

NASAA MORTGAGE PROGRAM GUIDELINES

(Adopted September 10, 1996, Amended May 7, 2007)

I. Introduction

A. *Application.*

1. The rules contained in these guidelines apply to qualifications and registrations of direct participation mortgage programs in the form of limited partnerships, trusts, limited liability companies, and limited liability partnerships (herein sometimes called "PROGRAMS" or "partnerships") and will be applied by analogy to mortgage PROGRAMS in other forms. These guidelines are a counterpart to the NASAA Real Estate Programs policy statement. While applications not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown certain guidelines may be modified or waived by the ADMINISTRATOR.
2. Where the individual characteristics of specific PROGRAMS warrant modification from these standards, they will be accommodated, insofar as possible while still being consistent with the spirit of these guidelines. A CROSS REFERENCE SHEET in the form set forth in Section IX.G. shall be furnished with the application.
3. Where these guidelines conflict with requirements of the Securities and Exchange Commission, the guidelines will not apply.

B. *Definitions.* [The following words and terms, when used in these guidelines, shall have the following meanings, unless the context clearly indicates otherwise.]

1. ACQUISITION AND ORIGINATION EXPENSES—Expenses including but not limited to legal fees and expenses, travel and communications expenses; costs of appraisals, accounting fees and expenses, title insurance funded by the PROGRAM, and miscellaneous expenses related to the origination, selection and acquisition of mortgages, whether or not acquired.
2. ACQUISITION AND ORIGINATION FEES—The total of all fees and commissions paid by any party in connection with making or investing in PROGRAM mortgage loans. Included in the computation of such fees or commissions shall be any selection fee, mortgage placement fee, nonrecurring management fee, and any origination fee, loan fee, or points paid; by borrowers to the SPONSOR, or any fee of a similar nature, however designated.
3. ADMINISTRATOR—the agency or official administering the securities law of the state.
4. AFFILIATE— means:
 - a. any PERSON directly or indirectly controlling, controlled by, or under common control with another PERSON;
 - b. any PERSON owning or controlling 10% or more of the outstanding voting securities of such other PERSON;
 - c. any officer, director, or partner of such PERSON; and
 - d. if such other PERSON is an officer, director, or partner, any company for which such PERSON acts in any such capacity.
5. ASSESSMENTS—Additional amounts of capital which may be mandatorily required of or paid at the option of a PARTICIPANT beyond his subscription commitment.

6. **ASSET BASED FEE**—Compensation to a SPONSOR computed according to Section IV.I.2. of these guidelines.
7. **AUDITED FINANCIAL STATEMENTS**—Financial statements (Balance Sheet, Statement of Income, Statement of PARTICIPANTS' Equity and Statement of Cash Flows) prepared in accordance with generally accepted accounting principles and accompanied by an independent auditor's report containing:
 - (A) an unqualified opinion;
 - (B) an opinion containing no material qualification; or
 - (C) no explanatory paragraph disclosing information relating to material uncertainties (except as to litigation) or going concern issues.
8. **BASE AMOUNT**—That portion of the CAPITAL CONTRIBUTIONS originally committed to INVESTMENT IN MORTGAGES without regard to and not including leverage and including working capital reserves allowable under subsection IV.I.1.(c) (relating to Fees—Compensation—Expenses). The BASE AMOUNT shall be recomputed annually after the second full year of PROGRAM operations by subtracting from the then fair market value of the PROGRAM's mortgages as determined by independent appraisals plus the working capital reserves allowable under subsection IV.I.1.c., an amount equal to the PROGRAM'S outstanding debt.
9. **CAPITAL CONTRIBUTION**—The gross amount of investment in a PROGRAM by a PARTICIPANT, or all PARTICIPANTS, as the case maybe.
10. **CAPITAL TRANSACTION**—The repayment of principal or prepayment of a mortgage to the extent classified as a return of capital for federal income tax purposes, and the foreclosure, sale, exchange, condemnation, eminent domain taking or other disposition of a mortgage or of a property subject to a mortgage, or the payment of insurance or a guarantee with respect to a mortgage.
11. **CARRIED INTEREST**—An equity interest in a PROGRAM which participates in all allocations and distributions, other than the PROMOTIONAL INTEREST provided for in Section IV.D. (relating to Fees—Compensation—Expenses), for which full consideration is not paid or to be paid.
12. **CASH AVAILABLE FOR DISTRIBUTION**—CASH FLOW less amount set aside for creation or restoration of reserves.
13. **CASH FLOW**—PROGRAM cash funds provided from operations (other than repayments of mortgage loan principal) including without limitation, interest, points, revenue participations, participations in property appreciation, and interest or dividends from interim investments, after deducting cash funds used to pay general PROGRAM expenses and debt payments.

