

**SECTION 2**

**CHECKLIST OF PREFERRED  
LIMITED PARTNERSHIP AGREEMENT TERMS**

**(THE “LPA CHECKLIST”)**

## **Checklist of Preferred Limited Partnership Agreement Terms**

Note that in this section, the term “Manager” refers to the fund’s sponsor and investment manager. “GP” refers to single-purpose entity that serves as the fund’s general partner or managing member. “LP” refers to a fund investor that is unaffiliated with the Manager.

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## 1) Marketing and Capitalization

1. The fund has a stated minimum and maximum equity capitalization that includes any parallel funds created for tax structuring purposes  Yes  No
2. Any parallel funds share investment income and expenses with the fund on a pro-rata basis  Yes  No
3. The final closing occurs within one year of the initial closing; LP consent via an LPA amendment is required to extend this deadline  Yes  No
4. Subsequent investors purchase the fund's existing investments at cost plus a fixed interest rate that is paid to prior investors on their capital to be refunded  Yes  No
5. There is no "reserve commitment" in addition to an LP's stated commitment  Yes  No
6. An LP's financial exposure is limited to its capital commitment. The GP may not call capital outside of or in addition to an LP's commitment for any reason  Yes  No
7. There is a stated limit to the organizational and marketing costs to be borne by the fund investors; costs exceeding the limit are borne by the GP  Yes  No
8. Such costs are for actual third-party out-of-pocket expenses and do not include any internal costs of Manager or its affiliates
9. Such costs are allocated pro-rata to all investors  Yes  No
10. A placement agent's compensation is a Manager expense. If capital may be called to pay this compensation, it is offset against future GP fees and subject to a clawback provision  Yes  No

## 2) Term, Capital Call Rights, and Investment Parameters

1. The fund terminates within ten years of the initial closing, including any GP options to extend the fund's life; LP consent via an LPA amendment is required to extend beyond ten years. Any assets not liquidated by the fund's termination date will be placed in a liquidating trust  Yes  No
2. The investment period does not exceed four years after the initial closing; LP consent via an LPA amendment is required to extend. New investments for which binding commitments were executed during the investment period must be funded within the following six months (one year for development projects)  Yes  No
3. Capital that may be recycled during the investment period is limited to the equity invested in realized investments less any realized losses (i.e., excludes any sale profits)  Yes  No
4. The follow-on investment period does not exceed three years from the conclusion of the investment period  Yes  No
5. The investment parameters are narrowly defined and limited to the specific strategy being marketed and Manager's clearly demonstrable core competencies  Yes  No
6. There are reasonable diversification requirements consistent with the fund's investment strategy  Yes  No
7. There are stated limits to investment- and fund-level leverage (excluding subscription line) as a percentage of the current investment cost basis  Yes  No
8. The Advisory Committee must approve all recourse leverage, including de-facto recourse such as master leases, cross-collateralization, and preferred equity, but excluding preferred shares issued to meet a REIT's 100-shareholder test, the subscription line, and typical non-recourse loan carve-outs such as environmental liability and "bad-boy" actions  Yes  No
9. Any subscription line financing must be repaid within 90 days (equity portion of an investment's capital structure) or one year (debt portion). The subscription line terminates at the conclusion of the investment period  Yes  No
10. The investment strategy is exclusive to the fund during the investment period  Yes  No
  - If not, the Manager's allocation method is spelled out clearly, and the Advisory Committee may review the Manager's specific allocation decisions
11. If the Manager is investing for more than one capital source, the Advisory Committee must approve the allocation of dead deal costs to the fund; reasonableness standard  Yes  No

12. There is a stated limit to dead deal costs that may be charged to the fund  Yes  No
13. Fund investments may not be shared with other Manager-controlled funds or accounts, excluding parallel funds created for tax structuring purposes  Yes  No
14. Each investment will be held in a separate bankruptcy-remote legal entity  Yes  No
15. The GP is separate bankruptcy-remote legal entity  Yes  No

### 3) Manager and GP

If the Manager is privately owned:

