right in a winding-up to repayment of capital as set out in the Feeder Fund Articles but shall confer no other right to participate in the profits or assets of the Feeder Fund; and as to income: nothing shall be payable on the Management Shares.

The Participating Shares shall have the following rights: as to voting: the holder of a Participating Share shall not (in respect of such Participating Share) have the right to receive notice of, attend at or vote as a shareholder at any general meeting of the Fund, but may vote at a separate class meeting convened in accordance with the Feeder Fund Articles; and as to capital: a Participating Share shall confer upon the holder thereof the rights to participate in the surplus assets of the Feeder Fund after the payment of all creditors and the return of the par value of the Management Shares to the holders thereof as provided for in the Feeder Fund Articles; and as to income: the Participating Shares shall confer on the holders thereof the right to receive the distributions described in this Memorandum and in the Feeder Fund Articles.

The Directors may allot, issue, grant options or warrants over, or otherwise offer shares in the Feeder Fund in separate classes and/or series with different terms, preferences, privileges or special rights including, without limitation, with respect to investment strategy and/or policy, participation in assets, profits and losses of the Feeder Fund, voting, fees charged (including management, performance and incentive fees), redemption privileges, allocation of costs and expenses (including, without limitation, the costs and expenses incurred in any hedging activities and any profits and losses arising therefrom) as the Directors may, in their absolute discretion, determine.

All or any of the special rights for the time being attached to any class or series of shares of the Feeder Fund in issue (unless otherwise provided by the terms of issue of those shares) may from time to time be varied with the consent in writing of the holders of not less than 66 2/3% of the issued shares of that class or series, or with the sanction of a resolution passed by a majority of at least 66 2/3% of the votes cast at a separate meeting of the holders of such shares.

The Feeder Fund has made investments in the Master Fund through NewCo. Specifically, the Feeder Fund has made a Structurally Subordinated Debt to NewCo pursuant to the Loan and Security Agreement and has purchased 100 shares of capital stock previously issued by NewCo. NewCo, in turn, contributed to the Master Fund such loan proceeds and capital contributions received from the Feeder Fund for the acquisition of Preferred Interests.

The Feeder Fund, as a lender to NewCo and as a holder of the issued Class B Common Stock of NewCo, is entitled to certain distributions from NewCo as provided for in this Memorandum, the Stockholders Agreement and the Articles of Incorporation of NewCo.

On or prior to November 1, 2016, each existing Investor in the Feeder Fund prior to the Recapitalization Date is required to provide to the Investment Manager a written direction (in such form as provided by the Investment Manager) with respect to Feeder Fund Shares. In such written direction and/or the applicable subscription agreement entered into or to be entered into between Investors in the Feeder Fund and the Investment Manager, each Investor in the Feeder Fund shall irrevocably direct the Investment Manager to:

- (a) (1) cause the Feeder Fund to redeem on the Recapitalization Date 100% of the Investor's Feeder Fund Shares at the Recapitalization Feeder Share Price and (2) use 100% of such redemption proceeds to repurchase new Feeder Fund Shares on the Recapitalization Date in accordance with the applicable Subscription Agreement among such Investor, the Investment Manager and the Administrator;
- (b) (1) cause the Feeder Fund to redeem on the Recapitalization Date 100% of the Investor's Feeder Fund Shares at the Recapitalization Feeder Share Price and (2) deposit or cause to be deposited all such redemption proceeds to an escrow account to be reinvested in the Park Ave S. Project;

(c) (1) cause the Feeder Fund to redeem on the Recapitalization Date 100% of the Investor's Feeder Fund Shares at the Recapitalization Feeder Share Price and (2) deposit or cause to be deposited all such redemption proceeds to an account specified by the Investor; or

(d) (1) cause the Feeder Fund to redeem on the Recapitalization Date 100% of the Investor's Feeder Fund Shares at the Recapitalization Feeder Share Price and (2)(x) use a specified portion of such redemption proceeds to repurchase Feeder Fund Shares on the Recapitalization Date at the Recapitalization Feeder Share Price (or, if specified in the applicable Subscription Agreement, at a discount of up to five percent (5%) of the Recapitalization Feeder Share Price) and (y) deposit or cause to be deposited all remaining redemption proceeds, if any, to an escrow account to be reinvested in the Park Ave S. Project and/or to an account specified by the Investor.

On the Recapitalization Date, NewCo is expected to repay the Feeder Fund all or a portion of the Structurally Subordinated Debt. On the Recapitalization Date, the Feeder Fund will use such proceeds to redeem the Feeder Fund Shares held by the Feeder Fund's Investors that have elected for such redemption pursuant to a Feeder Election Notice at the Recapitalization Feeder Share Price. Any remaining Feeder Fund Shares not redeemed will be subject to the terms of the Organization Documents as further described in this Memorandum.

Neither the Feeder Fund nor the Investment Manager has any obligation to issue to any Investor in the Feeder Fund entitlements to the indirect benefits of Master Preferred Discounts received by NewCo. Investors in the Feeder Fund that are entitled to receive indirect benefits from Master Preferred Discounts received by NewCo may receive higher distributions than Investors in the Feeder Fund who are not entitled to receive such benefits.

### **Capital Structure of NewCo**

NewCo is a Delaware corporation and has previously issued 100 shares of uncertificated capital stock to Feeder Fund and has received a loan from the Feeder Fund pursuant to the Loan and Security Agreement. All Structurally Subordinated Debts made to and capital contributions to NewCo by its Investors have been and will be further contributed to the capital of the Master Fund by NewCo for the acquisition of Preferred Interests.

All or any of the special rights for the time being attached to any class or series of shares of NewCo in issue (unless otherwise provided by the terms of issue of those shares) may from time to time be varied with the consent in writing of the holders of not less than 66 2/3% of the issued shares of that class or series, or with the sanction of a resolution passed by a majority of at least 66 2/3% of the votes cast at a separate meeting of the holders of such shares. All shares of NewCo are in registered form and no share certificates have been issued.

As of the date hereof, the Feeder Fund holds 100% of all issued and outstanding capital stock of NewCo and is the sole lender to NewCo under the Loan and Security Agreement. Prior to the Recapitalization Date, NewCo will (a) issue a single share of Class A Common Stock (voting share) to PSIM 84 and will (b) reclassify the 100 shares of uncertificated capital stock previously issued to the Feeder Fund as Class B Common Stock (non-voting shares). On the Recapitalization Date, NewCo will (a) issue to the Feeder Fund additional shares of Class B Common Stock (non-voting shares) without receiving additional cash capital contribution from the Feeder Fund and (b) issue to each New NewCo Investor Class B Common Stock (non-voting shares) at the then estimated value of such Class B Common Stock (as determined by the Investment Manager in its reasonable discretion) or, if specified in the applicable Subscription Agreement, at a discount of up to five percent (5%) of such estimated value. Each Investor in NewCo will be required to enter into a Stockholders Agreement with each other shareholders of NewCo. The terms of the equity investments made or to be made by Investors in NewCo will be subject to the organizational documents of NewCo as well as the Stockholders Agreement. The Stockholders Agreement will set forth, among other things, each Investor's entitlement to distributions as a shareholder of NewCo.

Each New NewCo Investor will be required to become a party to the Loan and Security Agreement and make a loan commitment thereunder (a) with respect to New NewCo Investors that are or are becoming an Investor of NewCo on or prior to the Recapitalization Date, in an amount equal to the product of (i) such Investor's subscription for equity investment in NewCo pursuant to the applicable Subscription Agreement and (ii) a fraction (x) the numerator of which is the total outstanding Loan (as defined in the Loan and Security Agreement) under the Loan and Security Agreement immediately prior to the Recapitalization Date and (y) the denominator of which is the value of the total equity in NewCo immediately prior to the Recapitalization Date and (b) with respect to New NewCo Investors that are becoming an Investor of NewCo after the Recapitalization Date, in an amount set forth in the applicable Subscription Agreement.

As of the Recapitalization Date, PSIM will be the only Investor in NewCo that holds voting common stock issued by NewCo.

Proceeds of capital contributions made by New NewCo Investors to NewCo and Structurally Subordinated Debts made by New NewCo Investors to NewCo may be (a) used by NewCo to purchase from each Investor in the Master Fund the applicable portion of the Preferred Interests held by such Investor that has elected for such sale pursuant to a Master Election Notice, (b) used by NewCo to repay all or a portion of existing Structurally Subordinated Debt made by the Feeder Fund to NewCo pursuant to the Loan and Security Agreement, (c) used by NewCo to redeem Class B Common Stock (including existing Class B Common Stock), and/or (d) contributed by NewCo to the Master Fund for the acquisition of additional Preferred Interests and/or Common Interests.

On the Recapitalization Date, NewCo will use capital contributions received from the New NewCo Investors to (a) purchase from each Investor in the Master Fund the applicable portion of the Preferred Interests held by such Investor that has elected for such sale pursuant to a Master Election Notice, and (b) repay the Structurally Subordinated Debt made by the Feeder Fund to NewCo in an amount sufficient for the Feeder Fund to effect the redemption of the Feeder Fund Shares held by the Feeder Fund's Investors that have elected for such redemption pursuant to a Feeder Election Notice at the Recapitalization Feeder Share Price.

Income of NewCo received from the Master Fund, less (a) cash expenditures for all costs and expenses in connection with the business of NewCo, including all of its Fund Expenses; (b) payments of principal of and interest on any loans or other obligations of NewCo (other than Structurally Subordinated Debts made by NewCo's Investors pursuant to the Loan and Security Agreement); and (c) such reserves for

and to meet anticipated expenses as the Investment Manager of NewCo (including taxes), will be used to repay obligations of NewCo under the Loan and Security Agreement. Pursuant to the Loan and Security Agreement, all interests and principal payments received from NewCo, net of fees and expenses, will be allocated by PSIM, in its capacity as the administrative agent, in accordance with the NewCo Loan Priority of Distributions. After the repayment and full satisfaction of NewCo's obligations under the Loan and Security Agreement, remaining net income of NewCo will be distributed to its Investors in accordance with the NewCo Sale Proceeds Priority of Distributions.

As a holder of Master Preferred Discounts, NewCo is entitled to receive certain distributions in connection with such Master Preferred Discounts pursuant to the Master Priority of Distributions. NewCo's Master Preferred Discount will be reflected in the records of the Investment Manager. Such records shall be binding and conclusive absent manifest error. The Investment Manager may from time to time grant additional Master Discounts to one or more other Persons. The amount of such Master Discounts may be greater than or less than the discount extended to NewCo in respect of its Preferred Interests.

### **Capital Structure of the Master Fund**

The Master Fund has authorized the issuance of Preferred Interests and Common Interests. As of the date hereof, (a) the Preferred Interests are held approximately 77% by NewCo, 1.5% by PSIM 84 and 21.5% by certain Investors who had contributed capital to the Master Fund to be used for certain Fund Expenses, purchase deposit on the Property and related purposes of the Fund ("Deposit Investors") and (b) the Common Interests are held approximately 80.04% by PSIM 84 and 19.96% by various other Investors.

All or any of the special rights for the time being attached to any class or series of units of the Master Fund in issue (unless otherwise provided by the terms of issue of those units) may from time to time be varied with the consent in writing of the holders of not less than 66 2/3% of the issued units of that class or series, or with the sanction of a resolution passed by a majority of at least 66 2/3% of the votes cast at a separate meeting of the holders of such units.

By the Recapitalization Date, the Property is expected to be valued at approximately \$185,000,000 based on a third party appraisal from a reputable firm. In order to reflect the appreciation in the value of the Property since October 22, 2013 and the appreciation in the value of the Master Fund, effective as of the Recapitalization Date, each holder of Preferred Interests and Common Interests in the Master Fund will be deemed to have made a capital contribution to the Master Fund as of the Recapitalization Date in an amount equal to (a) such Investor's entitlement to distributions from the Master Fund in its capacity as a holder of Preferred Interests or Common Interests, as the case may be, pursuant to the Existing Priority of Distributions assuming the liquidation of each of the Property, PropCo, MezzCo, JV and the Master Fund as of the Recapitalization Date *minus* (b) such Investor's capital contribution with respect to Preferred Interests or Common Interests, as the case may be, and in each case, immediately prior to the Recapitalization Date.

"Existing Priority of Distributions" means for purposes of determining the Booked-Up Capital Contribution of each Investor in the Master Fund on or prior to the Recapitalization Date, the following assumed priority of distributions of the Master Fund's liquidation cash flow as of the Recapitalization Date, net of (a) deductions (including, but not limited to, (i) payments due to any credit provider under any financing agreement, (ii) other existing or reasonably foreseeable expenses of the Master Fund and (iii) amounts reserved by the Investment Manager in its sole discretion to establish reserves for the Master Fund's liabilities) and (b) all prior distributions made by the Master Fund to each such Investor prior to the Recapitalization Date, to such Investors in the Master Fund:

(i) First, 100% to the holders of Preferred Interests in a cumulative amount under this clause (i) equal to the cumulative capital contributions made to the Master Fund on or prior to the Recapitalization Date, and as amongst the holders of such Preferred Interests pro rata in accordance with their capital contributions made and not yet returned under this clause (i) on or prior to the Recapitalization Date, until all holders of Preferred Interests have received an amount equal to their capital contributions made on or prior to the Recapitalization Date;

(ii) Second, 100% to the holders of Preferred Interests until all such holders have received an amount equal to a 6% annual compounded return on their capital contributions from the date of contribution to the Recapitalization Date, and as amongst such holders pro rata in proportion to their relative entitlement to such compounded return not previously distributed under this clause (ii);

(iii) Third, 33.33% to the holders of Preferred Interests pro rata in accordance with their relative capital contributions as of the Recapitalization Date and 66.66% to the holders of Common Interests pro rata in accordance with their percentage interests in the Common Interest as of the Recapitalization Date until the holders of the Common Interests have received distributions equal to 20% of the distributions made under clause (ii) and this clause (iii);

(iv) Fourth, 80% to the holders of Preferred Interests pro rata in accordance with their relative capital contributions as of the Recapitalization Date and 20% to the holders of Common Interests pro rata in accordance with their percentage interests in the Common Interests as of the Recapitalization Date until the holders of Preferred Interests receive distributions under clauses (ii), (iii) and this (iv) in an amount equal to a 15% annual compounded return on their capital contributions from the date of contribution to the date such capital contributions have been returned;

(v) Fifth, 85% to the holders of Common Interests pro rata in accordance with their percentage interests in the Common Interests as of the Recapitalization Date and 15% to the holders of Preferred Interests pro rata in accordance with their relative capital contributions until the holders of Common Interests as of the Recapitalization Date until the holders of the Common Interests have received an amount equal to 50% of all distributions made to the holders of Preferred Interests under clauses (ii)-(v); and

(vi) Sixth, 50% to the holders of Common Interests pro rata in accordance with their percentage interests in the Common Interests as of the Recapitalization Date and 50% to the holders of Preferred Interests pro rata in accordance with their relative capital contributions as of the Recapitalization Date.

To the extent reflected in the applicable Subscription Agreement with respect to an Investor in the Master Fund and/or the books and records of the Investment Manager, certain Investors in the Master Fund may receive an additional distribution factor with respect to its Preferred Interests and/or Common Interests under the Master Priority of Distributions in an amount no greater than five percent (5%) of such Investor's Recapitalization Date Amounts with respect to Preferred Interests and Common Interests, respectively. Investors in the Master Fund that receive Master Discounts may be entitled to receive additional distributions pursuant to the Master Priority of Distributions as compared to Investors in the Master Fund that are not entitled to such Master Discounts. Neither the Master Fund nor the Investment Manager has any obligation to issue to any Investor in the Master Fund any Master Discount..

On or prior to November 1, 2016, each existing Investor in the Master Fund prior to the Recapitalization Date is required to provide to the Investment Manager a Master Election Notice with respect to 100%

of its Booked-Up Capital Contribution in the Master Fund. In such written direction, each Investor in the Master Fund shall irrevocably direct the Investment Manager to:

(a) reflect in the Investment Manager's records that the Investor will continue to hold 100% of its Preferred Interests and Common Interests as of the Recapitalization Date, in each case, in an amount equal to the applicable Booked-Up Capital Contribution in connection with such Interests;

(b) (1) cause the Master Fund to redeem on the Recapitalization Date 100% of the Preferred Interests and Common Interests held by the Investor immediately prior to the Recapitalization Date at prices equal to the Booked-Up Capital Contribution related to such Preferred Interests and Common Interests, respectively, and (2) deposit or cause to be deposited all proceeds in connection with the redemption of such Preferred Interests and Common Interests to an escrow account to be reinvested in a project managed and sponsored by Prodigy Network, LLC (an affiliate of the Investment Manager) for the acquisition, renovation, management and operation of the real property located in the Borough of Manhattan in New York City at 331 Park Avenue South;

(c) (1) cause the Master Fund to redeem on the Recapitalization Date 100% of the Preferred Interests and Common Interests held by the Investor immediately prior to the Recapitalization Date at prices equal to the Booked-Up Capital Contribution related to such Preferred Interests and Common Interests, respectively, and (2) deposit or cause to be deposited all proceeds in connection with the redemption of such Preferred Interests and Common Interests to an account specified by the Investor; or

(d) (1) cause the Master Fund to redeem on the Recapitalization Date a portion of the Preferred Interests and/or Common Interests held by such Investor immediately prior to the Recapitalization Date at a price equal to the percentage of such Preferred Interests and/or Common Interests, as the case may be, to be sold multiplied by the Booked-Up Capital Contribution with respect to such Preferred Interests and Common Interests and to deposit or cause to be deposited all or a portion of the proceeds of such redemption to an escrow account to be reinvested in the Park Ave S. Project and/or to an account specified by the Investor and (2) reflect in the Investment Manager's records that the Investor will continue to hold the remaining portion of Preferred Interests and/or Common Interests, if any, in amounts equal to the Investor's Recapitalization Date Amount with respect to Preferred Interests and Common Interests, respectively.

“Recapitalization Date Amount” means, with respect to an existing Investor in the Master Fund on or prior to the Recapitalization Date, the remaining portion of such Investor's Booked-Up Capital Contribution with respect to Preferred Interests or Common Interests, as applicable, on the Recapitalization Date immediately after giving effect to the redemption of such Investor's Interests in the Master Fund pursuant to the applicable Master Election Notice plus any additional capital contribution made by such Investor to the Master Fund on the Recapitalization Date with respect to Preferred Interests or Common Interests, as the case may be.

On the Recapitalization Date, NewCo is expected to purchase from the Master Fund additional Preferred Interests in an amount at least sufficient for the Master Fund to effect the redemption of the Preferred Interests and/or Common Interests held by the Master Fund's Investors that have elected for such redemption pursuant to a Master Election Notice. Upon receiving such capital contribution from NewCo, the Master Fund will use such funds to redeem Preferred Interests and/or Common Interests held by the Master Fund's Investors that have elected for such redemption pursuant to a Master Election Notice.

To the extent reflected in the applicable Subscription Agreement with respect to an Investor in the Master Fund and/or the books and records of the Investment Manager, certain Investors in the Master Fund may receive a Master Discount in an amount no greater than five percent (5%) of such Investor's Recapitalization Date Amount with respect to Preferred Interests and Common Interests, respectively. Investors in the Master Fund that have received a Master Discount may be entitled to receive additional distributions pursuant to the Master Priority of Distributions as compared to Investors in the Master Fund that have not received Master Discounts. Neither the Master Fund nor the Investment Manager has any obligation to issue to any Investor in the Master Fund any Master Discount.

All preferred units of the Master Fund shall entitle the Feeder Fund to distributions as set forth in this Memorandum and the Operating Agreement of the Master Fund.

### **Capital Structure of the JV**

The JV has authorized the issuance of units to the Master Fund and the JV Partner. Approximately ninety percent (90%) of the units are issued to and currently held by the Master Fund and the remaining units of the JV are issued to and currently held by the JV Partner. All units of the JV are in registered form and no certificated membership interests have been issued.

All contributions to the capital of the JV are further contributed to the capital of MezzCo and by MezzCo to PropCo.

### **Capital Structure of MezzCo**

MezzCo has authorized the issuance of units to the JV. All of the units of MezzCo are issued to and currently held by the JV. All units of MezzCo are in registered form and no certificated membership interests have been issued.

All units of MezzCo entitle the JV to distributions as set forth in the operating agreement of MezzCo.

### **Capital Structure of PropCo**

PropCo has authorized the issuance of units to MezzCo. All of the units of PropCo will be issued to and held by MezzCo. All units of PropCo are in registered form and no certificated membership interests will be issued.

All units of PropCo shall entitle MezzCo to distributions as set forth in the operating agreement of PropCo.

## **X. OFFERING OF INTERESTS**

The Fund is inviting qualified investors to subscribe for Interests in the Fund.

NewCo is authorized to issue 5,000 shares of stock with a par value of \$0.01 per share. As of the date hereof, NewCo has issued 100 shares of capital stock to the Feeder Fund, which will be converted to 100 shares of Class B Common Stock as of the Recapitalization Date, NewCo will be issuing additional Class B Common Stock to the New NewCo Investors in connection with the recapitalization. Additionally, on the Recapitalization Date, NewCo will issue to the Feeder Fund additional shares of Class B Common Stock (non-voting shares) without receiving additional cash capital contribution from the Feeder Fund.

The minimum subscription amount for NewCo in connection with the recapitalization shall be at least 100 shares of Class B Common Stock at \$1,000/share or such other number of shares or price per share as the Investment Manager may determine.

The Investment Manager reserves the right to decline any and all new subscriptions at any time and to modify the foregoing minimum subscription amounts in its sole discretion.

To the extent reflected in the applicable Subscription Agreement with respect to an Investor in NewCo, such Investors may purchase Class B Common Stock at a discounted price; provided such discount will not exceed five percent (5%) of the then liquidation value of the Class B Common Stock (as reasonably determined by the Investment Manager) assuming the liquidation of PropCo, MezzCo, JV, the Master Fund and NewCo. Neither NewCo nor the Investment Manager has any obligation to issue to any Investor in NewCo any such discount.

Any potential New NewCo Investor subscribing to NewCo will make a capital contribution equal to its entire capital commitment (including both equity and loan commitment) no later than the earlier of (x) ten (10) days after notice by the Investment Manager that an Investor's Subscription Agreement has been approved and (y) the Recapitalization Date.

Each contribution by a New NewCo Investor in NewCo shall be deposited to an account maintained with the Bank in the name of NewCo. Contributions will be held by the Bank until the Recapitalization Date. Upon the occurrence of the Recapitalization Date, all such funds will be used by NewCo to (a) purchase from each current Investor in the Master Fund the applicable portion of the Preferred Interests and Common Interests held by such Investor that has elected for such redemption pursuant to a Master Election Notice, and (b) pay or distribute to the Feeder Fund sufficient funds to allow the Feeder Fund to effect the redemption of the shares held by the Feeder Fund's Investors that have elected for such redemption pursuant to a Feeder Election Notice.

A Defaulting Investor who defaults on any required payment in respect to its capital commitment shall be subject to certain remedies set forth in the Organizational Documents, including a 50% reduction in such Investor's Interests. Non-defaulting Investors may be required to contribute their *pro rata* share in proportion to their respective capital commitments to the Fund of the amount that was to have been paid by the Defaulting Investor; provided that a non-defaulting Investor shall not be required to fund amounts in excess of its unpaid capital commitment. The Investment Manager may offer some or all of a Defaulting Investor's Interest to a third party.

Copies of the Organizational Documents of the Fund, the Administration Agreement and the resolutions of the Board of Directors or other governing body of the Fund authorizing the issuance of the Interests will be available for inspection at the Registered Office of the Fund.

Since its date of establishment, there has been no significant change in the financial position of the Fund and no annual report or accounts have been prepared as of the date hereof.

The Fund is not involved in any litigation or arbitration proceedings relating to claims on amounts which are material in the context of the issue of the Interests, nor, so far as the Fund is aware, is any such litigation or arbitration involving it pending or threatened.

The Directors of the Feeder Fund and NewCo and the manager of the Master Fund reserve the right to select one or more placement agents to effect sales of Interests and to pay placement fees or commissions to such placement agents in amounts which the Directors and/or manager, as applicable, believe to be

appropriate. Any such fees or commissions will be charged to the Investors to whom such expenses are attributable and will not be treated as a Fund expense.

## **XI. REDEMPTIONS**

An Investor may not voluntarily redeem its Interest.

## **XII. COMPULSORY REDEMPTION OF INTERESTS AND TRANSFERS**

The Investment Manager reserves the right, with or without cause, to compel the redemption of any Investor's Interests on not less than ten (10) days' prior written notice. In particular, the Fund may compulsorily redeem an Investor's Interest in the event of delay or failure by an Investor to produce any information required for anti-money laundering verification purposes or compliance with FATCA, or if any answer provided or documentation required under the Subscription Agreement is found to be false, forged or misleading. The Fund may charge any such Investor any legal, accounting or administrative costs associated with such compulsory redemptions. In the event of a compulsory redemption, the redemption price will be determined as of the close of business of the immediately following Valuation Day (as defined below) after the ten-day period of notice for such compulsory redemption. An Investor whose Interests are compulsorily redeemed will have no rights as an Investor in the Fund after the close of business on the date on which the notice of compulsory redemption was issued. The Investment Manager may also, by written notice to the Investor, suspend the distribution of amounts payable thereto, if the Investment Manager deems it necessary to do so to comply with applicable anti-money laundering laws or FATCA. An Investor shall have no claim against the Fund, the Investment Manager or their respective affiliates for any form of damages as a result of forced redemption.

Investors in the Master Fund may Transfer their Preferred Interests without the prior written consent of the Investment Manager; Investors in NewCo may not Transfer their Class B Common Stock without the prior written consent of the Investment Manager; and Investors in the Feeder Fund may not Transfer their Participating Shares without the prior written consent of the Directors. Transferees of any Interest must satisfy the "Investor Suitability" requirements hereof (however, in no event will the Fund's Interests be registered or distributed pursuant to a public offering within the meaning of the Securities Act) and otherwise in compliance with the requirements of this Memorandum and the Organizational Documents. The Investment Manager may select one or more placement agents to assist Investors interested in the sale, assignment or other transfer of their Interests. It is expected that a commission fee of approximately five percent (5%) plus any transactions fees, costs and expenses will be paid by the transferor and/or transferee to those placement agents.

## **XIII. VALUATION OF THE FUND**

The following valuation principles relate to the Fund.

As part of its duties under the Investment Management Agreement, the Investment Manager will assist the Administrator in the calculation of the Net Asset Value of the Fund on the Valuation Date.

The ("Net Asset Value") of the Fund on any Valuation Date will equal the appraised value of the interests of the Fund in the Property (net of all liabilities of PropCo, MezzCo, or JV) as of the applicable appraisal date less all liabilities of the Fund at that time.

In each case, the net assets of the Fund will be determined on the accrual basis of accounting utilizing U.S. GAAP (with such exceptions as are set forth below) and in accordance with the following principles as of the close of business on the date of determination:

- (i) No value will be assigned to goodwill.
- (ii) Accrued Management Fee and other fees and expenses will be treated as liabilities.
- (iii) The value of any cash, bills, demand notes, overnight financing transactions, payables and receivables shall be deemed to be the full amount thereof.
- (iv) Securities which are United States Treasury obligations or other United States government or agency obligations shall be valued at their current estimated value, including accrued interest.
- (v) The value of the Investment shall be determined as follows:
  - (A) first, by means of one or more appraisals provided by a one or more independent real estate brokers selected by the Investment Manager; and
  - (B) second, if in the commercially reasonable business judgment of the Investment Manager, an appraisal does not adequately reflect current market conditions, a value provided by proprietary models developed by, or otherwise calculated by, the Investment Manager or independent valuation agents.
- (vi) All other assets and liabilities of the Fund (including securities) shall be valued in the manner determined by the Investment Manager.

Fund Expenses borne by the Fund may be amortized over a period of twelve (12) months.

Notwithstanding anything to the contrary, the Interests will not be considered liabilities of the Fund for purposes of determining the Net Asset Value.

In no event and under no circumstances shall the Administrator or the Investment Manager incur any individual liability or responsibility for any determination made or other action taken or omitted by it regarding valuation in the absence of fraud, gross negligence, bad faith or willful misconduct.

The Investment Manager or its respective appointed designee may, at its discretion, permit any other method of valuation to be used if they consider that such method of valuation better reflects value and is in accordance with good accounting practice. To the extent feasible, expenses, fees and liabilities are accrued in accordance with U.S. GAAP. Reserves (whether or not in accordance with U.S. GAAP) may be taken for estimated or accrued expenses, liabilities or contingencies.