COMMENT: Only funds which constitute interest payments shall be included in cash flow. Funds which may be deemed to constitute interest payments are (i) contractual current interest payments, (ii) interest accrued or deferred, when received, and (iii) contingent interest based upon the PROGRAM'S share of gross or net income from properties on which the PROGRAM has made a loan. All other funds shall be considered to be net proceeds of sale or refinancing (CAPITAL TRANSACTION).

14. **COMPETITIVE REAL ESTATE COMMISSION**—That real estate or brokerage commission paid for the purchase or sale of property which is reasonable, customary, and competitive in light of the size, type, and location of the property.
15. **CROSS-REFERENCE-SHEET**— A compilation of the guideline sections, referenced to the page of the PROSPECTUS, partnership agreement, or other exhibits, along with a justification of any deviation from the guidelines.
16. **FINANCING**—All indebtedness **INCURRED BY THE PROGRAM**, the principal amount of which is scheduled to be paid over a period of not less than 48 months, where not more than 50% of the principal amount of which is scheduled to be paid during the first 24 months. Nothing in this definition shall be construed as prohibiting a bona fide pre-payment provision in the financing agreement.
17. **FRONT-END FEES**—Fees and expenses paid by any party for any services rendered to organize the PROGRAM and to acquire assets for the PROGRAM, including **ORGANIZATION AND OFFERING EXPENSES, ACQUISITION AND ORIGINATION EXPENSES, ACQUISITION AND ORIGINATION FEES**, interest on deferred fees and expenses, and any other similar fees, however designated by the SPONSOR.
18. **INDEPENDENT EXPERT**—A PERSON with no material current or prior business or Personal relationship with the SPONSOR who is engaged to a substantial extent in the business of rendering opinions regarding the value of assets of the type held by the PROGRAM, and who is qualified to perform such work.
19. **INVESTMENT IN MORTGAGES**—The amount of **CAPITAL CONTRIBUTIONS** used to make or invest in mortgage loans or the amount actually paid or allocated to the purchase of mortgages, working capital reserves allocable thereto (except that working capital reserves in excess of 3.0% shall not be included), and other cash payments such as interest and taxes but excluding **FRONT-END FEES**.
20. **NET WORTH**—The excess of total assets over total liabilities as determined by generally accepted accounting principles, except that if any of such assets have been depreciated, then the amount of depreciation relative to any particular asset may be added to the depreciated cost of such asset to compute total assets, provided that the amount of depreciation may be added only to the extent that the amount resulting after adding such depreciation does not exceed the fair market value of such asset.
21. **NON-SPECIFIED MORTGAGE PROGRAMS**—PROGRAMS other than **SPECIFIED MORTGAGE PROGRAMS**.
22. **ORGANIZATION AND OFFERING EXPENSES**—Those expenses incurred in connection with and in preparing a PROGRAM for registration and subsequently offering and distributing it to the public, including sales commissions paid to broker-dealers in connection with the distribution of the PROGRAM and all advertising expenses.
23. **PARTICIPANT**—The holder of a PROGRAM INTEREST.
24. **PERSON**—Any natural PERSON, partnership, corporation, association, or other entity.
25. **PROGRAM**—A limited or general partnership, limited liability

- company, limited liability partnership, trust, joint venture, unincorporated association or similar organization other than a corporation formed and operated for the primary purpose of investment in mortgage loans.
26. **PROGRAM INTEREST**—The limited partnership unit or other indicium of ownership in a PROGRAM.
27. **PROGRAM MANAGEMENT FEE**—A fee paid to the SPONSOR or other PERSONS for management and administration of the PROGRAM.
28. **PROPERTY MANAGEMENT FEE**—The fee paid for day-to-day professional property management services.
29. **PROSPECTUS**—Shall have the meaning given to that term by the Securities Act of 1933, Section 2(10), including a preliminary PROSPECTUS, provided, however, that such term as used herein shall also include an offering circular as described in the Securities Act of 1933, Rule 256, or, in the case of an intrastate offering, any document by whatever name known, utilized for the purpose of offering and selling securities to the public.
30. **PURCHASE PRICE**—The price paid upon or in connection with the purchase of a particular mortgage, but excluding points and prepaid interest, ACQUISITION AND ORIGINATION FEES and ACQUISITION AND ORIGINATION EXPENSES.
31. **ROLL-UP**—A transaction involving the acquisition, merger, conversion, or consolidation, either directly or indirectly of the PROGRAM and the issuance of securities of a ROLL-UP ENTITY. Such term does not include:
- (a) a transaction involving securities of the PROGRAM that have been listed for at least 12 months on a national securities exchange or traded through the National Association of Securities Dealers Automated Quotation National Market System; or
 - (b) a transaction involving the conversion to corporate, trust, limited liability company, or association form of only the PROGRAM if, as a consequence of the transaction, there will be no significant adverse change in any of the following:
 - (i) PARTICIPANTS' voting rights;
 - (ii) the term of existence of the PROGRAM;
 - (iii) SPONSOR compensation; or
 - (iv) the PROGRAM'S investment objectives.
32. **ROLL-UP ENTITY**—A partnership, real estate investment trust, corporation, trust, limited liability company or other entity that would be created or would survive after the successful completion of a proposed ROLL-Up transaction.
33. **SPECIFIED MORTGAGE PROGRAM**—A PROGRAM where, at the time a securities registration is ordered effective, more than 75% of the net proceeds from the sale of PROGRAM INTERESTS is allocable to the origination or purpose of specific mortgage loans. Reserves shall be included in the nonspecified portion.
34. **SPONSOR**—Any PERSON directly or indirectly instrumental in organizing, wholly or in part, a PROGRAM or any PERSON who will manage or participate in the management of a PROGRAM, and any

