

Number: \_\_\_\_\_

# **Frontier Angel Fund II, LLC**

**A minimum of \$1,000,000 and  
maximum of \$5,000,000  
of  
Membership Units**

**Confidential Private Placement Memorandum**

**Updated January 10,**

**Confidential Private Placement Memorandum**  
Updated January 10, 2014

**\$1,000,000 Minimum**  
**\$5,000,000 Maximum**

**Frontier Angel Fund II, LLC**

**20 to 100 Units at a Capital Commitment of \$50,000 Per Unit**

Frontier Angel Fund II, LLC (we refer to Frontier Angel Fund II, LLC in this Memorandum as the “Company”) is a newly organized Montana limited liability company that was formed to be an angel capital fund comprised of accredited investors in and around or with connections to Montana. The Company is in the process of raising capital and is seeking members (“Members”) who are financially sophisticated and qualify as “accredited investors” as defined in Rule 501 of Regulation D under the Securities Act of 1933 (the “Act”). An investment in the Company is risky, and you should not consider investing in the Company unless you can afford to lose the money you invest.

The Company is seeking to raise between \$1,000,000 and \$5,000,000 in commitments of its Members to contribute capital to the Company. To be a Member you must purchase a membership unit of the Company (a “Unit”) by committing to contribute \$50,000 per Unit. Fifteen percent of this capital commitment (or \$7,500 per Unit) will be due when you subscribe and the \$42,500 balance per Unit must be contributed in various installments when called by the Company to the Company’s Members from time to time. **If you fail to make any required capital contribution in respect of any Unit within 30 days of receiving a written notice for such contribution from the Company, you will forfeit your Unit and your entire capital account will be allocated to the remaining Members. In other words, if you fail to pay any portion of your committed capital when called by the Company, you will lose your entire investment in the Company. The Executive Committee (as defined below) may, but is not required to, allow you to “cure” by making your defaulting payment with interest at 0.033% percent per day.**

The Chair of the Executive Committee, initially Larry Cates, is vested with the authority to accept or reject subscriptions for Units (and to approve the admission of new Members) until the earlier of: (a) July 31, 2015, and (b) the date on which the first investment is made by the Company (the “Initial Investment”). Any subsequent issuance of Units shall be subject to approval by the Executive Committee.

The Company has been organized pursuant to the operating agreement of the Company enclosed with this Memorandum (the “Operating Agreement”), but it will not commence investment operations unless and until subscriptions for a minimum of 20 Membership Units (\$1,000,000), together with the initial capital contribution of \$7,500 per Unit, are received by January 31, 2014. All subscriptions will be held in escrow by the Company, which will deposit the contributions into an interest-bearing account. **In the event the Company does not obtain the minimum subscriptions for 20 Membership Units with initial capital contributions of \$7,500 per Unit by January 31, 2014, all expenses related to organizing the Company will be paid from the initial capital contributions, the amount of initial capital contributions remaining shall be returned to the initial Members, and the Company shall be dissolved. The organizational expenses of the Company, including initial fees paid to the Servicing Company (as defined below) and legal fees are expected to be approximately \$35,000.**

The Company will be managed by a board of managers (the “Executive Committee”) that will manage the general business and affairs of the Company. Members of the Executive Committee must be Members and will initially be William Burg, Susan Carstensen, Larry Cates, Leon Liebman and Jon Marchi. Subsequent members of the Executive Committee will be chosen by the Executive Committee.

Under the Operating Agreement, all decisions to make investment in portfolio companies are to be approved by a vote of the holders of Active Units (together, the “Investment Committee”).

The Company plans to enter into a servicing agreement with Liz Marchi Consulting, LLC (the “Servicing Company”), pursuant to which the Servicing Company will (a) coordinate the Company’s communications to Members regarding meetings, communications to Investment Committee members regarding due diligence on prospective investments, record keeping of monetary and other transactions and communications, (b) coordinate with the Treasurer to prepare and submit annually a proposed budget for consideration and approval by the Executive Committee, (c) provide intake services and act as the Company’s first point of contact for companies looking for capital, and (c) market the Company’s activities in order to increase opportunities to invest.. The Servicing Company will not be responsible for investment advice or due diligence with respect to prospective portfolio companies and the servicing agreement will not provide for compensation to the Servicing Company for investment advice or due diligence services. The Servicing Company will not provide tax filing, auditing or legal services.

There are two classes of Units for which investors can subscribe: Active Units and Passive Units. Only holders of Active Units will be entitled to vote on the approval of investments in portfolio companies. Neither holders of Active Units nor holders of Passive Units will be entitled to vote on any other Company matters except with respect to extension of the term of the Company, dissolution of the Company, amendment of the Operating Agreement, reorganization of the Company, and any other actions which may be set forth in the Operating Agreement or provided under applicable law.

Although the Servicing Company will not be required to make capital contributions to the Company, the Company will issue up to two Units (“Special Units”) to the Servicing Company. One half of one Special Unit will be issued on December 1 of each year from December 1, 2014 until December 1, 2017, provided that the servicing agreement has not been terminated and the Servicing Company has continued to provide the services described therein through such date of issuance. Each one-half of each Special Unit will be fully vested upon issuance and will have the same distribution rights as one-half of each other Unit. Only one of the Special Units will be an Active Unit, with the same voting rights of each other Active Unit. In the event the Servicing Company materially breaches the servicing agreement, the Company can terminate the Servicing Agreement and cause the Servicing Company to forfeit any Special Units.

Distributions of cash or other assets of the Company shall be made from time to time when, and in the amounts, determined by the Executive Committee and shall be allocated among the Members in the following proportions:

- (a) 3% to the Servicing Company; and
- (b) 97% to the holders of Units (including Active Units and Passive Units and including the Servicing Company, if Special Units have been issued) pro rata in proportion to such Units.

**The Company is offering the Units under exemptions from registration requirements under federal and state securities laws. Because of this, the Units will be subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act of 1933, as amended, and the applicable state securities laws, pursuant to registration or exemption therefrom. Investors should be aware that they may be required to bear the financial risks of this investment for an indefinite period of time. The Units have not been registered with or approved by the US Securities and Exchange Commission, the Securities Commissioners or Securities Departments of any state or any other governmental agency.**

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### **ENCLOSURES:**

Subscription Agreement  
Operating Agreement  
Servicing Agreement

## EXECUTIVE SUMMARY

Frontier Angel Fund II, LLC is a new angel capital fund that is being formed by accredited investors in and around or with connections to Montana. The Company's objective is to provide both favorable investment returns to investors and to provide capital to and promote small business and economic development, particularly in and around Montana. The Company is seeking subscriptions under this offering for Units in the Company. Several Montana business owners and business professionals have helped organize the Company and started this offering. These people have not been paid to do this (except for reimbursement of direct costs). In addition, the Servicing Company has been paid a \$7,000 fee for organizational expenses.

The following summarizes certain of the characteristics of the Company and this offering. You should, however, read the rest of this Memorandum for a more detailed summary of the Company and the offering and certain risks of investing in the Company, as well as the Operating Agreement, which sets forth the terms of membership in the Company.

**Risks:** Investment in the Company is risky. If you cannot afford to lose your entire investment, you should not make this investment. If you can afford to take risks in making investments in portfolio companies, you should nevertheless carefully consider the risks that we describe below under the caption "Risk Factors."

**Company:** The Company is a Montana limited liability company. The Articles of Organization and the Operating Agreement of the Company (the "Operating Agreement") define the rights and obligations of the holders of interests in the Company ("Units"). Each investor must agree to be bound by the Operating Agreement.

**Investment Objective:** The Company intends to provide capital for emerging and growth businesses in Montana and other states. Most investments are expected to be in early- to mid-stage private companies and follow-on investments in such companies. The Company may also invest in later-stage private companies and in private companies that are undergoing generational and other ownership transitions.

