

## BAYSIERRA CAPITAL FUND, LLC

**Up to \$50,000,000 of Investment Class Membership Interest Units (“Units”) at \$1.00 per Unit<sup>i</sup>**  
**Minimum Cash Subscription: 25,000 Units (\$25,000)<sup>ii</sup>**

BaySierra Capital Fund, LLC (the “**Fund**”) is a California limited liability company whose sole manager is BaySierra Financial, Inc. (the “**Manager**”). The Fund has been organized for the purpose of making or investing in loans secured by first-priority deeds of trust encumbering primarily California real estate. Fund loans will be limited to business purpose loans and will be secured primarily by non-owner occupied residential properties and improved commercial, industrial, multi-family and mixed use properties. The Fund may also make land loans secured by unimproved properties; however, the aggregate principal balance of such loans will be limited to 20% of the Fund’s total capitalization. (See, “Fund Business and Lending – Lending Standards and Policies.”)

The Fund will have two outstanding classes of membership interests and is governed by the Fund’s Operating Agreement dated October 11, 2010, a copy of which is attached hereto as Exhibit A (as amended, the “**Operating Agreement**”). Units being offered pursuant to this Offering Circular represent an investment in the Fund’s “Investment Class” of membership interests (“**Investment Class Interests**”) and purchasers of Units will become Investment Class members of the Fund (the “**Investor Members**”). Proceeds from the sale of Units will be used to make or purchase loans or fractional interests in loans that meet the lending requirements outlined herein (“**New Loans**”) and for other proper Fund purposes. (See “Fund Business and Lending – Lending Standards and Policies” and “Use of Proceeds.”) A separate class of membership interest, designated the “Initial Class” or “Initial Interest” (the “**Initial Interest**”) has been issued, and is currently held by, BaySierra Mortgage Fund, LLC, a California limited liability company (“**Old Fund**”), an affiliated mortgage fund also managed by the Manager. The Initial Interest was issued to Old Fund in exchange for its contribution of the Fund’s initial capital comprised of: (i) cash in the amount of \$175,000 (the “**Initial Cash Contribution**”); and (ii) the assignment of ten (10) loans (the “**Initial Loans**”) with an aggregate par value of \$3,219,839 (the “**Initial Loan Contribution**”). (See, “Terms of the Offering – Membership Classes” and “Fund Business and Lending – Initial Loan Portfolio.”) All interest payments collected by the Fund, whether attributable to the Initial Loans or the New Loans, will be payable to both the Old Fund and the Investor Members, pro rata, based upon their relative capital account balances; however, payments received by the Fund attributable to the repayment of principal on the Initial Loans (“**Initial Loan Principal Payments**”) will be allocated and distributed 100% to the Old Fund (“**Initial Loan Principal Distributions**”) and payments received by the Fund attributable to the repayment of principal on all New Loans (“**New Loan Principal Payments**”) will be allocated 100% to the Investor Members (and further allocated among the Investor Members in accordance with their relative capital account balances). The Initial Interest will be redeemed and withdrawn prior to the expiration of a five-year liquidation period (as extended) and has additional rights and obligations not applicable to Investment Class Interests. (See “Terms of the Offering – Membership Classes” and “Summary of the Operating Agreement – Additional Rights and Obligations of Old Fund.”)

**AN INVESTMENT IN UNITS INVOLVES SIGNIFICANT RISKS, DESCRIBED IN DETAIL IN THIS OFFERING CIRCULAR. See “Risk Factors” beginning on page 9 for certain factors investors should consider before buying Units.** Significant risks include the following: (i) and investment in Units is subject to substantial withdrawal restrictions and investors will have a limited ability to liquidate their investment in the Fund; (ii) the transfer of Units is restricted and no public market for Units exists or is likely to develop; (iii) the Manager is entitled to various forms of compensation and is subject to certain conflicts of interest; and (iv) Investor Members will have no right to participate in the management of the Fund and will have only limited voting rights..

Investment Class Offering	Price to Investors	Selling Commissions <sup>iii</sup>	Net Proceeds to Fund <sup>iv</sup>
Per Unit	\$1.00	\$0	\$1.00
Maximum Total	\$50,000,000	\$0	\$50,000,000

**Manager:**

**BaySierra Financial, Inc.**

1410 Neotomas Avenue, Suite 106, Santa Rosa, California 95405  
(707) 544-5696 • [www.baysierra.com](http://www.baysierra.com)

*The date of this Offering Circular is October 5, 2010*

**Prospective purchasers of Units should read this Offering Circular in its entirety prior to investing.** THESE SECURITIES ARE BEING OFFERED AND SOLD ONLY TO RESIDENTS OF THE STATE OF CALIFORNIA PURSUANT TO A PERMIT GRANTED BY THE CALIFORNIA COMMISSIONER OF CORPORATIONS. THE COMMISSIONER OF CORPORATIONS DOES NOT RECOMMEND OR ENDORSE THE PURCHASE OF THESE SECURITIES, NOR HAS THE COMMISSIONER PASSED UPON THE ACCURACY OF THE INFORMATION SET FORTH HEREIN.

THE SALE OF UNITS COVERED BY THIS OFFERING CIRCULAR HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), IN RELIANCE UPON THE EXEMPTIONS FROM SUCH REGISTRATION REQUIREMENTS PROVIDED FOR UNDER SECTION 3(a)(11) OF THE ACT AND RULE 147 THEREUNDER RELATING TO INTRASTATE OFFERINGS. ACCORDINGLY, THESE UNITS ARE BEING OFFERED SOLELY TO CERTAIN SELECTED RESIDENTS OF THE STATE OF CALIFORNIA, AND NON-U.S. CITIZENS WHO ARE RESIDENTS OF A FOREIGN NATION, WHO MEET THE SUITABILITY STANDARDS DESCRIBED HEREIN. THIS DOES NOT CONSTITUTE AN OFFER TO SELL OR A SOLICITATION OF ANY OFFER TO BUY WITH RESPECT TO ANY OTHER PERSON. FURTHERMORE, FOR A PERIOD OF NINE MONTHS FROM THE TERMINATION OF THIS OFFERING, NO UNITS MAY BE SOLD OR OTHERWISE TRANSFERRED EXCEPT TO PERSONS WHO WERE ELIGIBLE TO PURCHASE UNITS IN THE INITIAL OFFERING.

THIS OFFERING CIRCULAR DOES NOT CONSTITUTE AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO BUY IN ANY STATE OTHER THAN THE STATE OF CALIFORNIA OR WITH RESPECT TO ANY PERSON WHO IS NOT EITHER A BONA FIDE RESIDENT OF CALIFORNIA OR A NON-U.S. CITIZEN WHO IS A RESIDENT OF A FOREIGN NATION. NOR DOES IT CONSTITUTE AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO BUY WITH RESPECT TO ANY PERSON EXCEPT THOSE PARTICULAR PERSONS WHO SATISFY THE SUITABILITY STANDARDS DESCRIBED HEREIN. (SEE "INVESTOR SUITABILITY STANDARDS.")

THERE IS NO MARKET FOR UNITS, AND NONE IS EXPECTED TO DEVELOP IN THE FUTURE. SUMS INVESTED IN THE FUND ARE ALSO SUBJECT TO SUBSTANTIAL RESTRICTIONS ON WITHDRAWAL AND TRANSFER, AND THE UNITS OFFERED HEREBY SHOULD BE PURCHASED ONLY BY INVESTORS WHO HAVE NO NEED FOR LIQUIDITY IN THEIR INVESTMENT.

NO PERSON HAS BEEN AUTHORIZED IN CONNECTION WITH THIS OFFERING TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED IN THIS OFFERING CIRCULAR, AND ANY SUCH INFORMATION OR REPRESENTATIONS SHOULD NOT BE RELIED UPON. ANY PROSPECTIVE PURCHASER OF UNITS WHO RECEIVES ANY SUCH INFORMATION OR REPRESENTATIONS SHOULD CONTACT THE MANAGER IMMEDIATELY TO CHECK ITS ACCURACY. NEITHER THE DELIVERY OF THIS OFFERING CIRCULAR NOR ANY SALES HEREUNDER SHALL UNDER ANY CIRCUMSTANCES CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE FUND SINCE THE DATE HEREOF.

PROSPECTIVE PURCHASERS SHOULD NOT REGARD THE CONTENTS OF THIS OFFERING CIRCULAR OR ANY OTHER COMMUNICATION FROM THE FUND AS A SUBSTITUTE FOR CAREFUL AND INDEPENDENT TAX AND FINANCIAL PLANNING. EACH POTENTIAL INVESTOR IS ENCOURAGED TO CONSULT WITH HIS OWN INDEPENDENT LEGAL COUNSEL, ACCOUNTANT AND OTHER PROFESSIONAL WITH RESPECT TO THE LEGAL

AND TAX ASPECTS OF THIS INVESTMENT AND WITH SPECIFIC REFERENCE TO HIS OWN TAX SITUATION, PRIOR TO SUBSCRIBING TO A MEMBERSHIP INTEREST IN THE FUND.

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- <sup>i</sup> The maximum of the offering may be increased by the Manager at any time.
  - <sup>ii</sup> The minimum cash subscription amount is 25,000 Units (i.e., \$25,000); however, the Manager may accept subscriptions in lesser amounts in its sole discretion. The 25,000 Unit minimum is also not applicable to Rollover Subscriptions made by existing members of the Fund's affiliate, BaySierra Mortgage Fund, LLC ("**Old Fund**"). (See "Terms of the Offering – Subscription for Units and Admission to the Fund.")
  - <sup>iii</sup> Units will be offered and sold directly by the Manager and employees of the Manager who will not receive selling commissions or other compensation from the Fund in connection with the sale of Units. Units may be offered and sold by independent broker-dealers. Any such brokers will receive a commission payable by the Manager. There is no firm commitment to purchase or sell any of the Units.
  - <sup>iv</sup> "Net Proceeds to the Fund" are calculated before deducting organizational and offering expenses, including without limitation legal and accounting expenses, reproduction costs, selling expenses and filing fees paid to the California Department of Corporations. (See "Use of Proceeds.")

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### EXHIBITS

Exhibit A – Operating Agreement

Exhibit B – Subscription Agreement and Power of Attorney

**SUMMARY OF THE OFFERING**

The following information is only a brief summary of the offering, and is qualified in its entirety by the information appearing elsewhere in this Offering Circular. A thorough examination of the entire Offering Circular is recommended.

Fund Objectives ..... The Fund is a California limited liability company formed for the purpose of making or investing in business purpose loans secured by first deeds of trust on primarily commercial and non-owner occupied residential real estate and a limited percentage of land loans. (See “Fund Business and Lending – Lending Standards and Policies.”)

Membership Classes ..... Membership interests in the Fund are comprised of the Initial Interest and Investment Class Interests. Units offered hereby represent Investment Class Interests in the Fund and purchasers of Units will be admitted to the Fund as Investor Members, only. The Initial Interest has been issued to, and will be held by, the Old Fund, only, and will be redeemed by the Fund over time from Initial Loan Principal Distributions derived from the ten loans initially contributed by Old Fund and potentially from other redemption provisions applicable to the Initial Interest. (See, “Terms of the Offering – Membership Classes” and “Summary of the Operating Agreement.”)

Allocations of Loan Proceeds ..... Prior to the full redemption of the Initial Interest, all principal and interest payments collected on Fund loans will be allocated to the Members, as follows: (i) all Initial Loan Principal Payments received by the Fund will be allocated 100% to Old Fund as Initial Loan Principal Distributions; (ii) all New Loan Principal Payments received by the Fund will be allocated 100% to the Investor Members (and further allocated among the Investor Members in accordance with the Investor Members’ relative capital account balances); and (iii) all interest payments collected by the Fund on either the Initial Loans or the New Loans will be allocated among all Members based upon the relative capital account balances of all Members.

Following the full redemption of the Initial Interest and the withdrawal of Old Fund’s Initial Cash Contribution, Investment Class Interests will be the Fund’s sole membership class and Fund income from any source will be allocated among the Investor Members, pro-rata in accordance with

	their relative capital account balances. (See “Terms of the Offering – Membership Classes” and “Summary of the Operating Agreement.”)
Capitalization .....	A maximum of \$50,000,000 of Investment Class Interest (subject to increase by the Manager). Such capitalization is in addition to the Initial Cash Contribution and the Initial Loan Contribution made by Old Fund in exchange for the Initial Interest.
Term of the Fund .....	Indefinite. (See “Summary of Operating Agreement – Term of the Fund.”)
Manager, Mortgage Broker and Loan Servicer .....	BaySierra Financial, Inc. 1410 Neotomas Avenue, Suite 106 Santa Rosa, California 95405, (707) 544-5696, <a href="http://www.BaySierra.com">www.BaySierra.com</a>
Prior Experience.....	The Manager has substantial prior experience in the mortgage industry including managing Old Fund. (See “The Manager and Its Affiliates.”)
Compensation to Manager and Its Affiliates .....	The Manager will receive fees and other forms of compensation. (See “Compensation to Manager and Its Affiliates.”)
Suitability Standards .....	Units are offered exclusively to investors who are California residents (or non-U.S. citizens that reside in a foreign nation) and who meet certain minimum standards of income and/or net worth. Qualified investors admitted to the Fund (including existing members of Old Fund purchasing Units) will become Investor Members. (See “Investor Suitability Standards” and “Terms of the Offering – Subscribing for Units and Admission to the Fund.”)
Mortgage Loan Portfolio.....	Fund loans will be made for business and commercial purposes only and will be secured primarily by non-owner occupied residential properties and improved commercial, industrial, multi-family and mixed use properties. The Fund may also make land loans (i.e., loans secured by unimproved properties, including fully entitled, partially entitled, unentitled or agricultural land); however, no such loan will be made if upon closing of such Land Loan the total outstanding principal balance of all Land Loans held by the Fund would exceed 20% of the Fund’s total

capitalization as of such date. New Loans will be made while this offering is continuing. (See “Fund Business and Lending – Lending Standards and Policies.”)

Cash Distributions.....

Investor Members have the choice of (1) regular monthly cash distributions of their share of Fund income, or (2) income credited to capital account and retained by the Fund for further investment. An investor may elect to switch from one of these options to the other only upon 90 days’ written notice to the Manager. Old Fund’s interest income will be distributed to Old Fund on a monthly basis and Initial Loan Principal Distributions will be made to Old Fund at intervals determined by the Manager.

The Manager, in its sole and absolute discretion, reserves the right to commence making cash distributions at any time to previously compounding ERISA investors in order for the Fund to remain exempt from the ERISA plan asset regulations. (See “ERISA Considerations” and “Summary of Operating Agreement – Cash Distributions.”)

Withdrawal.....

Investor Members have no right to demand the withdrawal of all or a portion of their investment for twelve (12) months after the date of the purchase of Units. Thereafter, withdrawals from the Fund will be subject to cash flow and other restrictions. (See “Summary of Operating Agreement – Withdrawal from Fund” and “Risk Factors – Risks Related to Ownership of Units.”)

Withdrawal of Old Fund’s Initial Cash Contribution is not subject to the twelve (12) month holding period applicable to Investor Members and the Manager is required to distribute the full amount of the Initial Capital Contribution to Old Fund prior to the expiration of a five year liquidation period applicable to Old Fund (subject to extension by a majority interest of the Old Fund members). The Fund may utilize money from new subscriptions to fund Investor Member withdrawals but may not utilize new subscription money to fund the return of Old Fund’s Initial Cash Contribution. The Manager may give Old Fund priority over Investor Members with respect to withdrawal distributions if, in the Manager’s sole discretion, such priority

is necessary to liquidate Old Fund’s Initial Interest by the expiration of the liquidation period. (See “Summary of Operating Agreement – Withdrawal from Fund” and “Risk Factors – Risks Related to Ownership of Units.”)

Restrictions on Transfers .....	There are substantial restrictions on transferability of Units under federal and state securities laws and under the Operating Agreement. (See “Terms of Offering – Restrictions on Transfer” and “Risk Factors – Risks Related to Ownership of Units.”)
Liquidity.....	The purchase of Units is an illiquid investment. There is no public market for Units and none is expected to develop in the foreseeable future and an investor’s withdrawal of invested capital is limited by Fund cash flow and other restrictions. (See “Risk Factors – Risks Related to Ownership of Units.”)
Reports to Investors .....	Annual reports, including audited financial statements.
Risks.....	An investment in Units is subject to certain risks which should be carefully evaluated before an investment in Units is made. (See “Risk Factors.”)
Voting .....	Members will have no right to vote on matters concerning the Fund except as expressly granted in the Operating Agreement or required by law. All voting rights granted to the members in the Operating Agreement require the affirmative vote of Members representing a majority of the total outstanding membership interests including the interest of Old Fund; however, any vote by Old Fund will be subject to, and directed by, the approval of a majority interest of the Old Fund Members. (See “Risk Factors – Risks Related to Ownership of Units” and “Summary of Operating Agreement – Rights and Liabilities of Members.”)
Conflicts of Interest.....	The Fund’s business operations will be managed by the Manager which has and will have certain conflicts of interest. (See “Conflicts of Interest.”)

### **INVESTOR SUITABILITY STANDARDS**

Units are being offered to a limited number of qualified investors including the existing members of Old Fund (“**Old Fund Members**”). To purchase Units an investor must execute a Subscription Agreement in the form attached hereto as Exhibit B. (See “Terms of the Offering – Subscribing for Units and

Admission to the Fund.”) All investors, including all Old Fund Members purchasing Units, must meet certain eligibility and suitability standards at the time of subscription, some of which are set forth below. By executing the Subscription Agreement, an investor makes certain representations and warranties, upon which the Manager will rely in accepting subscriptions. Read the Subscription Agreement carefully. Each investor must represent in writing that such investor is a bona fide resident of the State of California or non-U.S. citizen who resides in a foreign nation (or if the investor is a trust, corporation or other entity, that the principal office of such trust, corporation or other entity is located in California or a foreign nation). In addition:

1. Each Investor must have either (a) a net worth (exclusive of home, furnishings and automobiles) of at least \$250,000 and an annual gross income of at least \$65,000; or (b) a net worth (exclusive of home, furnishings and automobiles) of at least \$500,000; and

2. The amount of each investor’s investment in Units offered hereby must not exceed 10% of such investor’s net worth (exclusive of home, furnishings and automobiles).

3. If the investor is an ERISA Plan (such as a pension or profit sharing plan, Individual Retirement Account, or 401(k) plan), the foregoing requirements must be met by either the ERISA Plan itself or, if the investment is being made on behalf of a plan participant who has the power to direct the investment on his or her behalf, by the plan participant for whose account the investment is being made.

4. If the investor is a fiduciary account other than an ERISA Plan (such as a family trust or a custodial account for the benefit of a minor), the foregoing suitability standards may be met by any of the following: (i) by all beneficiaries of the account; (ii) by the trustee or custodian if that person is the donor of the funds for investment; or (iii) by the donor of the funds for investment if the only beneficiaries of the fiduciary account are the donor’s ancestors, descendants or spouse.

### **TERMS OF THE OFFERING**

Units may be purchased by new investors and Old Fund Members that meet the Investor Suitability Standards set forth above. The Unit subscription price for all investors is \$1.00 per Unit. Each Unit of investment represents a \$1.00 Investment Class Membership interest in the Fund. Old Fund and Investor Members are collectively referred to herein as the “**Members.**”

### **Formation of the Fund; Maximum Offering**

The Fund was formed on September 9, 2010 upon the filing of the Articles of Organization with the Office of the California Secretary of State; however, the Fund did not commence operations until on or about October 20, 2010, when the Fund obtained its initial capital from Old Fund in the form of the Initial Cash Contribution and the Initial Loan Contribution (the “**Initial Capital**”).

The maximum capitalization of the Fund, exclusive of the Initial Capital, is \$50,000,000 (50,000 Units). The maximum may be increased by the Manager at any time. This offering may also be terminated at the option of the Manager at any time, but in no event later than one year from the date of this Offering Circular, unless the offering permit issued by the California Commissioner of Corporations is thereafter extended.

### **Membership Classes**

The Fund currently has two outstanding membership classes comprised of: (i) the Initial Interest held by Old Fund; and (ii) the Investment Class Interests being offered as Units hereunder. On July 15,

2010, the Manager and the Old Fund Members elected to dissolve and wind down Old Fund and commenced a five-year liquidation period which will terminate on July 15, 2015, unless such date is extended by a majority interest of the Old Fund Members (the “**Liquidation Period**”). (See “The Manager and its Affiliates – BaySierra Mortgage Fund, LLC.”) The Initial Interest was issued to Old Fund in exchange for the Initial Capital as part of the liquidation plan approved by the Old Fund Members which was designed, in part, to give electing Old Fund Members the opportunity to reinvest their Old Fund liquidation distributions in this Fund.

The Initial Interest Class and the Investor Class Interests are identical with the exception of the following rights and obligations material to each such class: (i) all Initial Loan Principal Payments received by the Fund will be allocated and distributed 100% to Old Fund and all New Loan Principal Payments will be allocated 100% to the Investor Members and re-invested in New Loan investments or utilized for other proper Fund purposes (see “Summary of Operating Agreement – Cash Distributions,” and “Use of Proceeds”); (ii) Old Fund is required to re-acquire any Non-Performing Initial Loan as such item is defined in the section of this Offering Circular entitled, “Summary of the Operating Agreement – additional Rights and Obligations of Old Fund”; (iii) each Initial Loan Principal Distribution made to Old Fund and the outstanding principal balance of any Non-Performing Initial Loan re-acquired by Old Fund (if any) will redeem and reduce Old Fund’s Initial Interest on a dollar-for-dollar basis; (iv) Old Fund is not subject to the twelve (12) month holding period applicable to Investor Members and the Manager is required to distribute Old Fund’s entire Initial Cash Contribution prior to the expiration of Old Fund’s five-year Liquidation Period; and (v) the Manager may, in its discretion, give priority to withdrawal distributions payable to Old Fund over the withdrawal requests of Investor Members if the Manager deems such distributions necessary to liquidate the Initial Interest within the Liquidation Period (see “Summary of Operating Agreement – Withdrawal from Fund”).

Following the complete redemption of the Initial Interest and the final distribution of Old Fund’s Initial Cash Contribution, Old Fund will cease being a member of the Fund and Investment Class Interests will be the Fund’s sole membership interests class.

### **Subscribing for Units and Admission to the Fund**

Units may be purchased at the rate of \$1.00 per Unit by completing the Subscription Agreement and Power of Attorney attached hereto as Exhibit B (the “**Subscription Agreement**”) and delivering the executed Subscription Agreement to the Manager. Units may be purchased with cash or, in the case of Old Fund Members electing to purchase Units (“**Rollover Investors**”), by directing the Manager to utilize all or a portion of the liquidation distributions payable to a Rollover Investor to purchase Units in the Fund.

#### ***Cash Subscriptions***

Any potential investor including Old Fund Members, may purchase Units for Cash by completing and executing the Subscription Agreement and delivering the Subscription Agreement to the Manager together with the purchase price payable for Units (“**Cash Subscriptions**”). The minimum Cash Subscription amount is \$25,000 (i.e., 25,000 Units); provided, however, that the Manager may, in its sole discretion, accept Cash Subscriptions in lesser amounts. Cash Subscriptions will be accepted or rejected by the Manager promptly after receipt. The Manager reserves the right to reject any Cash Subscription submitted for any reason. If accepted, an investor submitting a Cash Subscription (a “**Cash Subscriber**”) will become a Member and the Cash Subscriber’s entire investment will be deposited into the Fund only when all, or any portion, of the Cash Subscriber’s subscription funds are required by the Fund to invest in a mortgage loan, to create appropriate reserves or for any other proper Fund purpose at which time all or a portion of the Cash Subscription funds will be transferred to the Fund. (See “Use of Proceeds.”) Until

then, a Cash Subscriber's subscription is irrevocable, and Cash Subscription funds received by the Manager may be held by it for the account of each Cash Subscriber in a non-interest-bearing subscription account (the "**Subscription Account**"). Cash Subscription funds will be transferred from the subscription account into the Fund on the first day of the month on a first-in, first-out basis, at which time the Cash Subscriber will be admitted to the Fund and Units will be issued to such Cash Subscriber at the rate of \$1.00 per Unit.

Cash Subscriptions are non-cancelable and irrevocable and Cash Subscription funds are non-refundable for any reason, except with the consent of the Manager. Notwithstanding the preceding sentence, Cash Subscription funds remaining in the subscription account after the expiration of 65 days from the first day of the month following the date the subscription funds were received from the investor will be returned to the investor. After having subscribed for at least 25 Units (\$25,000), an investor may at any time, and from time to time, submit additional Cash Subscriptions to purchase additional Units subject to the minimum subscription amount of \$25,000 (or 25 Units), provided, however, that the Manager may accept lesser additional Cash Subscription amounts in its discretion.

### ***Rollover Subscriptions***

In addition to purchasing Units for cash, Old Fund Members receiving monthly income and periodic liquidating distributions from Old Fund ("**Liquidation Distributions**") may purchase Units by directing the Manager to utilize all or a portion of such Liquidating Distributions to purchase of Units on their behalf (a "**Rollover Subscription**"). Rollover Subscriptions may be made by indicating the percentage of each Liquidation Distribution to be applied to such purchase in the "Rollover Subscription Election" section of the Subscription Agreement. The \$25,000 initial minimum subscription amount applicable to Cash Subscriptions is not applicable to Rollover Subscriptions and Rollover Investors may elect to have less than 100% of each Liquidation Distribution applied to the purchase of Units by indicating such lesser percentage in the Subscription Agreement. Any Liquidation Distributions in excess of such percentage will be distributed to the Rollover Investor in accordance with Old Fund's Operating Agreement or any other agreement between Manager and the Rollover Investor in connection with such distributions.

Rollover Investors must meet the Investor Suitability Standards set forth above at the time the Rollover Subscription is submitted and the Rollover Investor authorizes the application of future Liquidation Distributions to the purchase of Units. The Manager reserves the right to reject any Rollover Subscription submitted for any reason. Rollover Subscriptions received from Rollover Investors will be accepted or rejected by the Manager promptly after receipt. If accepted, a Rollover Investor will become an Investor Member at the time the first Liquidation Distribution is made and transferred into the Fund and Units are issued in the Rollover Investor's name. Thereafter, the designated percentage of each Liquidation Distribution will be applied to the purchase of Units by the Manager at the time each Liquidation Distribution is made unless and until a maximum number of Units identified in the Subscription Agreement have been issued or the Rollover Subscription is cancelled. Each Liquidation Distribution will be transferred to the Fund and Units will be issued to the Rollover Investor only when all, or any portion, of such amount is required by the Fund to invest in a mortgage loan, to create appropriate reserves or to pay organizational expenses. (See "Use of Proceeds – Proceeds from the Sale of Units.") Until then, Rollover Investor's funds may be held by the Manager for the account of the Rollover Investor in the Subscription Account. Rollover Investors' funds will be transferred from the Subscription Account into the Fund on the first day of the month on a first-in, first-out basis, at which time Units will be issued to such investor at the rate of \$1.00 per Unit. Rollover Subscriptions payable from future Liquidation Distributions are cancelable by the Rollover Investor or the Manager at any time prior to the transfer of the Liquidation Distribution to the Fund and the issuance of Units to the Rollover Investor.

### **Use of Subscriptions to Pay Pending Withdrawal Requests**

Subscription amounts transferred into the Fund may be utilized by the Manager for any proper Fund purpose, including funding New Loans, creating appropriate reserves or paying proper Fund expenses. Additionally, the Manager may accept subscriptions for the purpose of fulfilling Investor Members' withdrawal requests if at the time of receipt of a subscription there is a "waiting list" for withdrawals from the Fund. (See "Summary of Operating Agreement – Withdrawal from Fund" and "Risk Factors – Risks Related to Ownership of the Units.") Investors should ask the Manager about the aggregate amount of the then-current waiting list for withdrawals and the anticipated waiting period (if any) if that information would be a factor in determining whether to invest in Units. No subscriptions will be accepted by the Manager for the purpose of funding the withdrawal of Old Fund's Initial Cash Contribution.

