
\$5,500,000

\$3,000,000**Donated Contributions to Capital**

\$1,000,000**●% Surplus Notes due ●**

\$1,500,000**Donated Contributions in Support of the
National Conservation Defense Initiative**

The Land Trust Alliance Inc. (the “Alliance”) is sponsoring the formation of Terrafirma Risk Retention Group LLC (“Terrafirma”). The purpose of Terrafirma is to insure the costs of upholding conservation easements and fee lands held for conservation purposes when they have been violated or are under legal attack. This is the first time that the land conservation community has undertaken a far-reaching, national initiative to ensure the permanence of land conservation.

In order to commence business, insurance regulators will require that Terrafirma raise at least \$4 million of capital. Not less than \$1 million of this must be from persons who will not be members of, or insured by, Terrafirma. The balance may come from any type of foundation, land trust or other public charity, natural person or governmental entity. A contribution to capital may take the form of cash, a letter of credit, or the purchase of a Surplus Note. In addition, \$1.5 million is sought to fund the Alliance’s National Conservation Defense Initiative which will manage a legal defense fund, a legal clearinghouse, an attorney network and risk management and loss prevention services to Terrafirma and its Members.

This Preliminary Offering Memorandum does not contain all of the disclosures relevant to a land trust considering obtaining an ownership and membership interest in Terrafirma, which disclosures are provided in separate documentation. Terrafirma will operate exclusively for the charitable purpose of pooling insurable risks of its Members and providing information to its Members with respect to loss control and risk management. Terrafirma intends to apply for a ruling from the Internal Revenue Service that it qualifies as a charitable risk pool under Section 501(n) of the Internal Revenue Code and as a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code. Terrafirma’s LLC Agreement (its constitutional document) provides that no portion of the net income of Terrafirma may inure to the benefit of any Member or other person. **The Surplus Notes have not been and will not be registered under the Securities Act of 1933, as amended, or any state securities laws, and are being offered pursuant to an exemption from the registration requirements of the Securities Act.**

As more fully described herein, the Surplus Notes are unsecured subordinated obligations of Terrafirma. **Any payment of principal or interest on the Surplus Notes may be made only with the prior approval of the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration of the State of Vermont (the “Commissioner”) and only from surplus funds available for such payments.** The Surplus Notes may qualify as a program-related investment (“PRI”) by a private foundation. See “Certain U.S. Federal Income Tax Considerations.”

LAND TRUST ALLIANCE*(Sponsor)*

NOTICE TO PROSPECTIVE DONORS AND INVESTORS

This Offering Memorandum (whether in preliminary or final form) (“*Memorandum*”) does not constitute an offer to sell or a solicitation of an offer to buy a security in any jurisdiction in which, or to any person to whom, it is unlawful to make such an offer or solicitation.

No person other than the Alliance has been authorized to give any information or to make any representation, warranty, statement or assurance not contained in this Memorandum or in an annex hereto and, if given or made, the other information or representation, warranty, statement or assurance may not be relied upon. None of Terrafirma, the Alliance or any of its or their respective current or proposed directors, employees, affiliates, agents or representatives (collectively, the “*Other Persons*”) makes any representation or warranty, expressed or implied, as to the accuracy or completeness of any of the information contained in this Memorandum or any other written or oral communication transmitted or made available to a prospective donor or investor.

This Memorandum does not purport to be all-inclusive or to contain all the information that a prospective donor or investor may desire in evaluating an investment in Terrafirma. Each investor or donor must conduct and rely on its own evaluation of Terrafirma and the terms of the offering, including the merits and risks involved, in making an investment decision. See “*Risk Factors*.”

The information contained in this Memorandum is intended to be current as of the date of this Memorandum. Forward-looking statements herein are based on estimates and assumptions that are subject to significant business, economic and competitive uncertainties that are beyond Terrafirma or the Alliance’s control or are subject to change. Actual results could be materially different. Consequently, such forward-looking statements should be regarded solely as Terrafirma’s current plans, estimates and beliefs. Neither Terrafirma nor the Alliance intends to undertake, and does not undertake, any obligation to update any forward-looking or other statements to reflect future events or circumstances after the date of such statements.

Prospective investors or donors are not to construe the contents of this Memorandum as investment, legal, accounting or tax advice. This Memorandum and the accompanying annexes, as well as the terms of the offering, should be reviewed carefully by your legal, accounting and tax advisers. Each donor or investor will be required to agree that it has not relied upon the Alliance, Terrafirma or any of the Other Persons for such advice and that the donor or investor has relied only on its own adviser(s) for such advice.

This Memorandum contains summaries or descriptions of the Captive Management Services Agreement, the LLC Agreement of Terrafirma, the expected Internal Revenue Service determination of tax-exempt status, the Order and other documents referred to herein. Such summaries do not purport to be complete. They are subject to and qualified in their entirety by reference to such documents. Copies of all such documents are available upon request.

THE APPROVAL BY THE COMMISSIONER OF THE ISSUANCE OF THE SURPLUS NOTES DOES NOT CONSTITUTE A RECOMMENDATION OF THE SURPLUS NOTES AND DOES NOT INDICATE THAT APPROVAL WILL BE GIVEN AS TO THE PAYMENT OF INTEREST ON THE SURPLUS NOTES FROM TIME TO TIME, OR ANY REPAYMENT OF PRINCIPAL OF THE SURPLUS NOTES.

National Conservation Defense Initiative

Collective action to assure conservation permanence



Terrafirma RRG LLC

- Insuring over 18,200 committed easements and fee interests in 47 states and DC
- 460 participating § 501(c)(3) Land Trusts
- 1,000 Land Trusts in all states and DC may eventually participate
- Integrated part of national conservation defense and loss prevention education program

**CONSERVATION DEFENSE INSURANCE:
AN INITIATIVE CRITICAL TO THE FUTURE OF LAND CONSERVATION IN AMERICA**

The Challenge

Importance of Private Land Conservation. Private land conservation is vital to the protection of America's environment, the stewardship of our resources and the health and well-being of our citizens. Seventy percent of land in America is privately owned, and the protection of important natural and agricultural lands depends on the cooperation of private landowners. Conservation easements are the primary tool for conservation of privately owned lands. Today, national and local land trusts hold easements protecting over 7 million acres, and land trusts use easements to save an average of almost 750,000 additional acres each year.

Permanence. For private land conservation in America, permanence is fundamental. Landowners, donors and communities all expect that conserved land will be protected over time. The federal government requires conservation easements to be permanent in order to be eligible for tax deductions. The vast amounts of private, foundation and public capital devoted to land protection was and is premised on permanent conservation results.

The Coming Wave of Litigation. Ownership of real property interests — whether fee interests or conservation easements — is by far the most permanent and durable tool for permanent private land conservation. But even these durable real property interests are vulnerable to attack. Conservation easements can be breached. Adjacent landowners, developers and others can trespass. Conserved lands can be targeted for condemnation and conservation easements extinguished when private land is taken. Although legal attacks on conserved lands have been limited to date, research shows that such attacks are sure to increase as the result of population growth, sprawl, climate change and rising land values. Experience shows that challenges to easements will escalate as properties pass to new owners, and most of the properties protected by conservation easements in America will change hands sometime in the next 30 years.

The Common Interest in Effective Defense. The cost of a successful attack on a conservation fee interest or easement goes far beyond the loss of conserved lands at issue. Adverse court decisions can provide precedent with state-wide and even national influence, encouraging others who would violate their conservation obligations, devaluing easements generally, discouraging donors and imperiling the tax deductibility of easement donations.

The Cost of Effective Defense. The most expensive fully completed easement litigation of which the Alliance is aware cost the land trust over \$1,000,000; two cases exceeded \$500,000 and at least three other cases exceeded \$250,000 in costs. Despite good faith efforts to ensure that they have the financial capacity to defend their easements, few land trusts could fund litigation costs at these levels from existing resources. At the least, fund raising for these costs would divert them, perhaps for years, from their most important work. Even if a land trusts could draw on an endowment to fund litigation costs, it could take many years to replenish the endowment in order to fund future stewardship obligations. In contrast, large landowners and developers are often well funded, and willing to spend large amounts, and many years, attempting to escape their obligations. In some states, Attorneys General may be available to assist with defense of a conservation easement, but political considerations, capacity limitations and other factors mean that this source of defense is not assured. Fortunately, the average historic cost of defending an easement is only \$37,605 but land trusts need to be prepared for the worst case scenario.

Increasing Pressure on Land Trusts to Demonstrate Financial Capacity to Defend. The pressure on land trusts to demonstrate their capacity to defend their easements is increasing. For an easement donation to qualify for a tax deduction under Section 170(h) of the Internal Revenue Code and accompanying Treasury regulations, land trusts must have the resources to monitor and defend their conservation easements. The Internal Revenue Service recently required reporting of time and money spent by a land trust in monitoring and defending its easements, and is considering a requirement that the adequacy of financial resources to defend easements be documented. Without either insurance or significantly increased financial reserves, many land trusts may not be able to meet such a requirement.

The Solution

The Alliance is sponsoring the formation of an insurance program that would operate exclusively for the purpose of insuring land trusts for the legal costs of defending conservation lands and easements and to provide information to those land trusts with respect to loss control and risk management (the “*Insurance Program*”). The Insurance Program will be a “risk retention group,” which is a mutual insurance arrangement permitted by the Federal Liability Risk Retention Act of 1986 (the “Risk Retention Act”) under which similarly situated entities act together to form an insurance entity whose business is limited to insuring its members. Membership in the risk retention group will consist exclusively of the Alliance members, all of which are tax exempt land trusts. Because all of its Members and insured parties are entities that have been determined by the Internal Revenue Service to be tax-exempt organizations described in Section 501(c)(3) of the Internal Revenue Code, Terrafirma is expected to qualify as a “charitable risk pool” within the meaning of Section 501(n) of the Internal Revenue Code and as a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code. Terrafirma also will qualify as a captive insurance company under Vermont law.

For a basic initial annual premium of \$60 per unit of conserved land, a land trust will receive coverage with a deductible of \$5,000, a single-loss limit of \$500,000 and a limit on all claims in a single year of \$500,000. Land trusts insuring large amounts of conserved land will receive higher limits and the option for a higher deductible and lower premium. Premium stability will be a major goal of the Insurance Program, but, of course, the premiums ultimately will reflect actual loss experience, among other factors.

As of the date of this Memorandum, more than 460 land trusts have executed and delivered to the Alliance written commitments to become Members of Terrafirma for at least three years following commencement of the Insurance Program. These early commitments cover over 18,000 properties comprising approximately 70% of the land trust holdings in America (other than those held by large organizations with the preference and capacity to self insure). These initial commitments would generate approximately \$900,000 in annual premium revenues assuming an initial average premium of \$50 per property, or \$990,000 at a rate of \$55 per property. The Members have also paid registration fees totaling over \$200,000, which the Alliance is permitted to use to help fund the start-up expenses of the Insurance Program. One hundred dollars of each registration fee will be applied to fund the capital contribution required from each land trust Member.

The proposed Insurance Program is the result of years of debate and discussion by the land trust community, a survey of past conservation defense experience and costs, and a comprehensive feasibility study by Betterley Risk Consultants, Inc. See “*Description of Proposed Insurance Program — Insurance Program Design and Process.*” The Alliance created a steering committee of insurance and legal experts to guide the design of the program. Their work has been guided by the twin goals of satisfying land trust needs, and building a program that will be financially sustainable. The resulting program does not involve risk or exposure to the insured Members beyond their premiums and capital investment, has eligibility requirements that should make the insurance product available to most land trusts, large and small, and provides basic and supplemental coverage that should cover most of the conservation defense costs not covered by existing insurance products.

The Case for Conservation Defense Insurance

- Pooling of conservation defense risk through insurance is far more efficient than requiring each individual land trust to maintain sufficient individual reserves, and is the only solution for the many smaller land trusts which could not hope to acquire and maintain such reserves.
- No commercial insurance product is available because the universe of potential customers and potential profit is too small for existing insurers to justify entry to a new line of business.
- All land trusts would be affected by ineffective defense of specific cases and/or individual adverse court decisions, and thus collective action is appropriate to address conservation defense.
- The land trust community, acting through the Alliance, already has established, and wishes to expand, a vigorous conservation defense initiative that helps land trusts manage these risks and prevent these

What Others Are Saying

The importance of conservation defense insurance has been recognized by land trusts from all parts of the country and by some of the most thoughtful environmental and conservation leaders from the public and private sectors:

“The proposed insurance program is a huge step forward for land trusts grappling with the overwhelming task of funding conservation legal defense, and it is a great way for foundations to protect the enormous investment they have made in permanent land conservation.”

-Judith Stockdale, Executive Director, Gaylord & Dorothy Donnelley Foundation

“I view Conservation Defense Insurance as another step the land trust community is taking to keep our promises. We claim that we will help people protect their land in perpetuity. With this program, the public can be more confident than ever that we take that commitment seriously.”

-Christian Freitag, Attorney and Executive Director, Sycamore Land Trust (IN)

“I think that this is one of the most helpful things that the Land Trust Alliance could attempt for its members, and I have greatly appreciated the professional, thoughtful, fair and inclusive process that you have led. Thank you.”

-Greg Gamble, Executive Director, Ojai Valley Land Conservancy (CA)

“Having experienced the expensive, unpredictable costs of litigation, I feel easement defense insurance represents an essential safety net for prudent land trusts committed to defending their easements.”

-Dan Pike, President, Colorado Open Lands

“The proposed insurance program would be a huge step forward for land trusts grappling with the overwhelming task of funding future legal defense of easements. North Carolina Coastal Land Trust supports the concept.”

-Janice Allen, Deputy Director, North Carolina Coastal Land Trust

“This simply makes economic sense. We will take a very small percentage allocation from our existing Conservation Lands Defense Fund and buy the insurance. The result will be to essentially triple our existing financial resources for conservation easement defense.”

-Jay Freedman, Treasurer, Coastal Mountains Land Trust (ME)

TERRAFIRMA RRG LLC

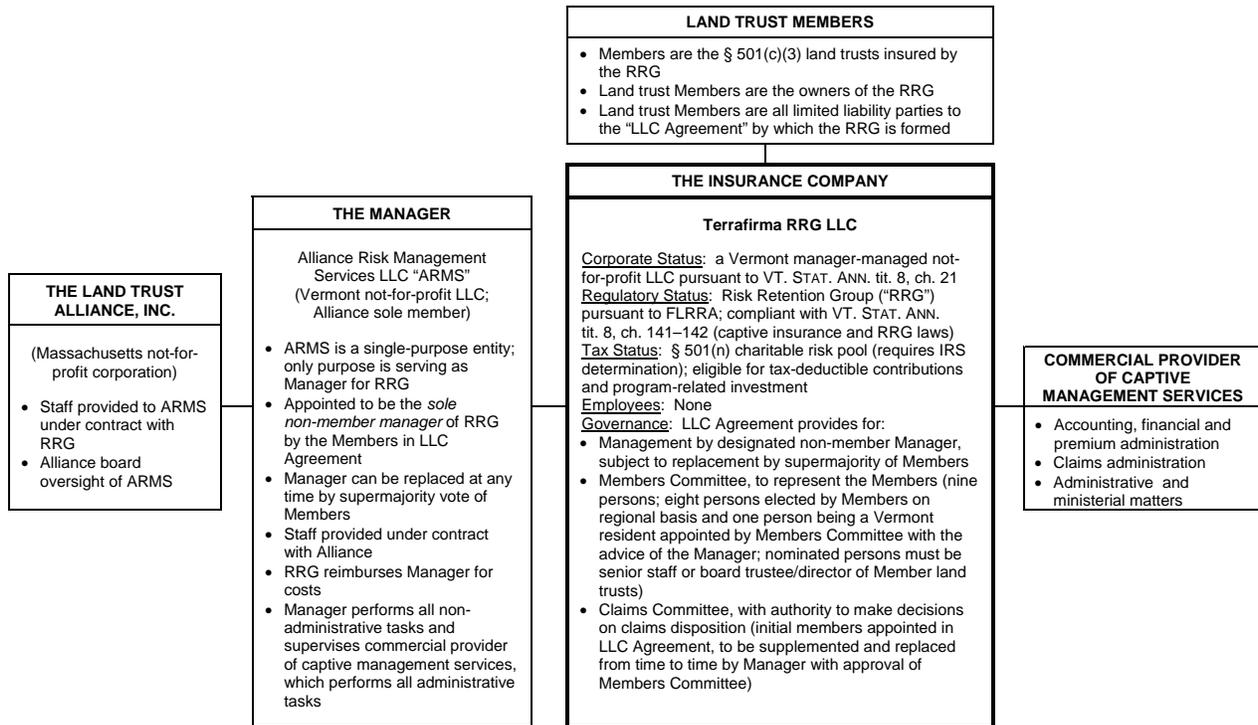
Terrafirma is a not-for-profit limited liability company organized in 2011 under the State of Vermont Limited Liability Company Law. It is domiciled in Vermont. Pursuant to its LLC Agreement (see “*Summary of Principal Agreement — Terrafirma LLC Agreement*”), it is an LLC in which the Members have designated a person not a Member to be the Manager of the LLC, authorized to act in its name and manage the business of Terrafirma on behalf of the Members. Alliance Risk Management Services LLC (“ARMS”), a Vermont limited liability company of which the Alliance is the sole owner and member, will be the “*Manager*” of Terrafirma.

In lieu of a Board of Managers, the Members in the LLC Agreement (“*LLC Agreement*”) have established a Members Committee (the “*Members Committee*”) to represent their interests. In order to assure broad representation of the land trust community in America, the LLC Agreement provides for the election of the Members Committee by region, and also requires nominations on a basis reasonably designed to include on the Members Committee representatives of national, regional (State) and local land trusts, and also a mix of accredited and non-accredited land trusts. See “*Control and Management*” below.