**LLC Unit Interests Proposed to be Offered to Investors:** The Company is offering a minimum of 20 and a maximum of 100 Units, with a total capital commitment of \$50,000 per Unit. These Units will be issued in two classes: Active Units and Passive Units.

At least 10 and up to 40 of the offered Units, as determined by the Executive Committee, will be issued as "Active Units." The holders of Active Units will comprise the "Investment Committee" and will have the right to vote on the Company's investments in portfolio companies as specified in the Operating Agreement.

The remainder of the Units offered to investors will be issued as "Passive Units." The holders of Passive Units will not make decisions on Company investments and, under the Operating Agreement, will generally not have the right to vote on Company matters except regarding extension of the term of the Company, the dissolution of the Company, reorganization and bankruptcy, amendment of the Operating Agreement, or as otherwise required by law.

No Member will be allowed to hold more than one Active Unit. A Member may hold multiple Passive Units.

<b>Capital Commitment; Capital Calls:</b>	Each Active Unit and each Passive Unit (except for the Special Units) will require a capital commitment of \$50,000 per Unit, \$7,500 of which will be payable upon such Member's subscription for investment and the remainder of which is expected to be payable, from time to time, within 30 days of each capital call to fund investments in portfolio companies and Company expenses.
<b>Company Size; Multiple Closings:</b>	The Company will not close the offering or issue any Units unless it receives capital commitments totaling at least \$1,000,000 (at least 20 Units) with at least 10 Active Units by January 31, 2014. The Company will be able to issue additional Units for investment after the initial closing up to 100 Units.
<b>Special Units; 3% Carried Interest:</b>	The Servicing Company will be a "Special Member" of the Company and will be issued "Special Units" having the same voting and economic rights as the other Units and the right to receive a "carried interest" of 3% of all distributions made by the Company.
<b>Servicing Company Contract; Monthly Fees; Commissions; Reimbursement:</b>	<p>The Company plans to enter into a servicing agreement with Liz Marchi Consulting, LLC (the "Servicing Company"), pursuant to which the Servicing Company will (a) coordinate the Company's communications to Members regarding meetings, communications to Investment Committee members regarding due diligence on prospective investments, record keeping of monetary and other transactions and communications, (b) coordinate with the Treasurer to prepare and submit annually a proposed budget for consideration and approval by the Executive Committee, (c) provide intake services and act as the Company's first point of contact for companies looking for capital, and (d) market the Company's activities in order to increase opportunities to invest. The Servicing Company will not be responsible for investment advice or due diligence with respect to prospective portfolio companies and the servicing agreement will not provide for compensation to the Servicing Company for investment advice or due diligence services. The Servicing Company will not provide tax filing, auditing or legal services.</p> <p>Unless terminated either by the Company or by the Servicing Company, the Servicing Company contract will terminate after four years.</p> <p>In addition to the Special Units, if any, and carried interest received by the Servicing Company, the servicing agreement requires the Company to pay the Servicing Company (i) a servicing fee of \$1,667, payable on the first day of each month, (ii) commissions equal to 15% of each cash payment made to the Company by a third-party sponsor of the Company if the sponsorship payment has been secured by the Servicing Company, and (iii) an initial payment of \$7,000, which initial payment has already been paid.</p> <p>These fees are expected to cover any office expense, phone, website, supplies, postage and consulting work related to coordinating the Company and administering its investments in portfolio companies. However, the Company will reimburse the Servicing Company for Company-related travel expenses up to \$5,000 per year and other expenses that are pre-approved by the Executive Committee.</p>
<b>Organizational Expenses, Operational Expenses</b>	The Company will pay all organizational expenses related to the formation of the Company and the offering of Units. The Company will also pay for all operational expenses of the Company (including all legal, accounting and similar expenses, as approved by the Executive Committee). The organizational expenses of the Company are expected to be approximately \$35,000.

**Executive Committee:** The affairs of the Company will be managed by an Executive Committee made up of five to seven Members of the Company owning Active Units. The initial members of the Executive Committee will initially be William Burg, Susan Carstensen, Larry Cates, Leon Liebman and Jon Marchi. Subsequent members of the Executive Committee shall be chosen by the Executive Committee.

All capital calls (for investments in portfolio companies, expenses or otherwise) in respect of Units will be determined by the Executive Committee.

**Investment Committee:** The holders of Active Units will comprise the Investment Committee and, voting together, will make all decisions regarding the Company's investment in and divestment of investments in portfolio companies. The Investment Committee will be responsible for screening and investigating prospective portfolio companies and investment opportunities and for making decisions to invest. Decisions by the Investment Committee will be made by a majority vote of the Active Units. Members of the Investment Committee will be expected to take part in screening, due diligence, research and investment decisions regarding potential portfolio companies of the Company. In the event that a holder of an Active Unit is, in the reasonable discretion of the Executive Committee, not reasonably active in participating on the Investment Committee, such Member may be removed by the Executive Committee and its Active Unit will become a Passive Unit.

**Term of the Company:** The Company will dissolve no later than December 31, 2028 unless holders of two-thirds of the Units, voting together, vote to amend the Company's Articles of Organization to extend the term of the Company.

**No Restriction on Investment Period:** It is expected that the Company will make most investments in portfolio companies during the first approximately six to eight years of its term and will hold most investments during the subsequent three to five years. However, the Company will be able to call unpaid committed capital for any purpose, at any time during the term of the Company, subject to the discretion of the Executive Committee.

**Failure to Make Capital Contributions:** Any Member that fails to make any required contribution of committed capital with respect to any Unit held by such Member within 30 days of receiving notice of a capital call from the Company may be required to forfeit his or her Unit. Upon the forfeiture of a Member's Unit, the entire capital account of such defaulting Member with respect to such Unit shall be allocated pro rata among the capital accounts in respect of the remaining Units. **Therefore if a Member fails to pay any portion of its committed capital in respect of a Unit when called by the Company, such Member may lose its entire investment in the Company with respect to such Unit.**

**Distributions:** Proceeds from all investments in portfolio companies are expected to be distributed as soon as commercially feasible after received, subject to the payment of expenses of the Company, including fees payable to the Servicing Company. However, the Executive Committee may distribute cash of the Company to the Members at such times as it may determine in its discretion. All distributions shall be made to the Members in the following proportions:

- (a) 3% "carried interest" to the Servicing Company; and
- (b) 97% to the holders of Units (including Active Units and Passive Units, and including the Servicing Company if Special Units have been issued) pro rata in proportion to such Units.

The Company may also make cash distributions to the Members as determined by the

Executive Committee to pay tax liabilities in respect of distributions from the Company.

**Tax Allocations:** Tax gains and losses from the Company will “flow-through” to Members. They will be allocated among the Members according to distributions.

**Transfer of Active or Passive Units:** Any transfer of Active or Passive Units will need to be approved in writing by the Executive Committee. The Executive Committee may withhold its approval to the transfer of any Unit in its sole discretion. Notwithstanding the forgoing, any Member may, without restriction, upon such Member’s death or disability, transfer any or all of such Member’s Units; provided that any such Unit that is an Active Unit will become a Passive Unit upon such transfer.

**Loss, Reissuance of Special Units:** If the Company terminates the Servicing Agreement in connection with a breach of the servicing contract by the Servicing Company, the Company may cause the Servicing Company to forfeit any Special Units and all rights to any future distributions from the Company in respect of such Special Units. The Company may subsequently issue Special Units to a new Member.