### **Election to Receive Monthly Cash Distributions**

Upon subscription for Units, an investor must elect whether to receive monthly cash distributions from the Fund or to allow his or her earnings to compound for the term of the Fund. An investor may elect to switch from compounding to monthly distributions upon 90 days' prior notice to the Manager. In addition, if there is in effect a permit issued by the California Commissioner of Corporations qualifying this offering, an investor may switch from receiving monthly distributions to compounding and reinvesting earnings upon 90 days' prior notice to the Manager. Notwithstanding the foregoing, the Manager reserves the right, at any time, to immediately commence making monthly cash distributions to ERISA plan investors who previously compounded earnings in order to ensure that the Fund remains exempt from the Plan Asset Regulations pursuant to the "significant participation" exemption. (See "ERISA Considerations.") All earnings payable to Old Fund will be distributed to Old Fund on a monthly basis.

Income allocable to investors who elect to compound their earnings will be retained by the Fund for investing in New Loans or other proper Fund purposes. The income from the New Loans will be allocated among all Fund Members (including Old Fund); however, investors who compound will be credited with a larger proportionate share of such earnings than Old Fund and the Investor Members who receive monthly distributions since the capital accounts of compounding Investor Members will increase over time. (See "Summary of Operating Agreement – Capital Account Maintenance.")

The amount of monthly distributions made to Old Fund and Investor Members electing such distributions will be based upon each such Member's allocable share of the Fund's monthly net income. Net income calculations will necessarily be based upon the Manager's good faith estimate of the Fund's income and liabilities (including estimated reserves for New Loan losses) as of the month for which the distribution is made. Such estimates are unaudited until after the end of each calendar year and are subject to subsequent adjustment over the course of the year to reflect losses or gains realized by the Fund in later months. (See "Risk Factors – Risks Related to Ownership of Units.")

### **Restrictions on Transfer**

As a condition to this offering of Units, restrictions have been placed upon the ability of investors to resell or otherwise dispose of any Units purchased hereunder, including without limitation the following:

(1) No Member may resell or otherwise transfer any Units without the prior written consent of the Manager, which may be withheld in its sole discretion. (See "Summary of Operating Agreement -- Limitations on Transferability.")

(2) Units may not be sold or transferred without the prior written consent of the California Commissioner of Corporations, except as permitted by the Commissioner's Rules. (See "Commissioner's Rule 260.141.11.")

(3) During the period that Units are being offered and sold and for a period of nine months from the date of the last sale of Units, no Units may be sold or otherwise transferred to any person who is not a bona fide resident of the State of California.

Legends substantially in the forms set forth below will be placed upon all instruments or certificates evidencing ownership of Units in the Fund stating that the Units have not been registered under the Securities Act of 1933, as amended, and setting forth the foregoing limitations on resale, and notations regarding these limitations shall be made in the appropriate records of the Fund with respect to all Units offered hereby. The foregoing steps will also be taken in connection with the issuance of any new instruments or certificates for any Units which are presented to the Manager for transfer during the nine-month period described in subparagraph (3) above.

Certificates shall bear the following legends:

THE UNITS REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). SUCH INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED TO ANY PERSON AT ANY TIME IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT COVERING SUCH UNITS UNDER THE ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGER OF THE FUND TO THE EFFECT THAT SUCH REGISTRATION IS NOT REQUIRED. IN ADDITION, IN NO EVENT MAY UNITS BE OFFERED FOR SALE, SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED TO ANY PERSON WHO IS NOT A RESIDENT OF CALIFORNIA FOR A PERIOD OF NINE MONTHS FROM THE DATE OF THE LAST SALE THEREOF BY THE FUND.

IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS SECURITY, OR ANY INTEREST THEREIN OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, EXCEPT AS PERMITTED BY THE COMMISSIONER'S RULES.

### **RISKS FACTORS**

Any investment in the Units involves a significant degree of risk and is suitable only for investors who have no need for liquidity in their investments or who can bear the loss of their entire investment. When analyzing this offering, prospective investors should carefully consider the following risks and other factors, in addition to those discussed under the captions "Compensation to Manager and its Affiliates," "Conflicts of Interest," and "Federal Income Tax Consequences." If any of these risks actually occur, the business, financial condition and operating results of the Fund could be materially adversely affected.

## **Risks Related To The Fund's Business**

### ***The Fund will be subject to risks related to high-yield mortgage loans.***

The Fund does not intend to make the type of loans that resulted in the “sub-prime mortgage” collapse in 2007-2008, both because it will not make loans secured by owner-occupied homes and because its loans will not have such high loan-to-value ratios. The Fund may, however, make or invest in loans to borrowers that are less creditworthy than those who can satisfy institutional lenders’ credit requirements or who cannot satisfy institutional lenders’ income documentation requirements, which are reasons the Fund can charge much higher interest rates on its loans. (See “Fund Business and Lending – Lending Standards and Policies.”)

Asset-based loans involve numerous risks, some of which include: (i) an increased risk of the non-availability of credit for a borrower to refinance a Fund loan at maturity; (ii) an increased risk of foreclosures in the area surrounding the security property negatively affecting the value of the property securing a Fund loan; (iii) increased constraints on consumer credit affecting the ability of borrowers to sell residential property; and (iv) increased risk of an abandonment of property by a borrower due to other financial problems or general market decline. The occurrence of any of these events for a borrower could lead to a default on a Fund loan, potentially causing losses and extra costs to the Fund, which may lead to lower returns or losses for investors.

### ***The real estate market is experiencing stagnation and declines in property values.***

During the present real estate market decline, the most dramatic and well-publicized declines in property values (and the largest loan losses) occurred in the single-family residential sector; however, commercial and other property categories have also experienced declines in value and a slow-down in sales volume. It is impossible to forecast how significant such declines will be or how long the stagnation of the real estate market or the economy generally will continue. If the market value of a property securing a new Fund loan declines significantly or declines below the amount of the new Fund loan on such property, borrowers may have difficulty paying or refinancing the loan or selling the property, potentially causing losses to the Fund and investors. Moreover, the continued lack of real estate sales volume in the market may affect the Manager’s ability to accurately value the Fund’s assets for the purpose of making withdrawal distributions, potentially resulting in excessive or deficient distributions to withdrawing Investor Members. (See “The Manager and its Affiliates – BaySierra Mortgage Fund, LLC.”)

### ***Fund loans will be concentrated in the Northern California real estate market.***

The Fund’s loans will be made and secured by properties concentrated in Northern California and, therefore will be dependent upon the continued demand for housing, office, retail and other commercial and residential property in that region. The Fund’s revenue and the value of its loan portfolio may be disproportionately affected if Northern California’s local economy and real estate markets suffer greater adverse impacts than the economies and real estate markets in other regions or nationally due to local industry slowdowns and layoffs, changing demographics and other factors that result in oversupply of, or reduced demand for, commercial or residential properties in the region.

### ***The Fund could suffer defaults on the loans in its portfolio of New Loans and may have to foreclose on the underlying real estate collateral.***

The Fund is in the business of lending money and, as such, takes the risk of defaults by borrowers and other risks faced by lenders. While some New Loans will be fully amortizing, most Fund loans will

be partially amortizing or provide for monthly payments of interest only and require the borrower to make a large “balloon” payment of principal due at the end of the term. Many borrowers are unable to repay such loans out of their own funds and are compelled to refinance or sell the property. Fluctuations in interest rates and the unavailability of financing could adversely affect the ability of borrowers to refinance their loans at maturity or to sell the underlying property.

If the borrower defaults, the Fund may be forced to purchase the property at a foreclosure sale. If the Fund cannot quickly sell such property, and the property does not produce any significant income, the Fund’s profitability will be adversely affected. Further, the property’s condition might deteriorate by the time the Fund obtains possession of the property.

***In a foreclosure, the Fund may not be able to recover its full investment.***

California state laws and the manner in which the Fund’s security interest in the security property is enforced may preclude the Fund from recovering any deficiency from the borrower if the Fund cannot recover its investment from the real property security. Under provisions of California law applicable to all real estate loans, if the real property security proves insufficient to repay amounts owing to the Fund, in most cases the Fund would not have a right to recover any deficiency from the borrower. (See “Certain Legal Aspects of Fund Loans.”) While the Fund in many cases will obtain personal guaranties which may be enforced to collect any deficiency balance, such collection may require the Fund to incur litigation expenses and recovery will depend on the collectibility of a judgment from the guarantors at the time the judgment is obtained.

The recovery of sums advanced by the Fund in making or investing in loans and protecting its security may also be delayed or impaired by the operation of the federal bankruptcy laws. Any borrower has the ability to delay a foreclosure sale by the Fund for a period ranging from several months to several years simply by filing a petition in bankruptcy, which automatically stays any actions to enforce the terms of the loan. The length of this delay and the costs associated with it may cause losses to the Fund.

***The Fund will be operating in a highly competitive business.***

Due to the nature of the Fund’s business, its profitability will depend to a large degree upon the future availability of secured loans. The Fund will compete with other private money lenders, institutional lenders and others engaged in the mortgage lending business, including banks and savings institutions, many of which have greater financial resources and experience than the Fund. If these companies increase their marketing efforts to include the Fund’s market of borrowers, or if additional competitors enter these markets, the Fund may be forced to reduce its interest rates and fees in order to maintain or expand market share. Any reduction in interest rates or fees charged could have an adverse impact on the Fund’s liquidity and profitability.

***If the Fund cannot collect all of the principal and interest due on its loans, the Fund’s ability to earn a profit or to fund withdrawals will be impaired.***

The Fund’s liquidity is dependent on, among other things, payments by borrowers of principal and interest on Fund loans. The Manager will continually monitor the delinquency status of the Fund’s loan portfolio and promptly institute collection activities on delinquent accounts but these efforts may ultimately prove unsuccessful. Loan repayments are also likely to be affected by economic conditions in the real estate market. Any failure by the Fund, for any reason, to collect nearly all of the principal and interest on the Fund’s New Loans may impair the Fund’s ability to operate successfully.

***A decline in the demand for, or increase in the risks of, real estate financing will impair the Fund's ability to make loans or could jeopardize repayment.***

A variety of factors affect the demand for real estate financing, including, without limitation, economic cycles, demand for and availability of new development and construction, competitive pressures, the availability and cost of labor and materials, changes in costs associated with real estate ownership, changes in consumer preferences, demographic trends and the availability of mortgage financing. The Fund will be directly and materially affected by the same risks faced by borrowers as well as those inherent to the commercial and residential real estate development and construction industries. Recently, the U.S. has experienced significant deterioration in certain sectors of the real estate, credit and mortgage markets which may negatively impact the Fund's ability to make suitable real estate loans. Any reduction in the cash flows, income of or financial condition of commercial and residential real estate borrowers by reason of any of the aforementioned factors or others may impair their ability to repay the Fund, which would increase the possibility that delinquencies would occur, that the Fund could incur losses and that Members could lose some or all of their investment in the Units.

***A decline in real estate values may impair the collateral for Fund loans.***

Declining real estate values will increase the probability of a loss in the event of a borrower default on Fund loans. As noted elsewhere in these Risk Factors, the U.S. has recently been experiencing significant deterioration in certain sectors of the real estate market. As a result, the value of the real estate or other collateral securing Fund loans may not, at any given time, be sufficient to satisfy the outstanding principal amount and accrued interest on such loans. If a borrower were to default, and if the collateral were insufficient, the Fund would suffer a loss and Members could lose some or all of their investment.

***The Fund may lend to credit-impaired borrowers, which will make its investment portfolio susceptible to high levels of default risk.***

The Fund may lend money to borrowers that are either unable or unwilling to obtain financing from traditional sources, such as commercial banks. Loans made to such individuals or entities may entail a high risk of delinquency and loss. Higher than anticipated delinquencies, foreclosures or losses will adversely affect the Fund's profitability and results of operations, and may result in a loss of some or all of the Members' investment in Units.

***The purchase of a minority interest in a loan may affect the ability of the Fund to direct loan enforcement decisions.***

The Fund may purchase undivided fractional interests in loans arranged by the Manager on behalf of the Fund and other lenders rather than funding or acquiring an entire loan in the name of the Fund at closing. (See "Fund Management and Loan Servicing – Loan Brokerage and Servicing.") In such circumstances, the Manager will service the loan as the agent of the Fund as well as the other purchasers of interests in the loan and could be subject to additional conflicts of interests in determining the appropriate actions to take on behalf of all of the lenders. (See "Conflicts of Interests"). Moreover, pursuant to the servicing agreement between the Manager, the Fund and the other lenders on the loan, the Manager's actions in connection with loan enforcement will be directed by lenders holding more than 50% of the total outstanding interests in the loan. Consequently, if the Manager arranges for the Fund to purchase a minority interest in a loan, the Fund will not have the right to control the enforcement of its rights under the loan if such enforcement action conflicts with the decisions of the majority.

***The Fund's business entails risks related to the ownership of real property.***

When the Fund acquires any equity in real property by direct investment, foreclosure or otherwise, the Fund is exposed to the risks of liability incident to real property ownership or tenancy. Owners of real property may be subject to liability for injury to persons and property occurring on the real property or in connection with the activity conducted thereon, as well as liability for failure to comply with governmental regulations.

***The Fund may suffer from uninsured losses.***

The Manager will require comprehensive title, fire and casualty insurance on the properties securing the Fund's loans. At the Manager's discretion, the Manager may also require earthquake insurance, but will not generally do so. However, there are certain types of losses (generally of a catastrophic nature) which are either uninsurable or not economically insurable, such as losses due to war, floods, mudslides or other acts of God. Should any such disaster occur, or if casualty insurance is allowed to lapse through oversight, the Fund could suffer losses.

***The industry in which the Fund will be active is not extensively regulated or supervised.***

The lending and investment practices of the Fund are not supervised or regulated by any federal or state authority, except to the extent that the lending and brokerage activities of the Manager and the Fund are subject to supervision or regulation by the California Department of Real Estate or Department of Corporations. A return on a Member's investment is completely dependent upon the successful operation of the Fund's business. To the extent that the Fund does not operate successfully for any reason, its ability to return Members' investments and earn a profit is limited.

***Lending laws and other laws and regulations applicable to the Fund's business may be amended in the future and affect the Fund's ability to operate.***

The laws and regulations applicable to the Fund's lending and the offering of Units are subject to amendment by federal and state regulators and agencies. Changes in such laws and regulations that may result from future federal, state or municipal actions, judicial decisions, or interpretations of existing laws and regulations could affect the ability of the Fund to operate under its current business plan. (See "Fund Business and Lending.") Following the 2008-2009 financial crisis, a great deal of new federal and state legislation was enacted to regulate the mortgage lending business far more closely. To date, most such legislation has been primarily focused on owner-occupied residential mortgage loans made for personal, family or consumer purposes. The Fund will not make New Loans secured by owner-occupied residential properties and New Loans will only be made for business purposes; however, any new legislation affecting those types of loans could adversely affect the ability of the Fund to operate and be profitable in the future.

***There are risks of government action if the Manager or the Fund does not comply with all applicable laws and regulations.***

While the Manager will use its best efforts to comply with all local, state and federal lending regulations applicable to it and to the Fund, there is the possibility of governmental action to enforce any alleged violations of such lending laws which may result in legal fees, damage awards or fines and penalties.

***The Fund may be responsible for environmental liabilities.***

Under current federal and state law, the owner of real property contaminated with toxic or hazardous substances (including a mortgage lender that has acquired title through foreclosure) may be liable for all costs associated with any remedial action necessary to bring the property into compliance with applicable environmental laws and regulations. This liability may arise regardless of who caused the contamination or when it was caused.

The Fund does not and will not participate in the on-site management of any facility on the property in order to minimize the potential for liability for cleanup of any environmental contamination under applicable federal, state or local laws. There can be no assurance that the Fund would not incur full recourse liability for the entire cost of any such removal and cleanup, or that the cost of such removal and cleanup would not exceed the value of the property. In addition, the Fund could incur liability to tenants and other users of the affected property, or users of neighboring property, including liability for consequential damages. The Fund would also be exposed to risk of lost revenues during any cleanup, and to the risk of lower lease rates or decreased occupancy if the existence of such substances or sources on the property becomes known. If the Fund fails to remove the substances or sources and clean up the property, it is possible that federal, state and/or local environmental agencies could perform such removal and cleanup, and impose and subsequently foreclose liens on the property for the cost thereof. The Fund may find it difficult or impossible to sell the property prior to or following any such cleanup. Fund could be liable to the purchaser thereof if the Manager knew or had reason to know that such substances or sources existed. In such case, the Fund could also be subject to the costs described above. If toxic or hazardous substances are present on real property, the owner may be responsible for the costs of removal or treatment of the substances. The owner may also incur liability to users of the property or users of neighboring property for bodily injury arising from exposure to such substances. If the Fund is required to incur such costs or satisfy such liabilities, this could have a material adverse effect on Fund profitability. Additionally, if a borrower is required to incur such costs or satisfy such liabilities, this could result in the borrower's inability to repay its loan from the Fund.

Even if the Fund does not foreclose on a contaminated site, the mere existence of hazardous substances on the property may depress the market value of the property such that the loan is no longer adequately secured.

A lender's best protection against environmental risks is to thoroughly inspect and investigate the property before making or investing in a loan. The Manager may take some precautions to avoid environmental problems but is not required to engage in any specific environmental review of the property. Where deemed appropriate by the Manager prior to making a loan, the Fund may engage a qualified environmental inspection firm to conduct an environmental review of the property (which may or may not include a "Phase I" or other level of environmental review). However, due to the nature of many types of environmental contamination, the possibility of the existence of toxic substances may not be apparent from a site visit, and any environmental review conducted may not reveal the extent or all types of contamination. As a result, it is possible that a security property could have toxic contamination not known to the Manager at the time of making the subject loan.

***The Fund will face an ongoing risk of litigation.***

The Manager will act in good faith and use reasonable judgment in selecting borrowers and making and managing the loans. However, as a lender, the Manager and the Fund are exposed to the risk of litigation by a borrower for any allegations by the borrower (warranted or otherwise) regarding the terms of the loans or the actions or representations of the Manager in making, managing or foreclosing on the loans. It is impossible for the Manager to foresee what allegations may be brought by a specific

borrower. The Manager will use its best efforts to avoid litigation if, in the Manager's judgment, the circumstances warrant an alternative resolution. If an allegation is brought and/or litigation is commenced against the Fund or the Manager, the Fund will incur legal fees and costs to respond to the allegations and to defend any resulting litigation. If the Fund is required to incur such fees and costs, this could have an adverse effect on Fund profitability.

### **Risks Related To The Manager**

#### ***The Members must rely on the Manager for the success of the Fund***

The loans in which the proceeds of this offering will be invested have not yet been determined, and Members will have no opportunity to review potential Fund loans. The Manager will participate in all decisions with respect to the management of the Fund, including the determination as to what loans to make or purchase, and the Fund is dependent to a substantial degree on their continued services. In the event of the dissolution, death, retirement or other incapacity of the Manager or those key principals listed in the "Manager and Its Affiliates" section hereof, the business and operations of the Fund may be adversely affected.

#### ***The Members will not have the ability to control the day to day operations of the Fund or to control the Manager. It will be difficult to remove the Manager.***

The Members will not have a voice in the management decisions of the Fund and can exercise only a very limited amount of control over the Manager. The Members have only the voting rights set forth in the Operating Agreement or required by California law. A vote of Members representing a majority interest of all Members (a "**Member Majority**") is required to remove the Manager. So long as Old Fund is a Member of the Fund, the Initial Interest will be included for the purposes of calculating the Member Majority; however, any vote cast by the Manager on Old Fund's behalf must be submitted to, and approved by, members representing a majority of the outstanding membership interests in Old Fund and may not be made unilaterally by the Manager. Because there may be a significant number of Members and the Members (including the Old Fund Members) may have differing opinions with respect to a course of action to take respecting the Fund, it may be difficult, time consuming and costly to solicit adequate votes to remove the Manager.

#### ***The Manager is not required to devote its full time to the business of the Fund.***

The Manager is not required to devote its full time to the Fund's affairs, but only such time as the affairs of the Fund may reasonably require. The Manager has ongoing businesses outside of, and in addition to, the business of the Fund, including managing Old Fund until its complete liquidation and termination, and the Manager will be required to allocate its time and resources among such endeavors over the life of the Fund.

#### ***The Manager may terminate its business relationship with the Fund adversely affecting the Fund's financial position and results of operations.***

The Manager may resign as the Manager of the Fund or terminate its business relationship in whole or in part upon six months notice to the Members or a shorter period if approved by a Member Majority. In such event, the Members would be required to find one or more third party servicers to perform the various services rendered to the Fund by the Manager. The compensation paid to the Manager as set forth in the "Compensation to the Manager and its Affiliates" section of this Offering Circular was not determined on an arm's-length basis. If the Fund is required to retain one or more third party servicers the fees payable to such third parties will likely be greater than those payable to the

Manager and the Fund's financial position and results of operations would likely be adversely affected in the Manager's absence.

***The Manager is subject to conflicts of interest.***

There are several areas in which the interests of the Manager will conflict with those of the Fund, which should be carefully considered. (See "Conflicts of Interest.")

***Members of the Fund will have no claim to the fees payable to the Manager.***

The Fund and its borrowers will pay certain fees and compensation to the Manager. (See "Compensation to Manager.") These fees will be owed as incurred. Even if the Fund is unsuccessful in generating sufficient income to cover its operations, it will have no claim against the Manager for a refund of such fees.

**Risks Related To Ownership Of The Units**

***There is no market for the Units, and transfer of the Units could be severely restricted by law or market conditions.***

There is no public market for the Units and none is expected to develop in the future. Even if a potential buyer could be found, the transferability of Units is also restricted by the provisions of the Securities Act of 1933, as amended, and Rule 144 thereunder, and by the provisions of the Operating Agreement. (See "Terms of the Offering – Restrictions on Transfer.") Any sale, transfer or encumbrance of Units also requires the prior written consent of the Manager, which may be withheld in its sole discretion. Furthermore, Members will have only limited rights to redeem Units or withdraw from the Fund or to otherwise obtain the return of their invested capital. Therefore, all purchasers of Units must be capable of bearing the economic risks of this investment with the understanding that their interest in the Fund may not be liquidated by resale, and should expect to hold their Units for an undetermined period of time, and should understand that such inability to sell or withdraw "on demand" will subject an investment in Units to any losses the Fund may experience during such period.

***Members will be subject to actions taken by the Member Majority.***

The Members have only the voting rights set forth in the Operating Agreement or required by California law and a vote of a Member Majority is required to exercise such rights. Consequently, each Member will have no right to require or approve any action of the Fund or the Manager that conflicts with the will of the Member Majority including a majority of the Old Fund interests and it may be difficult, time consuming and costly to solicit adequate votes to take any action because there may be a significant number of Members with differing opinions and perspectives with respect to a course of action to take. Moreover, so long as Old Fund is a Member of the Fund, the Initial Interest will be included for the purposes of calculating the Member Majority and any vote cast by the Manager on Old Fund's behalf must be submitted to, and approved by, members representing a majority of the outstanding membership interests in Old Fund. This will increase the number of votes to solicit and Old Fund members (many of which will not be investing in the Fund) may have significantly differing perspectives with respect to the Fund than the Investor Members.

***If the Fund cannot collect all of the principal and interest due on its loans, the Fund's ability to earn a profit or to fund withdrawals may be impaired.***

The Fund's liquidity is dependent on, among other things, payments of interest and New Loan Principal Payments on the Fund's New Loans. The Manager will continually monitor the delinquency status of the Fund's New Loan portfolio and promptly institute collection activities on delinquent New Loan accounts but these efforts may ultimately prove unsuccessful. New Loan Principal Payments are also likely to be affected by economic conditions in the real estate market. Any failure by the Fund, for any reason, to collect nearly all of the principal and interest on the Fund's New Loans may impair the Fund's ability to operate successfully, unless the net proceeds earned on the sale of the properties securing the loans are adequate to cover such amounts.

The inability of the Fund to collect Initial Loan Principal Payments will not affect Investor Members; however, failure to collect interest payments on the Initial Loans and transfer of any Non-Performing Initial Loans to Old Fund may negatively affect the overall return to Investor Members on their investment.

***The Fund will be taxed as a "Partnership" and the Members will be taxed as "Partners."***

The Fund will elect to be treated as a partnership for federal income tax purposes. Any favorable federal tax treatment presently available with respect to the Fund could be affected by any changes in tax laws that may result through future Congressional action, tax court or other judicial decisions, or interpretations of the Internal Revenue Service. IN VIEW OF THE FOREGOING, PROSPECTIVE MEMBERS ARE URGED TO REVIEW THE "FEDERAL INCOME TAX CONSEQUENCES" SECTION CAREFULLY AND TO CONSULT THEIR OWN TAX COUNSEL.

***The Units are not insured or guaranteed by any government agency or public entity.***

The Units are not insured or guaranteed by the Federal Deposit Insurance Corporation (FDIC), the Securities Investor Protection Corporation (SIPC) or any other governmental agency or public entity, in contrast to certificates of deposit or accounts offered by banks, savings and loan associations or credit unions. Members in the Fund will be dependent on the Manager's ability to effectively manage the Fund's business to generate sufficient cash flow for the repayment of Members' capital and the generation of any profit. If Fund cash flow proves inadequate, investors could lose part or all of their investments.

***The Fund will not set aside any funds to satisfy requests for withdrawals or redemptions from the Fund. A new investor's subscription may be used in whole or in part to fund withdrawals or redemptions.***

The Manager will not create or contribute funds to a separate account in order to fund requests for withdrawal from the Fund and redemption of any Member's investment. Because funds are not set aside periodically to fund such withdrawals, Members must rely on cash flow from operations and funds from the sale of Units to satisfy withdrawal requests. Money received from the sale of Units may be used in whole or in part, at the discretion of the Manager, to fund Investor Member withdrawal and redemption requests; however, to the extent cash flow from operations and the sale of Units is not sufficient to fund withdrawal requests received from one or more Investor Members at any time, any Units which are unredeemed will remain subject to Fund operations, which may include Fund losses. Furthermore, an investor may be admitted to the Fund at a time when there is a waiting list to withdraw, making it likely that such investor will not be able to withdraw quickly upon being admitted and therefore will remain subject to the Fund's operating results, which may include losses.

***The Fund is required to return the Initial Cash Contribution to Old Fund by the expiration of Old Fund's Liquidation Period, which may take priority to Withdrawal Distributions to Investor Members.***

The Manager will not create or contribute funds to a separate account in order to fund the withdrawal and redemption of Old Fund's Initial Cash Contribution (which is \$175,000) and will rely on cash flow from operations make such distribution prior to the expiration of Old Fund's Liquidation Period. (See, "Terms of the Offering – Membership Classes" and "The Manager and its Affiliates – BaySierra Mortgage Fund, LLC.") Money received from the sale of Units will not be used to fund Old Fund's redemption; however, the Manager may give priority to the redemption of Old Fund's Initial Cash Contribution over withdrawal requests received by Investor Members. (See "Summary of the Operating Agreement – Withdrawal from Fund.") To the extent the Fund's cash flow from operations is not sufficient to fund all withdrawal requests at a time when cash flow is needed to redeem the Initial Interest, Investor Members with outstanding withdrawal requests may be required to remain as Members of the Fund longer than they had anticipated, and any Units which are unredeemed will remain subject to Fund operations, which may include Fund losses.

***Fluctuations in interest rates pose risks to the Fund's business.***

Mortgage interest rates are subject to abrupt and substantial fluctuations, but the right of Investor Members to withdraw capital from the Fund is subject to substantial restriction and Units are a relatively illiquid investment. (See above, "No Market for Units.") If prevailing interest rates rise above the average interest rate being earned by the Fund's loan portfolio, Investor Members may wish to liquidate their investment in order to take advantage of higher returns available from other investments but may be unable to do so.

***Allocation of interest payments among Old Fund and the Investor Members may benefit Old Fund.***

Interest payable on the Initial Loans and New Loans will be shared among all Members of the Fund at the time the payments are received. Consequently, to the extent the average interest rate payable on Initial Loans is less than the average interest rate payable on the New Loans, interest otherwise payable to Investor Members under the New Loans (and funded by Investor Member capital) may be paid to Old Fund at the expense of Investor Members.