Terrafirma has been organized as a “risk retention group” consisting exclusively of Alliance members which are land trusts that are tax-exempt organizations described in Section 501(c)(3) of the Internal Revenue Code and that are insured by Terrafirma (“*Members*”). A “risk retention group” is a mutual insurance arrangement permitted under the Risk Retention Act, under which similarly situated entities act together to form an insurance entity whose business is limited to insuring its members. Terrafirma is expected to qualify as a captive insurance company under Vermont law. To obtain a state license to operate as a risk retention group in Vermont, Terrafirma must retain several professional advisors including a third party professional captive manager (“*Captive Manager*”). In Vermont and other jurisdictions, most day-to-day ministerial and administrative functions of a captive insurance company or risk-retention group are performed by commercial service providers located in that jurisdiction functioning as Captive Managers.

Terrafirma is expected to qualify as a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code. To qualify as an organization described in Section 501(c)(3), an organization must (i) be organized and operated exclusively for certain exempt purposes set forth in Section 501(c)(3), including a “charitable purpose”, (ii) not have any of its earnings inure to any private shareholder or individual, (iii) not attempt to influence legislation as a substantial part of its activities, and (iv) not participate in any campaign activity for or against political candidates. In general, an organization engaged in commercial-type insurance will not be considered by the Internal Revenue Service to be organized and operated exclusively for one of the exempt purposes set forth in Section 501(c)(3). There is, however, an exception for organizations meeting the definition of “charitable risk pool” under 501(n). Provided that the organization meets the requirements of that section, the organization will be deemed to have a “charitable purpose.” Terrafirma is expected to meet the requirements of Section 501(n), including the requirement that all of the organization’s members and insured parties are entities that have been determined by the Internal Revenue Service to be entities described in Section 501(c)(3) of the Internal Revenue Code, and will, therefore, be deemed to be organized and operated exclusively for a charitable purpose. Terrafirma is also expected to meet all the other requirements to qualify as a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code. See “*Regulation*” and “*Certain U.S. Federal Income Tax Consequences.*”

The structure of Terrafirma is summarized below:



THE LAND TRUST ALLIANCE

The Alliance promotes voluntary private land conservation to benefit communities and natural systems, and serves as the national convener, strategist and representative of more than 1,700 land trusts across America. The mission of the Alliance is “*To save the places people love by strengthening land conservation across America.*” The Land Trust Alliance, Inc. was formed in 1982 as a Massachusetts not-for-profit corporation, and is qualified as a tax-exempt public charity described in Section 501(c)(3) of the Internal Revenue Code. The Alliance operates through a national office in Washington, D.C. and regional programs around the country.

To fulfill its mission, the Alliance has worked for almost 30 years with the national conservation community — comprised of 5 million members — to quickly, effectively and permanently save our most valued natural resources across America. The Alliance has trained thousands of conservation leaders, won new federal incentives for conservation of private land, and developed standards and practices to professionalize and safeguard land trust work. Through its programs and services, the Alliance provides national and regional training; promotes the continued protection, in perpetuity, of land already set aside for conservation; and advances public policies to accelerate the pace of private voluntary conservation. In 2006, the Land Trust Accreditation Commission, an independent program of the Alliance, was created to operate a land trust accreditation program to ensure public confidence in land conservation and to build strong land conservation organizations by verifying land trust implementation of specific indicator practices from the *Land Trust Standards and Practices*, as established by the Alliance.

More information about the Alliance is available at www.landtrustalliance.org.

INVESTMENT OPPORTUNITY

Terrafirma cannot commence operations until at least \$4 million in capital has been secured. In order to qualify as a “charitable risk pool” under Section 501(n) of the Internal Revenue Code, at least \$1 million of that capital must be secured from entities other than Terrafirma’s insured Members. Given the small budgets of the typical land trust, it is not currently expected that a material amount of capital (in excess of the \$100 capital contribution from each) will be sourced from the Members. In addition, the Alliance is seeking \$1.5 million to fund its National Conservation Defense Initiative that will provide risk management and loss prevention services to Terrafirma and its Members. Contributions are being sought principally from foundations and individual donors.

Donated Contributions to Capitalize Terrafirma

Donated contributions to capital may take the form of cash or letters of credit executed in favor of the Department on behalf of Terrafirma and in accordance with the terms specified in Annex B (a “*Letter of Credit*”).

Cash

Terrafirma intends to apply for a determination by the Internal Revenue Service that it qualifies as a “charitable risk pool” pursuant to Section 501(n) of the Internal Revenue Code and as a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code. Should it so qualify, cash donations to Terrafirma will be tax deductible to the full extent permitted by law. However, we cannot provide assurance that the Internal Revenue Service will in fact determine that Terrafirma is a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code or that donations to Terrafirma will be tax deductible. See “*Certain U.S. Federal Tax Considerations — Charitable Contributions.*”

All donations must be made pursuant to a signed Grant Agreement between Terrafirma and the donor. Among other things, each donor will be required to agree that it has not relied upon this Memorandum, the Alliance, Terrafirma or any of their respective agents or representatives for advice on the tax treatment of their gift. Donors to the initial capitalization of Terrafirma will be entitled to the recognition, reporting and other rights to be agreed with each donor and set forth in the Grant Agreement.

Letter of Credit

A letter of credit serves as permanent capital, in the sense that it must be renewed each year, potentially indefinitely, or else the Department will draw it prior to termination and hold the proceeds for the benefit of Terrafirma or contribute the proceeds to Terrafirma as cash capital. Ordinarily, the Department would not draw a donated letter of credit unless the captive insurer were insolvent, or the proceeds were otherwise needed to pay claims. The only circumstance where a letter of credit would be permitted to terminate undrawn, is a circumstance where the Department has determined, upon application by Terrafirma, that it has surplus capital, and would be permitted to effect a capital reduction (*i.e.*, circumstances similar to those under which the Department might approve repayment of principal of a Surplus Note). Accordingly, there can be no assurance that a donated letter of credit will not be drawn, or that the Department will permit a donated letter of credit to terminate without drawing at any particular time.

The tax consequences of the execution, maintenance, and expiration of a Letter of Credit, as well as any draw on a Letter of Credit are complex and donors executing such a Letter of Credit will be required to confirm in writing to Terrafirma that they have independently consulted their own tax advisors with respect to such consequences. See “*Certain U.S. Federal Tax Considerations — Charitable Contributions — Letters of Credit*” and “*Certain U.S. Federal Tax Considerations — Tax-Exempt Organizations — Letters of Credit.*”

Purchase of Surplus Notes

The Surplus Notes will constitute debt obligations of the type generally referred to in the insurance industry as “Surplus Notes.” For a more detailed description of the Surplus Notes, see “*Description of the Surplus Notes.*”

The Surplus Notes will be issued pursuant to an Order of the Commissioner (the “*Order*”). The principal of the Surplus Notes and the indebtedness which such Surplus Notes represent, shall be recorded for statutory accounting purposes as an addition to surplus, rather than a liability. See “*Capitalization of Terrafirma*.” The Surplus Notes are solely the obligations of Terrafirma (to the extent described herein) and not obligations of the Alliance.

Any payment of principal or of interest on the Surplus Notes may be made from time to time, either in full or in part, only from available surplus funds of Terrafirma, and only with the prior approval of the Commissioner. The foregoing restrictions on the payment of interest on or principal of the Surplus Notes are referred to in this Memorandum as the “*Payment Restrictions*.” The Commissioner will have broad discretion in determining whether to allow payments to be made on the Surplus Notes. Accordingly, there can be no assurance that any such payments will be made. See “*Risk Factors*” and “*Description of the Surplus Notes — Payment — Restrictions on Payment*.”

In the case of private foundations, the purchase of Surplus Notes could possibly qualify as a “program-related investment” as that term is defined in Section 4944 of the Internal Revenue Code and the accompanying Treasury Regulations. The determination of whether or not the purchase of Surplus Notes qualifies as such a “program-related investment” is the sole responsibility of the private foundation making such purchase, and no such foundation is entitled to rely on the Alliance or Terrafirma in relation to such qualification. See “*Certain U.S. Federal Tax Considerations — Tax-Exempt Organizations — Program-Related Investments*.”

Donated Contributions to Alliance for National Conservation Defense Initiative

The Insurance Program has been conceived and will be executed as an integral part of the Alliance’s existing National Conservation Defense Initiative, which will also be expanded to support the success of the Insurance Program by providing risk management and loss prevention services to Terrafirma and its Members. The Alliance will continue its “*Conservation Defense Center*” (which provides networking, education, and an online legal clearinghouse) and deploy its Conservation Defense Fund (by intervening in precedent-setting cases and situations) when necessary.

The Alliance, acting through ARMS as the Manager, will closely coordinate its existing and expanded National Conservation Defense Initiative with the Insurance Program, consulting and coordinating with Terrafirma’s Members Committee and the national coordinating attorney who initially will be provided by ARMS from the Alliance conservation defense staff (“*National Coordinating Attorney*”).

To assure the necessary continuation and expansion of its National Conservation Defense Initiative through the critical early years of the Insurance Program, the Alliance is seeking \$1.5 million in funding for its National Conservation Defense Initiative at the same time as it is raising the capital for Terrafirma. We anticipate that many funders will wish to participate in supporting both.

RISK FACTORS

Prospective donors and investors should consider carefully, in addition to the other information contained in this Memorandum, the following factors before making a donation or purchasing the Surplus Notes.

Risks of Not Proceeding with National Conservation Defense Insurance

The risks of not proceeding with the Insurance Program are considerable. They include:

- The risk that one or more individual land trusts do not have the financial capacity to vigorously contest assaults on conserved land, resulting in loss of conserved lands to development or uses inconsistent with conservation values.
- The risk that adverse court decisions and/or settlement agreements have devastating precedential effect, frustrating later conservation defense efforts even where a land trust has the financial capacity to vigorously defend a subsequent law suit.
- The risk that one or more vigorous, effective and responsible land trusts are devastated by enforcement costs, resulting in program suspension, diversion of funds otherwise destined for conservation spending or, in the worst case, bankruptcy.
- The risk that land trusts are unable to meet their fundamental obligation of permanent protection of conserved lands, or present or future Internal Revenue Code requirements relating to financial capacity to enforce easements. In some cases, this could lead to loss of Section 501(c)(3) status for otherwise vigorous, effective and responsible land trusts.
- The risk that private land owners lose faith in conservation easements, resulting in reductions of easement donations that are the backbone of private land conservation in America.
- The risk that donors lose confidence in the work of land trusts and withdraw their financial support.
- The risk that easements are weakened to the extent that developers and/or governments start to look to protected open space as the preferred venue for transportation, energy and other infrastructure, housing and other purposes.
- The risk that Congress and other public agencies will lose confidence in land trusts and revoke the funding programs and tax incentives that are essential for conservation easements.

Risk Factors Related to Terrafirma

No Operating History; New Line of Business; No Diversification

Terrafirma has no history of operations, and, therefore, no financial results. Moreover, no other entity has previously engaged in the line of business which will be the sole line of business of Terrafirma.

The business of Terrafirma will be non-diversified, and limited to the business of insuring the conservation defense costs of its Members. Holders of Surplus Notes will be completely dependent for repayment on the ability of this single line of business to generate surplus sufficient for Terrafirma to obtain approval to make payments in respect of the Surplus Notes. There is no loss history or operating track record of this or any other insurer from which to judge the likelihood that such surplus funds may be available.

Future Claims Experience May Not Match Assumptions

The Insurance Program was designed on the basis of assumptions, described below under “*Annex A — Pro Forma Financial Model and Sensitivities.*” One of the key assumptions was loss experience. Assumed loss experience was based on the historic loss experience of a statistically significant sample of land trusts. But the historic loss experience of that sample may not be indicative of future loss experience of the land trusts participating

in the Insurance Program. Accordingly, actual loss experience could exceed, perhaps significantly, the loss experience assumed.

Actual Claims Losses May Exceed Reserves for Claims

The initial premium under the Insurance Program, plus investment income, is designed to exceed by a significant margin estimated losses plus operating expenses. The result is expected to be retained earnings that fund a reserve available to buffer fluctuating claims in future periods, especially in the absence of reinsurance. However, there can be no assurance that available reserves will be sufficient to fund claims in any single period. Should claims exceed available reserves, it is highly uncertain whether Terrafirma could obtain additional capital. The Alliance is not in a financial position to provide additional capital to Terrafirma in this event, nor is it committed or expected to do so. If additional funding is not obtained, Terrafirma could become insolvent and cease operations.

Operating Costs May Be Higher than Expected

Without any operating history, or the benefit of any other insurer engaged in the same line of business, it is difficult to make accurate estimates of operating costs. Certain initial operating costs, such as the administration costs to be paid to the Captive Manager and the cost of risk management and loss prevention services to be provided by the Manager, have been locked in for an initial period. Thereafter, such costs are expected to reflect actual costs, and could rise, perhaps significantly. Higher-than-expected operating costs could impair the ability of Terrafirma to generate retained earnings and fund reserves.

Reinsurance Is Unlikely to Be Available

Because Terrafirma is a captive start-up offering a new type of coverage, it is not likely to be able to obtain reinsurance, or, should reinsurance become available, it is not likely to be available at a reasonable cost.

Land Trusts May Fail to Renew Their Policies and Withdraw from the Insurance Program

Land trust Members of Terrafirma have committed to pay premiums on the insured properties for an initial period of three years. Thereafter, insured land trusts will decide whether to renew their participation each year. There can be no assurance that a number of land trusts sufficient to sustain the program will renew. If premium costs rise significantly due to loss experience, operating costs, investment losses and/or other factors, a significant number of land trusts could withdraw from the Insurance Program, jeopardizing its ability to continue to operate.

Risk Factors Related to the Surplus Notes

The Commissioner Must Approve Each Payment of Principal of or Interest on the Surplus Notes. As a Result, Payment of Principal of or Interest on the Surplus Notes, May Be Delayed Indefinitely

All payments of principal of or interest on the Surplus Notes may be made, from time to time, either in full or in part, only from the “available surplus funds” of Terrafirma, and only with the prior approval of the Commissioner. The Commissioner will have broad discretion in determining whether to allow payments to be made on the Surplus Notes. See “*Description of the Surplus Notes — Payment — Restrictions on Payment.*”

Disputes relating to the exercise by the Commissioner of his regulatory authority, including approval of repayment of interest on or principal of the Surplus Notes, will likely be governed by Vermont law and will be subject to the jurisdiction of the courts of the State of Vermont.

There is no statutory or other requirement that Terrafirma accumulate surplus in order to make payments on the Surplus Notes. In any event, regardless of the amount of Terrafirma’s surplus, unassigned funds (surplus), earnings or profits, the Commissioner has the sole discretion to withhold approval of any payment on the Surplus Notes (the “*Payment Restrictions*”).

If the Payment Restrictions are not satisfied and payments of interest or principal are not made, the applicable interest payment date or maturity date, as the case may be, will be extended until such time, if any, at which such Payment Restrictions are satisfied. Interest will continue to accrue on any unpaid principal amounts of the Surplus Notes (but not on unpaid interest the payment of which has not been so approved) during the period of such extension and no penalty will arise as a result of any such period of extension. Any payment of interest on any

Surplus Note so extended will cease to be payable to the person in whose name the Surplus Note was registered on the relevant record date, and such amount will instead be payable to the person in whose name such Surplus Note is registered on such date as is 15 days prior to such extended interest payment date. See “*Description of the Surplus Notes — Payment — Restrictions on Payment.*”

The Surplus Notes are solely obligations of Terrafirma (to the extent described herein) and are not obligations of the Alliance, the Manager, or any of Terrafirma’s present or future subsidiaries or affiliates.

The Surplus Notes Are Subordinated to other Obligations of Terrafirma

The Surplus Notes are unsecured obligations of Terrafirma and are expressly subordinated in right of payment to all existing and future prior claims and any Senior Indebtedness of Terrafirma, including all insurance policies and existing or future indebtedness issued, incurred, or guaranteed by Terrafirma (other than any future Surplus Notes or similarly subordinated obligations, any indebtedness that is expressly subordinate to, or ranks *pari passu* with — having equal rights to payment with — the Surplus Notes).

As used herein, “Prior Claims” means a claim that is either earlier in time or in priority to a claim accruing to a holder of the Surplus Notes. As used herein, “Senior Indebtedness” of Terrafirma means: (i) all existing or future indebtedness of Terrafirma for borrowed money; (ii) all existing or future indebtedness for borrowed money of other persons, the payment of which is guaranteed by Terrafirma; (iii) all existing or future obligations of Terrafirma under any agreement obligating Terrafirma to cause another person to maintain certain financial ratios, a minimum level of net worth, or otherwise to ensure the solvency of such person; and (iv) any expense or any claim or amount, to the extent that repayment of principal of or payment of the interest on the Surplus Notes is required by law to be subordinated to the prior payment thereof, *provided* that any such indebtedness of Terrafirma which by its express terms is subordinated in right of payment to, or ranks equally with, the Surplus Notes will not constitute Senior Indebtedness. “Senior Indebtedness” does not include any future Surplus Notes or similar obligations of Terrafirma, which would rank *pari passu* with the Surplus Notes.

There is no limitation on the ability of Terrafirma to incur additional Prior Claims and Senior Indebtedness from time to time in the future. Terrafirma may make adjustments that affect the cost of insurance to policyholders and/or its operating costs, even though payments on the Surplus Notes may not have been approved by the Commissioner, regardless of the effect of any such adjustment may have on the Commissioner’s decision regarding the payment of interest on or repayment of principal of the Surplus Notes. See “*Description of the Surplus Notes — Payment — Subordination.*”

Limited Remedies Exist to Enforce the Surplus Notes

The Surplus Notes provide that, in the event that any state or federal agency shall obtain an order or grant approval for the rehabilitation, liquidation, conservation or dissolution of Terrafirma, the Surplus Notes will, upon the obtaining of such order or the granting of such approval, immediately mature in full without any action on the part of any holder of the Surplus Notes, with payment thereon being subject to the satisfaction of the Payment Restrictions (see “*Description of the Surplus Notes — Payment — Restrictions on Payment*”) and to any restrictions imposed as a consequence of, or pursuant to, such proceedings.

