

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**Form 8-K**

**Current Report**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): March 16, 2017**

**Shepherd's Finance, LLC**

(Exact name of registrant as specified in its charter)

**Commission File Number: 333-203707**

**Delaware**  
(State or other jurisdiction  
of incorporation)

**36-4608739**  
(IRS Employer  
Identification No.)

**12627 San Jose Blvd., Suite 203, Jacksonville, FL 32223**  
(Address of principal executive offices, including zip code)

**302-752-2688**  
(Registrant's telephone number, including area code)

**None**  
(Former name or former address, if changed since last report)

**Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:**

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)**
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)**
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))**
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))**

## **Item 1.01. Entry into Material Definitive Agreement.**

On March 16, 2017, a majority of the members of Shepherd's Finance, LLC (the "Registrant") entered into Amendment No. 4 (the "Amendment") to the Registrant's Amended and Restated Limited Liability Company Agreement. The Amendment authorizes the Registrant to issue Series C Cumulative Preferred Units (the "Preferred Units") of the Registrant's equity at an initial price of \$100,000 per Preferred Unit. The terms of the Preferred Units are governed by the terms of the Amendment. The Registrant's board of managers previously authorized the Preferred Units at a meeting of the board of managers on March 2, 2017.

### *Preferred Unit Reinvestment Program*

The maximum number of authorized Preferred Units is 80, of which 40 are to be issued only pursuant to the Preferred Unit Reinvestment Program. The Preferred Unit Reinvestment Program provides that a holder of Preferred Units may elect to have their distributions reinvested in additional Preferred Units at the then-applicable price of such Preferred Units (such program, the "Preferred Unit Reinvestment Program"), at such price is determined by the Registrant's board of managers at its sole discretion. For purposes of all Preferred Units issued pursuant to the Preferred Unit Reinvestment Program, the initial date of issuance of such Preferred Units is the date of issuance of the underlying Preferred Units and not the date of issuance of the Preferred Units issued pursuant to the Preferred Unit Reinvestment Program. The Registrant's board of managers may determine to suspend or terminate the Preferred Unit Reinvestment Program at any time, at its sole discretion.

### *Distribution Rate*

Distributions on each Preferred Unit (the "Current Distributions") shall be payable quarterly, at an annual fixed rate of the greater of (such rate, the "Pay Rate"): (a) 12% per annum; or (b) the highest per annum rate of interest which the Registrant is then offering pursuant to its public offering of fixed rate subordinated notes, until the redemption of such Preferred Units in accordance with Section 5, 6, or 7 of the Amendment, as the case may be (each such period a "Current Distribution Period"). Once the Pay Rate is increased in accordance with (b), it will not reduce back to (a) if the higher rate is no longer offered. Current Distributions shall be cumulative from the applicable date of issuance at the Pay Rate, shall compound monthly, and shall be declared and payable quarterly each year, commenced following the initial date of issuance in the month after the next quarterly distribution is declared, and will be computed on the basis of a 360-day year and 90 days in the applicable period.

Current Distributions are payable only as a distribution on income. In the event that the Registrant has no net income during any given Current Distribution Period, the amount due is rolled forward to the next Current Distribution Period, which may continue only through the fourth quarter distribution of any year (which occurs in the following year), but no further. Accumulated but unpaid Current Distributions, if any, on the Preferred Units, will not accrue interest.

### *Redemptions*

The Preferred Units may be redeemed by the Registrant, in whole or in part, at the option of the Registrant at any time. The Preferred Units to be redeemed shall be determined at the sole discretion of the Registrant's board of managers. The redemption price for the Preferred Units will be equal to a redemption price per unit in cash in an amount equal to (the "Redemption Price") the sum of the Liquidation Amount (as defined in the Amendment) plus all accumulated and unpaid Current Distributions thereon to the date of redemption, provided, however, that if there is a Change of Control (as defined in the Amendment) of the Registrant within 9 months after the date that the Registrant redeems the Preferred Units, then the Registrant is required to pay to the prior holder of such Preferred Units an amount calculated in accordance with Section 5(a) of the Amendment.

