LAWLINE CLE: CORPORATE STRUCTURING AND FUNDRAISING FOR SINGLE PURPOSE VEHICLES

WE ARE RIVELES WAHAB LLP

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Program Description

What do securities syndications and fundraising for real estate, restaurant ventures, film ventures, theme parks and a variety other project finance opportunities have in common?

The answer is simply the often overlooked and misunderstood "SPV." Essentially, the SPV or "Single Purpose Vehicle" is an entity that is structured to take in investor monies towards funding a singular dedicated project or opportunity. Indeed, a great majority of real estate finance projects, and a variety of other project finance opportunities essential to the U.S. economy, are at least partly funded by SPVs. Furthermore, with the advent of crowdfunding and "general solicitation" under the JOBS Act, the SPV's role in financing a variety of projects and operating companies cannot be overstated.

This program is focused on structuring SPVs to undertake capital raising by and through the sale of private securities, across a variety of industry verticals, including but not limited to real estate. In addition, the program will discuss private offerings in general and the typical terms and conditions that apply to such offerings in and around the SPV universe. Unlike the many primer discussions of capital raising and securities focused on corporate startups, this program will focus on the fundamentals of structuring and offering of securities in an entity that is dedicated to a singular project (or singular outcome).

Hence, considerations that are not typically present in the capitalization of going concerns (e.g., Google), such as waterfalls, management performance fees, asset management fees, investor performance metrics and compensation structures, and a variety of other terms and issues unique to this context will be covered in detail.

This course, presented by Kaiser Wahab, partner in the law firm of Riveles Wahab LLP, which is dedicated to private securities offerings in the hedge fund, private equity, and early-stage/venture-capital spaces, is designed to arm the practitioner with the vocabulary, skill set, and overall understanding of what makes these companies unique and powerful in the capital raising landscape (especially in contrast to "price rounds" for going business concerns, such as a so-called "Series A").

Learning Objectives:

- Learn how to identify those instances where the SPV approach or structure is warranted and/or preferred.
- Understand usage scenarios for SPVs that are not immediately apparent, including as a "feeder" for an ongoing business concern or a separately syndicated opportunity
- Understand best practices as to entity structure and SPVs, including entity selection, typical entity charter documents, agreements, etc.
- Understand the role of various players in the SPV transaction pipeline, including but not limited to promoters, managers, investors, placement agents, etc.
- Understand common compensation and return structures from both the investor and promoter/manager perspective, including but not limited to waterfalls, performance fees, asset management fees, and variations thereon, including catch ups, clawbacks, etc.
- Understand how equity classes can be used in SPVs
- Understanding the interplay of the private placement of securities, under applicable private securities regulations, with SPVs, including but not limited to Regulation D-Rule 506C, Regulation CF, etc.

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Goals of Program

- The goal of this program is to familiarize the practitioner with the typical financial structures, regulatory compliance, and drafting considerations that apply to a very large swath of finance and funding transactions for a variety of cash hungry projects, ventures, etc.
- Most practitioners that are unfamiliar with the differences between venture finance, project finance, fund finance, etc. often find themselves faced with client scenarios that deceptively lend themselves to particular structures.
- Many of these scenarios call for asset segregation, investor segregation, or “single-purpose” scenarios that are probably best suited for an SPV / “Project Finance” approach.
- However, unfortunately, many non-securities or non-finance oriented practitioners are only really familiar on a high level with the notion of “venture finance”, which is the type of finance more typically oriented towards startups (e.g., the early days of Facebook).

Definition of SPV

There is a something of a porous, multi contextual definition for SPV's depending on the audience (e.g., a domestic real estate developer, or a cross border energy form developer). Nonetheless, the below definition attempts to capture common elements of SPV's and SPV transactions:

A limited liability business entity organized specifically to facilitate the operation, exploitation, and financing of the development or exploitation of a fixed set of rights, projects, resources, or other assets where the bulk of the investor recoupment is to come primarily from the exploitation of the assets being financed and their revenues.

