

## **CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM**

### **NOYACK FINE ART I, LLC**

#### **1,250,000 Class A Units**

Representing Class A Limited Liability Company Interests

#### **\$25,000,000 Maximum Offering Amount**

NOYACK Fine Art I, LLC (the “Company”) is a newly formed Delaware limited liability company formed to facilitate the acquisition, administration and strategic disposition of a diversified portfolio of pieces of fine art (the “Portfolio”). Concurrently with the initial closing of the Offering (as defined below), affiliates of the Manager (as defined below) will contribute up to 29 pieces of fine art in exchange for Class A Units, as more fully described herein under the caption “Description of Business—The Portfolio.” We believe that, for many investors, the Units (as defined below) represent an effective means to gain economic exposure to the Portfolio and, by extension, to the fine art market.

We are offering up to \$25,000,000 of our Class A Units (the “Units”) representing Class A limited liability company interests, at an initial offering price of \$20.00 per Unit, upon the terms and subject to the conditions set forth in this Confidential Private Placement Memorandum (the “Memorandum”). The Units will be offered at the price of \$20.00 per Unit, a price that was arbitrarily determined by the Manager, for a period of 12 months following the commencement of the Offering. Thereafter, the per Unit purchase price will be adjusted every fiscal quarter as of January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup> and October 1<sup>st</sup> of each year and will equal our net asset value (“NAV”) divided by the number of Units outstanding as of the end of the prior fiscal quarter. The \$20.00 per Unit or NAV per Unit, as applicable, is referred to in this Memorandum as the “Transaction Price.” See “Plan of Distribution—Purchase Price per Unit” for an explanation as to how the NAV will be calculated.

The Units will be offered and sold only to qualifying recipients of this Memorandum in an offering (the “Offering”) being made pursuant to an exemption from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”) provided by Section 4(a)(2) thereof and Regulation D promulgated thereunder. See “Plan of Distribution—Who May Invest.” We expect to offer the Units in the Offering until we raise the maximum amount being offered. The maximum offering period is 24 months from the date of commencement, but we reserve the right to terminate the Offering for any reason at any time prior to the final closing. Subscriptions for Units will be accepted on a rolling basis and the initial closing of the Offering and the final closing of the Offering will occur on a date or dates determined by the Company in its discretion. There is no minimum number of Units that have to be sold or dollar amount that needs to be raised as a condition of any closing of the Offering. Subscriptions, once received, are irrevocable by investors but can be rejected by us.

The day-to-day operations of the Company are managed by NOYACK Capital LLC (the “Manager”), which is an affiliate of Charles J. Follini, the current owner of the initial pieces of fine art that are being contributed to the Company. The Manager performs its duties and responsibilities pursuant to the terms of the Company’s operating agreement and a management agreement. The Manager and its affiliates have the exclusive right and power to manage and operate the Company, including, without limitation, the right to select which pieces of art are to be acquired and the purchase price and form of consideration to be paid for the artwork.

The Offering is being conducted on a “best efforts” basis, which means that there is no guarantee that any minimum amount will be sold. The Units will be offered by the officers of the Manager on an ongoing and continuous basis. The officers who sell the Units will not be compensated by commission and will not be associated with any broker or dealer.

**The date of this Memorandum is January 15, 2023**

## TABLE OF CONTENTS

	<u>Page</u>
<a href="#">THIRD PARTY DATA</a>	2
<a href="#">TRADEMARKS AND COPYRIGHTS</a>	2
<a href="#">CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS</a>	2
<a href="#">STATE LAW EXEMPTION AND PURCHASE RESTRICTIONS</a>	2
<a href="#">SUMMARY</a>	3
<a href="#">THE OFFERING</a>	7
<a href="#">DETERMINATION OF OFFERING PRICE</a>	10
<a href="#">DISTRIBUTION POLICY</a>	10
<a href="#">RISK FACTORS</a>	11
<a href="#">USE OF PROCEEDS TO ISSUER</a>	21
<a href="#">DESCRIPTION OF BUSINESS</a>	21
<a href="#">MANAGEMENT</a>	30
<a href="#">CONFLICTS OF INTEREST</a>	37
<a href="#">MANAGEMENT COMPENSATION</a>	39
<a href="#">DESCRIPTION OF THE UNITS</a>	40
<a href="#">MATERIAL U.S. FEDERAL TAX CONSIDERATIONS</a>	44
<a href="#">PLAN OF DISTRIBUTIONS</a>	50
<a href="#">ADDITIONAL INFORMATION</a>	55

Neither we nor the Underwriters have authorized anyone to provide any information other than that contained or incorporated by reference in this Memorandum prepared by us or to which we have referred you. Neither we nor the Manager takes responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This Memorandum is an offer to sell only the Units offered hereby but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this Memorandum is current only as of its date, regardless of the time of delivery of the Memorandum or any sale of Units.

For investors outside the United States: We have not done anything that would permit the Offering or possession or distribution of this Memorandum in any jurisdiction where action for that purpose is required, other than the United States. You are required to inform yourselves about and to observe any restrictions relating to the Offering and the distribution of this Memorandum.

## **THIRD PARTY DATA**

Certain data included in this Memorandum is derived from information provided by third-parties that we believe to be reliable. The discussions contained in this Memorandum relating to the Portfolio, the artists, the art market, and the art industry are taken from third-party sources that the Company believes to be reliable and reasonable, and that the factual information is fair and accurate. Certain data is also based on our good faith estimates which are derived from management's knowledge of the industry and independent sources. Industry publications, surveys and forecasts generally state that the information contained therein has been obtained from sources believed to be reliable, but there can be no assurance as to the accuracy or completeness of included information. We have not independently verified such third-party information, nor have we ascertained the underlying economic assumptions relied upon therein. The statistical data relating to the art market is difficult to obtain, may be incomplete, out-of-date, or inconsistent and you should not place undue reliance on any statistical or general information related to the art market included in this Memorandum. The art market data used in this Memorandum involves a number of assumptions and limitations, and you are cautioned not to give undue weight to such data. While we are not aware of any material misstatements regarding any market, industry or similar data presented herein, such data was derived from third party sources and reliance on such data involves risks and uncertainties.

## **TRADEMARKS AND COPYRIGHTS**

We own or have applied for rights to trademarks or trade names that we use in connection with the operation of our business, including our corporate names, logos and website names. In addition, we own or have the rights to copyrights, trade secrets and other proprietary rights that protect our business. We do not own any copyrights to the Portfolio. This Memorandum may also contain trademarks, service marks and trade names of other companies, which are the property of their respective owners. Our use or display of third parties' trademarks, service marks, trade names or products in this Memorandum is not intended to, and should not be read to, imply a relationship with or endorsement or sponsorship of us. Solely for convenience, some of the copyrights, trade names and trademarks referred to in this Memorandum are listed without their ©, ® and ™ symbols, but we will assert, to the fullest extent under applicable law, our rights to our copyrights, trade names and trademarks. All other trademarks are the property of their respective owners.

## **CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS**

This Memorandum contains certain forward-looking statements that are subject to various risks and uncertainties. Forward-looking statements are generally identifiable by use of forward-looking terminology such as "may," "will," "should," "potential," "plan," "intend," "expect," "outlook," "seek," "anticipate," "estimate," "approximately," "believe," "could," "project," "predict," or other similar words or expressions. Forward-looking statements are based on certain assumptions, discuss future expectations, describe future plans and strategies, or state other forward-looking information. Our ability to predict future events, actions, plans or strategies is inherently uncertain. Although we believe that the expectations reflected in our forward-looking statements are based on reasonable assumptions, actual outcomes could differ materially from those set forth or anticipated in our forward-looking statements. Factors that could cause our forward-looking statements to differ from actual outcomes include, but are not limited to, those described under the heading "Risk Factors." Readers are cautioned not to place undue reliance on any of these forward-looking statements, which reflect our views as of the date of this Memorandum. Furthermore, except as required by law, we are under no duty to, and do not intend to, update any of our forward-looking statements after the date of the Memorandum, whether as a result of new information, future events or otherwise.

## SUMMARY

This summary highlights selected information contained elsewhere in this Memorandum. This summary does not contain all of the information you should consider before investing in the Units. You should read this entire Memorandum carefully, especially the risks of investing in the Units discussed under “Risk Factors,” before making an investment decision.

### Overview

We were formed as a Delaware limited liability company in January 2023 to primarily acquire, administer and strategically dispose of a diversified portfolio of pieces of fine art (the “Portfolio”). The Manager will manage all acquisition, maintenance, administrative and disposition services relating to the Portfolio and the Company. The Company’s initial business activities are expected to consist of investing in, maintaining, promoting and ultimately selling some or all of the Portfolio. We may, however, engage in other activities in the future, including, without limitation, providing loans to third-party purchasers of fine art and temporarily loaning pieces of art from the Portfolio to investors whose investments in the Company exceed certain minimum thresholds. Our strategy will be to promote and periodically display the Portfolio so as to enhance its value and broaden its exposure to the art-viewing public.

The Company has agreed to acquire up to 29 pieces of fine art from Charles J. Follini, an affiliate of the Company and the Manager, in exchange for Units (the “Initial Contribution”) concurrently with the initial closing of the Offering. The pieces of art being contributed and the terms of the Initial Contribution are more fully described under the caption “Description of Business--The Portfolio.” The Company will use the proceeds of the Offering to acquire additional pieces of fine art. The actual number of pieces of art that will be acquired by the Company will depend upon the aggregate amount of the proceeds of the Offering. We are offering up to 1,250,000 Units in the Offering for maximum aggregate proceeds of up to \$25,000,000. The Company also issue Units to sellers of artwork as partial or total consideration for the purchase of such artwork. Any Units issued as consideration for the acquisition of artwork will be in addition to the Units issued in the Offering. The value of each Unit so issued will be equal to the then current Transaction Price.

We do not expect to generate any material amount of revenues or cash flow unless and until the Portfolio is sold and no profits will be realized by investors unless they are able to sell their Units, or the Portfolio is sold. We will be totally reliant on the Manager for administrative services, including those relating to the Portfolio and to fund operations. We intend to hold and manage the Portfolio for a minimum of at least three years, and during that three-year investment period, the Manager has the sole and absolute discretion to reinvest the proceeds from the sale of any portion of the Portfolio in additional pieces of art. See “The Offering—Investment Period.”

### The Art Market

The global art market is comprised of a network of auction houses, dealers, galleries, advisors, agents, individual collectors, museums, public institutions, and various experts and service providers engaged in the purchase and sale of unique and collectible works of art. Based on data included in the latest Art Basel & UBS Report on the Art Market in 2022, total annual art sales have ranged from \$50.3 billion to \$68.2 billion over the past 10 years and have grown at 15% from 2012 through 2021.

Despite the global recession in 2020, the art market recovered strongly in 2021. Aggregate art sales grew by 29% to reach an estimated \$65.1 billion; a transaction volume that surpassed pre-pandemic levels of 2019. The growth rate recorded last year is the largest year-on-year increase since 2010. A major shift that occurred as a result of COVID was a shift to online sales in the art market, as participants could only transact digitally. However, since 2021, there has been a significant change in the proportion of sales that take place online as opposed to in-person. While online sales made up for more than 70% of total sales during the COVID-19 pandemic in 2020, by 2022 this had decreased to 48%. Nevertheless, this figure is still double the amount of online sales that took place in the same period in 2019.

Though all sectors of the market grew in 2021, auctioneers had the most dramatic recovery with public sales increasing. By comparison, private sales increased by just over a third while the dealer market grew by 18%. Postwar and Contemporary art continued to be the most valuable segment, accounting for 55% of global auction sales, or \$6.7

billion, a 42% increase year-on-year. Works created in the past 20 years accounted for \$2.5 billion in global sales, twice as much as in 2020. This growth in transaction volume was driven by both a higher number of lots sold, as well as higher average prices. Galleries, auction houses and dealers facilitated transactions through traditional in-person events, online sales and a hybrid of the two.

According to early findings from the first half of 2022, aggregate sales from the major international auction houses indicate that the market is continuing to rebound from the pandemic. Sales at Christie's, Sotheby's, and Phillips increased by 21% from the same period in 2021. Total sales conducted by auction companies are estimated to have reached \$30.4 billion in 2021, up by 45% in 2020.

In general, the global art market is influenced by the overall strength and stability of the global economy, geopolitical conditions, capital markets and world events, all of which may affect the willingness of potential buyers and sellers to purchase and sell art. While the global art market is large, its exact size is unknown and statistical data is inconsistent. Much of the uncertainty stems from differing estimates of the size of the private dealer and gallery market, which is based on survey data, but disparities also exist in reported auction sales.

### *Observations on the Historical Progression of Art Prices*

The performance of major art indices provides further insight into the strength of the art market. The Masterworks.io All Art Index sources data from auction sales and uses the Case-Shiller Home Price Index methodology to measure the evolution of historical art market prices on a value weighted-basis. The following observations highlight the potential of investments in art to provide risk diversification:

- While the price performance of art during times of financial distress has resembled that of certain other risk asset classes, art market transaction volume records is more resilient in such periods. During the pandemic, equities, high-yield fixed income, and real estate saw sharp declines in value, yet no such effect is apparent for art. In fact, art market transaction volume remains relatively stable through other periods of economic hardship, including 2001-2002 and 2008-2009.

The Post-War & Contemporary Art category showed price appreciation at an estimated annualized rate of 13.8% from 1996 through 2022, against 10.2% for the S&P 500 Index for the same period.

- From 1996 through 2022, the Post-War & Contemporary Art subindex was positively correlated by a factor of 0.08 with the S&P 500 Index based on annual price performance.

### **Management Services**

Pursuant to a management agreement between the Company and the Manager, to be entered into prior to the initial closing of the Offering, the Manager will manage all administrative services relating to our business and will maintain the Portfolio. The Company will pay the Manager an annual asset management fee equal to 2.0% of the value of the Units outstanding at the beginning of each fiscal year, which fee is payable in Units (valued at the then current Transaction Price). There is no overall limit to the number of Units that may be issued to pay this fee. The Company will also pay directly or reimburse the Manager, as the case may be, for all costs and expenses of the Company's operations, including, without limitation, all organization and offering expenses, expenses associated with the acquisition, maintenance and disposition of the Portfolio and legal and accounting fees. These expenses will be paid from the Company's working capital, which will include proceeds from the Offering, operating revenues and proceeds from the sale of some or all of the Portfolio. In addition, the Manager will be entitled to receive 15% of the profit, if any, earned by the Company upon the sale of the Portfolio or the sale of any individual piece of fine art if the Manager determines to distribute the proceeds of such individual sale to the Members. The Manager may determine to sell all or any part of the Portfolio without engaging a third-party intermediary, in which event, the Manager would charge

the buyer(s) of the Portfolio a reasonable fee not to exceed the lowest published buyer's premium charged by Sotheby's, Christie's or Phillips in effect at such time.

### **Acquisition of the Portfolio**

The Company has agreed to acquire the artwork being contributed by Mr. Follini in the Initial Contribution for an aggregate purchase price of \$3,736,840, which shall be payable by the Company through the issuance of 186,842 Units valued at the \$20.00 initial Transaction Price per Unit in the Offering. The purchase price was determined using a process consisting of several components, including estimated values of certain pieces of art in the Initial Contribution based on sales information relating to comparable pieces of art and, in certain circumstances, individual appraisals of the artwork.

The Company will use the proceeds of the Offering to acquire additional pieces of fine art. The actual number of pieces of art that are ultimately acquired by the Company will depend on the aggregate amount of proceeds acquisition of the Offering. If less than the maximum offering amount of proceeds is raised in the Offering, the Manager shall have the sole discretion to determine which of the pieces of art in the Portfolio will be acquired by the Company. The Company will also offer artists selling their artwork directly to the Company the opportunity to receive Units (valued at the then applicable Transaction Price) in exchange for their artwork in transactions structured to be tax deferred under the Internal Revenue Code.

### **Art Selection Process**

#### ***General***

Artwork acquired by the Company is expected to meet the general criteria described below; however, the Manager has the discretion to acquire pieces of art outside these investment criteria:

- (1) Primarily paintings, but may also include other artistic objects;
- (2) Created by artist generally considered within the Post-War and Contemporary categories;
- (3) Created by artists with significant secondary market transaction; and
- (4) Acquisition prices between \$50,000 and \$500,000 and considered by the Manager to be priced at or below the fair market value of the artwork.

#### ***Identification and Pricing***

The Manager's acquisitions and sales team has developed relationships with auction houses, galleries, art intermediaries and collectors in the United States, Europe and Asia. The transaction team expects to evaluate a large volume of potential acquisition and sales opportunities. When an appropriate object for acquisition is identified, the transaction team will conduct a detailed evaluation of the object to determine its fair market value and the historical performance of similar objects. The transaction team will be supported by an in-house research team applying an extensive proprietary database of historical art market transactions, as well as other art market data to support the decision-making process. The Company may, in addition to paying cash for artwork, permit entities holding artwork to contribute the equity interests of such entities to the Company in exchange for Units. The Units issued in any such contribution transaction would be valued at the then applicable Transaction Price.

#### ***Due Diligence***

Once the Manager and the seller agree on the terms of a particular purchase, the transaction team will conduct further due diligence to verify the condition and provenance of the artwork, including performing a physical inspection of the object by a qualified art evaluator. The Manager will research the provenance of the artwork to be acquired and will use online resources to determine if the object has appeared in prior auctions, catalogues or other literature. The Manager may obtain a detailed condition report from the art evaluator prior to purchase and will reinspect the condition

of the artwork upon its arrival at the Manager-designated professional art storage facility to ensure the condition upon delivery matches the condition described in the condition report.

### ***Purchase and Sale***

The artwork will be purchased at public auctions through auction houses and in privately negotiated transactions with private sellers, which will consist of, among others, private art collectors, art market intermediaries and other investment sources. The Manager expects to display or exhibit the artwork in and when the Manager reasonably believes such display or exhibition will increase the exposure, profile, appeal and potential value of the artwork. The Manager will obtain and maintain insurance coverage for the Portfolio under commercial art policies.

### **Sale of the Portfolio or the Units**

The Manager, in its sole and absolute discretion, will be able to execute a sale of all or any portion of the Portfolio at any time and in any manner and, after distribution of the proceeds of such sale of the entire Portfolio, we intend to liquidate the Company. The Company will own the Portfolio for an indefinite period and may sell all or any portion of the Portfolio at any time following the final closing of the Offering. There is no guaranty that any means for holders of Units to sell those Units or any sale of the Portfolio will be successful, or if successful, that the net proceeds realized by the holders of the Units from such transaction will be reflective of the estimated fair market value of the Units at such time. The Manager may, in its sole and absolute discretion, retain all or a portion of the proceeds of the sale of any portion of the Portfolio for the sole purpose of acquiring additional pieces of art.

### **Risk Factors**

An investment in the Units includes a number of risks and uncertainties which are described in the “Risk Factors” section of this Memorandum, including the following:

- **Risks Related to Our Business Model.** Our business model is relatively new and untested, and we do not plan to generate any material amount of revenues. Our strategy is to own the Portfolio for an extended period of time and sell it at a profit, but no assurance can be given that we will be able to sell all or any portion of the Portfolio at a profit or the timing of any such sale.
- **Risks Associated with an Investment in a Company owning Fine Art.** Artwork can be highly illiquid and investors must be prepared to hold their investment for an extended period of time. The Portfolio may decline in value or may not appreciate sufficiently to exceed administration fees and expenses. There are a variety of other risks to art investing, including, without limitation, the risk of claims that the artwork is not authentic, physical damage and market risks for any particular artist or work.
- **Risks Relating to Our Relationship with the Manager.** Since we have minimal liquid assets, we are totally reliant on the Manager to administer our business. If Manager were to cease operations for any reason it would be difficult for us to find a replacement administrator and we would likely be required to sell the Portfolio and dissolve the Company. In addition, since the Manager may receive a “profits interests” and earns fees in the form of Units and incurs maintenance expenses relating to the administration of our business, the Manager may have economic interests that diverge from your interests.
- **Risks Related to Ownership of the Units and the Offering.** Investors in the Offering will have limited voting rights, and the Manager and its affiliates will have significant discretion to operate the business and sell the Portfolio. In addition, there is no public market for the Units, and the Company does not expect one to ever develop. Therefore, it will be difficult for you sell your Units.

### **Company Information**

We are a manager-managed limited liability company, managed by the Manager. Our principal office is located at 134 N. 4<sup>th</sup> Street, Suite 2007, Brooklyn, New York 11249 and our phone number is (813) 438-6542. Our corporate website address is the website address of the Manager at [www.wearenoyack.com](http://www.wearenoyack.com). Information contained on, or accessible through, the website is not a part of, and is not incorporated by reference into, this Memorandum.