The Fund has delegated to the Administrator the determination of the Net Asset Value, subject to oversight by the Investment Manager.

#### **XIV. SUSPENSION OF THE VALUATION OF THE FUND**

The Investment Manager may suspend dealings, or suspend the valuation of the Fund (i) during any period in which circumstances exist as a result of which, in the opinion of the Investment Manager, it is not reasonably practicable fairly to determine the Net Asset Value of the Fund or it is not reasonably practicable for the Fund to realize or dispose of investments held for the Fund; (ii) during any breakdown in the means of communication between the Fund or the Investment Manager or in any system or infrastructure of the Fund or the Investment Manager to such extent that the Net Asset Value of the Fund cannot be accurately calculated; (iii) during any other breakdown in the means normally employed by

the Investment Manager in assessing the value of investments; (iv) during any period in which the transfer of funds involved in the realization or acquisition of any investments by the Fund cannot be effected at normal rates of exchange; (v) when there exists in the opinion of the Investment Manager a state of affairs where disposal of the Fund's assets, or the determination of the Net Asset Value of the Fund, would not be reasonably practicable or would be seriously prejudicial to the non-redeeming Investors; and (vi) for any period during which the redemption of Interests would cause a breach or default under any covenant in any agreement entered into by the Fund for borrowing or cash management purposes.

Any suspension of dealings or the valuation of the Fund, as the case may be, shall take effect at such time as the Investment Manager shall declare and, thereafter, there shall be no dealings or valuation of the Fund, as the case may be, until the Investment Manager shall declare any such suspension to be at an end or the condition giving rise to the suspension having ceased to exist.

Notification of any suspension of dealings or valuation of the Fund or of any reinstatement following a suspension thereof will be made in an appropriate publication and reasonable steps will be taken to bring any suspension to an end as soon as possible.

## **XV. FEES AND EXPENSES**

### **Fees**

As compensation for the management of the Fund, Investment Manager (or an affiliate thereof) will receive a management fee semi-annually, in advance of each Semiannual Distribution Date, in an amount equal to 0.25% (i.e., an aggregate of one-half percent (0.50%) per annum) of the Property Value; provided, the Investment Manager may, in its sole discretion, charge less than 0.50% or defer such Management Fee in which case the shortfall amount shall accrue and shall be paid to the Investment Manager at such time that there is sufficient available cash flow and/or sales proceeds to pay the deferred fee).

Additionally, on the Recapitalization Date, the Fund will pay the Investment Manager (or an affiliate thereof) an Acquisition Fee equal to one percent (1%) of the Property Value as of the Recapitalization Date; provided the Investment Manager may, in its sole discretion defer such Acquisition Fee until such time that there is sufficient available cash flow and/or sales proceeds to pay such Acquisition Fee.

### **Distributions**

Distributions of PropCo's operational cash flow and cash flow upon the sale of the Property, net of deductions (including, but not limited to, (i) payments due to any credit provider under any financing agreement, including the Senior Debt, (ii) other existing or reasonably foreseeable expenses of PropCo and (iii) amounts reserved by the Investment Manager in its sole discretion to establish reserves for PropCo's operations and/or liabilities), will be made to MezzCo. Distributions of MezzCo's net cash flow, net of deductions (including, but not limited to, (i) payments due to any credit provider under any financing agreement, including the Mezz Debt, (ii) other existing or reasonably foreseeable expenses of MezzCo and (iii) amounts reserved by the Investment Manager in its sole discretion to establish reserves for MezzCo's liabilities), will be made to the JV. Distributions of JV's net cash flow, net of deductions (including, but not limited to, (i) payments due to any credit provider under any financing agreement, (ii) other existing or reasonably foreseeable expenses of the JV and (iii) amounts reserved by the Investment Manager in its sole discretion to establish reserves for the JV's liabilities), will be made to the Master Fund and the JV Partner pursuant to the Partnership Agreement of the JV.

Distributions of the Master Fund's net cash flows (as described below), if any, will be made semiannually on the Semiannual Distribution Date beginning on the first such Semiannual Distribution Date following the Recapitalization Date.

Distributions of the Master Fund's net cash flow (other than cash flow related to the disposition of the Property or any portion thereof), net of deductions (including, but not limited to, (i) payments due to any credit provider under any financing agreement, (ii) other existing or reasonably foreseeable expenses of the Master Fund and (iii) amounts reserved by the Investment Manager in its sole discretion to establish reserves for the Master Fund's liabilities), will be made to the holders of Common Interests and each Investor holding Preferred Interests as follows (such portion of the cash flow of the Master Fund, the "Available Operating Cash") in accordance with the following distribution priorities and calculations ("Operating Cash Priority of Distributions"):

- (i) First, 100% to the holders of Preferred Interests until each such holder has received, pursuant to this clause (i) and/or clause (iii) of the Sale Proceeds Priority of Distributions (including, in each case, distributions on prior Semiannual Distribution Dates), an amount equal to a 7% pre-tax annual compounded return on the sum of (x) its Capital Contribution with respect to Preferred Interests and (y) its Master Preferred Discount calculated from the date of such Capital Contributions to the date on which such compounded return amount has been fully distributed pursuant to this clause (i) and/or clause (iii) of the Sale Proceeds Priority of Distributions, and as among the holders of such Preferred Interests *pro rata* in proportion to their relative entitlement to such compounded return not previously distributed under this clause (i) and/or clause (iii) of the Sale Proceeds Priority of Distributions;
- (ii) Second, 100% to the holders of Common Interests until each such holder has received, pursuant to this clause (ii) and/or clause (iv) of the Sale Proceeds Priority of Distributions (including, in each case, distributions on prior Semiannual Distribution Dates), an amount equal to a 7% pre-tax annual compounded return on the sum of (x) its Capital Contribution with respect to Common Interests and (y) its Master Common Discount calculated from the date of such Capital Contributions to the date on which such compounded return amount has been fully distributed pursuant to this clause (ii) and/or clause (iv) of the Sale Proceeds Priority of Distributions, and as among the holders of such Common Interests *pro rata* in proportion to their relative entitlement to such compounded return not previously distributed under this clause (ii) and/or clause (iv) of the Sale Proceeds Priority of Distributions; and
- (iii) Third, to each holder of Preferred Interests on and Common Interests *pro rata* in accordance with the sum of their respective Capital Contribution and Master Discount.

"Capital Contribution" means (a) with respect to each Investor of the Master Fund on the Recapitalization Date, the Recapitalization Date Amount applicable to such Investor on the Recapitalization Date plus any additional cash received or deemed received by the Master Fund with respect to such Investor after the Recapitalization Date and (b) with respect to each person that becomes an Investor of the Master Fund raised by the Master Fund after the Recapitalization Date, the amount of cash received or deemed received by the Master Fund with respect to such Investor.

Distributions of the Master Fund's net cash flow related to the disposition of the Property or any portion thereof, net of deductions (including, but not limited to, (i) payments due to any credit provider under any financing agreement, (ii) other existing or reasonably foreseeable expenses of the Master Fund and (iii) amounts reserved by the Investment Manager in its sole discretion to establish reserves for the Master Fund's liabilities), will be made to the holders of Common Interests and each Investor holding Preferred Interests as follows:

- (i) First, 100% to the holders of Preferred Interests until each such holder has received, pursuant to this clause (i) and/or clause (iii) of the Operating Cash Priority of Distributions (including distributions on all prior Semiannual Distribution Dates), the sum of its Capital Contributions with respect to Preferred Interests and its Master Preferred Discount, and as among the holders of such Preferred Interests *pro rata* in proportion to their relative entitlement to distributions under this clause (i);
- (ii) Second, 100% to the holders of Common Interests until each such holder has received, pursuant to this clause (ii) and/or clause (iii) of the Operating Cash Priority of Distributions (including distributions on all prior Semiannual Distribution Dates), the sum of its Capital Contributions with respect to Common Interests and its Master Common Discount, and as among the holders of such Common Interests *pro rata* in proportion to their relative entitlement to distributions under this clause (ii);
- (iii) Third, 100% to the holders of Preferred Interests until each such holder has received, pursuant to this clause (iii) and/or clause (i) of the Operating Cash Priority of Distributions (including, in each case, distributions on prior Semiannual Distribution Dates), an amount equal to a 7% pre-tax annual compounded return on the sum of (x) its Capital Contributions with respect to Preferred Interests and (y) its Master Preferred Discount calculated from the date of such Capital Contributions to the date on which such compounded return amount has been fully distributed pursuant to this clause (iii) and/or clause (i) of the Operating Cash Priority of Distributions, and as among the holders of such Preferred Interests *pro rata* in proportion to their relative entitlement to such compounded return not previously distributed under this clause (iii) and/or clause (i) of the Operating Cash Priority of Distributions;
- (iv) Fourth, 100% to the holders of Common Interests until each such holder has received, pursuant to this clause (iv) and/or clause (ii) of the Operating Cash Priority of Distributions (including, in each case, distributions on prior Semiannual Distribution Dates), an amount equal to a 7% pre-tax annual compounded return on the sum of (x) its Capital Contributions with respect to Common Interests and (y) its Master Common Discount calculated from the date of such Capital Contributions to the date on which such compounded return amount has been fully distributed pursuant to this clause (iv) and/or clause (ii) of the Operating Cash Priority of Distributions, and as among the holders of such Common Interests *pro rata* in proportion to their relative entitlement to such compounded return not previously distributed under this clause (iv) and/or clause (ii) of the Operating Cash Priority of Distributions; and
- (v) Fifth, to each holder of Preferred Interests on and Common Interests *pro rata* in accordance with the sum of their respective Capital Contributions and Master Discount; provided, 30% of the distributions otherwise allocable to the holders of Preferred Interests pursuant to this clause (v) will be paid to the Investment Manager as an incentive management fee.

For purposes of the Operating Cash Priority of Distributions and Sale Proceeds Priority of Distributions, the date of Capital Contributions for (a) Capital Contributions made by Investors on or prior to the Recapitalization Date shall be the Recapitalization Date and (b) for Capital Contributions made after the Recapitalization Date shall be the date the Fund receives such Capital Contributions from such Investors.

Within five (5) Business Days following each Semiannual Distribution Date, the Investment Manager will cause NewCo to distribute to PSIM, in its capacity as the administrative agent under the Loan and Security Agreement, all distributions received by NewCo from the Master Fund on the applicable Semiannual Distribution Date, if any, less (a) cash expenditures for all costs and expenses in connection with the business of NewCo, including all of its Fund Expenses; (b) payments of principal of and interest on any loans or other obligations of NewCo (other than Structurally Subordinated Debts made by NewCo's Investors pursuant to the Loan and Security Agreement); and (c) amounts reserved by the Investment Manager in its sole discretion to establish reserves for NewCo's liabilities (including taxes). PSIM will apply such collections in the following priority:

- (i) First, pay and/or reserve for any current or anticipated fees and/or expenses (including taxes) payable by NewCo under the Loan and Security Agreement;
- (ii) Second, distribute to the lenders under the Loan and Security Agreement accrued and unpaid interests based on their pro rata entitlement thereto; and
- (iii) Third, distribute to the lenders the unreturned principal based on the sum of their relative unpaid principal balance of the loan.

After the repayment and full satisfaction of NewCo's obligations under the Loan and Security Agreement, remaining net income of NewCo received from the Master Fund will be distributed to NewCo's Investors in accordance with the following distribution priorities and calculations:

- (i) First, 100% to the holders of NewCo Stock until each such holder has received, pursuant to this clause (i) (including distributions on prior distribution dates), the sum of the liquidation value of its NewCo Stock at the time such shares were purchased by such Investor (as reasonably determined by the Investment Manager), and as among the holders of such NewCo Stock, pro rata in proportion to their relative entitlement to distributions under this clause (i);
- (ii) Second, 100% to the holders of NewCo Stock until each such holder has received, pursuant to this clause (ii) (including distributions on prior distribution dates), an amount equal to a 7% pre-tax annual compounded return on the sum of the liquidation value of its NewCo Stock at the time such shares were purchased by such Investor (as reasonably determined by the Investment Manager) calculated from the date such NewCo Stock were purchased to the date on which such compounded return amount has been fully distributed pursuant to this clause (ii), and as among the holders of such NewCo Stock pro rata in proportion to their relative entitlement to such compounded return not previously distributed under this clause (ii); For the avoidance of doubt the 7% pre-tax annual compounded return set forth above reflects the gross return of NewCo and that the Investor's actual rate of return may be less after giving effect of the payment or withholding of taxes of NewCo; and
- (iii) Third, to each holder of NewCo Stock pro rata in accordance with their relative ownership of NewCo Stock.

Within five (5) Business Days of Feeder Fund's receipt of distributions from NewCo, the Investment Manager will cause Feeder Fund to distribute to its Investors all such distributions received by Feeder Fund from NewCo, if any, net of deductions, including (but not limited to) (i) payments due to any credit provider under any financing agreement, (ii) other existing or reasonably foreseeable expenses of Feeder Fund and (iii) amounts reserved by the Investment Manager in its sole discretion to establish reserves for Feeder Fund's liabilities, in accordance with the following distribution priorities and calculations:

(a) With respect to funds received by NewCo from the Master Fund pursuant to the Operating Cash Priority of Distributions that are subsequently distributed by NewCo to the Feeder Fund:

- (i) First, 100% to the holders of Feeder Fund Shares until each such holder has received, pursuant to this clause (i) (including distributions on prior Semiannual Distribution Dates), an amount equal to a 7% pre-tax annual compounded return on the sum of the liquidation value of its Feeder Fund Shares at the time such shares were purchased by such Investor (as reasonably determined by the Investment Manager), and as among the holders of such Preferred Interests pro rata in proportion to their relative entitlement to such compounded return not previously distributed under this clause (i); For the avoidance of doubt the 7% pre-tax annual compounded return set forth above reflects the gross return of NewCo and that the Investor's actual rate of return may be less after giving effect of the payment or withholding of taxes of NewCo and the Feeder Fund;
- (ii) Second, 100% to the holders of Feeder Fund Shares until each such holder has received, pursuant to this clause (ii) (including distributions on all prior distribution dates), the sum of the liquidation value of its Feeder Fund Shares at the time such shares were purchased by such Investor (as reasonably determined by the Investment Manager), and as among the holders of such Feeder Fund Shares *pro rata* in proportion to their relative entitlement to distributions under this clause (i); and
- (iii) Third, to each holder of Feeder Fund Shares pro rata in accordance with their relative ownership of Feeder Fund Shares.

(b) With respect to funds received by NewCo from the Master Fund pursuant to the Sale Proceeds Cash Priority of Distributions that are subsequently distributed by NewCo to the Feeder Fund:

- (i) First, 100% to the holders of Feeder Fund Shares until each such holder has received, pursuant to this clause (i) (including distributions on all prior distribution dates), the sum of the liquidation value of its Feeder Fund Shares at the time such shares were purchased by such Investor (as reasonably determined by the Investment Manager), and as among the holders of such Feeder Fund Shares *pro rata* in proportion to their relative entitlement to distributions under this clause (i);
- (ii) Second, 100% to the holders of Feeder Fund Shares until each such holder has received, pursuant to this clause (ii) (including distributions on prior Semiannual Distribution Dates), an amount equal to a 7% pre-tax annual compounded return on the sum of the liquidation value of its Feeder Fund Shares at the time such shares were purchased by such Investor (as reasonably determined by the Investment Manager), and as among the holders of such Preferred Interests pro rata in proportion to their relative entitlement to such compounded return not previously distributed under this clause (ii); For the avoidance of doubt the 7% pre-tax annual compounded return set forth above reflects the gross return of NewCo and that the Investor's actual rate of return may be less after giving effect of the payment or withholding of taxes of NewCo and the Feeder Fund; and
- (iii) Third, to each holder of Feeder Fund Shares pro rata in accordance with their relative ownership of Feeder Fund Shares.

For purposes of the NewCo Sale Proceeds Priority of Distributions, Feeder Fund Operating Cash Priority of Distributions and Feeder Fund Sale Proceeds Priority of Distributions, the date of

purchase of NewCo Stock and Feeder Fund Shares, as applicable, for (a) purchases made on or prior to the Recapitalization Date shall be the Recapitalization Date and (b) for purchases made after the Recapitalization Date shall be the date NewCo or the Feeder Fund receives such purchase price from the applicable Investor.

### **Administrator Fees**

The Administrator will receive from the Fund a monthly administration fee at normal commercial rates. Certain other reasonable out-of-pocket expenses of the Administrator, which are documented and made for and on behalf of the Fund, may also be charged in accordance with the Administration Agreement.

### **Expenses**

The Fund shall bear all fees, costs and expenses incurred in connection with the organization and funding of the Fund, including (i) the negotiation, establishment and operation of the Master Fund, the Feeder Fund, and NewCo, (ii) the issuance of the Interests, (iii) the ongoing management activities of the fund, and (iv) marketing and selling expenses associated with the capital raising, excluding salaries and bonuses due to employees of the Investment Manager and/or affiliates of the Investment Manager that provide services related to the capital raising effort).

Additionally, the Fund is required to pay the following expenses: (i) insurance expenses, (ii) legal, accounting, auditing, consulting and other similar fees and expenses, (iii) costs, expenses and liabilities of the Master Fund, the Feeder Fund and/or NewCo, as the case may be (including, without limitation, litigation and indemnification costs and expenses, judgments and settlements), (iv) any taxes, fees and other governmental charges levied against the Master Fund, the Feeder Fund and/or NewCo, as applicable, (v) salaries and bonuses due to employees of the Investment Manager and/or affiliates of the Investment Manager that provide services related to the capital raising effort of the Fund (such salaries and bonuses will not exceed 2% of the Recapitalization Target), as well as any overhead associated with providing such services, (vi) expenses connected with communications to members of the Fund and other bookkeeping and clerical work necessary to maintaining relations with such members and in complying with the continuous reporting and other requirements of governmental bodies or agencies, (vii) costs associated with any computer software or hardware, electronic equipment or purchased information technology services from third-party vendors that is used for the Fund, (viii) expenses incurred by directors, officers, personnel and agents of the Investment Manager for work conducted on behalf of the Fund, and (viii) placement fees to third party agents that are negotiated on arm's-length basis with agents unaffiliated with the Investment Manager and its affiliates and are anticipated not to exceed 5% of the total capital contributions actually received by the Fund.

In addition to the foregoing, the Fund and/or JV may engage and pay fees to the Investment Manager, JV Manager, any member or any Affiliate thereof for services rendered or goods provided to the Fund to the extent that the fees paid to such persons or entities do not exceed the prevailing market rates for fees that would be payable to an independent responsible third party that is willing to perform such services or provide such goods. Such fees may include, without limitation, property management fees, financing procurement fees, due diligence costs, lease negotiation fees, and disposition fees.

## **XVI. TAX CONSIDERATIONS**

### **Certain General Tax Considerations**

PROSPECTIVE INVESTORS ARE URGED TO CONSULT THEIR OWN TAX ADVISERS AS TO THE SPECIFIC TAX CONSEQUENCES OF PURCHASING, OWNING AND DISPOSING OF AN INTEREST IN THE FUND INCLUDING THE APPLICATION AND EFFECT OF THE TAX LAWS OF THEIR JURISDICTION OF RESIDENCE AND CITIZENSHIP, THEIR ABILITY TO CLAIM FOREIGN TAX CREDITS AND THEIR ABILITY TO CLAIM THE BENEFITS OF ANY INCOME TAX TREATIES.

U.S. TAXABLE INVESTORS ARE URGED TO INVEST IN THE MASTER FUND, RATHER THAN IN THE FEEDER FUND. NON-U.S. INVESTORS AND U.S. TAX-EXEMPT SHAREHOLDERS ARE URGED TO INVEST IN THE FEEDER FUND, RATHER THAN DIRECTLY IN THE MASTER FUND. ALL INVESTORS ARE URGED TO CONSULT THEIR TAX ADVISORS CONCERNING THE TAX CONSEQUENCES OF THEIR PARTICULAR SITUATIONS.

An investment in the Fund may involve complex tax considerations. The following is a general summary only and does not purport to be a comprehensive description of all the tax considerations that may be relevant to a decision to take part in the Fund, nor it is a guarantee to any Investor of the taxation results of investing in the Fund.

### **U.S. Federal Income Tax Considerations**

The following is a general discussion of certain aspects of the U.S. federal income taxation of the Fund and its Investors, which should be considered by a prospective Investor. The Fund has not sought a ruling from the U.S. Internal Revenue Service (the “IRS”) or any similar state, local or non-U.S. authority with respect to any of the tax issues affecting the Fund or its Investors, nor has it obtained an opinion of counsel with respect to any U.S. federal, state, local or non-U.S. tax issues.

For purposes of this summary, a “U.S. Taxable Investor” is a beneficial owner of Interests who for U.S. federal income tax purposes is a citizen or resident of the United States; a corporation or partnership organized in or under the laws of the United States or any State thereof, including the District of Columbia; an estate the income of which is subject to U.S. federal income taxation regardless of its source; or a trust (1) that validly elects to be treated as a U.S. person for U.S. federal income tax purposes or (2)(a) the administration over which a U.S. court can exercise primary supervision and (b) all of the substantial decisions of which one or more U.S. persons have the authority to control. For this purpose, a “U.S. Taxable Investor” does not include any entity that is a “U.S. Tax-Exempt Investor”, which for purposes of this summary is defined as an entity that is exempt from U.S. federal income taxation under Section 501(a) of the U.S. Internal Revenue Code of 1986, as amended (the “Code”). A “Non-U.S. Investor” is a beneficial owner of Interests that is not a U.S. Taxable Investor or a U.S. Tax-Exempt Investor.

If a partnership (or any other entity treated as a partnership for U.S. federal income tax purposes) holds Interests, the tax treatment of the partnership and a partner in such partnership generally will depend on the status of the partner and the activities of the partnership. Such a partner or partnership should consult its own tax advisor as to its consequences. Investors are strongly urged to make their investments accordingly.

This summary of certain aspects of the U.S. federal income tax treatment of the Fund and its Investors is based upon the Code, existing laws, judicial decisions, existing, final, temporary and proposed regulations, rulings and administrative decisions of the IRS, each as in effect and available on the date of this Memorandum. No assurance can be given that changes in existing laws or regulations or their interpretation will not occur after the date of this Memorandum, possibly with retroactive effect. This summary does not (i) discuss the impact of various proposals to amend the Code that could change certain of the tax consequences of an investment in the Fund, or (ii) discuss all of the tax consequences that may be relevant to a particular Investor or to certain Investors subject to special treatment under the U.S. federal income tax laws, such as banks or other financial institutions, government instrumentalities or agencies, insurance companies, securities dealers, tax-exempt entities, controlled foreign corporations or passive foreign investment companies (or their shareholders), flow-through entities (*e.g.*, grantor trusts, partnerships and Subchapter S corporations) and their owners, part-year non-resident aliens, U.S. expatriates, individual retirement accounts, shareholders, beneficiaries or other owners of an Investor, Investors holding Interests in the Fund as part of a hedging transaction or as a position in a “straddle” or part of an integrated transaction or a “conversion transaction” for U.S. federal income tax purposes, or Investors that have a functional currency other than the Dollar or (iii) discuss any aspects of specific non-U.S. law or U.S. state, local, alternative minimum tax or the U.S. federal estate and gift tax consequences that may be relevant to Investors’ tax considerations.

**THE FOLLOWING IS A SUMMARY OF SOME OF THE IMPORTANT INCOME TAX RULES AND CONSIDERATIONS AFFECTING THE INVESTORS, THE FUND AND THE FUND’S PROPOSED OPERATIONS, AND DOES NOT PURPORT TO BE A COMPLETE ANALYSIS OF ALL RELEVANT TAX RULES AND CONSIDERATIONS, NOR DOES IT PURPORT TO BE A COMPLETE LISTING OF ALL POTENTIAL TAX RISKS INHERENT IN PURCHASING OR HOLDING INTERESTS. EACH PROSPECTIVE INVESTOR IS URGED TO CONSULT ITS TAX ADVISOR IN ORDER TO UNDERSTAND FULLY THE U.S. FEDERAL, STATE, LOCAL AND ANY NON-U.S. TAX CONSEQUENCES OF SUCH AN INVESTMENT IN ITS PARTICULAR SITUATION.**

## **MASTER FUND**

### ***Tax Classification of the Master Fund***

Subject to the discussion of “publicly traded partnerships” below, a limited liability company formed under the laws of a State with at least two members will generally be classified as a partnership for federal income tax purposes unless it affirmatively elects to be taxed as a corporation. The Investment Manager, on behalf of the Master Fund, has not made any such election on behalf of the Master Fund and does not anticipate any situation in which such an election would be made. Accordingly, assuming no such election is in fact made, and subject to the publicly traded partnership rules below, the Master Fund will be classified as a partnership for U.S. federal income tax purposes.

References to partnerships in the discussions in this section headed “*Tax Considerations—U.S. Federal Income Tax Considerations*” include references to a limited liability company such as the Master Fund.

Certain “publicly traded partnerships” are treated as associations that are taxable as corporations for U.S. federal income tax purposes. A publicly traded partnership is any partnership the interests in which are traded on an established securities market or which are readily tradable on a secondary market (or substantial equivalent thereof). Interests in the Master Fund will not be traded on an established securities market. Further, the governing documents of the Master Fund will contain restrictions on the transferability of the interests in the Master Fund, which are designed to prevent the Master Fund from being treated as a publicly traded partnership. In addition, Treasury Regulations concerning the classification of partnerships

as publicly traded partnerships provide certain safe harbors under which interests in a partnership are not considered readily tradable on a secondary market (or substantial equivalent thereof). Depending upon the number of Investors, the Master Fund may qualify for a safe harbor exemption from the publicly traded partnership rules. In addition, under current law, a publicly traded partnership that recognizes “qualifying income” (e.g., interest, dividends and certain capital gains) at least equal to 90% of its gross income is not taxable as a corporation.

If the Master Fund should at any time be classified as an association or a publicly traded partnership taxable as a corporation, the U.S. Taxable Investors would not be treated as partners for U.S. federal income tax purposes; income or loss of the Master Fund would not be passed through to the U.S. Taxable Investors and the Master Fund would be subject to tax on its income at the rates applicable to corporations. In addition, all or a portion of distributions made by the Master Fund to the U.S. Taxable Investors could be taxable to them as dividends (to the extent of current or accumulated earnings and profits) or capital gains, while none of those distributions would be deductible by the Master Fund in computing its taxable income. Any such recharacterization would reduce the after-tax return to a U.S. Taxable Investor from its investment in the Master Fund. The remainder of this discussion assumes that the Master Fund will not be classified as a publicly traded partnership.

To the extent that legislation is passed by U.S. Congress that would materially increase the taxes to be paid by direct or indirect investors in the Master Fund, the Investment Manager may, in its discretion, restructure the Master Fund to preserve the present tax treatment of a partnership if the Investment Manager determines in its discretion that such restructuring would not materially disadvantage any holder of Interests in the Master Fund.

#### ***Taxation of Master Fund Operations Generally***

As a partnership, the Master Fund is not itself subject to U.S. federal income tax. The Master Fund files an annual partnership information return with the IRS that reports the results of its operations for the taxable year. Each U.S. Taxable Investor is required to report separately on its income tax return its distributive share of the Master Fund’s net long-term capital gain or loss, net short-term capital gain or loss, and net ordinary income and deductions and credits. The Master Fund will distribute annually to each U.S. Taxable Investor a form showing its distributive share of items of income, gain, loss, deduction or credit. Each U.S. Taxable Investor is liable for any taxes owed upon its distributive share of the income or gains realized by the Master Fund, and may claim deductions or credits for its distributive share of the Master Fund’s losses, deductions and credits, to the extent allowed under the Code. Each U.S. Taxable Investor is taxed on its distributive share of the Master Fund’s taxable income and gain regardless of whether it has received or will receive a distribution from the Master Fund.

The U.S. federal information tax returns filed by the Master Fund will be subject to audit by the IRS, and such audit could result in an audit of the U.S. Taxable Investor’s own U.S. federal income tax returns. In connection with such audits, adjustments to Master Fund items could result in the assertion of tax deficiencies (as well as interest and penalties thereon) against the U.S. Taxable Investors. Any administrative or judicial proceedings involving the U.S. federal income tax treatment of the Master Fund items will generally be conducted on a unified basis, with binding effect on all U.S. Taxable Investors. The Investment Manager or such other person or entity as may be required by Section 6231 of the Code will serve as the “Tax Matters Partner” of the Master Fund for purposes of coordinating any such proceedings and providing any required notices about such proceedings to the U.S. Taxable Investors.