Venture Finance vs. Project Finance

	Venture Finance	Project Finance
Financing Stage	Startup or "early" stage — often pre revenue and sometimes even before the proof of concept phase or "minimal viable product" phase.	Startup or at the threshold of commencing the project (e.g., constructing a new hotel). Usually, these projects have less than 3 years operational history, after which they will more likely be seeking expansion capital outside of a project financing framework.
Risk/Return Ratio	Venture finance is typically high risk/high reward driven with potentially big payoffs for those investments that "succeed", often with a very low overall success rate among target companies. Also, potential return-on-investment but usually on an "exit" (i.e., sale of company, merger, IPO, which is a very long range prospect).	Equity and debt investors often enjoy a lower risk, and return profile since repayment of invested or lent capital is a function of operational cash flows of the SPV (i.e., as the project generates money, not the long run of a potential exit). However, the waterfall for distributions and repayments often are slanted to prefer immediate recovery of capital and returns to investors, often employing a "hurdle" before the project manager/sponsors can participate in the ongoing operational profits of the SPV.
Assets	There may a multiplicity of assets and products, often none of which are specifically collaterialized.	Often, an SPV is thought of "asset backed", meaning that the SPV contains the prime asset and/or rights that drive the project (e.g., property rights, contract rights to a resource or item, equipment, etc.)
Investment Modes	Equity investment in venture facing companies is often accomplished by the sale of stakes in the venture company via multiple rounds employing multiple classes of equity (units, or shares, of company stock). Such equity stakes have various rights such as voting to influence decision-making, among others. The company may authorize multiple classes of equity ownership (common vs. preferred stock) each with different rights or preferences such as voting, liquidation* or anti-dilution.	Project finance usually involves a mixture of equity and debt financing that is commenced when the "sponsor" or manager invests money in the SPV, thereby acquiring certain economic and managerial rights. Thereafter, often investor units are sold in an amount necessary to raise the overall budget to execute the project. Such units carry preferred return rights to the investors, but without some of the common features of venture securities (e.g., anti-dilution protection, or pro rata rights).

Typical SPV Advantages over a Going Venture

Investor Risk Calibration	SPV economics (e.g., cash distributions to investor equity and debt) tend to favor priority return to investors over sponsors and managers, often combining 1st position status in the waterfall with a "hurdle", resulting in very deferred condensation for the sponsors and managers.
Asset Protection	SPV's can house the core asset and provide limited liability protection from creditors and other adverse parties.
Off Balance Sheet Treatment	SPV's can be used in a variety of settings as an 'stand alone arm's length company' from the going business venture, the SPV assets may be segregated from the with the going business venture's on-balance sheet assets and are 'bankruptcy remote' in the event of bankruptcy or a default.
Asset Segregation	An SPV allows the ownership of a single asset often by multiple parties and allows for ease of transfer between parties.
Investor Aggregation	SPV's often "house" a group of investors into a singular entity/ "supra-investor" into a target operating company to simplify investor relations and accounting.
Mission Clarity	It is easy to constrain the SPV mission or prohibit unauthorized transactions within the SPV documentation (e.g., operating agreement).

Some Practical SPV Deployment Scenarios

Scenario	Structure
Commercial Real Estate Strip to be acquired, renovated and sold	SPV usually with equity sold as common units with significant investor preferences, including a preferred return hurdle. Also debt financing from banks for construction or mezzanine debt is common.
Restaurant Venture needs initial capitalization and intend s to bootstrap thereafter	SPV usually with equity sold as common units with significant investor preferences, including a preferred return hurdle.
Real Estate Venture wants to bring in tranche of investors under a separate “feeder” entity	SPV usually with equity sold as common units with significant investor preferences, including a preferred return hurdle. Also debt financing from banks for construction or mezzanine debt is common.
Feature Motion Picture Project requires capitalization to shoot and go to market	SPV usually with equity sold as common units with significant investor preferences, including a preferred return hurdle. Also debt financing from banks for construction or mezzanine debt is common.
Battery and Flywheel Energy Farm Acquisition and Operation	SPV usually with equity sold as common units with significant investor preferences, including a preferred return hurdle. Also debt financing from banks for construction or mezzanine debt is common.
Not for Profit Subsidiary or JV	Often a single purpose LLC that is segregated from the NFP, with charter docs that circumscribe its function to a particular good/service/mission.
Tech Startup with Proprietary Medical Tech Platform	Often a DE C-Corp that offers multiple rounds of equity ranging from Series AA Preferred Stock to Series XYZ Preferred Stock.

SPV Cast of Characters

Sponsors--The project sponsors are those companies, or individuals who promote a project, and bring together the various parties and obtain the necessary rights, title, and permits necessary to get the project under way (i.e., put the pieces together, ID the opportunity, and broadcast the opportunity). Often they are intimately involved in the foundational aspects of the project overall. This might be the construction, operation and maintenance, purchase of the services output from the project or ownership of land related to the project. And often they are actually investors themselves, purchasing foundational stakes of equity in the SPV entity; sometimes they may provide debt facilities or guarantees to help the SPV to achieve financing from third party sources. Sponsor support and consideration vary from project to project and vertical to vertical. A common scenario is for a sponsor of a real estate project to receive a condo unit with special entitlements on the enjoyment and exploitation of such units. Also sponsors often serve the purpose of demonstrating management's commitments to the success of the project and to show that the management has "skin in the game".