AFFILIATE of any such PERSON, but does not include a PERSON whose only relation with the PROGRAM is as that of an independent property manager, whose only compensation is as such. SPONSOR does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of PROGRAM INTERESTS. A PERSON may also be a SPONSOR of the PROGRAM by:

- (a) Taking the initiative, directly or indirectly, in founding or organizing the business or enterprise of the PROGRAM, either alone or in conjunction with one or more other PERSONS;
- (b) Receiving a material participation in the PROGRAM in connection with the founding or organizing of the business of the PROGRAM, in consideration of services or property, or both services and property;
- (c) Having a substantial number of relationships and contacts with the PROGRAM;
- (d) Possessing significant rights to control PROGRAM properties;
- (e) Receiving fees for providing services to the PROGRAM which are paid on a basis that is not customary in the industry; or
- (f) Providing goods or services to the PROGRAM on a basis which was not negotiated at arms-length with the PROGRAM.

II. REQUIREMENTS OF SPONSORS.

- A. *Experience.* The SPONSOR, the general partner, or their chief operating officers shall have at least two years relevant real estate lending or other experience demonstrating the knowledge and experience to acquire and manage the type of assets being acquired or originated, and any of the foregoing or any AFFILIATE providing services to the PROGRAM shall have had not less than four years relevant experience in the kind of service being rendered or otherwise must demonstrate sufficient knowledge and experience to perform the services proposed.
- B. *NET WORTH Requirement of SPONSOR.* The financial condition of the SPONSOR liable for the debts of the PROGRAM must be commensurate with any financial obligations assumed in the offering and in the operation of the PROGRAM. As a minimum, such SPONSOR shall have an aggregate financial NET WORTH, exclusive of home, automobile, and home furnishings, of the greater of either \$50,000 or an amount at least equal to 5.0% of the gross amount of all offerings sold within the prior 12 months, plus 5.0% of the gross amount of the current offering to an aggregate maximum NET WORTH of such SPONSOR of \$1 million. In determining NET WORTH for this purpose, evaluation will be made of contingent liabilities and the use of promissory notes, to determine the appropriateness of their inclusion in computation of NET WORTH.
- C. *Reports to ADMINISTRATOR.* Each application for registration shall contain a commitment, executed by the SPONSOR, to submit to the ADMINISTRATION

upon request any report or statement required to be distributed to PARTICIPANTS pursuant to VII.C. (relating to Rights and Obligations of PARTICIPANTS).