Surplus Notes are not otherwise subject to immediate maturity or otherwise becoming immediately payable. As a result, in the event that Terrafirma shall fail to perform any of its obligations under the Surplus Notes, including any failure to pay interest on or principal of the Surplus Notes, no holder of the Surplus Notes shall be entitled to declare the Surplus Notes to immediately mature or otherwise be immediately payable. See “*Description of the Surplus Notes — Remedies.*”

No Public Market Exists for the Surplus Notes and the Surplus Notes Are Subject to Transfer Restrictions

Prior to the offering made hereby, there has been no market for the Surplus Notes and no market for the Surplus Notes is expected to develop. No sale, assignment or transfer (whether legal or beneficial) of Surplus Notes may be made without the prior written consent of Terrafirma, not to be unreasonably withheld. In addition, the Surplus Notes are not and will not be registered under the Securities Act or any state securities laws and, as a result, may be subject to certain other restrictions on transfer. Purchasers may be unable to resell the Surplus Notes for an extended period of time, if at all. Consequently, a purchaser may not be able to liquidate its investment readily, and the Surplus Notes may not be readily accepted as collateral for loans.

Purchase of the Surplus Notes May Not Qualify as Insurance Program-Related Investment

There can be no assurance that the Internal Revenue Service will not contend, and that a court will not ultimately hold, that the purchase of the Surplus Notes are not program-related investments. The determination of whether or not the purchase of the Surplus Notes qualifies as program-related investment is the sole responsibility of the private foundation making such purchase. Please see “*Certain U.S. Federal Income Tax Considerations*” below. Please also consult your own tax advisors regarding the determination of whether or not the purchase of the Surplus Notes qualifies as a program-related investment.

USE OF PROCEEDS

Donated Cash Contributions. The proceeds of donated contributions shall be used (subject to any donor-imposed restrictions):

first, to provide the minimum \$1 million contributed capital of Terrafirma required by Section 501(n); *provided*, that the donor of such contribution is a person who is not a Member of, or insured by, Terrafirma,

second, to be retained and invested by Terrafirma as part of its statutory capital until that capital (less the amount of any donated Letter of Credit) equals \$3 million;

third, to refund the advances made by the Alliance for start-up costs not covered by land trusts from their commitment and registration fees;

fourth, to fund budgeted operating costs for the first year of Terrafirma's operations;

fifth, to be paid to the Alliance to fund budgeted costs (not reimbursable by Terrafirma) of its National Conservation Defense Initiative for the first five years of Insurance Program operations; and

sixth, to be paid to the Alliance to increase the Conservation Defense Fund, which is described in "*Description of National Conservation Defense Initiative — Conservation Defense Fund*" below.

Donated Letters of Credit. Donated Letters of Credit that comply with the requirements of the Department (described below under "*Annex B – State of Vermont Captive Insurance Company Required Form of Irrevocable Letter of Credit*") shall be delivered by Terrafirma to the Commissioner and held by the Commissioner. Should any Letter of Credit be drawn by the Commissioner, the proceeds of drawing may be applied to any purpose to which cash capital of Terrafirma could be applied under the same circumstances, including, without limitation, the discharge of claims and other liabilities of Terrafirma.

Surplus Note Proceeds. The proceeds from sales of Surplus Notes shall be used exclusively to be retained and invested by Terrafirma as part of its capital surplus.

CAPITALIZATION

The expected capitalization of Terrafirma, as of its commencement of operations (assuming for this purpose only that \$1,000,000 of proceeds available for capital result from sales of Surplus Notes and \$3,000,000 result from donated cash and/or letter of credit contributions), is as follows.

Terrafirma is required by the Department to maintain capital and surplus at a minimum of \$1 million in cash, money market funds, and certificates of deposit and treasury bills with maturities of one year or less.

	Expected as of Commencement of Operations
Assets	
Capital contributions from Members	\$45,000
Capital contributions from others	\$3,000,000
Surplus (from proceeds of the Surplus Notes)*	\$1,000,000
Registration fees from Members	\$155,000
 Total assets	 4,200,000
Liabilities	
Loss and loss adjustment expense reserves	\$0
Unearned premium	\$0
Accounts payable and other accrued liabilities	\$155,000
 Total liabilities	 \$155,000
 Net assets	 \$4,045,000

* The principal of the Surplus Notes and the indebtedness which such Surplus Notes represent must be recorded for Vermont statutory accounting purposes as an addition to surplus, rather than a liability.

DESCRIPTION OF NATIONAL CONSERVATION DEFENSE INITIATIVE

The ultimate goal of the Alliance's National Conservation Defense Initiative is to protect the permanence of conserved land. Fundamentally, this involves encouraging practices (such as landowner communication, easement monitoring, etc.) designed to prevent easement violations and discourage attempts to escape easement obligations or to encroach on preserved land. In addition, when litigation does occur, the program seeks not only to assure individual results that are consistent with the conservation values originally protected, but which avoid unfavorable case law, and create favorable case law.

The Alliance's National Conservation Defense Initiative has been in operation since 2007 and currently has three principal components: the Center, the Fund and the Insurance Program. The Conservation Defense Center provides networking, education and legal information to attorneys and land trusts on conservation defense. Services include an on-line conservation defense clearinghouse, an attorney locator service, a nationwide conservation defense network of experts and special training opportunities for senior conservationists and lawyers.

In addition, the Alliance maintains a Conservation Defense Fund that is used by the Alliance to assist land trusts facing precedent-setting legal challenges to their conservation easements and land holdings (discussed below).

The Alliance views the Insurance Program as the third component of a fully integrated National Conservation Defense Initiative. Risk management and loss prevention services are vital to the success of the Insurance Program, and those services will be provided to TerraFirma and its Members by the Alliance.

Conservation Defense Fund

In 2008, anonymous donors generously contributed \$500,000 to the Alliance to establish a "Conservation Defense Fund," to be used exclusively to assist land trusts to defray the costs of legal proceedings involving conservation easements and land holdings where, in the Alliance's judgment, the result could set precedents (positive or negative) that would be relevant to the land trust community as a whole.

The Conservation Defense Fund may be used to support outside costs directly related to legal defense, such as research, attorney and expert fees, court fees, briefs and other filings, communications, intervention in litigation and related out-of-pocket expenses. When necessary, the Alliance may decide to file an *amicus curiae* (friend of the court) brief or intervene to represent the public interest, if the case meets the Alliance's litigation selection criteria. The Conservation Defense Fund is designed to be an additional tool for the conservation community in significant situations, where creating strong case law is essential.

Three broad factors will be used to evaluate possible cases for support by the Conservation Defense Fund: significance of the case, merits of the case, and practical considerations. Within each category, the Alliance has developed specific criteria to guide participation.

To date, the Alliance has spent only a nominal amount from the Fund. Despite some loss suffered in the recent economic downturn, the Fund has recovered and now exceeds the original \$500,000 with a balance of \$503,837.50.

The Alliance has supplemented legal services paid for by the Fund with the volunteer services of twelve pro bono law firms and legal clinics affiliated with law schools to provide assistance to land trusts and to research emerging areas of law. Research conducted to date had included tax issues such as Tax Court precedent in zero valuation of conservation easements, and the complex problems of orphan easements.

Once the Insurance Program has commenced, the Conservation Defense Fund generally will not be available for TerraFirma to pay claims. Nor, as a donor-restricted gift to the Alliance, would it be available in the unlikely event that TerraFirma were unable to fund claim payments in any particular period. However, it is expected that the Conservation Defense Fund will play a critical role in providing specialist expertise, national attorneys, amicus support, expert witnesses and other forms of litigation support in cases where policy and precedential issues justify its use. Any decisions regarding use of the Conservation Defense Fund will remain decisions made by the Alliance in its sole discretion, although it is expected that TerraFirma's Claims Committee and ARMS will coordinate closely with the Alliance regarding the identification and prosecution of cases highly relevant to the cause of national conservation defense.

The Conservation Defense Fund is a revolving fund, not an endowment. In connection with the capitalization of the Insurance Program, the Alliance is seeking another \$500,000 in funding or commitments to the Conservation Defense Fund to ensure that it is available during the early years of the Insurance Program to make the best possible defense of the cases that, if adversely decided, could profoundly affect the loss experience of the Insurance Program going forward. In addition to the funding sought by this Memorandum, the Alliance plans to ask the largest 15 land trusts to contribute cash to this Fund.

Loss Prevention Services to Terrafirma and Its Members

The Terrafirma LLC Agreement specifies that the Alliance, acting through ARMS, will be responsible for providing specified loss prevention and risk management services to Terrafirma and its Members (“*Specified Services*”). These Specified Services to be provided through the Manager will be wholly or partly for the account of Terrafirma (see “*Budget*” below), while the balance of the Alliance’s National Conservation Defense Initiative will remain the responsibility of the Alliance.

Included in the Specified Services are:

- The services of a national coordinating attorney for the Insurance Program, who would oversee the selection of counsel and management of cases where costs are covered by the Insurance Program, and participate with land trusts and their counsel in decisions regarding settlement, appeal and the like. The National Coordinating Attorney would also convene and serve as an *ex officio* member of the committee with authority to make decisions regarding insurance claims (the “*Claims Committee*”).
- Expansion of Conservation Defense Center resources to include resources specifically required by Member land trusts, attorney location services for Member land trusts, special programs for attorneys eligible to act on cases covered by the Insurance Program and special training at Rally for all those involved in the Insurance Program and claims covered thereunder.
- The coordinating services of the senior staff member of ARMS, who is expected to be the Alliance staff director responsible for the Alliance’s National Conservation Defense Initiative. That person will, with other staff provided from time to time to ARMS, perform all other services required by Terrafirma that are not being performed under contract by the Captive Manager.

As noted above, the Alliance may from time to time decide to deploy the financial and other resources of the Conservation Defense Fund in support of a proceeding covered by the Insurance Program, but is under no obligation to do so. When so deployed, such funding would be for the account of the Alliance and would not be reimbursed by Terrafirma.

Budget

Some of the Alliance’s National Conservation Defense Initiative costs — mainly those consisting of direct risk management and loss prevention support to Terrafirma and its Members — will be reimbursed by Terrafirma to ARMS. The major part of such costs will continue to be borne by the Alliance itself and funded through grants and contributions to the Alliance.

The base case Financial Model (see *Annex A*) assumes that ARMS’ costs for which Terrafirma is responsible total an average of \$190,658 per annum during the first three years of the Insurance Program. Some of these costs (\$62,000 in the first year with inflation increases thereafter) relate to operating functions of the Insurance Program that are not being performed by the Captive Management Service Provider. The balance of the annual reimbursement (approximately \$123,000 in the first year with inflation increases thereafter) will be for risk management and loss prevention services. Other risk management and loss prevention services are being performed directly by the Alliance, and are not for the account of the Insurance Program.

Because the success of the broader National Conservation Defense Initiative is so critical to the success of the Insurance Program, the Alliance is seeking, as part of the initial fund raising for the Insurance Program, funding for its direct National Conservation Defense Initiative activities during the first five years of Insurance Program operations. The overall budget is as follows:

	Reimbursable by Insurance Program?	Annual Budgeted Amount – Reimbursable by TerraFirma for First Three Years of Insurance Program	Alliance Annual Unreimbursed Cost	Five Years of Alliance Costs
Direct loss prevention initiatives with				
Member/insureds	Yes	\$132,779	\$0	n/a
Various committee and counsel coordination	Yes	\$37,276	\$0	n/a
“National Coordinating Attorney” position	Yes	\$20,603	\$0	n/a
Conservation Defense Fund staff	No		\$70,000	\$350,000
Conservation defense clearinghouse	No	\$0	\$20,000	\$100,000
Attorney locator service	No	\$0	\$10,000	\$50,000
Conservation defense network	No	\$0	\$30,000	\$150,000
Special training for lawyers (symposium)	No	\$0	\$40,000	\$200,000
Rally conservation defense training and other programs	No	\$0	\$30,000	\$150,000
TOTAL		\$190,658	\$200,000	1,000,000
Additions to Alliance Conservation Defense Fund	No	\$0	\$0	\$500,000
FUNDING SOUGHT FOR FIVE YEARS OF UNREIMBURSED ALLIANCE COSTS	--	--	--	\$1,500,000

DESCRIPTION OF PROPOSED INSURANCE PROGRAM

Insurance Program Design and Process

The Alliance contracted with a well-regarded independent insurance consultant, Betterley Risk Consultants, Inc. (“*Betterley*”), to evaluate the feasibility of conservation defense insurance. The Alliance also contracted with the University of Wisconsin Survey Center to conduct a statistical survey of the land trust community to determine the history of litigation costs and land trust interest in conservation defense insurance. The survey showed that 73% of Alliance members had some interest in purchasing conservation defense insurance if it were made available.

Betterley used the University of Wisconsin survey to determine past risk and it evaluated future risk by examining variables such as increasing real estate prices, development pressure, sales of conserved land to successor owners, and third-party trespass. Betterley combined the loss history and the future risk evaluation to arrive at the estimated annual premium and capitalization required for a captive insurance program to be feasible.

The Betterley report proposed an annual premium per easement or land parcel of around \$60 with a \$5,000 deductible and a cap of \$500,000 per occurrence. The report determined that the Insurance Program would be financially feasible if at least 12,000 easements were enrolled in the program. As of the date hereof, over 460 land trusts from 47 states and DC have committed more than 18,000 conservation easements and fee parcels to the Insurance Program.

The Betterley report advised that it will be important to build capital by retaining excess revenues which would help buffer against premium increases if risks increase dramatically in future years. Should the Insurance Program generate excess revenue over the long term, it could decrease premiums or invest it in prevention programs to reduce risk.

The Insurance Program has been designed with the goal of satisfying land trust needs in a financially sustainable way. Coverages (described below) are broad, to enable a wide range of land trusts to benefit.

The Insurance Program as designed is non-assessable, meaning that excess losses are not billed to the Members, but must be absorbed by retained earnings and capital. Unlike a life insurance program, for example, this Insurance Program is designed to provide coverage on a year-by-year basis — with claims during a year covered by premiums paid during that year, plus whatever retained earnings or capital surplus may be available. TerraFirma is not expected to be able to obtain reinsurance, and will not benefit from any sort of governmental financial insolvency or guaranty fund. Accordingly, if TerraFirma did not have sufficient funds to cover its claims, could not raise premiums sufficiently and could not attract additional capital, then it would cease operations. In this event, the loss to its Members would be limited to loss of premiums paid, and the possibility that all or some part of a claim might not be paid. TerraFirma’s operating results and capital position will be monitored by the Commissioner with a view to minimizing these risks.

Terms of Insurance

Eligibility

The Alliance endeavored to make the Insurance Program’s eligibility standards accessible for most land trusts, although some will need to improve policies, reserves, baseline documentation reports and monitoring before they are eligible. Some of the eligibility criteria are drawn from *Land Trust Standards & Practices* with consistent language in order to avoid confusion arising from multiple standards.

If a land trust is accredited (see “*Land Trusts and Easements — Land Trusts — Accreditation*”), then it is automatically eligible every year during which it maintains accreditation.

All other (non-accredited) land trusts must meet each of the following eligibility criteria for the initial inception year and for every year upon re-application:

- Land trust legally organized and in good standing in that state;
- Land trust described in Section 501(c)(3) of the Internal Revenue Code and tax exempt under Section 501(a) or listed on Publication 78 (or a successor listing) with the Internal Revenue Service;

- Land trust has a complete baseline documentation report for every conservation easement;
- Land trust has a complete inventory for every parcel of fee-owned land if it is insuring its fee properties;
- Land trust has implemented a program for annual monitoring of its conservation easements;
- Land trust regularly monitors its fee-owned land, if it is insuring its fee properties;
- Land trust is a member in good standing with the Land Trust Alliance;
- Land trust has not been the subject of any final judgment against it for fraud, misrepresentation, criminal charges, bad faith, misleading business practices or any other similar charges;
- Land trust is not the subject of an ongoing governmental investigation or inquiry, such as an attorney general investigation, legislative hearing and the like, the subject of which is land trust complicity in misleading business practices, fraud, gross negligence or criminal misconduct;
- Land trust prepares an annual budget that is reviewed and approved by its board, that is based on programs planned for the year, and that either provides for annual revenue to be greater than or equal to expenses or provides for reserves to be deliberately drawn upon;
- Land trust has general liability insurance (land trusts will not be required to have directors and officers liability insurance);
- Land trust has and implements a written record-keeping policy and secure record-keeping system that preserves irreplaceable documents essential to defense and enforcement; and
- Land trust has, or is actively building, its legal defense and general stewardship reserves or other reserves that can be allocated for legal defense and stewardship, unless prohibited by state statute or regulation.

The Insurance Program will have the right to refuse to insure any land trust not meeting the eligibility criteria, and to verify land trust statements made in each annual application. The Insurance Program also may refuse to insure a land trust if it determines that a land trust has flagrantly deviated from *Land Trust Standards & Practices* or that its participation would materially damage the viability of the Insurance Program. The Insurance Program would have the right to waive specific eligibility requirements in exceptional cases in its discretion.

In addition, if a land trust has made a material misrepresentation in relation to eligibility, underwriting or any claim, then the Insurance Program may deny coverage for a claim.

Basic Coverage and Exclusions

Coverage under the Insurance Program has been designed to include risks not covered by the general liability, commissioners and officers and title insurance otherwise available. Coverage includes defense and enforcement of conservation easements, and the costs of litigation initiated by a land trust or other in the case of trespass on conserved land.

Coverage is solely for litigation, mediation, negotiation and other dispute resolution expenses, and not for damages or the cost of corrective work on the ground.