Managers--These are the parties that are either engaged by or are the sponsors themselves (or are agents of the sponsors) to manage, operate, and generally maintain the SPV. They are tasked with the execution of the SPV's business model (e.g., acquisition of assets, development of assets, commercial exploitation of assets), as well as the financial operations of the SPV. With regard to the financial operations of the SPV, these include, among other things, the distributions of net operational cash flow to investors and other stakeholder parties. Usually this also entails financial reporting to provide information on a routine basis to these third-party stakeholders.

SPV Cast of Characters

Third-Party Equity Investors-- These are the third party equity and debt investors who invest alongside the sponsors. However, unlike sponsors, these investors have a different risk and reward profile, since they are not intimately involved with the project and have not spearheaded the project like a sponsor has. These investors are typically "passive" and do not participate in company management, which is usually effectuated by virtue of the partnership agreement in place (e.g., typically a limited partnership agreement or an operating agreement). It is not at all uncommon for third-party development or equity funds to actually be investors (this is especially true and real estate development).

Banks/Lenders-- Given the scale of many SPV projects (particularly in the real estate development space), many projects require bank lending facilities in order to complete the project (often in addition to and on top of investor equity). In addition, lenders may actually come in multiples depending on the type of the project (e.g., a construction lender can provide construction funds for a real estate project, while the mezzanine lender may come in and provide completion funds for the very same project). In addition, banks will often look to the sponsors for comfort letters or guarantees against the lending facility. Given that the lenders are treating the SPV as a borrower, they often do not become members of the SPV and/or participate in the waterfall.

SPV Capitalization Structure

Capitalization Structure	Venture Finance	Project Finance
Equity Class Structure	Often a series of stock classes with specific rights that are often ordinal in terms of economic rights (Common, preferred, Series AA, Series A, Series A, etc.)	Often much "flatter" than a venture facing company, since there are usually only one or two classes of equity that are setup at the outset when the project budget is identified. Often there is merely common units or Class A and B structure.
Type of Equity	Often Shares, Units (Corp and LLC)	Often Units or LP interests (LLC and LP)
Payout on Equity	A function of the specific rights set forth in the designation of shares, as each such class is added to the company certificate of incorporation.	Generally speaking, the waterfall of an SPV, allocates all net profits from the operation of the project against a "waterfall" that very much favors investor recoupment, then investor return, and then a split between sponsors/managers/investors.
Number of Rounds	Multiple, often as needed to finance operations or expansion of operations.	Often, there is only one up front capitalization round designed to capitalize the articulated project budget. While the SPV management often reserves the right to add future rounds/classes.

Prototypical SPV Securitization Practices

Common Securitization Practice	Description
Reg D Offerings	Often, units or debt instruments offered by SPV's in order to finance operations to third-party private investors are conducted under securities Regulation D (17 C.F.R. §230.501 et seq.). These are private securities offerings, unlike registered securities offerings (e.g., an IPO) that require several core best practices to be fulfilled in order to avail the issuer of the safe harbor provided under Regulation D. Unfortunately, the operation of Regulation D is beyond the scope of this presentation. However, below are some common features of such offerings.
PPM or Disclosure Doc	Often, SPV's issue a Private Placement Memorandum (PPM), which is an information disclosure document designed to educate the investor of the SPV's mission, its management, its business model, and critically the risk factors that can undermine the SPV's financial performance or success.
Management/Investor Bifurcation	In addition, as part of the overall offering structure, there is either a limited partnership agreement or operating agreement (depending on the form of the SPV entity, e.g., an LLC or LP) that stipulates a bifurcation between the investor class in the management class. The management class is bestowed with significant authority as to the management and operations of the SPV, while the investors are rendered essentially "passive".
Investor Representations	As part of a Regulation D offering, there are often subscription agreement issued by the SPV for the purchase of equity units and/or debt instruments. Those subscription agreements often carry representations and warranties on the part of the investor/purchaser indicating that they understand that this is an unregistered securities offering, and that they are likely accredited investors in order to satisfy the Regulation D safe harbor requirements.
Number of Rounds	SPV's tend to capitalize in one singular round, unlike a venture finance company. In other words, capitalization is typically done at the outset of the project or at the early stages of the project's execution, with an eye towards acquiring the total capitalization budget necessary for successful execution. Private equity and private investment dollars can be matched with bank dollars as well in order to complete the total funding portrait (as is commonly the case with real estate SPV's).