D. Liability and Indemnification.

1. The PROGRAM shall not provide for indemnification of the SPONSOR for any liability or loss suffered by the SPONSOR, nor shall it provide that the SPONSOR be held harmless for any loss or liability suffered by the PROGRAM, unless all of the following conditions are met:
 - a. the SPONSOR has determined, in good faith, that the course of conduct which caused the loss or liability was in the best interests of the PROGRAM;
 - b. the SPONSOR was acting on behalf of or performing services for the PROGRAM;
 - c. such liability or loss was not the result of negligence or misconduct by the SPONSOR; and
 - d. such indemnification or agreement to hold harmless is recoverable only out of the assets of the PROGRAM and not from the PARTICIPANTS.
2. Notwithstanding anything to the contrary contained in Section II.D.1., the SPONSOR (which shall include AFFILIATES only if such AFFILIATES are performing services on behalf of the PROGRAM) and any PERSON acting as a broker-dealer shall not be indemnified for any losses, liabilities or expenses arising from an alleged violation of federal or state securities laws unless the following conditions are met:
 - a. there has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee, or
 - b. such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee, or
 - c. a court of competent jurisdiction approves a settlement of the claims against a particular indemnitee and finds that indemnification of the settlement and related costs should be made, and
 - d. in the case of subparagraph c. of this paragraph, the court of law considering the request for indemnification has been advised of the position of the Securities and Exchange Commission and the position of any state securities regulatory authority in which securities of the PROGRAM were offered or sold as to indemnification for violations of securities laws; provided that the court need only be advised of and consider the positions of the securities regulatory authorities of those states:
 - (1) which are specifically set forth in the PROGRAM agreement; and
 - (2) in which plaintiffs claim they were offered or sold PROGRAM interests.
 - (3) The PROGRAM may not incur the cost of that portion of liability insurance which insures the SPONSOR for any liability as to which the SPONSOR is prohibited from being indemnified under this subsection.
 - (4) The provision of advancement from PROGRAM funds

to a SPONSOR or its AFFILIATES for legal expenses and other costs incurred as a result of any legal action is permissible if the following conditions are satisfied:

- a. The legal action relates to acts or omissions with respect to the performance of duties or services on behalf of the PROGRAM.
- b. The legal action is initiated by a third party who is not a PARTICIPANT, or the legal action is initiated by a PARTICIPANT and a court of competent jurisdiction specifically approves such advancement; and
- c. The SPONSOR or its AFFILIATES undertake to repay the advanced funds to the PROGRAM in cases in which such PERSON is not entitled to indemnification under subsection II.D.(1) of this section.

E. *Fiduciary Duty.* The PROGRAM agreement shall provide that the SPONSOR shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the PROGRAM, whether or not in the SPONSOR's possession or control, and that the SPONSOR shall not employ, or permit another to employ such funds or assets in any manner except for the exclusive benefit of the PROGRAM. In addition, the PROGRAM shall not permit the PARTICIPANT to contract away the fiduciary duty owed to the PARTICIPANT by the SPONSOR under the common law.

F. *Terminated SPONSOR.*

1. Upon the occurrence of a terminating event, the PROGRAM may be required to pay to the terminated SPONSOR all amounts then accrued and owing to the terminated SPONSOR. Additionally, the PROGRAM may terminate the SPONSOR's interest in PROGRAM income, losses, distributions, and capital by payment of an amount equal to the then—present fair market value of the terminated SPONSOR'S interest determined by agreement of the terminated SPONSOR and the PROGRAM, or, if they cannot agree, by arbitration in accordance with the then—current rules of the American Arbitration Association. The expense of arbitration shall be borne equally by the terminated SPONSOR and the PROGRAM.
2. The method of payment to the terminated SPONSOR must be fair; and must protect the solvency and liquidity of the PROGRAM. Where the termination is voluntary, the method of payment will be deemed presumptively fair where it provides for a non-interest bearing unsecured promissory note with principal payable, if at all, from distributions which the terminated SPONSOR otherwise would have received under the partnership agreement had the SPONSOR not terminated. Where the termination is involuntary, the method of payment will be deemed presumptively fair where it provides for an interest bearing promissory note coming due in no less than 5 years with equal installments each year.

III. SUITABILITY OF PARTICIPANTS.

A. *General Policy.*

1. The SPONSOR shall establish minimum income and NET WORTH standards for PERSONS who purchase PROGRAM INTERESTS.
2. The SPONSOR shall propose minimum NET WORTH standards which are reasonable given the type of PROGRAM and the risks associated with PROGRAM INTERESTS. PROGRAMS with greater investor risk shall have minimum standards with a substantial NET WORTH requirement. The ADMINISTRATOR shall evaluate the standards proposed by the SPONSOR when the PROGRAM'S application for registration is reviewed. In evaluating the proposed standards, the ADMINISTRATOR may consider the following:
 - a. tax implications;
 - b. credit equity of borrowers;
 - c. potential variances in cash distributions;
 - d. potential PARTICIPANTS;
 - e. relationship between potential PARTICIPANTS and the SPONSOR;
 - f. liquidity of PROGRAM interests;
 - g. performance of the SPONSOR'S prior PROGRAMS;
 - h. financial condition of the SPONSOR;
 - i. conflicts of interest, including potential transactions between the PROGRAM and the SPONSOR;
 - j. loan-to-value ratios;
 - k. characteristics of properties subject to mortgages
 - l. limited PROGRAM diversification; and
 - m. any other relevant factors.