---

The holders of Preferred Units may require the Registrant to redeem their Preferred Units, in whole or in part at the option of the holders of the Preferred Units, at the Redemption Price, at the earlier to occur of: (i) 6 years after the initial date of issuance of such Preferred Units; or (ii) when, as measured on March 31 of each year following the initial date of issuance of such Preferred Units (the “March 31 Measurement Date”), the Registrant made distributions to its common equity holders from April 1 of the year prior to the March 31 Measurement Date until the March 31 Measurement Date that exceeded the Registrant’s net earnings attributable to common equity holders per GAAP during the calendar year immediately prior to the calendar year of the March 31 Measurement Date. The Registrant must pay the Redemption Price in full and by check or in cash by wire transfer of immediately available funds in 10 installments beginning on the redemption date in amounts calculated in accordance with Section 6(c) of the Amendment.

Upon a Change of Control of the Registrant, the Registrant must redeem the Preferred Units upon the closing date of such Change of Control. The price for such redemption is the Redemption Price plus a Change of Control Redemption Price (as such term is defined in Section 7(a) of the Amendment).

#### *Covenants*

The Amendment contains a number of covenants applicable to the Registrant, including, but not limited to, certain covenants that require the Registrant to take all necessary steps to ensure that neither the Registrant nor any of its Subsidiaries shall become an “investment company” within the meaning of such term under the Investment Company Act of 1940, and covenants that require the Registrant to give to each holder of Preferred Units written notice with regard to events reasonably expected to have a material adverse effect on the Registrant or its subsidiaries, or the occurrence of a Change of Control.

The foregoing discussion is qualified in its entirety by the Amendment, attached hereto as Exhibit 3.1.

#### **Item 3.02. Unregistered Sales of Equity Securities.**

On March 16, 2017, the Registrant sold 4.4 Preferred Units for the total price of \$440,000 to Margaret Rauscher IRA LLC, a limited liability company owned by the wife of Eric Rauscher, one of the Registrant’s independent managers (such transaction, the “Preferred Units Sale Transaction”). The Registrant’s managers previously authorized the Preferred Units at a meeting of the board of managers on March 2, 2017. Mr. Rauscher abstained from voting on such authorization. The remaining independent managers found it is in the best interests of the Registrant and the Registrant’s members to authorize the Preferred Units to one or more investors, including to Mr. Rauscher and/or his wife (directly or indirectly), and found that this authorization was on terms no less favorable to the Registrant than could be obtained from an independent third party.

The Preferred Units issued pursuant to the Preferred Units Sale Transaction are subject to all of the terms of the Preferred Units contained in the Amendment. The Preferred Units Sale Transaction was effected in a private transaction exempt from the registration requirements of the Securities Act of 1933 (the “Securities Act”) under Section 4(a)(2) of the Securities Act. The Preferred Units Sale Transaction did not involve any public offering, was made without general solicitation or advertising, and the buyer represented to the Registrant that it is an “accredited investor” as defined under the Securities Act, with access to all relevant information necessary to evaluate the investment in the Preferred Units.

#### **Item 9.01. Financial Statements and Exhibits**

(d) Exhibits.

3.1 Amendment No. 4 to the Registrant’s Amended and Restated Limited Liability Company Agreement

---

**Signature(s)**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**SHEPHERD'S FINANCE, LLC**

Date: March 21, 2017

By: */s/ Daniel M. Wallach*

---

Daniel M. Wallach

Chief Executive Officer and Manager

---

AMENDMENT NO. 4 TO THE AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
SHEPHERD'S FINANCE, LLC  
AUTHORIZING SERIES C CUMULATIVE REDEEMABLE PREFERRED UNITS

In accordance with Section 3.05 and Article IX of the Amended and Restated Limited Liability Company Agreement, dated as of March 29, 2012, as amended (the "Operating Agreement"), of Shepherd's Finance, LLC (the "Company"), the Operating Agreement is hereby amended by this Amendment No. 4 thereto (this "Amendment") to authorized Series C Cumulative Redeemable Preferred Units (the "Preferred Units") to a total of 80 authorized Preferred Units of membership interest in the Company, and having the rights, preferences, powers, privileges, restrictions, qualifications, and limitations set forth below. Certain terms used herein are defined in Section 11 of Exhibit I hereto. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Operating Agreement.