The provisions of the Bipartisan Budget Act of 2015 (the “Budget Act”) would apply to the Master Fund for taxable years beginning after December 31, 2017. Under the Budget Act, unless a partnership elects otherwise, taxes arising from audit adjustments generally are required to be paid by the partnership rather

than by its partners or members. Pursuant to this new legislation, the Investment Manager will be designated as the “partnership representative” and will be solely responsible for the tax administration of the Master Fund and will have the authority to utilize, and intend to utilize, any exceptions available under the Budget Act so that the persons treated as partners of the Master Fund, to the fullest extent possible, rather than the Master Fund itself, will be liable for any taxes arising from audit adjustments to the taxable income of the Master Fund. The application of the Budget Act to the Master Fund and the U.S. Taxable Investors is uncertain and remains subject to Treasury Regulations and IRS guidance yet to be issued. Each U.S. Taxable Investor should consult its own tax adviser regarding the implications of the Budget Act for an investment in the Interests of the Master Fund.

### ***Taxation of U.S. Taxable Investors***

#### *Allocation of Income and Losses*

Under Section 704 of the Code, a U.S. Taxable Investor’s distributive share of any item of income, gain, loss, deduction or credit with respect to the Master Fund is governed by the operating agreement of the Master Fund unless the allocation provided by such agreement does not have “substantial economic effect.” The Treasury Regulations promulgated under Section 704(b) of the Code provide certain safe harbors with respect to allocations which, under the Treasury Regulations, will be deemed to have substantial economic effect. The validity of an allocation which does not satisfy any of the safe harbors of these Treasury Regulations is determined by taking into account all facts and circumstances relating to the economic arrangements among the U.S. Taxable Investors. The allocations provided in the operating agreement of the Master Fund may not meet the standards required to come within the safe harbors set forth in these Treasury Regulations. Thus, the validity of the allocations for tax purposes may be determined in light of all the facts and circumstances. If it were determined by the IRS or a court that the allocation provided in the operating agreement of the Master Fund with respect to a particular item does not have substantial economic effect, each U.S. Taxable Investor’s distributive share of that item would be determined for tax purposes in accordance with that U.S. Taxable Investor’s Interest, taking into account all facts and circumstances.

#### *Distributions and Withdrawals*

Cash nonliquidating distributions and withdrawals made with the Master Fund, to the extent they do not exceed a U.S. Taxable Investor’s basis in its Interest in the Master Fund, will not result in taxable income to that U.S. Taxable Investor, but will reduce its tax basis in such Interest by the amount distributed or withdrawn. Cash distributed to a U.S. Taxable Investor in excess of the basis of such Interest is generally taxable as capital gain.

Upon the withdrawal of a U.S. Taxable Investor receiving a cash liquidating distribution from the Master Fund, generally, such U.S. Taxable Investor will recognize capital gain or loss to the extent of the difference between the proceeds received by the withdrawing U.S. Taxable Investor and such Partner’s adjusted tax basis in its Interest in the Master Fund. Such capital gain or loss will be short-term or long-term depending upon the U.S. Taxable Investor’s holding period (or holding periods) for its Interest. However, a withdrawing U.S. Taxable Investor will recognize ordinary income to the extent such U.S. Taxable Investor’s allocable share of the Master Fund’s “unrealized receivables” exceeds the U.S. Taxable Investor’s basis in such unrealized receivables (as determined pursuant to the Treasury Regulations).

Distributions of property other than cash, whether in complete or partial liquidation of a U.S. Taxable Investor’s Interest, generally will not result in the recognition of taxable income or loss to the U.S. Taxable Investor (except to the extent such distribution is treated as made in exchange for such U.S. Taxable Investor’s share of the Master Fund’s unrealized receivables). It should be noted, however, that a

distribution of marketable securities generally will be treated as a distribution of cash (which, as described above, can require the recognition of gain by the recipient U.S. Taxable Investor).

#### *Sale or Exchange of Interests*

A U.S. Taxable Investor that sells or otherwise dispose of an Interest in a taxable transaction generally will recognize gain or loss equal to the difference, if any, between its adjusted basis in the Interest and the amount realized from the sale or disposition. The amount realized will include the U.S. Taxable Investor's share of the Master Fund's liabilities outstanding at the time of the sale or disposition. Except as otherwise described below with respect to "inventory items" and "unrealized receivables" of the Master Fund, if the U.S. Taxable Investor holds the interest as a capital asset, the gain or loss generally will constitute capital gain or loss to the extent a sale of assets by the Fund would qualify for such treatment. Gain or loss on the disposition of an Interest generally will be long-term capital gain or loss if the U.S. Taxable Investor has held the Interest for more than one year on the date of such sale or disposition, provided that a capital contribution by the U.S. Taxable Investor to the Master Fund within the one-year period ending on such date will cause part of such gain or loss to be short term capital gain or loss. The portion of the U.S. Taxable Investor's gain allocable (or amount realized, in excess of basis, attributable to) "inventory items" and "unrealized receivables" of the Master Fund, as defined in Section 751 of the Code, will be treated as ordinary income.

#### *Net Investment Income Tax*

In addition, individuals, trusts, and estates are subject to a 3.8% "net investment income tax" ("NIIT"), which in the case of individuals, applies to the lesser of "net investment income" or the excess of modified adjusted gross income over a threshold amount (i.e., \$250,000 for married taxpayers filing jointly, \$125,000 for each married taxpayer filing separately, and \$200,000 for all other taxpayers that are individuals). In the case of an estate or a trust, the tax will be imposed on the lesser of (i) the estate or trust's undistributed net investment income or (ii) the excess (if any) of adjusted gross income over the dollar amount at which begins the highest income tax bracket applicable to an estate or trust for the tax year. Net investment income generally is equal to the sum of (i) interest, dividends and certain other portfolio income, unless such income is derived in the ordinary course of a business that is not a business of trading financial instruments or commodities or a passive activity with respect to the taxpayer (a "Passive or Trading Business"), (ii) any other gross income derived in a Passive or Trading Business, and (iii) net gains from the disposition of property, other than property held in a business that is not a Passive or Trading Business, reduced by the deductions properly allocable thereto. It is anticipated that a U.S. Taxable Investor's allocable share of gross income and/or net gain from the Master Fund as well as any net gain received by a withdrawing U.S. Taxable Investor from the Master Fund generally will be included in such U.S. Taxable Investor's net investment income subject to this 3.8% surtax. Prospective U.S. Taxable Investors should consult their tax advisors concerning the possible implications of the NIIT and any future IRS guidance related thereto based upon their particular circumstances.

#### *Limitations on Losses and Deductions*

Itemized Deduction Limitations. Under Section 67 of the Code, certain itemized deductions (including investment management fees) are allowable for non-corporate partners only to the extent they exceed a "floor" amount equal to 2% of adjusted gross income. A U.S. Taxable Investor that is a trust or estate should consult its tax advisor as to the applicability of Section 67 to such U.S. Taxable Investor. In addition, Section 68 of the Code reduces certain itemized deductions (including otherwise deductible miscellaneous itemized expenses) of an individual by the lesser of (i) 3% of such individual's adjusted gross income exceeding a threshold amount or (ii) 80% of the total amount of such deductions which otherwise would

be allowable. Moreover, such itemized deductions are non-deductible in computing such U.S. Taxable Investor's alternative minimum taxable income and alternative minimum tax liability.

Whether the Master Fund's operations constitute a trade or business within the meaning of Section 162 and other provisions of the Code is a highly factual determination and depends upon the future activities of the Master Fund. The Investment Manager generally intends to take the position that the Master Fund's operations constitute a trade or business for Section 162 purposes.

If or to the extent that the Master Fund's operations do not constitute a trade or business within the meaning of Section 162 and other provisions of the Code, a non-corporate U.S. Taxable Investor's distributive share of the Master Fund's expenses (including any amounts that are treated for tax purposes as expenses of the Master Fund) would be deductible only as itemized deductions, subject to the foregoing limitations.

Passive Activity Loss Rules. Income and losses of the Master Fund generally will be treated as passive income or losses for purposes of the passive activity loss limitations of Section 469 of the Code. Accordingly, individuals, personal service corporations and certain closely held corporations are advised to consult their own tax advisor about the passive activity loss limitations of Section 469 of the Code.

"At-risk" Rules. In the case of U.S. Taxable Investors that are individuals, trusts or certain closely held corporations, the ability to utilize any tax losses generated by the Master Fund may be restricted under the "at risk" limitation in Section 465 of the Code. Generally, this provision operates to postpone a U.S. Taxable Investor's loss deductions that are financed by the Master Fund or Master Fund (or U.S. Taxable Investor) indebtedness for which the U.S. Taxable Investor is not personally liable. Amounts disallowed under the "at-risk" rules may be carried forward and deducted in any subsequent taxable year that the U.S. Taxable Investor's at-risk limitation increases (for example, as a result of additional contributions to the Master Fund, personal assumption or amortization of Master Fund debt or otherwise).

Basis Limitations. Section 704(d) of the Code denies a deduction for a U.S. Taxable Investor's distributive share of losses from the Master Fund to the extent that such losses exceed such U.S. Taxable Investor's basis in its Interest in the Master Fund. These losses are suspended until the U.S. Taxable Investor's increased basis in subsequent taxable years permit deduction of all or part of the postponed losses.

#### *State and Local Taxes*

In addition to the federal income tax consequences described above, each prospective U.S. Taxable Investor should consider potential U.S. state and local tax consequences of an investment in the Master Fund. U.S. state and local laws often differ from U.S. federal income tax laws with respect to the treatment of specific items of income, gain, loss, deduction and credit. A U.S. Taxable Investor's distributive share of the taxable income or loss of the Master Fund generally will be required to be included in determining the U.S. Taxable Investor's reportable income for state and local tax purposes in the jurisdiction in which it is a resident and the jurisdictions in which the Master Fund operates and owns real property.

#### *Other Taxes*

The Master Fund and its U.S. Taxable Investors may be subject to other taxes, such as the alternative minimum tax, and estate, inheritance or intangible property taxes that may be imposed by various domestic jurisdictions.

### *Other Matters*

The Master Fund may incur certain expenses in connection with its organization and the marketing of its Interests. Amounts paid or incurred to organize a LLC are not deductible, but the Master Fund intends to elect that such amounts be capitalized and amortized over a period of eighty-four (84) months. Amounts paid or incurred to market interests in a LLC (syndication expenses) are not deductible.

### *Taxation of Non-U.S. Investors*

The Master Fund will be considered for U.S. federal income tax purposes to be engaged in the conduct of a U.S. trade or business. Accordingly, the Master Fund will be required to withhold tax from that portion of its income effectively connected with such trade or business that is allocable to a Non-U.S. Investors (“effectively connected income”). Non-U.S. Investors in the Master Fund will be liable for U.S. federal income tax on their distributive share of Master Fund effectively connected income (against which, amounts withheld may be credited) at the regular graduated rates and such Non-U.S. Investors will be required to file U.S. federal income tax returns even if no effectively connected income is allocable to them. The Master Fund also will be treated as engaged in a U.S. trade or business to the extent it disposed (or is deemed to have disposed) of a “United States real property interest,” as such term is defined in Section 897 of the Code and the income or loss from such disposition will be treated as effectively connected with a U.S. trade or business and a Non-U.S. Investor in the Master Fund will be subject to the foregoing requirements. Non-U.S. Investors in the Master Fund generally will have similar tax consequences arising from a disposition (including a deemed disposition resulting from certain redemptions) of an investment in the Master Fund, in which case the transferee (or the Master Fund, if applicable) will be required to withholding 15% of the “amount realized”. For this purpose, the “amount realized” includes, among others, the Non-U.S. Investor’s share of any liability to which the Master Fund’s property is subject immediately before and after the disposition. In addition, Non-U.S. Investors in the Master Fund that are corporations may be subject to an additional “branch profits” tax. There also may be state or local tax withholding. ***Non-U.S. Investors are urged to consult their own tax advisors about the tax liability and reporting obligations arising from an investment in the Master Fund.***

The U.S. federal estate tax treatment of Interests in the Master Fund with regard to the estate of a non-citizen who is not a resident of the United States is not entirely clear. If Interests in the Master Fund are includable in the U.S. gross estate of such person, then a U.S. federal estate tax might be payable in connection with the death of such person. Prospective individual Non-U.S. Investors who are non-citizens and not residents of the United States should consult their own tax advisors concerning the potential U.S. federal estate tax consequences of owning Interests in the Master Fund.

### *Tax Treatment of Master Discounts*

Certain Investors in the Master Fund may receive a Master Discount that may entitle them to receive additional distributions pursuant to the Master Priority of Distributions as compared to Investors in the Master Fund that have not received Master Discounts. The Master Fund does not intend to treat such Master Discount received by an Investor in the Master Fund as issued in exchange for deemed capital contributions to the Master Fund by such Investor for purposes of maintenance of the Capital Account (as defined in Section 4.3(a) of the Master Fund’s Operating Agreement). As a result, Master Discounts are not expected to increase the Capital Account of Investors receiving such Master Discounts as of the date of issuance of such Master Discounts. Investors receiving Master Discounts should consult their tax advisors regarding the economic and tax consequences to them of receiving such Master Discounts without a corresponding increase in their Capital Accounts as of the date of such receipt.

The IRS may take the position that the issuance by the Master Fund of Master Discounts to certain of its Investors should result in a taxable “capital shift” to such Investors in the taxable year of such Investors that includes the date of such issuance. For example, if there is a “capital shift” to NewCo as a result of receipt by NewCo of a Master Discount that is taxable in the tax year of NewCo that includes the date of such receipt, this would reduce the cash NewCo has available for distribution in such tax year. The amount and character of such taxable income is uncertain but may be as much as the sum of additional distributions received by an Investor by reason of a Master Discount pursuant to the Master Priority of Distributions as compared to Investors in the Master Fund that have not received Master Discounts. The Investors are urged to consult their tax advisors regarding the economic and tax consequences to them of receipt of Master Discounts.

#### ***Tax Treatment of the Booked-Up Amount***

The Master Fund does not intend to treat the Booked-Up Amount with respect to each Investor as issued in exchange for a deemed capital contribution by such Investor to the Master Fund for purposes of maintenance of the “Capital Account” (as defined in Section 4.3(a) of the Master Fund’s Operating Agreement). As a result, the Booked-Up Amount with respect to an Investor is not expected to increase the Capital Account of such Investor as of the date of the Recapitalization Date. Investors should consult their tax advisors regarding the economic and tax consequences to them of receiving the Booked-Up Amount without a corresponding increase in their Capital Accounts as of the date of such receipt.

The IRS may take the position that the Booked-Up Amount with respect to each Investor should result in a taxable “capital shift” to such Investor in the taxable year of such Investor that includes the date of the Recapitalization Date. For example, if there is a “capital shift” to NewCo as a result of the Booked-Up Amount that is taxable to NewCo in the tax year of NewCo that includes the date of the Recapitalization Date, this would reduce the cash NewCo has available for distribution in such tax year. The amount and character of such taxable income for each Investor is uncertain but may be as much as the amount of the Booked-Up Amount with respect to such Investor. The Investors are urged to consult their tax advisors regarding the economic and tax consequences to them of the Booked-Up Amount.

#### ***Backup Withholding Tax and Information Reporting Requirements***

Under certain circumstances, backup withholding of U.S. tax and information reporting requirements may apply to certain payments made to certain non-corporate Investors that fail to provide the Master Fund with certain identifying information. A U.S. Taxable Investor may comply with these identification and certification procedures by providing the Master Fund with a duly executed properly completed IRS Form W-9 (Request for Taxpayer Identification Number and Certification). A Non-U.S. Investor may comply with these identification procedures by providing the Master Fund with a duly executed properly completed appropriate IRS Form W-8. Backup withholding is not an additional tax, and may be refunded or credited against the Investor’s U.S. federal income tax liability, if any, if certain required information is timely furnished to the Service.

#### ***FATCA***

Very generally and with limited exceptions, pursuant FATCA, if a non-U.S. person fails to meet certain requirements that are mandated by FATCA, certain U.S. source income paid to such non-U.S. person will be subject to a 30% withholding tax. Pursuant to FATCA, a 30% withholding tax will be imposed on (i) certain U.S. source payments such as dividends, interest, and other fixed or determinable annual or periodical income received on or after July 1, 2014, (ii) proceeds of a sale or disposition of property producing U.S.-source interest or dividends received on or after January 1, 2019, and (iii) certain other payments received from other foreign financial institutions no earlier than January 1, 2019 that are allocable, as provided for under final Treasury Regulations, to payments described in clauses (i) and (ii)

above that are received by such other foreign financial institutions (“foreign passthru payments”) in each case paid to (1) a “foreign financial institution” (as specifically defined in the legislation), whether such foreign financial institution is the beneficial owner or an intermediary, unless such foreign financial institution provides a certification that it has agreed to verify, report and disclose its United States “account” holders (as specifically defined in the legislation) and meets certain other specified requirements, (2) a non-financial foreign entity, whether such non-financial foreign entity is the beneficial owner or an intermediary, unless such entity provides a certification that the beneficial owner of the payment does not have any substantial United States owners or provides the name, address and taxpayer identification number of each such “substantial United States owner” (as defined under the Code and applicable Treasury Regulations) and certain other specified requirements are met, and in each case, unless the relevant foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules, or (3) a U.S. person, whether such U.S. person is the beneficial owner or an intermediary, unless such person provides a certification that the beneficial owner of the payment is a U.S. person. In certain cases, the relevant foreign financial institution or non-financial foreign entity may qualify for an exemption from, or be deemed to be in compliance with, these rules.

The Master Fund will be required to withhold at a 30% rate on certain payments to a U.S. Taxable Investor if the U.S. Taxable Investor fails to timely provide the Master Fund with sufficient information, certification or documentation that is necessary for the Master Fund to determine whether or not the U.S. Taxable Investor is a U.S. person within the meaning of the Code. A Non-U.S. Investor of the Master Fund also may be subject to withholding on certain items of income from the Master Fund if such Non-U.S. Investor is not in compliance with applicable disclosure and information reporting requirements with respect to its direct and indirect beneficial owners under FATCA and any applicable inter-governmental agreement related to FATCA (“IGA”).

Potential investors should be aware that the Master Fund, to comply with its FATCA obligations and other information reporting obligations, may be required to disclose information relating to its investors and their respective beneficial owners to U.S. tax authorities and certain other relevant tax authorities. Prospective Investors should consult their tax advisors regarding the potential application of withholding under FATCA to their investment in the Master Fund.

## **FEEDER FUND**

**The following discussion presumes that the Feeder Fund will not offer Participating Shares to the U.S. Taxable Investors.**

### ***Taxation of the Feeder Fund Generally***

A business entity formed under the laws of a non-U.S. jurisdiction with at least two members, none of which has unlimited liability for the debts and obligations of the entity, will generally be classified as a corporation for federal income tax purposes unless it affirmatively elects to be taxed otherwise. The Feeder Fund has not affirmatively elected to be taxed other than as a corporation for U.S. federal income tax purposes and will not be permitted to elect to be taxed other than as a corporation for U.S. federal income tax purposes.

It is intended that the Feeder Fund will only invest into equity and/or securities of NewCo. The Feeder Fund is expected to acquire only non-voting stock of NewCo, with voting stock of NewCo owned by certain affiliates of the Investment Manager. NewCo will in turn invest into the Master Fund. The Feeder Fund intends to use commercially reasonable efforts to conduct its affairs to eliminate or reduce, to the extent possible, any income or gains realized by it (including in connection with any disposition of Interests in

NewCo) which will be effectively connected with the conduct of a U.S. trade or business or otherwise subject to regular U.S. federal income taxation on a net basis.

The Feeder Fund is expected to earn income from NewCo either by way of dividends and interest payments, or by the sale of Interests in NewCo. Dividends and interest paid by corporations that are U.S. persons (such as NewCo) are generally U.S. source income. Because the Feeder Fund is organized under the laws of the Cayman Islands, it will be considered to be a non-U.S. person for purposes of U.S. tax laws. As a result, dividends and interest (other than “Portfolio Interest” as defined in the section below headed “*Tax Considerations—U.S. Federal Income Tax Considerations—NewCo—U.S. Federal Income Taxation of Non-U.S. Investors in NewCo—Interest*”) received by the Feeder Fund from NewCo will be subject to U.S. withholding tax at a 30 percent rate.

Portfolio Interest generally includes interest paid on registered obligations with respect to which the beneficial owner provides a statement that it is not a U.S. Person, where the beneficial owner (determined, with respect to certain trusts and entities classified as partnerships, on a look-through basis) of such obligation does not own 10% or more of the total combined voting power of all classes of stock of the issuer of such obligation. The Feeder Fund is not expected to be considered a 10% shareholder of NewCo for this purpose because the Feeder Fund is expected to acquire only non-voting stock of NewCo. However, the IRS may disagree and recharacterize non-voting stock of NewCo owned by the Feeder Fund as voting stock of NewCo for purposes of the Portfolio Interest exemption. Therefore, no assurance can be given as to whether interest received by the Feeder Fund from NewCo would qualify for the Portfolio Interest exemption.

Even if the Portfolio Interest exemption is available with respect to interest received by the Feeder Fund from NewCo, the “debt versus equity” provisions may result in the characterization of interest payments as distributions relating to equity, which would not qualify for the Portfolio Interest exemption. The IRS may recharacterize debt instruments as stock based on the following general factors: (1) whether there is a written unconditional promise to pay on demand, or at a specified date, a sum certain along with a fixed rate of interest; (2) whether the debt is subordinate to, or has a preference over, any other indebtedness of the corporation; (3) the borrower corporation’s ratio of debt to equity; (4) whether the debt is convertible to stock; and (5) whether the debt is held pro rata to equity interests. There are several factors favoring debt treatment with respect to the Feeder Fund’s loans to NewCo—(1) the loans will be made pursuant to a binding written obligation requiring repayment along with a fixed rate of interest, (2) the debt will not be convertible into stock of the borrower, and (3) the Feeder Fund’s right to repayment will not be subordinate to the rights of any general creditors of the borrower. While NewCo’s ratio of debt to equity may be high as a result of loans from its investors (including the Feeder Fund), the ratio is not dispositive of whether the loan will be treated as debt or equity. Considering the totality of the circumstances, it is anticipated that the Feeder Fund’s loans to NewCo will be treated as debt rather than recharacterized as equity for U.S. federal income tax purposes. However, in light of the interest rate on the loans and the debt to equity ratio, it is possible that such loans could be recharacterized as equity for U.S. federal income tax purposes. Any such recharacterization would reduce the after-tax return to Non-U.S. Investors in the Feeder Fund as payments on such loans will be treated as dividends subject to U.S. withholding tax at a 30% rate.

In addition, on April 4, 2016, the Secretary of Treasury published proposed Treasury Regulations under Section 385 of the Code that address the debt or equity treatment of instruments held by parties related to an issuing entity. If these proposed Treasury Regulations are published as final in their current form or substantially similar form, the U.S. federal income tax treatment of debt issued by NewCo to the Feeder Fund may not be entirely clear.

In general, subject to the discussions in the sections below headed “*Tax Considerations—U.S. Federal Income Tax Considerations—NewCo—Taxation of Non-U.S. Investors in NewCo—Effectively Connected*”

*Income,*” and “*Tax Considerations—U.S. Federal Income Tax Considerations—NewCo—Taxation of Non-U.S. Investors in NewCo—FATCA,*” a non-U.S. person (such as the Feeder Fund) who realizes gain from the disposition of personal property (such as shares in a corporation) that is not a “U.S. real property interest” (as defined below) is not subject to U.S. federal income taxation on the gain, if any, from such disposition. On the other hand, any gain realized by a non-U.S. person from the sale or disposition of U.S. real property interests is generally subject to U.S. federal income tax on the gain from such sale as if such person had income effectively connected with a U.S. trade or business under the Code known as FIRPTA. Unless the U.S. real property interest is an interest in a “United States real property holding corporation” (as defined below), such gain is generally also subject to the branch profits tax and, thus, is subject to an effective U.S. federal tax rate of up to 54.5%. A U.S. real property interest (“USRPI”) for this purpose includes stock or securities (other than debt instruments with no equity component) of a U.S. corporation if the fair market value of such U.S. corporation’s USRPI equals or exceeds 50% of the fair market value of: (i) its USRPIs; (ii) its interests in real property located outside the United States; and (iii) all other of its assets used or held for use in a trade or business (such corporation being a “U.S. real property holding corporation” or “USRPHC”). For these purposes, assets held by a partnership are treated as held proportionately by such partnership’s partners. NewCo should be a USRPHC (and thus a USRPI) because NewCo’s only assets are its interests in the Master Fund, which is a partnership for U.S. federal income tax purposes that directly or indirectly only holds real property located in the United States. As a result, the sale or disposition by the Feeder Fund of non-voting stock of NewCo generally will be subject to taxation under FIRPTA, unless NewCo is not a USRPHC at the time of such sale or disposition. Moreover, any distributions by NewCo that are treated as return of capital or gain generally will be subject to U.S. withholding tax at a rate of 15% under FIRPTA, unless NewCo is not a USRPHC on the date of such distribution.

However, if NewCo were to liquidate and distribute its assets after all of its interests in the Master Fund or all of the Master Fund’s assets (in effect, all of the Master Fund’s investments in real property located in the United States) have been disposed of, NewCo would not hold any USRPIs, directly or indirectly, and thus would not be a USRPHC at the time of the liquidating distribution. As a result, any gain realized by the Feeder Fund that would result from NewCo’s liquidating distribution in such case would be treated as gain realized by a non-U.S. person from the disposition of tangible personal property that is not a USRPI and, as such, would be foreign sourced income and not subject to FIRPTA taxation or withholding.

Assuming that the Feeder Fund is not, in fact, engaged in a U.S. trade or business (including as a result of a disposition of a USRPI), it is anticipated that gains realized by the Feeder Fund will not be subject to U.S. federal income taxation. If, contrary to its intended method of operation, the Feeder Fund is considered to be engaged in a U.S. trade or business, the Feeder Fund’s share of any income that is “effectively connected with” such U.S. trade or business will be subject to regular U.S. federal income taxation (currently imposed at a maximum rate of 35 percent) on a net basis and may be subject to an additional 30 percent U.S. “branch profits” tax (or such lower rate specified by an applicable income tax treaty) on after-tax earnings that are not reinvested in a U.S. business. In addition, it is possible that the Feeder Fund could be subject to taxation on a net basis on such income by state or local jurisdictions within the United States. Any such taxation could adversely affect the Feeder Fund’s ability to make payments in respect of Interests therein.

In addition, under the recently enacted FATCA rules described in the section above headed “*Tax Considerations—U.S. Federal Income Tax Considerations—Master Fund—FATCA,*” the Feeder Fund may be subject to withholding on certain items of income received from NewCo, including U.S. source dividends and Portfolio Interest received from NewCo on or after July 1, 2014, as well as gross proceeds from the sale or disposition of securities of NewCo received on or after January 1, 2019, if the Feeder Fund is not in compliance with applicable disclosure and information reporting requirements with respect to its direct and indirect beneficial owners under FATCA and the United States/Cayman Islands IGA.

The Feeder Fund intends to comply with its obligations under such laws and the IGA. Potential investors should be aware that the Feeder Fund, to comply with such obligations, may be required to disclose information relating to its investors and their respective beneficial owners to Cayman Islands tax authorities who will in turn provide such information to the IRS and other relevant tax authorities (such as the United Kingdom), may be required to inform withholding agents (including NewCo) of the status of any “recalcitrant account holders” in the Feeder Fund (which may result in withholding of amounts distributable to the Feeder Fund and its Investors) as required under the FATCA rules and the IGA, and may in certain situations require an investor to withdraw from the Feeder Fund in connection with its obligations under FATCA.