Coverage includes:

- Defense against litigation regarding conservation easements and fee-owned land;
- Enforcement of legal rights by conservation easement holders and fee-land owners when those respective rights are violated;

- Fees for alternative dispute resolution, such as mediation fees, court filing fees, negotiation fees and the like for both defense and enforcement coverage, as well as fees for outside experts and associated out-of-pocket expenses for these experts; and
- Any appeals up to the policy limits.

A land trust may insure its entire conservation easement portfolio or its entire fee-owned land portfolio or both, but may not select individual properties or easements for coverage. Covenants contained in a deed conveying real estate that are vested in and enforceable by an insured, as well as trail easements, are eligible for coverage. A land trust may elect not to cover all trail easements or all deed covenants in its portfolio separately from its conservation easements and fee-owned land. A land trust may also elect to cover its entire portfolio of conservation interests. Exceptions would be available for land held for resale without retaining a conservation easement or restrictions (trade land), and for certain co-holder situations. Land conservation easements that have historic value and/or historic buildings are covered, but historic facade easements are not.

The policy form will contain the standard insurance clause that allows the Insurance Program to identify and decline to cover, prior to payment of any premium, specific easements, fee-owned land or covenants that excessively exceed the scope and purpose of the coverage. If the Insurance Program does decline to cover a specific conservation interest, such action would not have any effect on the rest of the land trust's portfolio. The Alliance anticipates that it would be a rare event. Any such denial would be accompanied by a detailed explanation and assistance to possibly address the concerns so as to obtain coverage. Once an eligible land trust pays a premium for a conservation interest, then coverage is insured unless the land trust did not meet the eligibility criteria.

If a land trust recovers fees or other costs or is awarded any other monetary damages of any kind in a case covered by the Insurance Program, then any such proceeds are divided between the Insurance Program and the land trust based on their actual costs. Typically the deductible would be re-paid to the insured land trust first, and anything above that (up to the amount of the claim paid out) is paid to the Insurance Program. Then any remaining award would be paid to the land trust.

Exclusions

The overall philosophy is to keep the Insurance Program simple and focused exclusively on matters directly related to conservation easement's and fee-owned land's defense and enforcement. Therefore, the following matters are excluded from coverage:

- Condemnation and actions arising out of condemnation (eminent domain);
- Any government enforcement action against a land trust for an alleged violation of statute, regulations, common law (including, if applicable, any fiduciary or other obligations under state law, if any) or other codes (land trust defense or enforcement of a conservation easement on land owned by a government entity is covered);
- Any and all Internal Revenue Service audits, investigations or other inquires of any type for both landowners and land trusts;
- All tax-related matters (challenges to the validity of a conservation easement itself by the landowner are covered);
- Criminal matters;
- Actual damages or corrective work undertaken on the ground;
- Business disputes not directly related to the defense or enforcement of a conservation easement or fee-owned land;
- Historic facade easements (land conservation easements that have historic value and/or historic buildings are covered);

- Anything covered by general liability insurance (which is required for eligibility for the Insurance Program; any conflicts would be managed on a case-by-case basis);
- Any other claim covered by other commercial insurance such as directors and officers, liability insurance (any conflicts would be managed on a case-by-case basis);
- Certain back-up holder positions (see “— *Other Coverages*”);
- Any services provided by government attorneys or other staff;
- Pending or prior litigation;
- Pre-existing known violations, disputes or trespass;
- Acts, proposed acts or failure to act on land not protected by the insured easement or land not owned in fee by the insured (third-party trespass on conserved or fee-owned land is covered);
- Affirmative rights in a conservation easement, covenants or trail easement, such as a right of first refusal, option to purchase, mowing rights or active land management, except as undertaken in defense or enforcement of a conservation easement, deed covenant or trail easement (this Exclusion does not apply to land owned in fee by a land trust or to the affirmative right of public access for recreation or education contained in a conservation easement, trail easement or deed covenant);
- Trespass by the land trust or other willful or grossly negligent acts or omissions;
- Court costs and any other costs related to a court action by the insured seeking to extinguish or amend any insured conservation interests; and any third-party challenges to the validity of any easement amendment, termination or partial termination, *provided, however*, that once an easement has been amended or partially terminated, the policy would cover challenges to the easement itself;
- Disputes between an insured and an uninsured private land trust not a government entity, disputes among trustees, or trustees and staff of an insured, among co-holders or a primary and a back-up holder, or between an insured easement holder and insured fee-land owner whether under one or multiple policies; and
- Staff costs and related expenses for staff or volunteers.

TerraFirma’s Claims Committee would be the arbiter of any disputes regarding whether the facts and circumstances of a potential claim fall within any Exclusion.

Limits

Basic Deductibles and Limits

The basic deductible will be \$5,000 per claim regardless of policy limits. A *pro bono* attorney arrangement may be credited toward the deductible with approval of the Claims Committee. Certain fees may also be credited toward meeting the deductible. For example, if a land trust uses outside counsel or other experts in its efforts to voluntarily resolve a dispute, the Claims Committee may determine that those fees are deductible.

The basic maximum limit will be \$500,000 per claim (which include defense costs). There will be an additional maximum aggregate limit of \$500,000 total for all claims in the policy year the claim occurred (the limit of the total amount of claims made by one organization in one policy year if more than one claim is made in the policy year). As described below, land trusts with large insured portfolios will benefit from higher limits.

Limits for Larger Land Trusts

Aggregate Limits. As a matter of equity for the holders of large portfolios (250 or more insured units) who would be paying much more in total premiums, the aggregate limit would be increased. For these land trusts, the

aggregate cap would increase from \$500,000 to \$750,000 for land trusts with 250–399 easements or fee-owned land parcels insured, and \$1 million for land trusts with 400 or more easements or fee-owned land parcels insured. The per unit base premium (exclusive of potential discounts) charged would be the same as for all other insureds and the per claim limit would remain at \$500,000 per claim.

The underwriting standards would be higher for insureds that desire the higher aggregate limit. Accredited land trusts would automatically qualify for the higher aggregate provided they have the larger portfolios. Any other large portfolio land trust would have to attest that it has each of the following to qualify for the higher aggregate limit in addition to a large portfolio:

- In-house legal counsel or retained outside counsel on call under a written agreement;
- A Program to personally visit every successor landowner with a conservation easement;
- Database system for tracking records, visits, amendments, reserved rights, discretionary approvals and violations; and
- Written policies for record keeping, amendments, violations, annual visits, landowner relationships and conflicts of interest.

Premium and Discounts

Premium Stability

Terrafirma will endeavor to keep premiums and terms stable over many years by building strong capitalization and retained earnings, investing in loss prevention, promoting good practices, providing pragmatic claims management, and controlling costs of service providers. The Commitment Letter received from prospective initial Members of Terrafirma provides that a land trust can be released from its commitment if premiums increase by more than 2.5% a year over the first three years.

The first year basic premium will be \$60 per year per conservation easement or fee-owned land unit (with certain discounts as described below). The premium is calculated on the number of conservation easements or deeds of fee land that a land trust holds regardless of the number of parcels that comprise any one conservation easement or deed of fee land. Certain exceptions to this general rule will be made for divisions of single conservation easements into separate ownership and for aggregation of fee preserves. If a land trust insured its trail easements or deed covenants, those are also charged one premium per year per deed.

Volume Discount

The unit cost to issue and administer a policy to a land trust with a portfolio of 250 or more insured units (conservation easements and/or fee-owned land) is substantially less than for land trusts with smaller portfolios. It is equitable and customary for insurance programs to share the benefits of these savings with those insureds with larger portfolios. Therefore, land trusts with a total insured portfolio of 250 conservation easements and/or fee-owned land parcels would receive a volume discount of \$3 per insured unit in addition to other discounts for which the land trust may qualify.

Underwriting and Other Discounts

The Insurance Program will not underwrite individual conservation easements, but will offer discounts based on the overall quality of a land trust's practices. The Alliance believes that accredited land trusts as a group are a good risk and have had their practices scrutinized. See "*Land Trusts and Easements — Land Trusts — Accreditation*" below. While any land trust may be subject to legal challenges, including frivolous lawsuits, good practices are more likely to prevent unnecessary litigation. Accredited land trusts would, therefore, receive an automatic \$11 per insured unit discount.

For all non-accredited land trusts, each would have to attest to meeting all the following conditions to receive a \$4 discount per insured unit:

- Currently every transaction is reviewed and approved by a qualified attorney prior to closing.

- Has and follows a written policy on violation resolution.
- Has and follows a written conflict of interest policy.
- Has and follows written criteria for selecting land and easement projects consistent with its mission.
- Evaluates its capacity to perform its perpetual stewardship responsibilities for each project.

Since the goals of the Insurance Program exceed those of traditional insurance and include a strong commitment to education, prevention and good practices, the Insurance Program would provide an additional discount of \$1 per insured unit to any land trust for attendance at an approved risk prevention seminar or other education program approved by the Manager and held at Rally or at regional conferences or electronically in the year prior to the application period. Continuing conservation education would have to be obtained annually for a land trust to receive the discount in the following year.

Other Coverages

Back-up Holder and Third-Party Enforcer Coverage

The Insurance Program would also offer coverage for back-up holders and third-party enforcers of conservation easements. Generally back-up holders and third-party enforcers are considered to be any other qualified holder with an expressly granted secondary, conditional or ancillary interest in a conservation easement. Any narrowness in this definition is not intended to exclude otherwise eligible land trusts with legally vested rights in conservation easements from applying for coverage. The following conditions apply:

- The back-up holder or third-party enforcer has agreed in writing to serve in that role for the primary holder.
- The back-up holder or the third-party enforcer is eligible for coverage.
- If the primary holder has insured its portfolio, then the back-up holder or the third-party enforcer can obtain coverage; in that case, the premium would be \$30 per conservation easement per year (half the base premium) for the back-up holder or the third-party enforcer (no discounts available for this coverage).
- The back-up holder or the third-party enforcer would have to provide eligibility information for both itself and the primary holder if the primary holder were not already insured; in that case, the premium would be \$60 per conservation easement per year (the full-base premium) for the back-up holder or the third-party enforcer only if both the primary and the back-up holder or the third-party enforcer are eligible for coverage (discounts available for this coverage).
- If the back-up holder or the third-party enforcer has no knowledge of and cannot provide the Insurance Program with a list of the conservation easements in which it is named as a back-up or third-party enforcer, then no coverage is available.

Co-holder Coverage

The Insurance Program would also offer coverage for co-holders of conservation easements or co-owners of fee-owned land on the following conditions:

- Only one aggregate collective policy limit and claim limit.
- Each co-holder seeking coverage would pay a full premium. (The reason for not reducing the premium for co-holders is that multiple holders would increase complexity of case management.)
- Required to consent to joint representation by one attorney.

- The primary holder would be the “first-named insured” and would manage the Insurance Program relationship. If necessary, the co-holders would need to designate a primary holder for insurance purposes and execute a written agreement about co-holding roles and responsibilities.
- The primary holder would be delegated to act for all the other insured co-holders on any claims.
- Suits between co-holders are excluded (this is called an “insured versus insured” exclusion).

If the primary holder has coverage, then the other co-holders may choose not to insure their co-held easements with that primary holder. The uninsured holders would be solely responsible for their legal costs. If the primary holder is not insured, then the co-holders may not exclude the easement from their insured portfolio.

Coverage for a Conservation Easement on Land Owned by Another Land Trust

Where one land trust holds a conservation easement on land owned exclusively by another land trust, the Insurance Program offers two options:

- The conservation easement holder may choose to not insure those conservation easements if the fee holder is eligible for the Insurance Program.
- The conservation easement holder may obtain coverage on land owned exclusively by another land trust, with the coverage depending on whether the fee holder is eligible for the Insurance Program. If the fee holder is eligible for the Insurance Program, then the conservation easement holder may insure its interest at half of the base premium (\$30 per conservation easement per year initially). No discounts are available for this coverage. If the fee holder is not eligible for the Insurance Program, then the full-base premium would be charged and discounts would be available as a part of the conservation-easement holder’s portfolio.

This coverage would be solely for third-party disputes. If both the conservation-easement holder and fee owner have coverage on the same land, then they cannot combine their policy limits in the same case. If the two insureds have different policy limits, then the higher limit would apply. Both insureds must agree to joint representation and delegate one of the insureds to be the lead representative in the claim.

Exceptional Coverage for Uninsured Risks

The Insurance Program may retain the right to participate in uninsured cases in the rare event where the matter is of extreme significance nationally. This would be an exceptional event and would be undertaken in collaboration with and subject to the Alliance policy on use of the Conservation Defense Fund. If Terrafirma has surplus available, the Members Committee may recommend to the Manager that a portion of such surplus comprise a discretionary fund (distinct from the Alliance Conservation Defense Fund) for such purposes. The Claims Committee of Terrafirma may decide to pay for some uninsured claims in rare and extraordinary circumstances.

Claims Management

Approach to Claims Management

An event is an occurrence that may or may not become a claim. A claim is a demand made by the covered land trust for payment of the benefits as provided by the policy. Therefore, a claim event would be one where the covered land trust reasonably anticipates that the event is likely to result in a claim or has already resulted in a claim. This includes a claim for payment of mediation, negotiation or other similar fees or other expert fees. The notice of a challenge or a complaint would initiate the claim without the need to have a lawsuit filed. A claim may stretch over more than one year, but it is covered under the policy in the policy year of first occurrence. This is a “claims made” policy so the claim would be docketed as occurring in the year the land trust makes the claim to the Insurance Program.

Service to land trusts is a central feature of the proposed Insurance Program. A land trust can call for help early before fully engaging in a dispute. Land trusts without legal defense experience or resources will be encouraged to call early for assistance to prevent problems from becoming disputes. More experienced land trusts with the capacity to resolve more complex problems would be asked to give the Insurance Program reasonable

notice of a problem that is likely to become a claim at the first indication that the problem is not likely to be resolved voluntarily or without assistance of experts.

TerraFirma anticipates a high degree of collaboration and collective decision-making on counsel selection and case management with the land trust and the Claims Committee of the Insurance Program.

Significant consideration for local issues and a preference for experienced local litigators will guide attorney selection. For land trusts without access to an experienced litigator, the Insurance Program will refer land trusts to competent attorneys from a list of experienced defense attorneys in each state. The Insurance Program should also be able to obtain favorable rates for land trusts from this list of attorneys. For those land trusts with some size, experience and long-standing experienced litigator relationships, the Insurance Program would defer to their choice of local counsel.

One of the initial tasks when a land trust makes a claim would be to assign roles and responsibilities between the land trust and the Insurance Program, and determine which attorney would have the lead role in managing the case. This would allow land trusts with experienced, qualified litigators to manage the litigation in consultation with the National Coordinating Attorney.

An efficient response, sound judgment and good management are critical to case oversight. The National Coordinating Attorney would triage cases, assist as needed with obtaining legal counsel and provide case oversight. Either the land trust attorney or an attorney provided by the Insurance Program would actually manage the case so that the National Coordinating Attorney is free to provide overall timely direction, cost containment, share information and coordinate management with the land trust and the Claims Committee.

In some situations, the Insurance Program and the insured may disagree about how far to proceed with litigation or a settlement opportunity or the use of alternative dispute resolution. If the insured does not agree with the offered settlement but the Insurance Program does, the Insurance Program would have no responsibility for costs beyond that settlement. In that case, the insured could take over the action, but would be responsible for those costs above the proposed settlement opportunity. The Insurance Program would not settle without the approval of the land trust.

In some cases, a land trust may have practices or documentation or a problematic amendment which would make it difficult to win a case. In that situation, the Claims Committee and the National Coordinating Attorney would work with the land trust to decide how best to defend that case using alternative methods; in any event, however, the Insurance Program would pay for the defense or enforcement. Litigation is generally a last resort method and the Insurance Program will encourage appropriate use of alternative dispute resolution to avoid unnecessary litigation. The Insurance Program will use litigation where necessary.

In the case of appeals of lower court decisions, the process would be similar to the original claim evaluation process. All the parties—the land trust, the attorney, the Claims Committee and the National Coordinating Attorney—would collectively consider all the facts and circumstances. They would then arrive at a consensus approach on whether and how to appeal a court order.

Claims Management Process

Decisions on claims payment and settlement shall be made by the Claims Committee (subject to a right of review by an outside neutral captive insurance claims attorney, and binding mediation if the insured land trust still disagrees with the disposition of its claim). The Claims Committee will be composed of land trust attorneys and practitioners experienced with legal challenges and knowledgeable about operating a land trust. The National Coordinating Attorney would be an *ex officio* member of the Claims Committee. The Claims Committee will also be responsible for ensuring that costs are appropriately contained, while still achieving the Insurance Program purpose of upholding conservation permanence in service to all insured land trusts. The National Coordinating Attorney and members of the Claims Committee may be replaced from time to time by the Manager with the approval of the Members Committee.

No Reinsurance or Guaranty Fund Operations

Reinsurance

Because of the lack of loss history, the Alliance's insurance consultants do not believe that reinsurance will be available at reasonable premiums. After several years of operation, it may be possible to obtain reasonably priced reinsurance and the possibility will be periodically re-evaluated from time to time.

No Guaranty Fund

The Insurance Program is not protected by a financial insolvency or guaranty fund. This means that all money paid into the Insurance Program is at risk and that coverage will end if the Insurance Program ceases operations. The loss to a land trust if the Insurance Program ends is limited to the loss of premiums paid and potentially the loss of payment of a claim in full or in part.

With robust capitalization, regulated reserves, diligent attention to loss trends and continued investment in the National Conservation Defense Initiative, the Alliance believes that this risk of failure can be mitigated.

Investments

Reserves will be invested in prudent investments as required by Vermont Law.

SUMMARY OF PRINCIPAL AGREEMENTS

The descriptions of documents which follow do not purport to be complete. They are subject to and qualified in their entirety by reference to the relevant documents. Copies of all such documents are, or will be, available upon request.