WHEREAS, the Company wishes to authorize the Preferred Units on the terms set forth therein;

WHEREAS, the Board of Managers of the Company has authorized and the Members hereby agree that 80 Preferred Units of the Company are hereby authorized, 40 of which are to be issued only pursuant to the Preferred Unit Reinvestment Program (as defined in Exhibit I hereto), to one or more investors pursuant to the terms hereof.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Authorization of Preferred Units

Pursuant to Section 3.05 of the Operating Agreement, the Company hereby agrees to authorize 80 Preferred Units to one or more investors. The Preferred Units will have the rights, powers, privileges, restrictions, qualifications, and limitations specified in Exhibit I hereto.

Section 2. Amendment to Operating Agreement

Pursuant to Section 14.09 of the Operating Agreement, the Members holding at least 60% of the outstanding Voting Units hereby amend the Operating Agreement to set forth the rights, powers, privileges, restrictions, qualifications, and limitations of the Preferred Units, as specified in Exhibit I hereto.

Section 3. Continuation of Operating Agreement

The Operating Agreement and this Amendment shall be read together and shall have the same force and effect as if the provisions of the Operating Agreement and this Amendment (including Exhibit I hereto) were contained in one document. Any provisions of the Operating Agreement not amended by this Amendment shall remain in full force and effect as provided in the Operating Agreement immediately prior to the date hereof. In the event of a conflict between the provisions of this Amendment and the Operating Agreement, the provisions of this Amendment shall control.

**[SIGNATURES ON FOLLOWING PAGES]**

---

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 4 to the Operating Agreement as of March 16, 2017.

**The Company:**

Shepherd's Finance, LLC

By: /s/ Daniel M. Wallach

Name: Daniel M. Wallach

Title: Chief Executive Officer

**The Members:**

Daniel M. Wallach and Joyce S. Wallach

By: /s/ Daniel M. Wallach

Name: Daniel M. Wallach

By: /s/ Joyce S. Wallach

Name: Joyce S. Wallach

2007 Daniel M. Wallach Legacy Trust

By: /s/ Daniel M. Wallach

Name: Daniel M. Wallach

Title: Trustee

**Investor's Mark Acquisitions, LLC**

By: /s/ Mark L. Hoskins

Name: Mark L. Hoskins

Title: Managing Member

**S.K. Funding, LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT I

SHEPHERD'S FINANCE, LLC

DESIGNATION OF THE RIGHTS, POWERS, PRIVILEGES,  
RESTRICTIONS, QUALIFICATIONS, AND LIMITATIONS  
OF THE SERIES C CUMULATIVE REDEEMABLE PREFERRED UNITS

The following are the terms of the Series C Cumulative Redeemable Preferred Units (the "Preferred Units") established pursuant to this Agreement:

(1) Number. The maximum number of authorized Preferred Units shall be 80, of which 40 are to be issued only pursuant to the Preferred Unit Reinvestment Program (as defined herein).

(2) Rank. The Preferred Units will, with respect to distribution rights (to the extent set forth herein) and rights upon liquidation, dissolution, or winding up of the Company, rank: (a) senior to all classes or series of Units not designated as Preferred Units ("Common Units") and to all equity securities issued by the Company the terms of which provide that such equity securities shall rank junior to such Preferred Units; (b) on a parity with all equity securities issued by the Company other than those referred to in clauses (a) and (c); and (c) junior to all equity securities issued by the Company that rank senior to the Preferred Units. The term "equity securities" shall not include convertible debt securities.

(3) Distributions.

(a) Current Distributions.

(i) Commencing from and including the applicable date of issuance of Preferred Units (the "Date of Issuance"), current distributions (the "Current Distributions") on each Preferred Unit shall be payable quarterly, at a fixed rate of the greater of (such rate, the "Pay Rate"): (a) 12% per annum; or (b) the highest per annum rate of interest which the Company is then offering pursuant to its public offering of fixed rate subordinated notes, until the redemption of such Preferred Units in accordance with Section 5, 6, or 7, as the case may be (each such period a "Current Distribution Period"). Once the Pay Rate is increased in accordance with (b), it will not reduce back to (a) if the higher rate is no longer offered.