1. The GP co-investment:
  - Represents the principals' and employees' own capital, not borrowed funds or capital otherwise obtained from third parties  Yes  No
  - Is material to the net worth of the principals  Yes  No
  - Is in the form of cash, not foregone fee income  Yes  No
  - May not be encumbered, although the economic and/or voting interest may be sold or transferred among active and retiring employees  Yes  No
2. The co-investment and distribution allocations and vesting methodologies among the firm's principals and employees are disclosed to the LPs prior to the final fund closing  Yes  No
3. Any future GP clawback liability to the fund is joint and several among the Manager's senior principals  Yes  No

In all cases, the Manager and the GP:

4. Covenant to maintain adequate amounts of non-cancellable E&O and D&O insurance for the life of the fund; D&O insurance includes the Advisory Committee as a named insured  Yes  No
5. May not withdraw from the fund during the investment period, and thereafter, only after Advisory Committee approval and LP approval via an amendment to the LPA  Yes  No
6. Are held to a minimum standard for a) the fund's indemnification and exculpation provisions, and b) the removal conduct provision<sup>3</sup>, that includes:
  - a material breach of the GP's obligations under the LPA and/or other fund documents that is not cured within 30 days of the occurrence  Yes  No
  - breach of fiduciary duty<sup>4</sup>  Yes  No
  - gross negligence  Yes  No
  - fraud  Yes  No
  - bad faith  Yes  No
  - willful misconduct  Yes  No
  - misappropriation or waste of fund assets  Yes  No

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<sup>3</sup> See *Governance and LP Rights, #2*

<sup>4</sup> Also, neither the Manager nor the GP may use the LPA's indemnification and/or exculpation provisions to waive their fiduciary duties or otherwise dilute their fiduciary obligations

- felony indictment and/or unlawful conduct on the part of the Manager, GP, or any of their principals  Yes  No
  - voluntary or involuntary bankruptcy or insolvency  Yes  No
7. May not engage in related party transactions or other conflicts of interest without Advisory Committee approval  Yes  No
  8. May not raise another commingled fund with substantially similar investment parameters until the current fund is at least 80% invested or committed for investment  Yes  No
  9. May not invest for another commingled fund if the current fund has sufficient capacity to make the proposed investment and the proposed investment won't violate the current fund's diversification requirements  Yes  No

Also:

10. Via the fund's key man provision, the Manager's dedicated senior principals are obligated to spend a meaningful portion of their time on fund management  Yes  No
  - If the key man provision is violated, the investment period is suspended until Advisory Committee and 75% of the non-GP-affiliated, non-defaulted LP interests approve a cure  Yes  No
  - If cure is not approved, constitutes removal conduct per #6 above  Yes  No
11. If the principals and employees may take interim distributions from the fund to pay tax created by "phantom income," such distributions must be repaid promptly from subsequent tax rebates or credits, and any amounts not repaid prior to the fund's termination represent a joint and several clawback obligation of the Manager and its senior principals  Yes  No
12. Manager and GP indemnification and exculpation payments are limited to fund assets, and only after the Manager first exhausts applicable insurance and all potential claims against third parties  Yes  No
13. The fund is not required to indemnify the Manager, the GP, or any of their affiliates, directors or employees for any dispute arising among themselves  Yes  No
14. All payments and distributions to the GP except for the base management fee are to be reviewed by the Advisory Committee in advance and by the fund auditor in arrears. Any overpayments are to be refunded promptly  Yes  No
  - If a Manager calculation has a discrepancy of 5% or more, the audit cost is a GP expense  Yes  No

#### 4) Manager Compensation and Alignment of Interests

Base management fees:

1. Properly reflect any economies of scale found in the size of the fund and the Manager's total AUM  Yes  No
2. During the investment period, are based on committed capital only  Yes  No
3. Thereafter, or upon the creation of a successor fund during the investment period, are calculated on capital invested, minus capital a) returned through dispositions or refinancing, and b) reduced through write-offs or permanent impairments  Yes  No
4. Are offset by any transaction, financing, monitoring, investment banking or break-up fees generated by the Manager or its affiliates on fund investments  Yes  No
5. Cover all of the Manager's internal costs of managing the fund including personnel recruitment, compensation and benefits; rent and other occupancy costs; investment and fund accounting; non-commercial employee travel; D&O insurance for the firm and its employees; firm marketing and publicity; information technology; and all other internal costs and overhead  Yes  No
  - Third-party audit, tax, legal and appraisal fees and expenses may be charged to the fund, along with the portion of Manager's D&O insurance premium attributable to the Advisory Committee  Yes  No
6. Are unaffected by any subsequent revisions to federal, state or local corporate or personal taxation  Yes  No

Incentive compensation:

7. Is based on the full pooling of all fund cash flows to and from investors for whatever purpose  Yes  No
8. Is based solely upon realized performance, i.e., has no investment valuation component<sup>5</sup>
9. Is subordinated to a) the return of all LP capital plus a hurdle rate (i.e., no deal-by-deal promote, no GP catch-up), and b) a minimum cash multiple on all LP capital  Yes  No
10. For calculation purposes, does not include in fund cash flows a) "deemed distributions" for taxes withheld or paid by the fund, or b) tax distributions to the Manager's principals and employees  Yes  No
11. Is unaffected by any subsequent revisions to federal, state or local corporate or personal taxation  Yes  No

The hurdle rate for incentive compensation is:

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<sup>5</sup> With the exception of Manager removal without cause – see *Governance and LP Rights, #5*



12. Defined as an IRR, not simple interest  Yes  No
13. An annualized rate calculated on daily, monthly or quarterly cash flows  Yes  No
14. Scaled to the riskiness of the investment strategy, including leverage limitations  Yes  No

Other compensation:

15. Other than the investment management fee and incentive compensation earned, the Manager and its affiliates may not charge fees or expenses to the fund or to the fund's investments without Advisory Committee approval  Yes  No
- Such fees, for services such as leasing and property management, must be at or below market rates, with any subsequent changes to the initial fee schedule approved by the Advisory Committee in its sole discretion  Yes  No

GP clawback:

16. Encompasses all previous distributions, including incentive compensation and GP tax distributions (*Manager and GP, #11*), to which the GP or Manager are not entitled after a final summation of the fund's investment performance  Yes  No
17. Is calculated on a pre-tax basis<sup>6</sup>  Yes  No
18. Represents a joint and several obligation of the Manager and its senior principals  Yes  No

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<sup>6</sup> If the LPs agree to an after-tax calculation methodology, the incentive compensation clawback calculation must take into account the GP's tax deduction that results from the clawback payment itself, and apply to losses and deductions the same tax rates attributed to income and gains. GP tax distributions should be calculated and repaid separately.

## 5) Governance and LP Rights

1. The Advisory Committee and a simple majority of non-GP-affiliated, non-defaulted LP interests may vote to a) remove the GP and/or the Manager for removal conduct, and/or b) to suspend, reinstate or terminate the investment period  Yes  No
2. Removal conduct includes:
  - Any condition enumerated in *Manager and GP, #6*  Yes  No
  - Investment activity outside of fund's permitted investment parameters  Yes  No
  - A Manager conflict of interest not approved by the Advisory Committee  Yes  No
  - Outside activity by the Manager or one of its principals not permitted in the LPA  Yes  No
  - A breach of the key man provision not cured within 30 days  Yes  No
  - If the Manager is privately owned, an encumbrance or an actual or de-facto sale or transfer of the economic and/or voting interest, except among the Manager's active and retiring employees  Yes  No
3. The Manager and/or the GP may contest a finding of removal conduct only via an expedited arbitration process with a ruling required no more than 20 business days after filing, and only after an interim manager has been appointed by the Advisory Committee  Yes  No
  - Once the Advisory Committee has made a finding of removal conduct, the GP may not make any capital calls, distributions, new investments or indemnification payments  Yes  No
4. The Advisory Committee plus two-thirds of the non-GP-affiliated, non-defaulted LP interests may vote at any time to:
  - Remove the GP and/or the Manager without cause  Yes  No
  - Dissolve the fund  Yes  No
5. In event of Manager and/or GP removal:
  - The removed party must furnish all fund records to its replacement and cooperate reasonably in the transition  Yes  No
  - The GP's interest in the fund converts to a passive LP interest  Yes  No
  - If for removal conduct, the incentive compensation is forfeited  Yes  No
  - If not for removal conduct, the GP's incentive compensation is calculated as of the date of removal, based upon investment net asset values determined by an independent appraisal of the fund's investments conducted by an appraiser(s) appointed by the Advisory Committee, less the costs of disposition (including mortgage  Yes  No