Initial Commitment Letters

To determine the feasibility of the Insurance Program, the Alliance asked land trusts to sign contingent commitments to participate in the first three years of the Insurance Program and to pay a registration fee that is refundable if the Insurance Program is not launched. The commitments provide for the Insurance Program to begin operations no earlier than January 31, 2011, and no later than December 31, 2013. If the Alliance determines that the Insurance Program is not feasible or is unable to raise the necessary capital by December 31, 2013, the land trusts may elect to be released from their commitment and the Alliance will refund the registration fees.

A land trust does not have to meet the eligibility requirements at the time of commitment, but it will be required to be eligible at the time of actual application for coverage. If a land trust signs a commitment letter and pays a registration fee but is not eligible when the Insurance Program starts, then the land trust may elect to correct any deficiencies, or forfeit the registration fee.

In order to maintain stability of the Insurance Program and have equitable prices for all Members, all land trust participants will be encouraged to maintain their commitment to the Insurance Program. If a land trust does not renew its participation in any year and then decides to renew participation later, the land trust would need to pay another registration fee at the higher price and for its full insured portfolio each time it re-enters the Insurance Program after a lapse of a year or more. A 50% co-payment of all claims in the first year of re-entry after a lapse would also be required.

Captive Management Contract

Following a competitive arm's-length process, Terrafirma is expected to enter into the Captive Management Contract, which will specify the services to be provided by the Captive Manager, and the compensation to be paid for such services. Such services are expected to include (in each case subject to Manager and Members Committee oversight) (i) compliance with insurance regulations, including the making of periodic filings and required reports, (ii) maintenance of Terrafirma financial control and accounting systems, and the preparation of financial statements, (iii) compliance with corporate and tax regulations, including the making of related filings and reports, (iv) premium billing and collection, (v) processing of claims payments (at the direction of the NCA and Claims Committee), (vi) interfacing with and supervising investment managers and custodians and providing reports on investment performance, (vii) engaging an auditor for Terrafirma (the "Auditor") and interfacing with the Auditor on an annual audit of Terrafirma, (viii) servicing the Surplus Notes, and (ix) other services customarily provided under such contracts. No employee, officer or director of the Captive Manager will be qualified to serve as a member of the Members Committee or the Claims Committee. All officers, directors, members and others in positions of responsibility at Terrafirma, the Manager and the Alliance will be required to certify annually as to their independence from the Captive Manager. The initial budget for Terrafirma estimates the compensation to be paid to the Captive Manager to be \$70,000 per annum, with disbursements to others, such as audit fees, legal fees and filing fees to be directly for the account of Terrafirma.

Terrafirma LLC Agreement

Terrafirma is organized as a Vermont limited liability company and will be governed by the LLC Agreement among the Members and the Manager. The provisions of the LLC Agreement will be designed, and amended if necessary, to be at all times consistent with Vermont Law, the Risk Retention Act and Section 501 of the Internal Revenue Code.

The LLC Agreement will provide that the sole purpose of Terrafirma is to pool the insurable risks of its Members and to provide information to its Members with respect to loss control and risk management, and that Terrafirma will be operated exclusively to further the charitable purposes of its Members. Membership in Terrafirma will be strictly restricted to organizations described in Section 501(c)(3) of the Internal Revenue Code that are engaged in land conservation and insured by Terrafirma for the liability arising from such activities. If a Member receives a final determination from the Internal Revenue Service that it is no longer an organization described in

Section 501(c)(3), the Member will immediately notify Terrafirma of such determination. Regardless of whether notice is given, such organization will immediately cease to be a Member and its insurance policy will be automatically terminated or otherwise rendered ineffective for claims arising after such determination. The Members are required to expeditiously and vigorously enforce all of their rights in the LLC Agreement and will agree to pursue all legal and equitable remedies to protect their interests in Terrafirma.

The LLC Agreement will provide that Terrafirma will be managed by the Manager and that no Member may function as the Manager or Captive Manager. The Manager will be authorized to act in the name of Terrafirma and manage the business of Terrafirma on behalf of the Members in its discretion. The Manager's authorization will extend to all matters except for those matters requiring requisite Member approval, such as modifying or waiving any provision of the LLC Agreement. The initial Manager, specified in the LLC Agreement, will be ARMS. The Manager can be replaced at any time after the first five years if 66 2/3% of the Members sign an amendment to the LLC Agreement specifying another person as the non-Member Manager. At all times, the Manager must be a Vermont resident and have in its own constitutional documents a requirement for its audit committee (or that of its sole member) to perform oversight with respect to the Manager's performance of its role under the LLC Agreement in relation to financial information and reporting (the Members Committee will perform that oversight role with respect to Terrafirma itself).

The LLC Agreement provides for a Members Committee having the rights and responsibilities described in "*Control and Management*" below. After the first five years, members of the Members Committee will serve a single three-year term followed by a mandatory year off. The Members Committee will be divided into nine classes; one class for each of eight designated geographic regions and one class occupied by a Vermont resident appointed by the other members of the Members Committee. Nominations of candidates to serve on the Members Committee will be made by the Members Committee. In order to assure broad representation of all segments of the insured land trust community, the LLC Agreement requires that candidates for the Members Committee be nominated on a basis reasonably designed to include on the Members Committee, without imposing a quota or specific requirements, representatives of national, regional (State) and local land trusts, and also a mix of accredited and non-accredited land trusts. Members of the Members Committee must not be affiliated (directly or indirectly) with the Captive Manager or any other entity that has a business, consulting or service relationship with Terrafirma, and such members are required to certify that they have no such affiliation on an annual basis. For the regional classes, each class representative will be elected by the Members in the designated geographic region, with each Member having one vote. All elections will be open for a 10-day period, will not require a quorum, and will be conducted via a secure online voting system that requires system users to affirm that they have authority to vote. In order to achieve some continuity on the Members Committee, the election of regional class representatives will be staggered, with two members of the Members Committee being elected annually. Initial members of the Members Committee will be appointed by the Alliance in the LLC Agreement. All vacant positions will be filled by appointment of the Members Committee. The original Members Committee will have staggered initial terms of 5, 4 and 3 years.

The Manager will convene, chair and circulate agendas for meetings of the Members Committee. Such meetings must occur not less than three times a year. All meetings will be held by telephone or web conference, except for the annual meeting, which shall be a physical meeting held in the State of Vermont.

The LLC Agreement provides for a National Coordinating Attorney to be provided by the Manager and a Claims Committee. Decisions on claims payment and settlement shall be made by the Claims Committee (subject to a Member's right to outside review and binding mediation). The Claims Committee will consist of four conservation defense and insurance experts and will have the National Coordinating Attorney as an *ex officio* member. The National Coordinating Attorney must be an attorney with national level conservation defense expertise and will serve as an *ex officio* member of the Claims Committee. Members of the Claims Committee will serve for a term of five years while the National Coordinating Attorney will be retained at the discretion of the Manager. The initial National Coordinating Attorney and initial members of the Claims Committee, will be named in the LLC Agreement, and may be replaced from time to time by the Manager with the approval of the Members Committee.

An initial budget will be appended to the LLC Agreement, which will require Terrafirma to reimburse the Manager for its costs in accordance with such and subsequent budgets. Subsequent budgets will be agreed to by the Manager and the Members Committee but the Manager will continue to operate Terrafirma under the prior year's budget if no agreement can be reached. The Manager will be indemnified by Terrafirma to the full extent permitted by Vermont law. Members of the Members Committee and Claims Committee will serve without compensation, except that members of the Members Committee will have the option to be reimbursed for out-of-pocket expenses of

attending annual meeting. Members Committee and other committee members also will be indemnified by Terrafirma to the full extent permitted by Vermont law.

The Manager, members of the Members Committee, members of the Claims Committee, and the National Coordinating Attorney must not be affiliated (directly or indirectly) with the Captive Manager or any other entity that has a business, consulting or service relationship with Terrafirma, and such parties are required to certify that they have no such affiliation on an annual basis.

The LLC Agreement broadly prohibits Members from transferring their membership interests and prohibits Terrafirma from transferring any assets to non-Members, including organizations that were formerly Members but have since received a final determination from the Internal Revenue Service that they are no longer an organization described in Section 501(c)(3) of the Internal Revenue Code, unless the transfer is in exchange for fair market value. Terrafirma may not merge with or convert into, a for-profit entity. Upon dissolution of Terrafirma, all assets remaining after the payment of liabilities shall be distributed exclusively to exempt organizations or for exempt purposes under Section 501(c)(3) of the Internal Revenue Code.

REGULATION

General

As a tax-exempt organization, Terrafirma will be subject to certain oversight and regulation by the Internal Revenue Service. See “*Internal Revenue Service*” below.

As a captive insurance company organized under Vermont law, its primary regulator will be the Vermont Department of Banking, Insurance, Securities and Health Administration. See “— *State Insurance Regulation in Vermont*” below. In addition, as a “risk retention group” under the Risk Retention Act, Terrafirma will not be subject to ordinary insurance regulation in each of the other States in which it does business, but, instead, will be eligible to write coverage in those states upon, subject to compliance with selected requirements. See “*State Insurance Regulation — Other States*” below.

State Insurance Regulation in Vermont

Domicile

Most states now have captive enabling acts permitting formation and operation of captive insurance companies. Many of these regulate Risk Retention Groups (each an “RRG”) as captives and could be the corporate home for Terrafirma. The Alliance considered only those that its outside advisors felt were most experienced and stable. After comparing common domiciles for captive insurance entities and RRGs, the Alliance board selected Vermont as the domicile for Terrafirma.

The Vermont program is superior in many respects. Although a few states have lower or no premium tax or slightly lower fees, Vermont is the leading onshore captive insurance domicile with nearly 30 years of experience working with the captive insurance industry. With over 900 captives, Vermont has licensed more than four times the number of captives than any other domestic domicile. Forty-two of the Fortune 100 and 19 of the companies that make up the Dow 30 operate captive insurance companies domiciled in Vermont.

While Vermont has some of the largest captive companies in the world, more than half of Vermont’s captive insurance industry writes less than \$5 million annually in premiums. This makes Vermont one of the best places for smaller and mid-sized businesses to form captive insurance companies.

Vermont is fortunate to have unparalleled government support for the ongoing formation and future needs of captive operations. Vermont has a nearly thirty-year track record of broad political support for the captive insurance industry, which is considered a strategic priority for the State. Vermont makes annual enhancements to its laws to keep it as the jurisdiction of choice.

Vermont also has the largest group of experienced and knowledgeable captive insurance regulators of any domicile with a 30-year track record of firm and friendly oversight. Vermont enacted its captive law in 1981 and now the Department of Banking, Insurance, Securities and Health Care Administration, Captive Insurance Division (the “Division”) enjoys a capable in-house veteran staff of more than 30 with a 23-member examination staff. Captives have an assigned financial analyst and all examinations are done internally. Vermont domicile approval can make easier registration of the RRG in other states. Vermont regulators have a powerful voice nationally in setting insurance accreditation rules through the National Association of Insurance Commissioners. Vermont also has a strong conservation reputation and depth of support in public and private sectors for land trusts.

Vermont Captive/RRG Regulation

Vermont’s captive insurance laws permit regulation of risk retention groups as captive insurers, exempting them from certain organizational and operational requirements applicable to traditional insurance companies. Vermont law, nonetheless, imposes certain ongoing obligations on risk retention groups which include:

- Annual filing of reports of financial conditions;
- Required approval of the Commissioner for any material change in its plan of operations;
- Annual audit by an independent firm;

- Annual certification by an independent actuary that the company holds adequate reserves to support its insured risks;
- Examination by Department staff at least once every three years;
- An annual meeting within Vermont by the Board or other governing body;
- Annual disclosure of Conflicts of Interest by members of a governing body, officers and key employees and review of biographical affidavits for each at the outset of service;
- Restrictions on permissible investments of company assets; and
- Payment of premium taxes and annual license fees.

The Order

Terrafirma will apply to the Commissioner for the Order, which will approve the issuance by Terrafirma of the Surplus Notes, set forth any conditions deemed appropriate by the Commission for such issuance, determine how the Surplus Notes are accounted for, and establish initial Payment Restrictions. Because the State of Vermont does not, like some other states, have a detailed statutory regime for surplus notes, the Order will set forth the basic legal framework for the Surplus Notes. The final Memorandum delivered prior to the purchase of the Surplus Notes will contain a detailed description of the Order, a copy of which also will be provided to each purchaser of Surplus Notes.

State Insurance Regulation — Other States

Generally, only the state in which a risk retention group is organized may regulate the formation and operation of the risk retention group. States, however, may require a risk retention group chartered in another jurisdiction to:

- Comply with the unfair claim settlement practices law of the State;
- Pay, on a non-discriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the state;
- Participate, on a non-discriminatory basis, in any mechanism established or authorized under the law of the state for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism;
- Register with and designate the state insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;
- Submit to an examination by the state insurance commissioners in any state in which the group is doing business to determine the group's financial condition, if the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group;
- Comply with a lawful order issued in a voluntary dissolution proceeding, or in a delinquency proceeding commenced by the state insurance commissioner;
- Comply with any state law regarding deceptive, false, or fraudulent acts or practices;
- Comply with an injunction issued by a court of competent jurisdiction, upon a petition by the state insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and
- Provide the following notice, in 10-point type, in any insurance policy issued by such group:

“This policy is issued by your risk-retention group. Your risk-retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk-retention group.”

Internal Revenue Service

A tax-exempt organization will jeopardize its exemption if it ceases to be operated exclusively for exempt purposes. Specifically, a tax-exempt organization will jeopardize its exemption if it:

- Engages in activities that do not further an exempt purpose and such activities are more than an insubstantial part of its total activities;
- Participates in the political campaigns of candidates for local, state, or federal office;
- Engages in lobbying activities that are not an insubstantial part of its total activities;
- Provides earnings that inure to the benefit of any private shareholder or individual;
- Operates for the benefit of private interests such as those of its founder, the founder's family, its shareholders or persons controlled by such interests;
- Operates for the primary purpose of conducting a trade or business that is not related to its exempt purpose;
- Provides commercial-type insurance as a substantial part of its activities, other than as permitted by Section 501(n) of the Internal Revenue Code;
- Has purposes or activities that are illegal or violate fundamental public policy; or
- Fails to file an annual return.

An organization that relies on Section 501(n) of the Internal Revenue Code for its tax-exempt determination is further restricted with respect to its purpose and operations. Specifically, an organization described in Section 501(n) of the Internal Revenue Code will jeopardize its exemption if it:

- Ceases to be operated solely to pool insurable risks of its members and to provide information to its members with respect to loss control and risk management;
- Allows an organization to join as a member of the charitable risk pool that is not an organization described in Section 501(c)(3) of the Internal Revenue Code; or
- Fails to take such action as may be reasonably necessary to remove from the charitable risk pool any member that ceases to be an organization described in Section 501(c)(3) of the Internal Revenue Code within a reasonable period of time.

CONTROL AND MANAGEMENT

Terrafirma is a manager-managed nonprofit LLC, controlled by its Members.

The Members Committee will consist of eight members elected on a regional basis by land trust Members, and one member that is a Vermont resident appointed by the other members of the Members Committee. In order to assure broad representation of all segments of the insured land trust community, the LLC Agreement requires that candidates for the Members Committee be nominated on a basis reasonably designed to include on the Members Committee representatives of national, regional (State) and local land trusts, and also a mix of accredited and non-accredited land trusts. The composition of the Members Committee is more fully described above in “*Summary of Principal Agreements — Terrafirma LLC Agreement.*”

The Members Committee has responsibility for (i) approving the annual budget (after the initial budget), (ii) approving all renewals of or new contracts, including the captive management contract, (iii) making nominations for the Members Committee, (iv) approving the persons serving from time to time on the Claims Committee, (v) approving the appointment of the National Coordinating Attorney, (vi) advising the Manager on all Insurance Program strategy and policy matters, (vii) advising the Manager on conservation defense, risk management and loss prevention programs provided to Terrafirma and its Members, (viii) meeting privately with the Auditor on an annual basis to review the financial statements of Terrafirma, the adequacy of Terrafirma’s financial and accounting controls and any other report prepared by the Auditor in anticipation for such meeting, and (ix) otherwise representing the interests of the Members. An annual report of Terrafirma’s activities will be prepared jointly by the Manager and the Members Committee and presented to the Members.

ARMS will serve as the initial Manager of Terrafirma. The Manager is authorized to act in the name of Terrafirma (which will have no employees of its own), and is responsible for all operations not delegated to the Captive Management Service Provider or as otherwise provided in the LLC Agreement. See “*Summary of Principal Agreements — Terrafirma LLC Agreement.*” The Manager can be replaced at any time by the act of 66 2/3% in number of the Members.

The LLC Agreement assures that Terrafirma will remain under the control of its Members, by broadly prohibiting Members from transferring their membership interests, and prohibiting Terrafirma from transferring any assets to non-Members, including organizations that were formerly Members but have since received a final determination from the Internal Revenue Service that it is no longer an organization described in Section 501(c)(3), (unless the transfer is in exchange for fair market value). The LLC Agreement also provides that Terrafirma may not merge with or convert into, a for-profit entity.

LAND TRUSTS AND EASEMENTS

Conservation Easements

Conservation easements are one of the most effective tools available for the permanent conservation of private lands in the United States. The use of conservation easements has successfully protected millions of acres of wildlife habitat, agricultural lands and open space, keeping land in private hands and generating significant public benefits.

A conservation easement is an encumbrance on real property established under specific statutes in 49 states and the District of Columbia. It constitutes a legally enforceable agreement between a landowner and the holder of the easement that prohibits future actions that are inconsistent with the conservation values that are being protected. Typically, an easement would prohibit most future subdivision and development, limit construction (especially in areas, such as wetlands, with ecological importance), and provide for other public benefit protections. The “fee interest” (*i.e.*, ownership of the land and right to all uses consistent with the easement) remains the private property of the landowner. Typically, eased lands — as property remaining in private hands — remain on the local tax roles.

Conservation easements are created by a legal document that is recorded in the local land records and becomes a part of the chain of title for the property. Like other real property interests, it “runs with the land” and is binding on all future owners of the property. As a recorded document, the terms of the easement are open to inspection by the public.