Prototypical SPV Borrowing Practices

SPV borrowing in order to finance a project generally has the below definitional characteristics (below you will see that the repayment of the subject loan(s) is, essentially, limited to the assets of the project being financed):

(a) loan is made to a SPV whose core assets comprise the subject project and the SPV debt liabilities generally don't requite a guaranty or recourse from the SPV members or sponsors except as stated below;

(b) lender recourse is generally limited to the following:

(i) recourse to the SPV itself for gross cash flow or net cash flow from the subject project and/or;

(ii) recourse to the SPV itself for the purpose only enforcing any security interests placed on the underlying assets;

(iii) the above recourse is generally limited to the value of the assets or cash flow streams and cannot force the winding up or receivership of the SPV (iii) recourse to the members or sponsors of the SPV only lies in the event of an express guaranty or undertaking to the same effect (often sponsors undertake such guarantees in order to finance a significant portion of the overall project).

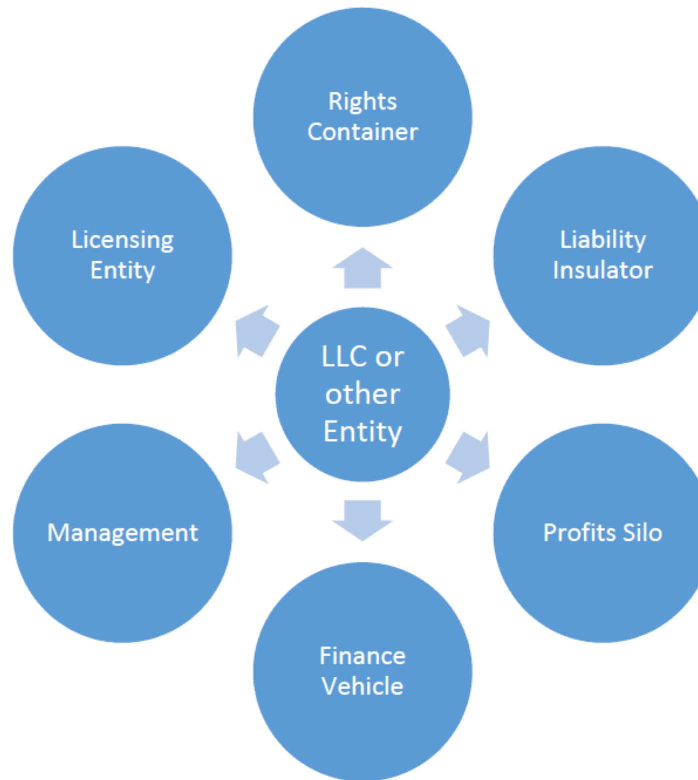
(c) the lenders will often characterize the loans as project finance oriented in writing.

Examples of borrowing in the SPV universe include construction loans, mezzanine financing, project completion funds, etc.

Prototypical SPV Borrowing Practices

COMPANY:	**The Company was organized on September ____, 2016, for the purpose of acquiring and undertaking the renovation, management, and leasing of the Property to improve the Property's operational capabilities, rental rolls, and returns.**
TERMS OF THE OFFERING:	We are raising a maximum of four hundred and fifty thousand dollars ($450,000) by selling four hundred and fifty thousand (450,000) Units. The Units are offered at one dollar ($1) per Unit. The minimum purchase is twenty-five thousand (25,000) Units for twenty-five thousand dollars at ($1) per Unit.
INVESTOR QUALIFICATIONS:	We are offering the Units primarily to accredited investors (as defined by Regulation D under the Securities Act of 1933, as amended). We will require each investor to represent in the Subscription Agreement that the investor is able to evaluate the merits of this investment, and that the investor is accredited.
USE OF PROCEEDS:	The proceeds of this offering will be used to pay offering expenses, expenses incurred by the Company, and to fund the acquisition, rehabilitation, and ultimately operation of the Property.
MANAGEMENT OF THE COMPANY:	The Company is managed by the Manager. The Manager is charged with the day-to-day oversight, administrative management, and deployment of capital into the Property. The Manager is also tasked with providing reports and information to the Class A Members of the Company in connection with the ongoing operations of the Property, as well as representing the Class A Members' interests and in connection with the Company's investment into the Property. Finally, the Manager is tasked with leveraging its financial, project management, and real estate development experience to assure that rehabilitation and operation of the Property adhere to established budgetary constraints, operational guidelines, and other project milestones. The Manager is not registered as an investment adviser with either the state or federal regulatory authorities.
VOTING RIGHTS OF MEMBERS:	Except in the limited circumstances described in the Operating Agreement, the purchasers of Class A Units in in this offering will have limited voting rights and will not take part in, participate in, or have any control over, the business of the Company. All decisions regarding management will be made by the Manager. Accordingly, the members will be substantially dependent upon the Manager. The Class A Units shall not have the right to vote on most Company operational and management concerns.