prepayment fees) as if the investments are sold, and as adjusted for the fund's other assets and liabilities; and is paid as and when the fund generates sufficient cash after accounting for all of its other needs and liabilities

6. A two-thirds vote of the non-GP-affiliated, non-defaulted LP interests is required to amend the LPA (100% to amend the investment parameters)  Yes  No
- In considering a GP proposal to amend the LPA, the LPs may retain a third-party advocate and/or legal, financial and valuation advisors at the fund's expense  Yes  No
7. The GP must disseminate contact information for all non-objecting LPs to all LPs, noting those LPs that are members of the Advisory Committee  Yes  No
8. Any LP side letter and/or most-favored-nation provisions granted by the GP that are not a) specific to the LP's regulatory, tax, or other investment structuring requirements, or b) specific to GP compensation, must be offered to all LPs  Yes  No
9. Copies of all LP side letters must be disseminated to all LPs  Yes  No
10. All LPs must be notified promptly of any material adverse change to the fund or to any investment, or of any lawsuit or SEC inquiry involving the fund, the GP and/or the Manager  Yes  No
11. The Manager must host an annual investor meeting at the fund's expense  Yes  No
- At this meeting, the non-GP-affiliated, non-defaulted LPs may meet among themselves without the Manager present. Upon the prior request of any LP, the Manager must make time for such a meeting on the meeting agenda  Yes  No
12. Any defaulting LP's interest must be offered on pro-rata basis to all non-defaulting LPs at a material discount to NAV. When paid out, the defaulting LP must withdraw from the fund  Yes  No
- The Manager may not charge the fund for a defaulting LP's share of the management fee from the default date through the date on which the defaulting LP withdraws from the fund  Yes  No
13. Consent to transfer of some or all of LP's interest to a purchaser may not be unreasonably withheld by the GP or the subscription lender.  Yes  No
14. Upon execution of a confidentiality agreement, including provisions reasonably requested by the Manager, an LP may share fund information generally available to all LPs with a potential purchaser of the LP's fund interest. The potential purchaser is permitted to conduct reasonable due diligence on the fund and the LP's interest, with the GP's reasonable cooperation  Yes  No

15. Co-investment opportunities must be offered to fund LPs on a pro-rata basis prior to being offered to third parties, along with a copy of the Manager's investment committee memorandum and other information that an LP might reasonably require in order to evaluate the opportunity properly  Yes  No
16. All fees and all base and incentive compensation paid by co-investors are remitted to the fund, not to the Manager or GP  Yes  No
17. In-kind distributions:
- Are not permitted without LP consent via an amendment to the LPA  Yes  No
  - Will be valued prior to distribution by an independent appraiser appointed by the Advisory Committee  Yes  No
  - May be refused by any LP, in which case the GP must use commercially reasonable efforts to liquidate the LP's interest within a reasonable period of time  Yes  No
  - If accepted by an LP, must also be taken in-kind by the GP  Yes  No
  - If accepted by the LP, the GP's incentive compensation is based upon the LP's share of appraised value less customary disposition costs. If declined by an LP, the GP's incentive compensation is based upon the LP's actual cash proceeds received from the eventual sale of the investment  Yes  No