## THE OFFERING

<b>The Offering</b>	The Company is offering up to 1,250,000 Units, on a “best efforts” basis for up to a maximum amount of \$25,000,000 of gross proceeds. Purchasers of the Units will become members of the Company. The Offering is only available to persons who are “accredited investors” as defined in Regulation 501(a) of Regulation D promulgated under the Securities Act. The Company intends to rely on Rule 506(c) under Regulation D, which permits the Company to engage in general solicitation of potential investors. In order to comply with Rule 506(c), the Company will endeavor to take reasonable steps to verify that each purchaser is an “accredited investor.”
<b>Offering Price per Unit by the Company</b>	\$20.00 per Unit for the initial 12 months of the Offering and, thereafter, the applicable Transaction Price, based on then applicable NAV. The Company’s NAV will be determined by the Manager as of the applicable date based on the Manager’s valuation policies and procedures. The determination of NAV will not be based on, or intended to comply with, the fair value standards under GAAP, the Company’s NAV may not be indicative of the price that the Company would receive for its assets in the then current market conditions.
<b>Number of Units Outstanding Before the Offering</b>	As of the date of this filing, 100% of the membership interests of the Company are held by the Manager in the form of 1,000 Units.
<b>Operating Agreement</b>	By participating in the Offering, investors will become parties to the operating agreement.
<b>Number of Units Outstanding After the Offering</b>	Up to 1,250,000 Units, provided that the Company shall have the right to issue additional Units (1) connection with the acquisition of artwork and (2) to the Manager in accordance with the terms of the management agreement.
<b>Redemptions</b>	Following a minimum sixty (60) day waiting period after submitting a redemption request, holders of the Units may seek to have its Units redeemed by the Company. The redemption price will be 90% of the price paid the holder for the Units to be redeemed. Holders may only have one redemption request outstanding at any given time and the request must be for the redemption of the lesser of 100 Units or \$2,000. Redemptions in any calendar month will be limited to certain percentages of the Company’s NAV. The Company may, in its sole discretion, amend, suspend or terminate the redemption plan at any time and is under no obligation to redeem any Units under the plan. See “Description of the Units—Unitholder Redemption Plan.”
<b>Minimum and Maximum Investment Amount</b>	The minimum investment amount per investor is \$250,000 (12,500 Units); however, we can waive the maximum or minimum purchase restriction on a case-by-case basis in our sole discretion. Subscriptions, once received, are irrevocable by the investors but can be rejected by us prior to acceptance.
<b>Subscription Process</b>	Our affiliate, NOYACK Capital LLC, which will be the Manager of the Company, operates the NOYACK Platform located at <a href="http://www.wearenoyack.com">www.wearenoyack.com</a> that enables investors to acquire the Units online. Through the NOYACK Platform, investors can view details regarding an investment in the Units and sign contractual documents online. The Offering will be conducted through the NOYACK Platform, whereby investors will receive, review, execute and deliver subscription agreements electronically. For additional information, see “Plan of Distribution – Subscription Process.” Each investor must complete and return a subscription agreement either manually or electronically and deliver immediately available funds to the Company in the amount of aggregate purchase price of the Units to be acquired.



<b>Payment for Units</b>	Investors can make payment of the purchase price of the Units in the form of ACH debit transfer or wire transfer into a segregated non-interest-bearing account held by us with a banking institution identified in the subscription documents until the applicable closing date. On each closing date, the funds in the account will be released to us and the associated Units will be issued to the investors in the Offering. If there is no closing of the Offering, the funds deposited in the segregated account will be returned to subscribers by mail via a check in U.S. dollars, without interest.
<b>Leverage</b>	The Manager has the authority to cause the Company to borrow funds from third-party lenders to supplement the capital it has available to acquire pieces of fine art. While there is no restriction in the Company’s organization documents on the amount of leverage it may incur, the Manager does not anticipate that the Company’s loan-to-value ratio will exceed 50%.
<b>Investment Period</b>	The Company intends to hold the Portfolio for an indefinite period; however, the Company anticipates it will seek one or more liquidity transactions within five (5) years following the initial closing of the Offering. While the Company expects to seek a liquidity transaction within this time frame, there can be no assurance that an acceptable transaction will be available during that time period or that market conditions will be favorable for a liquidity event. As a result, investors may be required to hold their Units beyond the projected liquidity date. Among the liquidity events the Company may consider are: (1) working with a protocol partner to “tokenize” the Units, (2) listing the Units on an exchange or other alternative trading system (“ATS”), (3) engaging a third-party liquidity provider at the Manager’s sole discretion to identify and implement a liquidity strategy, (4) selling some or all of the Portfolio to third parties and (5) creating a new fund to acquire the Portfolio in exchange for cash or equity in the new fund.
<b>Who May Invest</b>	The Offering is being made in reliance on an exemption from registration under the Securities Act. Accordingly, only accredited investors will be permitted to invest in the Offering. See “Plan of Distribution—Who May Invest.”
<b>Voting Rights</b>	The Units have no voting rights other than to vote, as a single class, to remove and replace the Manager for “cause” only. Holders of Units also have the right to and approve certain acts as described in our operating agreement, including the right to vote on certain amendments to the operating agreement and the management agreement.
<b>Risk Factors</b>	Investing in the Units involves risks. See the section entitled “Risk Factors” for a discussion of factors you should carefully consider before deciding to invest in the Units.
<b>Use of Proceeds</b>	We expect to receive gross proceeds from the Offering of up to \$25,000,000. We intend to use the proceeds from the Offering to acquire a diversified portfolio of pieces of fine art.
<b>Closings</b>	The Company may close the entire Offering at one time or may have multiple closings. Throughout this Memorandum, we have assumed multiple closings and refer to the “initial closing” as the first such closing and the “final closing” as the last such closing. The Portfolio will be acquired by the Company from time to time following the initial closing of the Offering. Subscriptions will be accepted on a rolling basis. Subscribers may make subscriptions to the Company and new members may be admitted to the Company on a rolling basis upon acceptance of such subscriptions by the Manager. The maximum Offering period is 24 months from the date of commencement.
<b>Termination of the Offering</b>	We reserve the right to terminate the Offering for any reason at any time prior to the initial closing.
<b>Transfer Restrictions</b>	The Offering is being made in reliance on an exemption from registration under the Securities Act. As a result, the Units may not be sold unless they are subsequently registered under the Securities Act and the securities laws of the applicable states, if so required, or an opinion of

counsel reasonably acceptable to the Company is obtained which states that such registration is not required.

**Transfer Agent  
and Registrar**

The transfer agent and registrar for the Units is the Manager.

**Distributions**

The Company does not currently intend to make distributions to the Members, other than with respect to tax distributions (as described in the Company's operating agreement). At such time, if any, that there is a sale of all or a portion of the Portfolio, the Manager, in its sole and absolute discretion, will determine whether to make a distribution of all or a portion of such proceeds or to reinvest such proceeds in additional pieces of fine art. There can be no assurance as to the timing of any distribution or that we will pay any distributions at all.

## **DETERMINATION OF OFFERING PRICE**

The Units are being initially offered at a price of \$20.00 per Unit, a price that was arbitrarily determined by the Manager, until 12 months following the commencement of the Offering. Thereafter, the per Unit purchase price will be equal to the then-current NAV per Unit. See “Plan of Distribution—Purchase Price per Unit” for an explanation as to how the NAV per Unit will be calculated. Prior to the Offering, no public market exists for the Units, and there can be no assurance that a public market will ever exist for the Units.

## **DISTRIBUTION POLICY**

We have not declared or paid dividends on the Units since our formation and do not anticipate paying dividends in the foreseeable future on any Units, unless and until all or a portion of the Portfolio is sold, at which point we will pay any expenses for which we are responsible and the Manager, in its sole and absolute discretion, will determine whether to make a distribution to the holders of the Units of all or a portion of the remaining proceeds or to reinvest such proceeds in additional pieces of fine art. There can be no assurance as to the timing of any distribution or that we will pay distributions at all. There are no contractual restrictions on our ability to declare or pay distributions and if any are to be paid in the future, such decision will be at the discretion of the Manager and will depend on our then current financial condition and other factors deemed relevant by the Manager.

## RISK FACTORS

The purchase of the Units offered hereby involves a high degree of risk. Each prospective investor should consult his, her or its own counsel, accountant and other advisors as to legal, tax, business, financial, and related aspects of an investment in the securities offered hereby. Prospective investors should carefully consider the following specific risk factors, in addition to the other information set forth in this Memorandum, before purchasing the securities offered hereby.

### **Risks Related to our Business Model**

#### ***The Company is a new company and our business model is untested.***

The Company is a new company that was formed in January 2023 and had no operating history. We cannot make any assurance that our business model can be successful. Since inception, the scope of our operations has been limited to our formation. Our operations will be dedicated to acquiring, maintaining and strategically disposing the Portfolio. We do not expect to generate any material amount of revenues or cash flow until all or a portion of the Portfolio is sold and no profits will be realized by our investors unless the Portfolio is sold for more than we acquire it for and there are sufficient funds after all applicable costs and expenses in order to effectuate a distribution to holders of the Units. Few companies have issued securities that represent indirect ownership in artwork with the sole goal of realizing appreciation on the value of that artwork. It is difficult to predict whether this business model will succeed or if there will ever be any profits realized from an investment in the Units.

#### ***We do not expect to generate any material amount of revenues and rely on the Manager to fund our operations.***

We do not expect to generate any material amount of revenues or cash flow unless and until all or a portion of the Portfolio is sold. No profits can be realized by our investors unless the Portfolio is sold for more than we acquire it and there are sufficient funds to effectuate a distribution after paying the applicable costs, fees and expenses, or the investors sell their Units. Accordingly, we will be completely reliant on the Manager to fund our operations.

#### ***We are undiversified since our strategy is to achieve capital appreciation from a single work of art.***

Our Company was formed to facilitate an investment in, maintain and potentially sell the Portfolio. We will not invest in any other assets or conduct any other operations that could generate income. Such lack of diversification creates a concentration risk that may make an investment in the Units riskier than an investment in a diversified pool of assets or business with more varied operations. Aggregate returns realized by investors are expected to correlate to the change in value of the Portfolio, which may not correlate to changes in the overall art market or any segment of the art market.

#### ***The Portfolio may be sold at a loss or at a price that results in a distribution that is below the purchase price of the Units, or no distribution at all.***

Any sale of all or a portion of the Portfolio could be effected at an inopportune time, at a loss and or at prices that would result in a distribution of cash that is less than the price paid by investors to purchase the Units. We intend to hold the Portfolio for an extended period of time and may choose to sell opportunistically all or a portion of the Portfolio if market conditions are favorable, which we believe is necessary to achieve optimal returns. Although the value of some or all of the Portfolio may decline in the future, we have no current intention nor economic incentive to sell the Portfolio at a loss. In the future, we may elect to do so if we determine that such a transaction would be necessary to satisfy our fiduciary obligations to the holders of the Units. Lastly, circumstances may arise that may compel us to sell all or a portion of the Portfolio at an inopportune time and potentially at a loss, such as if we face litigation or regulatory challenges. Investors should be prepared to hold their Units for an indefinite period of time, as there can be no assurance that the Units can ever be resold or that all or a portion of the Portfolio can ever be sold or that any sale would occur at a price that would result in a distribution of more than \$20.00 per Unit.

***There is no public trading market for the Units.***

There is no public trading market for the Units and the Company does not expect one to ever develop; therefore, it will be difficult for you to sell your Units. In addition, the Company is selling the Units in reliance upon exemptions from registration under the Securities Act and the securities regulations of the various states. As a result, the Units may not be sold unless they are subsequently registered under the Securities Act and the securities laws of the applicable states, if so required, or unless an opinion of counsel or other evidence satisfactory to the Company is obtained which states that such registration is not required. We do not contemplate registering the Units under the Securities Act or under any such state securities laws. For these reasons, it will be difficult for you to sell your Units.

***The timing and potential price of a sale of all or a portion of the Portfolio are impossible to predict, so investors need to be prepared to own the Units for an uncertain or even indefinite period of time.***

We intend to hold the Portfolio for the Investment Period, although the Portfolio will be perpetually available for sale following the Offering and we will evaluate any reasonable third party offers to acquire all or a portion of the Portfolio. In addition, the occurrence of certain events may compel us to sell the Portfolio. Accordingly, a risk of investing in the Units is the unpredictability of the timing of a sale of the Portfolio and the unpredictability of funds being available for cash distribution and investors should be prepared for both the possibility they will not receive a cash distribution for many years, if ever, and the contrary possibility that they may receive a cash distribution at any time following the completion of the Offering. An investment in the Units is unsuitable for investors that are not prepared to hold their Units for an indefinite period of time, as there can be no assurance that the Units can ever be resold or that the Portfolio can be sold within any specific timeframe, or at all.

***There is no assurance that the Company will be able to successfully implement a liquidity transaction.***

Although we currently intend to complete a transaction or series of transactions providing liquidity to our Members following the expiration of the investment period, our governing documents do not require the Company or the Manager to pursue such a liquidity transaction. Market conditions and other factors could cause us to delay the commencement of a liquidation or other type of liquidity transaction, such as a merger, beyond five years from the termination of the Offering. If we adopt a liquidity transaction, the time of the consummation of such transaction may depend on the financial markets and other economic conditions. We cannot guarantee that any liquidity transaction will be successful, and as a result your Units may continue to be illiquid and you may, for an indefinite period of time, be unable to convert your investment into cash.

***Our business model involves certain costs, some of which are to be paid for in the issuance of equity which will have a dilutive effect on the holders of the Units.***

There are various services required to administer our business and maintain the Portfolio. Pursuant to the management agreement, the Manager will manage all administrative services relating to our business and the maintenance of the Portfolio. The Company will pay the Manager an annual asset management fee equal to 2.0% of the value of the Units outstanding at the beginning of each fiscal, which fee may be paid in whole or in part through the issuance of Units. Such dilutive issuances, which will commence following the final closing of the Offering, will have a dilutive effect on the holders of the Units and will effectively reduce the tangible book value per Unit over time. In addition, we remain responsible for paying directly or reimbursing the Manager, as the case may be, for all costs and expenses of the Company's operations. Accordingly, investors may suffer losses, or a reduction of returns associated with the asset management fee and the payment of the operating expenses.

***In the event we are able to sell the Portfolio, your potential investment returns will be lower than the actual appreciation in value of the Portfolio due to applicable commissions, fees and expenses.***

In the event all or a portion of the Portfolio is sold, your distribution of cash proceeds, if any, will be reduced by commissions, fees and expenses incurred as a result of administering, marketing and selling the Portfolio, as well as dilution from Unit issuances to the Manager pursuant to the management agreement. Transaction costs incurred as part of the sale of the Portfolio will differ depending on whether we choose or are able to sell the Portfolio privately or through public auction(s). In a public auction, the principal transaction costs are a seller's commission and buyer's

premium (a form of selling commission, based on a graduated scale set by each auction house), both of which reduce the net proceeds received by a seller from what a buyer ultimately pays. The final reported sales price includes the hammer price (i.e., the price at which the auctioneer declared the winning bid), and the buyer's premium. The buyer may also separately incur additional sales or VAT taxes, fees or royalties. A seller typically receives the hammer price less the seller's commission, if any. The economic terms negotiated between the seller and the auction house can vary widely depending on a number of factors, including the value and importance of the specific work, whether the work is sold as an individual piece or part of a larger collection, anticipated demand levels, and other factors. In addition, the proceeds receivable by a seller are less favorable if the work is subject to a pre-auction guaranty. If we sell the Portfolio in private transactions, there may be sales commissions payable to third parties who arrange for the sale transaction or, if no seller's agent is engaged in connection with such sale, the Manager may charge a sales commission in connection with such sale. While we believe we may be able to substantially reduce the transaction costs of selling the Portfolio, they will not be entirely eliminated.

In addition, the Manager may be entitled to a 15% profits interest plus Units may be issued by us pursuant to the management agreement. Accordingly, your investment returns upon a sale of the Portfolio, if such a sale can occur and if such sale can generate sufficient funds for a distribution after accounting for applicable fees and expenses, may be significantly lower than the actual rate of appreciation of the Portfolio.

***The NAV used to determine the Transaction Price may be determined up to a calendar quarter before the date an investor acquires Units.***

The NAV will be determined by the Manager as of the last business day of each calendar quarter based on the Manager's valuation policies and procedures. Because the Company will accept subscriptions on a rolling basis, the Transaction Price will be determined up to a quarter prior to the applicable closing of a subscription. As a result, there is a risk that the Transaction Price at which a subscription is being accepted may not reflect the current or precise amount that might be paid for the Company's underlying assets in a market transaction as of the applicable closing date, which amount could be more or less than the Transaction Price.

#### **Risks Associated with an Investment in the Portfolio**

***There is no assurance of appreciation of the Portfolio or sufficient cash distributions resulting from the ultimate sale of the Portfolio.***

There is no assurance that the Portfolio will appreciate, maintain its value, or be sold at a profit. The marketability and value of the Portfolio will depend upon many factors beyond our control. There can be no assurance that there will be a ready market for all or a portion of the Portfolio, since investment in artwork is generally illiquid, nor is there any assurance that sufficient cash will be generated from the sale of the Portfolio to compensate investors for their investment. Even if the Portfolio does appreciate in value, the rate of appreciation may be insufficient to cover our administrative costs and expenses.

***The value of the Portfolio is subjective.***

The value of the Portfolio is inherently subjective given its unique character. The future realizable value of a fine artwork may differ widely from its estimated or appraised value for a variety of reasons, many of which are unpredictable and impossible to discern. In addition, the net realizable value to a seller at auction is often significantly lower than the published sale price because the net proceeds are typically reduced by all or a portion of the buyer's premium and there may also be a sales commission.

For non-cash generating assets, such as fine art, valuation is heavily reliant on an analysis of sales history of similar artwork. Experts often differ on which historical sales are comparable and the degree of comparability. The attempt to discern value from historical sales data is extremely challenging for a variety of reasons, including, without limitation:

- *Qualitative Factors.* Differences in perceived quality or condition between the subject work and the so-called “comparable” sale. Perceived differences in the physical quality and condition of the respective works require subjective judgements as to the valuation impact attributable to such differences.
- *Lack of Reliable Data.* Data from non-auction sales, comprising a majority of all sales, is largely unavailable and historical sales data may be inaccurate. Also, data may be stale or unavailable to the public because comparable works may remain off market for extended periods of time, often for generations. Even for public auctions, sale prices may be incorrectly reported due to credits for guarantees entered into with buyers (though under current rules in certain jurisdictions, these are required to be deducted from the reported sale price), or other credits provided to potential buyers.
- *Idiosyncratic Factors.* Idiosyncratic motivations of a buyer or seller may significantly affect the sale price. These motivations may relate to an emotional attachment to the work, ego, financial, estate or tax planning objectives, the desire to enhance or complete a specific collection objective, perceptions of supply and scarcity and other factors.
- *Timing Differences.* Historical transactions must be viewed in light of market conditions at the time compared to current conditions. Overall market conditions are difficult to track in recent periods and extremely difficult to discern for historical periods. Harder still, is the ability to track the relative popularity of specific works, artists and genres over historical periods.
- *Market Depth.* Sale prices only reflect the price a single buyer was willing to pay for a work, so it is very difficult to determine the depth of demand, as defined by the number of potential buyers that are ready, willing and able to purchase an artwork at or below a given price level.
- *Entanglements.* It is not uncommon in the art market for buyer, sellers and intermediaries to enter into private contractual arrangements that may affect the selling price in a specific transaction. It is often impossible to know of the existence or terms of any such contractual arrangements.

Accordingly, due to the inherent subjectivity involved in estimating the realizable value of the Portfolio, any appraisal or estimate of realizable value may prove, with the benefit of hindsight, to be different than the amount ultimately realized upon sale and such differences can be, and often are, material.

***Since the valuation of high-end artwork relies in large part on an analysis of historical auction sales, it is more difficult to accurately determine fair value of artwork by artists that have fewer auction sales.***

Certain artists such as Andy Warhol and Pablo Picasso have a relatively large global collector base and a well-established track record of auction sales over a lengthy period. These artists were also extremely prolific during their careers, so their artwork is frequently bought and sold at auction. This relatively large volume of data makes estimates of historical pricing trends and fair value ranges for artwork produced by these artists more reliable. By contrast, valuation of works by other artists who have a smaller collector base and or a shorter track record of auction sales is comparatively more difficult and such assessments are generally prone to wider margins of error. When assessing the historical auction performance of artwork by a particular artist, investors are urged to consider the volume of public auction data available. As a general matter, historical pricing trends and fair value estimates are more likely to be more accurate for artists with higher volumes of prior auction sales than pricing trends and estimates for artists that have fewer historical auction sales. Accordingly, there is a higher risk that we may overpay for, or misprice, artwork by artists with fewer auction sales than those with higher volumes of prior auction sales.

***Our appraisal of the fair value of the Portfolio may not be reflective of the value of the Units or the realizable value of the Portfolio.***

The Manager will estimate the fair value of the Portfolio for purposes of preparing our financial statements in accordance with generally accepted accounting principles in the United States. For the reasons set forth elsewhere in this “Risk Factors” section, any such valuation is inherently subjective and may not represent the actual realizable value of the Portfolio. In addition, because an investment in the Company represents not just the physical Portfolio, but also our administrative, cost, tax and governance structure, coupled with the fact that the timing of a sale of the

Portfolio is unknown, the value of the Units may be significantly different than the proportionate indirect ownership of the Portfolio that they represent. In addition, the Manager will consider a variety of factors in making any determination to sell all or a portion of the Portfolio and the appraised value of the Portfolio may not be indicative of the price at which the Manager would determine to sell the Portfolio.