The decision to donate or sell a conservation easement is a strictly voluntary one made by the landowner pursuant to the exercise of his or her property rights. In the case of a donation, certain federal tax benefits may be available to the donor if the easement qualifies under specific provisions of the Internal Revenue Code and regulations thereunder. State tax benefits are also available in many states.

Conservation easements can be held by qualified Section 501(c)(3) charities generally referred to as “land trusts” (see below), or certain types of government entities. In accepting the conservation easement, the easement holder has a responsibility to monitor future uses of the land to ensure compliance with the terms of the easement and to enforce the terms if a violation occurs.

Lands protected by conservation easements include agricultural land, timber resources, and/or other valuable natural resources such as wildlife habitat, clean water, clean air, or scenic open space.

Land Trusts

In the United States, there are approximately 1,700 land trusts that have more than 100,000 volunteers and 2 million members. They are located in all 50 states, the District of Columbia and U.S. territories, and serve rural, suburban and urban communities. Some are national or regional in scope, but most are local community-based organizations. The Alliance estimates that land trusts have conserved 37 million acres of land in America — an area roughly the size of all the New England states combined. Land trusts are virtually synonymous with private land conservation in America.

The future of private land conservation depends entirely on their sustainability as healthy, compliant and vigorous charities accepted as such by governments, landowners, and the communities in which they operate.

A land trust is a nonprofit organization that, as all or part of its mission, actively works to conserve land by undertaking or assisting in land or conservation easement acquisition, or by its stewardship of such land or easements. Most land trusts are community based and deeply connected to local needs. As a result, they are well situated to identify land that offers critical natural habitat, or recreational, agricultural and other conservation values, and to establish community support for the protection of such land.

Tax requirements

Most land trusts are organized as not-for-profit corporations under the laws of their home states, and have qualified as tax-exempt organizations described in Section 501(c)(3) of the Internal Revenue Code. Accordingly, they are subject to the same supervision, oversight and regulation by the Internal Revenue Service as other charities that have qualified for tax-exempt status under that Section.

Land trusts must have the capacity and capability to uphold conservation easements or risk having their tax-exempt status revoked by the Internal Revenue Service. Specifically, tax-exempt land trusts must not be organized and operated for the benefit of private interest and no part of the net earnings of tax-exempt land trusts may inure to the benefit of a person having a personal and private interest in the activities of the organization. To ensure the land trust is providing a public benefit rather than a private benefit, the land trust must protect their portfolio of easements and land. If a land trust fails in this, the Internal Revenue Service may revoke its tax exempt status. This is the only remedy available to the Internal Revenue Service as the Code and Treasury Regulations do not confer authority on the Internal Revenue Service to enforce or defend conservation easements, nor does the Internal Revenue Service wish to engage in such activities.

In addition, donors of conservation easements may not be able to take a deduction under Section 170 of the Internal Revenue Code for the value of the donated conservation easement unless the receiving land trust has the resources to enforce the conservation easement. For the donation of a conservation easement to a land trust to be deductible under Section 170 of the Internal Revenue Code, the recipient of the easement must be a “qualified organization,” have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the easement. Most land trusts are “qualified organizations” due to their status as organizations exempt from taxation under Section 501(c)(3) and meeting the public support test of Section 509(a)(2). (There are also other types of “qualified organizations.”) And all land trusts have a commitment to protect the conservation purposes of the donation. Land trusts may not, however, have the resources to enforce their conservation easements.

All land trusts have a legal commitment to protect the conservation purposes of all easements and land, but not all can clearly demonstrate the resources to enforce the easement restrictions. The tax-exempt status of land trusts and the continued deductibility of donations of conservation easements to land trusts may very well depend, in the long term, on the success of the Insurance Program, or some similar risk-sharing arrangement.

Accreditation

One of the primary goals of the Alliance since its inception has been the promulgation of high standards for land trust operations, and the supply of training and other resources to allow all sorts of land trusts to meet those standards.

In 2006, the Alliance established The Land Trust Accreditation Commission as an independent program of the Alliance to operate a voluntary accreditation program for land trusts. Accreditation has been designed as a “seal of approval” to verify that accredited land trusts are operating in an ethically, legally and technically sound manner, and in the public interest.

The primary measure is compliance with *Land Trust Standards and Practices*, which all accredited land trust must adopt as guiding principles for their organizations.

Applicants for voluntary land trust accreditation must demonstrate compliance with a set of accreditation “indicator practices” selected from *Land Trust Standards and Practices*. Indicator practices are chosen based on the following criteria:

- Responsible governance of the organization;
- Protection of the public interest with sound and sustainable land transactions and stewardship;
- Ethical operations;
- Accountability to donors and the public; and
- Compliance with all laws, such as Sections 170(h) and 501(c)(3) of the Internal Revenue Code.

Accredited land trusts are granted the ability to use the accreditation seal. Accreditation gives the land trust enhanced credibility and respect from donors, partners, members and the public. In addition, the preparation and application process affords applicants the opportunity to review and implement policies that will help streamline their operations and lead to more effective land conservation.

As of January 2011, 130 land trusts have been accredited, and 58 others are either current applicants or have registered to commence the accreditation process in 2011.

Land Trust Standards and Practices includes, among many other requirements, maintenance of the financial capacity to monitor and enforce easements in perpetuity. It is expected that the Insurance Program, should it commence operations, will significantly assist a large number of land trusts to meet this requirement, and, thus, may have a material impact on the number of land trusts which ultimately are able to obtain accreditation.

DESCRIPTION OF SURPLUS NOTES

Terrafirma will apply to the Commissioner for the Order, which will approve the issuance by Terrafirma of the Surplus Notes, set forth any conditions deemed appropriate by the Commissioner for such issuance, determine how the Surplus Notes are accounted for, and establish the Payment Restrictions. Because the State of Vermont does not, like some other states, have a detailed statutory regime for surplus notes, the Order will set forth the basic legal framework for the Surplus Notes. The final Memorandum delivered prior to the purchase of the Surplus Notes will contain a detailed description of the Order, a copy of which also will be provided to each purchaser of Surplus Notes. The following description is based on the expected terms of the Order, and is subject to amendment and completion upon receipt of the Order.

General

The aggregate principal amount of the Surplus Notes will not be limited. Terrafirma's present intention is to target \$1 million aggregate principal amount of Surplus Notes as part of its initial capitalization, and to accept (subject to the Commissioner's approval) up to \$2 million in Surplus Note purchases should it receive offers to purchase this amount (but there is no limit on the aggregate principal amount of Surplus Notes which Terrafirma, with the Commissioner's approval, could issue from time to time). The Surplus Notes will be general unsecured debt obligations of Terrafirma expressly subordinated to Senior Indebtedness and Prior Claims of Terrafirma. See "*Payment — Subordination.*" Terrafirma is not restricted from incurring any future Senior Indebtedness or Prior Claims. The Surplus Notes are solely obligations of Terrafirma, and not obligations of, or guaranteed or otherwise supported by, the Alliance or any of its present or future affiliates.

Status of the Surplus Notes under the Laws of the State of Vermont

The Surplus Notes will constitute debt obligations of the type generally referred to as "Surplus Notes" and will be issued in accordance with the Order. The net proceeds of the issuance of the Surplus Notes will be recorded by Terrafirma as an addition to surplus, and, accordingly, Terrafirma's surplus will be increased by the net proceeds from the sale of the Surplus Notes. The Surplus Notes are not a liability or claim against any of the assets of Terrafirma and will not be treated, for regulatory accounting purposes, as a liability.

All payments of principal or interest on the Surplus Notes may be made, from time to time, either in full or in part, only from the "available surplus funds" of Terrafirma, and only with the prior approval of the Commissioner in accordance with the Order.

The issuance of the Surplus Notes must be approved in writing by the Commissioner. ***The approval of the Commissioner of such issuance does not constitute a recommendation or endorsement of the Surplus Notes and does not indicate that approval will be given as to each payment of interest on or principal of the Surplus Notes.***

The Surplus Notes are solely the obligations of Terrafirma (to the extent described herein) and none of the Members, the Alliance, ARMS nor any other person has any obligation or liability to make, or cause to be made, payments on the Surplus Notes.

Maturity and Interest; No Redemption; No Sinking Fund

Subject to the Payment Restrictions, the principal amount of the Surplus Notes is payable on ● and will bear interest at the rate of ●% per annum from ● or from the most recent Scheduled Interest Payment Date to which interest has been paid or provided for. "Scheduled Interest Payment Date" is defined as the first Business Day on which a payment of interest is due. Interest on the Surplus Notes will be calculated on the basis of a 360-day year consisting of twelve 30-day months. Except as specified below, interest on the Surplus Notes is payable annually on ● of each year, commencing ●, to the persons in whose names the Surplus Notes (or any predecessor Surplus Notes) are registered at the close of business on the preceding● or, if later, such day as is 15 days prior to the Scheduled Interest Payment Date. The Surplus Notes are not redeemable prior to their stated maturity date and are not entitled to any sinking fund.

Payment

Restrictions on Payment

Pursuant to the Order, any payment of principal of or interest on the Surplus Notes may be made from time to time, either in full or in part, with the prior approval of the Commissioner, only from the “available surplus funds” of Terrafirma.

Any payment of interest on or repayment of principal of the Surplus Notes as approved by the Commissioner will be made from Terrafirma’s surplus. As of the date hereof, Terrafirma has no “surplus.” As of the date of commencement of operations, Terrafirma’s “surplus” is expected to be equal to the net proceeds (if any) of the sales of Surplus Notes. However, the availability of the funds to make payments on the Surplus Notes on any given date will be determined by the Commissioner. The Commissioner has broad discretion in determining the adequacy of surplus for the purpose of determining whether or not to approve payments on the Surplus Notes.

If the Payment Restrictions are not satisfied, the applicable Scheduled Interest Payment Date or Maturity Date will be extended until such time, if any, at which the Payment Restrictions are satisfied. Any payment with respect to which such Scheduled Interest Payment Date or Maturity Date is so extended shall be made by Terrafirma on the next following Business Day on which the Payment Restrictions are satisfied. Interest will continue to accrue on any unpaid principal amount of the Surplus Notes (but not on accrued interest the payment of which is not permitted pursuant to the Payment Restrictions) to the date of payment. Any payment of interest on any Surplus Notes so rescheduled will cease to be payable to the person in whose name such Surplus Notes were registered on the relevant record date, and such amount will instead be payable to the person in whose name such Surplus Notes are registered on such record date as is fixed by Terrafirma prior to such rescheduled Interest Payment Date.

If the Commissioner approves a payment of interest on or principal of the Surplus Notes in an amount that is less than the full amount of interest or principal then payable in respect of the Surplus Notes, payment of such partial amount shall be made pro rata among persons in whose names Surplus Notes are registered on the books of the issuer (the “*Noteholders*”).

So long as any amount remains unpaid, Terrafirma will use its best efforts to obtain the approval of the Commissioner for the payment by Terrafirma of interest on or principal of the Surplus Notes on the applicable Scheduled Interest Payment Dates or Maturity Date, and, in the event any such approval has not been obtained for any such payment at or prior to the applicable Scheduled Interest Payment Dates or Maturity Date, Terrafirma will continue to use its best efforts to obtain such approval promptly thereafter.

Not less than 45 days prior to each Scheduled Interest Payment Date and the Maturity Date thereof, Terrafirma will seek the approval of the Commissioner to make each payment of principal of or interest on the Surplus Notes. In addition, Terrafirma will notify or cause to be notified in writing each Noteholder no later than five (5) Business Days prior to such Scheduled Interest Payment Date or Maturity Date, in the event that the Commissioner has not then approved the making of any such payment on such Scheduled Interest Payment Date or Maturity Date.

With respect to any payment of interest on a Surplus Notes that has been approved by the Commissioner which is not made on the applicable Scheduled Interest Payment Date, interest will *not* continue to accrue on such unpaid interest and such payment will be payable to the person in whose name such Surplus Notes are registered on a special record date determined by Terrafirma.

Subordination

The Surplus Notes are unsecured obligations of Terrafirma and are expressly subordinated in right of payment to all existing and future Prior Claims and Senior Indebtedness of Terrafirma, which include all insurance policies and existing or future indebtedness issued, incurred, or guaranteed by Terrafirma (other than any future Surplus Notes or similarly subordinated obligations, any indebtedness that is expressly subordinate to, or ranks *pari passu* with, the Surplus Notes). In the event Terrafirma is liquidated or dissolved, the holders of Senior Indebtedness would be afforded higher priority than holders of the Surplus Notes and, accordingly, would have the right to be paid in full before any payment of principal of or interest on the Surplus Notes is made to the holders of the Surplus Notes.

Although Terrafirma does not presently anticipate the incurrence of any additional indebtedness, there is no limitation on the ability of Terrafirma to incur Senior Indebtedness from time to time in the future. Terrafirma may lower premiums to its Members (or incur increased operating costs, including obligations to the Manager), even though payments on the Surplus Notes may not have been approved by the Commissioner, regardless of the effect of any such premium adjustment (or other costs or obligations) may have on the Commissioner's decision regarding the payment of any part of principal of or interest on the Surplus Notes.

Certain Agreements

No Restrictive Covenants

The Surplus Notes do not contain restrictive covenants. For example, Terrafirma is not restricted from incurring, assuming or becoming liable with respect to any indebtedness or other obligations, whether secured or unsecured. There are also no financial ratios, or specified levels of net worth or liquidity to which Terrafirma must adhere. Furthermore, Terrafirma is not restricted in its ability to lower premiums or increase operating costs (including paying the Alliance and its affiliates for risk management and loss prevention services), nor do the Surplus Notes require Terrafirma to accumulate surplus so as to enable it to make payments on the Surplus Notes. In addition, Terrafirma is not required to repurchase, redeem or modify the terms of any of the Surplus Notes upon any event involving Terrafirma or the Alliance which may adversely affect the creditworthiness of Terrafirma.

Limited Available Information

Terrafirma is not subject to the information and reporting requirements of the Exchange Act and the amount of public information regarding Terrafirma will be extremely limited. In the Surplus Notes, Terrafirma has agreed to furnish each registered Holder of the Surplus Notes certain annual information, including audited financial statement of Terrafirma.

Preservation of Existence

The Surplus Notes provide, subject to certain exceptions, that Terrafirma will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises; *provided, however*, that Terrafirma will not be required to preserve any such right or franchise if Terrafirma determines that the preservation thereof is no longer desirable or in the interests of its Members and if such action is effected only in a manner which does not adversely affect the interests of any holder of the Surplus Notes in any material respect.

Remedies

In the event that any state or federal agency obtains an order or grants approval for the rehabilitation, liquidation, conservation or dissolution of Terrafirma, the Surplus Notes, upon the obtaining of such order or the granting of such approval, will immediately become payable in full without any action on the part of any holder of the Surplus Notes, with payment thereon being subject to the satisfaction of the Payment Restrictions and to any restrictions imposed as a consequence of, or pursuant to, such proceedings. See "*Risk Factors*" and "*— Payment — Restrictions on Payment*" above. In the event that, following approval of the Commissioner, Terrafirma fails to pay the full interest payment so approved on the applicable Interest Payment Date, or the full amount of principal so approved on the date such principal amount is scheduled to be paid, such approved amount of interest or principal will be immediately payable on such date without any action on the part of any holder of the Surplus Notes. In no event shall any holder of the Surplus Notes be entitled to declare the Surplus Notes to immediately mature or otherwise be immediately payable. Other than as set forth in this paragraph, there is no right of acceleration of the principal of or interest on the Surplus Notes upon a failure to make a payment of principal or interest, or in the performance of any agreement applicable to the Surplus Notes.

Certain Rights of the Holders

There is no trustee or fiscal agent that has assumed any obligation or relationship of agency or trust for or with the holders of the Surplus Notes. In the event of any breach by Terrafirma of its obligations under the Surplus Notes, each holder of the Surplus Notes will be entitled to institute action for any remedy under the Surplus Notes, subject to the limits on remedies described above under "*— Remedies*," without the consent of any other holder of the Surplus Notes.

Modification and Waiver

The Surplus Notes provide that, notwithstanding anything to the contrary set forth therein, without the prior approval of the Commissioner, no amendment, supplement, modification or waiver may change the terms and conditions of the Surplus Notes.

Merger, Consolidation or Sale by Terraforma

The Surplus Notes provide that Terraforma may merge or consolidate with or into any other corporation or sell, convey, transfer or otherwise dispose of all or substantially all of its assets to any person, firm or corporation, if: (i)(A) in the case of a merger or consolidation, Terraforma is the surviving corporation or (B) in the case of a merger or consolidation where Terraforma is not the surviving corporation and in case of any such sale, conveyance, transfer or other disposition, the successor corporation to Terraforma, if applicable, is an entity organized and existing under the laws of the United States of America or a State thereof and such entity expressly assumes all the obligations of Terraforma under the Surplus Notes; and (ii) Terraforma has delivered to such holder of Surplus Notes an officer's certificate stating that such merger, consolidation, sale, conveyance, transfer or other disposition complies with the relevant provision of the Surplus Notes and that all conditions precedent therein provided for relating to such transaction have been complied with. In the event a successor entity assumes the obligations of Terraforma as provided in (i)(B) above, such successor entity shall succeed to and be substituted for Terraforma under the Surplus Notes and all obligations of Terraforma thereunder shall terminate.

Form, Denomination and Registration

General

The Surplus Notes will be issued in fully registered form, without coupons.

Surplus Notes will be delivered to the purchasers thereof in definitive, fully registered form without interest coupons and will bear a legend saying that no sale, assignment or transfer thereof (whether of a legal or beneficial interest) may be made without the prior written consent of Terraforma, not to be unreasonably withheld.

Transfer and Exchange

The Surplus Notes may be presented for exchange or registration of transfer at the registered office in Vermont of Terraforma. The Surplus Notes are exchangeable at any time into an equal aggregate principal amount of Surplus Notes of different authorized denominations, subject to the minimum denomination requirement described below. Transfers of a certificated Note may be made only with the issuer's prior written consent, not to be unreasonably withheld.