(ii) Current Distributions on the Preferred Units shall be cumulative from the applicable Date of Issuance at the Pay Rate, shall compound monthly, and shall be declared and payable quarterly each year and such distributions will commence following the Initial Date of Issuance in the month after the next quarterly distribution is declared (each, a "Current Distribution Payment Date"), and will be computed on the basis of a 360-day year and 90 days in the applicable period. Current Distributions will be payable to holders of record as they appear in the records of the Company at the close of business on the applicable record date by wire transfer pursuant to wire instructions provided by such holders. The record date shall be the last calendar day of the calendar quarter immediately preceding each Current Distribution Payment Date (each, a "Current Distribution Payment Record Date").

---

(iii) Current Distributions on the Preferred Units are payable only as a distribution on income. In the event that the Company has no net income during any given Current Distribution Period, the amount due is rolled forward to the next Current Distribution Period, which may continue only through the fourth quarter distribution of any year (which occurs in the following year), but no further. If on any Current Distribution Payment Date the Company shall not be permitted under Delaware law to pay all or a portion of any such Current Distributions, the Company shall take such action as may be lawfully permitted in order to enable the Company, to the extent permitted by Delaware law, to lawfully to pay such Current Distributions. Accumulated but unpaid Current Distributions, if any, on the Preferred Units, will not accrue interest.

(b) Distribution Payments. Any Distribution payment made on Preferred Units shall first be credited against the earliest accumulated but unpaid Current Distribution due with respect to such Preferred Units which remains payable. Distributions made in any quarter are based on the Company's net income from the prior quarter. Taxable income to purchaser for any quarter will be allotted to be equal to the following quarter's Distribution.

(c) Preferred Unit Reinvestment Program. A holder of Preferred Units may elect to have Distributions reinvested in additional Preferred Units at the then-applicable price of such Preferred Units (such program, the "Preferred Unit Reinvestment Program"), at such price is determined by the Company's board of managers at its sole discretion. Notwithstanding anything to the contrary, for purposes of all Preferred Units issued pursuant to the Preferred Unit Reinvestment Program, the term "Initial Date of Issuance" shall mean the Date of Issuance of the underlying Preferred Units and not the Date of Issuance of the Preferred Units issued pursuant to the Preferred Unit Reinvestment Program. Additional terms of the Preferred Unit Reinvestment Program are as follows:

(i) The purchase of fractional Preferred Units is a permissible and likely result of the reinvestment of Distributions under the Preferred Unit Reinvestment Plan.

(ii) The Company's board of managers may determine to suspend or terminate the Preferred Unit Reinvestment Program at any time, at its sole discretion.

(iii) Reinvestment will not be permitted if such reinvestment in additional Preferred Units would result in Preferred Units being issued in excess of the amount authorized under this Agreement or by the Company's board of managers.



(iv) The Company may elect to deny an investor's participation in the Preferred Unit Reinvestment Program for any reason, at the Company's sole discretion.

(v) An investor may elect to terminate their participation in the Preferred Unit Reinvestment Program at any time by providing notice to the Company or such termination at least one month in advance of the next applicable Current Distribution Payment Date.

(vi) All additional Preferred Units issued pursuant to the Preferred Unit Reinvestment Program shall continue to be bound by all terms and conditions of this Agreement.

(4) Liquidation Amount.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company (referred to herein as a "liquidation"), the holders of the Preferred Units will be entitled to be paid out of the assets of the Company legally available for distribution to its unitholders liquidating distributions, in cash, in the amount of \$100,000 per unit multiplied by the number of outstanding Preferred Units (the "Liquidation Amount"), plus an amount equal to any accumulated and unpaid Current Distributions to the date of such liquidation, before any distribution or payment is made to holders of Common Units or any other equity securities of the Company ranking junior to the Preferred Units as to the distribution of assets upon a liquidation. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Preferred Units will have no right or claim to any of the remaining assets of the Company.