### ***Taxation of Non-U.S. Investors***

A Non-U.S. Investor in the Feeder Fund generally will not be subject to U.S. federal income taxation on amounts received from the Feeder Fund in respect of the Interests or gains recognized on the sale, exchange or redemption of Interests in the Feeder Fund, provided that such income and gains are not considered to be effectively connected with the conduct of a trade or business by the Investor in the U.S. In limited circumstances, an individual Investor who is present in the U.S. for 183 days or more during a taxable year may be subject to U.S. federal income tax at a flat rate of 30 percent (or lower treaty rate) on gains realized on a disposition of Interests in the Feeder Fund in such year. Special rules may apply in the case of non-U.S. persons (i) that conduct a trade or business in the U.S. or that have an office or fixed place of business in the U.S., (ii) that have a tax home in the U.S., (iii) that are former citizens or long-term residents of the U.S. or (iv) that are CFCs, PFICs or foreign insurance companies that hold Interests in connection with their U.S. business, or corporations which accumulate earnings to avoid U.S. federal income tax. Such persons are urged to consult their own U.S. tax advisors before investing in the Feeder Fund.

### ***Taxation of U.S. Tax-Exempt Investors***

In general, U.S. Tax-Exempt Investors are subject to U.S. federal income tax on any income which constitutes “UBTI.” UBTI is defined generally as any income derived from a trade or business regularly carried on by a U.S. Tax-Exempt Investor that is unrelated to its tax-exempt purposes. A U.S. Tax-Exempt Investor will be treated as engaged in an unrelated trade or business if it carries on an unrelated trade or business directly or if it is a partner in a partnership which carries on such a trade or business. In addition, as hereinafter more fully discussed, income derived by a U.S. Tax-Exempt Investor generally will be treated as UBTI if such income is derived from property with respect to which there is “acquisition indebtedness” (as hereinafter defined).

In general, interest, dividends, gains from the sale or exchange of capital assets, and certain other types of passive income are excluded from UBTI. However, any income which is derived from property (“debt-financed property”) with respect to which there is acquisition indebtedness at any time during the taxable year will be treated as UBTI. In addition, any gain realized from the disposition of property during the twelve-month period following the repayment of any acquisition indebtedness with respect to such property generally will be treated as UBTI. In general, acquisition indebtedness means the unpaid amount of any indebtedness incurred or continued by the U.S. Tax-Exempt Investor to acquire the debt-financed property. Therefore, if a U.S. Tax-Exempt Investor were to incur indebtedness in order to purchase Interests, all or a portion of any income or gain attributable to such Interests generally would be treated as UBTI. In determining whether a U.S. Tax-Exempt Investor has incurred acquisition indebtedness, indebtedness of the Feeder Fund will not be attributed to the U.S. Tax-Exempt Investor.

Capital gain derived by a U.S. Tax-Exempt Investor from the sale or exchange of Interests in the Master Fund and dividends (if any) received by a U.S. Tax-Exempt Investor with respect to such Interests should

be exempt from UBTI, provided that the U.S. Tax-Exempt Investor has not incurred acquisition indebtedness in connection with the acquisition of such Interests.

The Feeder Fund may constitute a PFIC for U.S. federal income tax purposes. Under Treasury Regulations, a U.S. Tax-Exempt Investor will not be considered to be a shareholder in a PFIC, and thus will not be subject to the PFIC tax rules, except to the extent that a “dividend” from the PFIC would be taxable as unrelated debt financed income under the UBTI rules. Hence, a tax-exempt entity would be subject to tax under the PFIC regime in respect of an excess distribution from, or any gain realized on the sale of the shares of a PFIC in only limited circumstances. Additionally, these Treasury Regulations provide that a tax-exempt entity that is not taxable under the PFIC rules may not make a QEF election under Section 1295 of the Code. The manner in which the PFIC rules apply to certain types of tax-exempt entities, such as charitable remainder trusts, is unclear. Accordingly, potential tax-exempt investors are urged to consult their own tax advisors regarding the tax consequences of, and reporting obligations arising from, an investment in the Feeder Fund.

### ***Investor Tax Filings and Record Retention***

The U.S. Treasury Department has adopted regulations designed to assist the Internal Revenue Service in identifying abusive tax shelter transactions. In general, the regulations require investors in specified transactions (including certain shareholders in foreign corporations and partners in partnerships that engage in such transactions) to satisfy certain special tax filing and record retention requirements. Certain monetary penalties (in addition to existing penalties that generally may be applicable as a result of a failure to comply with applicable Treasury regulations) may apply for failure to comply with these tax filing and record retention rules.

The regulations are broad in scope, and it is conceivable that the Feeder Fund may enter into transactions that will subject the Feeder Fund and certain Investors in the Feeder Fund to the special tax filing and record retention rules.

## **NEWCO**

### ***Taxation of NewCo***

#### ***General***

Although Non-U.S. Investors of NewCo will not be subject to direct U.S. federal income taxation on income earned by NewCo, taxes paid by NewCo, if any, may reduce the overall return for such Non-U.S. Investors. NewCo’s sole asset will be interests in the Master Fund, which, as discussed above, will be classified as a partnership for U.S. federal income tax purposes. As a partnership, the Master Fund will not be subject to U.S. federal income tax on any of its income, gain, losses, deductions, and credits. Instead, NewCo, in computing its U.S. federal income tax liability, will include its allocable share (as determined under the operating agreement) of the Master Fund’s items of income, gain, loss, deduction, and credit for each year during which it is a partner of the Master Fund, whether or not the Master Fund distributes cash or other property to NewCo during the taxable year.

#### ***Deductibility of Interest Payments***

**“Earnings-Stripping” Rules.** To the extent that Non-U.S. Investors of NewCo (such as the Feeder Fund) are not subject to U.S. federal income taxation with respect to interest income received from NewCo, deductions for the payment of such interest by NewCo may be disallowed if NewCo is considered a related party to such Non-U.S. Investors (the so called “earnings-stripping” rules). Under recently proposed

regulations, provisions of the Code which defer the deductibility of interest (such as the “matching rules” of Section 267(a)(3) described below) are applied before the application of the earnings-stripping rules.

Related parties for purposes of the earnings-stripping rules include, among others, two or more corporations that are members of the same controlled group and an individual and a corporation if more than 50% of the value of the outstanding stock of the corporation is owned, directly or indirectly, by the individual. A controlled group is defined to include a “parent-subsidiary” controlled group or a “brother-sister” controlled group. In order to be classified as a parent-subsidiary controlled group, NewCo and a corporate Non-U.S. Investor of NewCo must have a common parent corporation (including the corporate Non-U.S. Investor) owning (directly or through constructive ownership) more than 50% of the voting power or value of both NewCo and the corporate Non-U.S. Investor. Therefore, for example, interest payments by NewCo to any corporate Non-U.S. Investor (including the Feeder Fund) that owns more than 50% of value of NewCo will be treated as paid by a related party for purposes of the earnings-stripping rules.

In order to be classified as a brother-sister controlled group, five or fewer individuals, estates, or trusts who are the ultimate beneficial owners of more than 50% of the voting power or value of a corporate Non-U.S. Investor of NewCo would have to be treated as owning (directly, indirectly, or constructively) more than 50% of the voting power or value of NewCo. Under the applicable constructive ownership rules, a corporation’s ownership of stock will be attributed to any of its shareholders who hold 5% or more of the value of the stock in such corporation in that proportion which the value of the stock that such person owns bears to the value of all the stock in the corporation. Thus, a corporate Non-U.S. Investor’s ownership of NewCo will be attributed to that corporate Non-U.S. Investor’s shareholders who hold 5% or more of the shares of that corporate Non-U.S. Investor (“5% Shareholder”) in proportion to the 5% Shareholder’s interest in the corporate Non-U.S. Investor. Finally, any Non-U.S. Investor of NewCo who is an individual will be related to NewCo for purposes of the “earnings-stripping” rules only if more than 50% of the value of the outstanding stock of NewCo is owned, directly or indirectly, by such Non-U.S. Investor.

Even if interest payments by NewCo to its Non-U.S. Investor are deemed to have been paid by a related party, the deduction will only be limited if NewCo has (1) “excess interest expense” and (2) a debt to equity ratio (taking into account NewCo’s share of the Master Fund’s liabilities) that exceeds 1.5 to 1 as of the close of the taxable year. The excess interest expense is the amount by which NewCo’s total interest expense less total interest income for the taxable year exceeds the sum of 50% of NewCo’s adjusted taxable income (income before interest and depreciation) plus any excess limitation carried forward from a prior tax year. For this purpose, NewCo’s distributive share of the Master Fund’s interest income is considered interest income of NewCo, and its distributive share of the Master Fund’s interest expense is considered interest expense of NewCo. “Excess limitation” is the excess of 50% of adjusted taxable income over the net expense for the taxable year. Thus, if NewCo’s debt to equity ratio exceeds 1.5 to 1 as of the close of the taxable year, then the amount disallowed is limited to the amount of NewCo’s excess interest expense for the taxable year. Any disallowed interest expense may be carried forward to the succeeding taxable year. In the years in which NewCo sells substantially all of its investments, both the current interest expense and any interest expense carried forward should be deductible if the total interest expense does not exceed 50% of the adjusted taxable income of NewCo, including proceeds from the sale, plus any excess limitation carried forward.

Deductibility of OID on Discount Obligation Held by Related Non-U.S. Person. In addition to the “earnings-stripping,” there are rules that provide that if a debt instrument that has OID is held by a related non-U.S. person, any portion of such OID is not allowable as a deduction to the issuer until actually paid. A related non-U.S. person is any person who is not a “U.S. person” (as defined in the Section 7701(a)(30) of the Code) (such as the Feeder Fund) and who is related to the issuer under the same rules that establish

related parties for purposes of the “earnings-stripping” rules. Therefore, for example, a debt instrument issued by NewCo to any corporate Non-U.S. Investor (including the Feeder Fund) that owns more than 50% of value of NewCo will be subject to the rules disallowing the deduction for OID to the extent that such instrument has OID.

Matching Rule for Interest paid to Foreign Related Person. In addition, there are rules which generally do not allow an issuer of a debt instrument, held by a non-U.S. person that is related to the issuer, to deduct interest paid on such instrument until such interest is includible in the gross income of the related non-U.S. person (the so-called “matching rule”). The “matching rule” does not apply to OID. A related non-U.S. person is any person who is not a “U.S. person” (as defined in Section 7701(a)(30) of the Code) and who is related to the issuer under the same rules that establish related parties for purposes of the “earnings-stripping” rules discussed above. Thus, for example, the “matching rule” would apply to defer the deduction of interest paid by NewCo to any corporate Non-U.S. Investor (including the Feeder Fund) that owns more than 50% of value of NewCo until such interest is includible in the gross income of such Non-U.S. Investor.

AHYDO Rules. Even if NewCo were not subject to the limitations on interest deductibility discussed above, interest deductions may still be limited or disallowed under the “applicable high yield discount obligation” (“AHYDO”) rules. A portion of the original issue discount (“OID”) of an AHYDO issued by a corporation (other than an S corporation) will be treated as a dividend distribution and will not be deductible. The remaining portion of the OID will be deductible when paid in cash. A debt instrument will bear OID if its “stated redemption price at maturity” exceeds the “issue price.” The “stated redemption price at maturity” is the amount to be paid on the debt instrument and includes all interest and other payments (other than any interest based on a fixed rate and payable unconditionally at fixed and periodic intervals of one year or less during the entire term of the instrument). In the case of a debt instrument issued for money and not publicly traded, such debt instrument’s “issue price” is the price paid by the first buyer of the instrument. An OID debt obligation is an AHYDO if: (1) the maturity date is more than 5 years after the issue date; (2) the yield to maturity is at least five percentage points above the Applicable Federal Rate of interest (“AFR”) in effect under Code section 1274(d) for the calendar month the instrument is issued; and (3) OID on the instrument is “significant OID.” Since loans from Non-U.S. Investors to NewCo (including loans from the Feeder Fund) each are expected to have a five year maturity, none of them are expected to be an AHYDO instrument. Therefore, the OID on such loans generally are not expected to be subject to the AHYDO rules.

#### *Recharacterization of Debt as Equity*

Even if none of the foregoing interest deduction limitation rules are applicable, interest payments may still be disallowed if such payments are recharacterized as distributions relating to equity. As discussed above, the IRS may recharacterize debt instruments of NewCo as stock based on the following general factors: (1) whether there is a written unconditional promise to pay on demand, or at a specified date, a sum certain along with a fixed rate of interest; (2) whether the debt is subordinate to, or has a preference over, any other indebtedness of the corporation; (3) the borrower corporation’s ratio of debt to equity; (4) whether the debt is convertible to stock; and (5) whether the debt is held pro rata to equity interests. While NewCo’s ratio of debt to equity may be high as a result of loans from its investors (including the Feeder Fund), the ratio is not dispositive of whether the loan will be treated as debt or equity. Considering the totality of the circumstances, it is anticipated that debt instruments of NewCo held by its Investors will be respected as debt rather than recharacterized as equity for U.S. federal income tax purposes. However, in light of the interest rate of such debt instruments and the debt to equity ratio of NewCo, it is possible that such loans could be recharacterized as equity for U.S. federal income tax purposes.

In addition, as discussed above, on April 4, 2016, the Secretary of Treasury published proposed Treasury Regulations under Section 385 of the Code that address the debt or equity treatment of instruments held by parties related to an issuing entity. If these proposed Treasury Regulations are published as final in their current form or substantially similar form, the U.S. federal income tax treatment of certain debt issued by NewCo may not be entirely clear. Prospective Investors of NewCo should consult their tax advisors regarding the possible effects of these proposed Treasury regulations.

### ***Taxation of Non-U.S. Investors***

#### *Distributions*

If NewCo makes distributions to a Non-U.S. Investor of cash or property on its non-voting stock (or on debt recharacterized as equity under the rules discussed in the section headed “*Tax Considerations—U.S. Federal Income Tax Considerations—NewCo—Taxation of NewCo—Recharacterization of Debt as Equity*” above), such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from NewCo’s current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts of distributions not treated as dividends for U.S. federal income tax purposes will first constitute a return of capital and be applied against and reduce such Non-U.S. Investor’s adjusted tax basis in its non-voting stock of NewCo, but not below zero. Any excess will be treated as capital gain. Any distributions by NewCo that are treated as return of capital or gain generally will be subject to U.S. withholding tax at a rate of 15% under FIRPTA, unless NewCo is not a USRPHC on the date of such distribution.

In general, dividends paid to a Non-U.S. Investor will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends, or such lower rate specified by an applicable income tax treaty, provided the Non-U.S. Investor furnishes a valid IRS Form W-8BEN or W-8BEN-E (or other applicable documentation) certifying qualification for the lower treaty rate. A Non-U.S. Investor that does not timely furnish the required documentation, but that qualifies for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. Investors should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

If dividends paid to a Non-U.S. Investor are effectively connected with the Non-U.S. Investor’s conduct of a trade or business within the United States (or and, if required by an applicable income tax treaty, the Non-U.S. Investor maintains a permanent establishment in the United States to which such dividends are attributable), the Non-U.S. Investor will be exempt from the U.S. federal withholding tax described above. To claim the exemption, the Non-U.S. Investor must furnish to the applicable withholding agent a valid IRS Form W-8ECI, certifying that the dividends are effectively connected with the Non-U.S. Investor’s conduct of a trade or business within the United States.

#### *Interest*

Subject to the discussions in the sections below headed “*Tax Considerations—U.S. Federal Income Tax Considerations—NewCo—Taxation of Non-U.S. Investors in NewCo—Effectively Connected Income*” and “*Tax Considerations—U.S. Federal Income Tax Considerations—NewCo—Taxation of Non-U.S. Investors in NewCo—FATCA*,” all payments of interest on any loan made by a Non-U.S. Investor to NewCo generally will be exempt from U.S. federal withholding tax, provided that: (i) such Non-U.S. Investor does not own, actually or constructively, 10% or more of the total combined voting power of all classes of NewCo’s stock entitled to vote, (ii) such Non-U.S. Investor is not a controlled foreign corporation related, directly or indirectly, to NewCo through stock ownership, (iii) such Non-U.S. Investor is not a bank receiving certain types of interest, and (iv) either (A) the Non-U.S. Investor certifies under penalties of perjury on the

applicable IRS Form W-8 or on an applicable successor form (including any appropriate attachments), that it is not a U.S. person (as defined in the Code), and provides its name, address, and U.S. taxpayer identification number, if any, or (B) a securities clearing organization, bank or other financial institution that holds customers' securities in the ordinary course of its trade or business and holds the loans on behalf of the Non-U.S. Investor certifies under penalties of perjury that the certification referred to in clause (A) has been received from the Non-U.S. Investor, and furnishes a copy thereof (interest satisfying these requirements, "Portfolio Interest").

Non-U.S. Investors are expected to acquire only non-voting stock of NewCo, with voting stock of NewCo owned by certain affiliates of the Investment Manager. Therefore, it is expected that, provided the requirements set forth in (ii)-(iv) immediately above are satisfied, payments on interest on the loans made by a Non-U.S. Investor to NewCo generally will be exempt from U.S. federal withholding tax under the Portfolio Interest exemption. However, the IRS may disagree and recharacterize non-voting stock of NewCo owned by such Non-U.S. Investor as voting stock of NewCo for purposes of the Portfolio Interest exemption. Therefore, no assurance can be given as to whether interest received by a Non-U.S. Investor from NewCo would qualify for the Portfolio Interest exemption even if the requirements set forth in (ii)-(iv) above are satisfied.

Except as described in the section below headed "*Tax Considerations—U.S. Federal Income Tax Considerations—NewCo—Taxation of Non-U.S. Investors in NewCo—Effectively Connected Income*," a Non-U.S. Investor that does not qualify for exemption from withholding as described above generally will be subject to U.S. withholding tax at a rate of 30% on payments of interest on the loans. A Non-U.S. Investor may be entitled to the benefits of an income tax treaty under which interest on the loans is subject to a reduced rate of U.S. withholding tax or is exempt from U.S. withholding tax, in which case the Non-U.S. Investor will be required to furnish the applicable properly completed and executed IRS Form W-8 (or an applicable successor form) and any applicable attachments claiming the reduction or exemption and comply with any other applicable procedures.

#### *Sale or Other Taxable Disposition of Non-Voting Stock*

Subject to the discussions in the sections below headed "*Tax Considerations—U.S. Federal Income Tax Considerations—NewCo—Taxation of Non-U.S. Investors in NewCo—Effectively Connected Income*" and "*Tax Considerations—U.S. Federal Income Tax Considerations—NewCo—Taxation of Non-U.S. Investors in NewCo—FATCA*," a Non-U.S. Investor in general will not be subject to U.S. federal income tax on any gain realized upon the sale or other taxable disposition of non-voting stock of NewCo unless:

- the gain is effectively connected with the Non-U.S. Investor's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Investor maintains a permanent establishment in the United States to which such gain is attributable);
- the Non-U.S. Investor is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met; or
- the non-voting stock constitutes a USRPI by reason of NewCo's status as a USRPHC for U.S. federal income tax purposes at the time of such sale or disposition.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Investor that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on a portion of its effectively connected earnings and profits for the taxable year that are attributable to such gain, as adjusted for certain items.

Gain described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty), which may be offset by U.S. source capital losses of the Non-U.S. Investor (even though the individual Non-U.S. Investor is not considered a resident of the United States), provided the Non-U.S. Investor has timely filed U.S. federal income tax returns with respect to such losses.

On the other hand, as discussed in the section above headed “*Tax Considerations—U.S. Federal Income Tax Considerations—Feeder Fund—Taxation of the Feeder Fund*,” any gain realized by a non-U.S. person from the sale or disposition of USRPIs is generally subject to U.S. federal income tax on a net basis under FIRPTA. A USRPI for this purpose includes stock or securities (other than debt instruments with no equity component) of a USRPHC (as defined above). NewCo should be a USRPHC (and thus a USRPI) because NewCo’s only assets would be its interests in the Master Fund, which is a tax partnership that directly or indirectly only holds real property located in the United States. As a result, a Non-U.S. Investor that sells or otherwise disposes of non-voting stock in NewCo generally will be subject to U.S. federal income tax on the gain from such sale as if such Non-U.S. Investor had income effectively connected with a U.S. trade or business, unless NewCo is not a USRPHC at the time of such sale or disposition. However, if NewCo were to liquidate and distribute its assets after all of its interests in the Master Fund or all of the Master Fund’s assets (in effect, all of the Master Fund’s investments in real property located in the United States) have been disposed of, NewCo would not hold any USRPIs, directly or indirectly, and thus would not be a USRPHC at the time of the liquidating distribution. As a result, any gain realized by a Non-U.S. Investor that would result from NewCo’s liquidating distribution in such case would be treated as gain realized by such Non-U.S. Investor from the disposition of tangible personal property that is not a USRPI and, as such, would be foreign sourced income and not subject to FIRPTA taxation or withholding.

#### *Disposition of a Loan*

Subject to the discussions in the sections below headed “*Tax Considerations—U.S. Federal Income Tax Considerations—NewCo—Taxation of Non-U.S. Investors in NewCo—Effectively Connected Income*” and “*Tax Considerations—U.S. Federal Income Tax Considerations—NewCo—Taxation of Non-U.S. Investors in NewCo—FATCA*,” a Non-U.S. Investor generally will not be subject to U.S. federal income tax on gain realized on the sale, exchange, redemption or other disposition of debt instruments issued by NewCo unless (i) the gain is effectively connected with the conduct of a U.S. trade or business of the Non-U.S. Investor (and, generally, if an income tax treaty applies, is attributable to a U.S. permanent establishment or fixed base maintained by the Non-U.S. Investor) or (ii) in the case of a Non-U.S. Investor who is a nonresident alien individual, the individual is present in the United States for 183 or more days in the taxable year of the disposition and certain other conditions are met.

#### *Effectively Connected Income*

If a Non-U.S. Investor is engaged (or treated as engaged) in a trade or business in the United States, and if dividends received from NewCo or interest on loans made to NewCo or gain realized on a taxable disposition of NewCo stock or such loans is effectively connected with the conduct of such trade or business (and, generally, if an income tax treaty applies, is attributable to a U.S. permanent establishment or fixed base maintained by the Non-U.S. Investor), the Non-U.S. Investor, although exempt from the withholding tax discussed in the preceding paragraphs, generally will be required to file a U.S. federal income tax return and generally will be subject to regular U.S. federal income tax on such income or gain in the same manner as if it were a U.S. person (unless an applicable treaty provides otherwise). In addition, if such a Non-U.S. Investor is a non-U.S. corporation, such Non-U.S. Investor may be subject to a branch profits tax equal to 30% (or such lower rate provided by an applicable income tax treaty) of its effectively connected earnings and profits for the taxable year, subject to certain adjustments.

### *Information Reporting and Backup Withholding*

Payments of dividends on NewCo non-voting stock to a Non-U.S. Investor or interest paid to a Non-U.S. Investor generally will not be subject to backup withholding, provided the applicable withholding agent does not have actual knowledge or reason to know that such Investor is a U.S. person and such Investor either certifies its non-U.S. status, such as by furnishing a valid IRS Form W-8BEN, W-8BEN-E or W-8ECI, or otherwise establishes an exemption. However, information returns are required to be filed with the IRS in connection with any dividends on NewCo non-voting stock paid to a Non-U.S. Investor or any interest paid to a Non-U.S. Investor, regardless of whether any tax was actually withheld. In addition, proceeds of the sale or other taxable disposition of NewCo non-voting stock within the United States or conducted through certain U.S.-related brokers generally will not be subject to backup withholding or information reporting, if the applicable withholding agent receives the certification described above and does not have actual knowledge or reason to know that such holder is a U.S. person, or such holder otherwise establishes an exemption. Proceeds of a disposition of NewCo non-voting stock conducted through a non-U.S. office of a non-U.S. broker generally will not be subject to backup withholding or information reporting.

Copies of information returns that are filed with the IRS may also be made available under the provisions of an applicable treaty or agreement to the tax authorities of the country in which the Non-U.S. Investor resides or is established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund, or a credit against a Non-U.S. Investor's U.S. federal income tax liability, provided that the required information is timely furnished to the IRS.

### *FATCA*

Under the recently enacted FATCA rules described in the section above headed "*Tax Considerations—U.S. Federal Income Tax Considerations—Master Fund—FATCA*," a Non-U.S. Investor of NewCo may be subject to withholding on certain items of income from NewCo, including U.S. source dividends and Portfolio Interest received on or after July 1, 2014, as well as gross proceeds from the sale or disposition of securities of NewCo received on or after January 1, 2019, if such Non-U.S. Investor is not in compliance with applicable disclosure and information reporting requirements with respect to its direct and indirect beneficial owners under FATCA and any applicable IGA. Potential Non-U.S. Investors should be aware that NewCo, to comply with its FATCA obligations and other information reporting obligations, may be required to disclose information relating to its investors and their respective beneficial owners to U.S. tax authorities and certain other relevant tax authorities. Prospective Non-U.S. Investors should consult their tax advisors regarding the potential application of withholding under FATCA to their investment in NewCo.

### *U.S. Federal Estate Tax*

Shares of NewCo stock owned or treated as owned by an individual Non-U.S. Investor at the time of death are considered U.S. situs assets and will be included in the individual's estate for U.S. federal estate tax purposes, unless an applicable estate tax treaty provides otherwise. Subject to an applicable estate tax treaty, a debt obligation of NewCo owned or treated as owned by an individual Non-U.S. Investor at the time of death generally will not be subject to U.S. federal estate tax if the interest on such debt obligation qualifies for the Portfolio Interest exemption from U.S. federal income tax under the rules described above without regard to the certification requirement described above, and payments with respect to such obligation would not have been effectively connected with the conduct of a trade or business in the United

States by the individual. Prospective individual Non-U.S. Investors should consult their tax advisors regarding the U.S. federal estate tax consequences of an investment in NewCo in their particular situation and the availability of benefits provided by an applicable estate tax treaty, if any.

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A GENERAL SUMMARY OF SOME OF THE PRINCIPAL U.S. FEDERAL INCOME TAX ASPECTS OF PARTICIPATION IN THE FUND. THE TAX RULES APPLICABLE WITH RESPECT TO THE TREATMENT OF THE INVESTORS, THE FUND AND THE TRANSACTIONS WHICH THE FUND MAY ENGAGE IN ARE HIGHLY COMPLEX, AND THEIR EFFECT, IN CERTAIN INSTANCES, MAY NOT BE FREE FROM DOUBT. IT ALSO MUST BE EMPHASIZED THAT THE TAX RULES PRESENTLY APPLICABLE WITH RESPECT TO THE TRANSACTIONS DESCRIBED IN THIS OFFERING ARE SUBJECT TO CHANGE AT ANY TIME, AND ANY SUCH CHANGES MAY OR MAY NOT BE MADE WITH RETROACTIVE EFFECT.

### **Taxation - Cayman Islands**

The Cayman Islands at present impose no taxes on profit, income, capital gains or appreciations in value of the Feeder Fund or its shareholders. There are also currently no taxes imposed in the Cayman Islands by withholding or otherwise on the Feeder Fund's shareholders on profit, income, capital gains or appreciations in respect of their Participating Shares nor any taxes on the Feeder Fund's shareholders in the nature of estate duty, inheritance or capital transfer tax.

The Feeder Fund has applied for and can expect to receive an undertaking from the Governor-in-Cabinet of the Cayman Islands that, in accordance with section 6 of the Tax Concessions Law (2011 Revision) of the Cayman Islands, for a period of 20 years from the date of the relevant undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to the Feeder Fund or its operations and, in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable (i) on the shares, debentures or other obligations of the Feeder Fund or (ii) by way of the withholding in whole or in part of a payment of dividend or other distribution of income or capital by the Feeder Fund to their shareholders or a payment of principal or interest or other sums due under a debenture or other obligation of the Feeder Fund.

## **XVII. ERISA CONSIDERATIONS**

The U. S. Employee Retirement Income Security Act of 1974, as amended (“ERISA”), imposes certain fiduciary and prohibited transaction restrictions on (a) pension, profit-sharing and other employee benefit plans to which it applies, (b) any entities whose underlying assets include “plan assets” under the “Plan Assets Regulation” (as defined below), as modified by Section 3(42) of ERISA (together with (a), “Employee Benefit Plans”) and (c) persons and entities who are fiduciaries or “parties in interest” with respect to such Employee Benefit Plans. In addition, based on the reasoning of the United States Supreme Court in *John Hancock Mutual Life Insurance Co. v. Harris Trust & Savings Bank*, 114 S.Ct. 517 (1993), in certain circumstances an insurance company’s general account may be deemed to include assets of the Employee Benefit Plans investing in such general account (e.g., through the purchase of an annuity contract). Employee benefit plans that are governmental plans (as defined in Section 3(32) of ERISA) and certain church plans (as defined in Section 3(33) of ERISA) are not subject to these ERISA requirements but may be subject to other laws which impose restrictions on their investment. Section 4975 of the Code imposes essentially the same restrictions on prohibited transactions involving “disqualified persons” and tax-qualified retirement plans described in Section 401(a) of the Code, tax-qualified annuity plans described in Section 403 of the Code and individual retirement accounts or individual retirement annuities as described in Section 408 of the Code (“Tax Qualified Plans”).