***An investment in the Portfolio is subject to various risks, any of which could materially impair the value of the Portfolio and the market value of the Units.***

Investing in the Portfolio is subject to the following risks:

- ***Authenticity.*** Claims with respect to the authenticity of a work may result from incorrect attribution, uncertain attribution, lack of certification proving the authenticity of the artwork, forgery of a work of art, or falsification of the artist's signature. We generally obtain representations of authenticity from sellers, but these representations may not effectively eliminate the risk.
- ***Provenance.*** Claims related to provenance, or history of ownership, are relatively common and allege that an artwork has an uncertain or false origin. Buyers may also negatively perceive some elements of the prior ownership history, or whether the work is considered to have sold too often in the past. With respect to the Portfolio, buyers may negatively perceive our ownership in one or more of the pieces in the Portfolio when considering a purchase.
- ***Condition.*** The physical condition of an artwork over time is dependent on technical aspects of artistic workmanship, including the materials used, the manner and skill of application, handling and storage and other factors.
- ***Physical Risks.*** The Portfolio is subject to potential damage, destruction, devastation, vandalism or loss as a result of natural disasters (flood, fire, hurricane), crime, theft, illegal exportation abroad, etc.
- ***Legal Risks.*** Fine art ownership is prone to a variety of legal challenges, including challenges to title, nationalization, purchase of work of art from unauthorized person, risk of cheating, money laundering, violation of legal regulations and restitution issues. Purchasing from major auction houses and reputable galleries can reduce, but not eliminate these risks.
- ***Market Risks.*** The art market is prone to change due to a variety of factors, including changes in transaction costs, substantial changes in fees, tax law changes, export licenses etc., changes in legal regulations, changes in attitudes toward art as an investment, changes in tastes, trends (fashion) and changes in supply, such as the liquidation of a major collection. These risks can be specific to certain geographies.
- ***Economic Risks.*** Art values and demand are affected by economic confidence among ultra-high-net-worth individuals.
- ***Fraud Risk.*** The art market is unregulated and prone to abusive practices, including price manipulation, disguised agencies and lack of transparency.

Although, acting as agent for the Company, the Manager has agreed to conduct due diligence in connection with its purchase of the Portfolio, no amount of due diligence can completely insulate a buyer against these risks and if any of these risks materialize, the value of the Portfolio may decline, and the value of the Units would be adversely affected.

***If some or all of the Portfolio is eventually displayed in a gallery space or other location, it could be damaged, and insurance may not cover all of the damages, or even if insurance does cover the damages, it may cause some or all of the Portfolio to be unsaleable.***

It is planned that the Portfolio will be permanently stored in the United States, though it might be displayed internationally. We plan to obtain and maintain insurance coverage for the Portfolio. However, some or all of the Portfolio may be damaged while being displayed and our insurance may not be able to cover all of the damages resulting therefrom, and even if insurance does cover such damages, the damages may result in some or all of the Portfolio being unsaleable. Accordingly, damage or destruction of the Portfolio will have a material adverse impact on the value of the Portfolio and, consequently, the value of the Units.



***We may not be able to find a buyer for some or all of the Portfolio at a reasonable price.***

Art is a highly illiquid asset, and a significant percentage of objects go unsold when sent to auction. Even in the event that we attempt to sell the Portfolio, we cannot guarantee that there will be a buyer at any reasonable price. Additionally, if the Portfolio does go to an auction sale and is not sold, such failure could damage the reputation of the Portfolio in the marketplace and make it even more difficult to sell in the future.

***Temporary popularity of some paintings or categories of art may result in short-term value increases that prove unsustainable as collector tastes shift.***

Temporary consumer popularity or “fads” among collectors may lead to short-term or temporary price increases, followed by decreases in value. The demand for specific categories of art and artists is influenced by changing trends in the art market as to which collecting categories and artists are most sought after and by the collecting preferences of individual collectors. These conditions and trends are difficult to predict and may adversely impact our ability to sell some or all of the Portfolio for a profit. These risks of changes in popularity may be greater for a living or emerging artist, as compared to other categories which may have a proven valuation track record over a longer period of time. These trends could result in reduced profitability or a loss upon the sale of the Portfolio.

***We could be exposed to losses in the event of title or authenticity claims.***

The buying and selling of artwork can involve potential claims regarding title, provenance and or authenticity of the artwork. Authenticity risk related to works of art may result from incorrect attribution, uncertain attribution, lack of certificate proving the authenticity of the artwork, purchase of a non-authentic artwork, or forgery. In the event of a title or authenticity claim against us by buyers of the Portfolio from us, we would seek recourse against the sellers of the Portfolio pursuant to authenticity and title representations obtained at the time of purchase, but a claim could nevertheless expose us to losses. In addition, we do not maintain liquid assets to defend or settle any such legal claims and would be reliant on the Manager to outlay the cost of such defense or settlement.

***Ownership of the artists’ work may be concentrated, and any large-scale divestiture of a collection could negatively affect prices.***

If any major collector were to liquidate a large number of pieces of art by one or more of the artists, the supply and demand dynamic could shift dramatically. A significant increase in the number of pieces of art by any artist available for sale could reduce prices.

***The Portfolio could be subject to damage, theft or deterioration in condition, which could have a material adverse effect on the value of some or all of the Portfolio.***

We plan to store the Portfolio in a protected environment with security measures, but no amount of security can fully protect a piece of art from damage or theft. The damage or theft of valuable property, despite these security measures could have a material adverse impact on the value of the Portfolio and, consequently, the value of the Units. The Company maintains insurance, but there is no guaranty that such coverage would be adequate to mitigate all of such losses.

***Changes in opinions by experts in the artwork regarding authenticity could damage or eliminate the value of the Portfolio.***

Authenticity is often completed by art world experts, and opinions often matter more than scientific data. If a well-respected art expert were to opine negatively on the authenticity of some or all of the Portfolio, it could reduce or eliminate the value of the Portfolio.

***Insurance coverage for the Portfolio does not cover title claims and may not cover all possible contingencies, exposing us to losses resulting from the damage or loss of some or all of the Portfolio.***

We plan to maintain insurance coverage for the Portfolio against its damage or loss. Our insurance coverage does not cover title claims and may expressly exclude damage caused by war, losses caused by chemical or biological contamination and certain other potential loss scenarios. Accordingly, in the event of a successful claim that we do not have valid title and ownership to some or all of the Portfolio we would rely solely on the representations obtained from the seller to compensate us for such losses, which may prove to be inadequate. In addition, uncovered damage or destruction of the Portfolio that is not fully covered by insurance could have a material adverse impact on the value of the Units.

***Industry sales cycles can be unpredictable.***

Purchase behavior by collectors is generally unpredictable due primarily to the discretionary nature, relative scarcity and high values of art purchases. An art buyer may typically purchase art when excess liquidity is abundant. When economic conditions preclude art collectors from purchasing some or all of the Portfolio, such a downturn in sales will affect our ability to sell the Portfolio. Additionally, many art buyers have significant access to credit to facilitate the purchase of artwork and any changes which would cause art collectors to not access credit could have a serious impact on collectors' ability to purchase some or all of the Portfolio.

***Purchasing pieces of art in privately negotiated transactions may involve greater risk than purchasing artwork at a public auction.***

There are differences between purchasing artwork in a private transaction and purchasing at a public auction. Auctions are generally conducted by large companies that often perform higher levels of research and due diligence than private galleries or agents. Auction houses typically have greater financial and other resources as compared to private galleries or agents. Accordingly, if an authenticity claim were to arise, an auction house would likely have greater financial resources (and or higher levels of insurance coverage) to be able to address such claims than private galleries or agents. In addition, sales practices by auction houses are regulated by laws in the countries in which they operate. These laws vary by jurisdiction, but generally prevent unfair and improper practices and require certain mandatory disclosures. By contrast, private galleries and agents are largely unregulated and operate under general legal principles of agency which do not necessarily require the level of fairness, transparency and disclosure that apply to public auctions. Accordingly, there may be higher risks attendant to purchasing artwork in privately negotiated transactions.

#### **Risks Related to our Reliance on the Manager**

***We are totally reliant on the Manager to maintain and sell the Portfolio and manage our administrative services.***

We do not plan to have employees or intend to maintain or generate any cash flow prior to the sale of the Portfolio. Accordingly, we are totally reliant on the performance of the Manager under the management agreement to conduct the Company's day-to-day operations. We will rely on the Manager to perform or administer all necessary services to maintain the Portfolio, including obtaining insurance and ensuring appropriate storage. The Manager is also responsible for all administrative services required to maintain our Company, including professional services, regulatory filings, tax filings and other matters. The Manager has not yet developed a track record of successful performance of these activities. If the Manager were to default on its obligations under the management agreement, it would be extremely difficult for us to replace the Manager or internally manage these functions given our lack of cash flow and lack of employees. Accordingly, in the event of a material default by the Manager under the management agreement, we would likely be forced to sell the Portfolio. We cannot provide assurance that the timing and or terms of any such sale would be favorable.

***We are totally reliant on the Manager to maintain sufficient capital resources to pay our fees, costs and expenses.***

Although we believe the Manager has sufficient capital resources and sources of liquidity to perform its obligations under the management agreement for the foreseeable future, there can be no assurance that the Manager will be able to maintain sufficient capital to satisfy its obligations in future periods. Pursuant to and in accordance with the management agreement, the Manager is required to maintain a minimum of \$100,000 in cash reserves on hand so long as the Units remain outstanding to satisfy its obligations under the management agreement. However, there can be no assurance that the Manager will be able to maintain such cash reserves.

***The Manager will have complete authority to administer our business consistent with the terms and conditions of our operating agreement, other than certain amendments to the operating agreement and the management agreement.***

The Manager will have sole voting power over all matters, including: mergers, consolidations, acquisitions, winding up and dissolution, except, the Manager shall not have the authority to do any of the following without first obtaining the prior approval or consent of the holders of a majority of the Units, except as otherwise set forth in the Company's operating agreement:

- Amend, waive or fail to comply with any material provision of the operating agreement that disproportionately and adversely affects the holders of the Units;
- Incur debt for borrowed money or engage in business activities that are unrelated to the ownership, maintenance, promotion and sale of artwork; or
- Issue additional Units for cash other than pursuant to the agreements described herein.

Additionally, the Manager, in its sole and absolute discretion, may decide to sell some or all of the Portfolio at any time and in any manner.

The Company will own the Portfolio for an indefinite period and may sell some or all of the Portfolio at any time following the final closing of the Offering. There is no guaranty that any sale of the Portfolio will be successful, or if successful, that the net proceeds realized by holders of Units from such transaction will be reflective of the estimated fair market value of the Units at such time. The Manager will be entitled to reimbursement for costs and expenses associated with any such transaction and may earn fees for such transactions to the extent permitted by applicable laws, rules and regulations, and there can be no assurance that there will be any remaining net proceeds to be distributed after payment of such costs and expenses. In addition, the Company's operating agreement permits the Manager, in its sole and absolute discretion, to retain some or all of the proceeds from the sale of the Portfolio to acquire additional pieces of art rather than distributing such proceeds to the holders of the Units.

This concentration of control in the Manager may delay, deter or prevent acts that would be favored by holders of the Units. The interests of the Manager may not always coincide with the interests of the holders of the Units. As a result, the value of the Units could decline, or holders of the Units might not receive a premium over the then-current value of the Units upon a sale.

***Holders of the Units do not elect or vote on the Manager and have limited ability to influence decisions regarding our business.***

Our operating agreement provides that our assets, affairs and business will be managed under the direction of the Manager. Holders of the Units do not elect or vote on the Manager, and the Manager may only be removed by the affirmative vote of holders of two-thirds (2/3) of the Units (excluding those held by the Manager) and only for "cause", as defined in the operating agreement. Accordingly, unlike the holders of common stock in a corporation, holders of Units have only limited voting rights on matters affecting our business, and therefore limited ability to influence decisions regarding our business.

## **Risks Relating to Potential Conflicts of Interest**

***The Manager's financial arrangements may result in misalignment between its interests and the interests of holders of the Units.***

The Manager and its affiliates will have substantially complete discretion to determine when and if to sell some or all of the Portfolio. Since the Manager earns administrative fees and incurs maintenance and other ongoing costs for so long as the Portfolio is owned by us, the Manager may have economic incentives or disincentives to sell the Portfolio that are misaligned with the interests of the holders of the Units. Accordingly, there is a risk that the Manager and its affiliates will have conflicts of interest and no assurance can be given that any such conflicts will be resolved in a manner that is in the best interests of the holders of the Units.

***The Manager and its senior management have other business interests and obligations to other entities.***

The Manager and its senior management engage in other business activities, and as a result conflicts of interest will arise with respect to senior management's obligations to provide services to the Manager, in its capacity as the Manager of the Company, as opposed to affiliates of the Manager and to the other business ventures in which those affiliates may participate. Senior management will, therefore, have conflicts of interest in allocating management time, services and functions among these existing companies and businesses. In addition, neither the Manager nor its senior management will be required to manage us as their sole and exclusive function, and they will have other business interests and will engage in other activities in addition to those relating to us. We are dependent on the Manager and its officers and employees to successfully operate us. Their other business interests and activities could divert time and attention from operating our business.

***The Manager may receive fees from buyers of the Portfolio if it sells without engaging an intermediary.***

The Manager may determine to sell some or all of the Portfolio without engaging a third-party intermediary, in which event, the Manager would charge the buyers a reasonable fee not to exceed the lowest published buyer's premium charged by Sotheby's, Christie's or Phillips in effect at such time.

***Our operating agreement and the management agreement contain provisions that exculpate the Manager and its affiliates, and certain other persons engaged on behalf of the Manager from liabilities with respect to certain actions taken, even if such actions are negligent, which also reduces the remedies available to investors for certain acts by such persons.***

Our operating agreement and the management agreement limit the liability of the Manager, its affiliates, managers, officers and members. None of the foregoing persons shall be liable to us or the Administrator or any other member of us for any action taken or omitted to be taken by it or by other person with respect to us, including any negligent act or failure to act, except in the case of a liability resulting from any of the foregoing person's own actual fraud, gross negligence, willful misconduct, bad faith, breach of fiduciary duties that have not been waived, reckless disregard of duty or any intentional and material breach of the operating agreement or conduct that is subject of a criminal proceeding (where such person has reasonable cause to believe that such conduct was unlawful). With the prior consent of the Manager, any of the foregoing persons may consult with legal counsel and accountants with respect to our affairs (including interpretations of the operating agreement) and shall be fully protected and justified in any action or inaction which is taken or omitted in good faith, in reliance upon and in accordance with the opinion or advice of such counsel or accountants. In determining whether any of the foregoing persons acted with the requisite degree of care, such person shall be entitled to rely on written or oral reports, opinions, certificates and other statements of the officers, employees, consultants, attorneys, accountants and professional advisors of us selected with reasonable care, provided that no such person may rely upon such statements if it believed that such statements were materially false. The foregoing limitations on liability reduce the remedies available to the holders of the Units for actions taken which may negatively affect us.

## **Risks Relating to Ownership of the Units and the Offering**

***The holders of the Units will have very limited voting rights and the Manager will have the authority to sell some or all of the Portfolio without the approval of the holders of the Units.***

Our operating agreement provides that the assets, affairs and business of our Company will be managed under the direction of the Manager, which, in its sole and absolute discretion, will have the ability to sell all or any portion of the Portfolio at any time and in any manner. The holders of the Units do not elect or vote on the Manager. The holders of the Units will have voting rights only with respect to certain matters, primarily relating to amendments to our operating agreement or the management agreement that would adversely change the rights of the holders of the Units or to remove and replace the Manager. Generally, matters to be voted on by the holder of the Units must be approved by a majority of the votes cast by all Units present in person or represented by proxy, although the vote to replace the Manager requires a two-thirds vote. If any vote occurs, you will be bound by the majority or supermajority vote, as applicable, even if you did not vote with the majority or supermajority.

***You may not be able to sell the Units at or above the offering price or at all.***

The initial offering price for the Units is above their initial net tangible asset value due to the fact that the Company will only own the pieces of art acquired in the Initial Contribution at the time of the closing of the Offering. Prior to the Offering, no public market exists for the Units. You may not be able to sell your Units at or above the Transaction Price, or ever. Investors should be prepared to hold their Units for an indefinite period, as there can be no assurance that the Units can ever be tradable or sold.

***There is a risk the Offering will not close.***

There are numerous possible scenarios pursuant to which the offering may be abandoned prior to the initial closing, including a material adverse change or event in the capital markets or art markets, which could make it impracticable to consummate the Offering. The emergence of material litigation regarding the Company and/or involving the Company, material physical damage to the artwork in the Initial Contribution prior to the initial closing, the outbreak of war or hostilities, or the Manager's determination that the Offering should be delayed, suspended, or abandoned, due to these or other unforeseeable events.

***If we face litigation related to the Offering, we may elect to auction some or all of the Portfolio and the proceeds of any sale at such auction may be insufficient to provide an adequate remedy. Further, if investors successfully seek rescission, we would face severe financial demands that we may not be able to meet.***

The Units have not been registered under the Securities Act and are being offered in reliance upon the exemption provided by Section 4(a)(2) of the Securities Act, including Regulation D promulgated thereunder. We represent that this Memorandum does not contain any untrue statements of material fact or omit to state any material fact necessary to make the statements made, in light of all the circumstances under which they are made, not misleading. However, if this representation is inaccurate with respect to a material fact or if the Offering fails to qualify for exemption from registration under the federal securities laws pursuant to Regulation D, each investor may have the right to rescind his, her or its purchase of the Units and to receive back from us his, her or its purchase price with interest. Such investors, however, may be unable to collect on any judgment, and the cost of obtaining such judgment may outweigh the benefits. If investors successfully seek rescission, we may elect to sell some or all of the Portfolio and there can be no assurance that the proceeds of any such sale would be an adequate remedy for our investors and we would face severe financial demands we may not be able to meet, and it may adversely affect any non-rescinding investors.

***If we face litigation, unless such litigation is proven to involve fraud or intentional misconduct on the part of the Manager or its affiliates, we may seek to sell some or of the Portfolio, and the Manager will be entitled to recoup its expenses in connection with defending and or settling such litigation.***

Our operating agreement and the management agreement indemnify the Manager in all instances not involving fraud or intentional misconduct. In addition, while the Manager is responsible for all ordinary and necessary expenses

incurred in connection with maintaining the Portfolio and administering our Company, there is an exception for costs incurred in connection with litigation. Accordingly, if there is any litigation involving our Company which does not involve fraud or intentional misconduct, the costs relating to such litigation will be deducted from the funds to be disbursed to holders of the Units upon the sale of the Portfolio and subsequent dissolution of the Company.

***We do not intend to pay distributions in the foreseeable future and may only make a distribution to the holders of the Units if some or all of the Portfolio can be sold at a profit to the price we paid and after the costs and expenses associated with the sale there are sufficient funds to effect a distribution upon the liquidation of the Company.***

We do not maintain any cash balances and do not intend to pay any distributions in the foreseeable future and may only make a distribution to the holders of the Units if some or all of the Portfolio can be sold at a profit to the price paid by us and other costs and expenses associated with the sale there are sufficient funds to effect a distribution upon our liquidation. In addition, the Company's operating agreement permits the Manager, in its sole and absolute discretion, to retain some or all of the proceeds from the sale of the Portfolio to acquire additional pieces of art rather than distributing such proceeds to the holders of the Units. Investors should be prepared to never receive a distribution in connection with their ownership of the Units.

***The tax treatment of an investment in the Company is uncertain and subject to change.***

We currently expect to be taxed as a partnership, which means we do not expect to pay entity-level Federal income taxes and any income or loss arising from a sale of the Portfolio would be allocated to the holders of the Units and result in ordinary dividend income for the holders of the Units. In the event the Manager determines that there is a material risk that our partnership status may not be respected by the IRS for any reason, the Manager may restructure our operations to avoid or minimize entity-level Federal income taxes. Any such restructuring could, among other consequences, cause any gain resulting from a sale of the Portfolio being taxed at higher rates applicable to capital gains on collectibles. Prospective investors are urged to consult their advisors with respect to the tax consequences of an investment in the Company in light of their particular circumstances. In addition, the Manager has the sole discretion to change the tax election such that the Company would be taxed as a corporation for U.S. Federal income purposes, which would mean that the Company would be required to pay entity level U.S. Federal income taxes on gains, if any, from the sale of the Portfolio. Any such change could adversely impact the net amount of funds, if any, you receive, after taxes, from a sale of the Portfolio.

***Tax risk to investors seeking to invest using their individual retirement accounts, including traditional and self-directed IRAs and 401(k)s.***

Section 408(m) of the Internal Revenue Code of the United States treats the acquisition of any collectible, including any work of art, as a distribution from the retirement account. Distributions are taxable to the holder of the account and may be subject to early withdrawal penalties of 10% of such amount if the investor is not at least 59-1/2 years of age. The Internal Revenue Service could take the position that an investment in the Units is tantamount to the acquisition of artwork and therefore should be treated as a taxable distribution. We urge those investors seeking to use their individual retirement accounts to invest in the Units to consult with a competent professional tax professional prior to making an investment decision.

## **USE OF PROCEEDS TO ISSUER**

We expect to receive gross proceeds from the Offering of up to \$25,000,000. We intend to use substantially all of the proceeds from the Offering to acquire a diversified portfolio of pieces of fine art.

## **DESCRIPTION OF BUSINESS**

*The discussions contained in this Memorandum relating to the artists and the pieces of art in the Initial Contribution and the art industry are taken from third-party sources that the Company believes to be reliable, and the Company believes that the information from such sources contained herein is reasonable, and that the factual information therein is fair and accurate.*

## **Overview**

We were formed as a Delaware limited liability company in January 2023 to facilitate the acquisition, administration and strategic disposition of a diversified portfolio of pieces of fine art. We are a manager-managed limited liability company managed by the Manager. Upon our formation, the Manager was issued 1,000 Units. On or prior to the initial closing of the Offering, we will enter into the management agreement with the Manager pursuant to which the Manager will agree to administer the Portfolio and our business.