(b) In the event that, upon any liquidation of the Company, the available assets of the Company are insufficient to pay the amount of the liquidating distributions on all outstanding Preferred Units, plus an amount equal to any accumulated and unpaid Current Distributions to the date of such liquidation and the corresponding amounts payable on all other equity securities of the Company ranking on a parity with Preferred Units in the distribution of assets upon a liquidation, then the holders of Preferred Units and all other such equity securities of the Company ranking on a parity with Preferred Units shall share ratably in any such distribution of assets in proportion to the full liquidating distributions per unit to which they would otherwise be respectively entitled.

(c) The consolidation or merger of the Company with or into any other entity, or the merger of another entity with or into the Company, or a statutory unit exchange by the Company, or the sale, lease or conveyance of all or substantially all of the property or business of the Company, shall be deemed to constitute a liquidation of the Company.

(d) The Liquidation Amount of the outstanding Preferred Units will not be added to the liabilities of the Company for the purpose of determining whether under the Delaware Revised Uniform Limited Liability Company Act a distribution may be made to unitholders of the Company whose preferential rights upon dissolution of the Company are junior to those of holders of Preferred Units. This Section 4(d) shall be without prejudice to the provisions of Sections 3(a) and 4(a) hereof.

(5) Redemption by the Company.

(a) The Company may redeem the Preferred Units, in whole or in part at the option of the Company at any time or from time to time and at the sole discretion of the Company's board of managers, at a redemption price per unit in cash in an amount equal to (the "Redemption Price") the sum of the Liquidation Amount plus all accumulated and unpaid Current Distributions thereon to the date of redemption; *provided, however*, that if there is a Change of Control of the Company within 9 months after the date that the Company redeems the Preferred Units pursuant to this Section, then the Company shall also pay to the prior holder of such Preferred Units an additional amount as follows:

If after deducting from the realized sale price of the Change of Control after closing costs and sale costs, the Company's book value for each equity investor (including holders of common equity) and any payouts to executive employees (not including holders of common equity and their relatives) based on the Change of Control, there is a positive number, then each \$100,000 initial investment in the Preferred Units will be entitled to the smaller of:

(i) (x) 0.2% of such positive number *multiplied by* (y) the book value that the Preferred Units would have had immediately prior to the Change of Control if they had not been earlier redeemed by the Company *divided by* what the dividends would have been immediately prior to the Change of Control had dividends compounded on the original amount invested in the Preferred Units and such Preferred Units had not been earlier redeemed; or

(ii) 50% of the book value that the Preferred Units would have had immediately prior to the Change of Control if they had not been earlier redeemed by the Company.

(b) Notice of a redemption pursuant to Section 5(a) will be mailed by the Company, postage prepaid, not less than ten (10) nor more than thirty (30) days prior to the redemption date, addressed to the respective holders of the Preferred Units to be redeemed at their respective addresses as they appear on the books of the Company. Each notice shall state: (i) the redemption date; (ii) the number of Preferred Units to be redeemed; (iii) the Redemption Price; (iv) the place or places where certificates representing such Preferred Units, if any, are to be surrendered for payment of the Redemption Price; and (v) that Current Distributions on the Preferred Units to be redeemed will cease to accumulate on such redemption date. If fewer than all the Preferred Units are to be redeemed, the notice mailed to each such holder thereof shall also specify the number of Preferred Units to be redeemed from each such holder.

(c) On or after a redemption date, each holder of Preferred Units to be redeemed must present and surrender any certificates, if any, representing the Preferred Units to the Company at the place designated in the notice of redemption and thereupon the Redemption Price of such Preferred Units will be paid to or on the order of the Person whose name appears on such certificates, if any, as the owner thereof by wire transfer pursuant to wire instructions provided by such Person and each surrendered certificate will be canceled. In the event that fewer than all the Preferred Units are to be redeemed, and if a certificate has been issued representing the Preferred Units, a new certificate will be issued representing the unredeemed Preferred Units.