Functions of the SPV Entity



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Functions of the SPV Entity

- **Selling Entity**
  - The entity will enter into contracts with purchasers, and other entities and the monies that derive therefrom will flow into the entity and then to its stakeholders
- **Finance Vehicle**
  - The entity will be structures, usu through a unit offering to take in investor capital and the investors will be funneled into a separate non-management class
- **Management**
  - The Entity will be empowered to bestow upon a set of managers or managing members virtually carte blanche authority to conduct operations
- **Profits Silo**
  - Profits are funneled through and controlled by the waterfall and profits and loss allocations set forth in the entity papers (usu. operating agreement)
- **Liability Insulator**
  - All contracts (and really nearly all contracts) will be entered into by the entity, such that should lawsuits arise, such lawsuits should technically be directed at the entity and not the individuals that run/own it
- **Rights Container**
  - The entity will hold all rights to the project (e.g. deeds, leases, IP, etc.)

Business Entity Type

- SPVs are generally organized as either Limited Liability Companies (LLCs) or Limited Partnerships (LPs).
- Limited Liability Companies:
  - Are governed by an Operating Agreement.
  - Have “members” who hold “membership interests” (sometimes organized as “units”).
  - Are either member-managed or manager-managed.
- Limited Partnerships:
  - Are governed by a Limited Partnership Agreement.
  - Have “general partner(s)” and “limited partner(s)”.
  - Are managed solely by the general partner(s).
- Corporations are often not used, because:
  - Less Flexibility: Because corporation governance is largely governed by statute, they are not as flexible in structuring management and distribution of profits as LLCs or LPs.
  - Fewer Tax Advantages: LLCs and LPs allow investors to take deductions for losses on their personal tax returns and income is taxed only once. A corporation’s income is taxed twice – once when received by the corporation and again when distributed to shareholders on their personal returns.
- Since LLCs are typically favored and more familiar to most practitioners, we will focus our discussion on LLC structuring.

Operating Agreement Anatomy

An SPV Operating Agreement's Common Provisions:

- Ownership Interests
- Purpose
- Allocation and Distribution of Profits and Losses
- Managers
- Admission of New Members; Transfer of Membership
- Dissolution of the Company

Operating Agreement Anatomy

Ownership Interests

- An Operating Agreement must set forth the actual ownership stakes that the members have in the LLC.
- This is commonly achieved by a "Schedule" in the rear of the Operating Agreement that breaks down the members, the initial amount of capital they invested into the LLC, and the percentage interest each member actually owns in the LLC.

Purpose

- Usually, an Operating Agreement states that the LLC can engage in any "lawful" purpose.
- However, SPVs will generally limit the activities in which the LLC is permitted to engage.

Allocation and Distributions of Profits and Losses

- Unlike a corporation, there can be a disconnect between the equity a member has in the LLC and the amount of profits or losses that member is entitled to receive.
- This allows for various creative structures to incentivize and facilitate a variety of deals.
- May also specify timing of member cash distributions as well as distribution minimum amounts.

Operating Agreement Anatomy

Managers

- LLCs can have a dedicated management team, whose powers can be proscribed in the Operating Agreement. Non-managing members (investors) have a passive role in the LLC.
- Operating Agreement sets forth the Manager selection and removal procedure, as well as procedures that govern their management practices.

Admission of New Members; Transfer of Membership

- Commonly contains a “right of first refusal”, which grants the LLC and other members the opportunity to match any offer obtained from any third party by a member wishing to sell his or her Membership Interest.
- Can address so-called “involuntary transfer” situations such as death, bankruptcy, or disability as triggers that require a Member to sell, or the LLC to buy, a Membership Interest. A procedure and formula for determining valuation and buyout should be laid out.

Dissolution of the LLC

- Sets forth the scenarios in which the LLC can or should be dissolved and the timing and mechanism to do so. Typically the consent of the Manager(s) and a majority of the Members or by application to a court for a judicial decree.