We are offering 1,250,000 Units in the Offering for aggregate consideration of \$25,000,000. We intend to use substantially all of the proceeds from the Offering to acquire the Portfolio. The Company may also issue Units to sellers of artwork as partial or total consideration for the purchase of such artwork. Any Units issued as consideration for the acquisition of artwork will be in addition to the Units issued in the Offering. The value of each Units so issued will be equal to the then current Transaction Price.

We do not expect to generate any material amount of revenues or cash flow unless and until some or all of the Portfolio sold and no profits will be realized by investors unless the Portfolio is sold for more than we acquire it for and we have sufficient funds after payment of all associated costs and fees in connection with the sale of the Portfolio, or the investors are able sell their Units for a price higher than they purchased them for. We will be 100% reliant on the Manager to maintain the Portfolio and administer our business, including, without limitation, which pieces of art will be acquired by the Company and the purchase price and form of consideration to be paid for the artwork.

Pursuant to the management to be entered into prior to the initial closing of the Offering, the Manager will manage all administrative services relating to our business and will maintain the Portfolio. The Company will pay the Manager an annual asset management fee equal to 2.0% of the value of the Units outstanding at the beginning of each fiscal year, which fee is payable in Units (valued at the then current Transaction Price) or cash (funded by proceeds from the Offering). There is no limit on the number of Units that may be issued to pay these fees. In addition, the Manager will be entitled to receive 15% of the profit, if any, earned on the sale of the Portfolio or the sale of any individual piece of fine art if the Manager determines to distribute the proceeds of such individual sale to the Members.

The Manager will also manage any extraordinary or non-routine services which may be required, from time-to-time, including, without limitation, litigation or services in connection with a sale of the Portfolio or any sale, merger, third-party tender offer or other similar transaction involving us. Any third-party costs incurred by the Manager or payments made by the Manager in connection with litigation or major transactions will be reimbursed upon the sale of the Portfolio or our Company, as applicable. The Manager may determine to sell all or a portion of the Portfolio without engaging a third-party intermediary, in which event, the Manager would charge the buyer of the Portfolio a reasonable fee not to exceed the lowest published buyer's premium charged by Sotheby's, Christie's or Phillips in effect at such time. For more information regarding the management agreement, see "Related Party Transactions." We will not conduct any business activities except for activities relating to the ownership, maintenance, promotion and the eventual sale of the Portfolio. Our strategy will be to display and promote the Portfolio in a manner designed to enhance its provenance and increase its exposure and its value.

## **Initial Contribution**

Concurrently with the initial closing of the Offering, Mr. Follini will be contributing 26 pieces of fine art to the Company for an aggregate purchase price of \$3,736,846 (the "Purchase Price"), which shall be payable by the Company through the issuance of 186,842 Units valued at the \$20.00 initial Transaction Price per Unit in the Offering. The Purchase Price was determined using a process consisting of several components, including estimated values of certain pieces of art in the Initial Contribution based on sales information relating to comparable pieces of art and, in certain circumstances, individual appraisals of the artwork.

The pieces of art comprising the Initial Contribution include paintings and sculptures from artists such as Nicole Eisenman, Toyin Ojih Odutola, Charline Von Heyl and Kara Walker. Investors can obtain pictures and descriptions of the artwork contained in the Initial Contribution by contacting the Manager.

## **The Manager's Experience in the Art Industry**

Carrie Mackin, the Chief Executive Officer of the Company, is a leader and innovator in the fine art industry with over 20 years of experience as a curator, advisor, and gallery owner. She has established a reputation for being at the forefront of the evolving conversation in the art world.

In 2009, she founded Mackin Projects, a New York-based consultancy helping artists develop professional and profitable business practices. Her deep understanding of the needs of artists and the industry has made her a sought-after advisor. Most recently, she served as Executive Director and Founder of NXTHVN, a New Haven artist and curatorial residency with a focus on professional development and local community engagement.

Carrie is now launching her latest project, NFA.01, a portfolio collection that gives artists an enduring economic stake in the success of their own work. Her innovative approach empowers creators to benefit from the appreciation of their art alongside investors.

Throughout her career, Carrie has worked with renowned artists such as Wangechi Mutu, Nan Goldin, Kehinde Wiley, Sanford Biggers and many more to create fair business practices. With NFA.01, she continues to pave the way for a more equitable and sustainable art industry.

## **About the Art Market**

### *Primary Sources of Publicly Available Data*

There are currently a limited number of sources of publicly available data on the art market. Below are leading sources often relied upon for information:

- Art Basel, a promoter of art fairs and a subsidiary of MCH Group, an international marketing organization & UBS, an international banking organization, publish the Art Market Report, which we refer to as the Art Basel Report, annually in March. Until recently, the report was published by the same art economist in collaboration with TEFAF.
- Deloitte Luxembourg, a division of a global financial services company & ArtTactic, an art market research and analytics company, jointly publish the Art and Finance Report biannually in November.
- Artnet, an art market website operated by Artnet Worldwide Corporation, a wholly owned subsidiary of Artnet, AG, a German publicly traded company.
- ArtPrice, an art market website operated by ArtMarket.com, a French publicly traded company controlled by Groupe Serveur.
- ArtTactic, an art market website operated by ArtTactic Limited, a London-based private art market research company.
- Major auction houses, including Christie's, Sotheby's and Phillips, among others, regularly publish data pertaining to upcoming and past auctions sales, both online and in paper catalogues. The Manager reviews and compiles such data to derive additional analysis in the form of art market indices and summarized statistics on artists' markets.

Statistical data relating to the art market is difficult to obtain, incomplete, or inconsistent. It is a substantially unregulated industry. Accordingly, you should not place undue reliance on any data or general information related to the art market.

### *Summary*

The global art market is comprised of a network of auction houses, dealers, galleries, advisors, agents, individual collectors, museums, public institutions, and various experts and service providers engaged in the purchase and sale



of unique and collectible works of art. Based on data included in the latest Art Basel & UBS Report on the Art Market in 2022, total annual art sales have ranged from \$50.3 billion to \$68.2 billion over the past 10 years and have grown at 15% from 2012 through 2021.

Despite the global recession in 2020, the art market recovered strongly in 2021. Aggregate art sales grew by 29% to reach an estimated \$65.1 billion; a transaction volume that surpassed pre-pandemic levels of 2019. The growth rate recorded last year is the largest year-on-year increase since 2010. A major shift that occurred as a result of COVID was a shift to online sales in the art market, as participants could only transact digitally. However, since 2021, there has been a significant change in the proportion of sales that take place online as opposed to in-person. While online sales made up for more than 70% of total sales during the COVID-19 pandemic in 2020, by 2022 this had decreased to 48%. Nevertheless, this figure is still double the amount of online sales that took place in the same period in 2019.

Though all sectors of the market grew in 2021, auctioneers had the most dramatic recovery with public sales increasing. By comparison, private sales increased by just over a third while the dealer market grew by 18%. Postwar and Contemporary art continued to be the most valuable segment, accounting for 55% of global auction sales, or \$6.7 billion, a 42% increase year-on-year. Works created in the past 20 years accounted for \$2.5 billion in global sales, twice as much as in 2020. This growth in transaction volume was driven by both a higher number of lots sold, as well as higher average prices. Galleries, auction houses and dealers facilitated transactions through traditional in-person events, online sales and a hybrid of the two.

According to early findings from the first half of 2022, aggregate sales from the major international auction houses indicate that the market is continuing to rebound from the pandemic. Sales at Christie's, Sotheby's, and Phillips increased by 21% from the same period in 2021. Total sales conducted by auction companies are estimated to have reached \$30.4 billion in 2021, up by 45% in 2020.

In general, the global art market is influenced by the overall strength and stability of the global economy, geopolitical conditions, capital markets and world events, all of which may affect the willingness of potential buyers and sellers to purchase and sell art. While the global art market is large, its exact size is unknown and statistical data is inconsistent. Much of the uncertainty stems from differing estimates of the size of the private dealer and gallery market, which is based on survey data, but disparities also exist in reported auction sales.

#### *Observations on the Historical Progression of Art Prices*

The performance of major art indices provides further insight into the strength of the art market. The Masterworks.io All Art Index sources data from auction sales and uses the Case-Shiller Home Price Index methodology to measure the evolution of historical art market prices on a value weighted-basis. The following observations highlight the potential of art as a risk diversifier:

- While the price performance of art during times of financial distress has resembled that of certain other risk asset classes, art market transaction volume records is more resilient in such periods. During the pandemic, equities, high-yield fixed income, and real estate saw sharp declines in value, yet no such effect is apparent for art. In fact, art market transaction volume remains relatively stable through other periods of economic hardship, including 2001-2002 and 2008-2009.
- The Post-War & Contemporary Art category showed price appreciation at an estimated annualized rate of 13.8% from 1996 through 2022, against 10.2% for the S&P 500 Index for the same period.
- From 1996 through 2022, the Post-War & Contemporary Art subindex was positively correlated by a factor of 0.08 with the S&P 500 Index based on annual price performance.

#### *Art Appraisals, Valuation, and Auction Estimates*

The fair market value of art and other unique collectibles is generally assessed by expert appraisers using relative valuation techniques by analyzing historical comparative transactions involving similar works, characteristics of the

specific work, supply and demand factors, subjective perceptions of value, among other factors. However, there is no efficient market that determines the price of an artwork and there is no standardized art valuation methodology.

There is tremendous variability in the market value of individual artwork by any given artist. These differences are influenced by the perceived quality of the work, materials, condition, color, size, subject matter, provenance and other factors.

Auction houses generally estimate the sale price of a piece of art prior to conducting a sale. Such sale estimates are intended to provide general guidance to potential bidders regarding the expected price outcome of the artwork, however estimates may not be “arm’s length” and are often negotiated with the selling party. Therefore, they cannot be used as unbiased guidelines in determining the value of an artwork.

### *Private and Gallery Sales*

The private art market is made up of a network of galleries, dealers, art fairs and other intermediaries that sell artwork in privately negotiated transactions, in which transactions are generally not publicly reported. Galleries and other intermediaries that sell high end art have extensive relationships with artists, critics, collectors and others in the art market and are often driven by self-interested objectives, such as enhancing the reputation and market value of artists they represent or the market value of their inventory. Accordingly, galleries can be highly selective in determining which collectors are permitted to purchase from them, preferring those who are likely to hold works for a long period of time and enhance the provenance of a piece. Most private and gallery sales are confidential. Sellers generally determine pricing in private sales in which the dealer or gallery acts as an intermediary in negotiating a transaction with a buyer.

According to the 2022 Art Basel Report, auction sales accounted for an estimated 40% of total sales by dollar volume in 2021, as compared to approximately 38% in 2019 with the balance accounted for by the private market. Auction houses are also increasingly participating in the private market, brokering non-auction sales transactions. The relative size of the private dealer and gallery market as compared to the auction market tends to shift based on overall market sentiment, where market optimism tends to bolster auction sales.

### *Auction Sales*

The auction market is made of a network of global and regional auction houses that conduct regular sales of artwork and other collectibles in a public auction format, as well as provide other art-related services. In general, the auction market is more transparent and more open than the private sales market as sale prices are determined through open competition, in which any qualified individual can participate and potentially buy the offered work. Interested buyers place sequential ascending bids in a format referred to by economists as an English Auction. Works which are offered for sale by the auction house on behalf of a potential seller, also referred to as a consignor, are often referred to as lots, which may be comprised of one or more items; most artwork is sold as individual lots. Auction sales occur at a fixed time and are a matter of public record. Bidders determine the price of a piece in an auction sale, though the consignor typically sets a reserve floor price below which they would be unwilling to sell the work. A low and high estimate of the sale price is set by the auction house, with the consignor’s input, based on a variety of factors, including the prior sales history, market factors like supply considerations and the reserve price floor. If a consignor does not agree with the estimate range proposed by the auction house, they can elect not to consign the work for sale or can withdraw a consignment. Auction houses often set estimates at levels to either entice bidders to participate or potential consignors to offer their work at auction, thus estimates should not necessarily be viewed as proxies for determining market value.

The price at which an auctioneer declares an item sold at a public auction, referred to as the “hammer price,” does not reflect either the amount realized by a consignor, or the price paid by a buyer. In addition to the hammer price, the successful bidder must pay the so-called “buyer’s premium,” which is effectively a commission on the sale that ranges between 14.5% and 26% of the hammer price. The economics received by a consignor in an auction can vary widely. For works of relatively low value, consignors may also be required to pay a seller’s commission to the auction house. For higher value works, consignors often pay no commissions and may be entitled to receive a portion of the buyer’s premium, if not the full amount of the purchase price.

The public nature of auction sales can pose certain risks for consignors. A work that fails to sell at auction as a result of not attracting a bid in excess of the reserve price, will often be much harder to sell in the future. The rate at which artworks fail to sell at public auction, referred to as the “buy-in rate,” is generally around 30%, according to publicly available data. The value of an artwork is highly subjective, so a failure to sell a piece at auction is damaging to the perceived value of the work, a concept referred to the art industry as “burning” the work.

In order to attract high-value consignments, an auction house may offer a guaranteed minimum price to a consignor. In exchange, the consignor agrees, if the final sale is in excess of the guaranteed amount, to pay the auction house a certain percentage of sale proceeds above the guaranteed amount. To offset the risk of a sale below the amount guaranteed to the consignor, an auction house may also secure a minimum guaranteed bid from a potential buyer, also known as a “third-party guarantee” or “irrevocable bid”. These guarantees effectively provide certainty that a successful sale will occur. The economic terms of guarantees and irrevocable bids are not typically disclosed and can vary widely based on negotiations between the relevant parties.

Auction houses publicly report total sale prices that reflect the hammer price (i.e. the price at which the auctioneer declared the winning bid), plus the buyer’s premium, but tend to exclude applicable taxes, fees and royalties, which are typically paid by the purchaser. The buyer’s premium schedule is published by the auction house and is updated or revised periodically. The buyer’s premium (inclusive of any additional “Overhead Premium,” if applicable) for the New York salesroom of each of the major auction houses as of the date of this Memorandum is as follows (percentages and USD amounts relate to the hammer price):

<b>Sotheby’s</b>	<b>Christie’s</b>	<b>Phillips</b>
25% up to and including \$1.0 million	26% up to and including \$1,0 million	26% up to and including \$600,000
20% from \$1,000,001 to \$4.5 million	20% from \$1,000,001 to \$6.0 million	21% from \$600,001 to \$6.0 million
13.9% above \$4.5 million	14.5% above \$6.0 million	14.5% above \$6.0 million

The amount of the published sale price a consignor receives is typically reduced by all or a portion of the buyer’s premium and, in some cases for high value items, a sales commission. The percentage of the buyer’s premium received by the consignor, if any, and the amount of any sales commission payable by the consignor, if any, are negotiated between the consignor and the auction house and vary widely depending on a number of factors, including the value and importance of the specific work, whether the work is sold as an individual piece or part of a larger collection, anticipated demand levels and other factors. For high value items auction houses often waive the sales commission and rebate a portion of the buyer’s premium to the consignor, which is commonly referred to in the industry as an “enhanced hammer.”

Auction houses do not publicly report the economic terms of transactions with consignors, so the Company cannot determine with any degree of confidence what percentage of a sale price would be received by the Company upon consummation of an auction sale. In addition, the economics receivable by a seller are less favorable if the work is subject to a pre-auction guaranty. Based on experience, we believe that it would be reasonable to expect that the net pre-tax cash proceeds receivable by the Company in an auction sale would be approximately 80% to 90% of the published sale price, however, the net result could fall outside of this range. The existence of any such guarantee arrangement would provide greater certainty of success at auction but could reduce the sales proceeds received by the Company.

**About Art as an Investment**

Fine art, in the form of paintings, sculpture, drawings and all manner of unique collectibles, has been collected for centuries. Founded in 1744, Sotheby’s had been the oldest listed Company on the New York Stock Exchange until it was taken private in October 2019. While art collectors can enjoy the aesthetic and societal benefits of art ownership and patronage, works of art can equally be valuable assets that deliver financial, as well as emotional rewards to their owners. Art has often acted as a store of wealth, with price appreciation in excess of U.S. consumer price inflation over the long term. Many of those who collect art therefore do so with an eye upon its investment potential as well as its aesthetic appeal. Put simply, art can be considered an investable asset class.

In general, art as an investment bears the following characteristics:

- Demand for artwork generally coincides with wealth creation among the global ultra-high-net-worth community.
- Supply of artwork, particularly at the high-end of the market, is relatively fixed or otherwise scarce.
- Art is an internationally marketable good that can be transacted in any locale or currency.
- Art is a tangible, mobile store of value without a currency-specific denomination nor tied to a financial cash-flow.

### *Historical Art Price Indices*

The historical performance of prices in the art market can be estimated using different techniques and is generally derived from publicly available auction sales results. General statistical summaries of past prices, such as historical average or median prices, can provide a broad sense of price direction across the art market or for a specific artist. However, given that the supply of art transacted in any given period is not homogenous, changes in average or median prices from period-to-period may not be reflective of changes in the underlying value of the artwork, but may reflect varying quality or other characteristics that were present in the artwork sold.

Art market indices provide an alternative means to gauge market performance. A number of techniques have been developed in this regard. A repeat-sales-based index follows a methodology similar to that used to estimate home price appreciation, most notably through the S&P CoreLogic Case-Shiller Index. The best-known repeat-sales index for the art market is the Sotheby's Mei Moses, which was originally developed in 2002 by New York University Stern School of Business Professors Jianping Mei, PhD and Michael Moses, PhD, and was later acquired by Sotheby's in 2016. The Sotheby's Mei Moses indices control for differing levels of quality, size, color, maker, and aesthetics of a work of art by analyzing repeat sales. Another methodology is the hedonic price index, which estimates the historical progression of prices based on analysis of all available transactions and controlling for certain "hedonic" characteristics, such as artist name, dimension, medium, art category, among others. The use of these techniques, among others, provides insight into the behavior of art as an investment.

### *Observations on the Historical Progression of Art Prices*

The performance of major art indices provides further insight into the strength of the art market. The Masterworks.io All Art Index sources data from auction sales and uses the Case-Shiller Home Price Index methodology to measure the evolution of historical art market prices on a value weighted-basis. The following observations highlight the potential of investments in art to provide risk diversification:

- While the price performance of art during times of financial distress has resembled that of certain other risk asset classes, art market transaction volume records is more resilient in such periods. During the pandemic, equities, high-yield fixed income, and real estate saw sharp declines in value, yet no such effect is apparent for art. In fact, art market transaction volume remains relatively stable through other periods of economic hardship, including 2001-2002 and 2008-2009.

The Post-War & Contemporary Art category showed price appreciation at an estimated annualized rate of 13.8% from 1996 through 2022, against 10.2% for the S&P 500 Index for the same period.

- From 1996 through 2022, the Post-War & Contemporary Art subindex was positively correlated by a factor of 0.08 with the S&P 500 Index based on annual price performance.

### **Investment Strategy**

The Company intends to use substantially all of the proceeds of the Offering to acquire a diversified portfolio of fine artworks. In addition, we may use a portion of the proceeds of the Offering to provide loans to third-party purchasers

of fine art. The Manager's currently intends to focus its acquisition efforts on investment-grade art made by artists with a strong collector-base, blue-chip representation, and projected public interest. The art will be hand selected by the company's discerning internal team to provide investors with knowledge and access. Artworks may be acquired directly from the artists in exchange for cash and shares, and/or bought on the primary or secondary market. Artists of choice are from historically under-represented and marginalized groups including, for example, black, indigenous, LGBTQIA and artists of color. The Manager believes this investment strategy will enable it to acquire pieces of art that will generate attractive risk-adjusted returns to holders of the Units through appreciation in value by way of strategic acquisitions below primary and secondary market rates.

The Company intends to hold the Portfolio indefinitely; however, the Company anticipates it will seek one or more liquidity transactions within five (5) years following the initial closing of the Offering. While the company expects to seek a liquidity transaction within this time from, there can be no assurance that an acceptable transaction will be available during that time period or that market conditions will be favorable for a liquidity event. As a result, investors may be required to hold their Units beyond the projected liquidity date. Among the liquidity events the Company may consider are: (1) working with a protocol partner to "tokenize" the Units, (2) listing the Units on an exchange or other ATS, (3) engaging a third-party liquidity provider at the Manager's sole discretion to identify and implement a liquidity strategy, (4) selling some or all of the Portfolio to third parties and (5) creating a new fund to acquire the Portfolio in exchange for cash or equity in the new fund.

## **Art Selection Process**

### ***General***

Artwork acquired by the Company is expected to meet the general criteria described below; however, the Manager has the discretion to acquire pieces of art outside these investment criteria:

- (1) Primarily paintings, but may also include other artistic objects;
- (2) Created by artist generally considered within the Post-War and Contemporary categories;
- (3) Created by artists with significant secondary market transaction, as evidenced by sales volumes in excess of a minimum of \$1.0 million annually at public auction; and
- (4) Acquisition prices between \$100,000 and \$500,000 and considered by the Manager to be priced at or below the fair market value of the artwork.