***The Operating Agreement does not contain provisions to protect investment in the Units.***

The Units do not have the benefit of extensive protective provisions in the Operating Agreement. The provisions of the Operating Agreement are not designed to protect a Member's investment if there is a material adverse change in the Fund's financial condition or results of operations. For example, a Member's ability to withdraw from the Fund is limited. Therefore, the Operating Agreement provides very little protection of Members' investment.

***Investment delays carry risk.***

There may be a delay between the time a subscription is submitted by a prospective investors and the time the Fund accepts such subscription and the investor becomes a Member. There may also be delays between the time a Liquidation Distribution is made and a Rollover Subscription funds are required by the Fund. During such time, investors will not earn interest on their investment. There may also be a delay between the Fund's receipt of capital into the Operating Account (from new Cash Subscriptions, Rollover Subscriptions, payoffs or otherwise) and the funding of a loan with such capital. During these periods of delay, the proceeds may be invested in interest bearing accounts, short-term

certificates of deposit, money-market funds or other liquid assets which will not yield as high a return as the anticipated return to be earned on Fund loans. The length of these delays may adversely affect the overall investment return to Members.

***Members may be obligated to return certain impermissible distributions.***

Members are not required to contribute any additional capital to the Fund beyond their investment to pay any debts of the Fund. Under California law, however, limited liability companies such as the Fund are prohibited from making distributions to their members if following such distribution the limited liability company would be unable to pay its debts or following such distribution the company's total liabilities would exceed its total assets. Members receiving such distributions may be obligated to return the distribution but only if such member had actual knowledge of the impropriety of the distribution at the time it was made. Consequently, to the extent that a return of a Member's capital contribution is deemed a distribution, a Member may be required under certain circumstances to return such distributions to the Fund to discharge the Fund's liabilities to creditors who extended credit to the Fund during the period such capital contribution was held by the Fund.

***The Units are risky and speculative investments and if you cannot afford to lose your entire investment, you shouldn't invest.***

Prospective investors should be aware that the Units are risky and speculative investments suitable only for investors of adequate financial means. If you cannot afford to lose your entire investment, you should not invest in the Units. If the Fund accepts an investment, you should not assume that the Units are a suitable and appropriate investment for you.

***There is no guaranty that monthly distributions of Fund income will be made. Investors that will sustain substantial economic hardship in the absence of monthly income distributions from the Fund should not invest.***

An investor in the Fund may, upon purchasing Units, elect to have his or her share of Fund earnings distributed on a monthly basis; however, neither the amount of, nor the right to, such monthly distributions is guaranteed. Investors purchasing Units are only entitled to distributions equal to their pro-rata share of monthly net income to the extent cash is available for distribution. If the Fund is unable to generate sufficient cash in any given month to distribute to electing Members no distributions will be made. (See "Summary of Operating Agreement – Cash Distributions.") Consequently, investors that will rely on the monthly income received from the Fund to meet their monthly expenses or who will suffer substantial economic hardship in the absence of such income should not invest.

***Investors have not been independently represented in the formation of the Fund.***

Investors in the Fund have not been represented by independent counsel in its organization, and the attorneys who have performed services for the Fund have also represented the Manager. Thus, conflicts of interest between the Fund and the Manager may not have been addressed as vigorously as in an arms-length transaction. (See "Conflicts of Interest.")

**FORWARD-LOOKING STATEMENTS**

This Offering Circular contains forward-looking statements within the meaning of federal securities law. Words such as "may," "will," "expect," "anticipate," "believe," "estimate," "continue," "predict," or other similar words, identify forward-looking statements. Forward-looking statements appear in a number of places in this Offering Circular, including, without limitation, the "Use of

Proceeds,” “Business” and “Business and Lending - Lending Standards and Policies” sections, and include statements regarding the Fund’s intent, belief or current expectation about, among other things, trends affecting the markets in which the Fund will operate, its business, financial condition and strategies. Although the Fund believes that the expectations reflected in these forward-looking statements are based on reasonable assumptions, forward-looking statements are not guarantees of future performance and involve risks and uncertainties. Actual results may differ materially from those predicted in the forward-looking statements as a result of various factors, including those set forth in the “Risk Factors” section of this Offering Circular. If any of the events described in “Risk Factors” occur, they could have an adverse effect on the Fund’s business, financial condition and results of operations. When considering forward-looking statements, prospective investors should keep these Risk Factors in mind as well as the other cautionary statements in this Offering Circular. Prospective investors should not place undue reliance on any forward-looking statement. The Fund is not obligated to update forward-looking statements.

### **FUND BUSINESS AND LENDING**

The Fund will engage in the business of making or purchasing loans or interests in loans secured by deeds of trust that encumber real estate located primarily, if not exclusively, in California and, in some circumstances, loans that are secured by promissory notes that are, in turn, secured by deeds of trust (i.e., hypothecated notes). The Fund may also purchase loans from third parties when, in the Manager’s discretion, it is beneficial for the Fund to do so. With the exception of the Initial Loans, all Fund loans will be selected by the Manager pursuant to the guidelines set forth in the “Lending Standards and Policies” subsection below. The Initial Loans were contributed to the Fund by Old Fund and may not meet the guidelines set forth herein; however, Old Fund is required to re-acquire any Non-Performing Initial Loan and the risk of default on those loans and any associated costs of enforcement or collateral will be borne solely by Old Fund.

#### **General**

The Manager is a licensed California real estate broker and will be responsible for selecting, underwriting and arranging all New Loans made or purchased by the Fund. In addition to the asset management fee payable to the Manager for managing the Fund, the Manager will earn points, generally ranging from 2% to 6% of loan principal, on all New Loans it arranges for the Fund and may receive a servicing fee for servicing some New Loans on behalf of the Fund. (See “Compensation to Manager” and “Conflicts of Interest.”) Borrowers generally will borrow an amount sufficient to pay the points to the Manager, which becomes part of the loan balance to be repaid by the borrower. (See “Use of Proceeds.”) All of the promissory notes and deeds of trust evidencing New Loans will list the Fund as the initial lender or will be assigned to the Fund upon purchase of the loan. The Fund will earn income from the interest on all Fund loans, and from the payment of late fees, prepayment penalties and other fees which may be charged to borrowers.

The Fund will usually be an “asset” rather than a “credit” lender. This means that the Fund may rely primarily on the value of the real property securing New Loans to protect its investment. To determine the value of the real property, the Fund will conduct a Market Value Analysis to determine the fair market value of real property used to secure New Loans made by the Fund (see “Lending Standards and Policies,” below, for the definition of Market Value Analysis), but no assurance can be given that such an analysis will in any or all cases, be and remain accurate.

In some circumstances, the Fund may purchase undivided fractional interests in loans (“**Fractional Interests**”) arranged by the Manager on behalf of the Fund and other lenders (“**Fractionalized Loans**”) rather than funding an entire loan; however, the Fund will only acquire

Fractional Interests in Fractionalized Loans that meet the New Loan standards set forth in the “Lending Standards and Policies” section, below. Fractionalized Loans will be serviced by the Manager who will act as the agent of the Fund and the other holders of Fractional Interests in the loan and who will be paid a loan servicing fee in connection with such services. (See “Risk Factors – Risks Relating to the Fund’s Business,” “Conflicts of Interest – Fractional Interests,” and “Compensation to the Manager and its Affiliates.”)

## **Lending Standards And Policies**

### ***General Standards for New Loans***

New Loans made or purchased by the Fund will be secured by deeds of trust that encumber real estate located primarily in California including improved non-owner occupied residential properties and improved commercial, industrial, multi-family and mixed use properties. The Fund may also make loans secured by unimproved or partially improved properties including fully entitled, partially entitled or unentitled land and land utilized for agricultural purposes (collectively, “**Land Loans**”); however, the percentage of Land Loans will be limited such that no Land Loan will be made if upon closing of the Land Loan the total outstanding principal balance of all Land Loans held by the Fund (including Initial Loans that are Land Loans) would exceed 20% of the Fund’s total capitalization (i.e., its Net Assets Under Management) at such time. The Fund will not make or invest in construction or rehabilitation loans that are underwritten based upon the completed value of the construction or rehabilitation due to the increased risks of loss associated with such loans. The Fund’s loans will not be insured or guaranteed by any governmental agency or private entity. The Fund will select and underwrite New Loans for investment pursuant to the guidelines set forth below, which guidelines are designed to set standards for the quality of the real property security given for the loans.

1. **Priority of Deeds of Trust.** New Loans made or invested in by the Fund will be secured by first deeds of trust which will be senior to all other monetary liens (if any) on the real properties securing such loans (the “**Security Property**”) other than liens for taxes and assessments not yet due and payable. The Manager may also obtain additional collateral from borrowers to secure Fund loans if, in the Manager’s sole judgment, such cross-collateralization is necessary adequately secure the loan or otherwise protect the Fund’s interests. Such additional collateral may consist of senior or junior deeds of trust on real property, pledges of personal property, or other forms of collateral deemed by the Manager to provide additional security for a Fund loan.

2. **Geographic Area of Lending Activity.** Fund loans will be secured by deeds of trust on properties located primarily in California; however, the Fund may take a security interest in property outside California as additional collateral for a loan. In no event will the aggregate principal amount of Fund loans primarily secured by real estate located outside of California exceed 20% of the aggregate principal amount of the Fund’s entire loan portfolio.

3. **Loan-to-Value Ratios.** The amount of the Fund’s loan on the Security Property generally will not exceed the percentages stated below, based on the value of the Security Property as determined by written appraisal or written evaluation at the time the loan is made (a “**Market Value Analysis.**”). In most circumstances the Market Value Analysis will be based upon a written appraisal performed by a licensed independent California appraiser; however, Manager may have an appraisal or a written evaluation done by an independent broker or other non-certified appraiser (including Manager) who is qualified and experienced to value the subject property if, in Manager’s judgment, the cost of a certified independent appraisal is not warranted under the circumstances.

Type of Property/Loan	Maximum Loan to Value Ratio
Commercial Property (including multi-unit residential property with more than 4 units, office buildings, industrial and warehouse facilities, retail stores and small shopping centers)	65%
1-4 Single Family Residential Properties (Non-Owner Occupied)	65%
Land Loans	35%

The above-stated loan-to-value ratios may be increased if, in the sole discretion of the Manager, a given loan is supported by credit adequate to justify a higher loan-to-value ratio or if mortgage insurance is obtained; however, the Manager does not anticipate obtaining or requiring the borrowers to maintain mortgage insurance. The foregoing loan-to-value ratio will not apply to purchase-money financing offered by the Fund to sell any real estate owned (acquired through foreclosure) or to refinance an existing loan that is in default at the time of maturity. In such cases, the Manager shall be free to accept any reasonable financing terms that it deems to be in the best interests of the Fund, in its sole discretion.

4. Terms of Loans. The term of Fund loans will vary at the discretion of the Manager. Fund loans will generally have stated maturities ranging from one to five years and will generally provide for monthly payments of interest only with a “balloon payment” at the end of the term. Some Fund loans may be fully or partially amortizing (i.e., the loan will be repaid in equal monthly installments of principal and interest over the term).

5. Escrow Conditions. Fund loans will be funded through an escrow account handled by the Manager or a qualified title insurance or escrow company. The escrow agent will be instructed not to disburse any funds until the following conditions are met:

(a) Satisfactory title insurance coverage will be obtained for all loans, with the title insurance policy, or endorsement to an existing policy, naming the Fund as the insured and providing title insurance in an amount equal to the principal amount of the loan. Title insurance insures only the validity and priority of the Fund’s deed of trust, and does not insure the Fund against loss by reason of other causes, such as diminution in the value of the security property, over-appraisals, borrower’s defaults, etc.

(b) Satisfactory fire and casualty insurance has been obtained for all loans, or only casualty insurance in the event of a Loan secured by unimproved land, which insurance shall name the Fund as loss payee in an amount equal to the principal amount of the Fund’s loan. (See “Risk Factors – Uninsured Losses.”)

(c) The Manager does not intend to arrange for mortgage insurance, which would afford some protection against loss if the Fund foreclosed on a loan and there were insufficient equity in the security property to repay all sums owed.

(d) All loan documents (notes, deeds of trust, etc.) and insurance policies will name the Fund as payee and beneficiary or additional loss insured, as applicable. In the event the Fund purchases loans, the Fund shall receive assignments of all beneficial interest in any documents related to

each Loan so purchased. Fund investments in Loans will not be held in the name of the Manager or any other nominee.

6. No Loans to Manager. No loans will be made by the Fund to the Manager or to any of its affiliates, except for any financing extended as part of a sale of real estate owned as a result of foreclosure. (See “Conflicts of Interest – Sale of Real Estate Owned to Affiliates.”)

7. Purchase of New Loans from Affiliates. Manager is an active mortgage loan broker and mortgage banker. Manager currently funds the significant portion of mortgage loans it originates and sells interest in such loans to its investors. Existing loans funded by or acquired by the Manager or its affiliates (including Old Fund) may be purchased by the Fund. The Fund may also purchase New Loans from third parties. All New Loans purchased by the Fund shall not be in default at the time of purchase and must otherwise satisfy the foregoing lending guidelines. Generally, the purchase price to the Fund for any such loan will not exceed the par value of the note or its fair market value, whichever is lower, but the Manager may purchase loans for a premium if the New Loan is not being purchased from an affiliate of the Fund or the Manager and the Manager believes the total purchase price is fair and reasonable and in the best interest of the Fund.

8. Loan Diversification. No New Loan (or Fund interest in a New Loan) will exceed the greater of (a) \$500,000 or (b) 20% of total Fund capital at the time of the loan.

9. Cash Reserves. Cash reserves may be retained by the Fund for the purpose of covering the Fund’s unexpected cash needs, if the Manager believes it to be in the best interests of the Fund. The amount of cash reserves, if any, will be established by the Manager. Cash reserves may be held in cash, bank accounts, certificates of deposit, money market accounts, short-term bankers acceptances, publicly traded bond funds or other liquid assets.

### ***Credit Evaluations***

The Manager may consider the income level and general creditworthiness of a borrower, and any guarantor, to determine a borrower’s ability to repay a New Loan according to its terms, but such considerations may be subordinate to a determination that a borrower has sufficient equity in the security property to satisfy the loan-to-value ratios described above. Therefore, the Fund may make New Loans to borrowers with impaired credit (e.g., to consolidate their debts) or who do not have sources of income that would be sufficient to qualify for loans from other lenders such as banks or savings and loan associations.

### **Initial Loan Portfolio**

#### ***Initial Loans***

In October of 2010, Old Fund contributed to the Fund the ten (10) Initial Loans listed below (the “**Initial Loan Portfolio**”), all of which were current and free from default as of the date of contribution. Some or all of the Initial Loans in the Initial Loan Portfolio may not meet the lending standards in the “Lending Standards and Policies” subsection set forth above; however, as discussed below, the risk of default in the Initial Loan Portfolio will be borne primarily by the Old Fund.

The Initial Loan Portfolio was comprised of the following loans:

Description of Initial Loan Portfolio as of October 5, 2010				
Loan Number	Property Type	Note Rate (%)	Outstanding Principal	Due Date
0708787	Commercial	7.25%	\$518,189	09/01/12
0706772	Residential	8.00%	\$649,968	01/01/11
0610735	Commercial	8.00%	\$603,057	04/01/12
0703758	Land	11.00%	\$300,000	05/01/12
0710796	Commercial	8.00%	\$356,457	11/01/10
0712807	Commercial	11.50%	\$175,500	01/01/13
0611737	Commercial	11.50%	\$139,603	12/01/11
0804822	Commercial	11.50%	\$105,000	05/01/13
0804821	Land	11.75%	\$372,065	05/01/12
		<b>Wght. Avg.: 9.05%</b>	<b>Total: \$3,219,839.00</b>	

Interest payments payable on all of the Initial Loans will be allocated among all Members including the Investor Members, pro rata, in accordance with their relative capital account balances. All Initial Loan Principal Payments received by the Fund will be paid to Old Fund as Initial Loan Principal Distributions. Conversely, however, Old Fund will not be entitled to receive any New Loan Principal Payments collected by the Fund with respect to New Loans, which will be allocated solely to the Investor Members. (See “Summary of Operating Agreement – Profits and Losses.”)

### ***Non-Performing Initial Loans; Transfer Redemptions***

The Initial Loans were funded by Old Fund prior to being contributed to the Fund and only New Loans will be funded with the proceeds from the sale of Units. Moreover, the Operating Agreement requires Old Fund to re-acquire any Initial Loan that goes into default and any Initial Loan the Manager determines, in its reasonable judgment, will require the Fund to incur any enforcement or collateral protection expenses or that is otherwise is not in the Fund’s interest (a “**Non-Performing Initial Loan**”). At the time any Non-Performing Initial Loan is transferred to Old Fund, the Initial Interest of Old Fund will be reduced and redeemed in an amount equal to the unpaid principal balance of such loan as of the date of transfer (a “**Transfer Redemption**”). Consequently, the Fund will not be at risk for losses attributable to Initial Loans, except to the extent of the loss of interest income otherwise payable thereon. (See “Summary of Operating Agreement – Additional Rights and Obligations of Old Fund.”)

## **FUND MANAGEMENT AND LOAN SERVICING**

### **General**

The Manager will have the sole authority to manage the affairs of the Fund including the sole authority to: (i) identify and arrange loans and Fractional Interests to be made or purchased by the Fund; (ii) monitor and assess loan portfolio performance and set the Fund’s accounting procedures; (iii) oversee loan servicing and make loan enforcement decisions; and (iv) otherwise direct the day-to-day operations of the Fund. Members will have limited rights to vote on or direct the actions of the Fund and must rely upon the Manager to make decisions in the best interests of the Fund. (See “Risk Factors–Risks Related to the Manager” and “Conflicts of Interests.”)

### **Loan Brokerage and Servicing**

It is anticipated that the Manager will act as the Fund’s exclusive loan broker pursuant to its real estate broker’s license and will arrange the funding or purchase of New Loans or Fractional Interests in consideration of points payable to the Manager by the borrower. (See, “Compensation to the Manager and it’s Affiliates” and “Conflicts of Interest.”) The Manager will also “service” all Fund loans which

includes the collection of loan payments, performing administrative services in connection with the loan and (except in the case of the Initial Loans) taking all actions the Manager deems necessary to enforce the terms of the loan documents upon a default.

If the Fund makes or purchases a Fractional Interest in a loan, the Manager will service the loan on behalf of the Fund and the other Fractional Interest holders (the “**Co-Lenders**”) pursuant to the terms of a Loan Servicing and Equity Interest Agreement entered into by the Fund, the Manager and each of the Co-Lenders (the “**Co-Lender Servicing Agreement**”). Pursuant to the terms of the Co-Lender Servicing Agreement, Co-Lenders holding Fractional Interests representing more than 50% of the aggregate outstanding Fractional Interests in the loan will have the right to direct all decisions following a material loan default including the right to approve: (i) extended forbearances, loan extensions or material loan modifications; (ii) any forgiveness of principal or regular interest payable under the loan; (iii) the terms and conditions of any entity formed to take title to the security property following foreclosure; and (iv) foreclosure by judicial disclosure rather than under the power of sale contained in the deed of trust. Consequently, to the extent the Fund invests in less than 50% of the total Fractional Interests outstanding in a loan, the Fund will be subject to additional risks not inherent in whole loans or loans in which the Fund holds a majority interest. (See “Risk Factors – Risks Relating to the Fund’s Business.”) Moreover, by acting as the servicing agent of both the Fund and the other Co-Lenders, the Manager is subject to additional conflicts of interest whether or not the Fund holds a majority or minority interest in the loan. (See “Conflicts of Interest”)

### **THE MANAGER AND ITS AFFILIATES**

The Manager will manage and direct the affairs of the Fund. All loans made or invested in by the Fund will be arranged and serviced by the Manager, BaySierra Financial, Inc.

#### **BaySierra Financial, Inc.**

BaySierra Financial, Inc. is a California corporation that formerly operated under the business name BaySierra Mortgage, Inc. The Manager was incorporated in 2000 and is operating as a licensed real estate broker in California under the fictitious business name of Santa Rosa Mortgage & Investment Company (“**BaySierra**”). Prior to founding BaySierra, BaySierra’s shareholders, John M. Graziano and Pamela K. Graziano, each owned a one-third interest in TRIAD Mortgage, Inc., a California corporation (“**TRIAD**”). TRIAD was originally founded in 1990, and in 1996 TRIAD purchased Santa Rosa Mortgage & Investment, Co. from National Bank of the Redwoods. In April of 2000, John and Pamela Graziano incorporated BaySierra Financial, Inc. and purchased TRIAD’s portfolio of private money loans and the company name, Santa Rosa Mortgage & Investment Company.

BaySierra continues to engage in the business of arranging, funding, selling, purchasing and servicing trust deed investments. In addition to acting as the Fund’s manager, BaySierra is the Manager of Old Fund, another mortgage investment fund that is currently in the process of dissolution and winding up (see below). BaySierra also offers and sells Fractional Interests in loans to its individual private investors and its own account pursuant to a qualification permit issued by the California Department of Corporations (DOC File No. 506-3005) and the multi-lender exemption from qualification set forth in Section 10238 of the California Business & Professions Code. BaySierra currently services or manages over \$80 Million of loans secured by deeds of trust on behalf of over 150 investors. (See “Conflicts of Interest” and “Risk Factors – Risks Associated with the Fund’s Business.”)

BaySierra currently has 5 employees, of which the following will be primarily responsible for the Fund’s management and operations:

**John M. Graziano.** John Graziano is a 50% shareholder of BaySierra and has served as its President since its incorporation in April of 2000. Mr. Graziano has over 20 years of bank lending experience and has been a licensed real estate broker since 1987. Prior to forming BaySierra, Mr. Graziano was a shareholder, President and broker of record for TRIAD for over 10 years. Mr. Graziano received a B.A. degree from California State University Northridge in 1968 and is a member of the California Mortgage Association and the Santa Rosa Chamber of Commerce. As an owner and officer of BaySierra, Mr. Graziano is responsible for all aspects of BaySierra’s and the Fund’s business.

**Pamela K. Graziano.** Pamela Graziano is a 50% shareholder of BaySierra and serves as BaySierra’s Vice President, Secretary, Treasurer and broker of record. Mrs. Graziano has over 20 years of bank lending experience in the areas of consumer finance, residential real estate and business lending and has been a licensed California real estate broker since 1988. Prior to forming BaySierra, Mrs. Graziano was a shareholder, Vice President, Secretary and Treasurer for TRIAD for over 10 years. As an owner, officer and broker of record of BaySierra, Mrs. Graziano is responsible for all aspects of BaySierra’s business.

**Bobby Ritter.** Bobby Ritter is a licensed real estate salesperson and has served as BaySierra’s Fund Administrator since 2003. As Fund Administrator, Mr. Ritter is responsible for all aspects of the Fund’s operations. Mr. Ritter received a B.S. degree in Accounting from Sonoma State University in 2003.

**BaySierra Mortgage Fund, LLC**

The Manager is also the sole manager of Old Fund, which was formed for the same purpose as the Fund – investing in trust deed investments arranged by BaySierra. Old Fund began operations in May of 2003, and from Old Fund’s inception through 2007, Old Fund paid average yields to its members ranging from 9.02% to 7.01% per annum. In late 2007 and early 2008, Old Fund’s yield, like so many other investment vehicles, was significantly affected by the financial crisis and the ensuing rapid, unforeseen, deterioration of the credit markets and real estate values. (See “Risk Factors – Risks Related to the Fund’s Business.”) The increased defaults and the existence of a depressed real estate market in which to sell properties acquired through foreclosure resulted in losses in 2008 and 2009 of -3.78% and -5.06%, respectively. Old Fund’s average annual investment returns since inception are set forth in the table below.

Year	Average Annual Return to Investors
2004	9.02%
2005	8.83%
2006	8.89%
2007	7.01%
2008	(3.78%)
2009	(5.06%)
2010 (1/1/10 – 8/31/10)	2.71%*

\* 2010 YTD Yield based upon unaudited estimates of Old Fund’s accrued income and expenses as of August 31, 2010 and remains subject to revision.

In the second quarter of 2010, the Manager submitted proposals to the Old Fund members recommending the dissolution and orderly liquidation of Old Fund and the transfer of the Initial Capital to

the Fund in exchange for the Initial Interest, which proposals were approved by the Old Fund Members on July 15, 2010. The Manager's Old Fund dissolution proposal was made in response to two primary issues that resulted from the financial crisis: (i) decreased liquidity due to increased withdrawal requests received in response to the financial crisis; and (ii) the effect of the market uncertainty and stagnation on the Manager's ability to accurately value Fund assets for the purposes of making withdrawal distributions. (See "Risk Factors – Risks Related to Ownership of Units" and "Risks Related to the Fund's Business.")

To address the issue of decreased liquidity resulting from the significant increase in withdrawal requests experienced by Old Fund, the Fund's withdrawal provisions have been structured to allow the Manager to utilize up to 50% of the Fund's cash otherwise available for making withdrawal distributions to make investments in New Loans. (See "Summary of the Operating Agreement – Withdrawal Restrictions.") While such a provision does not guaranty the Fund will not be adversely affected by significant increases in withdrawal requests, it provides the Manager with an increased ability in such circumstances to maintain the Fund's performance for non-withdrawing Members while continuing to allocate a portion of the Fund's available cash flow to meet outstanding withdrawal requests. The Fund will also be subject to the risk that market uncertainty and stagnation will render valuing the Fund's assets difficult for the purposes of making withdrawal distributions. The Fund was formed, however, to take advantage of lending opportunities believed by the Manager and certain Old Fund Members to exist in the post-financial crisis market and, so long as the Fund can take advantage of these opportunities and grow and remain profitable for its Members, the Manager believes withdrawal requests received by Investor Members will be significantly reduced from those received by Old Fund in the wake of the panic experienced during the financial crisis. Moreover, as real estate markets stabilize over time, the ability of the Manager to value the Fund's assets will reduce the risk of making incorrect asset valuations in connection with any withdrawal requests the Fund receives in the future.

In connection with its liquidation, the Old Fund Members voted to make the Initial Cash Contribution and the Initial Loan Contribution to the Fund in exchange for the Initial Interest on the terms and conditions described herein.

### **COMPENSATION TO MANAGER AND ITS AFFILIATES**

The following discussion summarizes the forms of compensation to be received by the Manager and its affiliates. All of the amounts described below will be received regardless of the success or profitability of the Fund. None of the following compensation was determined by arm's-length negotiations. The Manager retains the right to terminate all or any portion of its business relationship with the Fund at any time, in which event the Fund would seek to retain one or more other firms to perform the various services to be rendered by the Manager as described below.

<u>Form of Compensation</u>	<u>Estimated Amount or Method of Compensation</u>
Loan Brokerage Commissions, Renewal and Forbearance Fees to the Manager.....	Anticipated to average between 2% and 6% of the principal amount of each loan and generally not less than \$2,000 per loan, and may be higher or lower depending upon market conditions
Loan Processing and Documentation Fees .....	Prevailing industry rates, of approximately \$250 per loan for documentation fees, \$150 per loan for funding fees, \$300 per loan for loan processing fees and \$275 for inspection fees (if applicable). These

<u>Form of Compensation</u>	<u>Estimated Amount or Method of Compensation</u>
	fees may vary depending on market conditions.
Asset Management Fee .....	1.50% of Net Assets Under Management on an annual basis, payable monthly (i.e., 1/12 <sup>th</sup> of 1.50% per month). [1] [2]
Reimbursement of Expenses to Manager.....	Reimbursement for all out-of-pocket organization, syndication, operating and administrative expenses of the Fund. The Manager will not allocate any portion of its general overhead expenses to the Fund.

[1] “Net Assets Under Management” means the total Fund capital, including cash, notes (at book value), real estate owned (at book value), accounts receivable, advances made to protect loan security, unamortized organizational expenses and any other Fund assets valued at fair market value, less Fund liabilities. The Asset Management Fee will be calculated on the last day of each calendar month with respect to Net Assets Under Management on such date and paid on the first day of the immediately proceeding month.

[2] The Manager may receive loan servicing fees in connection with Fractionalized Loans held by the Fund; however, all loan servicing fees paid to the Manager by the Fund on Fractionalized Loans (if any) will be deducted from and reduce the Fund’s Asset Management Fee otherwise payable to the Manager on a dollar-for-dollar basis. Consequently, the Fund will not pay any additional fees to the Manager for servicing Fractionalized Loans for the Fund.