**Indemnification:** To the fullest extent permitted by law, each Member, each member of the Executive and Investment Committees, each officer of the Company, the Servicing Company, Elizabeth C. Marchi, and their successors and assigns (each individually, an “Indemnatee”) shall be indemnified and defended by the Company from and against any and all losses, claims and liabilities incurred by such Indemnatee arising out of or in connection with the business or the operation of the Company and by reason of the Indemnatee’s status or relationship with the Company if (i) the Indemnatee acted in good faith and in a manner he or she reasonably believed to be in the best interests of the Company and, with respect to any criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful, (ii) the Indemnatee’s conduct did not constitute fraud, gross negligence, willful misconduct or a material breach of the terms of the Operating Agreement and (iii) the Indemnatee’s conduct did not involve a transaction from which the Indemnatee derived an improper personal benefit.



## **RISK FACTORS**

An investment in the Company is intended only for accredited investors who have experience making significant investments directly in companies. An investment in the Company involves a high degree of risk and is suitable only for persons who have no need for liquidity and can afford the loss of their entire investment. Investors should consider the following factors, among others, in evaluating an investment in the Company:

**Speculative Nature of  
Angel and Venture  
Capital Investments:**

Angel and venture capital investments involve a high degree of risk. There can be no assurances that the Company will be able to invest its capital on attractive terms or with positive results. Typical emerging, startup and similar, companies are highly dependent on the skills of a small group of key executives and operate with minimal cash resources. They are comparatively more vulnerable to developments such as rapid changes in technology, fluctuations of demand and prices and to competition from larger, more well-established companies and they are riskier and have higher rates of failure. There is no assurance that investments by the Company in portfolio companies will be profitable or that substantial losses will not occur. In fact, it is likely that some portfolio companies will not increase in value or will fail.

**Lack of Liquidity  
of Angel and Venture  
Capital Investments:**

The Company's investments will be in companies whose securities are not publicly traded and not marketable. Company investments are likely to remain illiquid for a considerable period of time.

**Unspecified Investments:**

The Investment Committee will make decisions as to the companies in which the Company will invest and the form each investment will take. Individual Members will not have the ability to veto any such decision or to withdraw their investment because they disagree with the decision, and holders of Passive Units will have no ability to vote for or against any such decisions. Accordingly, the character of such investments will be primarily a function of the knowledge and skills of the holders of Active Units.

**Limited Fund Size;  
Concentration of  
Investments:**

Because the Company will have commitments for only \$1,000,000 if the minimum number of Units is sold and only \$5,000,000 if the maximum number of Units are sold, the number of investments in portfolio companies made by the Company is likely to be small. Diversification of investment will be limited and it is possible that the Company's investments will be concentrated in only a small number of companies or in only one or a small number of industries and that the performance of the Company will be dependent on the performance of only a small number of portfolio companies.

**Consequences of Failure  
to Make Capital  
Commitment Calls:**

**Any Member (other than the Servicing Company) that fails to make any contribution of its committed capital within 30 days of receiving notice of a capital call from the Company will forfeit its Unit (provided that the Executive Committee may, in its sole discretion, allow such defaulting Member to "cure" such default without forfeiture of its Unit by paying such contribution amount plus interest at a rate of 0.033% per day after the 30-day capital call notice period if the defaulting Member makes such payment within a cure period specified by the Executive Committee in its discretion). Upon the forfeiture of a Member's Unit, the entire Capital Account of such defaulting Member with respect to such Unit shall be allocated pro rata among the Capital Accounts in respect of the remaining Units. Therefore if a Member fails to pay any portion of its Committed Capital in respect of a Unit when called by the Company, such Member will lose its entire investment in the Company with respect to such Unit.**

<b>Follow-On Investments:</b>	In many cases, portfolio companies will require total investment in excess of the initial investment made by the Company. In many cases, these “follow-on” investments may be on terms that are different from, and in some cases less favorable than, initial investments by the Company. There can be no assurances that the Company will be in a position to make follow-on investments when required or that its initial interest in a portfolio company will not be diluted.
<b>Competition for Investment:</b>	There is a high degree of competition among angel and venture capital investment funds attractive investment opportunities, and this heightened competition could make attractive opportunities less available or more costly. More importantly, the number of suitable portfolio company investments within (and outside of) Montana is limited, and the Company may be forced to invest a substantial amount of its capital outside of Montana and/or to delay for a significant amount of time the full investment of its committed capital.
<b>Limited Transferability of Company Interests:</b>	The transferability of Units will be substantially restricted. No transfers of Units will be allowed (and no transferee may be admitted as a Member of the Company) without compliance with the conditions specified in the Operating Agreement, which includes approval by the Executive Committee (except for certain transfers in the event of death or disability) and compliance with federal and state securities laws. No public market for Units will develop and therefore the Units will not be readily marketable. Consequently, Members may not be able to liquidate their investment in the Company in the event of emergency or for any other reason.
<b>Operating Expenses:</b>	The operating expenses payable by the Company are not yet determinable. It is probable that the operating expenses of the Company will exceed its income until investments in portfolio companies are sold, and it is possible that this will continue throughout the term of the Company.
<b>No Operating History:</b>	The Company is a new business with no operating history. Because investment decisions will be made by the Active Members, there is no information upon which potential investors can base a decision regarding the potential performance of the Company. The operations and returns of Frontier Angel Fund, LLC (the “Prior Fund”) are incomplete, and the Prior Fund is comprised of substantially different members and different investment and governance structures than the Company. Therefore, in the Company’s view, the operations and returns of the Prior Fund are not predictive of the operations and returns of the Company. Nevertheless, the Company is happy to provide certain information about the performance of the Prior Fund to prospective investors upon request.
<b>High Market Volatility and Illiquidity of Portfolio Company Investments:</b>	The market values of investments in private companies (especially seed capital and early-stage investments) may be highly volatile and speculative. Private investments made in such companies will be illiquid. Normally, there will be no collateral to protect an investment once made. In many cases, investments in portfolio companies will be long term in nature and may require years from the date of initial investment before disposition. Sales of investments in portfolio companies may not be possible and, if possible, may be made at substantial discounts from cost.
<b>Tax Risks:</b>	There may be risks associated with the federal income tax aspects of an investment in the Company. Each prospective investor should consult a tax advisor relative to such risks in the context of such investor’s own tax situation.

## THE OFFERING AND RELATED MATTERS

### The Offering

The Company is seeking to raise between \$1,000,000 and \$5,000,000 in commitments of its Members to contribute capital to the Company. To be a Member you must commit to purchase at least one membership unit of the Company (a "Unit") at the price of \$50,000 per Unit. If you decide to invest, 15% of the price per Unit (or \$7,500 per Unit) will be due when you subscribe and the \$42,500 balance per Unit will be due in various installments when called by the Company by written notice to the Company's Members from time to time. If you fail to make any required capital contribution in respect of any Unit within 30 days of receiving a written notice for such contribution from the Company, you will forfeit your Unit and your entire capital account will be allocated to the remaining Members. In other words, if you fail to pay any portion of your committed capital when called by the Company, you will lose your entire investment in the Company. The Executive Committee (as defined below) may, but is not required to, allow you to "cure" by making your defaulting payment with interest at 0.033% percent per day.

The Company will not commence investment operations unless and until subscriptions for a minimum of 20 Membership Units (\$1,000,000), together with the initial capital contribution of \$7,500 per Unit, are received by January 31, 2014. All subscriptions will be held in escrow by the Company, which will deposit the contributions into an interest-bearing account. In the event the Company does not obtain the minimum subscriptions for 20 Membership Units with initial capital contributions of \$7,500 per Unit, by January 31, 2014, all expenses related to organizing the Company shall be paid from the initial capital contributions, the amount of initial capital contributions remaining will be returned to the initial Members, and the Company will be dissolved.

There are two classes of Units for which investors can subscribe: Active Units and Passive Units. Only holders of Active Units shall be entitled to vote on the approval of investments in portfolio companies. Neither holders of Active Units nor holders of Passive Units are entitled to vote on any other Company matters except with respect to extension of the term of the Company, dissolution of the Company, amendment of the Operating Agreement, reorganization of the Company, and any other actions which may be set forth in the Operating Agreement or provided under applicable law.