Before proceeding with an investment in the Feeder Fund or NewCo of a portion of the assets of an Employee Benefit Plan, the fiduciary of an Employee Benefit Plan, taking into account the facts and circumstances of such plan, should consider (i) whether the investment in such Fund satisfies the prudence, diversification, and liquidity requirements of ERISA; (ii) whether the investment is in accordance with the Employee Benefit Plan’s investment policies and governing instruments; and (iii) whether such Fund will hold “plan assets” subject to ERISA pursuant to the Plan Assets Regulation (as defined below), as modified by Section 3(42) of ERISA. A fiduciary of an Employee Benefit Plan or Tax-Qualified Plan (collectively hereinafter the “Plan” or “Plans”) should consider (a) whether an investment in the Feeder Fund or NewCo would constitute or give rise to a prohibited transaction under ERISA or the Code and (b) whether an investment in the Feeder Fund or NewCo would result in unrelated business taxable income to the Plan. A fiduciary can be personally liable for losses incurred by a Plan resulting from a breach of fiduciary duties. The sale of Interests to a Benefit Plan Investor (as defined below) is in no respect a representation by the Feeder Fund or the applicable NewCo that such an investment meets all relevant legal requirements with respect to investments by Plans generally or any particular Plan, or that such an investment is appropriate for Plans generally or any particular Plan.

The following discussion is not intended to be exhaustive, but rather representative of the legal issues under ERISA and Section 4975 of the Code which may be of concern to a Plan investor. Due to the complexity of the rules with respect to ERISA and the Code and the penalties imposed upon persons involved in prohibited transactions, it is particularly important that prospective Plan investors consult with their legal advisors regarding the consequences under ERISA and the Code of their investment in Interests.

### ***Prohibited Transactions***

Certain provisions of ERISA and the Code prohibit specific transactions involving the assets of a Plan and persons who have certain specified relationships to the Plan (“parties in interest” within the meaning of ERISA or “disqualified persons” within the meaning of the Code). Under ERISA and the Code, any person who exercises any authority or control over the management or disposition of the assets of a Plan is considered to be a fiduciary of such Plan (subject to certain exceptions). Any party in interest (including a fiduciary) that has engaged in a prohibited transaction would be required to (i) restore to the Plan any profit realized on the transaction and (ii) reimburse the Plan for any losses suffered by the

Plan as a result of such investment. The disqualified person would be liable to pay an excise tax equal to 15 percent of the amount involved in the prohibited transaction for each year during which the investment is in place and would be required to eliminate the prohibited transaction by reversing the transaction (generally, even if the transaction was not detrimental to the Plan) and reimbursing the Plan for any losses resulting from the prohibited transaction. If the transaction is not corrected within a certain time period, the disqualified person involved could also be liable for an additional excise tax in an amount equal to 100 percent of the amount involved in the prohibited transaction.

The Fund, the Investment Manager and/or other entities involved in the offering and sale of Interests, or any of their respective affiliates, may be a “party in interest” or a “disqualified person” with respect to Plans that purchase, or whose assets are used to purchase, Interests and, consequently, a possible violation of the prohibited transaction rules could occur upon the acquisition of Interests with the assets of any such Plan. Because of this, each prospective Investor investing on behalf of a Plan will be required to represent that its investment in the Feeder Fund or NewCo is not a non-exempt “prohibited transaction” within the meaning of Section 406 of ERISA and Section 4975(c) of the Code. Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code provide a statutory prohibited transaction exemption for some transactions between Plans and non-fiduciary service providers who are parties in interest if specified conditions are satisfied. In addition, the United States Department of Labor (the “DOL”) has issued five (5) class exemptions that may apply to otherwise prohibited transactions arising from the purchase or holding of Interests: Prohibited Transaction Class Exemption 84-14 (for certain transactions determined by independent “qualified professional asset managers”); Prohibited Transaction Class Exemption 90-1 (for certain transactions involving insurance company pooled separate accounts); Prohibited Transaction Class Exemption 91-38 (for certain transactions involving bank collective investment funds); Prohibited Transaction Class Exemption 96-23 (for certain transactions determined by “in-house asset managers”) and Prohibited Transaction Class Exemption 95-60 (for certain transactions involving insurance company general accounts). In view of the foregoing, fiduciaries of any Plan who are considering an investment of Plan assets in Interests should consult their own legal advisors as to whether such purchases could result in liability under ERISA and/or the Code.

### ***Plan Assets Regulation***

Prospective Investors that are Plans should also consider whether an investment in Interests will cause the Feeder Fund’s assets or NewCo’s assets to be deemed “plan assets” with respect to such Plan. If the assets held by the Feeder Fund or NewCo were deemed to be “plan assets,” (i) the prudence standards and other fiduciary standards of ERISA (which impose liability on fiduciaries) would apply to investments made by the Feeder Fund, (ii) fiduciaries of Plans could be liable under ERISA for investments made by the Feeder Fund or NewCo which do not conform to such ERISA standards, (iii) certain transactions that the Feeder Fund or NewCo, as applicable, might enter into in the ordinary course of its business and operation might constitute “prohibited transactions” under ERISA and the Code and might have to be rescinded, (iv) the assets of the Feeder Fund or NewCo, as applicable, would be the subject of certain reporting and disclosure requirements under ERISA, (v) it is not clear that the limitations set forth in Section 403(a) of ERISA on the delegation of investment management responsibilities by trustees of Employee Benefit Plans, would be satisfied, (vi) it is not clear whether Section 404(b) of ERISA, which generally provides that no fiduciary may maintain the indicia of ownership of any assets of a Plan outside the jurisdiction of the district courts of the United States would be satisfied or any of the exceptions to this requirement set forth in 29 C.F.R. Section 2550.404b-1 would be available, (vii) the fiduciary making an investment in the Feeder Fund or NewCo on behalf of a Plan could be deemed to have improperly delegated its asset management responsibility and (viii) the Investment Manager would each be an ERISA fiduciary.

In late 1986, the DOL issued regulations contained at 29 C.F.R. Section 2510.3-101 (the “Plan Assets Regulation”) relating to the definition of “plan assets.” The Pension Protection Act has now added a definition of “plan assets” to ERISA. Under the Plan Assets Regulation, when a Plan acquires an “equity interest” in an entity (such as by investing in the Feeder Fund), and the equity interest is neither a “publicly-offered security” nor a security issued by an investment company registered under the Investment Company Act of 1940, the assets of the Plan will include not only such equity interest, but also an undivided interest in each of the underlying assets of such entity. An exception from this “look-through” rule in the Plan Assets Regulation, as modified by Section 3(42) of ERISA, applies, such that the underlying assets of an entity in which a Plan makes an equity investment will not be considered “plan assets” if, (i) less than 25 percent of the value of any class of equity interests in the entity, disregarding equity interests held by persons with discretionary control over the assets of the entity or who provide investment advice for a fee with respect to such assets, and their respective affiliates, is held by Plans that are subject to ERISA or Section 4975 of the Code and other entities whose assets are considered “plan assets” by reason of a Plan’s investment in the entity under ERISA and the Plan Assets Regulation, as modified by Section 3(42) of ERISA (collectively, “Benefit Plan Investors”) or (ii) the entity is an “operating company”. In determining whether less than 25 percent of any class of Interests in the Feeder Fund or NewCo are held by Benefit Plan Investors, the Interests held by a Benefit Plan Investor that is an entity are treated as held by Benefit Plan Investors only to the extent of the percentage of the equity interest in the entity held by Benefit Plan Investors. An “operating company” is defined in the Plan Assets Regulation as “an entity that is primarily engaged, directly or through a majority-owned subsidiary or subsidiaries, in the production or sale of a product or service other than the investment of capital.” The Interests should be considered to be “equity interests” for purposes of the Plan Assets Regulation and the Interests will not constitute “publicly offered securities” for purposes of the Plan Assets Regulation. In addition, the Feeder Fund and NewCo will not be “operating companies” or registered under the Investment Company Act.

The Investment Manager and the Directors intend to operate the Feeder Fund so that no assets of the Feeder Fund or NewCo would be deemed to be “plan assets” under ERISA or the Plan Assets Regulation, as modified by Section 3(42) of ERISA. Because the determination of whether the Feeder Fund’s assets or NewCo’s assets are “plan assets” is inherently factual, there can be no assurance at this time that the Feeder Fund’s assets and/or NewCo’s assets would not be deemed to be “plan assets.” In connection with the offer and sale of the Interests, each Feeder Fund and NewCo intends to limit investment by Benefit Plan Investors such that less than 25 percent of each class of the Interests of the Feeder Fund or NewCo, as applicable, are owned by Benefit Plan Investors (excluding Interests held by the Directors, Investment Manager and their affiliates). The Investment Manager or (in the case of the Feeder Fund) the Directors, in their discretion, have the right to prohibit the acquisition, transfer or redemption of Interests if, giving effect to the acquisition, transfer or redemption, investment by Investors who have represented that they are Benefit Plan Investors would equal or exceed 25 percent of any class of Interests (excluding Interests held by the Directors, Investment Manager and their affiliates). An Investor that is a Benefit Plan Investor may be required to withdraw from the Feeder Fund or NewCo, if, in the reasonable judgment of the Investment Manager or the Directors, as applicable, the Feeder Fund’s assets and/or NewCo’s assets would be deemed to be “plan assets” without such a redemption. Each holder of Interests will be required to obtain from any potential transferee of such Interests for the benefit of the Feeder Fund or the applicable NewCo, as applicable, the representations set forth in the Subscription Agreement, including the related investor questionnaire, as to the potential transferee’s status as a Benefit Plan Investor. No assurance is given as to whether the assets of the Feeder Fund or NewCo would be deemed to be the assets of Plans that become holders of Interests.

If the assets of the Feeder Fund or NewCo were deemed to be “plan assets”, then the prohibited transaction restrictions on the operation and administration of the Feeder Fund or NewCo, as applicable, and the duties, obligations and liabilities under ERISA, as discussed above, could apply to transactions entered into by Feeder Fund or NewCo, as applicable, as though such transactions were directly entered into by the Plan

investors. This could result in a restriction on the types of investments the Feeder Fund and/or NewCo could undertake in its course of business, particularly with respect to investments involving, among others, service providers to Plan investors, a fiduciary, administrator or employee of a Plan investor, an employer whose employees are covered by a Plan investor or the majority owner of such employer and other persons who are classified as “parties in interest” or “disqualified persons” with respect to such Plan.

Assets of Employee Benefit Plans must at all times comply with the “indicia of ownership” rules set forth in Section 404(b) of ERISA and the regulations issued by the DOL thereunder. Fiduciaries of Employee Benefit Plans who are considering an investment of assets of Employee Benefit Plans in Interests should consult their own legal advisors regarding compliance with these rules.

Any insurance company proposing to invest assets of its general account in Interests should consider the extent to which such investment would be subject to the requirements of ERISA and Section 4975 of the Code in light of the United States Supreme Court’s decision in *John Hancock Mutual Life Insurance Co. v. Harris Trust & Savings Bank*, 114 S.Ct. 517 (1993), and Section 401(c) of ERISA and the regulations issued by the DOL thereunder. In particular, such an insurance company should consider (i) the exemptive relief granted by the DOL for transactions involving insurance company general accounts in Prohibited Transaction Class Exemption 95-60, 60 Fed. Reg. 35925 (July 12, 1995), and (ii) if such exemptive relief is not available, whether its holding of Interests will be permissible. If at any time the Investment Manager or the Directors determine that assets of the Feeder Fund or NewCo may be deemed to be “plan assets” subject to ERISA and Section 4975 of the Code, the Investment Manager or the Directors may take certain actions they may determine to be necessary or appropriate, including requiring one or more Investors to redeem or otherwise dispose of all or part of their Interests or terminating or liquidating the Feeder Fund or NewCo.

### ***Requests for Information***

The Feeder Fund reserves the right to request from any Investor or potential Investor such information as the Feeder Fund deems necessary to eliminate or reduce the exposure of the Feeder Fund or the Investors, in general, to adverse tax, ERISA or regulatory consequences.

### ***Reporting Requirements***

To enable fiduciaries of Plans subject to annual reporting requirements under ERISA to file annual reports as they relate to an investment in the Feeder Fund or NewCo, Investors will be furnished with the Feeder Fund’s or NewCo’s determination of Net Asset Value of the Feeder Fund or NewCo as of the close of the Feeder Fund’s or NewCo’s fiscal years. There can be no assurance (i) that such value could or will actually be realized by the Feeder Fund, NewCo or by Investors upon liquidation or (ii) that Investors could realize the reported value if they were able to, and were to, sell their Interests in the Feeder Fund or NewCo.

### ***Governmental and Church Plans***

Governmental and certain church plans, while not subject to the fiduciary responsibility provisions of ERISA or the provisions of Section 4975 of the Code, may nonetheless be subject to state or other Federal laws that are substantially similar to the foregoing provisions of ERISA and the Code. Accordingly, fiduciaries of governmental plans, in consultation with their counsel and advisors should consider the impact of their respective state pension codes on investment in the Feeder Fund and NewCo, and the considerations discussed above, to the extent applicable. The Feeder Fund and NewCo will require similar representations and warranties regarding compliance with such similar laws with respect to the purchase of Interests by any such plan.

The discussion of ERISA and Section 4975 of the Code contained herein is, of necessity, general and does not purport to be complete. Moreover, the provisions of ERISA and Section 4975 of the Code are subject to extensive and continuing administrative and judicial interpretation and review. Therefore, the matters discussed above may be affected by future regulations, rulings and court decisions, some of which may have retroactive application and effect.

**ANY POTENTIAL INVESTOR CONSIDERING AN INVESTMENT IN SECURITIES THAT IS, OR IS ACTING ON BEHALF OF, A PLAN (OR A GOVERNMENTAL OR CHURCH PLAN SUBJECT TO LAWS SIMILAR TO ERISA AND/OR SECTION 4975 OF THE CODE) IS STRONGLY URGED TO CONSULT ITS OWN LEGAL, TAX AND ERISA ADVISERS REGARDING THE CONSEQUENCES OF SUCH AN INVESTMENT AND THE ABILITY TO MAKE THE REPRESENTATIONS DESCRIBED ABOVE.**

### **XVIII. REGULATORY MATTERS**

#### *Certain U.S. Regulatory Matters*

U.S. Securities Act of 1933. The offer and sale of the Interests have not been and will not be registered under the Securities Act. The Interests will be offered and sold in reliance on the exemption from registration provided by Section 4(2) of the Securities Act and Regulation D promulgated thereunder. Each prospective U.S. investor will be required to represent, among other customary private placement representations, that it is an “accredited investor” (as defined in Regulation D) and that it is acquiring the Interests for investment purposes only and not for resale or distribution.

U.S. Investment Company Act of 1940. The Funds will not be registered as, or subject to, the provisions of the Investment Company Act in reliance upon Section 3(c)(5)(C) of the Investment Company Act. Section 3(c)(5)(C) of the Investment Company Act is an exemption available to private funds primarily engaged in purchasing or otherwise acquiring mortgages and other liens on and interests in real estate. Because the Fund will not be registered as an Investment Company under the Investment Company Act, Investors will not be afforded the protections of the Investment Company Act.

***Because of the following restrictions, recipients of the Interests are advised to consult legal counsel prior to making any resale, pledge or transfer of Interests.***

#### *Certain Cayman Islands Regulatory Matter*

Mutual Funds Law. As the Feeder Fund is closed-ended, it is not considered to be a mutual fund for the purposes of the Mutual Funds Law (2009 Revision), as amended from time to time. Accordingly, the Feeder Fund is not regulated by the Authority.

The Feeder Fund will not be subject to supervision in respect of its investment activities or the constitution of the Feeder Fund’s portfolio by the Authority or any other governmental authority in the Cayman Islands, although the Authority does have power to investigate the activities of the Feeder Fund in certain circumstances. Neither the Authority nor any other governmental authority in the Cayman Islands has passed judgment upon or approved the terms or merits of this document. There is no investment compensation scheme available to investors in the Cayman Islands.

### **XIX. ANTI-MONEY LAUNDERING REGULATIONS**

In order to comply with legislation or regulation aimed at the prevention of money laundering, the Fund is required to adopt and maintain anti-money laundering procedures. In accordance therewith, the Fund,

the Directors, the Investment Manager or the Administrator may require a detailed verification of a subscriber's identity, any beneficial owner underlying the account, and the source of the subscriber's subscription payment.

The Fund, the Directors, the Investment Manager and the Administrator reserve the right to request information as they deem necessary to verify the identity of an Investor and the source of the Investor's capital contribution(s). In the event of delay or failure by the subscriber or Investor to produce any information required for verification purposes, the Fund may refuse to accept a subscription, in which case any funds received would be returned without interest, or may be required to withdraw such Investor's Interests. The Investment Manager, by written notice to any Investor, may suspend the payment of redemption or withdrawal proceeds payable to such Investor if they reasonably deem it necessary to do so to comply with anti-money laundering regulations applicable to the Fund, the Directors, the Investment Manager or any of the Fund's service providers.

The Administrator may disclose information regarding Investors to such parties (e.g., affiliates, attorneys, auditors, administrators or regulators) as it deems necessary or advisable to facilitate the transfer of the Interests, including, but not limited to, in connection with anti-money laundering and similar laws. The Administrator or other service providers may also release information if directed to do so by the Investors, if compelled to do so by law or in connection with any government or self-regulatory organization request or investigation. In connection with the establishment of anti-money laundering procedures, the Fund may implement additional restrictions on the transfer of Interests.

Each subscriber and Investor will be required to make such representations to the Fund as the Directors, the Investment Manager or the Administrator may require in connection with applicable anti-money laundering program, including without limitation representations to the Fund that such subscriber or Investor is not a prohibited country, territory, individual or entity listed on the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") website, and that it is not directly or indirectly affiliated with any country, territory, individual or entity named on an OFAC list or prohibited by any OFAC sanctions program. Such subscriber or Investor will also be required to represent to the Fund that amounts contributed by it to the Fund were not directly or indirectly derived from activities that may contravene U.S. Federal, state or international laws and regulations, including without limitation, any applicable anti-money laundering laws and regulations.

The Fund may impose additional requirements from time to time to comply with all applicable anti-money laundering laws, including the USA Patriot Act.

If any person resident in the Cayman Islands knows or suspects that a payment to the Feeder Fund (by way of subscription or otherwise) contains the proceeds of criminal conduct, the person will be required to report such belief or suspicion pursuant to the Proceeds of Crime Law (as amended). Such a report shall not be treated as a breach of confidence or of any restriction upon the disclosure of information imposed by any enactment or otherwise.

## **XX. FISCAL YEAR**

The accounting date of the Fund is 31 December in each year or such other date as the Investment Manager may determine from time to time having given due notice to all Investors. The accounts for the Fund will be prepared in accordance with U.S. GAAP.

**XXI. LEGAL COUNSEL**

Winston acts as U.S. counsel to the Fund and Appleby (Cayman) Ltd. acts as Cayman Islands counsel to the Fund in connection with this offering of Interests. In connection with this offering of Interests and ongoing advice to the Fund, Winston and Appleby (Cayman) Ltd. are not representing Investors of the Fund. No independent counsel has been retained to represent Investors of the Fund. Winston acts as counsel to the Investment Manager.

**XXII. INDEPENDENT PUBLIC ACCOUNTANTS; REPORTS**

The Investment Manager and the Directors reserve the right, in their sole discretion, to change the Fund's independent accountant without prior notice to the Investors.

The Fund will furnish to its Investors as soon as practicable after the end of each fiscal year annual reports containing the Fund's unaudited financial statements. In addition, the Fund will furnish each Investor with unaudited semi-annual financial statements. Reporting will begin as soon as practicable after the Recapitalization Date.

Copies of the constitutional documents of the Fund and annual and semi-annual reports of the Fund may be inspected and obtained at the registered or principal office of the Fund.

APPENDIX I

**PRIVACY NOTICE**

By completing an application to subscribe to become an Investor in the Fund, prospective Investors will provide the Fund with nonpublic personal information about themselves (including financial information to support their assertions that they meet the financial qualifications to subscribe). The Fund, Directors, Investment Manager and the Administrator will obtain and develop additional nonpublic personal information about Investors as a result of their investments in the Fund. The Fund, Directors, Investment Manager and the Administrator generally do not disclose this information to third parties, other than service providers who need access to that information in order to permit the Fund, Directors, Investment Manager and the Administrator to conduct their affairs (*e.g.*, auditors, accountants and attorneys). The Fund, Directors, Investment Manager and the Administrator restrict access to such information internally to those personnel who need the information in order to conduct the Fund's, Director's, the Investment Manager's and the Administrator's business. The Fund, Directors, Investment Manager and the Administrator maintain safeguards at their facilities to provide reasonable protection for the confidentiality of Investors' nonpublic personal information.

By submitting an application to subscribe for Interests, prospective Investors must indicate their understanding that, although the Fund, Directors, Investment Manager and the Administrator will use their reasonable efforts to keep Investors' investment in the Fund and the information Investors provide to the Fund confidential, (1) there may be circumstances in which applicable law or regulation relating to combating terrorism or money laundering may require the release of information provided in subscription applications to law enforcement or regulatory officials, (2) the Directors, Investment Manager and the Administrator may present completed subscription applications and/or any information included therein to any service providers of the Directors, Investment Manager or the Administrators, or to such regulatory bodies or other parties as may be appropriate to establish the availability of exemptions from certain securities and similar laws or the compliance of the Fund, Directors, Investment Manager and the Administrator with applicable laws and (3) the Fund, Directors, Investment Manager and the Administrator may disclose such completed subscription applications, any information included therein or other information relating to Investors' investments in the Fund when required by judicial process or, to the extent permitted under applicable privacy laws, to the extent the Fund, Directors, Investment Manager and the Administrator considers that information relevant to any issue in any action, suit, or proceeding to which the Fund, Directors, Investment Manager and the Administrator is a party or by which it is or may be bound.

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DIRECTORY OF THE FUND

DIRECTORS OF THE FUND

James Macfee  
Andre Slabbert

INVESTMENT MANAGER

Prodigy Shorewood Investment Management, LLC  
40 Wall Street, 17<sup>th</sup> Floor  
The Trump Building  
New York, NY 10005

ADMINISTRATOR

NESF Fund Services Corp.  
750 Third Avenue, 27th Floor  
New York, NY 10017

BANK

J.P. Morgan Chase Bank, N.A.

LEGAL ADVISERS

TO THE INVESTMENT MANAGER

Winston & Strawn LLP  
200 Park Avenue  
New York, NY 10166

TO THE FUND

*In the United States*

Winston & Strawn LLP  
200 Park Avenue  
New York, NY 10166

*In the Cayman Islands*

Appleby (Cayman) Ltd.  
Clifton House  
75 Fort Street  
PO Box 190  
Grand Cayman KY1-1104  
Cayman Islands

REGISTERED OFFICE OF THE FUND

Appleby Trust (Cayman) Ltd.  
Clifton House  
75 Fort Street  
PO Box 1350  
Grand Cayman KY1-1108  
Cayman Islands

EXHIBIT A

**Description of the Property**

The subject property is situated on a 7,488 square foot, irregularly shaped site located on the northeast corner of William Street and Maiden Lane. Prior to ownership's acquisition of the property, the site was improved with a 17-story building leased to the New School, which used the building as a student housing facility. There were also several retail tenants located in ground floor suites. Ownership acquired the property at the termination of the lease with the New School and vacated the building including the retail tenants. Ownership has converted the building to an extended stay property containing a total of 137 units with a total net rentable area of 87,981 square feet. The apartments range from studios to two-bedroom units with an average unit size of 642 square feet. In addition to the residential units, the property contains a 3,300 square foot retail suite which will be occupied by Blue Ribbon Federal Grill. As part of the conversion, ownership has added two penthouse levels to the top of the building. The building has an above grade gross building area of 120,540 square feet.

Each of the units features wide-plank, oak hardwood flooring and is fully furnished. Furnishings include HD televisions with a cable package that includes HBO, DVD player, and stereo, as well as phone, linen, flatware, and stemware. Kitchens feature stainless steel appliances, stainless steel countertops, Carrara marble backsplashes and custom made cabinets. Bathrooms feature Carrara marble flooring and walls, walk-in glass showers, and Grohe fixtures.

Amenities include a 24-hour doorman/concierge, conference room/business center, cinema room, fitness center, valet services, housekeeping, complimentary wireless internet, an outdoor rooftop terrace, laundry room, and complimentary coffee as amenities to its tenants.

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**APPENDIX 2 – LOAN AND SECURITY AGREEMENT AND PROMISSORY NOTE**

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**AMENDED AND RESTATED  
LOAN AND SECURITY AGREEMENT**

THIS AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT ("Agreement") is made this 21<sup>st</sup> day of September, 2016, by and among 84 William Street NewCo, Inc., a Delaware corporation (the "Borrower"), Prodigy Shorewood Investment Management, LLC, a Delaware limited liability company, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), the lenders identified on the signature pages hereof as well as any lender, from time to time, pursuant to Section 10.13 or 11.21 hereto (such lenders, together with their respective successors and permitted assigns, are referred to hereinafter each individually as a "Lender" and collectively as the "Lenders"). This Agreement amends and restates that certain Loan and Security Agreement, dated October 18, 2013 (the "Original Loan Agreement"), among the Borrower, Agent and the Lenders.

**RECITALS:**

WHEREAS, 84 William Street Realty Associates LLC (the "Fund") entered into that certain Purchase and Sale Agreement dated as of November 9, 2012 (as amended, the "Purchase Agreement") between 84 William Street Associates, LLC (the "Seller") and the Fund (as subsequently assigned to 84 William Street Property Owner LLC ("PropCo") pursuant to that certain Assignment and Assumption of Purchase and Sale Agreement dated October 18, 2013 by and between PropCo and the Fund) for the purchase of (a) the land located in the County of New York, City and State of New York located at 84 William Street, New York, New York (Block 68; Lot 16) and more particularly described in the Purchase Agreement (the "Land"); (b) all buildings and improvements situated on the Land (the "Building"); (c) all right, title, and interest of Seller, if any, in and to the land lying in the bed of any street or highway in front of or adjoining the Land to the centerline thereof and to any unpaid award for any taking by condemnation or eminent domain or any damage to the Land or Building by reason of a change of grade of any street or highway; (d) the appurtenances and all the estate and rights of Seller in and to its interests in the Land, the Building and the Property (as defined in the Purchase Agreement); and (e) all right, title, and interest of Seller, in and to the Leases (as defined in the Purchase Agreement) and the fixtures, equipment, and other personal property attached or appurtenant to the Building (all of the foregoing items described in clauses (a) through (e), together with all of Seller's right, title and interest in and to the Personal Property (as defined in the Purchase Agreement) and the Licenses (as defined in the Purchase Agreement) and Permits (as defined in the Purchase Agreement), collectively, the "Premises").

WHEREAS, PropCo purchased the Premises from the Seller pursuant to the Purchase Agreement on or about October 22, 2013.

WHEREAS, as of the date hereof, Borrower is the beneficial owner of approximately seventy-seven percent (77%) of the preferred membership interests of the Fund.

WHEREAS, PropCo is an indirect subsidiary of the Fund.