### ***Identification and Pricing***

The Manager's acquisitions and sales team has developed relationships with auction houses, galleries, art intermediaries and collectors in the United States, Europe and Asia. The transaction team expects to evaluate a large volume of potential acquisition and sales opportunities. When an appropriate object for acquisition is identified, the transaction team will conduct a detailed evaluation of the object to determine its fair market value and the historical performance of similar objects. The transaction team will be supported by an in-house research team applying an extensive proprietary database of historical art market transactions, as well as other art market data to support the decision-making process. The Company may, in addition to paying cash for artwork, permit entities holding artwork to contribute the equity interests of such entities to the Company in exchange for Units. The Units issued in any such contribution transaction would be valued at the then applicable Transaction Price.

### ***Due Diligence***

Once the Manager and the seller agree on the terms of a particular purchase, the transaction team will conduct further due diligence to verify the condition and provenance of the artwork, including performing a physical inspection of the object by a qualified art evaluator. The Manager will research the provenance of the artwork to be acquired and will use online resources to determine if the object has appeared in prior auctions, catalogues or other literature. The Manager may obtain a detailed condition report from the art evaluator prior to purchase and will reinspect the condition

of the artwork upon its arrival at the Manager-designated professional art storage facility to ensure the condition upon delivery matches the condition described in the condition report.

### ***Purchase***

The artwork will be purchased at public auctions through auction houses and in privately negotiated transactions with private sellers, which will consist of, among others, private art collectors, art market intermediaries and other investment sources. The Company may also seek to acquire artwork directly from the artists. In that event, the Company will offer the artist the opportunity to receive Units (valued at the then applicable Transaction Price) in exchange for their artwork in transactions structured to be tax deferred under the Internal Revenue Code.

The Manager expects to display or exhibit the artwork in and when the Manager reasonably believes such display or exhibition will increase the exposure, profile, appeal and potential value of the artwork. The Manager will obtain and maintain insurance coverage for the Portfolio under commercial art policies.

### **Selling the Portfolio**

Our intention is to own the Portfolio for an indefinite period, although the Manager has the sole and absolute discretion to some or all of the Portfolio at any time. If any person offers to purchase all or any portion of the Portfolio at any point in time, the Manager will determine whether, and the terms upon which, the Portfolio will be sold. See “— Investment Strategy.”

There is no guaranty that any such sale of the Portfolio will be successful, or if successful, that the net proceeds realized by the holders of Units from such transaction will be reflective of the estimated fair market value of the Units at such time. In addition, the Manager, in its sole and absolute discretion, has the authority to retain some or all of the proceeds from the sale of the Portfolio to acquire additional pieces of art rather than distributing such proceeds to the holders of the Units. The Manager will be entitled to reimbursement for costs and expenses associated with any such transaction and may earn fees from such transactions to the extent permitted by applicable laws, rules and regulations, and there can be no assurance that there will be any remaining net proceeds to be distributed after payment of such costs and expenses.

Following a sale of the Portfolio, the Manager will be reimbursed for any expenses for which it is responsible, including applicable sales commissions, income taxes, if any, and other transactional, extraordinary and non-routine expenses and other expenditures to enhance the value of the Portfolio. The Manager may determine to sell some or all of the Portfolio without engaging a third-party intermediary; in which event, the Manager would charge the buyer a reasonable fee not to exceed the lowest published buyer’s premium charged by Sotheby’s, Christie’s or Phillips in effect at such time. Following the payment of all of such expenses and fees, we will distribute the remaining proceeds, if any, in accordance with our operating agreement. Following such distribution, we will be liquidated. However, there can be no assurance as to the timing of a liquidating distribution or that we will pay a liquidating distribution at all.

### **Competition**

At the time we attempt to sell the Portfolio, we may face substantial competition from other entities and individuals who are selling or seeking to sell similar artwork. These other parties may be better funded and may be able to sell their artworks at a lower price than us. Further, we will face significant risks from other competitive factors, such as the available supply of similar artworks for sale.

### **Government Regulation**

#### ***Art Market Regulation***

Art as tangible personal property is subject to regulation under different city, state and federal statutory schemes. Generally, domestic art transactions that are conducted within the United States are subject to state Uniform Commercial Code statutes, which govern the sale of goods. Some states have additionally enacted art specific legislation, such as New York’s Arts and Cultural Affairs Law and California’s Resale Royalty Act. In addition,

federal statutes such as the Holocaust Expropriated Art Recovery Act and the National Stolen Property Act can apply to title disputes in the art market context. International art transactions involving the import and export of art into and out of the United States will subject us to the rules and regulations established by the United States Customs and Border Protection. Further, we and the Manager will be subject to the requirements of the federal Cultural Property Implementation Act which is the United States' accession legislation for the 1970 United Nations Educational, Scientific, and Cultural Organization (UNESCO) Convention which protects countries' cultural property, including artwork. New York City, as a major art auction center, has enacted legislation governing the activities of auctioneers in the New York City Administrative Code and the Manager may be subject to these regulations through its transactions and financing arrangements with auctioneers.

### ***Patriot Act***

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Patriot Act) is intended to strengthen the ability of U.S. law enforcement agencies and intelligence communities to work together to combat terrorism on a variety of fronts. The Patriot Act, to which we are subject, has significant implications for depository institutions, brokers, dealers and other businesses involved in the transfer of money. The Patriot Act required us to implement policies and procedures relating to anti-money laundering, compliance, suspicious activities, and currency transaction reporting and due diligence on customers. The Patriot Act also requires federal banking regulators to evaluate the effectiveness of an applicant in combating money laundering in determining whether to approve a proposed bank acquisition.

## **MANAGEMENT**

### **The Manager**

Our day-to-day operations are managed by the Manager, which performs its duties and responsibilities pursuant to our operating agreement and management agreement. The Manager and its affiliates have the exclusive right and power to manage and operate our Company, including the implementation of our investment strategy. The Manager and its officers and managers are not required to devote all of their time to our business and are only required to devote such time to our affairs as their duties require. The Manager maintains a contractual, as opposed to a fiduciary relationship, with the Company and the holders of the Units. In addition, the Company has agreed to limit the liability of the Manager and to indemnify it against certain liabilities.

### **Summary of the Management Agreement**

We plan to enter into the management agreement with the Manager prior to the initial closing of the Offering. The following summarizes some of the key provisions of the management agreement. The terms of the management agreement may not be amended prior to the first anniversary of the initial closing of the Offering and, thereafter, only if approved by a majority of the Company's board of managers. This summary is qualified in its entirety by the management agreement itself, a copy of which may be obtained from the Company.

### ***Services to be Provided***

Pursuant to the management agreement, the Manager will agree to provide the Company, itself directly or through its affiliates, with Portfolio-level services and provide entity-level services on the terms and conditions set forth in the management agreement.

The services to be provided by the Manager under the management agreement include the following:

- (1) Portfolio-level services with respect to the Portfolio, including:
  - (a) Adopting and overseeing our overall investment strategy, which will consist of elements such as investment selection criteria, diversification strategies and asset disposition strategies;
  - (b) Serving as our investment manager with respect to sourcing, underwriting, acquiring, financing, investing in a diversified portfolio of fine art assets;
  - (c) Providing custodial and storage services for the Portfolio;

- (d) Maintaining asset-level insurance requirements for the Portfolio;
  - (e) Managing transport for the Portfolio in the ordinary course of business, including the display and exhibition thereof;
  - (f) Providing research services;
  - (g) Providing appraisal and valuation services; and
  - (h) Engaging in such other services deemed necessary or appropriate by the Manager at its discretion to maintain the Portfolio.
- (2) Entity-level services, including:
- (a) Oversight and management of banking activities;
  - (b) Management of preparation and regulatory filings and other corporate filings;
  - (c) Financial, accounting and bookkeeping services, including retention of an auditor for the Company;
  - (d) Record keeping, Unitholder registrar, investor relations and regulatory compliance;
  - (e) Providing listing services, subject to the approval of the members of our Company as may be required by law;
  - (f) Tax reporting services;
  - (g) Bill payment;
  - (h) Selecting and negotiating insurance coverage for our Company, including operational errors and omissions coverage;
  - (i) Maintain our unit ledger and coordinating activities of our transfer agent, if any, escrow agent, if any, and related parties; and
  - (j) Software services.
- (3) Non-routine services with respect to the Portfolio, including:
- (a) Legal and professional transactional services;
  - (b) Negotiation of terms of potential sales and the execution thereof;
  - (c) Obtaining appraisals and statements of condition in connection with a sale transaction relating to the Portfolio;
  - (d) Other transaction-related services and expenditures relating to the Portfolio;
  - (e) Administrative services in connection with liquidation or winding up of our Company;
  - (f) Managing litigation;
  - (g) Conservation, restoration (as deemed necessary by the Manager), reframing and other expenditures that increase the value of the Portfolio; and
  - (h) Other non-routine or extraordinary services.

#### *Third Parties and Exclusivity*

Pursuant to the management agreement, the Manager may to the extent it determines that it would be advisable, arrange for and coordinate the services of other professionals, experts and consultants to provide any or all of the services under the management agreement in which case, the costs and expenses of such third parties for providing such services shall be borne by the Manager with it being understood that the manager shall not charge any fees in addition thereto with respect to such outsourced services.

The obligations of the Manager to us are not exclusive. The Manager may, in its discretion, render the same or similar services as rendered to us to any person or persons whose business may be in direct or indirect competition with us.

#### *Rights of the Manager*

Pursuant to the management agreement, the Manager and its affiliates shall have the right to engage in the following activities, and will be responsible for all incremental costs associated with such activities (including taxes):

- (a) Rights to commercialize the Portfolio for the duration of the operations of our Company;
- (b) Display rights;
- (c) The right to lend the Portfolio to museums, galleries, private entities or individuals, and the like; and



(d) The right to lease the Portfolio to companies, private entities and individuals.

The Manager will display or exhibit the Portfolio if and when the Manager reasonably believes that such display or exhibition would increase the exposure, profile and appeal of the Portfolio.

#### *Compensation of the Manager and Reimbursement of Expenses*

The Manager will receive fees and expense reimbursement for its services from the Company. The Company will pay the Manager an annual asset management fee equal to 2.0% of the value of the Units outstanding at the beginning of each fiscal year, which fee is payable, at the sole option of the Manager, in Units (valued at the then current Transaction Price) or cash (funded by proceeds from the Offering). There is no overall limit on the number of Units that may be issued to pay these fees. The Company will also pay directly or reimburse the Manager, as the case may be, for all costs and expenses of the Company's operations, including, without limitation, all organization and offering expenses, expenses associated with the acquisition, maintenance and disposition of the Portfolio and legal and accounting fees. These expenses will be paid from the Company's working capital, which will include proceeds from the Offering, operating revenues and proceeds from the sale of some or all of the Portfolio. In addition, the Manager will be entitled to receive 15% of the profit, if any, earned by the Company upon the sale of the Portfolio or the sale of any individual piece of fine art if the Manager determines to distribute the proceeds of such individual sale to the Members.

#### *Sale of the Portfolio without a third-party intermediary:*

The Manager may determine to sell some or all of the Portfolio without engaging a third-party intermediary, in which event, the Manager would charge the buyer of the Portfolio a reasonable fee not to exceed the lowest published buyer's premium charged by Sotheby's, Christie's or Phillips in effect at such time.

#### *Operating costs and expenses include:*

- Storage costs;
- Insurance costs;
- Display or gallery costs;
- Crating and shipping costs related to traveling exhibitions;
  
- Costs associated with SEC filings and compliance with applicable laws;
- Transfer agent fees;
- Other fees associated with the Offering
- Accounting and legal fees;
  
- Payments associated with litigation, judicial proceedings or arbitration (regardless of whether the Company is named as a defendant or party), including, without limitation, attorneys' fees, settlements or judgments;
- Costs associated with any material transactions, such as any third-party costs and expenses incurred in connection with any merger, third-party tender offer or other similar transaction;
- Costs and taxes, if any, associated with selling the Portfolio; and
- Conservation, restoration, reframing and other expenditures that increase the value of the Portfolio.

#### *Provision of Financial Information*

The Manager will report to the Company on a semi-annual basis its current and total assets, current and total liabilities, and total equity.

#### *Termination*

The term of the management agreement will terminate upon the first to occur of (i) the dissolution of our Company; or (ii) our termination of the management agreement on the terms set forth in the agreement.

We may terminate the management agreement at any time upon a vote the holders of the Units (other than the Manager) pursuant to our operating agreement following any of the following:

(i) The commission by the Manager or any of its executive officers of fraud, gross negligence or willful misconduct;

(ii) The conviction of the Manager of a felony;

(iii) A material breach by the Manager of the terms of the management agreement which breach is not cured within 30 days after receipt by the Manager of a notice of such breach from any member of our Company (provided that if such breach is not capable of cure within 30 days, and the Manager is diligently taking steps to cure the breach, then no such event shall be deemed to have occurred unless and until the Manager fails to cure such breach within 60 days after receiving notice thereof);

(iv) A material violation by the Manager or any of its executive officers of any applicable law that has a material adverse effect on our business; or

(v) The bankruptcy or insolvency of the Manager.

On the date of termination, or if we do not have the available funds on such date, then as soon as practicable after we do have the available funds, we will pay any accrued but unpaid costs subject to reimbursement owed to the Manager through to such date.

#### *Indemnification*

Under the management agreement we agreed to indemnify, hold harmless, protect and defend the Manager, its affiliates, any officer, employee or any direct or indirect partner, member or shareholder of the Manager, any person who serves at the request of the Manager on behalf of us (referred to herein as the “Indemnified Persons”) against any losses, claims, damages or liabilities, including legal fees, costs and expenses incurred in investigating or defending against any such losses, claims, damages or liabilities or in enforcing the Indemnified Persons’ rights to indemnification under the management agreement. The indemnification under the management agreement shall not apply to any actions, suits or proceedings in which one or more officers, partners, members or employees of the Manager are making claims against the Manager or one or more other officers, partners, members or employees of the Manager.

#### *Prohibited transactions under our operating agreement*

The Manager will have sole voting power over all matters, including, without limitation, mergers, consolidations, acquisitions, winding up and dissolution; however, the Manager shall not have the authority to amend, waive or fail to comply with any material provision of our operating agreement that disproportionately and adversely affects the holders of the Units, except as provided therein, without the prior written consent of the holders of a majority of the Units (other than the Manager).

#### *Sale of Portfolio*

The Company will own the Portfolio for an indefinite period and may sell some or all of the Portfolio at any time and from time-to-time following the final closing of the Offering. The Portfolio is effectively perpetually available for sale following the final closing of the Offering and we intend to promote the Portfolio in ways we believe will enhance its visibility, value and exposure to the market. There is no guaranty that any such sale of the Portfolio will be successful, or if successful, that the net proceeds realized by the holders of the Units from such transaction will be reflective of the estimated fair market value of the Units at such time. The Manager will be entitled to reimbursement for costs and expenses associated with any such transaction and may earn fees from such transactions to the extent permitted by applicable laws, rules and regulations, and there can be no assurance that there will be any remaining net proceeds to be distributed after payment of such costs and expenses.

Following a sale of the Portfolio, the Company will pay or reimburse the Manager for any expenses for which it is responsible, including applicable third-party sales commissions, income taxes, if any, and other transactional,

extraordinary and non-routine expenses and other expenditures to enhance the value of the Portfolio. The Manager may determine to sell some or all of the Portfolio without engaging a third-party intermediary, in which event, it would charge the buyer of the Portfolio a reasonable fee not to exceed the lowest published buyer's premium charged by Sotheby's, Christie's or Phillips in effect at such time. Following the payment of all of such taxes, expenses and fees, we may distribute the remaining proceeds to the holders of the Units in accordance with our operating agreement, provided that the Manager has the sole and absolute discretion to reinvest some or all of such disposition proceeds in additional pieces of art. There can be no assurance as to the timing of a liquidating distribution or that we will pay a liquidating distribution at all.

## **Executive Officers and Principals of the Management**

We have provided below certain information about our directors and executive officers.

<b>Name</b>	<b>Age</b>	<b>Position Held</b>
Carrie Mackin	52	Chief Executive Officer
Charles J. (CJ) Follini	56	Chairman
Andrea Pemberton	37	Head Curator
Sam Suechting	26	Chief Operating Officer
Stephen Robie	53	Chief Financial Officer

Currently, all of our directors and executive officers are also officers of the Manager and may serve as officers and managers of other entities managed by the Manager. The address of each director and executive officer listed is 134 N. 4<sup>th</sup> Street, Suite 2007, Brooklyn, New York 11249.

### **Carrie Mackin, Chief Executive Officer**

Carrie Mackin is a leader and innovator in the fine art industry with over 20 years of experience as a curator, advisor, and gallery owner. She has established a reputation for being at the forefront of the evolving conversation in the art world.

In 2009, she founded Mackin Projects, a New York-based consultancy helping artists develop professional and profitable business practices. Her deep understanding of the needs of artists and the industry has made her a sought-after advisor. Most recently, she served as Executive Director and Founder of NXTHVN, a New Haven artist and curatorial residency with a focus on professional development and local community engagement.

Carrie is now launching her latest project, NFA.01, a portfolio collection that gives artists an enduring economic stake in the success of their own work. Her innovative approach empowers creators to benefit from the appreciation of their art alongside investors.

Throughout her career, Carrie has worked with renowned artists such as Wangechi Mutu, Nan Goldin, Kehinde Wiley, Sanford Biggers and many more to create fair business practices. With NFA.01, she continues to pave the way for a more equitable and sustainable art industry.

### **CJ Follini, Managing Principal**

CJ Follini has more than 38 years of investment experience in commercial real estate and venture capital. Mr. Follini's real estate career began in his teens when he was handed the management and disposition of his family's eight figure industrial portfolio and successfully yielded in excess of 20% IRR.

Since 1990, Mr. Follini has become a leading investment expert on alternative real estate assets including healthcare, cold storage logistics, structured parking, media infrastructure, and Qualified Opportunity Zone development.

A few of Mr. Follini's real estate career highlights include:

- (1) Development of a 400-acre site into the first-ever Foreign Trade Zone in a joint venture with Rockefeller Group Properties known as the International Trade Center in Mount Olive, New Jersey
- (2) Creation and disposition of a \$300 million healthcare real estate portfolio yielding over 23% IRR for its family office investors
- (3) Creation and development of the content production infrastructure known as Gun For Hire Production Centers, consisting of over 700,000 square feet of digital media production studios in Miami, Vancouver, Toronto, Austin, Los Angeles, and New York. Mr. Follini was awarded the 1998 Crain's Magazine Small Business Award
- (4) Brownfield redevelopment of 15 waterfront acres in the NYC borough of Queens, the largest privately owned waterfront parcel in NYC, achieving 3x returns for its investors in four years
- (5) Transacted 12 acres of industrial-zoned land in Bronx, New York at the highest per square foot price ever recorded in that Borough.
- (6) Winner of Real Estate Forum's 2021 INDUSTRIAL INFLUENCER award.

Ten years ago, Mr. Follini expanded his single-family office into a multi-family office ("MFO") investing a majority of its discretionary assets under management in alternative real estate; concurrently he expanded the family office allocation into early-stage venture capital supporting female founders. He sits on several boards related to these investments. Mr. Follini has also significantly expanded the multi-family office's investments in Consumer Packaged Goods ("CPG") and e-sports.

Mr. Follini speaks at conferences, domestic and abroad, on commercial real estate, alternative asset investing and family office strategy.

Mr. Follini holds a B.S., *magna cum laude*, in Econometrics from Tufts University, a General Course Degree in Game Theory from the London School of Economics, and a Degree in Executive Management from Harvard Business School. Mr. Follini has also served on boards as Chairperson of the HERE Arts Center & Chashama Arts.

### **Andrea Pemberton, Head Curator**

"Andrea Pemberton is an arts professional with thirteen years of experience building international private and corporate art collections, producing artist projects and curating site specific installations. Andrea began her foundational career in 2011 at Gagolian Gallery where she worked alongside Larry Gagolian as assistant in New York and then in sales and artist management in Los Angeles for six years. She then led three key years of business and roster development as Director of the digital platform for emerging artists, Tappan Collective."

### **Sam Suechting, Chief Operating Officer**

Prior to joining NOYACK, Sam Suechting worked in numerous roles in the venture capital and private equity industries. At SilverHaze Partners, Mr. Suechting worked with the founder to source, analyze, structure, and manage investments in early-stage companies.

- (1) Mr. Suechting facilitated a joint venture between the Qatar Investment Authority, Doha Venture Capital, and Balbec KPL, a South Korean Asset Management Company led by the former Deputy Prime Minister, to structure transnational investments in breakthrough innovations.
- (2) Mr. Suechting consulted with Nectar, a commerce platform powered by ultrasonic Smart Caps, on business development opportunities in CPG and the global chemical industry, and worked with the CEO, Aayush Phumbhra, founder of Chegg (NYSE: CHGG), to develop go-to-market strategy.

- (3) Mr. Suechting created the financial forecast, investor presentation, and accretion/dilution model for CommuniKids, a venture-backed, for-profit, language immersion preschool growing rapidly in the Washington, D.C. area.

Mr. Suechting serves as the Director of Product & Platform Strategy for Chefs-à-Porter, a fine-dining platform based in Bengaluru, India. He graduated with a B.S. in Quantitative Economics from Tufts University.