The Chair of the Executive Committee, initially Larry Cates, is vested with the authority to accept or reject subscriptions for Active Units and Passive Units (and to approve the admission of new Members) until the earlier of: (a) July 31, 2015, and (b) the date on which the first investment is made by the Company (the "Initial Investment"). Any subsequent issuance of Units shall be subject to approval by the Executive Committee.

If you wish to purchase Units, you should (i) complete and sign a Subscription Agreement (the "Subscription Agreement") in the form enclosed with this Memorandum, along with the Company's Code of Conduct attached thereto, (ii) make a check payable to Frontier Angel Fund II, LLC for fifteen percent (\$7,500) of the purchase price per Unit and (iii) forward the completed and executed Subscription Agreement and Code of Conduct along with the check to Frontier Angel Fund II, LLC, c/o Chair, 40979 Valley View Road, Suite B, Polson, MT 59860. The Company and the Chair, on behalf of the Company, reserve the right to reject any Subscription Agreement and to return the purchase price.

### Investor Qualifications

The Units are offered only to "accredited investors" as defined in Rule 501(a) of Regulation D of the Securities and Exchange Commission and only to residents of the United States. "Accredited investors" generally include:

- (a) Any natural person whose net worth, or joint net worth together with such individual's spouse, exceeds \$1,000,000;
- (b) Any natural person whose income exceeded \$200,000, or whose joint income with his or her spouse exceeded \$300,000, in the last two calendar years and who reasonably expects an income in excess of such amount in the current calendar year;

- (c) Most banks and savings institutions, whether acting in their individual or in fiduciary capacities, any broker/dealer registered under the Securities Exchange Act of 1934, most insurance companies, investment companies registered under, any business development company defined in, or any private business development company defined in the Investment Company Act of 1940, Small Business Investment Companies, any state or municipal employee plan with assets exceeding \$5,000,000, employee benefit plans subject to the provisions of the Employee Retirement Income Security Act of 1974 which either have total assets in excess of \$5,000,000 or as to which investment decisions are made by a fiduciary which is either a bank, insurance Company or registered investment adviser;
- (d) Any (i) corporation, (ii) nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code, (iii) business trust, or (iv) partnership, in each case if such entities have assets in excess of \$5,000,000 and were not established for purposes of making this investment;
- (e) Any officer or director of the Company; and
- (f) Any entity each of whose equity owners separately meets any of the criteria set forth above.

Each potential purchaser of the Units will be required to represent in the Subscription Agreement that the purchaser meets one or more of the above criteria for qualification as an accredited investor. In addition, each such purchaser will be required to represent that (i) the purchaser is a resident of the United States (ii) that the purchaser is able to bear the economic risk of an investment in the Units, (iii) that together with the purchaser's representative, if any, the purchaser has such knowledge and experience in financial and business matters that the purchaser is able to evaluate an investment in the Units, (iv) that the purchaser has had the opportunity to consult with tax, legal and accounting advisors regarding the Company, the offering and the purchase of Units; and (v) that the purchaser has been given the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain additional information regarding the Company, the offering and the purchase of Units.

### **Restrictions on Transferability of Units**

The Company has not registered the offering of the Units under the Securities Act of 1933, as amended (the "Act") or the securities laws of any state. The Company is offering the Units in reliance on an exemption from registration contained in the Act and applicable state securities laws. Members may not sell the Units unless such sale is registered under the Act or unless an exemption from such registration is available. Any purchaser of Units must bear the economic risk of an investment for an indefinite period of time. Purchasers should seek independent legal advice regarding the effect of these restrictions and investment representations on the transferability of the Units offered pursuant to this Memorandum. The Units have not been registered with or approved by the Securities Commissioner of any state, or the US Securities and Exchange Commission, or any other governmental agency.

Furthermore, except in the event of death or disability of a Member, no Unit may be transferred without the prior written consent of the Executive Committee.

## **INVESTMENT OBJECTIVES AND POLICIES**

### **Principal Investment Objectives**

The Company is expected to provide capital for emerging and growth businesses in Montana and in other states. Most investments would be in early- to mid-stage private companies and follow-on investments in such companies. The Company might also invest in later-stage private companies and in private companies that are undergoing generational and other ownership transitions. The Company may also co-invest with other angel investment funds, other funds, or alongside individual Members of the Company.

If available, a majority of the Company's investments is likely be in seed to early stage private companies (i.e. investments in companies with an unproven idea that are just being formed or companies that have been formed and are in the process of developing a product or idea). It is an objective of the Company to provide long-term

capital appreciation to its Members and to encourage the economic development in Montana as well as the development of new technologies.

The Company may also, however, invest in private companies with more substantial operating histories. These investments may generally consist of two types—companies where the product or service has been developed but where additional capital is required to introduce that product or service to the market, or established companies that are closely held and that are undergoing management transition.

## MANAGEMENT

The business and affairs of the Company will be managed by a board of managers (the “Executive Committee”) comprised of between five and seven people, all of whom will be Members of the Company. Unless otherwise provided in the Operating Agreement, action by a majority of the Executive Committee members present at any meeting will constitute action by the Company. The initial members of the Executive Committee shall be William Burg, Susan Carstensen, Larry Cates, Leon Liebman and Jon Marchi, and thereafter members of the Executive Committee shall be elected or removed from time to time by a majority of the Executive Committee. Except as otherwise provided under applicable law, no member of the Executive Committee is to be personally liable for any liability of the Company and each member of the Executive Committee will be indemnified by the Company to the extent allowed by applicable law.

The Executive Committee may delegate authority to act on behalf of the Company to one or more officers or subcommittees, and, pursuant to the Operating Agreement, the Company’s officers will include a Chair, a Secretary and a Treasurer. These officers will be charged with day-to-day responsibility for the affairs of the Company, and the Chair will preside at meetings of Members and of the Executive Committee and may approve the issuance of Units of the Company prior to the Initial Investment. The Executive Committee may authorize the officers to take actions, including executing documents, on behalf of the Company.

Although the Executive Committee will elect the officers from time to time, the following individuals have agreed to serve as initial officers:

<u>Name</u>	<u>Position</u>	<u>Units Held</u>
Larry Cates	Chair	1 Active Unit
Elizabeth Marchi	Secretary	Up to 2 Special Units
William Burg	Treasurer/Tax Matters Partner	1 Active Unit

The Servicing Company, in addition to coordinating the formation and organization of the Company, will (a) coordinate the Company’s communications to Members regarding meetings, communications to Investment Committee members regarding due diligence on prospective investments, record keeping of monetary and other transactions and communications, (b) coordinate with the Treasurer to prepare and submit annually a proposed budget for consideration and approval by the Executive Committee, (c) provide intake services and act as the Company’s first point of contact for companies looking for capital, and (d) market the Company’s activities in order to increase opportunities to invest (collectively, the “Services”). The Servicing Company will not be responsible for investment advice or due diligence with respect to prospective portfolio companies and the servicing agreement will not provide for compensation to the Servicing Company for investment advice or due diligence services. The Servicing Company will not provide tax filing, auditing or legal services. The Servicing Company will not advise the Company whether or not to invest in any securities. The Servicing Company will not advise the Company as to the value of securities prior to investment by the Company, but will monitor the value of portfolio company securities held by the Company on an informational basis in support of the Investment Committee as part of the Services. The Servicing Company’s compensation will be paid by the Company, regardless of the amount or type of Services performed from time to time by the Servicing Company for the Company.

Unless terminated earlier by the Company or the Servicing Company, the Servicing Company contract will terminate after four years.

The Servicing Company will be a “Special Member” of the Company and will be issued “Special Units” having the same voting and economic rights as the other Units and the right to receive a “carried interest” of 3% of all distributions made by the Company.