Denomination; Registration

The Surplus Notes will be issued only in denominations of \$100,000 and integral multiples of \$1,000 in excess thereof. No service charge will be made for any registration of transfer or exchange of Surplus Notes, but Terraforma may require payment of a sum sufficient to cover any transfer tax or other governmental charges payable in connection with any registration or transfer.

Terraforma will act as security registrar and will cause to be kept at its registered office in Vermont a register in which, subject to such reasonable regulations as it may prescribe, Terraforma will provide for the registration of the Surplus Notes and registration of transfers of the Surplus Notes.

Payments

Payments in respect of interest on or principal of the Surplus Notes will be made, after receipt of the prior approval of the Commissioner, at the registered office in Vermont of Terraforma by U.S. dollar check drawn on a bank in the United States of America. Payments in respect of principal on Surplus Notes will be made only against surrender of such Surplus Notes. Payment in respect of interest on each scheduled payment date will be made to the person in whose name such Note is registered on the • immediately preceding such date (or, if the Payment Restrictions are not satisfied on such Interest Payment Date, such day as is 15 days prior to the Scheduled Interest Payment Date),

If any Scheduled Interest Payment Date or Maturity Date for any amount in respect of principal of or interest on any Note is not a Business Day at the place in which it is presented for payment, the holder thereof shall not be entitled to payment of such amount until the next succeeding Business Day at such place and, provided payment is made on such succeeding Business Day, shall not be entitled to any further interest or other payment in respect of any such delay. "Business Day" means any day other than a Saturday, Sunday or any other day on which banking institutions in the State of Vermont are authorized or required by law or executive order to close.

Governing Law

The Surplus Notes will be governed by and construed in accordance with the laws of the State of Vermont. The Commissioner's exercise of regulatory authority, including approval of payments on the Surplus Notes, will be governed by, and in accordance with, the law of the State of Vermont and Terra Firma and/or the holders of Surplus Notes shall submit any disputes related to the exercise of such regulatory authority to a court of competent jurisdiction in the State of Vermont.

CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following discussion summarizes certain U.S. federal income tax consequences of making charitable contributions and of the purchase, beneficial ownership, and disposition of the Surplus Notes. Except as otherwise noted under “— *Tax-Exempt Organizations*”, this discussion does not apply to you if you are a member of a class of holders subject to special rules, such as:

- a tax-exempt organization;
- a dealer in securities or currencies;
- a trader in securities that elects to use a mark-to-market method of accounting for your securities holdings;
- a bank;
- a life insurance company;
- a thrift institution;
- a regulated investment company;
- a person that owns debt securities that are a hedge or that are hedged against interest rate or currency risks;
- a person that owns debt securities as part of a straddle or conversion transaction for tax purposes; or
- a United States holder (as defined below) whose functional currency for tax purposes is not the U.S. dollar.

This section is based on the United States Internal Revenue Code of 1986, as amended (“*Internal Revenue Code*”), its legislative history, existing and proposed regulations under the Internal Revenue Code, published rulings and court decisions, all as currently in effect. These laws are subject to change, possibly on a retroactive basis.

This discussion is only applicable to you if you are a United States person. You are a “United States person” if you are (i) a citizen or resident of the United States, (ii) a domestic corporation, (iii) an estate whose income is subject to U.S. federal income tax regardless of its source, or (iv) a trust if a U.S. court can exercise primary supervision over the trust’s administration and one or more U.S. persons are authorized to control all substantial decisions of the trust.

IF YOU ARE NOT A UNITED STATES PERSON, THE FOLLOWING DISCUSSION DOES NOT APPLY TO YOU. PERSONS THAT ARE NOT UNITED STATES PERSONS SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE CONSEQUENCES UNDER THE INTERNAL REVENUE CODE AND THE LAWS OF ANY OTHER TAXING JURISDICTION OF MAKING A CONTRIBUTION, GIFT OR GRANT TO TERRAFIRMA, OF THE EXECUTION, MAINTENANCE OR EXPIRATION OF A LETTER OF CREDIT, OR THE PURCHASE, BENEFICIAL OWNERSHIP, AND DISPOSITION OF ANY OF THE SURPLUS NOTES.

Charitable Contributions

The following discussion summarizes certain U.S. federal income tax consequences of making a charitable contribution within the meaning of Section 170 of the Internal Revenue Code.

PROSPECTIVE DONORS ARE ADVISED TO CONSULT THEIR TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF MAKING A CONTRIBUTION OR GIFT TO TERRAFIRMA.

This discussion is only applicable to you if you are a United States person with itemized deductions. Prospective donors should consult their tax advisors regarding whether they should or should not itemize their deductions given their particular circumstances.

If a partnership makes a charitable contribution, the United States federal income tax treatment of a partner will generally depend on the status of the partner and the tax treatment of the partnership. A partner in a partnership making a charitable contribution should consult its tax advisor with regard to the United States federal income tax treatment of making a charitable contribution.

Generally, an individual taxpayer with itemized deductions is allowed to deduct from adjusted gross income an amount equal to the charitable contributions made in the tax year. That deduction will be available to taxpayers that make contributions to a particular kind of charitable organization (“*qualified organization*”). Terrafirma will be such a qualified organization, *provided* that the Internal Revenue Service determines that Terrafirma is a “charitable risk pool” within the meaning of Section 501(n) of the Internal Revenue Code, an organization described in Section 501(c)(3) of the Internal Revenue Code, and exempt from taxation under Section 501(a) of the Internal Revenue Code. If the Internal Revenue Service so determines, all contributions made prior to the determination will also be tax deductible. Although a favorable determination is expected from the Internal Revenue Service, there can be no assurance that the Internal Revenue Service will in fact so determine.

Timing of Contributions. Contributions must actually be paid in cash or other property before the close of the tax year in which the deduction is to be claimed. With the exception of a corporation making the election described in Section 170(a)(2) of the Internal Revenue Code and accompanying Treasury Regulations, this is the case whether you are a cash basis taxpayer or an accrual taxpayer.

Cash and Cash Equivalent Contributions. In general, the unconditional transfer of cash to or for the use of a qualified organization will be treated as a charitable contribution. Certain transactions will be deemed to be the equivalent of a cash transfer, including payments by check and payments by credit card. The distinction between transfers that are the equivalent of an unconditional cash transfer and those that are not is not always clear, and determining whether or not a transaction is the equivalent of an unconditional transfer of cash may depend upon the specific facts and circumstances of the case. A donor is not entitled to a deduction for transfers that are considered to be mere promises to pay cash in the future.

Contributions in the Form of Letters of Credit. The tax consequences to individual taxpayers for the execution, maintenance, and expiration of a Letter of Credit, as well as any draw on a Letter of Credit, are complex and individual taxpayers executing such a Letter of Credit will be required to confirm to Terrafirma that they have consulted their own tax advisors. In limited circumstances, an individual taxpayer may deduct the full amount of an irrevocable letter of credit executed in favor of a qualified organization, such as when the qualified organization is able to draw on the full amount of the Letter of Credit in the year of the deduction. There is, however, no legal authority that addresses the deduction available to individual taxpayers that execute a Letter of Credit having the terms and conditions prescribed in Annex B.

Quid Pro Quo. Goods or services will not be provided in consideration for any contribution.

Limitations on Deductions. The charitable contribution deduction is limited to a certain percentage of the taxpayer’s adjusted gross income as computed without regard to net operating loss carrybacks (“*contribution base*”); the percentage being determined based on the type of the recipient organization and whether the contribution is capital gain property.

For contributions to an organization described in Sections 509(a)(1) or (a)(2) of the Internal Revenue Code (“*public charity*”), a taxpayer may deduct the full amount of the contributions *provided* that the total deduction does not exceed 50% of the taxpayer’s contribution base. If, however, the contribution to a public charity is in the form of capital gain property, the total deduction cannot exceed 30% of the taxpayer’s contribution base. The taxpayer will not be subject to this 30% limit on contributions of capital gain property if the taxpayer elects to reduce the fair market value of the property by the amount that would have been long-term capital gain if they had sold the property.

Although Terrafirma should qualify as a public charity, there can be no assurance that Terrafirma will so qualify. Failure to qualify as a public charity may further limit the deduction to 30% of the taxpayer’s contribution base, or, in the case of contributions of capital gain property, 20% of the taxpayer’s contribution base.

Carryover. In general, the amount exceeding the limitations on deduction described in “— *Limitations on Deductions*” may be carried over in each of the five succeeding tax years.

Substantiation Requirement. Donors are required to substantiate their gifts to charity, with the nature and extent of the substantiation dependent upon the amount and whether the contribution was cash or noncash. Failure to satisfy the substantiation requirements may result in the denial of a deduction.

Substantiation requirements for cash contributions differ for (i) contributions of less than \$250, and (ii) contributions of \$250 or more. For cash contributions less than \$250, donors must maintain a bank record or written communication from TerraFirma that includes TerraFirma’s name and the date and amount of the contribution. For cash contributions of \$250 or more, donors must obtain from TerraFirma, and TerraFirma will provide, a contemporaneous written acknowledgment. A contemporaneous written acknowledgment must include the date and amount of the contribution and a statement indicating whether or not TerraFirma provided any goods or services in consideration for any contribution.

Tax-Exempt Organizations

The following discussion summarizes certain U.S. federal income tax consequences to a tax-exempt organization of making a grant to TerraFirma, of the execution, maintenance, and expiration of a Letter of Credit, as well as any draw on a Letter of Credit, and of the purchase, beneficial ownership, and disposition of the Surplus Notes.

PROSPECTIVE GRANTORS OR PURCHASERS OF THE SURPLUS NOTES THAT ARE TAX-EXEMPT ORGANIZATIONS ARE ADVISED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF MAKING A GRANT TO TERRAFIRMA, OF THE EXECUTION, MAINTENANCE OR EXPIRATION OF A LETTER OF CREDIT, OR THE PURCHASE, BENEFICIAL OWNERSHIP, AND DISPOSITION OF ANY OF THE SURPLUS NOTES.

This discussion is applicable to you if you are an organization that qualifies for tax exemption under Section 501(a) (“*tax-exempt organization*”). Where indicated, this discussion is only applicable to you if you are a private foundation. A “private foundation” is an organization that qualifies for tax exemption as an organization described in Section 501(c)(3) of the Internal Revenue Code and that is not excluded from the definition of “private foundation” in Section 509(a) of the Internal Revenue Code.

Grants. This section is only applicable to you if you are a private foundation. Generally, an amount paid to accomplish one or more purposes described in Section 170(c)(2)(B) of the Internal Revenue Code will not be subject to the excise tax imposed by Section 4945 of the Internal Revenue Code on taxable expenditures, as defined in that section and the accompanying Treasury Regulations, and will reduce the amount due, if any, on the excise tax imposed by Section 4942 of the Internal Revenue Code on a private foundation that fails to distribute a certain minimum amount of its income.

Letters of Credit. This section is only applicable to you if you are a private foundation. The tax consequences for the execution, maintenance, and expiration of a Letter of Credit, as well as any draw on a Letter of Credit, are complex and private foundations executing such a Letter of Credit will be required to confirm in the Grant Agreement that they have consulted their own tax advisors.

In general, a draw on a Letter of Credit and reimbursement thereof by the private foundation will be subject to the special rules described under “— *Tax-Exempt Organizations — Grants*” above.

There is no legal authority that addresses whether a private foundation that executes and maintains a Letter of Credit having the terms and conditions prescribed in Annex B will be able to claim that the amount set aside in a separate reserve for the use of draws on the Letter of Credit is “distributed income” within the meaning of Section 4942 of the Internal Revenue Code and the accompanying Treasury Regulations. The execution and maintenance of a Letter of Credit will not subject a private foundation to the excise tax imposed by Section 4944 of the Internal Revenue Code on investments which jeopardize the charitable purpose of a foundation.

Program-Related Investments. This section is only applicable to you if you are a private foundation. If an investment qualifies as a “program-related investment” (“*PRP*”), as that term is defined in Section 4944 of the

Internal Revenue Code and the accompanying Treasury Regulations, the investment will not be subject to (i) the excise tax imposed by Section 4944 of the Internal Revenue Code on investments which jeopardize the charitable purpose of a foundation, nor (ii) the excise tax imposed by Section 4945 of the Internal Revenue Code on taxable expenditures, as defined in that section and the accompanying Treasury Regulations. Moreover, the qualification of an investment as PRI will reduce the amount due, if any, on the excise tax imposed by Section 4942 of the Internal Revenue Code on a private foundation that fails to distribute a certain minimum amount of its income.

THE DETERMINATION OF WHETHER OR NOT THE PURCHASE OF THE SURPLUS NOTES QUALIFIES AS PRI IS THE SOLE RESPONSIBILITY OF THE PRIVATE FOUNDATION MAKING SUCH PURCHASE. PROSPECTIVE PURCHASERS OF THE SURPLUS NOTES ARE ADVISED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE DETERMINATION OF WHETHER OR NOT THE PURCHASE OF THE SURPLUS NOTES QUALIFIES AS PRI.

Expenditure Responsibility. This section is only applicable to you if you are a private foundation. As discussed in “— *Charitable Contributions*”, Terrafirma expects that the Internal Revenue Service will determine that Terrafirma is a “charitable risk pool” within the meaning of Section 501(n) of the Internal Revenue Code, an organization described in Section 501(c)(3) of the Internal Revenue Code and exempt from taxation under 501(a) of the Internal Revenue Code. If the Internal Revenue Service so determines, a private foundation will not have to exercise expenditure responsibility, as that term is defined in Section 4945 of the Internal Revenue Code and the accompanying Treasury Regulations, with respect to a grant to, or investment in, Terrafirma. If the Internal Revenue Service does not provide a favorable determination, however, a private foundation will have to exercise such expenditure responsibility with respect to a grant to, or investment in, Terrafirma. If you purchase the Surplus Notes or make a grant prior to the aforementioned determination by the Internal Revenue Service, you should consult your own tax advisor as to whether you should exercise expenditure responsibility with respect to a grant to, or investment in, Terrafirma.

Information Reporting and Backup Withholding. This section applies to all tax-exempt organizations. Interest payments on the Surplus Notes to, and proceeds from the sale, retirement, or other disposition of the Surplus Notes received by a tax-exempt organization are not subject to information reporting and/or backup withholding.

Unrelated Trade or Business Income Tax. This section applies to all tax-exempt organizations. All payments with respect to the Surplus Notes, as well as any income from the purchase, sale or retirement of the Surplus Notes, will not subject a tax-exempt organization to the income tax imposed on such organizations for income generated from an unrelated trade or business, as defined in Sections 511 to 515 of the Internal Revenue Code and the accompanying Treasury Regulations.

Surplus Notes

This discussion is only applicable to you if you are a United States holder that holds the Surplus Notes as capital assets for tax purposes. You are a “United States holder” if you are a beneficial owner of a note and you are a United States person.

The Surplus Notes are being offered exclusively to tax-exempt organizations. In the unlikely event that a United States holder is not a tax-exempt organization, such holder is advised to consult their tax advisors regarding the federal, state, local and foreign tax consequences of the purchase, ownership and disposition of the Surplus Notes.

Terrafirma makes no representation as to the tax treatment of the Surplus Notes for United States holders that are not tax-exempt organizations. However, to the extent that the Surplus Notes should be treated as contingent payment debt instruments for U.S. federal income tax purposes, United States holders that are not tax-exempt organizations may contact the Captive Manager, at an address to be provided to any purchaser of Surplus Notes at closing, to obtain the comparable yield and projected payment schedule.

PLAN OF DISTRIBUTION

No one has been engaged by Terrafirma or the Alliance to make, or assist in the making of, solicitations for contributions to the capital of Terrafirma or grants to the Alliance. No fee or other consideration shall be paid to any person in relation to commitments received for such gifts. No person other than the Alliance and its representatives is authorized to solicit such gifts.

The offering of the Surplus Notes is being made solely by Terrafirma and no underwriter, dealer, broker, manager or other financial intermediary or agent has been or will be engaged for such purpose. The offering of the Surplus Notes will not be underwritten on any basis, and thus, there can be no assurance that any amount of the Surplus Notes will be purchased.

GLOSSARY

“Auditor” refers to the auditor engaged to audit Terrafirma’s financial statements.

“Business Day” means any day other than a Saturday, Sunday or any other day on which banking institutions in the State of Vermont are authorized or required by law or executive order to close.

“Captive Manager” refers to the third party that is bound by the Captive Management Contract.

“Captive Management Contract” is the contract that will specify the services to be provided by the Captive Manager, and the compensation to be paid for such services. This contract is described in more detail under “*Summary of Principal Agreements — Captive Management Agreement.*”

“Claims Committee” refers to the committee vested with the authority to make decisions regarding claims disposition not made by the National Coordinating Attorney.

“Commissioner” means the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration of the State of Vermont.

“Commitment Letter” refers to the letter committing land trusts to participate in the Insurance Program provided certain contingencies are met. This letter is described in more detail under “*Summary of Principal Agreements — Initial Commitment Letters.*”

“Contribution Base” refers to a taxpayer’s adjusted gross income as computed without regard to net operating loss carrybacks.

“Department” refers to the Department of Banking, Insurance, Securities and Health Care Administration of the State of Vermont.

“Exchange Act” means the Securities and Exchange Act of 1934, as amended.

“Exclusion” refers to any matter excluded from the coverage of the Insurance Program, including all matters described in “*Description of Proposed Insurance Program — Terms of Insurance — Basic Coverage and Exclusions — Exclusions.*”

“Internal Revenue Code” refers to the United States Internal Revenue Code of 1986, as amended.

“Letter of Credit” refers to a letter of credit payable to the Commissioner and meeting the requirements specified in Annex B.

“LLC Agreement” refers to the agreement among the Members and the Manager under which Terrafirma is constituted.