Please see Exhibit A of your course materials for an example of a ***simple*** SPV Operating Agreement

Who Typically Runs an SPV?

- Typically, SPV's employ a management structure, comprised of either individual managers, a third-party management company, and/or a board of managers comprised of individuals and/or third-party companies. Commonly, SPV's provide very broad grant of authority to such managers in order to manage, operate, and effectuate the SPV's mission. In addition, the equity investors and lenders are offered slim to know opportunities to influence outcomes in the company.
- That said, however there are commonly significant limiting provisions in such authority, not the least of which is the scope and purpose of the SPV being circumscribed to a particular project (e.g., a particular real estate parcel, a particular energy form, a particular restaurant, etc.). The below provides an exemplar suite of provisions illustrating this kind of management structure.

Operating Agreement Management Provisions

1. Management of the Company by Board of Managers. Subject to the provisions of this Agreement relating to actions required to be approved by any Members, the business, property and affairs of the Company shall be managed and all powers of the Company shall be exercised by or under the direction of the Board of Managers.

2. Powers of Managers.

a. Each Manager shall participate in the direction, management and control of the business of the Company to the best of such Manager's ability. The Managers shall in all cases act as a group and shall have no authority to act individually, unless such authority is expressly delegated to one or more Managers or a committee thereof by the Managers acting as a group. The Board of Managers may appoint one (1) or more officers and, subject to this Agreement, may delegate to those officers the authority to manage the day-to-day operations of the Company. Without limiting the generality of Section 1, but subject to Section 2(b) and to the express limitations set forth elsewhere in this Agreement, the Board of Managers shall have all necessary powers to manage and carry out the purposes, business, property, and affairs of the Company, including, without limitation, the power to exercise on behalf and in the name of the Company all of the powers described in Act.

Management Structure

b. <u>Limitations on Power of Managers</u>. Notwithstanding any other provisions of this Agreement, the Board of Managers shall not have authority hereunder to cause the Company to engage in the following transactions without first obtaining the affirmative vote or written consent of a Majority Interest of the Members:

a. The sale, exchange or other disposition of all, or substantially all, of the Company's assets occurring as part of a single transaction or plan, or in multiple transactions over a twelve (12) month period;

b. The merger or consolidation of the Company with another Person wherein the holders of Units do not hold at least a majority of the voting power of the entity surviving such merger;

c. Any act which would make it impossible to carry on the ordinary business of the Company;

d. Effect a liquidation, dissolution or winding up of the Company;

e. Any amendment of the Certificate or this Agreement; and

f. Any other transaction described in this Agreement as requiring the vote, consent, or approval of a Majority Interest.

Distribution Waterfalls (or how do I get my $$)?

PRIME ASSETS

LENDERS

LENDERS

LLC/LP SPV

EQUITY INVESTORS

INFLOWS AND OUTFLOWS OF INVESTOR CAPITAL AND OPERATIONAL/SALES REVENUE RESPECTIVELY

INFLOWS AND OUTFLOWS OF INVESTOR CAPITAL AND SPV DISTRIBUTIONS

Distribution Waterfalls (or how do I get my $$)?

The following illustrates a prototypical waterfall provision (there are many, many, many, many variations on this theme).

11. Distributions. The Company share of the Net Profits of the Project shall be distributed as follows:

a. Company Net Profits will first be allocated one hundred percent (100%) to the Members, until such time as one hundred percent (100%) of the Members' initial contribution to the Company has been paid to the Members;

b. Then monies will be allocated one hundred percent (100%) to the Members, until such time as an additional twenty percent (20%) of the Members' initial contribution to the Company has been paid to the Members; and

c. Then monies will be fifty percent (50%) to the Members and fifty percent (50%) to the Managing Member.

Distribution Waterfalls (or how do I get my $$)?

The following illustrates a prototypical waterfall structure (there are many, many, many, many variations on this theme).

Return of Investors' Investment

100% of profits are distributed to the investors *pro rata*
until each has received an amount equal to 100% of their investment

Investor Preference

Often called a "hurdle", meaning the managers don't get to participate in cash flows until such time as this stage is fulfilled. Waterfalls can have multiple hurdles.

100% of profits are distributed to the investors *pro rata* until each has received an amount equal to a certain percentage of their investment (~10-30%)

Investor/Manager Split

At this stage management gets to participate in the cash flows of the SPV. This stage often has nicknames depending on the vertical within which the SPV exits (e.g., RE, energy, etc.) For example, in RE it's often called a "promote".