### **Stephen Robie, Chief Financial Officer**

Stephen Robie joined NOYACK in October 2021 as Chief Financial Officer. Mr. Robie has over thirty years of global real estate finance and accounting experience managing the financial operations of high-growth public real estate investment trusts (“REITs”), private real estate companies, and start-up, entrepreneurial ventures. From 2008 to October 2021, Mr. Robie founded and served as Managing Partner of SIR Holdings, LLC, an entrepreneurial investment firm with focus on venture capital, real estate, and advisory services. From 2015 to 2019, Mr. Robie also served as a Senior Principal and Senior Vice President – Finance and Operations at Veneto Capital Management, LLC, a privately-held commercial real estate investment management company. From 2011 to 2012, Mr. Robie served as Chief Financial Officer, Treasurer, and Secretary of Cornerstone Core Properties REIT, Inc. (“CCP REIT” and now Summit Healthcare REIT, Inc.), a publicly registered, non-traded industrial REIT, which he strategically repositioned into healthcare real estate. Mr. Robie also served as the Chief Operating Officer and Chief Financial Officer, Healthcare Real Estate Group of Cornerstone Ventures, Inc., an affiliate of CCP REIT’s advisor. From 2004 to 2008, Mr. Robie served as Senior Vice President – Financial Planning and Analysis at HCP, Inc. (now Healthpeak Properties, Inc. (NYSE:PEAK)), an S&P 500 healthcare REIT. From 1997 to 2004, Mr. Robie worked for General Electric Company (NYSE:GE) and its commercial real estate division, GE Real Estate, where he served as Manager of Finance for GE Real Estate’s North America Equity Investments. Prior to his affiliation with General Electric Company, Mr. Robie spent over six years in public accounting at Arthur Andersen LLP, including serving as a Manager for private and publicly traded real estate companies. Mr. Robie graduated magna cum laude with a Bachelor of Arts Degree in Economics from Tufts University and earned a Master of Business Administration Degree, with Distinction, in Finance and Accounting from the Leonard N. Stern School of Business at New York University. Mr. Robie is a Certified Public Accountant in the State of New York, a Chartered Global Management Accountant, and a member of the AICPA.

### **Limited Liability and Indemnification of the Manager and Others**

Subject to certain limitations, the management agreement limits the liability of the Manager, its officers, members, and affiliates for monetary damages and provides that we will indemnify and pay or reimburse reasonable expenses in advance of final disposition of a proceeding to the Manager, its officers, members and affiliates.

The management agreement provides that to the fullest extent permitted by applicable law the Manager, its officers, members, and affiliates will not be liable to us. In addition, pursuant to the management agreement, we have agreed to indemnify the Manager, its officers, members and affiliates to the fullest extent permitted by law, against all expenses and liabilities (including judgments, fines, penalties, interest, amounts paid in settlement with the approval of the Company and attorney’s fees and disbursements) arising from the performance of any of their obligations or duties in connection with their service to us or the management agreement, including in connection with any civil, criminal, administrative, investigative or other action, suit or proceeding to which any such person may hereafter be made party by reason of being or having been the Manager or one of the Manager’s managers or officers.

### **Principal Unitholders**

The following table sets forth the ownership of the Units as of the date of this Memorandum for each person or group that holds more than 5% of the Units.

Unless otherwise indicated below, each person or entity has an address in care of our principal executive offices at 134 N. 4<sup>th</sup> Street, Suite 2007, Brooklyn, New York 11249.

<u>Name of Owner</u>	<u>Number of Units Owned</u>	<u>Percent of All Units</u>
NOYACK Capital LLC	1,000	100%

## CONFLICTS OF INTEREST

*We are subject to various conflicts of interest arising out of our relationship with the Manager and its affiliates. We discuss these conflicts below and conclude this section with a discussion of the corporate governance measures we have adopted to mitigate some of the risks posed by these conflicts.*

### **Our Affiliates' Interests in Other Entities**

#### *General*

The officers and the professionals of the Manager, who perform services for us also perform services for the Manager, and are also or will become officers, directors, managers, and/or key professionals of other existing and to be formed entities sponsored or controlled by the Manager (the "Affiliated Entities"). These persons have legal obligations with respect to those Affiliated Entities that are similar to their obligations to us. There are no provisions in our operating agreement or the management agreement prohibiting the officers, managers, members or employees of the Manager, or any affiliates thereof, from organizing, acquiring or otherwise investing in any Affiliated Entity.

#### *Allocation of Our Affiliates' Time*

We rely on the Manager and the key professionals the Manager has assembled for the day-to-day operation of our business. Future NOYACK-sponsored programs will be advised by entities to which may employ many of the same finance, management and accounting professionals. Further, the officers and managers of the Manager may also become officers and/or directors of some or all of any future NOYACK-sponsored programs. As a result of their interests in other NOYACK programs, their obligations to other investors and the fact that they engage in and they may engage in other business activities on behalf of themselves and others, the officers, managers and other employees of the Manager could face conflicts of interest in allocating their time among us, and any other future NOYACK-sponsored program and other business activities in which they are involved. The executive officers and the key finance, management and accounting professionals affiliated with the Manager who provide services to us are not obligated to devote a fixed amount of their time to us.

The Manager believes that its executive officers and the other key professionals will have sufficient time to fully discharge their responsibilities to us and to the other businesses in which they are involved or may become involved. We believe that the affiliates and executive officers of the Manager will devote the time required to manage our business and expect that the amount of time a particular executive officer or affiliate devotes to us will vary during the course of the year and depend on our business activities at the given time. Because we have not commenced operations, it is difficult to predict specific amounts of time an executive officer or affiliate of the Manager will devote to us. We expect that those executive officers and affiliates will generally devote more time to programs raising and investing capital than to programs that have completed their offering stages, though from time to time each program will have its unique demands.

### **Receipt of Fees and Other Compensation by the Affiliated Entities and its Affiliates**

The Manager and its affiliates will receive fees from us, which fees will not be negotiated at arm's length. These fees could influence the Manager's advice to us as well as the judgment of affiliates of the Manager, some of whom also serve as the Manager's officers and the key professionals. Among other matters, these compensation arrangements could affect their judgment with respect to:

- (1) the continuation, renewal or enforcement of provisions in the management agreement involving the Manager and its affiliates;
- (2) the continuation of the Offering, which will generate increased funds to acquire additional pieces of art for the Portfolio, which may result increased fees for the Manager upon disposition;
- (3) the reinvestment rather than the distribution of proceeds from the sale of some or all of the Portfolio; and
- (4) whether and when we seek to sell the Company or some or all of the Portfolio.

### **Indemnification Arrangements**

Our operating agreement and the management agreement require us to indemnify the Manager and its officers and managers for certain liabilities and otherwise limit the liability of the Manager to the Company and the holders of the Units. See “Limited Liability and Indemnification of the Manager and Others.”

### **No Independent Underwriter**

As we are conducting the Offering without the aid of an independent underwriter, you will not have the benefit of an independent due diligence review and investigation of the type normally performed by an independent underwriter in connection with the offering of securities. See “Plan of Distribution.”

### **Certain Conflict Resolution Measures**

#### ***Independent Representative***

If the Manager or its affiliates have a conflict of interest with us that is not otherwise covered by an existing policy we have adopted or a transaction is deemed to be a “principal transaction,” the management agreement requires the Manager to designate an “independent representative” to review and approve such transactions. Principal transactions are defined as transactions between the Manager or its affiliates, on the one hand, and us or one of our subsidiaries, on the other hand the value of which is not otherwise quantifiable based on independent third-party valuations, for example third-party appraisals of the Portfolio. The Manager is only authorized to execute principal transactions with the prior approval of the Independent Representative and in accordance with applicable law. Such prior approval may include but not be limited to pricing methodology for the acquisition of assets and/or liabilities for which there are no readily observable market prices.

#### ***Our Policies Relating to Conflicts of Interest***

In addition to the provisions in the management agreement described below, we have adopted the following policies prohibiting us from entering into certain types of transactions with the Manager, its officers or any of its affiliates in order to further reduce the potential for conflicts inherent in transactions with affiliates.

Pursuant to these conflicts of interest policies, we may not engage in the following types of transactions unless the transaction price is based on an independent third-party appraisal, or such transaction is approved by the Independent Representative:

- (1) sell or lease any investments to the Manager, its officers or any of their affiliates; and
- (2) acquire or lease any investments from the Manager, its officers or any of its affiliates.

### ***Other Management Agreement Provisions Relating to Conflicts of Interest***

The management agreement contains many other restrictions relating to conflicts of interest including the following:

***Term of the Manager.*** The management agreement provides that the Manager will serve as the Company’s “manager” for an indefinite term, but that the Manager may be removed, or may choose to withdraw as the Manager, under certain circumstances. The holders of the Units may remove the Manager at any time with 30 days’ prior written notice for “cause.” Unsatisfactory financial performance does not constitute “cause” under the management agreement. The Manager may withdraw as the Company’s manager if we become required to register as an investment company under the Investment Company Act of 1940, as amended, with such withdrawal deemed to occur immediately before such event. In the event of the removal of the Manager, it will cooperate with us and take all reasonable steps to assist in making an orderly transition of the management function. The Manager will determine whether any succeeding manager possesses sufficient qualifications to perform the management function.

***Other Transactions Involving Affiliates.*** Before engaging in a transaction involving an affiliate, the Manager must conclude that all other transactions between us and the Affiliated Entities, the Manager, any of their officers or directors, or any of their affiliates are fair and reasonable to us and on terms and conditions not less favorable to us than those available from unaffiliated third parties.

### **MANAGEMENT COMPENSATION**

The Manager and its affiliates will receive certain fees and expense reimbursements for services relating to the Offering and the acquisition, maintenance, and sale of the Portfolio. The items of compensation are summarized below. Neither the Manager nor its affiliates will receive any fees in connection with the offer and sale of the Units. In addition, the Manager may be entitled to a 15% “profits interest” following the final closing of the Offering.

The following table sets forth the form of compensation and the recipient of such compensation together with the determination of the amount and the estimated amount.

#### **Form of Compensation and Expense**

<b>Reimbursement</b>	<b>Determination of Amount</b>	<b>Estimated Amount</b>
<i>Asset Management Fee and Expense Reimbursement</i>	In respect of the administration of our Company and the Portfolio, we will pay the Manager an annual asset management fee equal to 2.0% of the value of the Units then outstanding at the beginning of any fiscal year. The Company will also pay directly or reimburse the Manager, as the case may be, for all costs and expenses of the Company’s operations, including, without limitation, organization and offering expenses, expenses associated with the acquisition, maintenance and disposition of the Portfolio and legal and accounting fees.	The asset management will be payable in Units (valued at the current Transaction Price). The amounts of any expense reimbursements cannot be presently determined.
<i>Profits Interest</i>	Upon the liquidation of the Portfolio, a merger or other event, the Company will pay the Manager a profits interest equal to 15% of profits earned by the Company from such liquidation.	These amounts, if any, cannot presently be determined.
<i>Reimbursement for Extraordinary and Non-Routine Costs</i>	Extraordinary or non-routine costs, payments and expenses, if any, relating to our Company or the Portfolio, will be paid for by the Manager, but such extraordinary or non-routine costs and payments will be	These amounts, if any, cannot presently be determined.



reimbursed upon the sale of some or all of the Portfolio or a sale of the Company, as applicable.

*Disposition of the Portfolio without a third-party intermediary* The Manager may determine to sell some or all of the These amounts, if any, cannot Portfolio without engaging a third-party intermediary, in presently be determined. which event, it would charge the buyer of the Portfolio a reasonable fee not to exceed the lowest published buyer's premium charged by Sotheby's, Christie's or Phillips in effect at such time.

### **Compensation of Executive Officers**

We do not currently have any employees, nor do we currently intend to hire any employees who will be compensated directly by us. Each of our executive officers receive compensation for his or her services, including services performed for us, from the Manager. Although we will indirectly bear some of the costs of the compensation paid to these individuals, through fees we pay to the Manager, we do not intend to pay any compensation directly to these individuals.

## **DESCRIPTION OF THE UNITS**

### **General**

As of the date of this Memorandum, 100% of our issued and outstanding membership interests are held by the Manager in the form of 1,000 Units. The Company has two classes of membership interests: Class A membership interests (referred to herein as the "Units"). We are offering 1,250,000 of our Units, for an aggregate amount of \$25,000,000 pursuant to this Memorandum. We expect to offer the Units in the Offering until we raise the maximum amount being offering. The maximum offering period is 24 months from the date of commencement, but we reserve the right to terminate the Offering for any reason at any time prior to the final closing. Subscriptions for Units will be accepted on a rolling basis and the initial closing of the Offering and the final closing of the Offering will on occur on a date or dates determined by the Company in its sole discretion. There is no minimum number of Units that need to be sold or dollar amount that needs to be raised as a condition of any closing of the Offering.

The Company's operating agreement permits the Company to engage in subsequent offerings of its membership interests on terms similar to or different from the terms of the Units in the sole discretion of the Manager. The operating agreement does not permit the Company to effect a new offering of membership interests until at a minimum of twenty-four (24) months following the "final closing" of the prior offering (including the Offering).

The following description of the membership interests is based upon our certificate of formation, our operating agreement, and applicable provisions of law, in each case as in effect prior to the date of this Memorandum. This discussion does not purport to be complete and is qualified in its entirety by reference to the certificate of formation and the operating agreement, copies of which may be obtained from the Manager.

### **Membership Interests**

We were formed as a Delaware limited liability company on January 2023 by the Manager in order to facilitate the acquisition, administration and strategic disposition of a diversified portfolio of pieces of fine art. We are a manager-managed limited liability company. Upon our formation, the Manager was issued 100% of our membership interests.

Pursuant to our operating agreement we may not issue any additional Units after the consummation of the Offering, other than as described in this Memorandum, including Units that may be issued to third-party sellers of art in contribution transactions and Units issuable pursuant to the management agreement.

### **Display Rights**

The Company is offering its Members the opportunity to display pieces of the Company's artwork in their own homes under certain conditions. Each eligible investor will have the right display the piece of art for a six-month period. In

order to be able to obtain a piece of art for display, the investor will need to have acquired Units with an aggregate purchase price equal to at least two times the value of the requested piece of art. For example, if an investor selects a piece of art for display valued at \$300,000, the investor will have to own Units with an aggregate value of \$600,000 at the time of the request. In addition, the investor will need pay all expenses related to the display of the artwork, including, insurance, transportation and crating costs.

### **Summary of Operating Agreement**

We are governed by the Limited Liability Company Agreement of NOYACK Fine Art I, LLC, which is referred to throughout this Memorandum as the “operating agreement.”

### ***Organization and Duration***

We were formed in January 2023 as a Delaware limited liability company pursuant to the Delaware Limited Liability Company Act. We will remain in existence until liquidated in accordance with the operating agreement.

### ***Purpose and Powers***

Under the operating agreement, we are permitted to engage in such activities as determined by the Manager that lawfully may be conducted by a limited liability company organized under Delaware law and, in connection therewith, to exercise all of the rights and powers conferred upon us and the Manager pursuant to the operating agreement relating to such business activity, provided that we are prohibited from engaging in certain activities referred to as “Prohibited Acts” without obtaining the approval of the holders of a majority of the voting shares. “Prohibited Acts” consist of amending, waiving or failing to comply with any material provision of our operating agreement that disproportionately and adversely affects the Units, except as otherwise provided therein.

### ***The Manager***

We will enter into the management agreement with the Manager prior to the initial closing of the Offering which is further described in the “Summary of the Management Agreement” section of this document. Pursuant to our operating agreement and the management, the Manager will have complete and exclusive discretion in the management and control of our affairs and business, subject to the requirement to obtain consent for Prohibited Acts, and shall possess all powers necessary, convenient or appropriate to carrying out the purposes and business of the Company, including doing all things and taking all actions necessary to carry out the terms and provisions of each of the foregoing agreements.

The Manager will have sole voting power over all matters, including: mergers, consolidations, dispositions, winding up and dissolution, including any action with respect to the sale of some or all of the Portfolio; except, the Manager shall not have the authority to amend, waive or fail to comply with any material provision of our operating agreement that disproportionately and adversely affects the Units, except as provided therein, without first obtaining the prior approval of the holders of a majority of the Units (other than those held by the Manager).

### ***Ownership***

As of the date of this filing, 100% of the membership interests of the Company are owned by the Manager in the form of 1,000 Units. There will be up to 1,250,000 Units outstanding upon the final closing of the Offering, and the number of additional Units that may be issued by our Company following the Offering is limited to Units issued to third-party sellers of art in contribution transactions and Units issued to the Manager pursuant to the management agreement.

### ***Voting Rights***

On each matter where the members have a right to vote, each Unit (other than those owned by the Manager) shall be entitled to and shall constitute one (1) vote, and all voting shares shall vote together as a single class, except as otherwise set forth in our operating agreement, or otherwise required by the Delaware Limited Liability Company Act (the “Delaware Act”). In determining any action or other matter to be undertaken by or on behalf of us, each member shall be entitled to cast a number of votes equal to the number of Units that such member holds, with the power to

vote, at the time of such vote. Unless otherwise set forth in our operating agreement, or otherwise required by the Delaware Act, the taking of any action by us which requires a vote of the members as set forth above shall require the receipt of votes from members holding a majority of the Units to constitute a quorum, provided that in the case of a proposed removal of the Manager for any reason an affirmative vote of holders of two-thirds (2/3) of the Units shall be required to authorize and approve such action. In determining the outcome of any vote at a meeting, Unitholders that abstain or do not vote will effectively be counted as votes against such action. Units owned by the Manager shall have no voting rights.

Whenever holders of Units are required or entitled to vote on any matter, except as otherwise provided by the Delaware Act, that vote may be taken at a meeting or may be taken by written consent in lieu of a meeting. The Manager shall provide holders of Units with not less than five (5) nor more than sixty (60) days prior written notice of any meeting or any action subject to a vote of holders of Units.

### ***Distributions***

The Company does not currently intend to make distributions to the holders of the Units, other than with respect to tax distributions, as described in the operating agreement. At such time, if any, that there is a sale of all or a portion of the Portfolio, the Manager in its sole and absolute discretion, will determine whether to make of distribution of all or a portion of such proceeds or to reinvest such proceeds in additional pieces of fine art. There can be no assurance as to the timing of any distribution or that we will pay any distributions at all.

### ***Limited Liability***

The liability of each member of our Company shall be limited as provided in the Delaware Act and as set forth in the operating agreement. No member of our Company shall be obligated to restore by way of capital contribution or otherwise any deficits in its capital account (if such deficits occur). The Delaware Act provides that a member of a Delaware limited liability company who receives a distribution from such company and knew at the time of the distribution that the distribution was in violation of the Delaware Act shall be liable to the Company for the distribution for three years. Under the Delaware Act, a limited liability company may not make a distribution to a member if, after the distribution, all liabilities of the Company, other than liabilities to members on account of their Units and liabilities for which the recourse of creditors is limited to specific property of the company, would exceed the fair value of the assets of the Company. The fair value of property subject to liability for which recourse of creditors is limited shall be included in the assets of the Company only to the extent that the fair value of that property exceeds the nonrecourse liability. Under the Delaware Act, an assignee who becomes a substituted member of a company is liable for the obligations of his assignor to make contributions to the Company, except the assignee is not obligated for liabilities unknown to him at the time the assignee became a member and that could not be ascertained from the operating agreement.

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

Subject to certain limitations, our operating agreement limits the liability of the Manager and its affiliates, any of their members, managers and officers and any person who serves at the request of the Manager on behalf of us as an officer, independent representative, partner, member, stockholder or employee of such person (referred to together as the "Protected Persons" or in the singular as the "Protected Person").

***Exculpation.*** No Protected Person shall be liable to us, the Manager or any other member of our Company for any action taken or omitted to be taken by it or by other person with respect to us, including any negligent act or failure to act, except in the case of a liability resulting from such Protected Person's own actual fraud, gross negligence, willful misconduct, bad faith, breach of fiduciary duty, reckless disregard of duty or any intentional and material breach of our operating agreement or conduct that is subject of a criminal proceeding (where such Protected Person has reasonable cause to believe that such conduct was unlawful). With the prior consent of the Manager, any Protected Person may consult with legal counsel and accountants with respect to our affairs (including interpretations of our operating agreement) and shall be fully protected and justified in any action or inaction which is taken or omitted in good faith, in reliance upon and in accordance with the opinion or advice of such counsel or accountants. In determining whether a Protected Person acted with the requisite degree of care, such Protected Person shall be entitled to rely on written or oral reports, opinions, certificates and other statements of the Manager, officers, employees,

consultants, attorneys, accountants and professional advisors of the Company selected with reasonable care; provided, that no such Protected Person may rely upon such statements if it believed that such statements were materially false.

***Indemnification.*** To the fullest extent permitted by law, we will indemnify, hold harmless, protect and defend each Protected Person against any losses, claims, damages or liabilities, including reasonable legal fees, costs and expenses incurred in investigating or defending against any such losses, claims, damages or liabilities or in enforcing a Protected Person's right to indemnification under the operating agreement, and any amounts expended in respect of settlements of any claims approved by the Manager (collectively referred to herein as the "Liabilities"), to which any Protected Person may become subject:

- (i) by reason of any act or omission or alleged act or omission (even if negligent) arising out of or in connection with the activities of the Company;
- (ii) by reason of the fact that it is or was acting in connection with the activities of the Company in any capacity or that it is or was serving at the request of the Company as a partner, shareholder, member, manager of the Company or the Manager, the independent representative, officer, employee, or agent of any Person;

unless such Liability results from such Protected Person's own actual fraud, gross negligence, willful misconduct, bad faith, breach of fiduciary duty, reckless disregard of duty or intentional and material breach of our operating agreement or conduct that is subject of a criminal proceeding (where such Protected Person has reasonable cause to believe that such conduct was unlawful).