## 6) Advisory Committee

1. Consists of experienced representatives of investors at or above a specified commitment size who are willing to commit the necessary time and attention to the fund  Yes  No

2. Includes representatives of non-GP-affiliated, non-defaulted LPs only  Yes  No

A Committee member:

3. Serves without compensation, although his third-party costs may be reimbursed as a fund expense  Yes  No

4. Has no liability to the fund, the GP or the LPs. Is adequately covered by the Manager's D&O insurance and, except for fraud, is indemnified and held harmless to the fullest extent allowed by law  Yes  No

5. May resign, in which case his replacement is selected by the LP that he formerly represented  Yes  No

• Must resign if the LP that he represents defaults on a capital call  Yes  No

6. Must recuse himself in the event of a conflict of interest, e.g., a proposed transaction with another fund in which the LP also has an ownership interest  Yes  No

7. In deciding how to vote, may consider whatever factors he or she wishes, including the self-interest of the LP represented  Yes  No

8. May call a Committee meeting at any time, with or without the Manager present  Yes  No

Committee protocol:

9. Makes all decisions during face-to-face or telephonic meetings during which a quorum is present (no proxy voting). A majority of Committee members is required for a quorum.  Yes  No

10. A 75% vote of members present at a given meeting is necessary to approve a motion  Yes  No

11. Operates on one man one vote principle  Yes  No

12. May meet in executive session without the Manager present  Yes  No

13. In order to evaluate a GP's proposal, is entitled to the Manager's recommendation, a detailed summary of the issues, benefits and risks, and whatever supporting information is required  Yes  No

14. In evaluating a GP's proposal or considering another action within the purview of the Committee, may retain a third-party advocate and/or legal, financial and valuation advisors at the fund's expense  Yes  No

15. May meet with the fund's auditor and the fund's appraiser(s) in executive session  Yes  No

16. May hire an auditor to conduct an independent review of any portion of the fund's books at the fund's expense  Yes  No
17. May object to the Manager's determination of fair market value for one or more investments, and may secure an alternative determination by an appraiser retained at the fund's expense, in which case the alternative determination is binding  Yes  No
18. Through the Manager, distributes meeting minutes to all LPs  Yes  No
19. May call a meeting of all non-GP-affiliated LPs with or without the Manager present  Yes  No

Committee approval is required for:

20. Amending the LPA  Yes  No
21. Retaining or changing the fund's auditor and independent appraiser(s)  Yes  No
22. Incurring actual or de-facto recourse leverage (*Term, Capital Call Rights, and Investment Parameters, #8*)  Yes  No
23. If applicable, the allocation of dead deal costs to the fund (*Term, Capital Call Rights, and Investment Parameters, #11*)  Yes  No
24. Manager and/or GP withdrawal (*Manager and GP, #4*)  Yes  No
25. If applicable, Manager related-party transactions (*Manager and GP, #7*)  Yes  No
- In addition, if a Manager-related party is purchasing or financing a fund asset or selling an asset to the fund, approval of 100% of the non-GP-affiliated, non-defaulted LP interests is required  Yes  No
26. Curing a key man default (*Manager and GP, #7*)
27. The calculations for all payments and distributions to the GP except the base management fee (*Manager and GP, #14*). Includes:
- The calculations for tax distributions to the Manager's principals and employees (*Manager and GP, #11*)  Yes  No
  - Indemnification or exculpation payments to the Manager from fund assets (*Manager and GP, #12*)  Yes  No
  - Fees for Manager- or affiliate-provided services (*Manager Compensation and Alignment of Interests, #15*)  Yes  No
  - The Manager's incentive compensation  Yes  No
28. Appointing an interim or replacement GP and/or Manager in the event of resignation or removal (*Governance and LP Rights, #1 & #3*)  Yes  No
29. Appointing an independent appraiser in event of Manager or GP removal (*Governance and LP Rights, #5*) or a proposed in-kind distribution (*Governance and LP Rights, #17*)  Yes  No
30. Continuing Manager involvement in any asset to be sold by the fund  Yes  No