In addition to the Special Units, if any, and carried interest received by the Servicing Company, the servicing agreement requires the Company to pay the Servicing Company (i) a servicing fee of \$1,667, payable on the first day of each month, (ii) commissions equal to 15% of each cash payment made to the Company by a third-party sponsor of the Company if the sponsorship payment has been secured by the Servicing Company, and (iii) an initial payment of \$7,000, which initial payment has already been paid.

These fees are expected to pay for office expense, phone, website, supplies, postage and consulting work related to coordinating the Company and administering its investments in portfolio companies. However, the Company will reimburse the Servicing Company for all Company-related travel expenses up to \$5,000 per year and other expenses that are pre-approved by the Executive Committee.

The Company has hired outside counsel to assist in the formation of the Company. The Company will likely hire legal counsel to review matters in connection with some of the investments in portfolio companies made by the Company, and to deal with other legal issues that may arise in the future. The Company will provide financial statements to Members annually and will retain a firm of certified public accountants to assist with the preparation of tax returns and K-1s that will be provided to Members and, at the request of a majority of Members, to prepare audited financial statements.

## **MANAGEMENT BIOGRAPHIES**

Larry Cates was raised in Kansas City, and attended the University of Kansas (B.S. Advertising/Marketing '70, M.B.A. '72). His career began in 1972 with Hallmark Cards in Brand Management. In 1976 he joined PepsiCo (Pizza Hut Division) and served as Sr. Director-Marketing. In 1980, he was promoted to International general management, responsible for both company and franchise operations outside the US for 17 years (Pizza Hut, Taco Bell, KFC). Positions included Regional Director, Australasia (Sydney); Sr. VP Canada/Latin America (Toronto/Mexico City/Miami); CEO Pizza Hut UK Joint Venture (London), and SVP Franchising and Development, Europe/Africa/Middle East (London). In 1997, Larry joined Applebee's International (Kansas City), and served as President, International Division responsible for Applebee's company/franchise expansion outside the US. He retired from corporate life in 2004, and now resides in Whitefish, Montana with his wife Helen. In addition to his active interests in the Western Montana Real Estate Fund and the Frontier Angel Fund, Larry engages in part-time consulting to restaurant/retail chains in the areas of development strategy, operations and franchising. He currently owns Cates Investments, LLC, which invests in local real estate and businesses. He also serves on the Advisory Board of Directors of Margaritas, Inc, a casual dining restaurant chain (Portsmouth, NH).

Elizabeth (“Liz”) Marchi helped organize Frontier Angel Fund, LLC (the “Prior Fund”) and is the sole member of Liz Marchi, LLC, the fund coordinator for the Prior Fund. Ms. Marchi was the President/CEO of Montana West Economic Development/Flathead County Economic Development Authority, an organization that builds economic and job opportunities in the Flathead Valley, Montana region. She is a graduate of Hollins University in Roanoke, Virginia where she majored in Politics and has served as a trustee and President of the Alumnae Association. She has worked as a commercial credit analyst, corporate relocation director. Prior to moving to Montana, Mrs. Marchi was the Executive Director of Communications and Public Policy for the Winston-Salem Chamber of Commerce in North Carolina. Ms. Marchi is a member of the Montana Academy of Distinguished Entrepreneurs (MADE), a group that teaches, supports and recognizes distinguished entrepreneurship in association with the University Of Montana School Of Business. Mrs. Marchi serves on the Boards of the Montana Community Foundation, the Women’s Fund, the PPL Community Advisory Fund and the Montana Economic Developers Association. She is President of the Montana Ambassadors, a statewide group appointed by and serving at the pleasure of the Governor of Montana that supports business development and education in Montana and was appointed by Governor Schweitzer to the Governor’s Economic Development Advisory Board.

Bill Burg has been a military pilot, airline pilot, CPA and management consultant with PriceWaterhouseCoopers, and Arthur Anderson, and controller/CFO in a variety of industries, including garment manufacturing (both domestic and off shore sourced), financial products, primary annuities, PC hardware, compound semiconductors manufacturing, and large computers services, now known as “the cloud.” Bill experience extends to operations, start-up fund raising, turnarounds, and three IPOs. Bill also has CEO experience. Bill received a B.A. in Economics and Math and later an MBA, both from the University of Washington. Bill has had adjunct instructor assignments at the University of Washington, Hong Kong University, and Flathead Valley Community College. Bill is a retired Marine Corps Lt. Colonel and lives in Whitefish with his wife of 47 years. Bill’s volunteer activities include sitting on the boards of directors of Glacier Symphony & Chorale, Whitefish Winter Carnival and his neighborhood homeowners association. Bill is also a volunteer ski instructor for the Big Mountain (Whitefish) Ski Club. Bill is an active member of the Prior Fund, most significantly, as the leader or member of several due diligence teams. He has often been FAF/s designated “observer” or member of the board of directors of investee companies. Bill has developed relationships with other angel groups in Seattle/Bellevue, Spokane, Boise, and Coeur D’Alene

Susan Carstensen is an independent business advisor who counsels startup and growth companies from her home in Bozeman, Montana. Previously, Susan spent 12 years at RightNow Technologies, a Bozeman-based company providing on demand customer relationship management software and services (now, Oracle, Inc.), three years as Chief Operating Officer, eight years as Chief Financial Officer, and one year as Senior Vice President, Customer Experience. Prior to her time at RightNow, Susan was an accounting manager at Lockheed Martin and then the Chief Financial Officer of PowerHouse Technologies. Susan began her career at Ernst and Young, where she spent six years. Susan is a graduate of Montana State University, where she received a B.A. and B.S. in Business and Political Science. Susan currently advises AtTask, Inc. and Seneca and sits on the board of Intrinsic Value Software. Susan currently serves on the board of AtTask, Bridger Ski Foundation and the MSU Alumni Foundation and previously served on the board of Live Office.

Jon Marchi is Chairman and a General Partner of Glacier Venture Fund, a Montana Small Business Investment Company that focuses on investment in Montana companies. He is also a member of the Prior Fund. Mr. Marchi began an investment career at DA Davidson, a regional investment firm, in 1972 where he served in Marketing and Administration and as Vice President of Financial Services and Executive Development. He left DA Davidson in 1985 to run Marchi Angus Ranches. In 2005 Mr. Marchi was appointed by Montana’s Governor as Chairman of the Montana Facility Finance Authority which oversees a \$1 billion loan portfolio. Mr. Marchi currently serves as Treasurer and Director of Great Northern Drilling Company in Billings, Montana, a privately held oil and gas firm. He is Chairman of the Audit Committee and a Board member of Ligocyte Pharmaceuticals in Bozeman, Montana. He is Chairman and Director of Cleanwaste in Belgrade, Montana. Jon was a board member of Big Sky Airlines for 27 years, including 17 years as Chairman. He is former Chairman of the Development Corporation of Montana which provides debt and equity financing to companies through the SBA 504 program. Mr. Marchi is a cofounder of the Montana Private Capital Network, the state’s first angel network. Jon has also served as President of the American Wagyu Association and was on the Board of the Montana Economic Developers Association. He is past President and current Treasurer and Director of the Montana’s Ambassadors, a statewide organization of individuals, appointed by Montana’s governors, committed to economic development and education.

Jon holds a B.S. in Business and an M.S. in Finance from the University of Montana. He served as First Lieutenant in the US Army Corps of Engineers. He currently serves on the Business Advisory Council for the School of Business at Montana State University in Billings, is a founding member of the Montana Academy of Distinguished Entrepreneurs at the University of Montana and was named the Outstanding Distinguished Alumni by the University of Montana’s School of Business in 2004. He is a guest lecturer at the University of Montana’s School of Business.