“Manager” refers to the entity appointed as Manager under the LLC Agreement that is generally authorized to act on behalf of Terrafirma, subject to the limitations imposed by the LLC Agreement and Vermont law.

“Maturity Date” means the date on which the Surplus Notes mature, which will be ●, 20●●.

“Members” refers to those entities that have a membership interest in, and are insured by, Terrafirma. Such entities must be organizations described in Section 501(c)(3) of the Internal Revenue Code that are engaged in land conservation and insured by Terrafirma for liability arising from such activities.

“Members Committee” refers to the committee established pursuant to the LLC Agreement.

“Memorandum” means this Confidential Offering Memorandum, whether in preliminary or final form.

“National Coordinating Attorney” refers to the attorney that is generally responsible for the selection or approval of counsel and management of cases where costs are covered by the Insurance Program.

“Noteholders” means persons in whose names Surplus Notes are registered on the books of the issuer.

“Order” means the Order of the Commissioner, dated •, 20••, authorizing the issuance of the Surplus Notes.

“Other Persons” means any current or proposed directors, employees, affiliates, agents or representatives of Terrafirma or the Alliance.

“Payment Restrictions” is defined under “*Summary — The Opportunity — Surplus Notes.*”

“Program-Related Investment” has the meaning provided to it in Section 4944(c) of the Internal Revenue Code and the accompanying Treasury Regulations.

“Prior Claims” means a claim that is either earlier in time or in priority to a claim accruing to a holder of the Surplus Notes.

“Public Charity” means an organization described in Section 501(c)(3) and exempt from tax under Section 509(a)(2).

“Qualified Organization” has the meaning provided to it in Section 170(h)(3) of the Internal Revenue Code and the accompanying Treasury Regulations.

“Risk Retention Act” means the Federal Liability Risk Retention Act of 1986, as amended.

“Risk Retention Group” or “RRG” refers to an organization meeting the requirements imposed by the Risk Retention Act.

“Scheduled Interest Payment Date” means the stated date on which the Surplus Notes will make an interest payment and includes every • from issuance until maturity.

“Securities Act” means the Securities Act of 1933, as amended.

“Senior Indebtedness” means indebtedness that is unsubordinated or secured, or otherwise takes priority to the Surplus Notes.

“Specified Services” refers to those loss prevention and risk management services specified in the LLC Agreement to be provided by the Manager to Terrafirma.

“Surplus Notes” refers to the unsecured subordinated obligations of Terrafirma that are being offered pursuant to this Memorandum.

“Tax-Exempt Organization” refers to an organization described in Section 501(c)(3) and exempt from tax under Section 501(a).

ANNEX A. PRO FORMA FINANCIAL MODEL AND SENSITIVITIES

Note: This Annex does not contain projections, and should not be regarded as setting forth estimates or expectations regarding Terraforma's financial performance. Instead, it contains arithmetical computations of outcomes (i.e., earnings or losses, additions to or use of surplus) based on various combinations of assumptions regarding, among other things, premiums paid, claims paid, operating costs and investment income. Actual outcomes will be different. See "Description of Proposed Insurance Program — Insurance Program Design and Process." Please also see "4. Limitations to Opinion of Betterley Risk Consultants, Inc." below.

1. Introduction

Betterley Risk Consultants, Inc. ("Betterley") delivered its report to the Alliance in September 2008 (the "Betterley report"). This report included a *pro forma* financial model which illustrated the expected performance of the RRG over five years based on stated assumptions. The financial model was updated in February 2011 to make the assumptions more conservative and to run scenarios for ten years instead of five. The update includes a base case that assumed a loss ratio of 40% in years 1–3, 42% in years 4–6, 46% in years 7–10. For Terraforma's application to the insurance regulators, Betterley prepared another scenario designed to measure the sensitivity of the program to increased claims by increasing loss ratios 50% above the updated *pro forma* financial model, and to illustrate the financial impact of (and the various means to offset) such increased losses.

In reviewing the various financial models contained in this Annex A, prospective purchasers of Surplus Notes should be advised that the "retained earnings" shown in these models do not necessarily equate with "available surplus" for purposes of the Order and Payment Restrictions under the Surplus Notes.

2. Betterley Report *Pro Forma* Financial Model, Updated February 2011

The update to the *pro forma* financial model in the Betterley report was based upon the following assumptions:

- Capitalization of \$4 million (of which \$1 million is from the proceeds of the sales of Surplus Notes, the interest on which is included in the financial model under "General and administrative" expenses as detailed in the Supplement to Annex A, though such payments remain subject to the Payment Restrictions, including approval by the Commissioner);
- Average annual premium: \$50;
- Number of units insured: 16,000 across all years (over 18,000 units have already been committed as of March 2011);
- Annual premium growth at 2% after year 3;
- Investment yield of 2%;
- Premium taxes of 3.38%;
- Inflation in costs of captive support services of 2.5%;
- Reinsurance Premia: none; and
- Loss ratio of 40% in years 1–3, 42% in years 4–6, 46% in years 7–10 (based on 2.81 claims per year per 7,000 conservation easements, and a cost per claim estimated at \$53,120, or \$48,120 net of the per claim deductible);

Based on these assumptions, the update to the *pro forma* financial model in the Betterley report, excerpted below, showed retained earnings at end of ten years of \$1,385,383.

Betterley Pro Forma Financial Model

(in US dollars)

Year :	1	2	3	4	5	6	7	8	9	10
Underwriting Income:										
Gross premium received.....	800,000	800,000	800,000	816,000	832,320	848,966	865,946	883,265	900,930	918,949
Net earned premium	800,000	800,000	800,000	816,000	832,320	848,966	865,946	883,265	900,930	918,949
Expenses:										
Losses paid.....	140,800	211,200	320,000	329,997	338,012	350,320	372,567	387,639	407,169	415,312
Change in loss reserves.....	179,200	108,800	(0)	12,723	11,563	6,245	25,768	18,663	7,259	7,404
Incorporation costs.....	75,000									
General and administrative.....	389,998	399,315	403,685	413,493	423,625	441,091	451,905	463,077	474,620	486,548
Total expenses	784,998	719,315	723,685	756,213	773,199	797,657	850,240	869,379	889,048	909,264
Net underwriting income	15,002	80,685	76,315	59,787	59,121	51,309	15,706	13,886	11,882	9,684
Investment income.....	81,942	87,418	91,824	95,149	98,484	101,736	104,761	107,596	110,265	112,833
Total earnings	96,944	168,102	168,139	154,936	157,605	153,045	120,467	121,482	122,147	122,517
Retained Earnings, beginning of year.....	0	96,944	265,046	433,185	588,121	745,726	898,770	1,019,237	1,140,719	1,262,866
Retained Earnings, end of year.....	96,944	265,046	433,185	588,121	745,726	898,770	1,019,237	1,140,719	1,262,866	1,385,383

3. Sensitivity to Betterley Report Financial Model

For purposes of risk analysis, Betterley analyzed the sensitivity of the updated *pro forma* financial model to increased claims. Betterley increased the loss ratios by 50% to illustrate the financial impact of (and the various means to offset) such increased claims. The sensitivity was prepared using all the same assumptions as the *pro forma* financial model except that the assumed loss ratios were 60% in years 1–3, 63% in years 4–6, 69% in years 7–10. Based on these assumptions, the sensitivity analysis, excerpted below, showed that without any premium increase, Terraforma would be required to apply \$589,422 of its capital or surplus to pay cumulative losses in year 10. In reality, if the program had losses in its first years of operation, Terraforma would likely adjust the premium and terms to avoid future losses. Terraforma has the right to increase premia at any time, but an increase of more than 2.5% a year prior to year 3 allows land trusts to elect to terminate their commitment. In the following *pro forma*, Terraforma could have positive retained earnings in year 4 if it chose to raise the average premium 10%, from \$50 to \$55 (assuming 16,000 properties). Of course, factors other than the loss ratio (such as withdrawal of Members from the program after year 3, lower than forecast investment returns, or higher than budgeted operating costs) could result in a decrease in retaining earnings and/or use of capital.

Sensitivity Analysis: Assumed Loss Ratio Increased by 50%

(in US dollars)

Year :	1	2	3	4	5	6	7	8	9	10
Underwriting Income:										
Gross premium received.....	800,000	800,000	800,000	816,000	832,320	848,966	865,946	883,265	900,930	918,949
Net earned premium	800,000	800,000	800,000	816,000	832,320	848,966	865,946	883,265	900,930	918,949
Expenses:										
Losses paid.....	211,200	316,800	480,000	494,996	507,017	525,481	558,851	581,458	610,753	622,968
Change in loss reserves.....	268,800	163,200	(0)	19,084	17,344	9,368	38,652	27,994	10,889	11,107
Incorporation costs.....	75,000									
General and administrative.....	389,998	399,315	403,685	413,493	423,625	441,091	451,905	463,077	474,620	486,548
Total expenses	944,998	879,315	883,685	927,573	947,986	975,940	1,049,407	1,072,530	1,096,262	1,120,623
Net underwriting income	(144,998)	(79,315)	(83,685)	(111,573)	(115,666)	(126,974)	(183,462)	(189,265)	(195,332)	(201,674)
Investment income.....	81,238	84,940	86,640	86,611	86,436	86,005	85,101	83,742	81,960	79,849
Total earnings	(63,760)	5,624	2,955	(24,962)	(29,231)	(40,969)	(98,361)	(105,523)	(113,372)	(121,825)
Retained Earnings, beginning of year.....	0	(63,760)	(58,136)	(55,180)	(80,142)	(109,373)	(150,341)	(248,702)	(354,225)	(467,597)
Retained Earnings, end of year.....	(63,760)	(58,136)	(55,180)	(80,142)	(109,373)	(150,341)	(248,702)	(354,225)	(467,597)	(589,422)

4. Limitations to Opinion of Betterley Risk Consultants, Inc.

Betterley Risk Consultants, Inc. has consented to inclusion of their financial models in this Offering Memorandum, and states the following:

In reviewing these financial models, the reader must understand that claims activity, including the frequency and/or severity of such claims, are subject to a great deal of uncertainty. No assurance is given by Betterley Risk Consultants, Inc. that the estimates provided will actually be realized.

Estimates of losses are subject to variation due to several unpredictable forces, including (i) the random fluctuation of events which may lead to a claim; (ii) changing attitudes toward conservation easements, litigation, violations, and other forces that may affect the likelihood or intensity of claims; (iii) judicial attitudes toward litigation; and (iv) the willingness of attorneys to support conservation defense at favorable rates.

In addition, other computations are subject to variance, including (i) market estimates as to the number and type of land trusts that may buy the insurance; (ii) claims settlement patterns; (iii) loss development and claims inflation rates, and (iv) investment yields.

If the reader understands these variances, Betterley Risk Consultants, Inc. believes that the financial models provide a reasonable basis to consider establishing a captive insurance company for conservation defense insurance.

Supplement to Annex A: Detail of Assumed Operating Costs

The operating costs assumed for purpose of the Betterley report were based on the following detailed budget:

	1	2	3	4	5	6	7	8	9	10
	\$									
Captive Management fees	70,000	70,000	70,000	70,000	70,000	77,000	77,000	77,000	77,000	77,000
Audit fees	25,000	25,625	26,266	26,922	27,595	28,285	28,992	29,717	30,460	31,222
Underwriting & loss control (see below)	184,158	190,579	197,234	204,130	211,278	218,686	226,364	234,323	242,572	251,124
Marketing	7,000	7,175	7,354	7,538	7,727	7,920	8,118	8,321	8,529	8,742
Legal and actuarial	40,000	41,000	36,772	37,691	38,634	39,599	40,589	41,604	42,644	43,710
Government fees	300	308	315	323	331	339	348	357	366	375
Premium Taxes	27,040	27,716	28,409	29,119	29,847	30,593	31,358	32,142	32,946	33,769
Meeting expenses	16,500	16,913	17,335	17,769	18,213	18,668	19,135	19,613	20,104	20,606
Interest expense (surplus note) ..	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
	<u>389,998</u>	<u>399,315</u>	<u>403,685</u>	<u>413,493</u>	<u>423,625</u>	<u>441,091</u>	<u>451,905</u>	<u>463,077</u>	<u>474,620</u>	<u>486,548</u>
Incorporation costs	75,000									

The line item "Underwriting and Loss Control" was derived as follows:

Manager Operating Cost

Staff Costs (498 hours):

Support and convene board	4,620	4,805	4,997	5,197	5,405	5,621	5,846	6,080	6,323	6,576
Support and convene committees	7,480	7,779	8,090	8,414	8,751	9,101	9,465	9,843	10,237	10,646
Provide member services	6,600	6,864	7,139	7,424	7,721	8,030	8,351	8,685	9,033	9,394
Act as operator	770	801	833	866	901	937	974	1,013	1,054	1,096
Liaison for consultants/regulators	2,640	2,746	2,855	2,970	3,088	3,212	3,340	3,474	3,613	3,758
Liaison to Alliance	2,640	2,746	2,855	2,970	3,088	3,212	3,340	3,474	3,613	3,758
Address unusual underwriting issues	2,640	2,746	2,855	2,970	3,088	3,212	3,340	3,474	3,613	3,758
Direct expenses	2,500	2,563	2,627	2,692	2,760	2,829	2,899	2,972	3,046	3,122

Manager Risk Management

Costs

Staff Costs (1,065 hours):

National coordinating attorney	16,500	17,160	17,846	18,560	19,303	20,075	20,878	21,713	22,581	23,485
Coordinate special permanence fund	5,500	5,720	5,949	6,187	6,434	6,692	6,959	7,238	7,527	7,828
National training/information sharing	22,825	23,738	24,688	25,675	26,702	27,770	28,881	30,036	31,238	32,487
Member education and assistance	13,750	14,300	14,872	15,467	16,086	16,729	17,398	18,094	18,818	19,571
Direct program expenses (contractors)	50,000	51,250	52,531	53,845	55,191	56,570	57,985	59,434	60,920	62,443
General contingency (200 hours)	15,000	15,600	16,224	16,873	17,548	18,250	18,980	19,739	20,529	21,350
Overhead	30,693	31,763	32,872	34,022	35,213	36,448	37,727	39,054	40,429	41,854
Total "Underwriting and Loss Control"	<u>184,158</u>	<u>190,579</u>	<u>197,234</u>	<u>204,130</u>	<u>211,278</u>	<u>218,686</u>	<u>226,364</u>	<u>234,323</u>	<u>242,572</u>	<u>251,124</u>

ANNEX B
STATE OF VERMONT CAPTIVE INSURANCE COMPANY
REQUIRED FORM OF IRREVOCABLE LETTER OF CREDIT

Letter of Credit No. •
Date

A.B.C. Bank
Address
City, State

Commissioner of Banking, Insurance, Securities
and Health Care Administration
State of Vermont
89 Main Street
Montpelier, VT 05620-3101

Commissioner:

1. We hereby establish our IRREVOCABLE LETTER OF CREDIT in your favor for the account of _____ up to the aggregate amount of _____ available by your draft(s) drawn on us, at sight, bearing the number of this IRREVOCABLE LETTER OF CREDIT No. (00001). This LETTER OF CREDIT shall expire at our Letter of Credit Department, _____, at our close of business on _____ unless as hereinafter extended.
2. This LETTER OF CREDIT is issued pursuant to the provisions of 8 V.S.A. Section 6004 and on behalf of the above-mentioned _____ (name of captive) which is applying for a certificate of authority to engage in the insurance business in the State of Vermont as a captive insurance company. We understand and agree that _____ (name of captive) has no obligation to reimburse us and we have no right of set off against any funds held by us for _____ (name of captive) in the event this LETTER OF CREDIT is drawn down, in whole or in part. By issuing this LETTER OF CREDIT, we waive any common law, statutory or contractual right of reimbursement or set off against _____ (name of captive) that may arise in the event this LETTER OF CREDIT is drawn down, in whole or in part.
3. It is a condition of the LETTER OF CREDIT that it shall be automatically extended for additional periods, each of one year, unless at least ninety (90) calendar days prior to the then-relevant expiration date we have advised you in writing, by certified mail, that we elect not to extend. In that event, you may draw hereunder on or prior to the then-relevant expiration date, up to the full amount then available hereunder, against your sight draft(s) on us, bearing the number of this LETTER OF CREDIT.
4. It is a further condition of this LETTER OF CREDIT that each automatic extension shall be measured from the then-relevant expiration date, even though such date is not a business day in Montpelier, Vermont for this Bank. It is also a condition of this LETTER OF CREDIT that, for the purpose of drawing hereunder, if the then-relevant expiration date is a non-business day for our Bank, drawing may be made not later than our next immediate following business day.
5. This LETTER OF CREDIT sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended or amplified by reference to any note, document, instrument, statute, regulation or agreement referred to herein or in which this LETTER OF CREDIT is referred to or to which this LETTER OF CREDIT relates and any such reference shall not be deemed to incorporate herein by reference any note, document, instrument, statute, regulation, or agreement.
6. Each sight draft so drawn and presented shall be promptly honored by us if presented on or prior to the above-stated expiration date or any extension thereof as above provided. Presentation under this LETTER OF CREDIT must be made at _____ located at _____ during normal banking hours.
7. Unless otherwise expressly stated, this undertaking is issued subject to the International Standby Practices 1998 (ISP 98), ICC Publication No. 590.

Very truly yours,

No person is authorized to give any information or to represent anything not contained in this Memorandum. You must not rely on any unauthorized information or representations. This Memorandum is an offer only under the circumstances and in jurisdictions where it is lawful to do so. The information contained in this Memorandum is accurate only as of its date, regardless of the time of delivery of the documents or any sale of the securities.

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\$5,500,000



\$3,000,000

Donated Contributions to Capital

\$1,000,000

●% Surplus Notes due ●

\$1,500,000

**Grants In Support of National
Conservation Defense Initiative**

LAND TRUST ALLIANCE

(Sponsor)

March 21, 2011

Preliminary — Subject to Completion