Profits are then distributed to both the investors and the managers in a
set percentage (often ~50/50 or 40/60) until the SPV is wound up and dissolved

Management Compensation Structures

The final stage in the distribution waterfall above illustrates the typical point at which a manager/sponsor can participate in the net cash revenues of the SPV. While the above slide provides a basic “plain-vanilla” distribution waterfall model, there are numerous modifications and permutations of the same. Two common “wrinkles” that are thrown into distribution waterfalls are discussed below as an example.

Catch-up — distribution waterfalls can carry provisions that enable the manager/sponsor to receive the bulk of cash distributions until the agreed upon split of profits has been achieved. This might be interjected after a hurdle or preferred return, in order to “catch up” the manager to an agreed-upon participation split, since up to that point potentially all of the cash distributions were made to the investors alone.

Clawback — on the flipside, distribution waterfalls can carry provisions that provide the investors (i.e., limited partners or non-managing members) the right to reclaim a portion of distributions previously made to the manager/sponsor, if it becomes clear that towards the end of the project life in the SPV the manager/sponsor has received more than the pre-agreed profit split. Clawbacks can also be employed if adverse situations arise based on the manager/sponsor’s neglect or failure to perform that result in the investors having to return monies that were previously distributed to them through the waterfall (i.e., an adverse judgment related to the operations of the SPV).

Exemplar SPV Term Sheet

COMPANY:	**The Company was organized on September ____, 2016, for the purpose of acquiring and undertaking the renovation, management, and leasing of the Property to improve the Property's operational capabilities, rental rolls, and returns.**
TERMS OF THE OFFERING:	We are raising a maximum of four hundred and fifty thousand dollars ($450,000) by selling four hundred and fifty thousand (450,000) Units. The Units are offered at one dollar ($1) per Unit. The minimum purchase is twenty-five thousand (25,000) Units for twenty-five thousand dollars at ($1) per Unit.
INVESTOR QUALIFICATIONS:	We are offering the Units primarily to accredited investors (as defined by Regulation D under the Securities Act of 1933, as amended). We will require each investor to represent in the Subscription Agreement that the investor is able to evaluate the merits of this investment, and that the investor is accredited.
USE OF PROCEEDS:	The proceeds of this offering will be used to pay offering expenses, expenses incurred by the Company, and to fund the acquisition, rehabilitation, and ultimately operation of the Property.
MANAGEMENT OF THE COMPANY:	The Company is managed by the Manager. The Manager is charged with the day-to-day oversight, administrative management, and deployment of capital into the Property. The Manager is also tasked with providing reports and information to the Class A Members of the Company in connection with the ongoing operations of the Property, as well as representing the Class A Members' interests and in connection with the Company's investment into the Property. Finally, the Manager is tasked with leveraging its financial, project management, and real estate development experience to assure that rehabilitation and operation of the Property adhere to established budgetary constraints, operational guidelines, and other project milestones. The Manager is not registered as an investment adviser with either the state or federal regulatory authorities.
VOTING RIGHTS OF MEMBERS:	Except in the limited circumstances described in the Operating Agreement, the purchasers of Class A Units in in this offering will have limited voting rights and will not take part in, participate in, or have any control over, the business of the Company. All decisions regarding management will be made by the Manager. Accordingly, the members will be substantially dependent upon the Manager. The Class A Units shall not have the right to vote on most Company operational and management concerns.