**FIDUCIARY RESPONSIBILITY OF THE MANAGER**

Under California law, the fiduciary duties of a manager to the limited liability company and to its members are those of a partner to a partnership and to the partners of a partnership. Accordingly, a manager is accountable to a limited liability company as a fiduciary, which means that a manager is required to exercise good faith and integrity with respect to company affairs. This fiduciary duty is in addition to those other duties and obligations of, and limitations on, the Manager which are set forth in the Operating Agreement. The Fund’s business operations and affairs will be managed entirely by the Manager, which is subject to certain conflicts of interest. (See “Conflicts of Interest.”)

The Fund has not been separately represented by independent legal counsel in its formation or in its dealings with the Managers, and Members must rely on the good faith and integrity of the Managers to act in accordance with the terms and conditions of this offering.

The Manager must, on demand, give to any Member or his legal representative true and complete information concerning all Fund affairs. Each Member or his legal representative has the right to inspect and copy the Fund books and records upon reasonable request.

The Operating Agreement provides that the Manager shall have no liability to the Fund for losses resulting from errors in judgment or other acts or omissions, unless the Manager is guilty of fraud, bad faith or willful misconduct. The Operating Agreement also provides that the Fund shall indemnify the Manager against liability and related expenses (including reasonable attorneys’ fees and costs) incurred in dealing with the Fund, Members or third parties, so long as no fraud, bad faith or willful misconduct on the part of the Manager is involved. Therefore, Members may have a more limited right of action than

they would have absent these provisions in the Operating Agreement. A successful indemnification of the Manager or any litigation that may arise in connection with the Manager's indemnification could deplete the assets of the Fund. Members who believe that a breach of the Manager's fiduciary duty has occurred should consult with their own counsel.

### **CONFLICTS OF INTEREST**

The following is a list of the important areas in which the interests of the Manager will conflict with those of the Fund. The Members must rely on the general fiduciary standards which apply to a general partner of a limited partnership to prevent unfairness by the Manager or an affiliate of the Manager in a transaction with the Fund. The Fund has not been represented by separate legal counsel in connection with its formation or its dealings with the Manager. (See "Fiduciary Responsibility of the Manager.") Except as may arise in the normal course of the relationship, there are no transactions presently contemplated between the Fund and its Manager (or its affiliates) other than those listed below.

#### **Loan Brokerage Commissions, Renewal and Forbearance Fees**

None of the compensation set forth under "Compensation to Manager and Its Affiliates" was determined by arms' length negotiations. It is anticipated that the loan brokerage commissions, renewal and forbearance fees charged to borrowers by the Manager for most loans will average between 3-6% of the principal amount of each loan, but may be higher or lower depending upon market conditions. Any increase in such charges will have a direct, adverse effect upon the interest rates that borrowers will be willing to pay the Fund, thus reducing the overall rate of return to Members. Conversely, if the Manager reduced the loan brokerage commissions, renewal and forbearance fees charged by it, a higher rate of return might be obtained for the Fund and the Members. Moreover, the Manager will earn the largest portion of its compensation from commissions (or "points") that it collects at loan closing, which are not affected by whether the loan proves to be a performing or non-performing loan for the Fund. Therefore, a conflict will exist when the Manager must decline to fund a loan it deems not to be in the best interest of the Fund if such loan would otherwise provide the Manager with additional compensation at closing through earning the points payable on the loan.

This conflict of interest will exist in connection with every Fund loan transaction, and Members must rely upon the fiduciary duties of the Manager to protect their interests. The Fund will generally charge borrowers interest at the rate generally prevailing in the geographical areas where the security property is located for loans to comparable borrowers of similar size, duration and security.

The Manager has the right to retain the services of other firms, in addition to or in lieu of the Manager, to perform brokerage services, loan servicing and other activities in connection with the Fund's loan portfolio that are described in this Offering Circular.

#### **Other Funds or Businesses**

The compensation structure applicable to the Manager in connection with loans that are arranged or originated for investors unrelated to the Fund may be different, and depending on the circumstances at a given point in time, may be more lucrative to the Manager than the compensation payable to the Manager in connection with the Fund. As a result, there may exist a financial incentive for the Manager to arrange or originate loans for private investors outside the Fund and the Members must rely on the fiduciary duties of the Manager to protect their interests under such circumstances. In the future, the Manager may also sponsor other funds formed to conduct business similar to that of the Fund. If these other funds (if formed) have funds to invest at the same time as the Fund, there will then exist conflicts of interest on the part of the Manager as to whether to offer a particular loan opportunity to the Fund or to

these other funds. The Manager will decide which loans are appropriate for funding by the Fund or by such other funds after consideration of all relevant factors, including the size of the loan, portfolio diversification, and amount of uninvested funds.

The Manager may engage for its own account, or for the account of others, in other business ventures, similar to that of the Fund or otherwise, and neither the Fund nor any Member shall be entitled to any interest therein.

The Fund will not have independent management and it will rely on the Manager for the operation of the Fund. The Manager will devote only so much time to the business of the Fund as is reasonably required. The Manager will have conflicts of interest in allocating management time, services and functions between its existing business interests other than the Fund and any future partnerships which it may organize as well as other business ventures in which it may be involved. The Manager believes it has sufficient staff available to be fully capable of discharging its responsibilities to all such entities.

### **Managing Old Fund**

The Manager will manage both the Fund and Old Fund until all of Old Fund's assets have been liquidated and Old Fund has been terminated. Consequently, the Manager will have a fiduciary duty to act in the interest of the Old Fund Members in connection with its Initial Interest while simultaneously having a fiduciary duty to the Investor Members. Consequently, a conflict of interest will exist at any time that the interest of Old Fund deviates from the interest of the Investor Members. In order to minimize this conflict, the Manager has agreed that any vote made by Old Fund in connection with its Initial Interest will be directed by a majority interest of the Old Fund Members and will not be discretionary on the part of the Manager.

### **Servicing Fractional Interests**

If the Manager arranges for the Fund to invest in a Fractional Interest rather than funding an entire loan, the Manager will service the Fractionalized Loan pursuant to a Co-Lender Servicing Agreement between the Manager, the Fund and each of the other Co-Lenders on the Loan. (See "Fund Management and Loan Servicing – Loan Brokerage and Servicing.") Under the Co-Lender Servicing Agreement, the Manager will serve as the agent of the Fund as well as each of the other Co-Lenders (which in some circumstances may include the Manager or its principals or affiliates). In circumstances where the interests of the Fund and the Co-Lenders diverge with respect to each parties interest in the Fractionalized Loan, the Manager will have a conflict of interest arising out of its agency of each party. In the case of such a conflict with Manager will act in accordance with the express terms of the Co-Lender Servicing Agreement unless to do so would require a breach of the Manager's duties to the Fund or any of the Co-Lenders, in which case, the Manager shall seek to remove itself as the Manager and to have an independent third party Manager appointed in its place. The Manager may receive loan servicing fees payable by the lenders on Fractionalized Loans; however, either (i) the Fund will not be required to pay such fees, or (ii) any loan servicing fees paid by the Fund to the Manager will reduce the Asset Management Fee payable to the Manager on a dollar-for-dollar basis. (See "Compensation to the Manager and its Affiliates.")

### **Lack of Independent Legal Representation**

The Fund has not been represented by independent legal counsel to date. The use by the Manager and the Fund of the same counsel in the preparation of this Offering Circular and the organization of the

Fund may result in the lack of independent review. Prospective investors must rely on their own legal counsel for legal advice in connection with this investment.

### **Sale of Defaulted Loans or Real Estate Owned to Affiliates**

In the event a Fund loan goes into default or the Fund becomes the owner of any real property by reason of foreclosure on a Fund loan, the Manager's first priority will be to arrange the sale of the loan or property for a price that will permit the Fund to recover the full amount of its invested capital plus accrued but unpaid interest and other charges, or so much thereof as can reasonably be obtained in light of current market conditions. In order to facilitate such a sale, the Manager may arrange a sale to persons or entities controlled by or affiliated with the Manager (e.g., to another entity formed by the Manager or its affiliates), for the express purpose of acquiring defaulted loans or foreclosure properties from lenders such as the Fund. The Manager will be subject to conflicts of interest in arranging such sales since it will represent both parties to the transaction. For example, the Fund and the potential buyer will have conflicting interests in determining the purchase price and other terms and conditions of sale. The Manager's decision will not be subject to review by any outside parties.

The Manager shall undertake to resolve these conflicts by setting a purchase price for each defaulted loan or property which is not less than any of the following: (i) the independently appraised value of such loan or property, if any, at the time of sale; (ii) the amount of any third party offer already received, if any; or (iii) the total amount of the Fund's investment in the property. The Fund's investment is deemed to include without limitation the following: the unpaid principal amount of the loan upon which the Fund foreclosed, all unpaid interest accrued to the date of foreclosure, expenditures made to protect the Fund's interest in the property such as payments to senior lienholders and for insurance and taxes, all costs of foreclosure (including attorneys fees actually incurred to prosecute the foreclosure or to obtain relief from stays in bankruptcy), and any advances made by or on behalf of the Fund for any of the foregoing. A portion of the purchase price may be paid by the affiliate executing a promissory note in favor of the Fund, secured by a deed of trust on the property being sold. The total loan-to-value ratio for the property (including the Fund's note and any senior liens) will not exceed 90% of the purchase price of the property, and the note will otherwise contain terms and conditions comparable to those that would be contained in notes executed by third parties.

### **ERISA CONSIDERATIONS**

The Employee Retirement Income Security Act of 1974 ("**ERISA**") contains strict fiduciary responsibility rules governing the actions of "fiduciaries" of employee benefit plans. It is anticipated that some Members will be corporate pension or profit-sharing plans and Individual Retirement Accounts, or other employee benefit plans that are subject to ERISA. In any such case, the person making the investment decision concerning the purchase of Units will be a "fiduciary" of such plan and will be required to conform to ERISA's fiduciary responsibility rules. Persons making investment decisions for employee benefit plans (i.e., "fiduciaries") must discharge their duties with the care, skill and prudence which a prudent man familiar with such matters would exercise in like circumstances. In evaluating whether the purchase of Units is a "prudent" investment under this rule, fiduciaries should consider all of the risk factors set forth above. Fiduciaries should also carefully consider the possibility and consequences of unrelated business taxable income (see "Federal Income Tax Consequences"), as well as the percentage of plan assets which will be invested in the Fund insofar as the diversification requirements of ERISA are concerned. An investment in the Fund is relatively illiquid, and fiduciaries must not rely on an ability to convert an investment in the Fund into cash in order to meet liabilities to plan participants who may be entitled to distributions. **DUE TO THE COMPLEX NATURE OF ERISA, EACH PROSPECTIVE INVESTOR IS URGED TO CONSULT HIS OWN TAX ADVISOR OR**

## PENSION CONSULTANT TO DETERMINE THE APPLICATION OF ERISA TO HIS OR HER PROSPECTIVE INVESTMENT.

The Fund will limit subscriptions for Units from ERISA plan investors such that, immediately after each sale of Units, ERISA plan investors will hold less than 25% of the total outstanding membership interests in the Fund.

Fiduciaries of plans subject to ERISA are required to determine annually the fair market value of the assets of such plans as of the close of any such plan's fiscal year. Although the Manager will provide annually upon the written request of a Member an estimate of the value of the Units based upon, among other things, outstanding mortgage investments, it may not be possible to value the Units adequately from year to year, because there will be no market for them.

### **USE OF PROCEEDS**

The Fund's Initial Capital of \$3,394,840 will be contributed by Old Fund in the form of the Initial Loan Contribution \$3,219,839 and the Initial Cash Contribution (\$175,000). It is anticipated that the Initial Cash Contribution will be utilized to pay the Fund's initial organization and syndication expenses and to establish the Fund's initial cash reserves. The proceeds from the sale of Units offered hereby will be used to invest in New Loans, to fund and create additional reserves for Fund operations, pay ongoing syndication expenses and for other proper Fund purposes. The table below setting forth the anticipated use of proceeds is an estimate only, and actual use of proceeds will vary.

	Initial Capital	Percentage	Maximum Offering of Units	Percentage
Organization/Syndication Expenses <sup>1</sup>	\$75,000	2.2%	\$100,000	0.2%
Cash Reserves <sup>2</sup>	\$100,000	3.0%	\$1,500,000	3.0%
Initial Loan Portfolio <sup>3</sup>	\$3,219,839	94.8%	\$0.0	0.0%

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<sup>1</sup> The Fund's initial organization and syndication expenses have been paid from the Initial Cash Contribution made by Old Fund. The Manager will be entitled to reimbursement from the Fund for any ongoing operating and administrative expenses. (See "Compensation to the Manager and its Affiliates.")

<sup>2</sup> Cash reserves may be set aside by the Fund, in such amounts as the Manager shall deem appropriate, to meet unexpected cash needs of the Fund, including such operational cash needs that may arise if a New Fund loan goes into default. The total amount of reserves may be greater or less than indicated in the table, depending on needs perceived by the Manager.

<sup>3</sup> Initial Loan Principal Payments received by the Fund will be allocated and distributed to Old Fund, only, and Investor Members will only be entitled to their pro rata share of interest earned on the Initial Loans except to the extent an Investor Member is also an Old Fund Member entitled to distributions of Initial Loan Principal Payments payable through Old Fund. (See "Terms of the Offering – Membership Classes" and "Summary of the Operating Agreement – Profits and Losses.")

	Initial Capital	Percentage	Maximum Offering of Units	Percentage
Investment in New Loans <sup>4</sup>	<u>\$0.0</u>	<u>0.0%</u>	<u>\$48,400,000</u>	<u>96.8%</u>
TOTAL:	<u>\$3,394,840.00</u>	<u>100.00%</u>	<u>\$50,000,000.00</u>	<u>100.00%</u>

In addition to the uses for funds raised in this offering described in the table above, the Manager may accept subscriptions for Units for the purpose of redeeming the membership Interests of Investor Members wishing to withdraw from the Fund. (See “Summary of Operating Agreement – Withdrawal From Fund.”)

### **FEDERAL INCOME TAX CONSEQUENCES**

The following is a summary of certain relevant federal income tax considerations resulting from an investment in the Fund, but does not purport to cover all of the potential tax considerations applicable to any specific purchaser. Prospective investors are urged to consult with and rely upon their own tax advisors for advice on these and other tax matters with specific reference to their own tax situation and potential changes in applicable law. The Fund will not seek, and therefore will not obtain, an opinion of counsel as to any tax consequences intended to result from an investment in the Fund.

#### **Taxation of Undistributed Fund Income (Individual Investors)**

Under the laws pertaining to federal income taxation of limited liability companies that are treated as partnerships, no federal income tax is paid by the Fund as an entity. Each individual member reports on his federal income tax return his distributive share of Fund income, gains, losses, deductions and credits, whether or not any actual distribution is made to such member during a taxable year. Each individual member partner may deduct his distributive share of Fund losses, if any, to the extent of the tax basis of his Units at the end of the Fund year in which the losses occurred. The characterization of an item of profit or loss will usually be the same for the member as it was for the Fund. Since individual members will be required to include Fund income in their personal income without regard to whether there are distributions of Fund income, such investors will become liable for federal and state income taxes on Fund income even though they have received no cash distributions from the Fund with which to pay such taxes.

#### **Distributions of Income**

To the extent cash distributions exceed the current and accumulated earnings and profits of the Fund, they will constitute a return of capital, and each Member will be required to reduce the tax basis of his Units by the amount of such distributions and to use such adjusted basis in computing gain or loss, if any, realized upon the sale of Units. Such distributions will not be taxable to Members as ordinary income or capital gain until there is no remaining tax basis, and, thereafter, will be taxable as gain from the sale or exchange of the Units.

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<sup>4</sup> New Loan Principal Payments received by the Fund will be allocated and distributed to Investor Members, only, and Old Fund will not have any interest in the New Loans funded with the proceeds from the sale of Units other than its pro rata share of interest earned on such loans. (See “Terms of the Offering – Membership Classes” and “Summary of the Operating Agreement – Profits and Losses.”). All loan brokerage commissions paid to the Manager on New Loans will be paid by borrowers out of the proceeds of loans made by the Fund. Thus, a portion of the proceeds from the sale of Units, which will be used by the Fund to fund New Loans, will indirectly be paid to the Manager in the form of loan brokerage commissions, but will ultimately be repaid to the Fund by the borrowers if and when the New loans are repaid. (See “Compensation to Manager.”)

## **Property Held Primarily for Sale; Potential Dealer Status**

The Fund has been organized to invest in loans primarily secured by deeds of trust on real property. However, if the Fund were at any time deemed for federal tax purposes to be holding one or more Fund loans primarily for sale to customers in the ordinary course of business (a “dealer”), any gain or loss realized upon the disposition of such loans would be taxable as ordinary gain or loss rather than as capital gain or loss. The federal income tax rates for ordinary income are higher than those for capital gains. In addition, income from sales of loans to customers in the ordinary course of business would also constitute unrelated business taxable income to any investors which are tax-exempt entities. Under existing law, whether or not real property is held primarily for sale to customers in the ordinary course of business must be determined from all the relevant facts and circumstances. The Fund intends to invest in Loans and hold the Fund loans for investment purposes only, and to dispose of Fund loans, by sale or otherwise, at the discretion of the Manager and as consistent with the Fund’s investment objectives. It is possible that, in so doing, the Fund will be treated as a “dealer” in mortgage loans, and that profits realized from such sales will be considered unrelated business taxable income to otherwise tax-exempt investors in the Fund.

## **Tax Returns**

Annually, the Fund will provide the Members sufficient information from the Fund’s informational tax return for such persons to prepare their individual federal, state and local tax returns. The Fund’s informational tax returns will be prepared by certified public accountants selected by the Manager.

## **Character of Income**

The Fund will report its income as being derived from the trade or business of mortgage lending, not as portfolio income. The Manager believes this is the proper characterization, but there can be no assurance that it will not be challenged by the Internal Revenue Service. If the Fund is deemed to be engaged in the trade or business of lending money, its income allocable to that business will generally be characterized as nonpassive income, against which passive losses from other sources may not be offset. This is true even though its net losses allocable to that activity (or that portion of Members’ loss on the sale of a unit that is allocable to the Fund’s mortgage lending business) will be treated as passive activity losses. If the Fund is not considered engaged in a trade or business of lending money, then income and loss from its mortgage lending activities will be considered portfolio income and loss. In either case, Members will not be permitted to offset passive losses from other activities against Members’ share of that portion of income. Under Section 469 of the Code, the Fund’s income will not be passive income against which passive losses from other sources may be offset.

Moreover, if the Company’s income is considered portfolio income, then the loan servicing fees and asset management fees payable by the Company to the Manager will not serve to reduce the Company’s own net taxable income, but will instead be separately passed through to Members for inclusion on their individual tax returns as an investment expense. This means that such expenses may not be tax deductible by Members who do not itemize deductions on their income tax returns, or who do not exceed certain thresholds applicable to the deductibility of such expenses, or who are subject to the alternative minimum tax.

## **Unrelated Business Taxable Income**

Units may be offered and sold to certain tax exempt entities (such as qualified pension or profit sharing plans) that otherwise meet the investor suitability standards described elsewhere in this Offering

Circular. (See “Investor Suitability Standards.”) Such tax exempt entities generally do not pay federal income taxes on their income unless they are engaged in a business which generates “unrelated business taxable income,” as that term is defined by Section 513 of the Code. Under the Code, tax exempt purchasers of Units may be deemed to be engaged in an unrelated trade or business by reason of interest income earned by the Fund. Although interest income (which will constitute the primary source of Fund income) ordinarily does not constitute an item of unrelated business taxable income, this exclusion does not apply to the extent interest income is derived from “debt-financed property.” To increase Fund profits or increase Fund liquidity, the Manager may borrow funds in order to invest in mortgage loans. This “leveraging” of the Fund’s loan portfolio will constitute an investment in “debt-financed property” and the interest income earned on loans funded with borrowed funds will be unrelated business income taxable to ERISA plans. (See “Leveraging the Portfolio.”) The Fund may also realize unrelated business taxable income by reason of profits earned from the resale or lease of properties acquired through foreclosure that are encumbered by senior mortgage loans. However, unrelated business income is taxable only to the extent such income from all sources exceeds \$1,000 per year. The remainder of a tax exempt investor’s income will continue to be exempt from federal income taxes to the extent it complies with other applicable provisions of law, and the mere receipt of unrelated business income will not otherwise affect the qualification of an IRA or ERISA plan under the Code. The Manager does not anticipate that the Fund will ever earn so much unrelated business taxable income as to exceed this \$1,000 threshold for any tax exempt investor.

Rents from real property and gains from the sale or exchange of property are also excluded from unrelated business taxable income, unless the property is held primarily for sale to customers or is acquired or leased in certain manners described in Section 514(c)(9) of the Code. Therefore, unrelated business taxable income may also be generated if the Fund operates or sells at a profit any property that has been acquired through foreclosure on a Fund loan, but only if such property (1) is deemed to be held primarily for sale to customers, or (2) is acquired from or leased to a person who is related to a tax-exempt investor in the Fund.

The trustee of any trust that purchases Units in the Fund should consult with his tax advisors regarding the requirements for exemption from federal income taxation and the consequences of failing to meet such requirements, in addition to carefully considering his fiduciary responsibilities with respect to such matters as investment diversification and the prudence of particular investments.

### **CERTAIN LEGAL ASPECTS OF FUND LOANS**

Each of the Fund’s loans will be secured directly or indirectly by a deed of trust, the most commonly used real property security device in California. The deed of trust (also commonly referred to as a mortgage) formally has three parties: a debtor-trustor, a third-party grantee called the “trustee,” and the lender-creditor called the “beneficiary.” The trustor grants the property, irrevocably until the debt is paid, “in trust, with power of sale” to the trustee to secure payment of the obligation. The trustee’s authority is governed by law, the express provisions of the deed of trust and the directions of the beneficiary. The Fund will be the beneficiary under all deeds of trust securing Fund loans.

#### **Foreclosure**

Foreclosure of a deed of trust is accomplished in most cases by a nonjudicial trustee’s sale under the power-of-sale provision in the deed of trust. Prior to such sale, the trustee must record a notice of default and send a copy to the trustor, to any person who has recorded a request for a copy of a notice of default and notice of sale, to any successor in interest to the trustor and to the beneficiary of any junior deed of trust. If the default is not cured within 90 days after the filing of the notice of default, then at least 20 days before the trustee’s sale, notice of sale must be posted in a public place and published once a

week over such period. A copy of the notice of sale must be posted on the property, and sent to the trustor, to each person who has requested a copy, to any successor in interest to the trustor and to the beneficiary of any junior deed of trust, at least 20 days before the sale. The trustor or any person having a junior lien or encumbrance of record may, until five business days prior to the date of a scheduled foreclosure date, cure the default by paying the entire amount of the debt then due, exclusive of principal due only because of acceleration upon default, plus costs and expenses actually incurred in enforcing the obligation and statutorily limited attorney's and trustee's fees. Following the sale, neither the debtor-trustor nor a junior lienor has any right of redemption, and the beneficiary may not obtain a deficiency judgment against the trustor.

A judicial foreclosure (in which the beneficiary's purpose is usually to obtain a deficiency judgment where otherwise unavailable) is subject to most of the delays and expenses of other lawsuits, sometimes requiring up to several years to complete. Following a judicial foreclosure sale, the trustor or his successors in interest will have certain rights to redeem the property, unless the creditor waives any right to a deficiency. The Fund generally will not pursue a judicial foreclosure to obtain a deficiency judgment, except where, in the sole discretion of the Manager, such a remedy is warranted in light of the time and expense involved.

### **Anti-Deficiency Legislation**

California has four principal statutory prohibitions which limit the remedies of a beneficiary under a deed of trust. Two statutes limit the beneficiary's right to obtain a deficiency judgment against the trustor following foreclosure of a deed of trust, one based on the method of foreclosure and the other on the type of debt secured. Under one statute, a deficiency judgment is barred where the foreclosure was accomplished by means of a nonjudicial trustee's sale. It is anticipated that all of the Fund's loans will be enforced by means of a nonjudicial trustee's sale, if foreclosure becomes necessary. Under the other statute, a deficiency judgment is barred in any event where the foreclosed deed of trust secured a "purchase money" obligation, i.e., a promissory note evidencing a loan used to pay all or a part of the purchase price of a residential property occupied, at least in part, by the purchaser. This restriction may apply to some Fund loans.

Another statute, commonly known as the "one form of action" rule, requires the beneficiary to exhaust the security under the deed of trust by foreclosure before bringing a personal action against the trustor on the promissory note. The fourth statutory provision limits any deficiency judgment obtained by the beneficiary following a judicial sale to the excess of the outstanding debt over the fair market value of the property at the time of sale, thereby preventing a beneficiary from obtaining a large deficiency judgment against the debtor as a result of low bids at the judicial sale. Other matters, such as litigation instituted by a defaulting borrower or the operation of the federal bankruptcy laws, may have the effect of delaying enforcement of the lien of a defaulted loan and may in certain circumstances reduce the amount realizable from sale of a foreclosed property.

### **"Due-on-Sale" Clauses**

The Fund's forms of promissory notes and deeds of trust, like those of most lenders, contain "due-on-sale" clauses permitting the Fund to accelerate the maturity of a loan if the borrower sells the property, but do not usually contain "due-on-encumbrance" clauses which would permit the same action if the borrower further encumbers the property (i.e., executes further deeds of trust). The enforceability of these types of clauses is discussed below:

Due-on-sale clauses contained in mortgage loan documents executed by the Fund after October 15, 1982 are enforceable in accordance with their terms. However, acquisition of a property by

the Fund by foreclosure on one of its loans would also constitute a “sale” of the property, and would entitle a senior lienholder to accelerate its loan against the Fund. This would be likely to occur if then-prevailing interest rates were substantially higher than the rate provided for under the accelerated loan. In that event, the Fund may be compelled to sell or refinance the property within a short period of time, notwithstanding that it may not be an opportune time to do so.

### **Due-on-Encumbrance**

With respect to mortgage loans on residential property containing four or less units, federal and California law prohibits acceleration of the loan merely by reason of the further encumbering of the property (e.g., execution of a junior deed of trust). This prohibition does not apply to mortgage loans on other types of property.

### **Prepayment Charges**

Certain loans originated by the Fund provide for prepayment charges to be imposed on the borrowers in the event of certain early payments on the loans.

## **SUMMARY OF OPERATING AGREEMENT**

The following is a summary of the Operating Agreement for the Fund dated as of October 15, 2002, and is qualified in its entirety by the terms of the Operating Agreement itself. Potential investors are urged to read the entire Operating Agreement which is set forth as Exhibit A to this Offering Circular.

### **Membership Classes**

The Fund currently has two outstanding membership classes: (i) the Initial Interest held by the Old Fund; and (ii) the Investor Class being offered as Units to new members, including Old Fund Members. The Investor Members and Old Fund will have the same rights and obligations as Members except as expressly provided for in the Operating Agreement.

### **Rights and Liabilities of Members**

The rights, duties and powers of Members (including Old Fund) are governed by the Operating Agreement and Chapter 3, Title 2.5 of the California Corporations Code (the “Act”) and the discussion herein of such rights, duties and powers is qualified in its entirety by reference to such Agreement and Act. Neither Old Fund nor Investor Members who become Members in the Fund in the manner set forth herein will be responsible for the obligations of the Fund and will be liable only to the extent of their agreed upon capital contributions. Members may be liable for any return of capital plus interest if necessary to discharge liabilities existing at the time of such return. Any cash distributed to Members may constitute, wholly or in part, return of capital.

Members will have no control over the management of the Fund except that, a Member Majority may approve or disapprove any of the following matters (“**Member Actions**”): (a) dissolution and termination of the Fund; (b) merger or consolidation of the Fund with one or more other entities; (c) amendment of the Operating Agreement; (d) removal of the Manager and election of a successor manager; and (e) election of a successor manager upon the cessation of the Manager for any reason (such as the withdrawal or resignation). Old Fund’s Initial Interest will be entitled to vote on each of the Member Actions; however, so long as the Manager or its affiliate is the Manager of Old Fund, the Manager will be required to obtain the approval of Old Fund’s vote on any Member Action from a

majority interest of the outstanding Old Fund Members of Old Fund. Members representing 10% of the Membership interests may call a meeting of the Fund.