WHEREAS, the Borrower has requested that the Lenders extend to Borrower one or more loans, the proceeds of which will be or have been (a) (x) contributed to acquire membership interests of the Fund and to allow the Fund (together with other capital contributed to the Fund and the Fund's direct and indirect subsidiaries from time to time) to indirectly acquire the Premises and (y) used for the payment of certain fees, and expenses (including legal fees and expenses) related to entering into the Transaction

Documents, the transactions contemplated by the Transaction Documents and the transactions contemplated by that certain Amended and Restated Confidential Private Offering Memorandum of 84 William Street Realty Associates, LLC, 84 William Street NewCo, Inc. and Prodigy Shorewood New York REP Co. dated September 21, 2016 (as amended, restated or otherwise modified from time to time, the "PPM") and/or (b) used for the repayment of certain Advances previously made by Prodigy Shorewood New York REP Co. as a Lender under the Original Loan Agreement (the loan purposes described in clauses (a) and (b), collectively, the "Loan Purposes");

WHEREAS, the Lenders have agreed to extend a loan, which may be borrowed by the Borrower in one or more installments, in the maximum amount of the Maximum Loan Commitment to Borrower on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the representations, warranties and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, the Agent and the Lenders do hereby agree as follows:

**1. CONSTRUCTION AND DEFINITION OF TERMS.**

All terms used herein without definition which are defined by the New York Uniform Commercial Code shall have the meanings assigned to them by the New York Uniform Commercial Code, as in effect on the date hereof, unless and to the extent varied by this Agreement. All accounting terms used herein without definition shall have the meanings assigned to them as determined by GAAP. Whenever the phrase "satisfactory to Agent" is used in this Agreement such phrase shall mean "satisfactory to Agent in its sole discretion." The use of any gender or the neuter herein shall also refer to the other gender or the neuter and the use of the plural shall also refer to the singular, and vice versa. In addition to the terms defined elsewhere in this Agreement, unless the context otherwise requires, when used herein, the following terms shall have the following meanings:

1.01. "Accounts" shall mean an "account" (as that term is defined in the New York Uniform Commercial Code), and any and all supporting obligations in respect thereof.

1.02. "Account Debtor" shall mean the person or entity obligated upon an Account or general intangible.

1.03. "Advance" shall mean, with respect to a Lender, the disbursement in one or more installments (as determined by the Agent and the Borrower) by such Lender of its Commitment, the aggregate of which shall not exceed its pro rata share of the Maximum Loan Commitment.

1.04. "Agent's Account" means the account having the following wire transfer instructions:

Bank: JPMorgan Chase Bank, NA  
ABA: 021-000-021  
SWIFT: CHASUS33  
Beneficiary Name: 84 William Street Newco, Inc.  
Account: 512711156

1.05. "Bankruptcy Code" means the United States Bankruptcy Code, as amended from time to time.

1.06. **"Business Day"** shall mean any day that banks in the State of New York are not required or permitted to be closed.

1.07. **"Certified"** shall mean that the information, statement, schedule, report or other document required to be "certified" shall contain a representation of a duly authorized officer of Borrower that such information, statement, schedule, report or other document is true and correct and complete.

1.08. **"Closing Date"** shall mean October 18, 2013.

1.09. **"Collateral"** shall mean all of Borrower's all assets and properties, now owned and hereafter acquired, including, but not limited to:

- (a) Accounts;
- (b) chattel paper;
- (c) deposit accounts;
- (d) documents;
- (e) equipment;
- (f) fixtures;
- (g) general intangibles;
- (h) goods;
- (i) instruments;
- (j) inventory;
- (k) investment property;
- (l) letter-of-credit rights; and
- (m) proceeds and products of all of the foregoing.

1.10. **"Commitment"** means, with respect to each Lender, its Commitment, and, with respect to all Lenders, their Commitments, in each case as such Dollar amounts are set forth in Schedule I or in a Counterpart Agreement or an assignment and acceptance (in form and substance satisfactory to the Agent) pursuant to which such Lender became a Lender hereunder, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 10.13 and the addition of Lenders pursuant to Section 11.21.

1.11. **"Counterpart Agreement"** means a Counterpart Agreement substantially in the form of Exhibit A.

1.12. **"Defaulting Lender"** means any Lender that (a) has failed to fund any amounts required to be funded by it under this Agreement within one (1) Business Day of the date that it is required to do so hereunder, (b) notified the Borrower, Agent, or any Lender in writing that it does not intend to comply with

all or any portion of its funding obligations hereunder, (c) has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements generally (as reasonably determined by Agent) under which it has committed to extend credit, (d) failed, within one (1) Business Day after written request by Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund any amounts required to be funded by it hereunder, (e) otherwise failed to pay over to Agent or any other Lender any other amount required to be paid by it hereunder within one (1) Business Day of the date that it is required to do so, or (f) (i) becomes or is insolvent or has a parent company that has become or is insolvent or (ii) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

1.13. **"Dollars" or "\$"** means United States dollars or such other lawful currency of the United States of America.

1.14. **"Event of Default"** shall mean any of the events described in Section 8 hereof, after giving effect to all applicable notice, grace and cure periods.

1.15. **"GAAP"** shall mean generally accepted accounting principles in the United States of America in effect from time to time.

1.16. **"Governmental Authority"** means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

1.17. **"Initial Advance"** shall be the Advance on the Closing Date in the amount of Eight Million Six Hundred Fifty Eight Thousand Seven Hundred Fifty and 00/100 Dollars (\$8,733,750.00).

1.18. **"Indebtedness"** shall include all items which would properly be included in the liability section of a balance sheet or in a footnote to a financial statement, in accordance with GAAP, including, without limitation, contingent liabilities.

1.19. **"Laws"** shall mean all ordinances, statutes, rules, regulations, orders, injunctions, writs or decrees of any Governmental Authority or political subdivision or agency thereof, or any court or similar entity established by any thereof.

1.20. **"Lien"** shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of setoff, claim or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the Uniform Commercial Code of any jurisdiction.

1.21. **"Loan"** shall mean the sum of all Advances made hereunder, plus any other Obligations added to the outstanding principal balance of the Note in accordance with the terms and conditions hereof less any amounts paid in respect of the foregoing.

1.22. **"Maximum Loan Commitment"** shall mean the loan commitments in the aggregate maximum amount of Fifty Million and 00/100 Dollars (\$50,000,000.00), evidenced by the Note.

1.23. **"Maturity Date"** shall mean the fifth (5<sup>th</sup>) anniversary of the Recapitalization Date (as defined in the Operating Agreement); *provided* that, to the extent that the Investment Manager extends the term of the Fund in accordance with the Operating Agreement, the Maturity Date, automatically and without the need of any action by any of the parties hereto, shall be extended by each such additional period determined by the Investment Manager pursuant to the Operating Agreement

1.24. **"Note"** shall mean the Promissory Note (Term) in the maximum principal amount of the Maximum Loan Commitment, to be executed and delivered by Borrower to Agent at or prior to Closing Date pursuant to Section 5.03(a) hereof, and all renewals, amendments, modifications, replacements and extensions thereof.

1.25. **"Obligations"** shall include the full and punctual observance and performance of all present and future duties, covenants and responsibilities due to Agent and Lenders by Borrower under this Agreement, the Note, and the other Transaction Documents, all present and future obligations and liabilities of Borrower to Agent and Lenders for the payment of money under this Agreement, the Note, and the other Transaction Documents (extending to all principal amounts, interest, late charges, fees and all other charges and sums, as well as all costs and expenses payable by Borrower under this Agreement, the Note and the other Transaction Documents). Any reference in this Agreement or in the other Transaction Documents to the Obligations shall include all extensions, modifications, renewals, supplements, restatements or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

1.26. **"Operating Agreement"** shall mean the Amended and Restated Limited Liability Company Agreement of 84 William Street Realty Associates LLC, dated on or about the date hereof, by and among Prodigy Shorewood Investment Management, LLC, as manager, NESF Fund Services Corp., as administrator, and the members party thereto from time to time, as amended, supplemented and otherwise modified from time to time.

1.27. **"Permitted Liens"** shall mean (a) Liens in favor of Agent or the Lenders, (b) Liens for taxes not delinquent or for taxes being diligently contested in good faith by Borrower by appropriate proceedings, (c) Liens arising in the ordinary course of business with respect to obligations which are not due or which are being diligently contested in good faith by Borrower by appropriate proceedings, provided such Liens did not arise in connection with the borrowing of money or the obtaining of advances or credit and do not, in Agent's discretion, in the aggregate materially detract from the value of Borrower's assets or materially impair the use thereof, (d) Liens arising by reason of any judgment but only to the extent not resulting in an Event of Default under Section 8(h) hereof, (e) financing liens incurred in connection with permitted financing under Section 7.01, hereof, (f) pledges and deposits incurred in connection with worker's compensation, unemployment insurance, or other social security legislation, and (g) Liens specifically consented to by Agent in writing.

1.28. **"Person"** shall include natural persons, corporations, associations, limited liability companies, partnerships, joint ventures, trusts, governments and agencies and departments thereof, and every other entity of every kind.

1.29. **"Recapitalization Date"** shall mean the date sufficient funds have been raised by the Borrower in connection with the recapitalization of the Property to allow the Borrower to (a) distribute to the Fund sufficient funds to allow the Fund to effect the redemption of the shares held by the Fund's investors that have elected for such redemption pursuant to a Letter Agreement and Release prior to November 1, 2016, and (b) pay or distribute to Rep Co sufficient funds to allow Rep Co to effect the redemption of the shares held by Rep Co's investors that have elected for such redemption pursuant to a

Letter Agreement and Release prior to November 1, 2016 and/or the applicable subscription agreement entered into or to be entered into between such investors in Rep Co and the Investment Manager.

1.30. "Security Agreement" means the Security Agreement (Interest in Limited Liability Company), dated the date hereof, by and between Borrower and Agent.

1.31. "Transaction Documents" shall mean this Agreement, the Note, the Security Agreement and the other transaction documents executed from time to time by the Borrower in connection with the transactions contemplated by the PPM, together with any other instrument or document executed by Borrower in connection with the Loan.

## 2. LOAN.

2.01. Loan Commitment. Subject to, and in accordance with the terms, conditions and provisions of this Agreement, each Lender (severally, not jointly or jointly and severally) agrees to make its pro rata share (based on its respective Commitment) of the Initial Advance to the Borrower on the Closing Date. Upon two (2) Business Days prior written notice to the Agent, the Borrower may request one or more additional Advances (each an "Additional Advance"), not to exceed the remaining undrawn Commitment, on any Business Day prior to the Maturity Date. Each Additional Advance shall be made by delivery of a funding notice to the Agent. A funding notice must be received by Agent no later than 4:00 p.m. (New York time) on the second Business Day immediately prior to the date that the Additional Advance is to be made and must specify the amount of such Additional Advance and the requested funding date of such Additional Advance, which shall be a Business Day. Promptly after Agent's receipt of a funding request for an Additional Advance, Agent shall notify the Lenders, not later than 4:00 p.m. (New York time) on the Business Day immediately preceding the funding date applicable to such Additional Advance, by telecopy, telephone, or other similar form of transmission, of the requested Additional Advance. On the date specified in the applicable funding notice delivered by the Borrower to the Agent, subject to and in accordance with the terms and conditions of this Agreement, each Lender (severally, not jointly or jointly and severally) agrees to make its pro rata share (based on its respective remaining undrawn Commitment) of such Additional Advance to the Borrower, at such account as may be designated by the Borrower from time to time. The Borrower shall not be required to make any payments of accrued interest on or principal of the Loan until the Maturity Date. On the Maturity Date, the Borrower shall repay in full the then outstanding principal balance of the Loan and any and all accrued and unpaid interest thereon. All Advances shall be made by the Lenders substantially contemporaneously pro rata based on their respective Commitments. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Advance hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder and (iii) a Lender shall not be responsible to make a Commitment for an Advance if the aggregate amount of the Commitments from other Lenders is less than the required Advance amount, as provided for in Schedule I (as modified from time to time in connection with any assignments pursuant to Section 10.13) or addition of Lenders pursuant to Section 11.21.

2.02. Manner of Borrowing and Disbursement of Loan. Each Lender shall make its Advance on account of the Loan to Agent for the account of the Borrower. No later than 12:00 Noon (New York, New York time) on the Closing Date or the date that the Additional Advance is to be made (as the case may be), each Lender shall make available to Agent, in immediately available funds, its Advance to the account designated by the Agent. After Agent's receipt of the proceeds of such Advances, Agent shall make the proceeds thereof available to Borrower on the Closing Date or the date that the Additional

Advance is to be made (as the case may be) by transferring immediately available funds equal to such proceeds received by Agent to an account designated by the Borrower to the Agent. Each Advance on account of the Loan shall be disbursed in accordance with the Loan Purposes and as otherwise provided in the notice requesting such Advance. With respect to all matters and transactions in connection therewith, the Borrower hereby irrevocably authorizes the Agent to accept, rely upon, act upon, and comply with any written instructions, requests, confirmations, and orders from Borrower or its duly appointed agents. The Borrower acknowledges that the transmission between the Borrower or such agents and the Agent of any such instructions, requests, confirmations, and orders involves the possibility of errors, omissions, mistakes, and discrepancies. By reason thereof, the Borrower hereby assumes all risk of loss and responsibility for, and releases and discharges the Agent from any and all responsibility or liability for and agrees to indemnify, reimburse on demand, and hold the Agent harmless from, any and all claims, actions, damages, losses, liability, and expenses by reason of, arising out of or in any way connected with or related to (a) the Agent's accepting, relying and acting upon, complying with, or observing any such instructions, requests, confirmations, or orders, and (b) any such errors, omissions, mistakes, and discrepancies.

2.03. The Account. The Agent shall establish and maintain an account on the books of the Agent evidencing the indebtedness of the Borrower to the Lenders and the Agent under the provisions of this Agreement and the other Transaction Documents with respect to the Loan and the transactions contemplated hereby and thereby to which (a) the amount of each Advance made by the Lenders shall be debited by recording therein on the date of such Advance a debit entry in the amount of such Advance, (b) each payment on the Loan made by the Borrower shall be credited by recording therein on the date received a credit entry in the amount of such payment, (c) all interest (and principal, if applicable), on the Loan not paid as and when due and payable shall be debited by recording therein on the date such interest becomes past due a debit entry in the amount of such interest, (d) all Expense Payments (hereinafter defined) not paid as and when due and payable shall be debited by recording therein on the date such Expense Payment becomes due a debit entry in the amount of such Expense Payment, (e) all Liquidation Costs (hereinafter defined) shall be debited by recording therein on the date incurred the amount of such Liquidation Costs, and (f) all other charges, interest, and expenses chargeable by the Agent and/or the Lenders to the Borrower under this Agreement or the other Transaction Documents not paid as and when due and payable shall be debited by recording therein on the date such charges, interest, and expenses become past due a debit entry in the amount of such charges, interest, and expenses. All credit entries to such account are conditional and shall be readjusted as of the date made if final payment is not received by the Agent or the Lenders (as the case may be) in cash or solvent credits. The entries made by the Agent to such account shall constitute prima facie evidence of the existence and amounts of the Borrower's indebtedness to the Agent and the Lenders under the provisions of this Agreement and the other Transaction Documents.

2.04. Note. The Loan shall be evidenced by and repaid in accordance with the Note.

2.05. Defaulting Lender. Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrower to Agent for the Defaulting Lender's benefit, and, in the absence of such transfer to the Defaulting Lender, Agent shall transfer any such payments to each other Lender that is not a Defaulting Lender ratably in accordance with their respective outstanding principal balances of the Loan (but only to the extent that such Defaulting Lender's Advance was funded by such Lenders). Solely for the purposes of voting or consenting to matters with respect to the Transaction Documents, such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero. This Section shall remain effective with respect to such Lender until (x) the non-Defaulting Lenders, Agent, and Borrower shall have waived such Defaulting Lender's default in writing, or (y) the Defaulting Lender makes its Advance and pays to Agent all amounts owing by Defaulting Lender in

respect thereof. The operation of this Section shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by Borrower of its duties and obligations hereunder to Agent or to the Lenders other than such Defaulting Lender. Any such failure to fund by any Defaulting Lender shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle Borrower at its option, upon written notice to Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be acceptable to Agent in its discretion. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of assignment and acceptance (in form and substance satisfactory to the Agent) in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so); *provided* that any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Agent's, the Lenders' or the Borrower's rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund.

2.06. Repayment of the Loan. Agent hereby directs that amounts due to Agent or Lenders hereunder be wired to the Agent's Account. Except as otherwise provided with respect to Defaulting Lenders or elsewhere in the Transaction Documents (including agreements between Agent and individual Lenders), (a) interest payments received in Agent's Account shall be apportioned among the Lenders in accordance with their relative accrued and unpaid interests on its Advances, (b) principal received in Agent's Account shall be apportioned among the Lenders in accordance with their relative outstanding Advances and (c) payments of fees and expenses (other than fees or expenses that are for Agent's separate account or as individual Lenders' separate account, after giving effect to any agreements between Agent and individual Lenders) shall be apportioned ratably among the Lenders. Agent shall make distributions to each Lender pursuant to the applicable wire instructions received from each Lender in writing. Except with respect to the payments required to be made by the Borrower in accordance with the immediately preceding sentence, the Borrower shall not be required to make any payments of accrued interest on or principal of the Loan until the Maturity Date; *provided*, the Borrower may pay accrued and unpaid interest and prepay the principal of the Loan in full or in part at any time, without premium or penalty. On the Maturity Date, the Borrower shall repay in full the then outstanding principal balance of the Loan and any and all accrued and unpaid interest thereon.

### 3. SECURITY.

3.01. Security Interest. As security for the payment and performance of all of the Obligations and performance under the Transaction Documents, Borrower hereby irrevocably and unconditionally assigns, pledges and grants to Agent for the benefit of the Lenders a continuing security interest in the Collateral. Borrower's assignment, pledge and grant is coupled with an interest and shall continually exist until all Obligations have been paid in full. If required by Agent at any time, Borrower shall make notations, satisfactory to Agent, on its books and records disclosing the existence of Agent's security interest in the Collateral. Borrower agrees that, with respect to the Collateral, Agent shall have all the rights and remedies of a secured party under the New York Uniform Commercial Code, Agent shall have no liability or duty, either before or after the occurrence of an Event of Default hereunder, on account of loss or damage to, or to collect or enforce any of its rights against, the Collateral, or to preserve any rights against account debtors or other parties with prior interests in the Collateral.

3.02. Covenants and Representations Concerning Collateral. With respect to all of the Collateral, Borrower covenants, warrants and represents that:

(a) No financing statement covering any of the Collateral is on file in any public office or land or financing records except for financing statements in favor of Agent and financing statements with respect to any Permitted Liens.

(b) Borrower is the legal and beneficial owner of all of the Collateral, free and clear of all Liens, except for Permitted Liens.

(c) The security interest granted by Borrower to Agent hereunder shall constitute a first Lien in, to and under the Collateral, except for Permitted Liens, and Borrower will not, except in connection with the repayment of the Obligations, permit any other Lien to be created or remain thereon except for Permitted Liens.

(d) Borrower shall defend the Collateral, at Borrower's expense, against all claims and demands of any persons claiming any interest in the Collateral adverse to Borrower, the Lenders or Agent.

(e) At all reasonable times, and after five (5) days written notice to the Borrower, Agent, Lenders and/or their respective agents and designees may enter Borrower's premises and inspect the Collateral and all books and records of Borrower (in whatever form) relating to the Collateral or to the finances and operations of Borrower's business.

(f) Intentionally Omitted.

(g) All information, schedules, certificates, records and data furnished to the Agent and the Lenders are, when taken as a whole, true and correct in all material respects and complete (in light of the circumstances under which such information is delivered) insofar as completeness may be necessary to give the Agent and the Lenders accurate knowledge of the subject matter.

(h) All books and records of Borrower pertaining to the Collateral are located at c/o Prodigy Shorewood Investment Management, LLC, 40 Wall Street, 17<sup>th</sup> Floor, New York, New York 10005, and Borrower will not change the location of such books and records without prior written notice to the Agent.

(i) Borrower shall do, make, execute and deliver all such additional and further acts, things, deeds, assurances, instruments and documents as Agent may reasonably request to vest in and assure to Agent its rights hereunder or in any of the Collateral, including, without limitation, placing legends on Collateral or on books and records pertaining to Collateral stating that Agent has a security interest therein.

(j) Borrower shall cooperate with Agent to obtain and keep in effect one or more control agreements with respect to Collateral comprised of deposit account, electronic chattel paper, investment property and letter of credit rights Collateral.

(k) Borrower authorizes Agent to file financing statements covering the Collateral. Borrower agrees to pay all taxes, fees and costs (including attorneys' fees and expenses) paid or incurred by Agent in connection with the preparation, filing or recordation thereof.

(l) Whenever required by Agent, Borrower shall promptly deliver to Agent, with all endorsements and/or assignments required by Agent, all instruments, chattel paper, guaranties and the

like received by Borrower constituting or evidencing any of the Collateral or proceeds of any of the Collateral.

(m) Borrower shall not file any Uniform Commercial Code amendments, correction statements or termination statements concerning the Collateral without the prior written consent of Agent, unless the Obligations have been paid in full.

#### 4. REPRESENTATIONS AND WARRANTIES.

To induce Agent and Lenders to enter into this Agreement, Borrower represents and warrants to Agent and Lenders that as of the Closing Date and on the date that the Additional Advance is made:

4.01. State of Organization, Legal Name and Good Standing. Borrower's state of organization and exact legal name are set forth in the first paragraph of this Agreement. Borrower is an entity, duly organized, legally existing and in good standing under the laws of the jurisdiction of its organization, has the power to own its property and to carry on its business and is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary, except where failure to be so qualified would not result in a material adverse effect on its Obligations hereunder.

4.02. Authority. Borrower has full power and authority to enter into this Agreement, to make the borrowing hereunder, to execute and deliver all documents and instruments required hereunder and to incur and perform the Obligations provided for herein and in the Note, all of which have been duly authorized by all necessary and proper corporate and/or other action, and no consent or approval of any person, including, without limitation, equity owners of Borrower and any public authority or regulatory body, which has not been obtained, is required as a condition to the validity or enforceability hereof or thereof, except where failure to do so would not result in a material adverse effect on its Obligations hereunder.

4.03. Binding Agreements. This Agreement has been duly and properly executed by Borrower, constitutes the valid and legally binding obligation of Borrower and is fully enforceable against Borrower in accordance with its terms, subject to applicable insolvency laws and applicable laws affecting creditors' rights.

4.04. No Conflicting Agreements. The execution and performance by Borrower of this Agreement, the borrowing hereunder, and Borrower's execution and delivery of and performance under the Note will not (a) violate (i) any provision of law, any order, rule or regulation of any court or other agency of government applicable to it, (ii) any award of any arbitrator, (iii) the organizational documents of Borrower, or (iv) any material indenture, contract, agreement, mortgage, deed of trust or other instrument to which Borrower is a party or by which it or any of its property is bound, or (b) be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under, any such award, indenture, contract, agreement, mortgage, deed of trust or other instrument, or result in the creation or imposition of any Lien upon any of the property or assets of Borrower, except for Liens in favor of the Agent.

4.05. Litigation. There are no undisclosed judgments, claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or adversely affecting Borrower or its properties, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, which is likely to result in any material adverse change in the business, operations, prospects, properties or assets or in the condition, financial

or otherwise, of Borrower, and Borrower is not, to its knowledge, in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which would have a material adverse effect on Borrower.

4.06. Taxes. Borrower has paid or caused to be paid all federal, state and local taxes to the extent that such taxes have become due. Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed by, except where failure to do so would not result in a material adverse effect on its Obligations hereunder.

4.07. Title to Properties. Borrower has valid title to all of its properties and assets (including the Collateral) and all of the properties and assets of Borrower are free and clear of Liens, except for Permitted Liens, and Borrower has not granted a Lien in any of the Collateral except to Agent and except for Permitted Liens.

4.08. Licenses and Permits. Borrower has duly obtained and now holds all licenses, permits, certifications, approvals and the like required by federal, state and local laws of the jurisdiction in which Borrower conducts its business in each case except where failure to do so would not result in a material adverse effect on its Obligations hereunder, and each remains valid and in full force and effect and Borrower has paid all fees, taxes, assessments and other charges necessary to maintain same.

4.09. Outstanding Indebtedness. Borrower has no outstanding Indebtedness except as permitted by Subsection 7.01 hereof and to Borrower's knowledge, there exists no event of default under the provisions of any instrument evidencing such Indebtedness or of any agreement relating thereto.

4.10. No Adverse Change. There has been no material adverse change in the business, properties or condition (financial or otherwise) of the Borrower since the date of its organization.

4.11. Use of Loan Proceeds. The proceeds of the Loan shall be used to fund the Loan Purposes.

4.12. No Default. No Event of Default (hereinafter defined), and no event which, with notice or passage of time or both would constitute an Event of Default, has occurred hereunder.

## 5. **CONDITIONS OF LENDING.**

Lenders shall have no obligation to make their respective Advances on the Closing Date or the date that the Additional Advance is to be made (as the case may be) unless each of the following conditions precedent shall be satisfied as of such date:

5.01. Representation and Warranties. All representations and warranties set forth in this Agreement are true and correct in all material respects on and as of such date.

5.02. Event of Default. No Event of Default or event which, with notice or passage of time or both, would constitute an Event of Default shall have occurred hereunder.

5.03. Documents. With respect to the Initial Advance only, on or before the making of the Initial Advance, there shall have been delivered to Agent, fully completed and duly executed (where applicable), the following documents, the terms of which are hereby specifically incorporated herein by reference as though fully set forth:

- (a) The Note.
- (b) This Agreement.
- (c) The Security Agreement.

(d) A Uniform Commercial Code financing statement naming the Borrower as debtor, the Agent as secured party and the Collateral as collateral has been filed with the Secretary of State of the State of Delaware.

5.04. Advance Made Available to Agent. Each Lender shall have made its respective Advance to the Agent in immediately available funds on or before such date.

## 6. AFFIRMATIVE COVENANTS.

Borrower covenants and agrees with Agent that, until all of the Obligations have been paid in full, Borrower will require the Fund to:

### 6.01. Financial Reporting Requirements.

Furnish or cause to be furnished to Agent and Lenders:

(a) as soon as available after the end of each semiannual accounting period of Borrower and the Fund, an unaudited statement of consolidated income and retained earnings and changes in consolidated financial position of Borrower and the Fund for such period and for the period from the beginning of the current year of Borrower and the Fund to the end of such period, and a consolidated balance sheet of Borrower and the Fund, as at the end of such period, all in form and detail satisfactory to Agent, which fairly represents, in accordance with GAAP, the financial condition of the Borrower and the Fund.

(b) as soon as available after the end of each calendar year, an audited statement of consolidated income and retained earnings for such year, and a consolidated balance sheet of Borrower and the Fund, as at the end of such year, all in form and detail satisfactory to Agent, audited in accordance with GAAP, by an independent certified public accountant reasonably satisfactory to Agent; and

(c) within fifteen (15) days after filing (including an application for extension, if filed), a copy of the federal and state income tax returns for the Borrower.

6.02. Taxes. Promptly pay and discharge all taxes, assessments and governmental charges upon Borrower, its income and/or properties (including the Collateral) prior to the date on which penalties are attached thereto, except to the extent the same are being diligently contested in good faith by appropriate proceedings.

6.03. Continuation of Business and Compliance with Laws. Continue its business operations as now being conducted and comply with all applicable federal, state and local laws, rules, ordinances, regulations and orders, except where failure to so comply would not result in a material adverse effect hereunder.

6.04. Litigation. Promptly notify Agent and Lenders in writing of any action, suit or proceeding at law or in equity by or before any court, governmental agency or instrumentality which could result in

any material adverse change in the business, operations, prospects, properties or assets (including the Collateral) or in the condition, financial or otherwise, of Borrower or the Fund.

6.05. Extraordinary Loss. Promptly notify Agent in writing of any event causing extraordinary loss or depreciation of the value of any of Borrower's or the Fund's assets and the facts with respect thereto.

6.06. Books and Records/Depository Accounts. Keep and maintain proper and current books and records which fairly represent the financial condition of the Borrower and the Fund. Subject to Section 3.02(e) hereof, permit access by Agent to, reproduction by such Person(s) of and copying by such Person(s) from (all at the Borrower's expense) such books and records during normal business hours.

6.07. Maintenance of Properties. Maintain all properties and improvements necessary to the conduct of Borrower's or the Fund's business in good working order and condition, ordinary wear and tear excepted, and cause replacements and repairs to be made when necessary for the proper conduct of its business.

6.08. Patents, Franchises, etc. Maintain, preserve and protect all licenses, patents, franchises, trademarks and trade names of Borrower and the Fund or licenses by Borrower or the Fund, which are necessary to the conduct of the business of Borrower or the Fund, as now conducted, free of any conflict with the rights of any other person.

6.09. Financial Information. Deliver to Agent and Lenders, promptly upon request, and periodically if Agent shall so require, any reasonable information, statements or reports concerning Borrower's and/or the Fund's business, financial affairs or any other matter or matters as may be requested by Agent, including, without limitation, copies of federal and state tax returns of Borrower and/or the Fund.