Exemplar SPV Term Sheet

DISTRIBUTIONS AND PREFERRED RETURN:	**The Company shall distribute Company net profits to the Class A Members, generally, based on two profit generating events: 1) rental income generated from the operation of the Property; and 2) non-ordinary course transactions, generally, including but not limited to the liquidation of the Property and/or refinancing of the Property. Such distributions shall be made, after funds shall be provided to the Company for purposes of a reserve operational fund towards ongoing Company operations (the Company reserves the right to increase such reserve in its good faith judgment from time to time.** **A.** ***With regard to funds generated by the rental operations of the Property ("Available Rental Cash"), distributions shall be made in the following order of priority:*** **(i) First, to the Class A Members in an amount equal to their respective Preferred Returns, in proportion to their respective Preferred Returns, until all Preferred Returns have been paid in full for that calendar year.** **(ii) Then, fifty percent (50%) to the Class A Members in proportion to their Member Percentage, and fifty percent (50%) to the Manager.** **B.** ***With regard to funds generated by liquidity*** **invest in connection with** ***the Property ("Available Cash"), distributions shall be made in the following order of priority:*** **(i) First, to the Class A Members in an amount equal to their respective Preferred Returns, in proportion to their respective Preferred Returns, until all Preferred Returns have been paid in full for that calendar year.** **(i) Then, one hundred percent (100%) to the Class A Members in proportion to their respective Class A Member Unreturned Capital Value Balances, until all Class A Member Unreturned Capital Value Balances have been reduced to zero.** **(i) Then, fifty percent (50%) to the Class A Members in proportion to their Member Percentage, and fifty percent (50%) to the Manager.**
PERFORMANCE FEE (THE "PROMOTE"):	The Manager shall receive as a performance fee of (commonly referred to as a "Promote") 50% of the Available Cash or Available Rental Cash, as applicable, payable as described in the order of distribution set forth above.
ASSET MANAGEMENT FEE:	As additional compensation for its services rendered in managing the Company, the Manager may, in its sole discretion, recover a fee calculated as described further below (the "Asset Management Fee"). The Asset Management Fee shall not be considered a distribution of profits or a return of capital for the purpose of any provision of this Agreement, but shall be considered an expense of the Company, and shall be deducted from Company net income or added to Company net loss. The Asset Management Fee shall be at a fixed annual amount of $10,000. The Management Fee shall commence to accrue on the date of this Agreement. Payment of the Asset Management Fee shall be made quarterly. Additional Asset Management Fees resulting from an increase in the Total Committed Capital shall be payable promptly after the acceptance of additional Capital Commitments (with such payment being prorated to reflect the remaining term of the then current fiscal period).

Exemplar SPV Term Sheet

RISK FACTORS:	**An investment in the Company involves significant risk and should be considered only by sophisticated investors able to meet drawdown obligations and assume the risks of loss and illiquidity inherent with an investment in the Company. See "Risk Factors."**
RESTRICTIONS ON TRANSFERABILITY:	The Units sold in this offering will be restricted securities under the Securities Act of 1933, as amended, and will not be transferable except in compliance with the Securities Act and applicable state securities laws.
SPONSOR CLASS B UNITS:	In consideration of the Sponsor's contribution of capital to the Company, as well as its procurement of the Senior Loan (as defined below), coupled with its prior investment of time, resources, and expertise in identifying the Property, as well as performing certain preliminary due diligence, the Sponsor shall receive 450,000 Class B Units, which are generally junior in terms of economic privileges to the Class A Units, as further set forth in the Company Operating Agreement.

Potential New Roles for SPV's

- **SPV's for Traditionally VC Backed Companies—**Increasingly SPV's are being employed in the VC backed company context, especially after successful SPVs deployments for companies like Facebook and Twitter prior to IPOs. In these scenarios they have been used to aggregate investors for later-stage investment in "unicorn" companies unlikely to avail themselves of private funding rounds. In addition, however, in some cases SPVs are being deployed to fund very early stage pre-revenue companies, including those undergoing their Series A rounds, with an eye to future funding rounds.
- **Fix Crowdfunding Act--**In early June 2016, the U.S. House of Representatives, Financial Services Committee, approved the "Fix Crowdfunding Act" bill (HR 4855). This bill was originally put forward to improve the function of Title III (or Regulation CF) investment crowdfunding rules by proposing fixes to major perceived shortcomings in the final Title III rules under the JOBS ACT. Currently, the final Title III rules prevent the use of "SPVs" for aggregating investors. As a result, all investors participating in a Title III offering will be direct equity-holders of the issuer.
  - This can become a significant issue when coordinating and interfacing with large groups of investors, like obtaining required equity-holder consents/votes and exercising buy-out/drag along rights. Moreover, for companies looking to raise significant rounds of follow on funding, having a congested cap table with hundreds of equity-holders is almost certain to scare off any potential VC firm/angel investor.
  - If this bill ultimately passes, it can allow the use of SPV's to alleviate a major structural shortcoming of crowdfunding (i.e., the aggregating of MANY small dollar investors and dealing with their rights on the whole or individually).

Potential New Roles for SPV's

- **SPV’s for Not for Profits—**Increasingly NFP’s are turning to SPV’s to provide a segregated platform for the exploitation of good and services that may benefit from third party commercial investment monies. In other words, by spinning of certain non core good and services (imagine an established brick and mortar university that wants to create an online educational division) in to an SPV, under certain NFP regulations and precedent, the SPV can act as a fully for profit entity, commercially exploiting those good and services and even selling debt or equity to investors using prototypical investment terms (i.e., not a charitable donation). See e.g., 26 U.S. Code § 501 and IRS LETTER RULING – LTR 200225046 (March 28, 2002).