### **Additional Rights and Obligations of Old Fund**

#### ***Non-Performing Initial Loan Obligations***

Each of the Initial Loans was funded by Old Fund and not by any proceeds of the offering of Units. (See “Use of Proceeds.”) As the Initial Interest holder, Old Fund is required to re-acquire any Initial Loan that becomes a Non-Performing Initial Loan (i.e., any loan that goes into default or that the Manager determines, in its reasonable judgment, will require the Fund to incur any enforcement or collateral protection expenses or is otherwise is not in the Fund’s interest). Consequently, the Fund will not be at risk for losses on any Initial Loan except to the extent of the loss of interest income otherwise payable to the Fund on a Non-Performing Initial Loan.

#### ***Redemption of Initial Interest***

Each Initial Loan Principal Distribution made to Old Fund and the outstanding principal balance of any Non-Performing Initial Loan re-acquired by Old Fund will result in the redemption and reduction of Old Fund’s Initial Interest on a dollar-for-dollar basis. Consequently, upon full repayment of each of the Initial Loans and assignment of all Non-Performing Initial Loans (if any), Old Fund will be completely redeemed from the Fund with the exception of the return of the amount of its Initial Cash Contribution, which the Manager will distribute to Old Fund from the Fund’s available cash flow over time. Old Fund is not subject to the twelve (12) month holding period applicable to Investor Members and the Manager may distribute available cash to Old Fund in full or partial liquidation of the Initial Cash Contribution at any time and is required by the terms of the Old Fund’s dissolution proposal approved by the Old Fund Members to fully distribute and liquidate the Initial Cash Contribution by the July 15, 2015 expiration of Old Fund’s liquidation period, unless such date is extended by a vote of a majority interest of the Old Fund Members. (See “Summary of Operating Agreement – Withdrawal from Fund.”)

### **Capital Contributions**

Old Fund will contribute the Fund’s Initial Capital in the form of the \$175,000 Initial Cash Contribution by assigning the Initial Loans to the Fund with an aggregate par value of \$3,219,840 in exchange for an initial capital account credit of \$3,394,840, which will be redeemed and withdrawn over time in connection with each Initial Loan Principal Distribution and any Transfer Redemption.

Investment Class Interests in the Fund will be sold in Units of \$1.00 each. With the exception of Old Members making Rollover Subscriptions, no person may initially acquire less than 25 Units, unless the Manager exercises the right in its discretion to issue fractional Units. For purposes of meeting this minimum investment requirement, a person may cumulate Units he or she purchases individually or with ERISA funds with Units purchased by his or her spouse or related family members, all at the discretion of the Manager. To purchase Units an investor must deliver to the Fund a Subscription Agreement in the form attached to this Offering Circular as Exhibit B.

### **Rights, Powers and Duties of Manager**

Subject to the right of the Members to vote on specified matters, the Manager will have complete charge of the business of the Fund. The Manager is not required to devote full time to Fund affairs but only such time as is required for the conduct of Fund business. The Manager acting alone has the power and authority to act for and bind the Fund.

The Manager is granted the special power of attorney of each Members for the purpose of executing the documents which the Members have expressly agreed to execute and deliver or which are required to be executed, delivered and/or filed under applicable law.

### **Profits and Losses**

Profits of the Fund accrued during any calendar month will be allocated as of the last day of such calendar month to the Members (including Old Fund) in accordance with each Member's respective outstanding capital account balance as of such date; provided, however, that if an Investor Member purchases Units following the first day of the month, then the profits allocable to such Investor Member for such month will be allocated in proportion to the number of days during such month that each Investor Member held a capital account in the Fund.

Any losses attributable to the Initial Loans (if any) will be allocated 100% to Old Fund and any losses attributable to the New Loans will be allocated 100% to the Investor Members (and further allocated among the Investor Members, pro rata, in accordance with the Investor Members' relative capital account balances). Losses accrued during any calendar month will be allocated as of the last day of such calendar month in accordance with their capital account balances as of such date.

Upon transfer of Units (if permitted under the Operating Agreement and applicable law), profit and loss will be allocated to the transferee beginning with the next succeeding calendar month.

### **Cash Distributions**

Old Fund's proportionate share of net income will be distributed to Old Fund on a monthly basis. Initial Loan Capital Payments received by the Fund will be distributed to Old Fund either monthly, quarterly or upon receipt as determined by the Manager.

Upon subscription for Units, an Investor Member must elect whether to receive monthly cash distributions from the Fund or to allow his or her earnings to compound for the term of the Fund. Investor Member's who elect to change this election must give the Manager 90 days' prior written notice. Investor Members who elect to receive distributions may change this election in order to begin compounding earnings only if there is in effect a permit issued by the California Department of Corporations. Earnings allocable to investors who elect to compound their earnings will be retained by the Fund for making or investing in further New Loans or other proper Fund purposes. The earnings from these New Loans will be allocated among all Members (including Old Fund); however, Investor Members who compound will be credited with an increasingly larger proportionate share of such earnings than Old Fund and Investor Members who receive monthly distributions, since their capital accounts will increase over time. Cash available for distribution will be determined by computing the net income during the calendar month on the accrual basis and in accordance with generally accepted accounting principles.

Promptly after the end of each calendar month, the Fund will distribute to Members receiving monthly distributions an amount of cash equal to their proportionate share of the Fund's net income during such month. As used herein, net income means the excess of income from operations and investment of, or the sale or refinancing or other disposition of, Fund assets during such calendar month over the accrued operating expenses of the Fund during such month, including any adjustments for bad debt reserves or deductions as the Manager may deem appropriate, all determined in accordance with generally accepted accounting principles. Cash available for distribution shall be distributed only to Old Fund and those Members who elect to receive such distributions in an amount equal to their respective allocable shares of Fund profits during such month, and the balance of Fund income will be credited to the capital accounts of Members who elected to compound earnings.

## **Capital Account Maintenance**

The Manager will establish a capital account for each Investor Member which will, upon admission to the Fund, be credited with the amount paid by such Investor Member for the purchase of Units. Thereafter, Investor Members' capital account balance will be increased on a monthly basis by: (i) the Investor Members' pro rata share of any net income earned by the Fund in such month; and (ii) any additional capital contributions made by the Investor Members during such month through the purchase of additional Units (including additional purchases of Units made by Rollover Investors from their periodic Liquidation Distributions ). Investor Members' capital account balance will be reduced on a monthly basis by (i) the amount of cash distributions made to the Investor Members (but only in the case of Investor Member's electing monthly income distributions); and (ii) the amount of any withdrawal distributions made to the Investor Members in such month (if any). The capital account established for Old Fund will also be reduced periodically in the amount of each Initial Loan Principal Distribution made to Old Fund and in the amount of any Assigned Loan Redemptions recognized upon the assignment of a Non-Performing Initial Loan to Old Fund, if any.

In the event any interest in the Company is transferred according to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

## **Meetings**

The Manager, or Members representing 10% of the outstanding membership interests, may call a meeting of the Fund. Unless the notice otherwise specifies, all meetings will be held at the office of the Fund. Members may vote in person or by proxy at the Fund meeting. A majority of the membership interests will constitute a quorum at Fund meetings.

## **Accounting and Reports**

The Manager will cause to be prepared and furnished to the Members an annual report of the Fund's operation, which will include financial statements audited by an independent accounting firm. Within six months of the close of the year covered by the report, a copy or condensed version will be furnished to the Members. The Members will also be furnished such detailed information as is reasonably necessary to enable them to complete their own tax returns within 90 days after the end of the year. Any Member may inspect the books and records of the Fund at all reasonable times and upon reasonable prior notice to the Manager.

## **Amendment of the Agreement**

The Operating Agreement may, in most cases, be amended by the Manager only upon the vote of a Member Majority. The Manager may, however, amend the Operating Agreement unilaterally without the approval of the Members with respect to some matters including, amending the Operating Agreement to reflect the full redemption and withdrawal of Old Fund and the fact that the Fund no longer has two classes of Membership Interests.

## **Withdrawal from Fund**

Investor Members have no right to withdraw from the Fund or to obtain the return of all or any portion of their invested capital (or reinvested earnings with respect thereto) for at twelve months after the date Units are purchased (the "**Holding Period**"). Upon expiration of the twelve month Holding Period, Investor Members may request withdrawal of all or part of their capital accounts from the Fund by giving

written notice to the Manager indicating the Investor Member's desire to withdraw capital from the Fund and the amount of capital to be withdrawn (a "**Withdrawal Notice**"). An Investor Member's capital account will be paid (subject to the limitations described below) in four quarterly installments beginning on the first day of the second calendar quarter following the quarter in which the Withdrawal Notice. For example, if the Manager receives a Withdrawal Notice from an Investor Member on September 18, 2011, then quarterly withdrawal distributions would commence on January 1, 2012 (subject to the limitations described below). Each quarterly installment payable to a withdrawing Investor Member is subject to the additional withdrawal restrictions described below.

The amount that a withdrawing Investor Member will receive from the Fund is based on the withdrawing Investor Member's capital account. A capital account is a sum calculated for tax and accounting purposes and, because there is no public market for Units, may be greater than or less than the fair market value that might be payable in connection with the sale of an Investor Member's membership interest. (See "Capital Account Maintenance," above.)

The Fund will not establish a reserve from which to fund withdrawals of Investor Members' capital accounts and such withdrawals are subject to the availability of cash in any calendar quarter to make withdrawal distributions ("**Cash Available for Withdrawals**") only after: (i) all current Fund expenses have been paid (including compensation to the Manager and its affiliates as described in this Offering Circular); (ii) adequate reserves have been established for anticipated Fund operating costs and other expenses and advances to protect and preserve the Fund's investments in New Loans (such as enforcement costs and protective advances to senior lienholders); (iii) all Initial Loan Principal Distributions due to Old Fund have been made; and (iv) adequate provision has been made for the payment of all monthly cash distributions owing to Old Fund and the Investor Members who elected to receive such distributions. Moreover, the Manager may, in its sole discretion, withhold up to 50% of the Fund's Cash Available for Withdrawals in any calendar quarter in order to make New Loans or otherwise preserve Fund liquidity for the benefit of the non-withdrawing Members ("**New Investment Reserves**").

If at any time the Fund does not have sufficient Cash Available for Withdrawals (after deduction of any New Investment Reserves) to distribute the quarterly amounts due to all Member that have outstanding withdrawal requests, the Fund is not required to liquidate any Fund loans prior to maturity for the purpose of liquidating the capital account of withdrawing Members. In such circumstances, the Fund is merely required to distribute that portion of the Cash Available for Withdrawals remaining in such quarter (after deduction of any New Investment Reserves) to all withdrawing Investor Members pro rata based upon the relative amounts being withdrawn as set forth in the Contribution Notice.

Notwithstanding the foregoing, the Manager reserves the right to utilize all Cash Available for Withdrawals to liquidate the capital accounts of deceased Members, ERISA plan investors or Old Fund's Initial Cash Contribution, in whole or in part, before satisfying outstanding withdrawal requests from any other Investor Members. The Manager also reserves the right, at any time, to liquidate the capital accounts of ERISA plan investors to the extent the Manager determines, in its sole discretion, that any such liquidation is necessary in order to remain exempt from the Department of Labor's "plan asset" regulations. Additionally, the Manager has the discretion to limit aggregate withdrawals during any single calendar year to not more than 10% of the total Fund capital accounts of all Members (including Old Fund) that were outstanding at the beginning of such calendar year.

If at any time there are outstanding unfulfilled withdrawal requests from Members that, together with all withdrawals each quarter unfulfilled, would exceed 25% of the total Fund capital accounts outstanding as of the first day of the current calendar year (a "**Constructive Dissolution Vote**"), the Manager may, in its sole discretion, upon written notice to the Members, dissolve the Fund pursuant to the dissolution and winding up provisions of the Operating Agreement.

## **Dissolution and Winding-Up**

The Fund may be dissolved upon: (i) the vote of a Majority Interest of the Members with the consent of the Manager; (ii) the election of the Manager following a Constructive Dissolution Vote; (iii) the entry of a decree of judicial dissolution; or (iv) the sale of all or substantially all of Fund's assets. Upon dissolution of the Fund, outstanding withdrawal requests will no longer be paid to withdrawing Investor Members based upon their withdrawal requests, but instead all Investor Members will participate in the Fund's liquidating distributions in proportion to their relative capital accounts.

Upon dissolution and termination of the Fund, a five-year winding-up period is provided for liquidating the Fund's loan portfolio and distributing cash to Investor Members. Due to high prevailing interest rates or other factors, the Fund could suffer reduced earnings (or losses) if a substantial portion of its loan portfolio remains outstanding and must be liquidated quickly at the end of such winding-up period. Members who complete a withdrawal from the Fund prior to any such liquidation will not be exposed to this risk.

## **Limitations on Transferability**

The Operating Agreement places substantial limitations upon transferability of membership interests. Any transferee (including a donee) must be a person or entity which would have been qualified to purchase a Unit in this offering and a transferee may not become a substituted Member without the consent of the Manager. A transferee who does not become a substituted Member will own an economic interest which entitles him or her only to the share of income or return of capital to which the transferor would be entitled. Economic interest holders will have no voting or inspection rights.

In addition to the restrictions imposed by the Operating Agreement, the California Commissioner of Corporations has imposed additional restrictions on transferability as set forth in Commissioners Rule 260.141.11 which is set forth below.

## **Term of Fund**

The Fund will continue indefinitely until dissolved and terminated by vote of Members holding a majority of the outstanding membership interests with the concurrence of the Manager.

## **Merger with Other Business Entities**

The Manager, upon the prior written consent of a majority interest of the Members, will have the right to merge the Fund with one or more other business entities (of which the Manager may be a sponsor or cosponsor).

## **Mediation and Arbitration**

Any dispute between the parties in connection with the Operating Agreement is subject to certain mediation and arbitration requirements set forth in Section 12.5 of the Operating Agreement. Potential investors should review such requirements and limitations prior to investing.

## **PLAN OF DISTRIBUTION**

The Units will be offered and sold by the Fund, with respect to which no commissions or fees will be paid to the Manager or its employees. The Manager may also retain the services of independent securities dealers or finders to locate prospective investors, who may receive selling commissions or

finders' fees on the gross proceeds of their sales in amounts negotiated on a case-by-case basis, but any such commissions will be paid by the Manager or its affiliates and will not be borne by the Fund. There is no firm commitment to purchase any Units, and there is no assurance that the maximum amount of this offering will be received.

### **LEGAL MATTERS**

The Manager has engaged legal counsel to advise it in connection with the preparation of this Offering Circular and the Operating Agreement, as well as the offer and sale of the Units offered hereby. Such counsel has not been retained to provide legal services in connection with the drafting of any of the loan documents, the negotiation or closing of any loans or the servicing or enforcement of any loans, nor has it represented the interests of the Members in connection with the Units offered hereby. Investors purchasing Units that wish to obtain the benefit of review by legal counsel on their behalf must retain their own attorneys to do so.

### **ADDITIONAL INFORMATION AND UNDERTAKINGS**

The Manager undertakes to make available to each offeree every opportunity to obtain any additional information from the Fund or the Manager necessary to verify the accuracy of the information contained in this Offering Circular, to the extent that they possess such information or can acquire it without unreasonable effort or expense. This additional information includes, without limitation, all the organizational documents of the Fund, and all other documents or instruments relating to the operation and business of the Fund and material to this offering and the transactions contemplated and described in this Offering Circular.

### **COMMISSIONER'S RULE 260.141.11**

In addition to the various restrictions on the transfer of Units imposed by the Operating Agreement and state and federal securities laws generally, no Unit may be sold or transferred or any consideration received therefor without the prior written consent of the California Commissioner of Corporations, except as provided in the Commissioner's Rules. Commissioner's Rule 260.141.11 is set forth below in its entirety.

#### **§260.141.11. Restriction on Transfer**

(a) The issuer of any security upon which a restriction on transfer has been imposed pursuant to Sections 260.102.6, 260.141.10 or 260.534 shall cause a copy of this section to be delivered to each issuee or transferee of such security at the time the certificate evidencing the security is delivered to the issuee or transferee.

(b) It is unlawful for the holder of any such security to consummate a sale or transfer of such security, or any interest therein, without the prior written consent of the Commissioner (until this condition is removed pursuant to Section 260.141.12 of these rules), except:

- (1) to the issuer;
- (2) pursuant to the order or process of any court;

(3) to any person described in Subdivision (i) of Section 25102 of the Corporations Code or Section 260.105.14 of these rules;

- (4) to the transferor's ancestors, descendants or spouse, or any custodian or trustee for the account of the transferor or the transferor's ancestors, descendants, or spouse; or to a transferee by a trustee or custodian for the account of the transferee or the transferee's ancestors, descendants or spouse;
- (5) to holders of securities of the same class of the same issuer;
- (6) by way of gift or donation inter vivos or on death;
- (7) by or through a broker-dealer licensed under the Corporations Code (either acting as such or as a finder) to a resident of a foreign state, territory or country who is neither domiciled in this state to the knowledge of the broker-dealer, nor actually present in this state if the sale of such securities is not in violation of any securities law of the foreign state, territory or country concerned;
- (8) to a broker-dealer licensed under the Corporations Code in a principal transaction, or as an underwriter or member of an underwriting syndicate or selling group;
- (9) if the interest sold or transferred is a pledge or other lien given by the purchaser to the seller upon a sale of the security for which the Commissioner's written consent is obtained or under this rule not required;
- (10) by way of a sale qualified under Sections 25111, 25112, 25113, or 25121 of the Corporations Code, of the securities to be transferred, provided that no order under Section 25140 or Subdivision (a) of Section 25143 is in effect with respect to such qualification;
- (11) by a corporation to a wholly owned subsidiary of such corporation, or by a wholly owned subsidiary of a corporation to such corporation;
- (12) by way of an exchange qualified under Section 25111, 25112, or 25113 of the Corporations Code, provided that no order under Section 25140 or Subdivision (a) of Section 25143 is in effect with respect to such qualification;
- (13) between residents of foreign states, territories or countries who are neither domiciled nor actually present in this state;
- (14) to the State Controller pursuant to the Unclaimed Property Law or to the administrator of the unclaimed property law of another state;
- (15) by the State Controller pursuant to the Unclaimed Property Law or to the administrator of the unclaimed property law of another state if, in either such case, such person (i) discloses to potential purchasers at the sale that transfer of the securities is restricted under this rule, (ii) delivers to each purchaser a copy of this rule, and (iii) advises the Commissioner of the name of each purchaser;
- (16) by a trustee to a successor trustee when such transfer does not involve a change in the beneficial ownership of the securities; or
- (17) by way of an offer and sale of outstanding securities in an issuer transaction that is subject to the qualification requirement of Section 25110 of the Corporations Code but exempt from that qualification requirement by subdivision (f) of Section 25102; provided that any such transfer is on the condition that any certificate evidencing the security issued to such transferee shall contain the legend required by this section.

(c) The certificates representing all such securities subject to such a restriction on transfer, whether upon initial issuance or upon any transfer thereof, shall bear on their face a legend, prominently stamped or printed thereon in capital letters of not less than 10-point size, reading as follows:

“IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS SECURITY, OR ANY INTEREST THEREIN, OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, EXCEPT AS PERMITTED IN THE COMMISSIONER’S RULES.

**OPERATING AGREEMENT**  
**FOR**  
**BAYSIERRA CAPITAL FUND, LLC**

**Dated**

**October 5, 2010**

*THE MEMBERSHIP INTERESTS UNITS REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. ACCORDINGLY, THERE ARE SUBSTANTIAL RESTRICTIONS ON TRANSFER, AS SET FORTH IN THIS AGREEMENT. THESE INTERESTS MAY BE ACQUIRED FOR INVESTMENT PURPOSES ONLY AND NOT WITH A VIEW TO DISTRIBUTE OR RESELL AND MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, MORTGAGED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR OFFERED TO BE SO TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH INTERESTS UNDER THE SECURITIES ACT OF 1933 OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENTS, TO ESTABLISH WHICH THE MANAGER MAY REQUIRE AN OPINION OF COUNSEL SATISFACTORY TO IT THAT SUCH REGISTRATION IS NOT REQUIRED. THERE IS NO PUBLIC MARKET FOR THE INTERESTS AND NONE IS LIKELY TO DEVELOP. THE MANAGER AND THE COMPANY ARE UNDER NO OBLIGATION TO REGISTER THE MEMBERSHIP INTERESTS.*

*IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THESE UNITS, OR ANY INTEREST THEREIN OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, EXCEPT AS PERMITTED BY THE COMMISSIONER'S RULES.*

**OPERATING AGREEMENT  
FOR  
BAYSIERRA CAPITAL FUND, LLC**

**THIS OPERATING AGREEMENT** (“**Agreement**”) is made and entered into effective as of October 5, 2010, by and among BaySierra Financial, Inc., a California corporation (“**Manager**”); BaySierra Mortgage Fund, LLC, a California limited liability company (“**Initial Member**”) and such Persons as may be admitted as Members pursuant to the terms of this Agreement.

**RECITALS**

A. On September 9, 2010, Articles of Organization for BaySierra Capital Fund, LLC, a California limited liability company (the “**Company**”) were filed with the California Secretary of State.

B. The parties now desire to adopt and approve a written operating agreement for the Company.

**AGREEMENT**

**NOW, THEREFORE**, the parties by this Agreement set forth the operating agreement for the Company under the laws of the State of California upon the terms and subject to the conditions of this Agreement.

**ARTICLE I  
DEFINITIONS**

When used in this Agreement, the following terms shall have the meanings set forth below (all terms used in this Agreement that are not defined in this Article I shall have the meanings set forth elsewhere in this Agreement):

1.1 “**Act**” shall mean the Beverly-Killea Limited Liability Company Act, codified in the California Corporations Code, Section 17000 et. seq., as the same may be amended from time to time.

1.2 “**Affiliate**” shall mean, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by or under common control with such Person, (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such Person, (iii) any officer, director or general partner of such Person, or (iv) any Person who is an officer, director, general partner, trustee or holder of ten percent (10%) or more of the voting securities of any Person described in clauses (i) through (iii) of this sentence.

1.3 “**Agreement**” shall mean this Operating Agreement, as the same may hereafter be amended from time to time.

1.4 “**Articles**” shall mean the Articles of Organization for the Company originally filed with the California Secretary of State and as amended from time to time.

1.5 “**Asset Management Fee**” shall have the meaning given in Section 11.1.

1.6 “**Bankruptcy**” shall mean: (a) the filing of an application by a Person for his, her or its consent to the appointment of a trustee, receiver, or custodian of his, her or its other assets; (b) the entry of an order for relief with respect to a Person in proceedings under the United States Bankruptcy Code, as amended or superseded from time to time; (c) the making by a Person of a general assignment for the benefit of creditors; (d) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of the assets of a Person unless the proceedings and the person appointed are dismissed within ninety (90) days; or (e) the failure by a Person generally to pay his, her or its debts as the debts become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or the admission in writing of his, her or its inability to pay his, her or its debts as they become due.

1.7 “**Capital Account**” shall mean, with respect to any Member, the capital account maintained for such Member in accordance with the following provisions:

(a) To each Member’s Capital Account there shall be credited such Member’s Capital Contributions, such Member’s distributive share of Profits and any items in the nature of income or gain (from unexpected adjustments, allocations or distributions) that are specially allocated to a Member and the amount of any Company liabilities that are assumed by such Member or that are secured by any Company property distributed to such Member.

(b) To each Member’s Capital Account there shall be debited the amount of cash and the Gross Asset Value of any property distributed to such Member, such Member’s distributive share of Losses and any items in the nature of expenses or losses that are specially allocated to a Member and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

(c) In the event any interest in the Company is transferred according to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

(d) In the event the Gross Asset Values of the Company assets are adjusted pursuant to Section 1.20, the Capital Accounts of all Members shall be adjusted simultaneously to reflect the aggregate net adjustment as if the Company recognized gain or loss equal to the amount of such aggregate net adjustment.

The provisions of this Section and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulation Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such regulations. In the event it is necessary to modify the manner in which the Capital Accounts are computed in order to comply with such regulations, the Manager shall make such modifications. The Manager shall adjust the amounts debited or credited to the Capital Accounts with respect to (i) any property contributed to the Company or distributed to any Member and (ii) any liabilities that are secured by such contributed or distributed property or that are assumed by the Company in the event the Manager shall determine that such adjustments are necessary or appropriate pursuant to

Regulations Section 1.704-1(b)(2)(iv). The Manager shall also make any adjustments that are necessary or appropriate to maintain equality between the aggregate Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, and are otherwise in accordance with Regulations Section 1.701-1(b)(2)(iv)(q). The Manager shall also make appropriate modifications if unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704 1(b).

1.8 “**Capital Contribution**” shall mean the total value of cash and fair market value of property (including the par value of the Initial Loan Contribution) contributed to the Company by the Members in accordance with Article V.

1.9 “**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time, the provisions of succeeding law and, to the extent applicable, the Regulations.

1.10 “**Company**” shall mean BaySierra Capital Fund, LLC the California limited liability company formed and governed by this Agreement.

1.11 “**Company Minimum Gain**” shall have the meaning ascribed to the term “Company Minimum Gain” in the Regulations Section 1.704-2(d).

1.12 “**Depreciation**” shall mean, for each Fiscal Year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis.

1.13 “**Economic Interest**” shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company, except as may expressly be provided in the Act.

1.14 “**Economic Interest Owner**” shall mean the owner of an Economic Interest who is not a Member.

1.15 “**Electing Members**” shall mean the Initial Member and each Investor Member electing to receive monthly distributions of Company earnings in accordance with Section 4.2(b).

1.16 “**ERISA Plan Asset Regulations**” shall have the meaning given in Section 4.2(b).

1.17 “**ERISA Plan Investor**” shall mean any Member that is a pension or profit-sharing plan, Keogh Plan, 401(k) plan, Individual Retirement Account or other employee benefit plan qualified under the Employee Retirement Income Security Act of 1974, as amended.

1.18 “**Fiscal Year**” shall mean the Company’s fiscal year which shall be the calendar year.

1.19 “**Fractional Interest Investments**” shall mean undivided fractional interests in loans purchased by the Company, arranged and serviced by the Manager or a third party licensed real estate broker.

1.20 “**Gross Asset Value**” shall mean, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Company;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Manager, as of the following times: (i) the contribution of more than a de minimis amount of money or other property to the Company by a new or existing Member as consideration for a Membership Interest in the Company; (ii) the distribution by the Company to either a withdrawing or continuing Member of more than a de minimis amount of money or other property as consideration for an interest in the Company; and (iii) the termination of the Company for federal income tax purposes pursuant to Code Section 708(b)(1)(B); and

(c) If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraphs (a) or (b) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

1.21 “**Incapacity**” means the Bankruptcy, dissolution, liquidation, adjudication of incompetency or death of any Person.

1.22 “**Initial Cash Contribution**” shall have the meaning given in Section 5.1(a).

1.23 “**Initial Member**” shall mean BaySierra Mortgage Fund, LLC, a California limited liability company.

1.24 “**Initial Interest**” shall mean the Initial Member’s entire interest in the Company as the Initial Member and all rights, benefits, privileges and obligations pertaining to such interest as set forth in this Agreement.

1.25 “**Initial Loans**” shall mean the mortgage loans contributed by the Initial Member to the Company as the Initial Loan Contribution in accordance with Section 5.1(b) below. The Initial Loans are set forth in Schedule A hereto, which shall be amended from time to time by the Manager to reflect periodic Initial Loan payoffs and/or Initial Loan Transfers made pursuant to the terms of this Agreement. “**Initial Loan**” means any one of the Initial Loans.

1.26 “**Initial Loan Contribution**” shall have the meaning assigned in Section 5.1(b) below.

1.27 “**Initial Loan Principal Distributions**” shall have the meaning assigned in Section 6.1(a) below.

1.28 “**Initial Loan Principal Payments**” shall mean all payments received by the Company from any party or source that are attributable to the repayment of all or any portion of the principal balance of any Initial Loan.