Leon Liebman holds degrees from MIT’s Sloan School of Management, and the Wharton School in Economics, Accounting, Math. Leon is an investor in MALBEC, LLC, Property Management, the Beacon Angels, of Boston, MA, MAID and Profiling Systems, LLC. He is also an investor in, and serves on the board of, Saladin, Ltd, Telerate, Greg Manning Auctions, Resource Data International and Fidessa Group plc. Leon was a founder of Evaliant (acquired by Taylor Nelson SOFRES in 2002) and Interactive Market Systems. Leon is currently an

Assistant Professor of Accounting at the Wharton School and is a consultant to First National Bank of Boston, American Express Credit Card Division.

Leon has spent over four decades as an entrepreneur and angel investor in businesses, especially involving digital media and technologies, information services, data integration and value-added analytics, all across a wide range of business sectors, in the US, Canada, UK, Europe and Asia. Leon has been involved (as founder, investor and/or board member) in companies such as Interactive Market Systems (IMS), Competitive Media Reporting (CMR), Evaliant Teletrade, Resource Data Intl (RDI), Saladin LTD., Fidessa Group (formerly Royalblue Group. He graduated from the Wharton School of the University of Pennsylvania (BS Economics, Accounting and Mathematics) followed by MIT's Sloan School of Management (Masters in Management in Quantitative Methods, Economics and Marketing). Before starting his first company he was an Assistant Professor of Accounting at Wharton. Leon currently divides his year between Bozeman, Montana (his primary residence), Boston, London and Stockholm, and he actively pursues the advancement of education. He and his wife have recently funded a program at Roanoke College to support faculty investigation and development of improved methods to improve the educational processes at Roanoke and to improve the student experience.

#### **DISCLAIMER**

Neither the Company nor the Servicing Company or any of the officers of the Company is registered as a securities broker-dealer or an investment advisor with any state securities regulatory authorities or with the U.S. Securities and Exchange Commission. Any support or advice in connection with investment recommendations in portfolio companies or due diligence that the Servicing Company, the Company's officers or the Investment Committee provide to the Company or any of its Members will be for informational purposes only and shall not constitute investment recommendations or advice. None of the Servicing Company, the Company, or any of the officers, nor any other person, is receiving or entitled to receive, nor is the Company paying any, commissions for the sale of any of the Units being offered by the Company or for the Company's investment in any portfolio companies. Information given to prospective investors by the Servicing Company, the Company or any of its officers or prospective officers is not intended as securities, investment, tax, accounting or legal advice, or as an offer or solicitation of an offer to sell or buy, or as an endorsement, recommendation or sponsorship of any company or security. The Servicing Company, the Company and the officers cannot and do not assess, verify or guarantee the adequacy, accuracy or completeness of any information, the suitability or profitability of an investment in the Company or any particular investment in a portfolio company, or the potential value of any investment or informational source. You bear responsibility for your own investment research and decisions, and should seek the advice of accounting, legal, and tax professional before making any investment. Any sale or purchase of securities or ownership interest that results from information presented through the Servicing Company, the Company, or its officers will be on a negotiated basis between the Company and entrepreneur without any additional participation by or remuneration to the Servicing Company, the Company, or its officers. Before selling or buying any Units you should conduct your own analysis and due diligence to ensure accurate measurement and assessment of the risk factors involved. Furthermore, venture capital investments are highly speculative and there is no assurance a liquidation event may occur favorable to the investor.



## SUMMARY OF ARTICLES OF ORGANIZATION AND OPERATING AGREEMENT

The Company operates pursuant to Articles of Organization, filed on September 18, 2013 and pursuant to the Company's Operating Agreement, substantially in the form enclosed with this Memorandum.

The following summary of the Company's Articles of Incorporation and the Operating Agreement is not complete, and each prospective Member should read the Articles of Incorporation and the Operating Agreement in their entirety.

- Limited Liability:** A Member will be liable for debts and obligations of the Company only to the extent of his or her interest in the Company. Under applicable law, a Member who has received unlawful distributions from the Company may, as a matter of law, be liable to return the distribution to the Company to the extent that the distribution exceed the amount that could have properly been paid.
- Term of Existence:** The Company was formed as of the time of the filing of the Articles of Organization in the Office of the Secretary of State of Montana and its term of existence shall end on December 28, 2028, unless earlier terminated, dissolved or liquidated in accordance with the provisions of this Agreement provided that the term of the Company may be extended by a vote of the holders of two-thirds of the Units.
- Liquidation and Winding Up:** If dissolution of the Company is triggered, no further business shall be done in the name of or on behalf of the Company except insofar as may be necessary to wind up the business of the Company and distribute its assets to the Members or their successors in interest (provided that the Company will first pay its debts and obligations and establish reserves if necessary for contingent and unforeseen liabilities) in accordance with the distribution provisions of the Operating Agreement.
- Capital Accounts:** In general, the Capital Account of each Member will be initially credited with the amount of their cash contribution to the capital of the Company. The Capital Account of each Member will further be credited by the amount of any additional contributions to the capital of the Company made by such Member, will be debited by the amount of any cash distributions made by the Company or the fair market value of any property distributed in kind to such Member and will be credited with the amount of income and gains and debited with the amount of losses of the Company allocated to such Member. In the case of the Transfer of all or a part of a Membership Interest in the Company, the Capital Account of the transferor Member attributable to the transferred Membership Interest will carry over to the transferee Member.
- Liability of Members:** The Members will not be liable for any of the debts, liabilities, contracts or other obligations of the Company. Except as otherwise provided in the Company's Articles of Organization, in the Operating Agreement or under applicable law, the Members will be liable only to make their capital contributions up to the amount of their committed capital and will not be required to lend any funds to the Company or, after their committed capital has been paid, to make any further contributions.
- Admission of New Members:** Additional Members may be admitted to the Company upon the initial issuance of Units, provided, however, that any new Units be issued after the Initial Investment will be made subject to certain adjustments set forth in Section 5.3 of the Operating Agreement so that all the Members will bear their proportionate share of Company expenses and returns as if all of Units were issued on the same date.

**Distributions:**

From time to time, the Executive Committee shall determine the amount of net cash flow of the Company. The Executive Committee may distribute all or a portion of the net cash flow, if any, to the Members at such times and in such amounts as it may determine in its discretion. All distributions shall be made to the Members in the following proportions:

(a) 3% “carried interest” to the Servicing Company; and

(b) 97% to the holders of Units (including Active Units and Passive Units, and including the Servicing Company if Special Units have been issued) pro rata in proportion to such Units.

**Distributions for Tax Liabilities:**

To the extent there is positive net cash flow, the Executive Committee may cause the Company to make cash distributions to Members, by a date 90 days after the close of such fiscal year of the Company, which the Executive Committee in good faith determines will be sufficient (in light of the then current provisions of the Code, or any successor federal income tax law, the typical tax circumstances of Members known to the Executive Committee, and the typical tax consequences of transactions of the Company during such fiscal year) to pay the federal income tax liabilities of such Members resulting from the allocation of profits and losses of the Company to the Members during such fiscal year of the Company.

**Management by Executive Committee:**

The business and affairs of the Company will be managed by the Executive Committee comprised of between five and seven Members. The act of a majority of all the Executive Committee members present at a meeting thereof for which a quorum is present shall be an act of the Company unless otherwise provided in the Operating Agreement. Except as otherwise provided under applicable law, no member of the Executive Committee will be personally liable for any liability of the Company, and each member of the Executive Committee will be indemnified by the Company to the extent allowed by applicable law. The initial members of the Executive Committee shall be William Burg, Susan Carstensen, Larry Cates, Leon Liebman and Jon Marchi. The members of the Executive Committee shall be elected or removed from time to time by a majority of the Executive Committee.

The Executive Committee may delegate authority to act on behalf of the Company to one or more officers or subcommittees, and, pursuant to the Operating Agreement, the Company’s officers will include a Chair, a Secretary and a Treasurer. These officers will be charged with day-to-day responsibility for the affairs of the Company, and the Chair will preside at meetings of Members and of the Executive Committee and may issue Units of the Company. The Executive Committee may authorize the officers to take actions, including executing documents, on behalf of the Company.