Any indemnification provided under our operating agreement is limited thereunder to the extent of our assets only.

### ***Reimbursement of Expenses***

We will reimburse (and/or advance to the extent reasonably required) each Protected Person for reasonable legal or other costs and expenses (as incurred) of such Protected Person in connection with investigating, preparing to defend or defending any claim, lawsuit or other proceeding relating to any Liabilities for which the Protected Person may be indemnified pursuant to our operating agreement and for all costs and expenses, including fees, expenses and disbursements of attorneys, reasonably incurred by such Protected Person in enforcing the indemnification provisions of our operating agreement; provided, that such Protected Person executes a written undertaking to repay us for such reimbursed or advanced costs and expenses if it is finally judicially determined that such Protected Person is not entitled to the indemnification provided by our operating agreement.

### ***Liquidity Event***

The Company intends to hold the Portfolio for an indefinite period; however, the Company anticipates it will seek one or more liquidity transactions within five (5) years following the initial closing of the Offering. There is no guaranty that any such liquidity transaction will be successful, or if successful, that the net proceeds realized by the holders of the Units from such transaction will be reflective of the estimated fair market value of the Units at such time. Among the liquidity events the Company consider are: (1) working with a protocol partner to "tokenize" the Units, (2) listing the Units on an exchange or other ATS, (3) engaging a third-party liquidity provider at the Manager's sole discretion to identify and implement a liquidity strategy, (4) selling some or all of the Portfolio to third parties or (5) creating a new fund to acquire the Portfolio in exchange for cash or equity in the new fund. The Manager will be entitled to reimbursement for costs and expenses associated with any such transaction and may earn fees from such transactions to the extent permitted by applicable laws, rules and regulations, and there can be no assurance that there will be any remaining net proceeds to be distributed after payment of such costs and expenses.

### ***Amendment of Our Operating Agreement***

Amendments to our operating agreement may be proposed only by or with the consent of the Manager and must be approved by a majority vote of holders of the Units. Further, the Manager does not need consent of holders of the Units to amend the operating agreement in the following instances: (i) to evidence the joinder of a new member of the Company; (ii) in connection with the transfer of Units by members; (iii) as otherwise required to reflect capital contributions, distributions and similar actions (iv) to reflect the naming of new managers, officers or replacement of

officers of the Company; or (v) in connection with the issuance of Units to the Manager pursuant to the management agreement.

### ***Termination and Dissolution***

We will continue as a limited liability company until terminated under the Masterworks 123, LLC operating agreement. We will commence winding up upon the first to occur of the following (the “Dissolution Event”):

- (1) Upon the determination of the members with the approval of the Manager;
- (2) Our insolvency or bankruptcy;
- (3) The sale of all or substantially all of our assets; or
- (4) The entry of a decree of judicial dissolution under the Delaware Act

The Dissolution Event shall be effective on the day on which such event occurs and immediately thereafter we will commence its winding up during which our affairs shall be wound up in accordance with the terms of the operating agreement.

### ***Books and Reports***

We are required to keep appropriate books of our business at our principal offices. The books will be maintained for both tax and financial reporting purposes on a basis that permits the preparation of financial statements in accordance with generally accepted accounting principles in the U.S. For financial reporting purposes and federal income tax purposes, our fiscal year and tax year are the calendar year.

### ***Unitholder Redemption Plan***

While you should view this investment as long-term, we have adopted a redemption plan whereby, on an ongoing basis, holders of Units may obtain liquidity monthly, following a minimum sixty (60) day waiting period after submitting their redemption request. Pursuant to the redemption plan, a holder of Units may only (a) have one outstanding redemption request at any given time and (b) request that we redeem up to the lesser of 100 units of Units or \$2,000 per each redemption request. In addition, the redemption plan is subject to certain liquidity limitations, which may fluctuate depending on the liquidity of the real estate assets held by us.

The redemption price will be equal to 90% of the purchase price of the Units being redeemed.

In addition, in the event the Company determines, in its sole discretion, that it does not have sufficient funds available to redeem all of the Units for which redemption requests have been submitted during any given month, such pending requests will be honored on a pro-rata basis, if at all. In the event that not all redemptions are being honored in a given month, the redemption requests not fully honored will have the remaining amount of such redemption requests considered during the next month in which redemptions are being honored. Accordingly, all unsatisfied redemption requests will be treated as requests for redemption on the next date on which redemptions are being honored, with redemptions processed on a pro-rata basis, if at all.

If funds available for the redemption plan are not sufficient to accommodate all redemption requests on such future redemption date, Units will be redeemed on a pro-rata basis, if at all.

We intend to limit holders of Units to one (1) redemption request outstanding at any given time, meaning that, if a unitholder desires to request more or less Units be redeemed, such unitholder must first withdraw the first redemption request.

We intend to limit redemptions in any calendar month to Units whose aggregate value (based on the repurchase price per Units) is less than or equal to 2.0% of the Company’s aggregate NAV as of the first day of such calendar month, and intend to limit the amount redeemed in any calendar quarter to Units whose aggregate value (based on the repurchase price per Units) is 5.0% of the Company’s aggregate NAV as of first day of the last month of such calendar quarter (e.g., March 1, June 1, September 1, or December 1), with excess capacity carried over to later calendar quarters in that calendar year. However, we may elect to increase or decrease the dollar amount of Units available for

redemption in any given month or quarter. Notwithstanding the foregoing, we are not obligated to redeem Units under the redemption plan.

Further, the Company may in its sole discretion, amend, suspend, or terminate the redemption plan at any time without prior notice, including to protect its operations and its non-redeemed holders of Units, to prevent an undue burden on its liquidity, or for any other reason. However, in the event that we amend, suspend or terminate our redemption plan, we will disclose such amendment to investors in a supplement to this Memorandum.

## MATERIAL U.S. FEDERAL TAX CONSIDERATIONS

The following is a discussion of material U.S. federal income tax considerations relating to the purchase, ownership and disposition of the Units by Holders (as defined below) as of the date hereof. For purposes of this section, under the heading “Material U.S. Federal Tax Considerations,” references to the “Company,” “we,” “our,” and “us” refer only to NOYACK Fine Art I, LLC. This discussion is based on the U.S. Internal Revenue Code of 1986, as amended (the “Code”), U.S. Treasury Regulations promulgated or proposed thereunder, and all administrative and judicial interpretations thereof, all as in effect on the date hereof and all of which are subject to change, possibly with retroactive effect, or to different interpretation.

The U.S. federal income taxation of partnerships and partners is extremely complex, involving, among other things, significant issues as to the character, timing of realization and sourcing of gains and losses. This discussion does not address all of the U.S. federal income tax considerations that may be relevant to specific Holders in light of their particular circumstances or to Holders subject to special treatment under U.S. federal income tax law (such as banks, insurance companies, dealers in securities or other Holders that generally mark their securities to market for U.S. federal income tax purposes, tax-exempt entities, retirement plans, regulated investment companies, real estate investment trusts, certain former citizens or residents of the United States or Holders that hold the Units as part of a straddle, hedge, conversion or other integrated transaction) or U.S. Holders that have a “functional currency” other than the U.S. dollar. This discussion does not address any U.S. state or local or non-U.S. tax considerations or any U.S. federal estate (except as discussed below for Non-U.S. Holders), gift or alternative minimum tax considerations. **Prospective investors are urged to consult their own tax advisors regarding the purchase, ownership and disposition of the Units with respect to their particular tax situations, including, in the case of prospective Holders subject to special treatment under U.S. federal income tax laws, with reference to any special issues that the purchase, ownership and disposition of the Units may raise for such persons.** The activities of a Holder unrelated to such Holder’s status as a member of the Company may affect the tax consequences to such Holder of an investment in the Company.

As used in this discussion, the term “U.S. Holder” means a beneficial owner of a Unit that, for U.S. federal income tax purposes, is (i) an individual who is a citizen or resident of the United States, (ii) a corporation created or organized under the laws of the United States, any state thereof or the District of Columbia, (iii) an estate, the income of which is subject to U.S. federal income tax regardless of its source, or (iv) a trust (x) with respect to which a court within the United States is able to exercise primary supervision over its administration and one or more U.S. persons have the authority to control all of its substantial decisions or (y) that has in effect a valid election under applicable U.S. Treasury Regulations to be treated as a U.S. person. As used in this discussion, the term “Non-U.S. Holder” means a beneficial owner of a Unit that is neither a U.S. Holder nor a partnership for U.S. federal income tax purposes, and the term “Holder” means a U.S. Holder or a Non-U.S. Holder.

If an entity treated as a partnership for U.S. federal income tax purposes invests in the Units, the U.S. federal income tax considerations relating to such investment will depend in part upon the status and activities of such entity and the particular partner. Any such entity should consult its own tax advisor regarding the U.S. federal income tax considerations applicable to it and its partners relating to the purchase, ownership and disposition of the Units.

PERSONS CONSIDERING AN INVESTMENT IN THE UNITS SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE U.S. FEDERAL, STATE AND LOCAL AND NON-U.S. INCOME, ESTATE AND OTHER TAX CONSIDERATIONS RELATING TO THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE UNITS IN LIGHT OF THEIR PARTICULAR CIRCUMSTANCES.

### **Taxation of Our Company**

We expect that we will be treated as a partnership for U.S. federal income tax purposes and not as an association or publicly traded partnership subject to tax as a corporation. As a partnership, we generally will not be subject to U.S. federal income tax. Instead, each Holder that is subject to U.S. tax will be required to take into account its distributive share, whether or not distributed, of each item of our income, gain, loss, deduction or credit. See “—Taxation of U.S. Holders of Units”.

If we were treated as a corporation in any taxable year, our items of income, gain, loss, deduction and credit would be reflected our tax return, rather than the returns of our Holders subject to U.S. tax, and we would be subject to U.S. corporate income tax on our taxable income. Distributions of cash or other property to a Holder with respect to the Units generally would be treated as a dividend to the extent such distribution was paid from our current or accumulated earnings and profits (as determined under U.S. federal income tax principles), or in the absence of earnings and profits, as a tax-free return of capital to the extent of such Holder’s adjusted tax basis in such Unit, and then as capital gain. Accordingly, treatment as a corporation could materially reduce a Holder’s after-tax return and thus could result in a substantial reduction of the value of the Units.

The remainder of this discussion assumes that we will be treated as a partnership for U.S. federal income tax purposes.

### **Taxation of U.S. Holders of Units**

Below is a discussion of material U.S. federal income tax considerations applicable to U.S. Holders of the Units.

***Taxation of Holders of Units on Our Profits and Losses.*** As a partnership for U.S. federal income tax purposes, we generally will not be subject to U.S. federal income tax. Instead, each Holder that is subject to U.S. tax will be required to take into account its distributive share, whether or not distributed, of each item of our income, gain, loss, deduction or credit. It is possible that in any year, a Holder’s tax liability arising from the Company could exceed the distributions made by the Company to such Holder. The Company will file a U.S. federal partnership information return reporting its operations for each year and provide a U.S. Internal Revenue Service Schedule K-1 to each Holder. However, Holders may not receive such Schedule prior to when their tax return reporting obligations become due and may need to file for extensions or file based on estimates.

In addition to regular U.S. federal income tax, certain U.S. Holders that are individuals, estates or trusts are subject to a 3.8% tax on all or a portion of their “net investment income,” which may include all or a portion of any interest income we earn that is allocable to such U.S. Holder.

***Allocation of Profits and Losses.*** For each of our fiscal years, each Holder’s allocable share of our items of income, gain, loss, deduction or credit will be determined by our operating agreement (the “operating agreement”), *provided* such allocations either have “substantial economic effect” or are determined to be in accordance with such Holder’s interest in the Company. We believe that for U.S. federal income tax purposes, such allocations will be given effect as being in accordance with such Holder’s interest in the Company and we intend to prepare tax returns based on such allocations. If the allocations provided by our operating agreement were successfully challenged by the IRS, the resulting allocations to a particular Holder for U.S. federal income tax purposes may be less favorable than the allocations set forth in our operating agreement.

Section 706 of the Code provides that items of partnership income and deductions must be allocated between transferors and transferees of Units. We will apply certain assumptions and conventions in an attempt to comply with applicable rules and to report income, gain, loss, deduction and credit to Holders in a manner that reflects such Holders’ beneficial shares of our items. These conventions are designed to more closely align the receipt of cash and the allocation of income between Holders of Units, but these assumptions and conventions may not conform with all

aspects of existing Treasury Regulations. If the IRS successfully challenges our conventions, our items of income, gain, loss, deduction or credit may be reallocated among the Holders of Units to the possible detriment of certain Holders. The Manager is authorized to revise our method of allocation between transferors and transferees (as well as among Holders whose interests otherwise could vary during a taxable period).

**Adjusted Tax Basis of Units.** A Holder's initial tax basis in its Units will generally equal the amount such Holder paid for the Units plus such Holder's allocable share of our liabilities, if any. A Holder's adjusted tax basis will be increased by such Holder's share of items of our income and gain and any increase in such Holder's share of our liabilities. A Holder's adjusted tax basis will be decreased, but not below zero, by distributions from us, such Holder's allocable share of items of our deductions and losses and by any decrease in such Holder's allocable share of our liabilities.

Holders who purchase the Units in separate transactions must combine the basis of those Units and maintain a single adjusted tax basis for all of those Units. Upon a sale or other disposition of less than all of the Units held by such Holder, a portion of that tax basis must be allocated to the Units sold.

**Restrictions on Deductibility of Expenses and Other Losses.** A Holder may deduct its allocable share of our losses (if any) for U.S. federal income tax purposes only to the extent of such Holder's adjusted tax basis in the Units it is treated as holding at the end of the taxable year in which the losses occur. If the recognition of a Holder's allocable share of our losses would reduce its adjusted tax basis for its Units below zero, the recognition of such losses by such Holder would be deferred to subsequent taxable years and will be allowed if and when such Holder has sufficient tax basis so that such losses would not reduce such Holder's adjusted tax basis below zero. In addition, the "at-risk" rules and the limitation on "excess business losses" could limit the deductibility of losses allocable to a Holder. We do not expect to generate income or losses from "passive activities" for purposes of Section 469 of the Code. Therefore, income allocated by us to a Holder may not be offset by the Section 469 passive losses of such Holder and losses allocated to a Holder generally may not be used to offset Section 469 passive income of such Holder.

It is anticipated that our expenses generally will be investment expenses treated as miscellaneous itemized deductions, rather than trade or business expenses, with the result that any individual who is a Holder (either directly or through a Holder that is a partnership or other pass-through entity) will not be permitted to claim a U.S. federal income tax deduction for such expenses for taxable years beginning before January 1, 2026 and thereafter may be limited in his or her ability to claim a U.S. federal income tax deduction for such expenses.

In general, neither we nor any Holder may deduct organizational expenses. We may elect to amortize any organizational expenses ratably over fifteen years, or we may elect to capitalize such expenses. No deduction is allowed for offering expenses, including placement fees.

**Treatment of Distributions.** For U.S. federal income tax purposes, distributions of cash by us generally will not be taxable to a U.S. Holder to the extent of such U.S. Holder's adjusted tax basis in its Units. Any cash distributions in excess of a U.S. Holder's adjusted tax basis generally will be considered to be gain from the sale or exchange of the Units. Under current law, such gain generally will be capital gain and will be long-term capital gain if such U.S. Holder has held such Units for more than one year at the time of such distribution, subject to certain exceptions.

**Disposition of the Units.** A U.S. Holder generally will recognize gain or loss for U.S. federal income tax purposes upon the sale, exchange or other disposition of the Units in an amount equal to the difference, if any, between the amount realized on the sale, exchange or other disposition and such U.S. Holder's adjusted tax basis in such Units. A U.S. Holder's adjusted tax basis will be adjusted for this purpose by its allocable share of our income or loss for the year of such sale or other disposition. Any gain or loss so recognized generally will be capital gain or loss and will be long-term capital gain or loss if such Holder has held such Units for more than one year at the time of such sale, exchange or other disposition. Net long-term capital gain of certain non-corporate U.S. Holders generally is subject to preferential rates of tax. The deductibility of capital losses is subject to limitations.

Holders who purchase Units at different times and intend to sell all or a portion of their Units within a year of their most recent purchase are urged to consult their tax advisors regarding the application of certain "split holding period" rules to them and the treatment of any gain or loss as long-term or short-term capital gain or loss. For example, a selling Holder may use the actual holding period of the portion of its transferred Units, provided such Units are divided



into identifiable groups with ascertainable holding periods, the selling Holder can identify the portion of the Units transferred, and the selling Holder elects to use the identification method for all sales or exchanges of Units.

### **Taxation of Non-U.S. Holders of Units**

Below is a discussion of material U.S. federal income tax considerations applicable to Non-U.S. Holders of the Units and does not purport to address all of the U.S. federal income tax consequences that may be applicable to any particular Non-U.S. Holder. This discussion does not address the tax consequences of purchasing, holding or disposing of the Units to Non-U.S. Holders subject to special rules under U.S. federal income tax laws, such as non-U.S. governments and their controlled entities, non-U.S. pension plans, trusts, former U.S. citizens or residents and individual Non-U.S. Holders that have a “tax home” in the United States. The discussion assumes that a Non-U.S. Holder is not and will not be engaged in a trade or business within the United States, has and will have no U.S. source income apart from its investment in the Units, and, in the case of a Non-U.S. Holder that is an individual, has not been (and will not be) present in the United States for 183 days or more in any taxable year.

***Interest, Dividends, Etc.*** A Non-U.S. Holder is subject to U.S. federal withholding tax at the rate of 30% (or at a lower rate if provided by an applicable tax treaty and the Non-U.S. Holder provides the documentation (generally, IRS Form W-8BEN or W-8BEN-E) required to claim benefits under such tax treaty to the applicable withholding agent) on its distributive share of any U.S. source interest (subject to certain exemptions), U.S. source dividends (including, in certain cases, dividend equivalent amounts) and certain other income received by us.

***Effectively Connected Income.*** In general, a non-U.S. person that invests in an entity taxable as a partnership for U.S. federal income tax purposes that is (directly or through entities treated as disregarded from their owners or as partnerships for U.S. federal income tax purposes) “engaged in trade or business within the United States” is itself considered to be engaged in trade or business within the United States and is subject to U.S. federal income tax (including, possibly, in the case of a non-U.S. corporation, the “branch profits” tax), withholding and income tax return filing requirements with respect to its income effectively connected (or treated as effectively connected) with the U.S. trade or business (“ECI”). A non-U.S. person that fails to file a timely U.S. federal income tax return in respect of its ECI may subsequently be precluded from claiming deductions related to the ECI and may be subject to interest and penalties.

***U.S. Federal Estate Taxes for Non-U.S. Persons.*** Individual Non-U.S. Holders will be subject to U.S. federal estate tax on the value of U.S.-situs property owned at the time of their death. Units that are owned or treated as owned by an individual Non-U.S. Holder at the time of such Non-U.S. Holder’s death may be considered U.S.-situs property for U.S. federal estate tax purposes and may be subject to U.S. federal estate tax unless an applicable estate tax treaty provides otherwise. Prospective individual holders who are non-U.S. persons are urged to consult their tax advisors concerning the potential U.S. federal estate tax consequences with regard to the Units.

### **Administrative Matters**

***Tax Elections.*** The Manager will have the authority to act on our behalf with respect to tax audits and certain other tax matters and to make such elections under the Code and other relevant tax laws as the Manager deems necessary or appropriate. Accordingly, the Manager can change our tax election to have our company taxed as a corporation in its sole and absolute discretion.

***Nominee Reporting.*** Persons who hold Units as nominees for another person are required to furnish to us (i) the name, address and taxpayer identification number of the beneficial owner and the nominee; (ii) whether the beneficial owner is (1) a person that is not a U.S. person, (2) a foreign government, an international organization or any wholly owned agency or instrumentality of either of the foregoing, or (3) a tax exempt entity; (iii) the amount and description of Units held, acquired or transferred for the beneficial owner; and (iv) specific information including the dates of acquisitions and transfers, means of acquisitions and transfers, and acquisition costs for purchases, as well as the amount of net proceeds from sales. Brokers and financial institutions are required to furnish additional information, including whether they are U.S. persons and specific information on Units they acquire, hold or transfer for their own account. A penalty is imposed by the Code for failure to report that information to us. The nominee is required to supply the beneficial owner of the Units with the information furnished to us.

**Taxable Year.** We currently intend to use the calendar year as our taxable year for U.S. federal income tax purposes. Under certain circumstances which we currently believe are unlikely to apply, a taxable year other than the calendar year may be required for such purposes.

**Partnership Audit Rules.** We or the Holders may have potential tax liability in the event of an adjustment imposed as a result of a tax audit by the IRS. An audit resulting in an adjustment to any item of our income, gain, loss, deduction or credit (or adjustment of the allocation of any such items among the Holders), and any tax (including interest and penalties) attributable to such adjustment, may be determined and collected at the Company level in the year of such adjustment. In that event of any adjustment at the Company level, under the operating agreement, the Manager will allocate such tax among the Holders as equitably determined by the Manager, and each Holder may be required to contribute to the Company the amount of such tax allocated to it. As a result, a Holder may bear liability for the adjustment in an amount that exceeds the taxes that the Holder (or its predecessor in interest) would have paid if the adjustment had been applied at the Holder level. Alternatively, the Manager may elect to send an adjusted Schedule K-1 to each person who was a Holder in the taxable year reviewed on audit (the “Push-Out Election”). In that event, each such person (whether a current or former Holder) may elect to pay any resulting tax (including interest and penalties) or, in the case of a person that is itself treated as a partnership or other flow-through vehicle for U.S. federal income tax purposes, such person may further push out the adjustment to the next tier of partners. Non-U.S. Holders may be required to file U.S. tax returns as a result of a Push-Out Election. There is some uncertainty regarding the interpretation and implementation of these partnership audit procedures.