1.29 “**Invested Capital**” shall mean, as of any date, each Member’s unreturned Capital Contribution in the Company as reflected in such Member’s Capital Account as of such date.

1.30 “**Investment Class Interests**” shall mean the interest of the Investor Members in the Company attributable to the purchase of Units and all rights, benefits and privileges pertaining thereto, as set forth in this Agreement.

1.31 “**Investor Members**” means collectively the Persons purchasing Units of Investment Class Interests that are admitted to the Company as Investor Members; and “**Investor Member**” means any one of the Investor Members.

1.32 “**Liquidation Distributions**” shall mean the periodic distributions payable to Old Fund Members upon the liquidation of the Initial Member’s assets over the course of the Liquidation Period.

1.33 “**Liquidation Period**” shall mean the five-year period provided for in the Initial Member’s operating agreement during which time the Manager is required to liquidate and wind up the Initial Member’s business, as such period may be extended as provided for therein.

1.34 “**Majority Interest of the Members**” shall mean, as of any given date one or more Members (including the Initial Member) that cumulatively hold Percentage Interests in the Company which taken together exceed fifty percent (50%) of the aggregate Percentage Interests of all Members.

1.35 “**Manager**” shall mean BaySierra Financial, Inc., a California corporation, or any person or entity substituted in place thereof pursuant to this Agreement.

1.36 “**Member Nonrecourse Debt**” shall have the meaning ascribed to the term “Partner Nonrecourse Debt” in Regulations Section 1.704-2(b)(4).

1.37 “**Member Nonrecourse Deductions**” shall mean items of Company loss, deduction, or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt.

1.38 “**Members**” shall mean the Initial Member and the Investor Members, and “**Member**” shall mean any one of the Members.

1.39 “**Membership Interest**” shall mean a Member’s entire interest in the Company and all rights, benefits and privileges pertaining thereto.

1.40 “**Net Assets Under Management**” shall mean, as of any date, the Company’s aggregate capital, including cash, the Initial Loans and any other notes (at book value), real estate owned (at book value), accounts receivable, advances made to protect loan security, unamortized organizational expenses and any other Company assets valued at fair market value, less Company liabilities, as determined in accordance with generally accepted accounting principles.

1.41 “**New Loans**” shall collectively mean all loans and Fractional Interest Investments in loans made or acquired by the Company other than the Initial Loans; and “**New Loan**” means any one of the New Loans.

1.42 “**New Loan Principal Payments**” shall mean all payments received by the Company from any party or source that are attributable to the repayment of principal due on any New Loan.

1.43 “**Nonrecourse Liability**” shall have the meaning set forth in Regulations Section 1.752-1(a)(2).

1.44 “**Non-Performing Initial Loan**” shall have the meaning given in Section 4.6.

1.45 “**Offering Circular**” shall mean the Offering Circular originally dated October 5, 2010, as amended, updated and supplemented from time to time, pursuant to which the Company has solicited investments in Investment Class Interests issued by the Company.

1.46 “**Old Fund Members**” shall mean those Persons that continue to be members of the Initial Member as of a given date.

1.47 “**Percentage Interests**” shall mean (as applicable) (i) the relative percentage interests of the Members determined as of any date by dividing each such Member’s then current Capital Account balance by the total outstanding Capital Accounts of all Members; or (ii) the relative percentage interests of the Investor Members determined as of any date, by dividing each such Investor Member’s Capital Account balance by the total outstanding Capital Account balances of the Investor Members.

1.48 “**Person**” shall mean an individual, general partnership, limited partnership, limited liability company, corporation, trust, estate, real estate investment trust association or any other entity.

1.49 “**Profits**” and “**Losses**” shall mean, for each Fiscal Year or other period, an amount equal to the Company’s taxable income or loss for such Fiscal Year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this Section shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profits or Losses pursuant to this Section, shall be subtracted from such taxable income or loss;

(c) In the event the book value of any Company asset is adjusted as a result of the application of Regulations Section 1.704-1(b)(2)(iv)(e) or Section 1.704-1(b)(2)(iv)(f), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other period, computed in accordance with Regulations Section 1.704(b)(2)(iv)(g); and

(f) Notwithstanding any other provision of this Section, any items that are specially allocated, shall not be taken into account in computing Profits or Losses.

1.50 “**Regulations**” shall, unless the context clearly indicates otherwise, mean the regulations currently in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the Code.

1.51 “**Rollover Subscriber**” shall have the meaning given in Section 5.4.

1.52 “**Rollover Subscriptions**” shall mean subscriptions for Units made by Rollover Investors in accordance with Section 5.4 of this Agreement.

1.53 “**Units**” shall mean the units of Investment Class Interests in the Company issued to Investor Members upon their admission to the Company at the rate of \$1.00 per Unit.

## **ARTICLE II**

### **ORGANIZATION OF THE COMPANY**

2.1 Formation. The parties hereto hereby agree to form a limited liability company, pursuant to the provisions of the Act.

2.2 Name. The name of the Company shall be “BaySierra Capital Fund, LLC,” which name may be changed by the Manager with notice to the Members.

2.3 Term. The term of this Agreement shall commence as of the October 5, 2010 and shall continue indefinitely until terminated as hereinafter provided.

2.4 Office and Agent. The Company shall continuously maintain an office and registered agent in the State of California as required by the Act. The principal office of the Company shall be located at 1410 Neotomas Avenue, Suite 106, Santa Rosa, California 95402 or at such other location as the Manager may determine. The registered agent shall be as stated in the Articles or as otherwise determined by the Manager.

2.5 Addresses of Members and Manager. Unless a Member or Manager notifies the other Members and Manager to the contrary, the address of the Manager shall be the principal office of the Company and the address of the Members shall be as set forth in the Subscription Agreement submitted by such Member to the Company pursuant to Sections 5.3 and/or 5.4.

2.6 Purpose of Company. The Company is formed for the limited purposes of:

(a) making, investing in and administering loans to the general public secured by mortgages or deeds of trust on real property or on such other terms and conditions described in the Offering Circular; and

(a) engaging in such other activities directly related to the foregoing business as may be necessary, advisable, or appropriate, in the reasonable opinion of the Manager.

2.7 Power of Attorney. Each of the Members irrevocably constitutes and appoints the Manager, acting by and through any of its executive officers, as his true and lawful attorney-in-fact, with full power and authority for him, and in his name, place and stead, to execute, acknowledge, publish and file:

(a) This Agreement, the Articles, and any amendments or cancellation thereof required under the laws of the State of California;

(b) Any certificates, instruments and documents, including, without limitation, fictitious business name statements, as may be required by, or may be appropriate under, the laws of any state or other jurisdiction in which the Company is doing or intends to do business; and

(c) Any documents which may be required to effect the continuation of the Company, the admission of an additional or substituted Member, the amendment of this Agreement, or the dissolution and termination of the Company.

2.8 Nature of Power of Attorney. The grant of authority set forth in Section 2.7 is a special power of attorney coupled with an interest, is irrevocable, and shall survive the death of the undersigned or the delivery of an assignment by the undersigned of a Membership Interest, provided that where the assignee thereof has been approved by the Manager for admission to the Company as a substituted Member, the Power of Attorney shall survive the delivery of such assignment for the sole purpose of enabling the Manager to execute, acknowledge and file any instrument necessary to effect such substitution.

### **ARTICLE III** **THE MANAGER**

3.1 Management by the Manager. Subject to any provisions of the Articles and this Agreement relating to actions required to be approved by the Members, if any, the business, property and affairs of the Company shall be managed and all powers of the Company shall be exercised by or under the direction of the Manager. The Company shall initially have one (1) Manager, as specified in Article I, above.

3.2 Authority of Manager. In addition to the general management authority provided under Section 3.1, above, and without in any way limiting the generality of the foregoing, the Manager shall have all necessary powers to manage and carry out the purposes, business and affairs of the Company, including, without limitation, the power to exercise and to authorize and direct the Company's or the Manager's officers (if any) to exercise, on behalf and in the name of the Company, all of the powers described in California Corporations Code Section 17003, including, without limitation, the following powers and authority:

(a) To expend Company funds in furtherance of the business of the Company and to acquire and deal with assets upon such terms as it deems advisable, from Affiliates and other persons;

(b) To offer additional Units for sale from time to time to determine the terms of the offering of Units and to amend the Offering Circular in connection therewith, including the price of Units thereof and the amount of discounts allowable or commissions to be paid and the manner of complying with applicable law;

(c) To bind the Company in all transactions involving the Company's property or business affairs, including the preparation and execution of all loan documents, the funding of loans, and the purchase and sale of notes and Fractional Interests;

(d) To take all actions on behalf of the Company deemed necessary by the Manager, in its sole discretion, to enforce Company loans and otherwise protect the value of such loans including, without limitation: (i) initiating foreclosure proceedings and bidding at foreclosure sales; (ii) forming limited liability companies or limited partnerships to take title to security properties and issuing membership or limited partnership interests in such entities in the name of the Company; (iii) negotiating terms and entering into forbearance agreements or loan extensions with borrowers; (iv) accepting deeds in lieu of foreclosure; (v) filing suit and pursuing other legal remedies (including judicial foreclosures) in the name of the Company against any borrower or guarantor on Company loans; and (vi) taking any other action deemed necessary by the Manager in its sole judgment to protect the Company's interest in any loan or any real property securing a Company loan or acquired by the Company through foreclosure or otherwise.

(e) To take all actions necessary to cause the Initial Member to re-acquire a Non-Performing Initial Loan in accordance with the Initial Loan Transfer provisions of Section 4.6.

(f) To borrow money from any Person (which may, but is not required to be a bank or other financial institution) for the purpose of refinancing any real property directly or indirectly owned by the Company as a result of foreclosure (or deed-in-lieu of foreclosure) of

any Company loan, to pledge or encumber such real property as security therefor, and to repay in whole or in part, or to refinance, increase, modify, or extend any such obligation, all on such terms and conditions as the Manager shall deem appropriate;

(g) To employ, at the expense of the Company, such agents, employees, independent contractors, attorneys and accountants as the Manager deems reasonable and necessary for any Company purpose;

(h) To effect necessary insurance for the proper protection of the Company, the Manager or Members;

(i) To prosecute, defend, pay, collect, compromise, arbitrate, or otherwise adjust any and all claims or demands of or against the Company;

(j) To amend this Agreement with respect to the matters described in subsections 13.4(a) through (g) below;

(k) To determine the accounting method or methods to be used by the Company, which methods may be changed at any time by written notice to all Members;

(l) To open accounts in the name of the Company in one or more banks, savings and loan associations or other financial institutions or money market funds, and to deposit Company funds therein, subject to withdrawal upon the signature of the Manager or any person authorized by the Manager;

(m) To sell from time to time all or any portion of the Company's assets, or any undivided or beneficial interests therein; and

(n) To retain such advisors and professionals, execute all instruments and documents and do all other things necessary or appropriate in the judgment of the Manager to effectuate any of the foregoing.

3.3 Fiduciary Duty. The Manager shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the Company, and the Manager shall not employ such funds or assets in any manner except for the exclusive benefit of the Company.

3.4 Devotion of Time to Company Business. The Manager shall not be required to devote full time to the affairs of the Company but shall devote whatever time, effort and skill the Manager may deem to be reasonably necessary for the conduct of the Company's business. The Manager may engage in any other businesses including businesses related to or competitive with the Company.

3.5 Officers. The Manager may appoint officers at any time. The officers of the Company, if deemed necessary by the Manager, may include a president, vice president, secretary, and chief financial officer. The officers shall serve at the pleasure of the Manager, subject to all rights, if any, of an officer under any contract of employment. Any individual may hold any number of offices. No officer need be a resident of the State of California or citizen of the United States. The officers shall exercise such powers and perform such duties as shall be

determined from time to time by the Manager, provided that in no event shall officers have any greater authority than the Manager hereunder. Subject to the rights, if any, of an officer under a contract of employment, any officer may be removed, either with or without cause, by the Manager at any time. Any officer may resign at any time by giving written notice to the Manager. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party. A vacancy in any office may be filled by the Manager in its sole discretion.

3.6 Competing Activities. The Manager and its principals and Affiliates may engage or invest in, independently or with others, any business activity of any type or description, including without limitation those that might be the same as or similar to the business of the Company or any subsidiary thereof and that might be in direct or indirect competition with the Company or any subsidiary thereof. Neither the Company, any subsidiary of the Company nor any Member shall have any right in or to such other permitted ventures or activities or to the income or proceeds derived therefrom. The Manager shall not be obligated to present any investment opportunity or prospective economic advantage to the Company, even if the opportunity is of the character that, if presented to the Company, could be taken by the Company. The Manager shall have the right to hold any investment opportunity or prospective economic advantage for its own account or to recommend such opportunity to Persons other than the Company. The Members hereby waive any and all rights and claims which they may otherwise have against the Manager and its Affiliates as a result of any of such activities.

3.7 Performance of Duties; Limited Liability. The Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of intentional fraud, intentional misconduct, or a knowing and willful violation of law by the Manager. No Person who is a Manager or officer or both a Manager and officer of the Company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise, by reason of being a Manager or officer or both a Manager and officer of the Company.

3.8 Indemnity. The Company shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he, she or it is or was a Member, Manager, officer, employee or other agent of the Company or that, being or having been such a Member, Manager, officer, employee or agent, he or she is or was serving at the request of the Company as a manager, director, officer, employee or other agent of another limited liability company, corporation, Company, joint venture, trust or other enterprise to the fullest extent permitted by applicable law in effect on the date hereof and to such greater extent as applicable law may hereafter from time to time permit. The Manager shall be authorized, on behalf of the Company, to enter into indemnity agreements from time to time with any Person entitled to be indemnified by the Company hereunder, upon such terms and conditions as the Manager deems appropriate in its business judgment.

3.9 Manager Removal. The Manager may be removed upon the following terms and conditions:

(a) The Manager may be removed by the written consent of a Majority Interest of the Members. Members may exercise such right by (i) presenting to the Manager a written notice (a “**Removal Notice**”) to the effect that the Manager is removed effective on the date set forth in such Removal Notice which Removal Notice shall be executed (with each such signature being acknowledged) by Members representing a Majority Interest of the Members; and (ii) concurrently therewith delivering a copy of the Removal Notice to any Members who have not executed the Removal Notice.

(b) Concurrently with delivery of the Removal Notice or within 90 days thereafter by written notice given in the manner as the Removal Notice, a Majority Interest of the Members may also designate a successor Manager.

(c) Substitution of a new Manager, if any, shall be effective upon written acceptance of the duties and responsibilities of a manager of the Company by the new Person being designated as the Manager. Upon effective substitution of a new Manager, this Agreement shall remain in full force and effect except for the change in the Manager and the business of the Company shall be continued by the new Manager.

3.10 Retirement by or Incapacity of Manager. The Manager may withdraw (“retire”) from the Company upon not less than ninety (90) days’ written notice of same to the Members. In the event that the Manager voluntarily withdraws, or if the Manager is the subject of an Incapacity, then one or more replacement managers may be appointed by the affirmative vote or written consent of a Majority Interest of the Members. If the number of Managers is changed, the Articles shall be amended, if necessary, to accurately reflect whether the Company has only one Manager or more than one Manager.

#### **ARTICLE IV** **MEMBERS AND MEMBERSHIP CLASSES**

4.1 Membership Classes. The Company shall initially have two classes of Membership Interests – the Initial Interest and the Investment Class Interests. The Initial Interest and Investment Class Interests shall each have only those rights and obligations attributable to such Membership Interests as expressly set forth in this Agreement. The Initial Interest shall be issued to the Initial Member, only, and may not be issued, transferred or held by any other Person and shall be redeemed and withdrawn over the course of the Liquidation Period in accordance with Section 9.2. Upon the full redemption and withdrawal of the Initial Member in accordance with Section 9.4, below, the Investment Class Interests shall be the Company’s sole class of Membership Interests and all rights and obligations of the Initial Interest hereunder shall become null and void. Upon the full redemption and withdrawal of the Initial Member, the Manager may amend this Agreement without the prior consent of the Investor Members to reflect the elimination of the Initial Interest and the existence of only a single Membership Interest class.

#### 4.2 Election to Compound Earnings or Receive Cash Distributions.

(a) All earnings allocable to the Initial Member shall be distributed to the Initial Member on a monthly basis in accordance with Section 6.1(b) and all Initial Loan Principal Payments received by the Company shall be distributed to the Initial Member on a monthly, quarterly or other basis in accordance with Section 6.1(a);

(b) Upon subscription for Units, a subscribing Investor Member must elect whether to receive monthly income distributions from the Company or to allow his or her earnings to compound. A Member may elect to switch from compounding earnings to receiving monthly cash distributions, or vice versa, upon 90 days notice to the Manager; provided, however, that a Member may only switch from receiving cash distributions to compounding earnings if there is then in effect a permit issued by the California Department of Corporations for the offering of Units and provided further that such Member shall have received the most current version of the Company's Offering Circular. Notwithstanding the foregoing, the Manager at any time shall have the right to immediately commence making monthly distributions to one or more ERISA Investors who previously had elected to compound earnings if necessary in order for the Company to remain exempt from the application of Title 29 of the Code of Federal Regulations Part 2510 relating to the definition of plan assets for purposes of ERISA (the "**ERISA Plan Asset Regulations**"). Income allocable to Members who elect to compound their earnings will be retained by the Company for purposes of making or investing in New Loans or for other proper Company purposes, and the amount of such allocable income will be credited to their Capital Accounts.

4.3 No Participation in Management. Except as expressly provided herein, the Members shall take no part in the conduct or control of the Company business and shall have no right or authority to act for or bind the Company. Economic Interest Owners shall have no voting rights whatsoever.

4.4 Voting Rights of Members. The Manager shall have the right to take all actions in furtherance of the Company's operations as it deems necessary in its sole discretion including, without limitation, to all actions set forth in Article III and elsewhere in this Agreement. Notwithstanding the foregoing, an affirmative vote, consent or ratification by Majority Interest of the Members shall be required for each of the actions set forth in subsections (a) through (d), below (the "**Member Actions**"). Any vote, approval or ratification by the Initial Member for any Member Action shall be subject to the approval of the Old Fund Members as set forth in Section 4.5, below. The Member Actions subject to the Members' voting rights as described herein are the following actions, and no others:

(a) dissolution and termination of the Company prior to the expiration of the term of the Company as stated in Section 2.3 above;

(b) amendment to this Agreement, provided that this subsection (b) shall not apply to the matters set forth in Section 13.4 below, with respect to which matters the Manager alone may amend this Agreement without the vote of the Members;

(c) merger or consolidation of the Company pursuant to Section 10.3 below;  
and

(d) Removal of the Manager and election of a successor Manager, in the manner and subject to the conditions described in Sections 3.9 and 3.10 above.

4.5 Voting Rights of Initial Member. So long as the Initial Member is a Member of the Company it shall have the right to vote upon each of the Member Actions in the same manner as any other Member. Any Member Action requiring the vote of the Initial Member shall be presented by the Manager to each of the Old Fund Members at the time of presentation to the Members of the Company (the “**Vote Date**”). Any affirmative vote, consent or ratification to be given by the Initial Member in connection with any Member Action must be approved by the affirmative vote or consent of Old Fund Members holding a majority of the aggregate percentage interests in the Initial Member as of the Vote Date. The Manager shall have no right to unilaterally cast a vote on behalf of the Initial Member under this Agreement without obtaining the prior written approval by the Old Fund Members as set forth herein.

4.6 Non-Performing Initial Loans Transfers. The Company shall have no obligation to incur any expense in connection with the enforcement or the protection of any Initial Loan held by the Company. In the event that an Initial Loan goes into material default or the Manager determines, in its reasonable judgment, that (prior to or following an event of default) an Initial Loan will require the Company to incur expenses in connection with the loan or that the continued ownership of any Initial Loan is otherwise not in the economic interest of the Company (a “**Non-Performing Initial Loan**”), the Company shall distribute the Non-Performing Initial Loan to the Initial Member by executing and recording such documents as the Manager deems necessary or appropriate to effect such distribution (an “**Initial Loan Transfer**”), and in such event the Initial Member’s Capital Account in the Company shall be debited in an amount equal to the outstanding principal balance of the Non-Performing Initial Loan, which shall be conclusively deemed to be its Gross Asset Value for purposes of adjusting the Initial Member’s Capital Account. The Members hereby authorize the Manager to take all actions required to complete any Initial Loan Transfer to the Initial Member in accordance with this Section 4.6.

4.7 Meetings. Meetings of Members shall be called, noticed and held, and voting procedures shall be followed in accordance with the provisions of Section 17104 of the Act.

4.8 Limited Liability of Members. Units are non-assessable, and no Member shall be personally liable for any of the expenses, liabilities, or obligations of the Company or for any of the losses thereof beyond the amount of such Member’s agreed upon Capital Contribution to the Company and such Member’s share of any undistributed net income and gains of the Company; provided, that each Member shall remain liable to return to the Company any distributions that such Member is obligated to return pursuant to Section 17254 of the Act.

## **ARTICLE V**

### **CAPITAL CONTRIBUTIONS; SUBSCRIPTIONS**

5.1 Capital Contributions of the Initial Member. The Initial Member shall make the following Capital Contributions (the “**Initial Capital**”) to the Company and shall be issued the Initial Interest as follows:

(a) Upon execution of this Agreement, Initial Member shall contribute cash to the Company in the amount of \$175,000 (the “**Initial Cash Contribution**”);

(b) Upon execution of this Agreement, the Initial Member shall, in addition to the Cash Contribution, contribute the Initial Loans to the Company by executing assignment documents acceptable to the Manager to effectively assign all of Initial Member’s rights, title and interest in the Initial Loans to the Company, including the execution recordation of assignments of the deeds of trust for each of the Initial Loans in favor of the Company (the “**Initial Loan Contribution**”);

(c) Upon making the Initial Cash Contribution and the Initial Loan Contribution, the Initial Member shall be issued the Initial Interest and shall receive a Capital Account credit of \$3,394,840 which sum represents the amount of the Initial Cash Contribution plus the par value of the Initial Loans assigned in connection with the Initial Loan Contribution.

5.2 Capital Contributions of the Investor Members. The Investor Members shall contribute to the capital of the Company an amount equal to \$1.00 for each Unit subscribed for by each such Initial Member. The total capitalization of the Company, exclusive of the Initial Capital, shall be a maximum of \$50,000,000; provided, however, that the Manager reserves the right to issue additional Units of Investment Class Interests from time to time in the future without approval of the Members. Investor Member’s Capital Contributions shall be made by subscribing for Units pursuant to the Cash Subscriptions procedures set forth in Section 5.3 or the Rollover Subscription procedures set forth in Section 5.4 below.

5.3 Cash Subscriptions; Admission to Company. All investors, including Old Fund Members, that meet the investor suitability standards set forth in the Offering Circular may purchase Units for cash by completing and executing the Subscription Agreement and Power of Attorney attached to the Offering Circular (“**Subscription Agreement**”) and delivering the Subscription Agreement to the Manager together with the purchase price payable for Units (“**Cash Subscriptions**”). Cash Subscriptions shall be made and accepted or rejected in accordance with the terms and conditions of this Section 5.3.

(a) The minimum Cash Subscription amount is \$25,000 (i.e., 25,000 Units); provided, however, that the Manager may, in its sole discretion, accept Cash Subscriptions in lesser amounts.

(b) Cash Subscriptions will be accepted or rejected by the Manager promptly after receipt and the Manager reserves the right to reject any Cash Subscription submitted for any reason.

(c) If accepted, an investor submitting a Cash Subscription (a “**Cash Subscriber**”) will become an Investor Member and the Cash Subscriber’s entire investment will be deposited into the Company only when all, or any portion, of the Cash Subscriber’s subscription funds are required by the Company to invest in a New Loan, to create appropriate

reserves or for any other proper Company purpose at which time all or a portion of the Cash Subscription funds will be transferred to the Company. Until then, a Cash Subscriber's subscription is irrevocable and Cash Subscription funds received by the Manager may be held by it for the account of each Cash Subscriber in a non-interest-bearing subscription account (the "**Subscription Account**").

(d) Cash Subscription funds will be transferred from the Subscription Account into the Company on the first day of the month, only, on a first-in, first-out basis, at which time the Cash Subscriber will be admitted to the Company as an Investor Member and Units will be issued to such Cash Subscriber at the rate of \$1.00 per Unit; provided, however, that the Manager reserves the right to admit non-ERISA Plan Investors before ERISA Plan Investors in order for the Company to remain exempt from the application of the ERISA Plan Asset Regulation.

(e) Cash Subscriptions are non-cancelable and irrevocable and Cash Subscription funds are non-refundable for any reason, except with the consent of the Manager; provided, however, that Cash Subscription funds remaining in the subscription account after the expiration of 65 days from the first day of the month following the date the subscription funds were received from the investor will be returned to the investor.

(f) After having subscribed for at least 25,000 Units (\$25,000), an Investor Member admitted to the Company may, at any time, and from time to time, submit additional Cash Subscriptions to purchase additional Units subject to the minimum subscription amount of \$25,000 (or 25 Units).

5.4 Rollover Subscriptions; Admission to the Company. Old Fund Members receiving Liquidation Distributions may also purchase Units by completing the "Rollover Subscription Election" section of the Subscription Agreement and delivering the executed Subscription Agreement to the Manager (a "**Rollover Subscription**"). Rollover Subscriptions shall be made and accepted or rejected and subject to termination in accordance with the provisions of this Section 5.4.

(a) Rollover Subscriptions shall be available to all Old Fund Members receiving Liquidation Distributions, only, and each Old Fund Member submitting a Rollover Subscription ("**Rollover Subscriber**") must meet the investor suitability standards set forth in the Offering Circular at the time the Rollover Subscription is submitted and the Rollover Investor authorizes the application of future Liquidation Distributions to the purchase of Units.

(b) The \$25,000 initial minimum subscription amount applicable to Cash Subscriptions is not applicable to Rollover Subscriptions and Rollover Investors may elect to have less than 100% of each Liquidation Distribution applied to the purchase of Units by indicating such lesser percentage in the Subscription Agreement. Any Liquidation Distributions in excess of such percentage will be distributed to the Rollover Investor in accordance with Old Fund's Operating Agreement or any other agreement between Manager and the Rollover Investor in connection with such distributions.

(c) The Manager reserves the right to reject any Rollover Subscription submitted for any reason. Rollover Subscriptions received from Rollover Subscribers will be accepted or rejected by the Manager promptly after receipt. If accepted, a Rollover Subscriber will become an Investor Member at the time the first Liquidation Distribution is made and transferred into the Company and Units are issued in the Rollover Investor's name in accordance with subsection (d), below. Thereafter, the designated percentage of each Liquidation Distribution will be applied to the purchase of Units by the Manager at the time each Liquidation Distribution is made unless and until a maximum number of Units identified in the Subscription Agreement have been issued or the Rollover Subscription is cancelled by the Rollover Subscriber or the Manager in accordance with subsections (e) and (f), below.

(d) Each Liquidation Distribution will be transferred to the Company and Units will be issued to a Rollover Subscriber only when all, or any portion, of such amount is required by the Company to invest in a New Loan, to create appropriate reserves or for other appropriate Company purposes. Until then, a Rollover Subscriber's funds may be held by the Manager for the account of the Rollover Subscriber in the Subscription Account. Rollover Subscribers' funds will be transferred from the Subscription Account into the Company on the first day of the month, only, on a first-in, first-out basis, at which time Units will be issued to such investor at the rate of \$1.00 per Unit; provided, however, that the Manager reserves the right to admit non-ERISA Plan Investors before ERISA Plan Investors in order for the Company to remain exempt from the application of ERISA Plan Asset Regulations.

(e) Any Rollover Subscriber purchasing Units as described above shall become an Investor Member in the Company with the same rights, preferences and privileges as any other Investor Members in respect of the Units so purchased.

(f) Rollover Subscriptions payable from future Liquidation Distributions are cancelable by a Rollover Subscriber at any time prior to the transfer of the Liquidation Distribution to the Company and the issuance of Units to the Rollover Investor in exchange therefor.

(g) Rollover Subscriptions may be cancelled by the Manager at any time if it determines the sale of Units pursuant to a Rollover Subscription would violate the terms and conditions of the offering of Units as set forth in the Offering Circular or would otherwise be in violation of the laws and regulations applicable to the Company. The Manager may also cancel a Rollover Subscription for any reason at any time prior to the transfer of the Liquidation Distribution to the Company and the issuance of Units to the Rollover Investor in exchange therefore.