(d) From and after a redemption date (unless the Company defaults in payment of the Redemption Price), all Current Distributions on the Preferred Units subject to such redemption will cease to accumulate and all rights of the holders thereof, except (i) the right to receive the Redemption Price thereof (including all accumulated and unpaid Current Distributions to the redemption date) and (ii) the right to receive any accumulated Deferred Distributions, will cease and terminate and such Preferred Units will not thereafter be transferred (except with the consent of the Company) on the Company's records, and such Preferred Units shall not be deemed to be outstanding for any purpose whatsoever other than with respect to the accumulation of Deferred Distributions on such Preferred Units. In the event that the Company defaults in the payment of the Redemption Price for any Preferred Units surrendered for redemption, such Preferred Units shall continue to be deemed to be outstanding for all purposes and to be owned by the respective holders that surrendered such Preferred Units, and the Company shall promptly return the surrendered certificates representing such Preferred Units, if any, to such holders (although the failure of the Company to return any such certificates to such holders shall in no way affect the ownership of such Preferred Units by such holders or their rights thereunder).

(e) Any Preferred Units that have been redeemed shall, after such redemption, have the status of authorized but unissued Units, without designation as to series, until such units are once more designated as part of a particular series.

(f) The Preferred Units will not have a stated maturity date and will not be subject to any sinking fund.

(6) Redemption by the Holders of Preferred Units.

(a) The holders of Preferred Units may require the Company to redeem their Preferred Units, in whole or in part at the option of the holders of the Preferred Units, at the Redemption Price, at the earlier to occur of:

(i) 6 years after the Initial Date of Issuance of such Preferred Units; or

(ii) when, as measured on March 31 of each year following the Initial Date of Issuance of such Preferred Units (the "March 31 Measurement Date"), the Company made distributions to its common equity holders from April 1 of the year prior to the March 31 Measurement Date until the March 31 Measurement Date that exceeded the Company's net earnings attributable to common equity holders per GAAP during the calendar year immediately prior to the calendar year of the March 31 Measurement Date.

(b) Notice of a redemption pursuant to Section 6(a) will be mailed by the holders of the Preferred Units requiring redemption, postage prepaid, not less than 2 months prior to the redemption date, addressed to the Company. Each notice shall state: (i) the redemption date; (ii) the number of Preferred Units to be redeemed; (iii) the Redemption Price; (iv) that Current Distributions on the Preferred Units to be redeemed will cease to accumulate on such redemption date.

(c) The Company shall pay the Redemption Price in full and by check or in cash by wire transfer of immediately available funds in 10 installments beginning on the redemption date. The 10 installments will begin on the redemption date in amount equal to the Payment Percentage times the Redemption Price, and will continue on the fifteenth day of each of the following 9 months. The "Payment Percentage" is an amount equal to: (x) one *divided by* (y) the number of installment months remaining. For example, if the Redemption Price is \$750,000 on the redemption date and the Pay Rate is 12% per annum, then: (a) the Company shall pay to the holder an amount equal to \$75,000.00 on the redemption date, (b) on the fifteenth day of the month following the redemption date, the Company shall pay to the holder an amount equal to approximately \$75,750.00 (equal to the Redemption Price *times* 1/9), and (c) on the fifteenth day of the remaining months, the Company shall make the installments continuing as specified in this Subsection.

(d) On or after a redemption date, each holder of Preferred Units to be redeemed must present and surrender any certificates, if any, representing the Preferred Units to the Company's principal place of business and thereupon the Redemption Price of such Preferred Units will be paid to or on the order of the Person whose name appears on such certificates in accordance with Section 6(c), if any, as the owner thereof and each surrendered certificate will be canceled. In the event that fewer than all the Preferred Units are to be redeemed, and if a certificate has been issued representing the Preferred Units, a new certificate will be issued representing the unredeemed Preferred Units.

(e) From and after a redemption date (unless the Company defaults in payment of the Redemption Price), all Current Distributions on the Preferred Units subject to such redemption will cease to accumulate and all rights of the holders thereof, except (i) the right to receive the Redemption Price thereof (including all accumulated and unpaid Current Distributions to the redemption date) and (ii) the right to receive any accumulated Deferred Distributions, will cease and terminate and such Preferred Units will not thereafter be transferred (except with the consent of the Company) on the Company's records, and such Preferred Units shall not be deemed to be outstanding for any purpose whatsoever other than with respect to the accumulation of Deferred Distributions on such Preferred Units. In the event that the Company defaults in the payment of the Redemption Price for any Preferred Units surrendered for redemption, such Preferred Units shall continue to be deemed to be outstanding for all purposes and to be owned by the respective holders that surrendered such Preferred Units, and the Company shall promptly return the surrendered certificates representing such Preferred Units, if any, to such holders (although the failure of the Company to return any such certificates to such holders shall in no way affect the ownership of such Preferred Units by such holders or their rights thereunder).