**Treatment of Withholding Taxes.** We will withhold and pay over any U.S. withholding taxes required to be withheld with respect to any Holder and will treat such withholding as a payment to such Holder. Such payment will be treated as a distribution to the extent that the Holder is then entitled to receive a cash distribution. To the extent that such payment exceeds the amount of any cash distribution to which such Holder is then entitled, such Holder shall be required to make prompt payment to us. Similar provisions would apply in the case of taxes withheld from a distribution to us.

**Information Reporting and Backup Withholding.** If we are required to withhold any U.S. tax on distributions made to any Holder of Units, we will pay such withheld amount to the IRS. Amounts withheld generally will be reported annually to the IRS and to the Holders by the applicable withholding agent. Distributions made to a U.S. Holder may be subject to backup withholding, unless such U.S. Holder provides the appropriate documentation certifying that, among other things, its taxpayer identification number (“TIN”) is correct, or otherwise establishes an exemption. Such U.S. Holder should use an IRS Form W-9 for this purpose. If such U.S. Holder does not provide its correct TIN and other required information or an adequate basis for exemption, payments made to such U.S. Holder will be subject to backup withholding (currently, at a rate of 24%) and such U.S. Holder may be subject to a penalty imposed by the IRS. Exempt U.S. Holders (including, among others, all corporations) are not subject to these information reporting and backup withholding requirements, provided that, if required, they properly demonstrate their eligibility for exemption. In order for a Non-U.S. Holder to avoid backup withholding, such Non-U.S. Holder should submit the appropriate version of IRS Form W-8, attesting to such Non-U.S. Holder’s foreign status. The failure of such a Non-U.S. Holder to provide the appropriate IRS Form W-8 may result in backup withholding on some or all of the payments made to such Non-U.S. Holder. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules generally will be allowed as a refund or a credit against a Holder’s U.S. federal income tax liability if the required information is furnished by such Holder on a timely basis to the IRS.

If you do not timely provide us with IRS Form W-8 or IRS Form W-9, as applicable, or such form is not properly completed, we may become subject to U.S. backup withholding taxes in excess of what would have been imposed had we received certifications from all Holders. Such excess U.S. backup withholding taxes may be treated by us as an expense that will be borne by all Holders on a pro rata basis (where we are or may be unable to cost efficiently allocate any such excess withholding tax cost specifically to the Holders that failed to timely provide the proper U.S. tax certifications).

The proper application to us of rules for withholding under Section 1441 of the Code (applicable to certain dividends, interest and similar items) is unclear. Because the documentation we receive may not properly reflect the identities of Holders at any particular time (in light of possible sales of the Units), we may over-withhold or under-withhold with respect to a particular Holder. For example, we may impose withholding, remit that amount to the IRS and thus reduce the amount of a distribution paid to a Non-U.S. Holder. It may be determined, however, that the corresponding amount

of our income was not properly allocable to such Non-U.S. Holder, and the withholding should have been less than the actual withholding. Such Non-U.S. Holder would be entitled to a credit against such Non-U.S. Holder's U.S. tax liability for all withholding, including any such excess withholding, but if the withholding exceeded the Non-U.S. Holder's U.S. tax liability, the Non-U.S. Holder would be required to apply for a refund to obtain the benefit of the excess withholding. Similarly, we may fail to withhold on a distribution, and it may be determined that the corresponding income was properly allocable to a Non-U.S. Holder and withholding should have been imposed. In that event, we may determine to pay the under-withheld amount to the IRS, and we may treat such under-withholding as an expense that will be borne by all partners on a pro rata basis (since we may be unable to allocate any such excess withholding tax cost to the relevant Non-U.S. Holder).

### **Reportable Transactions**

If the U.S. federal tax rules relating to "reportable transactions" are applicable to us (or any of the transactions undertaken by us), Holders that are required to file U.S. federal income tax returns (and, in some cases, certain direct and indirect interest holders of certain Holders) would be required to disclose to the IRS information relating to the Company and our transactions, and to retain certain documents and other records related thereto. Although we do not believe that the purchase of the Units is a reportable transaction, there can be no assurance that the IRS will not take a contrary position. In addition, an interest in the Company could become a reportable transaction for Holders in the future, for example if we generate certain types of losses that exceed prescribed thresholds or if certain other events occur. It is also possible that a transaction undertaken by us will be a reportable transaction for Holders. Substantial penalties may be imposed on taxpayers who fail to comply with these laws.

In addition, other tax laws impose substantial excise taxes and additional reporting requirements and penalties on certain tax-exempt investors (and, in some cases, the managers of tax-exempt investors) that are, directly or in some cases indirectly, parties to certain types of reportable transactions.

### **Certain Reporting Requirements**

Certain U.S. Holders of the Units who either (i) invest (together with any person treated as related under certain U.S. tax rules) more than \$100,000 in the Company during a 12-month period or (ii) hold, directly, indirectly or through certain attribution rules under the Code, at least 10% of the total voting power or total value of the Company, may be required to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation, reporting certain transfers of cash or other property to foreign corporations. U.S. Holders that fail to comply with these reporting requirements may be subject to substantial penalties.

### **FATCA**

Under the Foreign Account Tax Compliance Act provisions of the Code and related U.S. Treasury guidance ("FATCA"), a withholding tax of 30% will be imposed in certain circumstances on (i) payments of certain U.S. source income (including interest and dividends) and gross proceeds from the sale or other disposition after December 31, 2018, of property that can produce U.S. source interest or dividends ("withholdable payments") and (ii) payments made after December 31, 2018 (or, if later, the date on which the final U.S. Treasury regulations that define "foreign passthru payments" are published) by certain foreign financial institutions (such as banks, brokers, investment funds or certain holding companies) ("FFIs") that are "attributable" to withholdable payments ("foreign passthru payments"). It is uncertain at present when payments will be treated as "attributable" to withholdable payments.

Although the application of FATCA to a sale or other disposition of an interest in an entity treated as a partnership for U.S. federal income tax purposes is unclear, it is possible that the gross proceeds from the sale or other disposition of an interest in the Company may be subject to tax under FATCA.

Each Holder should consult its own tax advisor regarding the application of FATCA to an investment in the Company.

## **Certain State, Local and Non-U.S. Tax Considerations**

The foregoing discussion does not address the U.S. state and local or non-U.S. tax consequences of the purchase, ownership and disposition of the Units. Holders may be subject to certain U.S. state and local and non-U.S. taxation, and tax return filing requirements, in the jurisdictions of our activities or investments. Holders may not receive the relevant tax information prior to when their tax return reporting obligations become due and may need to file for extensions. Prospective Holders are urged to consult their own tax advisors regarding U.S. state and local and non-U.S. tax matters.

## **PLAN OF DISTRIBUTIONS**

### **The Offering**

The Company is offering, on a “best efforts” basis, up to 1,250,000 Units, at the initial Transaction Price of \$20.00 per Unit, exclusively to accredited investors. We expect to offer Units in the Offering until we raise the maximum amount being offered. The maximum offering period is 24 months from the date of commencement, but we reserve the right to terminate the Offering for any reason at any time prior to the final closing. Subscriptions for Units will be accepted on a rolling basis and the initial closing of the Offering and will on a date or dates determine by the Company in its discretion. There is no minimum number of Units that need to be sold or dollar amount that needs to be raised as a condition of any closing of the Offering. The Units will be offered primarily directly the Manager’s officers on an ongoing and continuous basis.

Subscriptions for Units will be effective only after acceptance by the Company of Subscription Documents duly executed by the parties. Subscription Documents are attached to this Memorandum as Exhibit A. The Company reserves the right to reject any subscription in whole or in part, notwithstanding a deposit by the Company of subscription proceeds. If the Company rejects a subscription for any reason, investor funds deposited will be promptly refunded.

### **Purchase Price per Unit**

The per Unit purchase price for Units will be equal to \$20.00 for the first 12 months of the Offering. After 12 months, the offering price will be equal to the then-current “Transaction Price.” The Transaction Price generally will be the most recently determined NAV per Unit; however, we may offer Units at a price we believe reflects the NAV per Unit more appropriately than the prior quarter’s NAV per Unit, including by updating the previously disclosed Transaction Price, in cases where we believe there has been a material change (positive or negative) to our NAV per Unit since the end of the prior quarter. Until we commence quarterly valuations, the Transaction Price will be \$20.00.

After the 12-month anniversary of the commencement of the Offering, the Transaction Price will be adjusted every fiscal quarter and, as of January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup> and October 1<sup>st</sup> of each year, will be equal to the sum of our NAV divided by the number of Units outstanding as of the closing of business on the last business day of the prior fiscal quarter. We will supplement this Memorandum each quarter to disclose to prospective investors the Transaction Price for the applicable quarter. The NAV per Unit will be calculated by the Manager at the end of each fiscal quarter based on its valuation policies and procedures. The determination of the NAV will not be based on, or intended to comply with, the fair value standards under GAAP, and the Company’s NAV may not be indicative of the price it would receive for its assets in then current market conditions. The Manager intends to calculate NAV using a process that reflects several components, including (1) estimated values of the Portfolio and investments, including related liabilities, based on (a) market capitalization rates, comparable sales information, interest rates and net operating income and (b) in certain circumstances individual appraisals of the artwork.

### **Closing of Sales**

Closings of the sales of the Units will occur on the last business day of each calendar month (each, a “Closing Date”), with each subscription payment made during the quarter prior to that Closing Date being held in a non-interest-bearing escrow account until the applicable Closing Date. The Company may, in its sole discretion, conduct closings more

frequently than quarterly. The Transaction Price for the Units subject to the applicable subscription agreement will be the Transaction Price in effect as of the date of such subscription agreement.

### **Certificates Will Not be Issued**

We will not issue stock certificates. Instead, the Units will be recorded and maintained on a unitholder register that we maintain or that we engage a transfer agent to maintain. Information regarding restrictions on the transferability of the Units that, under Delaware law, would otherwise have been required to appear on unit certificates will instead be furnished to unitholders upon request and without charge.

### **Advertising, Sales and other Promotional Materials**

In addition to this Memorandum, subject to limitations imposed by applicable securities laws, we expect to use additional advertising, sales and other promotional materials in connection with the Offering. These materials may include information relating to the Offering, the past performance of the Manager, property brochures, articles and publications concerning real estate, or public advertisements and audio-visual materials, in each case only as authorized by us. In addition, the sales material may contain certain quotes from various publications without obtaining the consent of the author or the publication for use of the quoted material in the sales material. Although these materials will not contain information in conflict with the information provided by this Memorandum and will be prepared with a view to presenting a balanced discussion of risk and reward with respect to the Units, these materials will not give a complete understanding of the Offering, us or the Units and are not to be considered part of this Memorandum. The Offering is made only by means of this Memorandum and prospective investors must read and rely on the information provided in this Memorandum in connection with their decision to invest in Units.

### **Compensation We May Pay for the Sale of the Units**

The Company may use broker-dealers (the “Selling Group Members” and, collectively, the “Selling Group”) who are members of FINRA, to sell the Units. Should sales be made by the Selling Group, the Selling Group Members will receive commercially reasonable selling commissions (the “Selling Commissions”), not greater than 7%, on the purchase price of the Units sold by Selling Group Members (the “Broker Sales”). The Selling Group may also receive a non-accountable marketing and due diligence expense allowance of up to 1% of the Broker Sales.

Certain persons or entities may purchase Units at certain discounted price levels, including (i) the Manager, service providers and affiliates, employees, officers, manager and directors of any of the foregoing, (ii) registered principals or representatives of any Seller Dealer, (iii) friends and family of any of the foregoing persons, and (iv) any plan established exclusively for the benefit of such persons or entities. In addition, any Selling Dealer may reduce or waive the amount of compensation payable to the Seller Dealer in its sole discretion, thereby reducing the price level of the Units, with respect to purchases by (i) certain of its clients or (ii) clients of an investment adviser registered under the Investment Advisers Act of 1940, as amended, who have been advised by such adviser on an ongoing basis regarding investments other than in the Company and who are not being charged by such adviser or its affiliates through the payment of commissions or otherwise for the advice rendered by such adviser in connection with the purchase of the Units through a Selling Dealer, may purchase Units at certain discounted price levels. Price levels may be discounted up to net of the applicable Selling Commission. Any reduction in fees will reduce the effective purchase price per Unit to the investor involved but will not alter the net offering proceeds payable to the Company as a result of such sale. All investors will be deemed to have paid the same amount per Unit regardless of whether the investor receives a discount.

### **Who May Invest**

#### ***Investor Suitability***

The offer and sale of the Units is being made only to accredited investors in reliance on the Rule 506(c) exemption from the registration requirements of the Securities Act. As the Company is relying on Rule 506(c), each investor’s accredited investor status will need to be independently verified by the Company. Accordingly, distribution of this Memorandum is strictly limited to prospective purchasers who meet the requirements and make the representations

set forth below. The Company reserves the right to declare any prospective purchaser ineligible to invest based on any information that is known or that may become known concerning the suitability of such prospective purchaser.

An investment in the Company involves significant risk. Accordingly, an investment in the Units is only suitable for persons who are accredited investors and who have substantial financial means, desire a relatively long-term investment, and who will not need immediate liquidity from their investment. Persons who meet these standards and seek to diversify their personal portfolios with a real estate-based investment, preserve capital, obtain the benefits of potential long-term capital appreciation and who are able to hold their investment for a time period consistent with the Company's liquidity plans will most likely benefit from an investment in the Company. Persons who require immediate liquidity or guaranteed income should not consider an investment in the Company.

In consideration of these factors, the Units will be sold only to prospective purchasers who (i) make a minimum initial investment of \$250,000, or 12,500 Units, based on the initial Transaction Price of \$20.00 per Unit (provided that the Company reserves the right to permit smaller investments in its sole discretion), and (ii) represent in writing that they meet the purchaser suitability requirements established by the Company and as may be required under federal law and applicable state law.

To purchase the Units offered hereby, each prospective investor must execute a Subscription Agreement, among other documents, as set forth under the section titled "Subscription Process" below. Pursuant to the Subscription Documents, all investors must represent in writing that they meet all of the following requirements:

- (1) They have received, read and fully understand this Memorandum and all exhibits and attachments hereto. They are basing their decision to invest on information contained in this Memorandum and all exhibits and attachments hereto. Furthermore, they have relied solely on the information contained in such materials and have not relied upon any representations made elsewhere or by any other person.
- (2) They understand that an investment in the Units is speculative and involves substantial risks. They acknowledge that they understand all of the risk factors relating to an investment in the Units, including those risks set forth under the caption "Risk Factors" in this Memorandum.
- (3) Their overall commitment to investments that are not readily marketable is not disproportionate to their individual net worth and any investment in the Units will not cause such overall commitment to become excessive.
- (4) They have adequate means of providing for their financial requirements and have no need for liquidity from this investment.
- (5) They can bear and are willing to accept the economic risk of losing their entire investment in the Units.
- (6) They are acquiring the Units for their own account and for investment purposes only and have no present intention, agreement or arrangement for the distribution, transfer, assignment, resale, or subdivision of the Units.
- (7) They have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of an investment in the Units.
- (8) They are an "Accredited Investor" as defined under Regulation D promulgated under the Securities Act.
- (9) Accordingly, all prospective investors will be required to make representations that will enable the Company to determine whether they are Accredited Investors. In addition to certain institutional investors, an investor who meets one of the following tests will qualify as an Accredited Investor:
  - (a) The investor is a natural person who had individual income in excess of \$200,000 in each of the two most recent years, or joint income with that person's spouse in excess of \$300,000 in

each of these years, and has an expectation of reaching the same income level in the current year; or

- (b) The investor is a natural person whose individual net worth, or joint net worth with that person's spouse exceeds \$1,000,000 at the time of purchase of the Units (net worth is defined as the difference between total assets and total liabilities, excluding the value of the investor's primary residence, home furnishings and personal automobiles); or
- (c) The investor is an organization described under Section 501(c)(3) of the Internal Revenue Code, a corporation, a Massachusetts or similar business trust or a partnership, not formed for the specific purpose of acquiring the Units, with total assets in excess of \$5,000,000; or
- (d) The investor is an entity in which all of the equity owners are Accredited Investors as defined above; or
- (e) The investor is a trust with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Units, whose purchase is directed by a "Sophisticated Person" as defined in Rule 506(b)(2)(ii) of Regulation D under the Securities Act (note that an investment in the Units is not suitable for charitable remainder trusts since the Company will generate unrelated business taxable income); or
- (f) The investor is an employee benefit plan within the meaning of ERISA in which the investment decision is made by a plan fiduciary (as defined in Section 3(21) of ERISA) which is either a bank, a savings and loan association, an insurance company or a registered investment adviser; or the employee benefit plan has total assets in excess of \$5,000,000; or is a self-directed plan (including an IRA) in which investment decisions are made solely by persons who are Accredited Investors. If the potential investor is unable or unwilling to make the foregoing representations, they may not purchase the Units.

#### ***Discretion in Acceptance of Subscriptions***

The investor suitability requirements stated above represent minimum suitability standards, as established by law and the Company. The investor's satisfaction of such requirements does not necessarily mean the Units are a suitable investment for the investor or that a subscription for the Units will be accepted by the Company. Furthermore, the Company reserves the right to modify the suitability requirements at any time. Such modification may increase the suitability requirements for certain investors.

The written representations made by potential purchasers of the Units will be reviewed by the Company to determine the suitability of a prospective investor. The Company will have the right, in its sole discretion, to refuse to accept a subscription for the Units for any reason, including a determination that the investor does not meet suitability requirements, or such purchase would constitute an unsuitable investment for the investor.

In the case of sales to fiduciary accounts, these suitability standards must be met by the fiduciary account, by the person who directly or indirectly supplied the funds for the purchase of the Units or by the beneficiary of the account. These suitability standards are intended to help ensure that, given the Company's investment objectives and the lack of liquidity of the Units, an investment is appropriate for potential purchasers.

In making the evaluation as to whether an investment in the Units is suitable for a potential investor, the Company will review the information provided in order to determine that the investor:

- (1) Can reasonably benefit from an investment in the Units based on investment objectives and portfolio structure;
- (2) Is able to bear the economic risk of an investment in the Units based on the current financial situation; and

- (3) Has an apparent understanding of: (a) the particular features of an investment in the Units; (b) the fundamental risks of an investment in the Units; (c) the risk of loss of investment; (d) the lack of liquidity in the Units; (e) the background and qualifications of the Manager; and (f) the tax consequences of an investment in the Units.

### ***Minimum Investment***

In addition to meeting the applicable financial suitability requirements described above, potential investors must make a minimum investment for initial purchases of \$250,000, or 12,500 Units (based on the initial Transaction Price per Unit), provided that the Company, in its sole discretion, may accept subscriptions for a lesser amount. In order to satisfy the minimum purchase requirement for retirement plans, unless otherwise prohibited by state law, a husband and wife may jointly contribute funds from their separate IRAs. The investor should note that an investment in the Units will not, in itself, create a retirement plan and that in order to create a retirement plan the investor must comply with provisions of the Code.

### ***Subscription Process***

The Company will sell the Units when subscriptions to purchase Units are received and accepted by the Company. If investors meet the Suitability Standards, the investor may subscribe for Units by completing and signing the Subscription Documents (including the Subscription Agreement and Subscriber Suitability Questionnaire), according to its instructions for a specific number of Units and delivering to the Company payment for the full purchase price of such Units. The investor's payment should be made payable to "NOYACK Fine Art I, LLC." The investor should exercise care to ensure that the Subscription Documents are filled out correctly and completely. By executing the Subscription Agreement, each investor will attest that it:

- (1) Has received and read this Memorandum;
- (2) Met the suitability standards described in this Memorandum;
- (3) Is purchasing the Units for its own account;
- (4) Has accurately and completely completed the Subscriber Suitability Questionnaire;
- (5) Acknowledges that there is no public market for the Units;
- (6) Understands that, if it is investing on behalf of any entity which is tax-exempt under the Code (other than certain plans qualified under ERISA), an investment in the Units is likely to give rise to unrelated business taxable income, or UBTI, which is likely to result in the entity being subject to federal income tax; and
- (7) Is in compliance with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 and is not on any governmental authority watch list.

The Company includes these representations in the Subscription Documents in order to prevent persons who do not meet the Suitability Standards or other investment qualifications from subscribing to the Units. Subscriptions will be effective only upon the Company's acceptance, and the Company reserves the right to reject any subscription in whole or in part.

The Company intends to accept or reject subscriptions within 15 days after receipt. If the investor's Subscription Agreement is rejected, the investor's funds, without interest, will be returned within ten business days after the date of such rejection. If the investor's subscription is accepted, the Company will send a confirmation of the investor's purchase.



## **ADDITIONAL INFORMATION**

The Manager officers are available to meet or speak with any prospective investor to answer questions with respect to the Offering, the transactions contemplated herein, or any document or information furnished or referenced herein. In addition, the Manager will furnish, upon request, any additional information that it possesses or can obtain without unreasonable effort or expense necessary to verify or expand upon the information contained herein. The Manager's telephone number is (813) 438-6452.