## **ARTICLE VI ALLOCATIONS AND DISTRIBUTIONS**

6.1 Distributions of Cash. The Company's available cash shall be distributed to the Members as follows:

(a) An amount of cash equal to all Initial Loan Principal Payments received by the Company shall be distributed to the Initial Member on a monthly, quarterly or other periodic basis, as determined by the Manager (the “**Initial Loan Principal Distributions**”); and

(b) Promptly following the close of business on the last day of each calendar month, the Company shall distribute to each Electing Member an amount of cash equal to the monthly Profits allocated to such Electing Member pursuant to Section 6.2(a), below.

6.2 Profits and Losses. Profits and Losses of the Company shall be allocated among the Members in accordance with the following provisions:

(a) Profits shall be allocated among the Members (including the Initial Member) on the last day of each calendar month in accordance with their respective Percentage Interests as of such date; and

(b) Losses shall be allocated among the Members on the last day of each calendar month as follows:

(i) Any losses attributable to Initial Loans (if any) shall be allocated solely to Old Fund; and

(ii) Any losses attributable to New Loans shall be allocated solely to the Investor Members and further allocated among the Investor Members, pro rata, in accordance with their respective Percentage Interests as of such date.

(c) Profits and Losses allocable to the Members for each month or other period shall be allocated among the Members in a manner reasonably determined by the Manager to take account of any variations in the Members’ relative Capital Account balances during such period.

6.3 Cash Distributions Upon Dissolution. Upon dissolution and termination of the Company, all cash distributions shall thereafter be distributed to Members in accordance with the provisions of Article IX below.

6.4 Special Allocations. Notwithstanding the provisions of Section 6.2, the following provisions shall be controlling:

(a) Notwithstanding Section 6.2 above, allocations of Losses to a Member shall be made only to the extent that such allocations will not create a deficit Capital Account balance for that Member in excess of an amount, if any, equal to such Member’s share of Minimum Gain. Any Losses not allocated to a Member because of the foregoing provision shall be allocated to the other Members (to the extent the other Members are not limited in respect of the allocation of Losses under this subsection (a)). Any Losses reallocated under this subsection (a) shall be taken into account in computing subsequent allocations of Profits and Losses pursuant to this Article VI, so that the net amount of any item so allocated and the Profits and Losses allocated to each Member pursuant to this Article VI, to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to this Article VI if no reallocation of Losses had occurred under this subsection (a).

(b) Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, in subsequent fiscal years) in an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain that is allocable to the disposition of Company property subject to a Nonrecourse Liability, which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(g)(2). Allocations pursuant to this subsection (b) shall be made in proportion to the amounts required to be allocated to each Member under this subsection (b). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f). This subsection (b) is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(c) Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt. If there is a net decrease in Company Minimum Gain attributable to a Member Nonrecourse Debt, during any Fiscal Year, each member who has a share of the Company Minimum Gain attributable to such Member Nonrecourse Debt (which share shall be determined in accordance with Regulations Section 1.704-2(i)(5)) shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, in subsequent Fiscal Years) in an amount equal to that portion of such Member's share of the net decrease in Company Minimum Gain attributable to such Member Nonrecourse Debt that is allocable to the disposition of Company property subject to such Member Nonrecourse Debt (which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(i)(5)). Allocations pursuant to this subsection (c) shall be made in proportion to the amounts required to be allocated to each Member under Section 6.4(b). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This subsection (c) is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(d) Nonrecourse Deductions. Any nonrecourse deductions (as defined in Regulations Section 1.704-2(b)(1)) for any Fiscal Year or other period shall be specially allocated to the Members in proportion to their Percentage Interests.

(e) Member Nonrecourse Deductions. Those items of Company loss, deduction, or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt for any Fiscal Year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such items are attributable in accordance with Regulations Section 1.704-2(i).

(f) Qualified Income Offset. If a Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), or any other event creates a deficit balance in such Member's Capital Account in excess of such Member's share of Company Minimum Gain, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such excess deficit balance as quickly as possible. Any special allocations of items of income and gain pursuant to this subsection (f) shall be taken into account in computing subsequent allocations of income and gain pursuant to this Article VI so that the net amount of any item so allocated and the income, gain, and losses allocated to each Member pursuant to this

Article VI to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this subsection (f) if such unexpected adjustments, allocations, or distributions had not occurred.

6.5 Code Section 704(c) Allocations. Notwithstanding any other provision in this Article VII, in accordance with Code Section 704(c) and the Regulations promulgated thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value on the date of contribution. Allocations pursuant to this Section are solely for purposes of federal, state and local taxes. As such, they shall not affect or in any way be taken into account in computing a Member's Capital Account or share of profits, losses, or cash distributions pursuant to any provision of this Agreement.

6.6 Allocations in Respect of a Transferred Interest. If any Membership Interest is transferred, or is increased or decreased by reason of the admission of a new Member or otherwise, during any Fiscal Year of the Company, each item of income, gain, loss, deduction, or credit of the Company for such Fiscal Year shall be assigned pro rata to each day in the particular period of such Fiscal Year to which such item is attributable (i.e., the day on or during which it is accrued or otherwise incurred) and the amount of each such item so assigned to any such day shall be allocated to the Member based upon his or her respective Membership Interest at the close of such day.

6.7 Obligations of Members to Report Allocations. The Members are aware of the income tax consequences of the allocations made by this Article VI and hereby agree to be bound by the provisions of this Article VI in reporting their shares of Company income and loss for income tax purposes.

6.8 Overriding Adjustments. Notwithstanding any other provisions hereof, the Manager shall have the discretion, to be exercised based upon the advice of the Company's accountants or other tax advisors, to make such further allocations of Company Profits and Losses or to adjust the allocations of Company Profits or Losses so as to ensure, to the extent possible, that such allocations, when coupled with distributions payable to the Members under the terms of this Agreement, reflect the intended economic arrangements of the parties. The Manager shall have the authority to unilaterally amend this Agreement as necessary to provide for such allocations so long as such amendment does not alter the intended economic arrangements of the Members.

## **ARTICLE VII ACCOUNTING AND REPORTS**

7.1 Books and Records. The Manager shall cause the Company to keep the following books and records, which shall be maintained at the Company's principal place of business and shall be available for inspection and copying by, and at the sole expense of, the Members (but not Economic Interest Holders), or their duly authorized representatives, during reasonable business hours:

(a) A current list of the full name and last known business or residence address of each Member and Economic Interest Owner set forth in alphabetical order, together with the Capital Contributions, Capital Account and Percentage Interest of each Member and Economic Interest Owner;

(b) A current list of the full name and business or residence address of each Manager;

(c) A copy of the Articles and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which the Articles or any amendments thereto have been executed;

(d) Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;

(e) A copy of this Agreement and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which this Agreement or any amendments thereto have been executed;

(f) Copies of the financial statements of the Company, if any, for the six most recent Fiscal Years; and

(g) The Company's books and records as they relate to the internal affairs of the Company for at least the current and past four Fiscal Years.

7.2 Financial Reports and Returns. The Manager shall cause to be prepared and distributed to each Member the following:

(a) Within ninety (90) days after the end of each Fiscal Year of the Company, an annual report which shall contain a balance sheet of the Company as of the end of each Fiscal Year, an income statement and a report of the activities of the Company during such Fiscal Year, including a statement of changes in financial position for that Fiscal Year, which financial statements shall be prepared in accordance with generally accepted accounting principles and may (but are not required to be) audited; provided, however, that so long as the offering of Units remains open to new investments and subject to a permit qualifying the offer and sale of Units issued by the California Department of Corporations, the financial statements required by this Section 7.2(a), shall be audited by an independent certified public accounting firm selected by the Manager.

(b) Within ninety (90) days after the end of each Fiscal Year of the Company, such other information which the Members may need for preparation of their federal income tax returns.

7.3 Tax Matters Partner. In the event the Company is subject to administrative or judicial proceedings for the assessment or collection of deficiencies for federal taxes or for the refund of overpayments of federal taxes arising out of a Member's distributive share of profits, the Manager shall act as the Tax Matters Partner ("TMP") and shall have all the powers and duties assigned to the TMP under Sections 6221 through 6232 of the Code and the Treasury

Regulations thereunder. The Members agree to perform all acts necessary under Section 6231 of the Code and Treasury Regulations thereunder to designate the Manager as the TMP.

## **ARTICLE VIII TRANSFER OF COMPANY INTERESTS**

8.1 Restrictions on Transfers. Notwithstanding any provision to the contrary contained herein, the following restrictions shall apply to any and all proposed sales, assignments or transfers of Membership Interests and Economic Interests, and any proposed sale, assignment or transfer in violation of same shall be void *ab initio*:

(a) The Initial Interest or any part thereof (including an Economic Interest therein) shall not be transferred or assigned by the Initial Member at any time.

(b) No Investor Member shall make any transfer or assignment of all or any part of his Membership Interest without the prior written consent of the Manager, which consent may be withheld in the sole discretion of the Manager.

(c) No Investor Member shall make any transfer or assignment of all or any part of his Economic Interest without the prior written consent of the Manager, which consent shall not be unreasonably withheld.

(d) No Investor Member shall make any transfer or assignment of all or any part of his Membership Interest or Economic Interest if said transfer or assignment would, when considered with all other transfers during the same applicable twelve-month period, cause a termination of the Company for federal or California state income tax purposes.

(e) No Investor Member shall be entitled to sell, assign, transfer or convey his Membership Interest or Economic Interest to any person or entity other than a bona fide resident of the State of California for a period of nine months after the termination of the offering of Units pursuant to which such Membership Interest (or the Membership Interest associated with such Economic Interest) was acquired.

(f) No Investor Member shall be entitled to sell, assign, transfer or convey his Membership Interest or Economic Interest to any Person unless such transfer complies with Section 260.141.11 of the Rules of the California Commissioner of Corporations if such Section of such Rules is applicable at the time of the proposed transfer.

(g) Instruments evidencing any Investment Class Interest or Economic Interest therein shall bear and be subject to a legend condition in substantially the following form:

THE UNITS REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED NOR HAVE THEY BEEN QUALIFIED UNDER THE CALIFORNIA CORPORATE SECURITIES LAW OF 1968, AS AMENDED. SUCH UNITS MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED TO ANY PERSON AT ANY TIME WITHOUT SUCH REGISTRATION AND QUALIFICATION, OR AN OPINION OF COUNSEL

SATISFACTORY TO THE MANAGER OF THE COMPANY TO THE EFFECT THAT SUCH REGISTRATION OR QUALIFICATION IS NOT REQUIRED. THERE ARE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFER, AS SET FORTH IN THE OPERATING AGREEMENT.

IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS SECURITY, OR ANY INTEREST THEREIN OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, EXCEPT AS PERMITTED BY THE COMMISSIONER'S RULES.

8.2 Transfer of Membership Interests and Substitution. No assignee of the whole or any portion of an Investment Class Interest in the Company shall have the right to become a substituted Investor Member in place of his assignor unless the following conditions are first met:

(a) The assignor shall designate such intention in the instrument of assignment;

(b) The written consent of the Manager to such substitution shall be obtained, which consent may be withheld in the sole discretion of the Manager and which, in any event, shall not be given if the Manager determines that such sale or transfer may jeopardize the continued ability of the Company to qualify as a "partnership" for federal income tax purposes or that such sale or transfer may jeopardize the status of the original sale of said interest pursuant to the nonpublic and intrastate offering exemptions from registration or qualification under the Securities Act of 1933, as amended (the "**1933 Act**") or the California Corporate Securities Law of 1968, as amended (the "**1968 Law**");

(c) The instrument of assignment shall be in a form and substance satisfactory to the Manager;

(d) The assignor and assignee named therein shall execute and acknowledge such other instruments as the Manager may deem necessary to effectuate such substitution, including but not limited to a power of attorney with provisions more fully described in this Agreement;

(e) The assignee shall accept, adopt and approve in writing all of the terms and provisions of this Agreement as the same may have been amended;

(f) Such assignee shall pay or, at the election of the Manager, obligate himself to pay all reasonable expenses (including reasonable attorneys' fees) not exceeding \$500 connected with such substitution; and

(g) The Company has received, if requested, a legal opinion in form and substance satisfactory to the Manager that such transfer will not violate the registration provisions of the 1933 Act or the qualification requirements of the 1968 Law, which opinion shall be furnished at the Member's expense.

## ARTICLE IX WITHDRAWAL FROM COMPANY

9.1 Withdrawals by Investor Members. No Investor Member shall have the right to withdraw from the Company or otherwise obtain the return of all or any portion of his, her or its Invested Capital for a period of twelve (12) months after the date of the initial purchase of Units by such Investor Member or such Investor Member's predecessor in interest (the "**Holding Period**"). After the expiration of the Holding Period, an Investor Member may request the return of all or a portion of his, her or its Invested Capital by making a request to the Manager as set forth in this Section 9.1 (a "**Withdrawal Request**"). All Withdrawal Requests made by Investor Members shall be satisfied by the Manager subject to the limitations set forth in Section 9.2, below and all other conditions, restrictions and priorities set forth in this Article IX.

(a) Upon expiration of the twelve month Holding Period, an Investor Member may request the withdrawal of all or part of his, her or its Invested Capital from the Company by giving written notice to the Manager (a "**Withdrawal Notice**") indicating either the amount of Invested Capital to be withdrawn or a request for the return of 100% of the Investor Member's then current Invested Capital. Withdrawal Notices made pursuant hereto shall be deemed to be effective as of the first day of the calendar quarter following the Manager's receipt of the Withdrawal Notice (the "**Notice Effective Date**").

(b) Unless one or more distributions is subject to the limitations or priorities set forth in Section 9.2 or Section 9.3, below, the total amount requested in any Withdrawal Notice (a "**Withdrawal Amount**") shall be distributed to a requesting Investor Member in four (4) quarterly installments each equal to 25% of the Withdrawal Amount commencing on the first day of the next calendar quarter following the Notice Effective Date and continuing on the first day of each successive calendar quarter thereafter until the Withdrawal Amount has been distributed in full. By way of example, the Notice Effective Date for a Withdrawal Notice received by the Manager on September 18, 2011 is October 1, 2011 and the quarterly withdrawal distributions requested in such Withdrawal Notice would commence on January 1, 2012, with additional distributions on April 1, 2012, July 1, 2012 and October 1, 2012.

(c) If an Investor Member submitting a Withdrawal Notice (a "**Requesting Member**") is not an Electing Member as of the date of the Withdrawal Notice, all Profits allocated to the Requesting Member pursuant to Section 6.2(a) (or a proportional amount corresponding to the Withdrawal Amount) shall be distributed, in cash, to the Requesting Member in the manner provided in Section 6.1(b) commencing no later than the Notice Effective Date.

9.2 Limitations on Investor Member Withdrawals. The obligation of the Company to make any quarterly or other periodic distribution of Invested Capital to Requesting Members in accordance with Section 9.1, above, shall be subject to the priorities provided for in Section 9.3, below and the following additional limitations:

(a) The Company will not establish a cash reserve from which to fund withdrawals and the Manager has reserved the ongoing right to reserve up to 50% of the Company's available cash for further investment in New Loans or otherwise preserve the

Company's liquidity for the benefit of the non-withdrawing Members ("**New Investment Reserves**"). Accordingly, the Company shall only be obligated to distribute 50% of the Company's Cash Available for Withdrawals (as defined herein) in any calendar quarter or other period to pay any outstanding Withdrawal Requests submitted pursuant to Section 9.1, and the remaining 50% of such cash may be retained as New Investment Reserves. The term "**Cash Available for Withdrawals**" as used herein and in Section 9.4, below, shall mean the cash available to the Company on the first day of any calendar quarter or other period after: (1) all current Company expenses have been paid (including compensation to the Manager and its affiliates hereunder); (2) adequate reserves have been established for anticipated Company operating costs and other expenses and advances to protect and preserve the Company's investments in New Loans (such as enforcement costs and protective advances to senior lien holders); (3) adequate provisions have been made for the payment of all Initial Loan Principal Distributions required to be made to the Initial Member under Section 6.1(a); and (4) adequate provision has been made for the payment of all amounts required to be distributed to the Electing Members under Section 6.1(b).

(b) In no event shall the Company be required to make distributions of Invested Capital to Requesting Members' Accounts to the extent that the aggregate distributions paid to all Requesting Members during any calendar year (including any distributions to the Initial Member of the Initial Cash Contribution made under Section 9.4(b), below) would exceed an amount equal to ten percent (10%) of the aggregate Invested Capital of all Members at the beginning of such calendar year.

(c) If available cash flow is inadequate to make any quarterly liquidation payment in the full amount of aggregate pending Withdrawal Requests, or if any of the limitations described in subsection (b) are applicable, then liquidating distributions among Requesting Members shall be made on a pro rata basis, based upon the relative amounts to which each Requesting Member is entitled for that quarterly period; provided, that the Manager shall have the discretion to accord priority to Notices of Withdrawal received from Deceased Members and ERISA Plan Investors or to accord priority to the withdrawal of the Initial Member's Initial Cash Contribution all in accordance with Section 9.3, below.

9.3 Priority Withdrawals and Liquidations. Notwithstanding any provision herein to the contrary, the Company shall have the right, but not the obligation, to give priority, to distributions of Invested Capital to certain Members, as follows:

(a) Upon the death of a Member or of the sole beneficiary of a corporate pension or profit-sharing plan, Individual Retirement Account or other employee benefit plan subject to ERISA (a "**Deceased Member**"), the return of such Deceased Member's Invested Capital may be given priority over the return of other withdrawing Members' Invested Capital, in the Manager's sole and absolute discretion.

(b) The Manager, in its sole and absolute discretion, shall also have the right at any time to immediately liquidate all or a portion of the Invested Capital of one or more ERISA Plan Investors regardless whether that ERISA Plan Investor has given a Notice of Withdrawal, if the Manager determines such liquidation is required in order to ensure that the Company remains exempt from the ERISA Plan Asset Regulations. Each ERISA Plan Investor

agrees that its Invested Capital may be liquidated involuntarily pursuant to this Section 9.3(b). Any such liquidation of an ERISA Plan Investor's Capital Account may be given priority over the liquidation of all other withdrawing Members' Capital Accounts, including those of Deceased Members and the return of the Initial Cash Contribution of the Initial Member pursuant to subsection (c), below.

(c) The Manager may shall also have the right to give priority to distributions of the Initial Member's Initial Cash Contribution pursuant to Section 9.4(b), below, if, in the Managers sole judgment, such priority is required to ensure the full liquidation and withdrawal of the Initial Interest on or before the expiration of the Liquidation Period.

9.4 Withdrawal and Redemption of Initial Interest. The Initial Interest shall not be subject to the twelve (12) month Holding Period set forth in Section 9.1 and shall be redeemed and withdrawn by the Company in accordance with this Section 9.4.

(a) The Initial Loan Contribution made by the Initial Member and the Initial Interest and Capital Account credit amount received in connection therewith shall be redeemed by the Company solely from each of the following sources: (i) the amount of each periodic Initial Loan Principal Distribution made by the Company to the Initial Member under Section 6.1(a), which distributions shall each be deemed a return of the Investor Member's Invested Capital and shall reduce the Initial Member's Capital Account balance on a dollar-for-dollar basis; and (ii) any reductions of the Initial Interest and the Initial Member's Capital Account (if any) resulting from one or more Initial Loan Transfer Redemptions made pursuant to Section 4.6, hereof.

(b) The Initial Cash Contribution may be distributed to the Initial Member from Cash Available for Withdrawals at any time following the date of this Agreement, as determined by the Manager in its sole discretion. Distributions of Cash Available for Withdrawals to the Initial Member pursuant to this Section 9.4(b) shall have priority over distributions payable to the Requesting Members that have delivered Withdrawal Notices in accordance with Section 9.1, above, if the Manager determines, in its reasonable judgment, that such priority is necessary in order to fully liquidate and distribute the Initial Member's Initial Interest in the Company prior to the expiration of Liquidation Period.

9.5 Capital Account Adjustments. During any withdrawal period, the remaining Capital Account of a Requesting Member shall continue to be subject to adjustment as described in Article I above until it is fully liquidated. Any reduction in a Capital Account by reason of an allocation of Losses, if any, shall reduce all subsequent liquidation payments proportionately. In no event shall any Member receive cash distributions upon withdrawal from the Company if the effect of such distribution would be to create a deficit in such Member's Capital Account.

9.6 Constructive Vote to Dissolve. If at any time there are outstanding unfulfilled Notices of Withdrawal that, if fulfilled and when taken together with all Notices of Withdrawals paid out during the preceding twelve (12) month period, would exceed twenty five percent (25%) of the balance of total Capital Accounts outstanding as of the first day of the then current calendar year (a "**Construction Dissolution Vote**"), the Manager may, in its sole discretion, upon written notice to the Members, dissolve the Company and initiate the winding up of the

Company pursuant to Article X below. In such event, the winding up and distribution provisions of Article X below shall apply and be controlling, such that liquidation payments shall thereafter be made proportionately to all Members pursuant to and in accordance with Article X below, and no further withdrawal payments shall be made pursuant to this Article IX.

9.7 Effect of Withdrawal or Liquidation. Each payment by the Company in liquidation of all or any portion of a Member's Invested Capital under this Article IX shall be treated as the Company's repurchase of the Initial Interest or an Investor Member's Investment Class Interest (as applicable), and the number of Membership Interests repurchased shall be equal to the dollar amount of the Invested Capital (and corresponding Capital Account) being returned to the Member.

## **ARTICLE X DISSOLUTION OF THE COMPANY; MERGER OF THE COMPANY**

10.1 Events Causing Dissolution. The Company shall dissolve upon occurrence of the earlier of the following events:

- (a) The affirmative vote of a Majority Interest of the Members;
- (b) The declaration by the Manager upon the occurrence of a Construction Dissolution Even pursuant to Section 9.5, above; or
- (c) The entry of a decree of judicial dissolution pursuant to Section 17351 of the California Corporations Code.

10.2 Winding Up. Upon the occurrence of an event of dissolution, the Company shall not immediately be terminated, but shall continue until its affairs have been wound up. Upon dissolution of the Company, unless the business of the Company is continued as provided above, the Manager will wind up the Company's affairs as follows:

- (a) No New Loans shall be made or purchased;
- (b) Except as may be agreed upon by the Manager and a Majority Interest of Members in connection with a merger or consolidation described in Section 10.3, the Manager shall liquidate the assets of the Company as promptly as is consistent with recovering the fair market value thereof, either by sale to third parties (including the Manager or Affiliates) or by servicing the Company's outstanding loans in accordance with their terms; provided, however, the Manager shall liquidate all Company assets for the best price reasonably obtainable in order to completely wind up the Company's affairs within five (5) years after the date of dissolution;
- (c) Except as may be agreed upon by the Manager and a Majority Interest of Members in connection with a merger or consolidation described in Section 10.3, all sums of cash held by the Company as of the date of dissolution (including liquid assets which shall be converted to cash), together with all sums of cash received by the Company during the winding up process from any source whatsoever, shall be applied and promptly distributed to the Members in proportion to the positive balances in their respective outstanding Capital Accounts, but only after all the Company's debts have been paid or otherwise adequately provided for.

(d) Upon the completion of the liquidation of the Company and distribution of liquidation proceeds, the Manager shall cause to be filed a Certificate of Dissolution as required by the Act and shall furnish to each of the Members a statement setting forth the receipts and disbursements of the Company during such liquidation, the amount of proceeds from such liquidation distributed with respect to Company Interests and the amount of proceeds paid or distributed to Members.

10.3 Merger or Consolidation of the Company. The Company may be merged or consolidated with one or more other entities, which may be Affiliates of the Company, provided that the principal terms of any such merger or consolidation are first approved by the Manager and by the affirmative vote of a Majority Interest of the Members. Any such merger or consolidation may be effected by way of a sale of the assets of, or units in, the Company or purchase of the assets of, or units in, one or more other entities, or by any other method approved by the Manager and a Majority Interest of the Members. In any such merger or consolidation, the Company may be either a disappearing or surviving entity. The foregoing shall not be interpreted as setting forth the exclusive means of merging or consolidating the Company, and the Company may utilize any method by which the Company may be merged or consolidated pursuant to the Act or any other provision of applicable law.

## ARTICLE XI

### TRANSACTIONS BETWEEN THE COMPANY, THE MANAGER AND AFFILIATES

11.1 Asset Management Fee. The Manager shall manage all of the Company's assets. In consideration for such management efforts, the Manager shall be entitled to receive an annual asset management fee equal to one and one-half percent (i.e., 1.5%) of the Net Assets Under Management less any Servicing Fees payable by the Company in accordance with Section 11.2 below, if any (the "**Asset Management Fee**"). The Asset Management Fee shall be payable in accordance with the following:

(a) The Asset Management Fee shall be payable monthly based on the Net Assets Under Management as of the last day of each calendar month, i.e., the Manager shall be entitled to a monthly payment equal to a maximum of one-twelfth (1/12<sup>th</sup>) of 1.5% (i.e., 0.125%) of such Net Assets Under Management.

(b) The monthly Asset Management Fee shall be reduced by the amount of any Loan Servicing Fees paid to the Manager by the Company for such month (if any).

(c) The Manager shall be entitled to receive the Asset Management Fee without regard to Company Profits and regardless whether the a return on investment is earned or paid to the Members.

11.2 Loan Servicing Fees. The Manager may act as loan servicing agent with respect to any Fractional Interest Investments held by the Company and, in consideration for such services, may be entitled to receive a monthly servicing fee at prevailing rates based upon the total unpaid principal balance of each Fractional Interest Investment being serviced ("**Servicing Fees**"). Servicing Fees paid by the Company to the Manager in connection with any Fractional

Interest Investment shall be deducted from the Asset Management Fee payable to the Manager on a dollar-for-dollar basis.

11.3 Loan Origination Fees. The Company will purchase New Loans or will enter into loan transactions in which the Manager will act as a broker in arranging the loan, for which it will receive brokerage, origination, renewal or forbearance fees in an amount determined on a case-by-case basis.

11.4 Sale of Defaulted Loans or Real Estate. In the event a loan owned by the Company becomes delinquent or the Company becomes the owner of any real property by reason of foreclosure on a Company loan or receipt of a deed in lieu of foreclosure, the Company may sell such loan or property to the Manager or an Affiliate of the Manager but only so long as the following conditions are satisfied:

(a) Subject to subsection (b) below, the purchase price shall not be less than any of the following amounts: (i) any bona fide third-party offer previously received, if any; (ii) the value of such loan or property as determined by any independent appraisal (if any) prepared within the preceding six months; and (iii) the total amount of the Company's "investment" (as hereafter defined) in the loan or property; *provided*, however, that each of the amounts described in the foregoing clauses (i)-(iii) shall be reduced by the amount of a reasonable and customary real estate brokerage commission that would be payable in connection with a sale of that loan or property to an unrelated party (the "**Avoided Commission**").

(b) Notwithstanding the foregoing, the purchase price may be less than the Company's investment in the loan or property if the following conditions are satisfied: (i) the purchase price is not less than the value of the property as determined by an independent written appraisal prepared by a certified appraiser within the preceding six months, less the amount of the Avoided Commission; and (ii) the purchaser is obligated to pay to the Company the amount of any gain realized from the resale or repayment of the subject loan or from the resale of the subject property, up to the amount of the difference between the purchase price and the Company's investment in the loan or property.

(c) For purposes of this Agreement, the Company's "**investment**" in a loan or property includes, without limitation, the following: the unpaid principal amount of the Company's loan, unpaid interest accrued to the earlier of the date of sale or foreclosure, expenditures made by the Company to protect the Company's interest in the loan or property such as payments to senior lienholders and for insurance and taxes, costs of foreclosure (including attorneys' fees actually incurred to prosecute the foreclosure or to obtain relief from stays in bankruptcy), and any advances made by or on behalf of the Company for any of the foregoing.

(d) Neither the Manager nor any of its Affiliates shall receive a real estate commission in connection with such a sale. Neither the Manager nor any of its Affiliates shall have any obligation whatsoever to purchase any loans or property from the Company.