(f) Any Preferred Units that have been redeemed shall, after such redemption, have the status of authorized but unissued Units, without designation as to series, until such units are once more designated as part of a particular series.

(g) The Preferred Units will not have a stated maturity date and will not be subject to any sinking fund.

(7) Redemption Upon Change of Control.

(a) Upon a Change of Control, the Company must redeem the Preferred Units upon the closing date of such Change of Control. The price for such redemption shall be the Redemption Price *plus* an amount as follows (the “Change of Control Redemption Price”):

If after deducting from the realized sale price of the Change of Control after closing costs and sale costs, the Company’s book value for each equity investor (including holders of common equity) and any payouts to executive employees (not including holders of common equity and their relatives) based on the Change of Control, there is a positive number, then each \$100,000 initial investment in the Preferred Units will be entitled to the smaller of:

(i) (x) 0.2% of such positive number *multiplied by* (y) the current book value of the Preferred Units immediately prior to their redemption *divided by* what the dividends would have been immediately prior to the redemption had dividends compounded on the original amount invested in the Preferred Units; or

(ii) 50% of the book value of the Preferred Units immediately prior to the redemption.

(b) The Company shall provide the holders of the Preferred Units with notice of such a Change of Control by mail not less than 2 weeks prior to the closing of such Change of Control, addressed to the respective holders of the Preferred Units to be redeemed at their respective addresses as they appear on the books of the Company. Each notice shall state: (i) the date of closing of the Change of Control; (ii) the Change of Control Redemption Price; (iii) the place or places where certificates representing such Preferred Units, if any, are to be surrendered for payment of the Change of Control Redemption Price; and (iv) that Current Distributions on the Preferred Units to be redeemed will cease to accumulate on such date of Change of Control.

(c) The Company shall pay the Change of Control Redemption Price in full and by check or in cash by wire transfer of immediately available funds on the closing date of the Change of Control.

(d) On or before the closing date of the Change of Control, each holder of Preferred Units to be redeemed must present and surrender any certificates, if any, representing the Preferred Units to the Company's principal place of business and thereupon the Change of Control Redemption Price of such Preferred Units will be paid to or on the order of the Person whose name appears on such certificates in accordance with Section 7(c), if any, as the owner thereof and each surrendered certificate will be canceled.

(e) From and after a redemption date due to a Change of Control (unless the Company defaults in payment of the Redemption Price), all Current Distributions on the Preferred Units subject to such redemption will cease to accumulate and all rights of the holders thereof, except (i) the right to receive the Change of Control Redemption Price thereof (including all accumulated and unpaid Current Distributions to the redemption date) and (ii) the right to receive any accumulated Deferred Distributions, will cease and terminate and such Preferred Units will not thereafter be transferred (except with the consent of the Company) on the Company's records, and such Preferred Units shall not be deemed to be outstanding for any purpose whatsoever other than with respect to the accumulation of Deferred Distributions on such Preferred Units. In the event that the Company defaults in the payment of the Change of Control Redemption Price for any Preferred Units surrendered for redemption, such Preferred Units shall continue to be deemed to be outstanding for all purposes and to be owned by the respective holders that surrendered such Preferred Units, and the Company shall promptly return the surrendered certificates representing such Preferred Units, if any, to such holders (although the failure of the Company to return any such certificates to such holders shall in no way affect the ownership of such Preferred Units by such holders or their rights thereunder).

(f) Any Preferred Units that have been redeemed shall, after such redemption, have the status of authorized but unissued Units, without designation as to series, until such units are once more designated as part of a particular series.

(g) The Preferred Units will not have a stated maturity date and will not be subject to any sinking fund.

(8) Covenants of the Company.