Other Committee responsibilities include formally reviewing, without approval rights:

- 31. New investments, for compliance with the investment strategy and the fund's diversification requirements  Yes  No
- 32. Portfolio holdings and management strategy  Yes  No
- 33. Compliance with fund valuation policies, procedures and results  Yes  No
- 34. Audit results  Yes  No

## 7) Transparency and Reporting

1. A quarterly report, including but not limited to unaudited fair value financial statements prepared in accordance with GAAP, will be furnished within 45 days of quarter-end  Yes  No
2. An annual report, including but not limited to audited fair value financial statements prepared in accordance with GAAP, will be furnished within 90 days of year-end  Yes  No
3. The year-end audit is conducted by an independent, nationally recognized accounting firm  Yes  No

All reports will contain:

4. A business plan update and a performance discussion for each investment, including its exit timetable and strategy  Yes  No
5. A report showing total funded and unfunded investor capital commitments and the capital commitment expiration date  Yes  No
6. The terms of each property and portfolio financing, including drawn and undrawn capacity, interest rate and loan maturity, as-of-right and contingent extension options, actual and de-facto recourse (*Term, Capital Call Rights, and Investment Parameters, #8*), and material loan covenants  Yes  No
7. A description and valuation of each interest rate swap or hedge  Yes  No
8. A description and USD valuation of each hedged or unhedged foreign currency position  Yes  No
9. The valuation and valuation methodology for each investment along with a discussion of any material difference from the prior quarter's value  Yes  No
10. A supplemental "look-through" market value fund balance sheet showing the fund's share, for each investment, of:
  - the investment's gross asset value
  - its financing and other obligations that are superior to the fund's position in the capital structure, noting actual and de-facto recourse amounts
  - if applicable, the estimated "in-the-money" carried interest accruing to an investment partner as if the investment is sold
  - its net asset value
  - the value of any positions in the capital structure that are subordinate to the fund's position
11. A detailed schedule and calculation of each fee and expense charged to fund by the Manager, its affiliates, or third parties  Yes  No



- 12. A detailed schedule of the dead deal costs borne by the fund  Yes  No
- 13. A detailed schedule of all taxes paid to domestic and foreign jurisdictions  Yes  No
- 14. Any incentive fee/carried interest payments to the GP during the quarter, with the calculation thereof  Yes  No
- 15. A list of all tax distributions during the quarter  Yes  No
- 16. After the investment period, a forecast of annual capital calls and distributions during the remainder of the fund term  Yes  No

Supplemental disclosures to the LPs from time to time will include:

- 17. A detailed schedule of the organizational and marketing costs charged to the fund (*Marketing and Capitalization, #7 and #8*)  Yes  No
- 18. The amounts of D&O insurance carried on behalf of the Manager, the GP and the Advisory Committee (*Manager and GP, #4*)  Yes  No
- 19. Indemnification or exculpation payments to or from the Manager (*Manager and GP, #12*)  Yes  No
- 20. LP contact information (*Governance and LP Rights, #7*)  Yes  No
- 21. LP side letters (*Governance and LP Rights, #9*)  Yes  No
- 22. Any material adverse change to the fund or any investment, including a write-off or permanent impairment, or any lawsuit or SEC inquiry involving the fund, the GP and/or the Manager (*Governance and LP Rights, #10*)  Yes  No
- 23. A notice of any LP default, along with the right to purchase a pro-rata share of the defaulting LP's fund share (*Governance and LP Rights, #12*)  Yes  No
- 24. Proposed in-kind distributions (*Governance and LP Rights, #17*)  Yes  No
- 25. Advisory Committee meeting minutes (*Advisory Committee, #18*)  Yes  No
- 26. Annually, for each LP, a Schedule K-1 and any other information required to file its tax return  Yes  No
- 27. An annual GP certificate of compliance with the fund's governance documents, including the investment criteria  Yes  No
- 28. For each investment, the Manager's investment committee memorandum and other supplemental information  Yes  No