**Voting:**

Each Member will have one vote per Unit of committed capital, provided, however, that (i) other than the holders of Active Units being entitled to vote on the approval of investments by the Company in portfolio companies, Active Units and Passive Units (including the Special Member, if applicable) shall be entitled to vote only on extension of the term of the Company, dissolution of the Company, amendments to the Operating Agreement, and reorganization and bankruptcy, and except as otherwise explicitly provided in the Operating Agreement or under applicable law; and (ii) no Member who has defaulted in the payment of any committed capital shall have any vote or any right to vote unless such rights are restored by the Executive Committee and the Member in default has cured such payment default.

- Investment Committee:** Members holding Active Units will comprise the Investment Committee. Investment Committee members shall vote (in person or by proxy) on investment opportunities for the fund. Investment Committee members will take reasonable efforts to (i) attend each Investment Committee meeting involving prospective portfolio company pitches, (ii) take part in each vote regarding whether the Investment Company shall proceed with due diligence in respect of investment opportunities, (iii) serve at least annually on Investment Committee due diligence teams, (iv) participate in structuring investment deals, and (v) serve as portfolio company board members and/or portfolio company liaisons. Investment Committee members should take reasonable efforts to remain alert to potential fund investment opportunities. In the event that a holder of an Active Unit is, in the reasonable discretion of the Executive Committee, not reasonably active in the participation of the Investment Committee as set forth in the previous sentence, such Active Unit shall, by written notice to such Member from the Executive Committee, become a Passive Unit, possessing only the rights and privileges of a Passive Unit, and such Member will cease to be a member of the Investment Committee.
- Indemnification:** To the fullest extent permitted by law, each Member, each member of the Executive and Investment Committees, each officer of the Company, the Servicing Company, Elizabeth C. Marchi, and their successors and assigns (each individually, an “Indemnitee”) shall be indemnified and defended by the Company from and against any and all losses, claims and liabilities incurred by such Indemnitee arising out of or in connection with the business or the operation of the Company and by reason of the Indemnitee’s status or relationship with the Company if (i) the Indemnitee acted in good faith and in a manner he or she reasonably believed to be in the best interests of the Company and, with respect to any criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful, (ii) the Indemnitee’s conduct did not constitute fraud, gross negligence, willful misconduct or a material breach of the terms of the Operating Agreement and (iii) the Indemnitee’s conduct did not involve a transaction from which the Indemnitee derived an improper personal benefit.
- Restriction on Transfers:** Except upon the death or disability of a Member, in addition to any restrictions imposed by the federal securities laws and any applicable state securities or “blue-sky” laws, no Member may transfer any Unit whether voluntary by operation of law or otherwise, and no transferee thereof shall have any rights in the Company or be or have any rights as a Member with respect to all or any part of any such Unit attempted to be transferred, without prior written consent of the Executive Committee. The Executive Committee may withhold its consent to the transfer of any Unit in its sole discretion. Upon a Member’s death or disability, such Member may transfer any or all of such Member’s Units; provided that any such Unit that is an Active Unit will become a Passive Unit upon such transfer.
- Books; Place; Access:** Books of account will be maintained on behalf of the Company in accordance with applicable law, at the principal office or such other place as may be designated by the Executive Committee. All Members will at all reasonable times have access to and the right to inspect the same.
- Financial Information:** An annual financial report will be provided to the Members not later than 90 days following each fiscal year-end and will not be audited unless otherwise determined by the Executive Committee. The Members will be entitled to such other financial reports as may be specified by in the Operating Agreement.
- Tax Information:** The Company will make commercially reasonable efforts to transmit to all Members within 90 days after the close of each fiscal year all necessary tax information.

- Tax Elections:** All elections required or permitted to be made by the Company under the Code, will be made by the Tax Matters Partner (“TMP”) in consultation with the Company’s accountants and attorneys. In the event of a Transfer of all or part of the Membership Interest of any Member, the Company may, in the sole discretion of the TMP, elect pursuant to Section 754 of the Code to adjust the basis of the assets of the Company.
- Tax Matters Partner:** The TMP (initially, Bill Burg) is authorized to and will represent the Company in connection with all examinations of the Company’s affairs by tax authorities, including resulting administrative and judicial proceedings. The Members and the TMP will use all reasonable efforts to comply with the responsibilities outlined in the Tax Matters Exhibit to the Operating Agreement and in Sections 6222 through 6231 of the Code (including any Treasury Regulations thereunder and any successor or amendatory provisions thereto for which a tax matters partner is designated).
- Amendment:** The Articles of Organization and the Operating Agreement may be amended by a vote of holders of two-thirds of the Units; provided that any amendment that would (i) change the rights or preferences of any Member under the Articles of Organization or the Operating Agreement (ii) dilute the relative interest of any Member in the profits or capital of the Company or otherwise adversely affect the interest of any Member in the Company, or (iii) change the provisions for amending the Articles of Organization or the Operating Agreement, shall require the consent of such Member. In addition, any change that may materially and adversely affect the ability of the Company to be taxed as a partnership for federal income tax purposes will require unanimous approval.

## **CERTAIN FEDERAL INCOME TAX CONSIDERATIONS**

The following is a summary of certain federal income tax considerations of the acquisition, ownership and disposition of Units of the Company. The following general discussion (i) assumes that each investor is an individual who is a U.S. Person that is not tax-exempt and that each investor holds Units as a capital asset and is the initial holder of such Units, (ii) does not deal with the consequences of the ownership of Units by special classes of holders such as banks, thrifts, insurance companies, dealers, traders in securities that elect to mark their securities portfolios to market and other investors that do not own their Units as capital assets, and (iii) does not deal with the state, local or non-U.S. tax consequences of purchasing, holding or disposing of Units of the Company. For purposes of this Memorandum, a “U.S. Person” is (i) an individual who is a citizen of the United States or is treated as a resident of the United States for U.S. federal income tax purposes, (ii) a corporation (or entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States or any state thereof, (iii) an estate, the income of which is subject to United States federal income taxation regardless of its source, or (iv) a trust that either is subject to the supervision of a court within the United States and the control of one or more United States persons as described in Section 7701(a)(30) of the Code or has a valid election in effect under applicable Treasury regulations to be treated as a U.S. Person.

No representation is made as to state income tax consequences or that any federal income tax consequence described below will be realized. No rulings have been requested from the Internal Revenue Service (the “Service”) with respect to any tax matter. Because the tax consequences of an investment in the Company may not be the same for each investor, each investor should consult his or her own tax advisor with respect to these and other tax consequences (including state, local and foreign tax consequences) of an investment in the Company. Furthermore, investors should seek periodic consultations with respect to their individual tax situations because of potential future changes in the applicable statutes and regulations or in their interpretations by the courts or the state or federal tax authorities.

The following discussion is based on the current provisions of the Internal Revenue Code of 1986, as amended (the “Code”), the applicable regulations promulgated by the Treasury Department (the “Treasury Regulations”), currently published administrative positions of the Service, and existing judicial decisions, all of which are subject to change, modification or challenge at any time. Any such change or modification could be retroactive and could adversely affect an investment in or commitment to the Company.

**TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, PROSPECTIVE INVESTORS IN THE COMPANY ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES IN THIS MEMORANDUM IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY INVESTORS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON INVESTORS UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN BY THE COMPANY TO PROSPECTIVE INVESTORS; AND (C) INVESTORS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

### **Partnership Classification**

The Company believes that, under current law, the Company is and will continue to be taxable as a partnership for federal income tax purposes and not as an association or “publicly-traded partnership” taxed as a corporation, and, therefore, the Company will not be subject to any federal income tax. No ruling from the Internal Revenue Service (the “IRS”) with respect to such partnership status has been or will be sought. In the absence of such a ruling, there can be no assurance that the IRS will not successfully contend that the Company should be treated as an association or publicly-traded partnership taxable as a corporation.