(a) *Investment Company Act.* The Company hereby covenants and agrees that, for as long as any Preferred Units are outstanding, the Company shall take such steps as shall be necessary to ensure that neither the Company nor any of its Subsidiaries shall become an "investment company" within the meaning of such term under the Investment Company Act of 1940, as amended.

(b) *Notices*. The Company hereby covenants and agrees that, for as long as any Preferred Units are outstanding, the Company shall give to each holder of Preferred Units written notice, within three (3) days of the Company having actual knowledge thereof, of:

(i) the issuance by any Governmental Authority of any injunction, order, decision or other restraint or the initiation of any litigation or similar proceeding seeking any such injunction, order or other restraint that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(ii) the occurrence of an event or series of events relating to or affecting the Company and its Subsidiaries, taken as a whole, that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect; or

(iii) the occurrence of a Change of Control.

The written notice provided in connection with any of the foregoing events shall specify the nature of the event prompting such notice and the action (if any) that is proposed to be taken with respect thereto.

(9) Transfers.

(a) Pursuant to Section 9.01 of the Operating Agreement, a holder of Preferred Units may not Transfer all or any portion of such holder's Preferred Units without the express written consent of the Company, in its sole discretion. The provisions of Section 9.02 of the Operating Agreement shall not apply to the Preferred Units.

(10) Power of Attorney. Notwithstanding Section 8.01 of the Operating Agreement, no holder of Preferred Units appoints the board of managers of the Company as its attorney-in-fact, and the board of managers shall not execute any document as attorney-in-fact or otherwise on behalf of the holders of Preferred Units pursuant to the powers set forth in Section 8.01 of the Operating Agreement.

(11) Definitions.

"Change of Control" will be deemed to have occurred with respect to the Company on any date after the Initial Date of Issuance on which Daniel M. Wallach, Joyce Wallach, the Daniel M. Wallach Legacy Trust, or their affiliates fail to own at least 51% of the voting common equity of the Company.

"Common Units" has the meaning set forth in Section 2.

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise and “Controlling,” “Controlled” and “under common Control” shall have meanings correlative thereto. For purposes of this definition, debt securities that are convertible into common stock will be treated as voting securities only when converted.

“Current Distribution Payment Date” has the meaning set forth in Section 3(a)(ii).

“Current Distribution Payment Record Date” has the meaning set forth in Section 3(a)(ii).

“Current Distribution Period” has the meaning set forth in Section 3(a)(i).

“Current Distributions” has the meaning set forth in Section 3(a)(i).

“Date of Issuance” has the meaning set forth in Section 3(a)(i).

“GAAP” means generally accepted accounting principles in the United States of America in effect from time to time.

“Governmental Authority” means any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence, including foreign Governmental Authorities.

“Initial Date of Issuance” means, subject to Section 3(c), the date that the first Preferred Unit is issued.

“Liquidation” has the meaning set forth in Section 4(a).

“Liquidation Amount” has the meaning set forth in Section 4(a).

“Material Adverse Effect” with respect to any Person means any event, occurrence, development, change or effect that is, or is reasonably likely to be, individually or in the aggregate, materially adverse to the business, prospects, properties, operating assets, financial condition or results of operations of such Person and its Subsidiaries, taken as a whole; *provided*, that, in no event shall the following, either individually or in the aggregate, in and of itself be deemed to constitute a “Material Adverse Effect”: the failure by the Company to meet independent, third party projections of earnings, revenue or other financial performance measures (*provided*, that the underlying facts, circumstances, operating results or prospects which cause the Company to fail to meet such projections may be considered in determining whether a “Material Adverse Effect” has occurred or is reasonably likely to occur).

“Pay Rate” has the meaning set forth in Section 3(a).

“Person” means any individual, partnership, limited liability company, corporation, joint venture, trust, or other entity.

“Preferred Units” has the meaning set forth in the opening paragraph of this Amendment.

“Redemption Price” has the meaning set forth in Section 5(a).

“Set apart for payment” means the recording by the Company in its accounting ledgers of any accounting or bookkeeping entry which indicates, pursuant to an authorization of a distribution by the Company, the allocation of funds to be so paid on any series or class of Units.