11.5 Purchase of Loans from Manager or Affiliates. The Company may purchase existing loans from the Manager or Affiliates, provided that the following conditions are met:

- (a) At the time of purchase the borrower shall not be default under the loan;
- (b) The purchase price for such loan does not exceed the unpaid balance of principal, accrued interest and other charges owing thereunder; and
- (c) The loan satisfies the loan underwriting criteria customarily applied by the Company with respect to loans made to or purchased from unrelated third parties.

11.6 Sale of Current Loans to Manager or Affiliates. The Company may sell existing loans that are not in default to the Manager or its Affiliates, but only so long as the Company receives net cash proceeds from such sale in an amount equal to the total unpaid balance of principal, accrued interest and other charges owing under such loan. Notwithstanding the foregoing, the Manager shall be under no obligation to purchase any loans from the Company or to guarantee any payments under any Company loan.

11.7 No Loans to Related Parties. The Company shall not make or purchase any loan under which the borrower or any guarantor is an Affiliate of the Manager.

11.8 Loans by Manager. In the event that the Manager determines at any time that the cash available to the Company is insufficient to meet the then existing and projected needs of the Company, the Manager, in addition to exercising its rights to cause the Company to borrow funds from third party sources, may in its sole discretion loan or cause an Affiliate thereof to loan necessary funds to the Company in accordance with the provisions of this Section. Any loan by the Manager or its Affiliate(s) to the Company may be repaid from Company funds available therefore in the reasonable judgment of the Manager. Any such loan from the Manager or its Affiliate(s) to the Company shall be at a rate of interest and on such other terms as the Manager determines in its reasonable business judgment are not more onerous to the Company than those that an unaffiliated third party would charge the Company in an arms-length transaction. Any such lender shall have the same rights and obligations with respect to such transactions or loans as a Person who is not a Manager or Affiliate thereof and the Members hereby waive, to the fullest extent permitted under applicable law, any fiduciary duty or duties that would impose any additional obligations on any such lender.

11.9 Contracts with Affiliates. In addition to the foregoing, the Manager may cause the Company to enter into other agreements whereby the Manager or its or other Persons, or entities controlled by any of the foregoing, provide or sell or purchase services or property to or from the Company, are compensated for such services or property, and are reimbursed for expenses incurred on behalf of the Company in providing such services or property, so long as each such agreement is on terms and conditions that are fair and reasonable to the Company as determined by the Manager in its reasonable discretion and are at least as favorable to the Company as those generally available from unaffiliated Persons capable of similarly performing them in similar transactions between parties operating at arm's length, as determined by the Manager in its reasonable discretion.

11.10 Reimbursement of Manager for Certain Expenses. The Manager shall be reimbursed by the Company for all organizational syndication and operating expenses incurred on behalf of the Company, including without limitation, out-of-pocket general and administrative

expenses of the Company, accounting and audit fees, legal fees and expenses, postage, and preparation of reports to Members.

## **ARTICLE XII ARBITRATION**

12.1 Arbitration. Any action to resolve any controversy or claim arising out of or related to this Agreement, or the breach hereof, however characterized, shall be resolved through a binding, non-public arbitration before an adjudicator selected as provided in this Article XI.

12.2 Demand for Arbitration. Any party desiring to bring any action under this Agreement shall give written notice to the other party, which notice shall state with particularity the nature of the dispute and the demand for relief, making specific reference by paragraph number and title, if applicable, of the provisions of this Agreement pertaining to the dispute.

12.3 Appointment of Arbitrator. The parties shall endeavor to agree, within thirty (30) days of the above-described notice, upon a mutually acceptable adjudicator to resolve the dispute. The adjudicator shall be a single former judge of the Superior Court or the Court of Appeal of the State of California or member in good standing with the California State Bar currently employed by or associated with the office of JAMS, Inc. (“JAMS”) located in Santa Rosa, California or, if there is no JAMS office in that city, then at the JAMS office nearest thereto. If the parties cannot agree upon the adjudicator within such thirty (30)-day period, then JAMS, in its sole discretion, shall provide a list of three adjudicators with the qualifications set forth above. Within ten (10) days of JAMS providing the above-described list, each of the parties shall be entitled to strike one name from the list and so notify JAMS. JAMS, in its sole discretion, thereafter shall select as adjudicator any one of the persons remaining on the list, and the person so selected shall thereafter serve as adjudicator. If for any reason JAMS is unable or unwilling to make such an appointment, either party may apply to the Superior Court of the State of California in and for the County of Sonoma for appointment of any former judge of the Superior Court or the Court of Appeal of the State of California to serve as adjudicator. The appointment of an adjudicator, whether by JAMS or by the Superior Court pursuant to the foregoing, shall be made, and the adjudicator shall serve, without further objection from either party, except on the ground of conflict of interest, if any, pursuant to the same rules that would apply if the former judge were serving as an active member of the Superior Court or Court of Appeal.

12.4 Hearing. The hearing shall take place at the JAMS office described above and shall be conducted pursuant to the provisions of the California Arbitration Act commencing with California Code of Civil Procedure Section 1280, the rules and procedures established by JAMS, and such other rules and procedures as may be determined by the adjudicator; provided, however, that: (1) at the hearing, any relevant evidence may be presented by either party, and the formal rules of evidence applicable to judicial proceedings shall not govern; and (2) discovery between the parties prior to the arbitration hearing shall be limited to the mutual exchange of relevant documents. Interrogatories, requests for admissions, and depositions of witnesses shall not be permitted.

12.5 Arbitration Award. In resolving the dispute, the adjudicator shall apply the pertinent provisions of this Agreement without departure therefrom in any respect, and the adjudicator shall not have the power to change any of the provisions of the Agreement. The adjudicator shall try all of the issues, including any issues that may be raised concerning arbitrability of the dispute, subject-matter and personal jurisdiction, and any and all other issues, whether of fact or of law, and shall hear and decide all motions and matters of any kind. The adjudicator shall not be required to prepare a written statement of decision as to any interlocutory decision, but at the conclusion of the arbitration shall prepare a written statement of decision thereon which shall be final and binding upon the parties, and upon which judgment may be entered in accordance with applicable law in any court having jurisdiction thereof. Any interlocutory decisions by the adjudicator likewise shall be final and binding, except that the adjudicator shall have the power to reconsider such.

12.6 Costs of Arbitration. The prevailing party in any dispute regarding or arising out of this Agreement shall be entitled to an award of its reasonable attorneys' fees in addition to any other relief to which it is entitled.

12.7 WAIVERS. THE PARTIES HEREBY FREELY WAIVE THE RIGHT TO TRIAL BY JUDGE OR JURY, THE RIGHT TO APPEAL, FULL PRETRIAL DISCOVERY AND APPLICATION OF THE RULES OF EVIDENCE.

### **ARTICLE XIII MISCELLANEOUS**

13.1 Covenant to Sign Documents. Without limiting the power of attorney granted by Sections 2.6 and 2.7 above, each Member covenants, for himself and his successors and assigns, to execute, with acknowledgement or verification, if required, any and all certificates, documents and other writings which may be necessary or expedient in the creation of the Company and the achievement of its purposes, including, without limitation, all such filings, records or publications necessary or appropriate in the judgment of the Manager to comply with the applicable laws of any jurisdiction in which the Company shall conduct its business.

13.2 Notices. Except as otherwise expressly provided for in this Agreement, all notices which any Member may desire or may be required to give any other Member shall be in writing and shall be deemed duly given when delivered personally or when deposited in the United States mail, first-class postage prepaid, addressed to the Member's address provided to the Manager in accordance with Section 2.5, hereof. Notices to the Manager or to the Company shall be delivered to the Company's principal place of business, as set forth in Section 2.5 above or as hereafter charged as provided herein.

13.3 Right to Engage in Competing Business. Nothing contained herein shall preclude any Member from purchasing or lending money upon the security of any other property or rights therein, or in any manner investing in, participating in, developing or managing any other venture of any kind, without notice to the other Members, without participation by the other Members, and without liability to them or any of them. Each Member waives any right he may have against the Manager for capitalizing on information received as a consequence of the Manager's management of the affairs of this Company.

13.4 Amendment. This Agreement is subject to amendment by the affirmative vote of a Majority Interest of the Members with the written concurrence of the Manager. Notwithstanding anything to the contrary contained in this Agreement, the Manager shall have the right to amend this Agreement, without the vote or consent of any of the Members, in the following circumstances:

- (a) To change the name of the Company or the amount of the contribution of any Member;
- (b) To substitute a Person as a Member;
- (c) To admit an additional Member;
- (d) To admit a successor or additional Manager in accordance with the terms of this Agreement;
- (e) To reflect the withdrawal of the Initial Member as a Member and the existence of a single Membership Class;
- (f) To correct a false or erroneous statement in this Agreement; or
- (g) To change this Agreement in order that it shall accurately represent the agreement among the Members.

13.5 Governing Law. This Agreement shall be governed by and shall be interpreted and enforced in accordance with the substantive laws of the State of California.

13.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and representations, either oral or in writing, between the parties hereto with respect to the subject matter contained herein.

13.7 Waiver. No waiver by any party hereto of any breach of, or default under, this Agreement by any other party shall be construed or deemed a waiver of any other breach of or default under this Agreement, and shall not preclude any party from exercising or asserting any rights under this Agreement with respect to any other breach or default.

13.8 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

13.9 Captions. Section titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement.

13.10 Number and Gender. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include a natural

person, firm, partnership, corporation, trust, association of other form of legal entity. Any consent or action required or permitted to be given or made by a Manager may be given or made by any Manager.

13.11 Counterparts. This Agreement may be executed in counterparts, any or all of which may be signed by the Manager on behalf of the Members as their attorney-in-fact.

13.12 Legal Representation.

(a) Counsel to the Company may also be counsel to the Manager or any Affiliate of the Manager. The Manager may execute on behalf of the Company and the Members any consent to the representation of the Company that counsel may request pursuant to the California Rules of Professional Conduct or similar rules in any other jurisdiction (“**Rules**”). Each Member agrees that counsel to the Company (“**Company Counsel**”) also represents the Manager and its Affiliates, but does not represent any Member in the absence of a clear and explicit written agreement to such effect between the Member and Company Counsel, and that in the absence of any such agreement Company Counsel shall owe no duties directly to any Member. Notwithstanding any adversity that may develop, in the event any dispute or controversy arises between any Members and the Company, or between any Members or the Company, on the one hand, and the Manager (or Affiliate), on the other hand, then each Member agrees that Company Counsel may represent either the Company or such Manager (or his Affiliate), or both, in any such dispute or controversy to the extent permitted by the Rules, and each Member hereby consents to such representation.

(b) Each Member further acknowledges that Company Counsel has represented only the interests of the Manager and not the other Members in connection with the formation of the Company and the preparation and negotiation of this Agreement, and each Member acknowledges that it has been afforded the opportunity to consult with independent counsel with regard thereto.

*[signatures on next page]*

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

MANAGER:

BAYSIERRA FINANCIAL, INC.  
a California corporation

By:

  
John Graziano, President

MEMBERS:

BAYSIERRA FINANCIAL, INC.  
a California corporation, as Attorney-In-Fact For The  
Persons Listed on Schedule B hereto

By:

  
John Graziano, President

INITIAL MEMBER:

BAYSIERRA MORTGAGE FUND, LLC, a California  
limited liability company

By: BaySierra Financial, Inc., a California  
corporation, Manager

By:

  
John Graziano, President

**SCHEDULE A**  
**INITIAL LOANS**

Description of Initial Loan Portfolio as of October 5, 2010				
Loan Number	Property Type	Note Rate (%)	Outstanding Principal	Due Date
0708787	Commercial	7.25%	\$518,189	09/01/12
0706772	Residential	8.00%	\$649,968	01/01/11
0610735	Commercial	8.00%	\$603,057	04/01/12
0703758	Land	11.00%	\$300,000	05/01/12
0710796	Commercial	8.00%	\$356,457	11/01/10
0712807	Commercial	11.50%	\$175,500	01/01/13
0611737	Commercial	11.50%	\$139,603	12/01/11
0804822	Commercial	11.50%	\$105,000	05/01/13
0804821	Land	11.75%	\$372,065	05/01/12
		<b>Wght. Avg.: 9.05%</b>	<b>Total: \$3,219,839.00</b>	

**SCHEDULE B**

**MEMBERS**

Name and Address

Date of Admission

Capital Contribution

*[Current Schedule B is on file with the Manager.]*

## EXHIBIT B

THE LIMITED LIABILITY COMPANY MEMBERSHIP INTEREST UNITS REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). SUCH UNITS MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED TO ANY PERSON AT ANY TIME IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT COVERING SUCH UNITS UNDER THE ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGER OF THE COMPANY TO THE EFFECT THAT SUCH REGISTRATION IS NOT REQUIRED. IN ADDITION, IN NO EVENT MAY UNITS BE OFFERED FOR SALE, SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED TO ANY PERSON WHO IS NOT A RESIDENT OF CALIFORNIA FOR A PERIOD OF NINE MONTHS FROM THE DATE OF THE LAST SALE THEREOF BY THE COMPANY.

IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS SECURITY, OR ANY INTEREST THEREIN OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, EXCEPT AS PERMITTED BY THE COMMISSIONER'S RULES.

### SUBSCRIPTION AGREEMENT AND POWER OF ATTORNEY

#### **BAYSIERRA CAPITAL FUND, LLC** a California limited liability company

The undersigned hereby applies to become an Investor Member in BaySierra Capital Fund, LLC, a California limited liability company (the "**Company**"), and subscribes to purchase the number of membership interest units ("**Units**") herein indicated in accordance with the terms and conditions set forth in the Offering Circular of the Company dated October 5, 2010, as supplemented from time to time (the "**Offering Circular**") and the Operating Agreement attached thereto as Exhibit A, thereto (the "**Operating Agreement**"). Capitalized terms not otherwise defined herein shall have the meanings given in the Offering Circular.

**1. REPRESENTATIONS AND WARRANTIES.** The undersigned represents and warrants as follows:

(a) I have received, read and fully understood the Offering Circular and the Operating Agreement and in making this investment I am relying only on the information provided in the Offering Circular and the Operating Agreement. I have not relied on any statements or representations inconsistent with those contained in the Offering Circular or the Operating Agreement.

(b) I understand that the Units are being offered and sold without registration under the Securities Act of 1933, as amended in reliance upon the exemption from such

registration requirements for intrastate offerings. I acknowledge and understand that the availability of this exemption depends in part upon the accuracy of the representations and warranties contained herein, which I hereby make with the intent that they may be relied upon by the Manager. I understand that the Company has obtained a permit from the California Department of Corporations to offer and sell the Units in California but has not registered or qualified the Units for offer or sale under the securities laws of any other state. This Subscription Agreement is made pursuant to, and is subject to, the terms and conditions of the qualification approved by the Commissioner of Corporations of the State of California for the Company.

(c) If I am an individual, my principal residence is in the State of California or I am a non-U.S. citizen that resides in a foreign nation.

(d) Except as hereafter provided, if I am acting as the trustee of a trust or on behalf of any other business entity, both the principal office and the principal place of business of such trust or other entity are located in the State of California. If I am acting as the trustee or custodian of a Keogh plan, Individual Retirement Account or other retirement plan and I am not a resident of California, then all of the following requirements are satisfied: (i) all participants or beneficiaries of such retirement plan have their principal residence in California; (ii) all investment decisions regarding such plan are made by such resident participants and/or beneficiaries; and (iii) I perform only ministerial functions with respect to the investment of plan assets, with no independent authority or discretion to make investment decisions.

(e) I understand that Units may not be sold or otherwise disposed of without the prior written consent of the Manager, which consent may be granted or withheld in their sole discretion, and that any such transfer is also subject to the prior written consent of the California Commissioner of Corporations and to numerous other restrictions described in the Offering Circular and in the Operating Agreement. I have liquid assets sufficient to assure myself (i) that investment in these Units will not cause me undue financial difficulties and (ii) that I can provide for my current needs and possible personal contingencies or, if I am the trustee of a retirement trust, that the limited liquidity of the Units will not cause difficulty in meeting the trust's obligations to make distributions to plan participants in a timely manner.

(f) I understand that an investment in the Units involves certain risks.

(g) I am 18 years of age or older.

(h) By virtue of my own investment acumen and experience or financial advice from my independent advisors (other than a person receiving commissions by reason of my purchase of Units), I am capable of evaluating the risks and merits of an investment in the Units.

(i) As further indicated in Section 6, below, I satisfy one of the following financial suitability standards:

(i) I have a net worth (exclusive of home, furnishings and automobiles) of \$250,000 plus an annual gross income of \$65,000; or

(ii) I have a net worth (exclusive of home, furnishings and automobiles) of \$500,000; or

(iii) I am purchasing as a trustee or other fiduciary for a person meeting the requirements of clause (i) or (ii) above.

(j) The amount of my investment in the Units as set forth in this Agreement does not exceed ten percent (10%) of my net worth (exclusive of my home, furnishings and automobile); or if I am a trustee or fiduciary of a fiduciary account, the amount of the investment in the Units does not exceed ten percent (10%) of the net worth of such fiduciary account itself or of the plan participant who directly or indirectly supplies the funds for investment to such fiduciary account.

(k) I am purchasing the Units solely for my own account, and not with a view to or for a sale in connection with any distribution of the Units.

(l) If I am purchasing Units for cash (a “**Cash Subscription**”), I understand that the purchase price for my Units is payable concurrently with my delivery of this Subscription Agreement to the Manager (“**Subscription Funds**”). I understand that this subscription is subject to acceptance by the Manager and that upon acceptance, my Subscription Funds may be held by the Manager on behalf of the Fund in a segregated subscription account at a financial institution selected by the Manager (the “**Subscription Account**”) prior to being transferred into the operating account of the Fund (“**Operating Account**”). I acknowledge that my Subscription Funds will be held in the Subscription Account until the Manager determines such funds are needed by the Company for the purpose of funding or investing in a New Loan, paying fund debts, creating appropriate reserves or to pay withdrawal requests to existing Investor Members. I further acknowledge that I will not earn interest on my subscription funds while on deposit in the Subscription Account.

(m) If I am an existing member of BaySierra Mortgage Fund, LLC (“**Old Fund**”) electing to purchase Units from Liquidation Distributions payable to me by Old Fund (a “**Rollover Subscription**”), I understand that by delivering this Subscription Agreement to the Manager I am authorizing and directing the Manager to apply the indicated amount of each Liquidation Distribution otherwise payable to me towards the purchase of Units at the rate of \$1.00 per Unit at the time each future Liquidation Distribution is made and that any Liquidation Distributions in excess of such amount, if any, will be distributed to me in accordance with Old Fund’s Operating Agreement or any other agreement between the Manager and me in connection with such distributions. I further acknowledge that this Subscription is subject to acceptance by the Manager and that, if accepted, I will only become an Investor Member in the Fund at the time the first Liquidation Distribution is made and transferred into the Fund and Units are issued in my name. Each Liquidation Distribution will be transferred to the Fund and Units will be issued to me only when all, or any portion, of each such amount is required by the Fund to invest in a New Loan, to create appropriate reserves or for other proper purposes. Until then, my funds may be held by the Manager for my account in the Subscription Account and will be transferred from the Subscription Account into the

Fund on the first day of the month on a first-in, first-out basis, at which time additional Units will be issued to me at the rate of \$1.00 per Unit.

**2. POWER OF ATTORNEY.** The undersigned hereby irrevocably constitutes and appoints the Manager as his, her or its true and lawful attorney-in-fact, with full power of substitution and with full power and authority for him, her or it and in his, her or its name, place and stead, to execute, acknowledge, publish and file:

(a) The Operating Agreement, the Articles of Organization of the Company and any amendments thereto or cancellations thereof required under the laws of the State of California;

(b) Any other certificates, instruments and documents as may be required by, or may be appropriate under, the laws of any state or other jurisdiction in which the Company is doing or intends to do business; and

(c) Any documents which may be required to effect the continuation of the Company, the admission of an additional or substituted Member, or the dissolution and termination of the Company.

The power of attorney granted above is a special power of attorney coupled with an interest, is irrevocable, and shall survive the death of a Member or the delivery of an assignment of Units by a Member; provided, that where the assignee thereof has been approved by the Manager for admission to the Company as a substituted Member, such power of attorney shall survive the delivery of such assignment for the sole purpose of enabling the Manager to execute, acknowledge, file and record any instrument necessary to effect such substitution.

**3. ACCEPTANCE.** This Subscription Agreement will be accepted or rejected by the Manager promptly following receipt by the Company. Upon acceptance, the Manager will return a countersigned copy of an Acceptance of Subscription in the form attached hereto, to accepted subscribers, which will be evidence of my purchase of Units.

**4. INVESTOR INFORMATION AND SUITABILITY** (please print or type).

(a) **Name and Address of Investor or Beneficial Owner:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, California 9\_\_\_\_\_  
City Zip Code  
( ) ( )  
Telephone (Home) Telephone (Office)

(b) **Investor Suitability.** Please answer "yes" or "no" to the following questions:

My net worth (excluding home, furnishings and automobile) exceeds \$500,000

yes no

My annual income exceeds \$65,000 per year  yes  no

The amount of my investment in the Company is less than ten percent (10%) of my net worth (exclusive of my home, furnishings and automobile)  yes  no

**5. FURTHER IDENTIFYING INFORMATION.**

Please complete the following, as applicable. (Investments by more than one of the following entities, even if related to each other or controlled by the same person, require completion of separate Subscription Agreement.)

Identifying Information                      Monthly Income to Be:<sup>1</sup>

**Individual:**

Name \_\_\_\_\_                      Compounded \_\_\_\_\_  
Address \_\_\_\_\_                      or Distributed \_\_\_\_\_  
\_\_\_\_\_, CA 9 \_\_\_\_\_  
Soc. Sec. No. \_\_\_\_\_

**Individual Retirement Account (“IRA”):**

Custodian \_\_\_\_\_                      Compounded \_\_\_\_\_  
Address \_\_\_\_\_                      or Distributed \_\_\_\_\_  
\_\_\_\_\_, CA 9 \_\_\_\_\_  
Acct. No. \_\_\_\_\_                      Tax I.D. No. 94- \_\_\_\_\_

**Pension or Profit Sharing Trust (“ERISA Plan”):**

Trustee \_\_\_\_\_                      Compounded \_\_\_\_\_  
Address \_\_\_\_\_                      or Distributed \_\_\_\_\_  
\_\_\_\_\_, CA 9 \_\_\_\_\_  
Acct. No. \_\_\_\_\_                      Tax I.D. No. 94- \_\_\_\_\_

**Corporation, Trust or Other:**

Trustee \_\_\_\_\_                      Compounded \_\_\_\_\_  
Address \_\_\_\_\_                      or Distributed \_\_\_\_\_  
\_\_\_\_\_, CA 9 \_\_\_\_\_  
Acct. No. \_\_\_\_\_                      Tax I.D. No. 94- \_\_\_\_\_

**6. UNDERSTANDING OF LEGAL CONSEQUENCES.** The undersigned acknowledges that it understands the meaning and legal consequences of the

<sup>1</sup> Changes in this election (whether to compound earnings or receive monthly distributions) are subject to certain restrictions and limitations, as set forth in the Offering Circular.

representations and warranties made by the undersigned herein, and that the Manager is relying on such representations and warranties in making his determination to accept or reject this subscription.

**PLEASE READ THE FOLLOWING PARAGRAPHS CAREFULLY  
AND INITIAL WHERE INDICATED AFTER HAVING DONE SO**

The undersigned agrees to indemnify, defend and hold BAYSIERRA CAPITAL FUND, LLC and its Manager and their respective officers, directors, shareholders, members, agents and employees harmless from and against any and all claims, demands, liabilities, and damages (including, without limitation, all attorneys' fees which shall be paid as incurred) which any of them may incur, in any manner or to any person, by reason of the falsity, incompleteness or misrepresentation of any information furnished by the undersigned herein or in any document submitted herewith.

The effect of the foregoing paragraph is that the undersigned will be financially responsible for all losses, damages, expenses and liabilities incurred by the Company and/or its Manager as a result of a breach of any of the representations and warranties made by the undersigned.

**THE UNDERSIGNED HAS READ CAREFULLY AND UNDERSTANDS THE FOREGOING INDEMNIFICATION PROVISIONS AND ITS EFFECT.**

\_\_\_\_\_  
(INITIAL)

**7. SUBSCRIPTION FOR UNITS.** Please indicate the type of subscription being made by completing the information below, as applicable. For further information regarding subscription elections, see the section of the Offering Circular entitled “Terms of the Offering – Subscriptions for Units and Admission to the Fund.”

**Cash Subscription Election.** I hereby subscribe to purchase the following number of Units for the cash purchase price indicated which I am delivering to the Manager together with an executed copy of this Subscription Agreement:

No. of Units (Minimum of 25,000) \_\_\_\_\_

Purchase Price (@ 1.00 per Unit; minimum \$25,000): \$ \_\_\_\_\_

- Please make checks payable to “BaySierra Capital Fund, LLC” and return checks together with an executed copy of this Subscription Agreement to:

BaySierra Capital Fund , LLC  
1410 Neotomas Ave., Suite 160  
Santa Rosa, CA 95405,  
Attention: \_\_\_\_\_.

**Rollover Subscription Election.** I am an existing member of BaySierra Mortgage Fund, LLC (“Old Fund”), and hereby authorize and direct Manager to apply the following Liquidating Distributions payable to me from Old Fund to the purchase of Units<sup>2</sup>:

**Options for Liquidating Distributions**

**A. Monthly Income**

Rollover Old Fund monthly income

**B. Quarterly Capital Distributions**

Rollover \_\_\_\_\_% of each Old Fund quarterly capital distribution

OR

Rollover from each and every capital distribution until my account reaches \$\_\_\_\_\_.

- Please return a full completed and executed copy of this Subscription Agreement to:

BaySierra Capital Fund, LLC  
1410 Neotomas Ave., Suite 160  
Santa Rosa, CA 95405,  
Attention: \_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned hereby agrees to become a Member in BAYSIERRA CAPITAL FUND, LLC upon the terms and conditions set forth in the Operating Agreement.

Dated: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(signature of Investor or Beneficial Owner)

\_\_\_\_\_  
(signature of Trustee, if any)

**[IF IRA OR ERISA PLAN, THEN BOTH TRUSTEE AND BENEFICIAL OWNER(S) MUST SIGN.]**

<sup>2</sup> Rollover Subscriptions from future Liquidation Distributions are revocable at any time upon written notice to the Manager; however, once a Liquidation Distribution is applied to the purchase of Units and Units are issued in the name of a Member, the amounts paid for such Units and any Units issued prior thereto are non- refundable and immediately become subject to the withdrawal and other restrictions applicable to Units outlined in the Offering Circular.

**ACCEPTANCE OF SUBSCRIPTION**

**BAYSIERRA CAPITAL FUND, LLC  
a California Limited Liability Company**

Effective as of \_\_\_\_\_ 20\_\_ (the “**Effective Date**”), BaySierra Capital Fund, LLC (the “**Fund**”) and its manager, BaySierra Financial, Inc. (“**Manager**”) have approved and accepted the subscription of \_\_\_\_\_ (“**Investor**”) for the purchase of Units in the Fund as set forth in the Subscription Agreement and Power of Attorney delivered by Investor to Manager, dated \_\_\_\_\_, 20\_\_ (“**Subscription Agreement**”). This Acceptance of Subscription is provided in connection with the Fund’s offering of membership interests as set forth in the Offering Circular dated [October \_\_, 2010] and remains subject to the terms and conditions set forth in the Offering Circular and the Operating Agreement and the Subscription Agreement attached as Exhibits A and B thereto. All capitalized terms not otherwise defined herein shall have the meaning given in the Offering Circular.

Investor shall be admitted to the Fund only upon the transfer of Investor’s subscription funds to the Fund’s Operating Account as outlined in the Offering Circular and the Operating Agreement, at which time Investor shall be issued Units in the Fund and shall begin earning returns payable to Investor Members.

This Acceptance of Subscription has been executed by the Fund and the Manager as of the Effective Date.

**FUND:**

BAYSIERRA CAPITAL FUND, LLC,  
a California limited liability company

**MANAGER:**

BAYSIERRA FINANCIAL, INC.,  
a California corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_