6.10. Further Assurances. The Borrower shall promptly, upon request by Agent, execute, acknowledge and deliver any financing statement, endorsement, renewal, affidavit, deed, assignment, continuation statement, security agreement, certificate or other document as the Agent may reasonably require in order to perfect, preserve, maintain, protect, continue or extend the lien or security interest of the Agent under this Agreement in the Collateral and its priority. The Borrower shall pay to the Agent on demand all taxes, costs and expenses (including, but not limited to, reasonable attorney's fees) incurred by the Agent in connection with the preparation, execution, recording and filing of any such document or instrument mentioned aforesaid.

## 7. **NEGATIVE COVENANTS.**

Borrower covenants and agrees with Agent and the Lenders that, until all Obligations have been paid in full, Borrower will not, directly or indirectly, without Agent's prior written consent:

7.01. Indebtedness. Create, incur, assume or permit to exist any Indebtedness except (a) Indebtedness to Agent and Lenders, (b) any Indebtedness specifically permitted hereunder, (c) Indebtedness secured by Permitted Liens, (d) unsecured trade payables incurred in the ordinary course of business, and (e) Indebtedness which shall be approved in advance by Agent in writing, in Agent's discretion, and if required by Agent, subordinated to all Obligations by a written agreement satisfactory in form and substance to Agent and Agent's counsel.

7.02. Liens. Create, incur, assume or permit to exist any Lien upon any of Borrower's properties or assets, now owned or hereafter acquired by Borrower, other than Permitted Liens or Liens subordinated to the Agent's Lien.

7.03. Merger, Sale of Assets, Etc. Except in connection with a repayment in full of the Obligations, enter into or be a party to any merger or consolidation; sell, assign, transfer, convey or lease all or substantially all of its property or any interest therein; purchase or otherwise acquire all or substantially all of the assets of any other Person, or any shares of stock of, or similar interest in, any other Person, except for the Fund.

7.04. Guarantees. Except for the Fund, guarantee or otherwise in any way become or be responsible for obligations or Indebtedness of any other person, whether by agreement to purchase the Indebtedness of any other person, or by agreement for the furnishing of funds to any other person for the purchase of goods, supplies or services, or by way of stock purchase, capital contribution, advance or loan for the purpose of paying or discharging Indebtedness of any other person, or otherwise.

## 8. EVENTS OF DEFAULT.

The occurrence of any one or more of the following events shall constitute an "Event of Default":

(a) Any material representation or warranty made herein in any of the Transaction Documents or in any statement, report, certificate, opinion, financial statement or other document furnished in connection with this Agreement or the Transaction Documents shall be false or knowingly misleading (in light of the circumstances under which it is made) in any material respect when made and such representation and warranty, if curable, shall not have been cured within thirty (30) days of the date Borrower is notified in writing by Agent or Lenders that such representation or warranty is false or misleading.

(b) Failure of Borrower to pay any of the Obligations, including, without limitation, any sum due Lenders under this Agreement or any of the Transaction Documents, when and as the same shall become due, whether at the due date thereof, by demand, by acceleration or otherwise.

(c) Intentionally Omitted.

(d) Failure of Borrower to observe or perform any covenant or agreement to be observed or performed by Borrower under this Agreement or any of the Transaction Documents, and such failure shall continue for a period of thirty (30) days after written notice thereof by the Agent to the Borrower; provided that if such thirty (30) day period is not a sufficient period to cure any such failure and Borrower is diligently pursuing such cure during the initial 30-day period, the Borrower shall have such additional time as the Agent may determine in its discretion is reasonably required to cure such failure not to exceed sixty(60) days after the written notice by the Agent to the Borrower described above.

(e) If Borrower and/or the Fund shall (i) admit in writing its insolvency or its inability to pay generally its debts as they mature, (ii) make a general assignment for the benefit of creditors, (iii) commence a case under or otherwise seek to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law, statute or proceeding, or (iv) by any act indicate its consent to, approval of or acquiescence in any such proceeding or the appointment of any receiver of or trustee for Borrower and/or the Fund or a substantial part of its property,

(f) If Borrower or the Fund becomes a debtor in any case under any chapter of the Bankruptcy Code, and if the petition in bankruptcy shall not be discharged or dismissed within sixty (60) days after the date on which such petition was filed.

(g) Entry of any order, judgment or decree for the dissolution of Borrower or the Fund.

(h) Entry of any judgment against Borrower in excess of One Million Dollars (\$1,000,000.00), which judgment shall not have been discharged or execution thereof stayed within thirty (30) days after entry thereof or discharged within thirty (30) days after the expiration of any such stay, if such judgment is not fully covered by applicable insurance (which shall not include any bonding or other arrangement with which Borrower may be liable for indemnification to any extent).

(i) Intentionally Omitted.

(j) If any assets of Borrower shall be attached, levied upon, seized or repossessed or come into the possession of a trustee, receiver or other custodian which is not discharged within sixty (60) days.

## 9. RIGHTS AND REMEDIES.

9.01. Rights and Remedies of Agent. Upon the occurrence of an Event of Default, Agent may (and if directed by Lenders holding a majority of the outstanding principal balance of the Loan, shall), without notice or demand, exercise in any jurisdiction in which enforcement hereof is sought, the following rights and remedies, in addition to the rights and remedies of a secured party under the Uniform Commercial Code and all other rights and remedies available to Agent under applicable law, all such rights and remedies being cumulative and enforceable alternatively, successively or concurrently:

(a) Declare the Note, all interest accrued and unpaid thereon, and all other Obligations to be immediately due and payable and the same shall thereupon become immediately due and payable without presentment, demand or protest, all of which are hereby expressly waived. Irrespective of whether the Agent accelerates amounts payable under the Note, the Agent shall have the right to raise the rate of interest accruing on the unpaid principal balance of the Note by two (2) percentage points above the interest rate otherwise applicable under the Note.

(b) Institute any proceeding or proceedings to enforce the Obligations and any Lien of Agent.

(c) Take possession of the Collateral, and for that purpose, so far as Borrower may give authority therefor, enter upon the premises on which the Collateral or any part thereof may be situated and remove the same therefrom without any liability for suit, action or other proceeding by Borrower, BORROWER HEREBY WAIVING ANY AND ALL RIGHTS TO PRIOR NOTICE AND TO JUDICIAL HEARING WITH RESPECT TO REPOSSESSION OF COLLATERAL, and require Borrower, at Borrower's expense, to assemble and deliver the Collateral to such place or places as Agent may designate.

(d) Operate, manage and control the Collateral, or permit the Collateral or any portion thereof to remain idle, or store the same, and collect all income, payments and proceeds therefrom and sell or otherwise dispose of any or all of the Collateral upon such terms and under such conditions as Agent, in its reasonable discretion, may determine, all without any notice or demand, and

purchase or acquire any of the Collateral at any such sale or other disposition, all to the extent permitted by applicable law. Borrower shall have all risk of loss of the Collateral. Agent shall have no liability or duty, either before or after the occurrence of an Event of Default, on account of loss of or damage to, to collect or enforce any of its rights against, the Collateral, to collect any income, payments or proceeds accruing on the Collateral, or to preserve rights against account debtors or other parties with prior interests in the Collateral. If Agent actually receives any notices requiring action with respect to Collateral in Agent's possession, Agent shall take reasonable steps to forward such notices to Borrower. Borrower is responsible for responding to notices concerning the Collateral, voting the Collateral, and exercising rights and options, calls and conversions of the Collateral. Agent's sole responsibility is to take such action as is reasonably requested by Borrower in writing, however, Agent is not responsible to take any action that, in Agent's discretion, would affect the value of the Collateral as security for the Obligations adversely. While Agent is not required to take certain actions, if action is needed, in Agent's discretion, to preserve and maintain the Collateral, Borrower authorizes Agent to take such actions, but Agent is not obligated to do so.

(e) Enforce Borrower's rights against account debtors and other parties obligated on Collateral, including, but not limited to, the right to: (a) notify and/or require Borrower to notify any or all account debtors and other parties obligated on Collateral to make payments directly to Agent or in care of a post office lock box under the sole control of Agent established at Borrower's expense subject to Agent's customary arrangements and charges therefor, and to take any or all action with respect to Collateral as Agent shall determine in its sole discretion, including, without limitation, the right to demand, collect, sue for and receive any money or property at any time due, payable or receivable on account thereof, compromise and settle with any person liable thereon, and extend the time of payment or otherwise change the terms thereof, without incurring liability or responsibility to Borrower; (b) require Borrower to segregate and hold in trust for Agent and, on the day of Borrower's receipt thereof, transmit to Agent in the exact form received by Borrower (except for such assignments and endorsements as may be required by Agent), all cash, checks, drafts, money orders and other items of payment constituting Collateral or proceeds of Collateral; and/or (c) establish and maintain at Agent a "Repayment Account," which shall be under the exclusive control of and subject to the sole order of Agent and which shall be subject to the imposition of such customary charges as are imposed by Agent from time to time upon such accounts, for the deposit of cash, checks, drafts, money orders and other items of payments constituting Collateral or income, payments and/or proceeds of Collateral from which Agent may, in its discretion, at any time and from time to time, withdraw all or any part. Agent's collection and enforcement of Collateral against account debtors and other persons obligated thereon shall be deemed to be commercially reasonable if Agent exercises the care and follows the procedures that Agent generally applies to the collection of obligations owed to Agent. All proceeds of the Collateral may be applied by Agent upon Agent's actual receipt of such proceeds against such of the Obligations, matured or unmatured, as Agent shall determine in Agent's sole discretion.

9.02. Power of Attorney. Borrower hereby irrevocably constitutes and appoints Agent and its designees as attorney-in-fact of Borrower irrevocably and with power of substitution, with authority to receive, open and dispose of all mail addressed to Borrower, to notify the postal authorities to change the address for delivery of mail addressed to Borrower to such other address as Agent designates; to endorse Borrower's name on any notes, acceptances, checks, drafts, money orders, instruments or other evidences of payment or proceeds of the Collateral that may come into Agent's possession; to sign Borrower's name on any invoices, documents, drafts against and notices to account debtors or other obligors of Borrower, assignments and requests for verification of accounts; to execute proofs of claim and loss; to execute any endorsements, assignments, or other instruments of conveyance or transfer; to adjust and compromise any claims under insurance policies; to execute releases; and to perform all other acts necessary and advisable, in Agent's discretion, to carry out and enforce this Agreement and the

Transaction Documents. All acts of said attorney or designee are hereby ratified and approved by Borrower, and said attorney or designee shall not be liable for any acts of commission or omission nor for any error of judgment or mistake of fact or law, except for gross negligence, willful misconduct or bad faith. This Power of Attorney is coupled with an interest and is irrevocable so long as any of the Obligations remain unpaid or unperformed.

9.03. Cumulative Nature of Remedies. Each right, power and remedy of Agent and/or Lenders shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy. It is mutually agreed that commercial reasonableness and good faith require Agent and/or Lenders to give Borrower no more than ten (10) days prior written notice of the time and place of any public disposition of the Collateral or of the time after which any private disposition or any other intended disposition is to be made.

9.04. Liquidation Costs. The Borrower shall reimburse and pay to the Agent and the Lenders upon demand all costs and expenses (the "Liquidation Costs"), including, without limitation, attorneys' fees and expenses, advanced, incurred by, or on behalf of the Agent and/or the Lenders in collecting and enforcing its rights and remedies hereunder. All Liquidation Costs shall bear interest payable by the Borrower to Agent and/or the Lenders incurring such Liquidation Costs upon demand from the date advanced or incurred until paid in full at a per annum rate of interest equal at all times to the rate of interest charged on the principal of the Note, plus two percent (2%) per annum. All such Liquidation Costs shall be deemed to be included in the Obligations and secured by the security interest granted to the Agent hereunder.

9.05. Expense Payments. If the Borrower shall fail to make any payment or otherwise fail to perform, observe, or comply with any of the conditions, covenants, terms, stipulations, or agreements contained herein, or in any of the documents evidencing the Obligations, the Agent and/or the Lenders, without notice to or demand upon the Borrower and without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Borrower, and may enter upon any premises of the Borrower for that purpose and take all such action thereon as the Agent and/or a majority of the Lenders (based on their respective principal balances of the Loan) may consider necessary or appropriate for such purpose. All sums so paid or advanced by the Agent and/or one or more Lenders (the "Expense Payments"), together with interest thereon from the date paid, advanced, or incurred until repaid in full at a per annum rate of interest equal at all times to the rate of interest charged on the Note plus two percent (2%) per annum, shall be paid by the Borrower to the Agent and/or the Lenders incurring such Expense Payments upon demand by such Person. All such Expense Payments shall be deemed to be included in the Obligations and secured by the security interest granted to the Agent hereunder.

## 10. MISCELLANEOUS.

10.01. Performance for Borrower. Borrower agrees and hereby authorizes that Agent and/or any one or more Lenders (with the consent of a majority of the Lenders (based on their respective outstanding principal balances of the Loan)) may, in Agent's and/or such Lender's discretion, but neither Agent nor any Lender shall be obligated to, advance funds on behalf of Borrower without prior notice to Borrower, in order to ensure Borrower's or the Fund's compliance with any covenant, warranty, representation or agreement of Borrower or the Fund made in or pursuant to this Agreement or any of the Transaction Documents, to cover overdrafts in any deposit or securities accounts of Borrower or the Fund at any bank or other financial institution or to preserve or protect any right or interest of Agent and/or Lenders in, to and/or under any of the Collateral or under or pursuant to this Agreement or any of the Transaction Documents, including without limitation, the payment of any insurance premiums or taxes

and the satisfaction or discharge of any judgment or any Lien upon the Collateral or other property or assets of Borrower or the Fund; provided, however, that the making of any such advance by Agent and/or one or more Lenders shall not constitute a waiver by Agent or Lenders of any Event of Default with respect to which such advance is made nor relieve Borrower of any such Event of Default. Borrower shall pay to Agent and/or the Lenders making such advance, upon demand therefor, all such advances with interest thereon at the rate of interest charged on the principal of the Note, plus two percent (2%) per annum. All such advances shall be deemed to be included in the Obligations and secured by the security interest granted to the Agent hereunder.

10.02. Expenses. Whether or not any of the transactions contemplated hereby shall be consummated, Borrower agrees to pay to Agent within five (5) Business Days of demand therefor, all expenses of Agent (including the reasonable fees and reasonable expenses of its counsel) in connection with the preparation of this Agreement, the other Transaction Documents and all documents and instruments referred to herein or therein and all expenses of Agent in connection with the filing or recordation of all financing statements and instruments as may be required by Agent at the time of, or subsequent to, the execution of this Agreement, including, without limitation, all documentary stamps, recordation of any document or instrument in connection herewith. Borrower agrees to save harmless and indemnify Agent from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by Agent in connection with this Agreement. The provisions of this Subsection 10.02 shall survive the execution and delivery of this Agreement and the payment of all other Obligations.

10.03. Applications of Collateral. All Collateral and income, payments and proceeds of Collateral coming into Agent's possession during the continuance of an Event of Default, may be applied by Agent to any of the Obligations, whether matured or unmatured, as Agent shall determine in its discretion. All Collateral and income, payments and proceeds of Collateral coming into one or more Lenders possession during the continuance of an Event of Default, shall be applied by Lenders to the Obligations, whether matured or unmatured, as a majority of the Lenders (based on their respective principal balances of the Loan) shall determine.

10.04. Indemnification by Borrower. The Borrower hereby agrees to indemnify and hold harmless the Agent from and against all liabilities, claims, demands, and expenses, including without limitation, reasonable attorney's fees and expenses, arising out of or in connection with the Collateral or the transactions contemplated hereby or the Transaction Documents, except arising from the Agent's gross negligence, willful misconduct or bad faith. The provisions of this Subsection 10.04 shall survive the execution and delivery of this Agreement and the payment of all other Obligations.

10.05. Receipt Sufficient Discharge to Purchaser. Upon any sale or other disposition of the Collateral or any part thereof, the receipt of the Agent, the Lenders or any other person making the sale or disposition on behalf of the Agent and/or the Lenders shall be a sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obligated to see to the application thereof.

10.06. Waivers by Borrower. Borrower hereby waives, to the extent the same may be waived under applicable law:

(a) All claims, causes of action and rights of Borrower against Agent on account of actions taken or not taken by Agent in the exercise of Agent's rights or remedies hereunder or under the Transaction Documents, except arising from the Agent's gross negligence, willful misconduct, bad faith, or in violation of any of the provisions hereof, or in the Transaction Documents.

(b) All claims of Borrower for failure of Agent to comply with any requirement of applicable law relating to enforcement of Agent's rights or remedies hereunder or under the Transaction Documents;

(c) Intentionally Omitted;

(d) In the event Agent seeks to repossess any or all of the Collateral by judicial proceedings, any bond(s) or demand(s) for possession which otherwise may be necessary or required;

(e) Presentment, demand for payment, protest and all exemptions;

(f) Trial by jury in any action or proceeding of any kind or nature in connection with any of Obligations, this Agreement or any of the Transaction Documents;

(g) Settlement, compromise or release of the Obligations of any person primarily or secondarily liable upon any of the Obligations;

(h) Substitution, impairment, exchange or release of any collateral security for any of the Obligations.

Borrower agrees that Agent may exercise any or all of its rights and/or remedies hereunder and under the Transaction Documents without resorting to and without regard to any collateral security or sources of liability with respect to any of the Obligations.

10.07. Waivers by Agent or Lenders. Neither any failure nor any delay on the part of Agent or the Lenders in exercising any right, power or remedy hereunder or under any of the Transaction Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other rights, power or remedy.

10.08. Agent's Records. Every statement of account or reconciliation rendered by Agent to Lenders or Borrower with respect to any of the Obligations unless manifestly incorrect, shall be presumed conclusively to be correct and shall constitute an account stated between Agent and Borrower unless, within thirty (30) days after any such statement or reconciliation shall have been mailed, postage prepaid, to Borrower or a Lender (as the as case may be), Agent shall receive written notice of specific objection thereto.

10.09. Modifications. No modification or waiver of any provision of this Agreement, the Note or any of the Transaction Documents, and no consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand upon Borrower in any case shall entitle Borrower to any other or further notice or demand in the same, similar or other circumstances. Unless a Transaction Document requires the consent of a percentage of the Lenders based on their Commitments or outstanding principal balance of the Loan, only the consent of the Agent shall be required in connection with any modification or waiver; *provided* that no such waiver or modification shall, unless in writing and signed by all of the Lenders affected thereby and Borrower, do any of the following:

(a) increase the amount of or extend the expiration date any Commitment of any Lender,

(b) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document,

(c) reduce or forgive the principal of, or reduce the rate of interest (other than the waiver of interest at the "Default Rate" (as defined in the Note) by Agent) on, any loan or other extension of credit hereunder, or reduce or forgive any fees or other amounts payable hereunder or under any other Loan Document,

(d) change the pro rata share that is required to take any action hereunder,

(e) amend, modify or eliminate this Section or any provision of any agreement providing for consent or other action by a majority of Lenders, all Lenders or all affected Lenders, or

(f) amend, modify or eliminate any of the provisions of Section 11.

10.10. Replacement of Holdout Lender.

(a) If any action to be taken by one or more Lenders or the Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization or agreement of a majority of the Lenders (based on their respective outstanding principal balances of the Loan) but not all Lenders or all Lenders affected thereby, then the Agent, upon at least five (5) Business Days prior notice to the Lender that fails to give its consent, authorization, or agreement (a "Holdout Lender"), may permanently replace the Holdout Lender with one or more substitute Lenders (each, a "Replacement Lender"), and the Holdout Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender shall specify an effective date for such replacement, which date shall not be later than fifteen (15) Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Holdout Lender and each Replacement Lender shall execute and deliver an assignment and acceptance (in form and substance satisfactory to the Agent), subject only to the Holdout Lender being repaid its share of the outstanding Obligations without any premium or penalty of any kind whatsoever, but including accrued interest. If the Holdout Lender shall refuse or fail to execute and deliver any such assignment and acceptance prior to the effective date of such replacement, the Holdout Lender shall be deemed to have executed and delivered such assignment and acceptance. The replacement of any Holdout Lender shall be made in accordance with the terms of Section 10.13. Until such time as the Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender hereunder and under the other Loan Documents, the Holdout Lender shall remain obligated to make the Holdout Lender's Advance.

10.11. Notices. Any notice or other communication in connection with this Agreement or the other Transaction Documents, if delivered by registered or certified mail, shall be deemed to have been given upon the earlier of when received by the party to whom directed or the third Business Day following delivery thereof; or, if delivered by overnight guaranteed delivery service, one (1) Business Day after deposited in the mail; or, if delivered by facsimile, after telephonic confirmation of receipt thereof; provided that any such notice or communication shall be addressed to a party hereto at the address provided below its signature hereto (or at such other address as such party shall specify in writing to the other parties hereto from time to time).

10.12. Applicable Law. The performance and construction of this Agreement, the Note and the Transaction Documents shall be governed by the laws of the State of New York without giving effect to its conflict of law principles (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).

10.13. Survival; Successors and Assigns. All representations and warranties made herein and in the Transaction Documents shall survive the Closing Date and the execution and delivery to Lenders of the Note, and shall continue in full force and effect until all of the Obligations have been paid in full. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, agreements, representations and warranties by or on behalf of Borrower which are contained in this Agreement and the Transaction Documents shall inure to the benefit of the successors and assigns of Agent and Lenders. This Agreement may not be assigned by Borrower without the prior written consent of Agent. No Lender may assign, participate or delegate to any Person any or all of its Commitment and/or the other rights and/or obligations of such Lender hereunder or under the other Transaction Documents without the prior written consent of the Agent. Any permitted assignment by a Lender hereunder shall be pursuant to an assignment and acceptance in form and substance satisfactory to the Agent. The Agent may charge to an assigning Lender an administrative fee (not to exceed \$2,500) in connection with any such assignment by such Lender plus any legal fees and expenses incurred by the Agent in connection with any such assignment by such Lender. Notwithstanding the foregoing or anything contained herein, Agent shall have the right to join any third-party to this Agreement in the capacity as a Lender upon such party's execution of an assignment and acceptance (in form and substance satisfactory to the Agent).

10.14. Use of Terms. The use of any gender or the neuter herein shall also refer to the other gender or the neuter and the use of the plural shall also refer to the singular, and vice versa.

10.15. Severability. If any term, provision or condition, or any part thereof, of this Agreement or any of the Transaction Documents shall for any reason be bound or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement, the Note, and the Transaction Documents shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

10.16. Merger and Integration. This Agreement, the Transaction Documents and the attached exhibits, schedules and annexes hereto and thereto, if any, contain the entire agreement of the parties hereto with respect to the matters covered and the transactions contemplated hereby, and no other agreement, statement or promise made by any party hereto, or by any employee, officer, agent or attorney of any party hereto, which is not contained herein, shall be valid or binding.

10.17. Counterparts; Electronic Delivery. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute the same instrument. Delivery of an executed counterpart of this Agreement by telefacsimile, email or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile, email or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Transaction Document *mutatis mutandis*.

10.18. Headings. The headings and subheadings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

10.19. Consent to Jurisdiction; Service of Process. THE PARTIES HERETO HEREBY AGREE AND CONSENT THAT ANY ACTION OR PROCEEDING ARISING OUT OF OR BROUGHT TO ENFORCE THE PROVISIONS OF THIS AGREEMENT SHALL BE BROUGHT IN ANY APPROPRIATE COURT IN THE STATE OF NEW YORK, OR IN ANY APPEALS COURT THEREFROM HAVING JURISDICTION OVER THE SUBJECT MATTER, AND BY THE EXECUTION OF THIS AGREEMENT, EACH PARTY HERETO IRREVOCABLY CONSENTS TO THE JURISDICTION OF EACH SUCH COURT; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY IS LOCATED OR HAS A CONNECTION. EACH PARTY HERETO TO THE EXTENT PERMITTED UNDER APPLICABLE LAWS, WAIVES ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 1019. EACH LENDER HEREBY IRREVOCABLY APPOINTS PRODIGY SHOREWOOD INVESTMENT MANAGEMENT, LLC AS ITS AGENT TO ACCEPT SERVICE OF PROCESS FOR IT AND ON ITS BEHALF IN ANY SECTION AND TO RECEIVE ANY NOTICES REQUIRED PURSUANT TO OR BY THE TERMS OF THIS AGREEMENT.

10.20. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT NOW OR HEREAFTER PERMITTED BY APPLICABLE LAW, THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE TRANSACTION DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY HERETO REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

## 11. AGENT; THE LENDERS.

11.01. Appointment and Authorization of Agent. Each Lender hereby designates and appoints Prodigy Shorewood Investment Management, LLC as its representative under this Agreement and the other Transaction Documents and each Lender hereby irrevocably authorizes Agent to execute and deliver each of the other Transaction Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Transaction Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Transaction Document, together with such powers as are reasonably incidental thereto. Each Lender hereby further authorizes Agent to act as the secured party under each of the Transaction Documents that create a Lien on any item of Collateral.

Agent agrees to act as such on the express conditions contained in this Section 11. The provisions of this Section 11 (other than Section 11.12) are solely for the benefit of Agent, and the Lenders, and Borrower and the Fund shall have no rights as a third party beneficiary of any of the provisions contained herein. Any provision to the contrary contained elsewhere in this Agreement or in any other Transaction Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or

liabilities shall be read into this Agreement or any other Transaction Document or otherwise exist against Agent. Without limiting the generality of the foregoing, it is expressly agreed that the use of the word "Agent" herein or any of the other Transaction Documents is not intended to connote any fiduciary or other implied (or express) obligation rising under the agency doctrine of any applicable law and that such term is being used as a matter of market custom that is intended to create or reflect only a representative relationship among independent contracting parties. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Transaction Documents.

Without limiting the generality of the foregoing, or of any other provision of the Transaction Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect:

(a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, the income, payments and proceeds thereof, and related matters,

(b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Transaction Documents,

(c) make advances, for itself or on behalf of Lenders as provided in the Transaction Documents,

(d) exclusively receive, apply, and distribute the income, payments and proceeds of the Collateral as provided in the Transaction Documents,

(e) open and maintain such deposit accounts, securities accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Transaction Documents for the foregoing purposes with respect to the Collateral and the income, payments and proceeds thereof,

(f) perform, exercise, and enforce any and all other rights and remedies of the Lenders with respect to Borrower, the Obligations, the Collateral, the income, payments and proceeds of the Collateral, or otherwise related to any of same as provided in the Transaction Documents, and

(g) incur and pay such Liquidation Costs or Expense Payments as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Transaction Documents.

11.02. Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Transaction Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

11.03. Liability of Agent. None of Agent, its affiliates (excluding Borrower or the Fund) or their respective officers, directors, employees, attorneys, and/or agents (the "Agent-Related Persons") shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this

Agreement or any other Transaction Document or the transactions contemplated hereby or thereby (except as a result of such Person's own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by Borrower or the Fund, or any officer or director thereof, contained in this Agreement or in any other Transaction Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Transaction Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Transaction Document, or for any failure of Borrower, the Fund or any other party to any Transaction Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Transaction Document, or to inspect the books, records or properties of Borrower or the books, records or properties of the Fund.

11.04. Reliance by Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrower or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Transaction Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Transaction Document in accordance with a request or consent of a majority of the Lenders (based on their respective principal balances of the Loan) and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

11.05. Notice of Default or Event of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or event that with notice and/or the lapse of time would constitute an Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Event of Default or event that with notice and/or the lapse of time would constitute an Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 11.4, Agent shall take such action with respect to such Event of Default as may be requested by a majority of the Lenders (based on their respective principal balances of the Loan); provided that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable.

11.06. Credit Decision. Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by any Agent-Related Person hereinafter taken, including any review of the affairs of Borrower or the Fund, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender represents to

Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower, the Fund and any other Person party to a Transaction Document, and all applicable laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Transaction Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower, the Fund and any other Person party to a Transaction Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower, the Fund and/or any other Person party to a Transaction Document that may come into the possession of any of the Agent-Related Persons.