If the Company should at any time be classified as an association or publicly-traded partnership taxable as a corporation, the Members would not be treated as partners for tax purposes, income or loss of the entity would not be passed through to the Members, and the entity 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 entity to its Members 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 entity in computing its taxable income. Any such recharacterization would reduce the after-tax return to a Member from its investment in the Company.

The discussion in the following paragraphs assumes the Company will be treated as a partnership for federal income tax purposes.

### **Taxation of Fund Operations**

As a partnership for federal income tax purposes, the Company will not be subject to federal income tax. The Company will file an annual partnership information return which will report the results of its operations. Each Member of the Company will be required to report separately on his or her own income tax return his or her distributive share of the net long-term capital gain or loss, net short-term capital gain or loss, dividend income, net ordinary income (including interest received) or deduction, and various other categories of income, gain, loss, deduction and credit of the Company for the taxable year of the Company ending within or with the Member's taxable year, regardless of whether the Member has received any distributions from the Company. Thus, each Member will be subject to tax on his or her distributive share of the taxable income or loss of the Company regardless of whether the Member has received or will receive any distribution of cash from the Company. The characterization of an item of profit or loss usually will be determined at the Company (rather than at the Member) level. However, various loss limitations may prohibit Members from including distributive shares of Company losses on their individual tax returns.

The Company believes its allocations of partnership tax items among the various Members will be upheld under the provisions of the Code and Treasury Regulations dealing with tax allocations by partnerships. However, if it were determined that an allocation made by the Company with respect to a particular item did not have "substantial economic effect" (within the meaning of the Code and Treasury Regulations) and was not in accordance with the Members' interests in the Company, taking into account all the facts and circumstances, that item could be allocated, for tax purposes, in a different manner. In some circumstances, this could result in a Member recognizing a greater or smaller amount of loss, deduction, gain or income than such Member would have recognized under the allocation made by the Company, or in such Member recognizing an amount of loss, deduction, gain or income at a different time than such Member would have recognized such amount under the allocation made by the Company.

### **Tax Basis of Units**

A Member's tax basis for his or her Units initially will be the amount the Member paid for such Units. The Member's tax basis will be increased by (i) contributions to the Company, and (ii) the Member's allocable share of any taxable income of the Company. In addition, each Member's adjusted basis in his or her interest will be increased in certain circumstances by the amount of any increase in the Company's liabilities allocable to the Member. A Member's tax basis will be decreased (but not below zero) by (i) distributions from the Company, (ii) the Member's allocable share of Company losses, and (iii) any decrease in the Company's liabilities allocable to the Member.

### **Limitation on Deductions**

A Member's deduction of his or her distributive share of the Company's losses is subject to many limitations. A Member may deduct his or her distributive share of the Company losses in any taxable year in an amount up to the tax basis or, in the case of individuals and certain closely held corporations, the amount with respect to which the Member is "at risk," if less. In general, a Member will be considered to be at risk with respect to Company activities to the extent of (i) amounts contributed to the capital of the Company, (ii) amounts borrowed for use by the Company with respect to which the Member is liable for repayment, and (iii) amounts borrowed for use by the Company with respect to which the Member has pledged property. A Member's amount at risk is increased by his or her share of taxable income and decreased by his or her share of distributions and Company tax loss. Each Member's amount at risk is determined separately. Any tax loss that cannot be deducted in a year because of the basis or at risk limitation is carried over to the following taxable year, and such loss will be deductible in such year to the extent that the basis or at risk limitation does not apply in such year.

In the case of non-corporate taxpayers and “closely held C corporations,” losses and deductions from passive activities may be limited pursuant to Section 469 of the Code. Passive activities include trade or business activities in which the taxpayer does not materially participate. Generally, losses arising from a passive activity are deductible only against income from passive activities. Losses from a passive activity that are not currently deductible are carried forward (and not back) and may be used to offset passive income attributable to passive activities in subsequent taxable years, and to offset active income upon certain dispositions of entire interests in passive activities.

For non-corporate taxpayers, Section 163(d) of the Code limits the deduction for “investment interest” (i.e., interest expense (including certain short sale expense) allocable to investment property). Investment interest is not deductible to the extent that it exceeds the taxpayer’s net “investment income” (generally, the excess of (a) the ordinary income derived from investments and the net gain attributable to the disposition of property held for investment over (b) the deductions, other than for interest, which are directly connected with the production of investment income). However, net long-term capital gains and qualified dividend income are excluded from the category of net investment income, unless the taxpayer elects to pay tax on such amounts at ordinary income rates. A Limited Partner who cannot deduct investment interest currently as a result of the application of Section 163(d) of the Code would be entitled to carry forward such deductions to future years, subject to the same limitation.

### **Nonliquidating Distributions**

A distribution of cash to a Member generally will be regarded as a return of capital and will reduce, but not below zero, the Member’s adjusted basis in his or her Units by an amount equal to the cash distributed. The excess of the amount of cash distributed over the Member’s adjusted basis in his or her Units before the distribution will be treated as gain from the sale or exchange of an interest in the Company, as discussed below.

A nonliquidating distribution of property other than cash to a Member will generally be nontaxable and will reduce, but not below zero, the Member’s basis in his or her Units by an amount equal to the adjusted basis of the distributed property in the hands of the Company plus the amount of any cash received in the transaction. The distributed property will have a basis in the hands of the distributee Member equal to the adjusted basis of the property to the Company, except that the basis of the distributed property in the hands of the distributee Member may not exceed the adjusted basis of the Member’s Units reduced by the amount of any cash distributed in the same transaction.

### **Liquidating Distributions**

Upon the liquidation of the Company or the liquidation of a Member’s interest in the Company, a Member will recognize gain to the extent that any money distributed to the Member exceeds the adjusted basis of the Member’s Units. Under Section 752 of the Code, any reduction of a Member’s share of Company liabilities will be treated as a deemed distribution of cash. A Member may recognize a loss on the liquidation of his or her Units only if the Member receives liquidating distributions from the Company that consist solely of money, unrealized receivables or inventory items and then only to the extent that the adjusted basis of his or her interest in the Company exceeds the basis to the Member of the items so distributed. In the event other property is distributed to a Member as a liquidating distribution, the basis of such other property in the hands of the Member will be equal to the adjusted basis of the Member’s interest in the Company reduced by any money distributed (or deemed distributed) to the Member in the same transaction.

### **Sale or Disposition of Units**

Any gain or loss realized by a Member upon the sale, exchange or assignment of Units generally will be treated as capital gain or loss. However, under present law, a portion of the sales proceeds could give rise to ordinary income if the Company makes certain direct investments in depreciable property and other capital assets.

## **State and Local Taxes**

The Company or the Members, or both, may be subject to state and local taxes and may be required to file tax returns in jurisdictions in which the Company may be deemed to be doing business. Members should consult their own tax advisers with respect to the effect of state and local income taxes as a result of an investment in the Company.

## **Tax Returns and Audits**

The Treasurer of the Company serves as the “tax matters partner” “TMP” of the Company. Section 13.5 of the Operating Agreement provides that the TMP has the authority to make certain decisions that affect the federal tax treatment and procedural rights of the Members. For example, the TMP may negotiate with the Internal Revenue Service on behalf of the Company during all aspects of any tax proceeding with the Service. The TMP has the authority to bind any Member to a settlement agreement without obtaining the written concurrence of any Member who would be bound by the agreement. Subject to certain limitations, the TMP may engage legal counsel, certified public accountants, or others (including, without limitation, experts) on behalf of the Company as it may determine is necessary and appropriate with respect to any tax matter. In addition, all elections required or permitted to be made by the Company under the Code are made by the TMP in consultation with the Company’s accountants and attorneys.