11.07. Costs and Expenses; Indemnification. Agent may incur and pay Lenders Liquidation Costs and/or Expenses Payments to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Transaction Documents, including court costs, attorneys fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrower or any of its affiliates is obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from the income, payments and/or proceeds of the Collateral received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders. In the event Agent is not reimbursed for such costs and expenses from the income, payments and/or proceeds of the Collateral received by Agent, each Lender hereby agrees that it is and shall be obligated to pay to or reimburse Agent for the amount of such Lender's pro rata share thereof (based on their respective principal balances of the Loan). Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), according to their pro rata shares (based on their respective principal balances of the Loan), from and against any and all indemnified liabilities payable to Agent hereunder or under the other Transaction Documents; provided that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such indemnified liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make an Advance hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's pro rata shares (based on their respective principal balances of the Loan) of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants reasonable fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Transaction Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

11.08. Agent in Individual Capacity. Prodigy Shorewood Investment Management, LLC and its affiliates may make loans to, acquire equity interests in, and generally engage in any kind of business

with Borrower and its Affiliates and any other Person party to any Transaction Documents as though Prodigy Shorewood Investment Management, LLC were not Agent hereunder, and, in each case, without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, Prodigy Shorewood Investment Management, LLC or its affiliates may receive information regarding Borrower or its affiliates and any other Person party to any Transaction Documents that is subject to confidentiality obligations in favor of Borrower or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them.

11.09. Successor Agent. Agent may resign as Agent upon 30 days prior written notice to the Lenders (unless such notice is waived by a majority of the Lenders based on their respective principal balance of the Loan). If Agent resigns under this Agreement, the Lenders shall be entitled, in consultation with Borrower (absent an Event of Default), to appoint a successor Agent for the Lenders (the appointment of any successor Agent shall be at the direction of a majority of the Lenders based on their respective outstanding principal balances of the Loan). If no successor Agent is appointed prior to the effective date of the resignation of Agent, the Agent may appoint on behalf of the Lenders a successor Agent, provided that any such successor Agent may be subsequently removed by the Lenders upon appointment of another successor Agent approved by them, in consultation with Borrower (absent an Event of Default), in accordance with this Agreement. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable laws, the Lenders, in consultation with Borrower (absent an Event of Default), may agree in writing to remove and replace Agent with a successor Agent (the appointment of any successor Agent shall be at the direction of a majority of the Lenders based on their respective outstanding principal balances of the Loan). In the event of any such resignation or removal, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring or removed Agent and the term "Agent" shall mean such successor Agent and the retiring or removed Agent's appointment, powers, and duties as Agent shall be terminated and discharged. After any retiring or removed Agent's resignation or removal hereunder as Agent, the provisions of this Section 11 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent, or been approved by the Lenders and Borrower as applicable, by the date which is 45 days following a retiring Agent's notice of resignation, then the retiring Agent's resignation may nevertheless become effective and the retiring Agent shall be discharged from all duties and obligations as Agent under all Transaction Documents, and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided above. Agent or Lenders, as applicable, shall notify Borrower if and when any change of Agent becomes effective.

11.10. Lender Register and Participant Register. The Agent, acting solely for this purpose as an agent of the Borrower, shall maintain a register for the recordation of the names and addresses of the Lenders, and the Maximum Loan Commitment of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. Each Lender that sells a participating interest in all or part of its rights and obligations hereunder shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Transaction Documents (the "Participant Register");

provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any Maximum Loan Commitments, Loans, or other obligations under any Transaction Document) to any Person except to the extent that such disclosure is necessary to establish that such Maximum Loan Commitments, Loans or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

11.11. Lender in Individual Capacity. Any of a Lender and their respective affiliates may make loans to, acquire equity interests in and generally engage in any kind of business with Agent, Borrower and their respective affiliates and any other Person party to any Transaction Documents as though such Lender were not a Lender hereunder without notice to or consent of the other Lenders. The other Lenders acknowledge that, pursuant to such activities, such Lender and its respective affiliates may receive information regarding Agent, Borrower or their respective affiliates and any other Person party to any Transaction Documents that is subject to confidentiality obligations in favor of Agent, Borrower or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

11.12. Withholding Taxes.

(a) "Taxes" shall mean, any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments (but excluding any tax, levy, impost, duty, fee, assessment or other charge of similar nature now or hereafter imposed (i) by any jurisdiction or by any political subdivision or taxing authority thereof or therein measured by or based on the net income or net profits of any Lender or (ii) as a result of a Lender having its residence, place of organization, principal place of business or branch or lending office participating in the transactions set forth herein in such jurisdiction or political subdivision or taxing authority thereof or therein if such Lender could otherwise reasonably move the site of its participation and thereby avoid such tax, levy, impost, duty, fee, assessment or other charge of similar nature) and all interest, penalties or similar liabilities with respect thereto.

(b) If a Lender claims an exemption from United States withholding tax, Lender agrees with and in favor of Agent and Borrower, to deliver to Agent and Borrower one of the following:

(i) if such Lender is eligible (within such Lender's sole judgment) to claim an exemption from United States withholding tax pursuant to its portfolio interest exception, (A) a statement of the Lender, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder of Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to Borrower within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN, before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower;

(ii) if such Lender is eligible (within such Lender's sole judgment) to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, properly completed and executed IRS Form W-8BEN before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower;

(iii) if such Lender is eligible (within such Lender's sole judgment) to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, two properly completed and executed copies of IRS Form W-8ECI before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower; or;

(iv) such other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower.

Lender agrees promptly to notify Agent and Borrower of any change in circumstances which would modify or render invalid any claimed exemption or reduction. Each Lender further acknowledges and agrees that certain payments made under this Agreement after June 30, 2014 as to extensions of credit made after July 1, 2014 (or made prior to such date but materially modified after such date) to any Lender that does not comply with the information collection and reporting obligations imposed by the United States with respect to "foreign financial institutions" and "non-financial foreign entities" under Section 1471 and 1472 of the Code ("FATCA") or the terms of an applicable intergovernmental agreement entered into by the United States and a foreign jurisdiction relating to FATCA (collectively, "FATCA IGAs"), or fails to provide adequate certification regarding such compliance, may become subject to withholding taxes imposed under FATCA. Each Lender shall cooperate with Agent and Borrower in establishing that it is in compliance with such requirements and agrees to provide all certifications required by the Internal Revenue Service or pursuant to the laws, rules and regulations implementing an applicable FATCA IGA or as otherwise determined by Agent, in its reasonable discretion, to be necessary to establish compliance under such provisions (including, without limitation, provision of appropriate W-8BEN-E or E-8IMY forms reflecting such Lender's status under FATCA and any applicable FATCA IGA). Notwithstanding such obligations, nothing in this Sections 11.12 shall be interpreted to require any Lender to violate any law or regulation applicable to such Lender in any jurisdiction in which such Lender is formed, managed and controlled or doing business.

(c) If a Lender is eligible (within such Lender's sole judgment) to claim an exemption from withholding tax in a jurisdiction other than the United States, Lender agrees with and in favor of Agent and Borrower, to deliver to Agent any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower. Lender agrees promptly to notify Agent and Borrower of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If any Lender claims exemption from, or reduction of, withholding tax and such Lender sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrower to such Lender, such Lender agrees to notify Agent and Borrower of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrower to such Lender. To the extent of such percentage amount, Agent and Borrower will treat such Lender's documentation provided pursuant

to Sections 11.12(b) or 11.12(c) as no longer valid. With respect to such percentage amount, Lender may provide new documentation, pursuant to Sections 11.12(b) or 11.12(c), if applicable.

(e) If any Lender is entitled to a reduction in the applicable withholding tax, Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by subsection (b) or (c) of this Section 11.12 are not delivered to Agent, then Agent may withhold from any interest payment to such Lender not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(f) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent did not properly withhold tax from amounts paid to or for the account of any Lender due to a failure on the part of the Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless for all amounts paid, directly or indirectly, by Agent, as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent under this Section 11.12, together with all costs and expenses (including attorneys fees and expenses). The obligation of the Lenders under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

(g) Each Lender shall, at the request of Agent or Borrower, use commercially reasonable efforts to comply timely with any certification, identification information, documentation or other reporting requirements if such compliance is required by law, regulation, administrative practice or an applicable treaty as a precondition to exemption from, or reduction in the rate of, deduction or withholding of any Taxes for which Borrower is required to pay additional amounts to or for the account of such Lender pursuant to this Section 11.12; *provided* that complying with such requirements would not be materially more onerous (in form, in procedure or in substance of information disclosed) to such Lender than complying with the comparable information or other reporting requirements imposed under U.S. tax law, regulations and administrative practice.

(h) If Borrower is required to pay additional amounts to or for the account of any Lender pursuant to this Section 11.12 as a result of a change of law occurring after the date hereof, then such Lender agrees to designate a different lending office if such designation will eliminate or reduce such additional payment which may thereafter accrue and would not, in the good faith judgment of the Lender, otherwise be materially disadvantageous to such Lender.

(i) If any increased payment by Borrower is made to or for the account of any Lender pursuant to this Section 11.12 on account of Taxes then, if any Lender determines in its sole discretion that it has received or been granted a refund of, credit against or other remission of such Taxes, so long as no Default or Event of Default shall have occurred and be continuing, such Lender shall reimburse to Borrower such amounts as such Lender shall determine to be attributable to the relevant Taxes. Notwithstanding anything in this Agreement to the contrary, nothing in this Section 11.12 shall be construed to require Agent or any Lender to make available its tax returns (or other information its deems confidential) to Borrower or any other Person.

(j) If at the time any Additional Lender becomes a party to this Agreement or any other Lender is assigned an interest hereunder by another Person or designates a new lending office, notwithstanding anything in this Section 11.12, Borrower will not be required to make payments under this Section 11.12 with respect to taxes that are imposed on amounts payable to the Lender at such time

except to the extent that (i) such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from Borrower with respect to such withholding tax pursuant to this Section 11.12 (unless such assignment or designation was made at the request of Borrower in order to alleviate such additional amounts) or (ii) such Tax is an additional United States withholding tax that is imposed after the time such Lender becomes a party to this Agreement (or designates a new lending office) as a result of a change in law, rule, regulation, order or other decisions with respect to any of the foregoing by any Governmental Authority.

(k) Each Lender hereby authorizes Agent and Borrower to withhold any and all amounts due under Section 1471 or 1472 of the Code as in effect on the later of date of this Agreement or the date any Lender becomes a party to this Agreement from amounts payable to such Lender under this Agreement after December 31, 2012. Notwithstanding any other provision in this Agreement, Borrower shall not be required to make payments hereunder free and clear of withholding or deduction of those taxes imposed by Section 1471 and 1472 of the Code as in effect on the later of date of this Agreement or the date any Lender becomes a party to this Agreement, or to provide a gross-up or indemnity to any Lender for such withholdings or deductions, if such Lender fails to establish an exemption from withholding under such provisions.

#### 11.13. Collateral Matters.

(a) The Lenders hereby irrevocably authorize Agent at its option and in its discretion, to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by Borrower of all Obligations or (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrower certifies to Agent that the sale or disposition is permitted under the Transaction Documents (and Agent may rely conclusively on any such certificate, without further inquiry). The Borrower and the Lenders hereby irrevocably authorize Agent, based upon the instruction of a majority of the Lenders (based on their respective principal balances of the Loan), to credit bid and purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted by Agent under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code, or at any sale or foreclosure conducted by Agent (whether by judicial action or otherwise) in accordance with applicable law. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of a majority of Lenders (based on their respective principal balances of the Loan). Upon request by Agent or Borrower at any time, the Lenders will confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 11.13; provided that (1) Agent shall not be required to execute any document the terms of which, in Agent's discretion, would expose Agent to liability or create any obligation of Agent or entail any consequence to Agent other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of Borrower in respect of) all interests retained by Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

(b) Agent shall have no obligation whatsoever to any of the Lenders to assure that the Collateral exists or is owned by Borrower or is cared for, protected, or insured or has been encumbered, or that the Agent's Liens have been properly or sufficiently or lawfully created, perfected (except that Agent shall have the responsibility of ensuring that the appropriate Uniform Commercial Code financing statements are filed and continued), protected, or enforced or are entitled to any particular priority, or that any particular items of Collateral meet the eligibility criteria applicable in respect thereof or

whether to impose, maintain, reduce, or eliminate any particular reserve hereunder or whether the amount of any such reserve is appropriate or not, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Transaction Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender as to any of the foregoing, except as otherwise provided herein.

11.14. Restrictions on Actions by Lenders; Sharing of Payments.

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to Borrower. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings, to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's ratable portion of all such distributions by Agent, such Lender promptly shall (1) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (2) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their principal balances of the Loan; provided that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

11.15. Agency for Perfection. Agent hereby appoints each other Lender as its agent (and each Lender hereby accepts such appointment) for the purpose of perfecting the Agent's Liens in properties which, in accordance with Article 8 or Article 9, as applicable, of the Uniform Commercial Code can be perfected only by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

11.16. Payments by Agent to the Lenders. All payments to be made by Agent to the Lenders shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

11.17. Concerning the Collateral and Related Transaction Documents. Each Lender authorizes and directs Agent to enter into this Agreement and the other Transaction Documents in its capacity as

Agent. Each Lender agrees that any action taken by Agent in accordance with the terms of this Agreement or the other Transaction Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

11.18. Field Audits and Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each financial-related, field audit or examination report (each a "Report") prepared by Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any audit or examination will inspect only specific information regarding Borrower and will rely significantly upon the Books, as well as on representations of Borrower's personnel,

(d) agrees to keep in a confidential manner in accordance with Section 11.18 (i) all Reports and other material, non-public information regarding Borrower and their operations, assets, and existing and contemplated business plans, and (ii) any information provided to Borrower or Fund pursuant to a confidentiality agreement the terms of which have been disclosed to Lenders, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrower, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing: (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by Borrower or the Fund to Agent that has not been contemporaneously provided by Borrower to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Transaction Documents, to request additional reports or information from Borrower or the Fund, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Borrower the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Borrower, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrower a statement regarding the Loan, Agent shall send a copy of such statement to each Lender.

11.19. Several Obligations; No Liability. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Except as provided in Section 11.7, no Lender shall have any liability for the acts of any other Lender. No Lender shall be responsible to Borrower, the Fund or any other Person for any failure by any other Lender to fulfill its obligations to make Advances available hereunder, nor to advance for such Lender or on its behalf in connection with its Commitment, nor to take any other action on behalf of such Lender hereunder or in connection with the financing contemplated herein.

11.20. Legal Representation of Agent. In connection with the negotiation, drafting, and execution of this Agreement and the other Transaction Documents, or in connection with future legal representation relating to loan administration, amendments, modifications, waivers, or enforcement of remedies, Winston & Strawn LLP ("WS") only has represented and only shall represent Prodigy Shorewood Investment Management, LLC, in its capacity as Agent and such other roles as it may have under the other Transaction Documents, the Fund and its subsidiaries. Each Lender hereby acknowledges that WS neither represents it or its shareholders in connection with any such matters.

11.21. Additional Lenders. The parties hereto hereby agree that new Lenders may become party hereto from time to time by entering into a Counterpart Agreement (the "Additional Lender") with the Borrower and the Agent. Upon the execution and delivery of the applicable Counterpart Agreement by the Borrower, the Agent and an Additional Lender, (a) such Additional Lender agrees to be bound by all of the same obligations and rights as a "Lender" under this Agreement and the other Transaction Documents, to the same extent that it would have been bound if it had been a signatory to this Agreement, (b) such Additional Lender shall become a party to this Agreement as a "Lender" with the same force and effect as if originally named herein as a Lender and, without limiting the generality of the foregoing, hereby agrees to be bound by all obligations and liabilities of the Lenders hereunder, (c) each reference to a "Lender" in this Agreement and in any other Transaction Document shall be deemed to include such Additional Lender and (d) such Additional Lender shall be liable under this Agreement for all obligations incurred hereunder by such Additional Lender.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed this Agreement as of the date first above written by their duly authorized representatives.

**BORROWER:**

84 WILLIAM STREET NEWCO, INC.

By: \_\_\_\_\_

Name:

Title:

Contact Information for Notices:

c/o Prodigy Shorewood Investment Management, LLC,  
as Investment Manager  
40 Wall Street, 17<sup>th</sup> Floor  
New York, NY 10005  
Attention: Brian Newman  
Fax: (212) 966-1087  
Email: [bnewman@prodigynetwork.com](mailto:bnewman@prodigynetwork.com)

**AGENT:**

PRODIGY SHOREWOOD INVESTMENT  
MANAGEMENT, LLC

By: \_\_\_\_\_

Name:

Title:

Contact Information for Notices:

40 Wall Street, 17<sup>th</sup> Floor  
New York, NY 10005  
Attention: Brian Newman  
Fax: (212) 966-1087  
Email: [bnewman@prodigynetwork.com](mailto:bnewman@prodigynetwork.com)

**LENDER:**

**PRODIGY SHOREWOOD NEW YORK REP CO.**

By: \_\_\_\_\_

Name:

Title:

Contact Information for Notices:

c/o Estera Trust (Cayman) Limited  
75 Fort Street  
PO Box 1350  
Grand Cayman KY1-1108  
Cayman Islands  
Attn: James Macfee/Andre Slabbert  
Email: james.macfee@estera.com /  
andres.slabbert@estera.com

**LENDER:**

**IA CAPITAL STRUCTURES (IRELAND) PLC**

By: \_\_\_\_\_ 

Name:

Title:

Contact Information for Notices:

[ \_\_\_\_\_ ]

SCHEDULE I

Commitment

Date	Lender	Total Commitment	Total Advances
October 18, 2013	Prodigy Shorewood New York REP Co.	[\$19,000,000]	[\$19,000,000]
December 22, 2016	IA Capital Structures (Ireland) plc	\$12,032,700.00	\$12,032,700.00

**EXHIBIT A**

**COUNTERPART AGREEMENT**

**December 22, 2016**

This **COUNTERPART AGREEMENT**, dated December 22, 2016 (this "**Counterpart Agreement**") is delivered pursuant to that certain Amended and Restated Loan and Security Agreement, dated as of December 22, 2016 (as it may be amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "**Loan and Security Agreement**"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among 84 William Street NewCo, Inc., a Delaware corporation (the "**Borrower**"), Prodigy Shorewood Investment Management, LLC, a Delaware limited liability company, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "**Agent**") and the lenders party thereto from time to time.

**Section 1.** Pursuant to Section 11.21 of the Loan and Security Agreement, the undersigned hereby:

- (a) agrees that this Counterpart Agreement may be attached to the Loan and Security Agreement and that by the execution and delivery hereof, the undersigned becomes a Lender under the Loan and Security Agreement and agrees to be bound by all of the terms thereof;
- (b) agrees that its Commitment as a Lender shall be \$12,032,700.00;
- (c) represents and warrants that each of the representations and warranties set forth in the Loan and Security Agreement and each other Transaction Document and applicable to the undersigned is true and correct in all material respects (except for any such representation and warranty that is conditioned by materiality, in which case such representation and warranty is true and correct in all respects) as of the date hereof both before and after giving effect to this Counterpart Agreement, except to the extent such representation and warranty specifically relate to an earlier date, in which case such representation and warranty is true and correct in all material respects (except for any such representation and warranty that is conditioned by materiality, in which case such representation and warranty is true and correct in all respects) on and as of such earlier date; and
- (d) (i) agrees that this Counterpart Agreement may be attached to the applicable Transaction Documents and (ii) agrees that the undersigned will comply with all the terms and conditions of the applicable Transaction Documents as if it were an original signatory thereto.

**Section 2.** The undersigned agrees from time to time, upon request of Agent, to take such additional actions and to execute and deliver such additional documents and instruments as Agent may request to effect the transactions contemplated by, and to carry out the intent of, this Counterpart Agreement. Neither this Counterpart Agreement nor any term hereof may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party (including, if applicable, any party required to evidence its consent to or acceptance of this Counterpart Agreement) against whom enforcement of such change, waiver, discharge or termination is sought. Any notice or other communication herein required or permitted to be given shall be given in pursuant to Section 10.11 of the Loan and Security Agreement. In case any provision in or obligation under this Counterpart Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**Section 3.** THIS COUNTERPART AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

**Section 4.** This Counterpart Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Counterpart Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Counterpart Agreement.

[remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the undersigned has caused this Counterpart Agreement to be duly executed and delivered by its duly authorized officer as of the date above first written.

**IA Capital Structures (Ireland) plc, as a Lender**

By:  \_\_\_\_\_

Name:

Title:

**Address for Notices:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention:

Telecopier

ACKNOWLEDGED AND ACCEPTED,  
as of the date above first written:

**AGENT:**

PRODIGY SHOREWOOD INVESTMENT MANAGEMENT, LLC

By: \_\_\_\_\_  
Name:  
Title:

**BORROWER:**

84 WILLIAM STREET NEWCO, INC.

By: \_\_\_\_\_  
Name:  
Title:

**AMENDED AND RESTATED PROMISSORY NOTE  
(84 William Street)**

FOR VALUE RECEIVED, the undersigned, 84 WILLIAM STREET NEWCO, INC., a Delaware corporation (the "Borrower") promises to pay to the order of Prodigy Shorewood Investment Management, LLC, a Delaware limited liability company, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), on behalf of the Lenders (defined below), the principal amount of any and all Advances made from time to time under the Loan Agreement (defined below) or such lesser principal amount as may be outstanding from time to time, in United States Dollars and in immediately available funds as provided in that certain Amended and Restated Loan and Security Agreement of even date herewith (the "Loan Agreement") among Borrower, Agent, and the lenders identified on the signature pages thereof as well as any lender, from time to time, pursuant to Section 10.13 or 11.21 thereto (such lenders, together with their respective successors and permitted assigns, are referred to hereinafter each individually as a "Lender" and collectively as the "Lenders"), together with interest on the unpaid principal amount hereof from time to time outstanding at the rate hereinafter provided until paid, said principal and interest being payable as follows:

(a) from the applicable date of each Advance until such Advance is repaid in full, interest shall accrue on the outstanding principal balance of each such Advance at a fixed rate of sixteen and one-half of one percent (16.5%) per annum, and no payments of interest on or principal of this Note shall be due and payable prior to the Maturity Date;

(b) any time and from time to time, the Borrower may prepay, without penalty, any Loan and interests accrued thereon; and

(c) if not sooner paid, the entire balance of principal remaining unpaid, plus interest accrued thereon at the aforesaid rate not previously paid, fees and costs, if any, shall be due and payable in full on the fifth (5<sup>th</sup>) anniversary of the Recapitalization Date; *provided* that, to the extent that the Investment Manager extends the term of the Fund in accordance with Section 8.1 of the Operating Agreement, the Maturity Date shall be automatically and without the need of any action by any of the parties hereto, be extended by each such additional period determined by the Investment Manager pursuant to Section 8.1 of the Operating Agreement (the "Maturity Date").

All payments of principal of and interest on this Note shall be paid to the Agent's Account in accordance with the Loan Agreement.

For purposes of computing interest on the debt evidenced hereby, interest shall be calculated on the basis of a three hundred sixty (360) day calendar year based on the actual number of days elapsed. Payments made on account hereof shall be applied first to the payment of late fees, then to the payment of accrued and unpaid interest, and the remainder shall be credited to principal.

If payment of principal of or interest on the principal of this Note is not made on or before the Maturity Date (after giving effect to any applicable grace period), or if any other Event of Default has occurred and is continuing, then the Agent may, at its option (and if directed by Lenders holding a majority of the outstanding principal balance of the Loan, shall), declare the outstanding principal balance payable under this Note, together with all interest accrued and unpaid thereon and all other Obligations, to be immediately due and payable. In addition, the Agent shall have the right to exercise all rights and remedies of the Agent under the Loan Agreement or any other Transaction Document, applicable law or

otherwise, all such rights and remedies being cumulative and enforceable alternatively, successively and concurrently. No delay or omission on the part of the Agent in exercising any right hereunder, under the Transaction Documents or under applicable law shall operate as a waiver of such right or of any other right of the Agent, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or any other right on any future occasion. Acceleration of maturity, once claimed by the Agent, may at its option be rescinded by an instrument in writing to that effect; however, the tender and acceptance of a partial payment or partial performance shall not, by itself, affect or rescind such acceleration of maturity.

Upon the occurrence and continuance of an Event of Default, the Agent may, in the Agent's discretion, in addition to any other remedy the Agent may exercise, raise the rate of interest accruing on the unpaid principal balance of this Note by two (2) percentage points above the interest rate otherwise applicable hereunder (the "Default Rate"), regardless of whether the Agent elects to accelerate the unpaid principal balance as a result of such default, and effective immediately upon the Agent's declaration of such default. If judgment is entered against the Borrower on this Note, the amount of such judgment entered (which may include principal, interest, fees and costs) shall bear interest at such Default Rate as of the date of entry of judgment.

The Borrower shall pay all of the Agent's costs and expenses (including, without limitation, all reasonable attorneys' fees and expenses) incurred in connection with the enforcement of or preservation of rights under this Note on the terms provided in the Loan Agreement.

This Note may be prepaid in full or in part at any time, without premium or penalty. Any partial prepayment shall be applied against the principal sum then outstanding and shall not postpone the due date of any subsequent installment or change the amount of any such installment, until the principal amount hereof is paid in full.

The Borrower and any endorsers, guarantors and sureties jointly and severally waive presentment, protest and demand, notice of protest, demand and dishonor, and any and all lack of diligence or delays in the collection or enforcement hereof and expressly agree that this Note, or any payment hereunder, may be extended from time to time without in any way affecting the liability of the Borrower or any endorser, guarantor or surety hereof.

The Borrower represents and warrants that the loan evidenced by this Note was made and transacted solely for the purpose of carrying on or acquiring a business or commercial enterprise.

All rights and obligations hereunder shall be governed by the laws of the State of New York (without giving effect to principles of conflicts or choice of laws other than Section 5-1401 and Section 5-1402 of the New York General Obligations Law).

Any action or proceeding arising out of or brought to enforce the provisions of this Note shall be brought in any appropriate court in the State of New York, or in any appeals court therefrom having jurisdiction over the subject matter, and Borrower irrevocably consents to the jurisdiction of each such court.

In the event any provision of this Note (or any part of any provision) is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision (or remaining part of the affected provision) of this Note; but this Note shall be construed as if such invalid, illegal or unenforceable provision (or part thereof) had not been contained in this Note, but only to the extent it is invalid, illegal or unenforceable.

None of the terms or provisions of this Note may be excluded, modified, or amended except by a written instrument duly executed by Agent expressly referring hereto and setting forth the provision so excluded, modified or amended. This Note shall be binding upon the successors and assigns of the Borrower and inure to the benefit of the Agent (on behalf of itself and the Lenders) and its successors, permitted endorsees and permitted assigns.

All notices, demands, requests and other communications required pursuant to the provisions of this Note shall be in writing and shall be delivered in accordance with the Loan Agreement.

This Note is issued pursuant to, and is entitled to the benefits of, the Loan Agreement. This Note is secured pursuant to the terms of the Loan Agreement and certain other Transaction Documents and reference is made thereto for a statement of the terms and provisions thereof. Capitalized terms used herein and not otherwise defined herein are used with the respective meanings attributed to them in the Loan Agreement.

This Note is amended and restated this 21<sup>st</sup> day of September, 2016 by its duly authorized representative.

**84 WILLIAM STREET NEWCO, INC.**

By: \_\_\_\_\_

Name:

Title:

**REGISTERED OFFICE OF THE ISSUER**

**IA Capital Structures (Ireland) Plc**

22 Clanwilliam Square  
Grand Canal Quay  
Dublin 2, Ireland

**ARRANGER AND CALCULATION AGENT**

**FlexFunds LTD**

94 Solaris Avenue  
Camana Bay  
PO Box 1348  
Grand Cayman KY1-1108  
Cayman Islands

**TRUSTEE**

**Sanne Fiduciary Services Limited**

13 Castle Street, St Helier,  
Jersey JE4 5UT

**ISSUE AGENT AND  
PRINCIPAL PAYING AGENT**

**Citibank N.A., London Branch**

Citi Centre, Canada Square Canary Wharf,  
London E14 5LB,  
United Kingdom

**AUDITORS OF THE ISSUER**

**PricewaterhouseCoopers**

One Spencer Dock,  
North Wall Quay,  
Dublin 1, Ireland

**PLACING AGENT AND SALE AGENT**

**GWM Group, Inc.**

177 Broad Street, 7<sup>th</sup> Floor, Suite 708  
Stamford, CT 06901  
USA

**GWM LTD**

Cumberland House, 7<sup>th</sup> Floor  
1 Victoria Street  
Hamilton HM 11  
Bermuda

**LEGAL ADVISERS**

*To the Trustee as to Irish Law:*

**A&L Goodbody**

IFSC  
North Wall Quay  
Dublin 1  
Ireland

*To the Issuer as to Irish Law:*

**Mason Hayes & Curran**

South Bank House,  
Barrow Street  
Dublin 4  
Ireland