B. *Income and NET WORTH Standards*

1. Unless the Administrator determines that the risk associated with the PROGRAM would require lower or higher standards, or except as provided in Section V.I.5, each PARTICIPANT shall have:
 - a. a minimum annual gross income of \$70,000, and a minimum NET WORTH of \$70,000; or
 - b. a minimum NET WORTH of \$250,000.
2. NET WORTH shall be determined exclusive of home, home furnishings, and automobiles.
3. In the case of sales to fiduciary accounts, these minimum standards shall be met by the beneficiary, the fiduciary account, or by a donor or grantor who directly or indirectly supplies the funds to purchase the PROGRAM INTERESTS if the donor or grantor is the fiduciary.
4. The SPONSOR shall set forth in the final PROSPECTUS:
 - a. the investment objectives of the PROGRAM;
 - b. a description of the type of PERSON who might benefit from an investment in the PROGRAM; and
 - c. the minimum standards imposed on each PARTICIPANT in the PROGRAM.

C. *Determination that Sale to a PARTICIPANT is Suitable and Appropriate.*

1. The SPONSOR and each PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or PROGRAM shall make every reasonable effort to determine that the purchase of PROGRAM INTERESTS is a suitable and appropriate investment for each PARTICIPANT.

2. In making this determination, the SPONSOR or each PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or the PROGRAM shall ascertain that the prospective PARTICIPANT:
 - a. meets the minimum income and NET WORTH standard established for the PROGRAM;
 - b. can reasonably benefit from an investment in the PROGRAM based on the prospective PARTICIPANT'S overall investment objectives and portfolio structure;
 - c. is able to bear the economic risk of the investment based on the prospective PARTICIPANT'S overall financial situation;
 - d. has apparent understanding of:
 - (i) the fundamental risks of the investment;
 - (ii) the risk that the PARTICIPANT may lose the entire investment;
 - (iii) the lack of liquidity of PROGRAM INTERESTS;
 - (iv) the restrictions on transferability of PROGRAM INTERESTS;
 - (v) background and qualifications of the SPONSOR or PERSONS responsible for directing and managing the PROGRAM; and
 - (vi) the tax consequences of the investment.
 3. The SPONSOR and each PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or the PROGRAM will make this determination on the basis of the information it has obtained from the prospective PARTICIPANT. Relevant information for this purpose will include at least the age, investment objectives, investment experience, income, NET WORTH, financial situation, and other investment of the prospective PARTICIPANT, as well as any other pertinent factors.
 4. The SPONSOR and each PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or the PROGRAM shall maintain records of the information used to determine that an investment in PROGRAM INTERESTS is suitable and appropriate for each PARTICIPANT. The SPONSOR or each PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or PROGRAM shall maintain these records for at least six years.
 5. The SPONSOR shall disclose in the final PROSPECTUS the responsibility of the SPONSOR and each PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or PROGRAM shall make every reasonable effort to determine that the purchase of PROGRAM INTERESTS is a suitable and appropriate investment for each PARTICIPANT, based on information provided by the PARTICIPANT regarding the PARTICIPANT'S financial situation and investment objectives.
- D. *Subscription Agreements.*
1. The ADMINISTRATOR may require that each PARTICIPANT complete and sign a written subscription agreement.
 2. The SPONSOR may require that each PARTICIPANT acknowledge that the investment is not liquid.
 3. If the representation in Section III.D.2. above is included in the Subscription Agreement, the PARTICIPANT must separately sign or initial that representation. Except in the case of fiduciary accounts, the

- PARTICIPANT may not grant any PERSON a power of attorney to make such representation on his or her behalf.
4. The SPONSOR and each PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or PROGRAM shall not require a PARTICIPANT to make representations in the subscription agreement which are subjective or unreasonable and which:
 - a. might cause the PARTICIPANT to believe that he or she has surrendered any rights to which he or she is entitled under federal or state law; or
 - b. would have the effect of shifting duties regarding suitability, imposed by law on broker-dealers, to the PARTICIPANT.
 5. Prohibited representations include, but are not limited to the following:
 - a. The PARTICIPANT understands or comprehends the risks associated with an investment in the PROGRAM.
 - b. The investment is a suitable one for the PARTICIPANT.
 - c. The PARTICIPANT has read the PROSPECTUS.
 - d. In deciding to invest in the PROGRAM, the PARTICIPANT has relied solely on the PROSPECTUS, and not on any other information or representations from other PERSONS or sources.
 6. The SPONSOR may place the content of the prohibited representations in the subscription agreement in the form of disclosures to the PARTICIPANT. The SPONSOR may not place these disclosures in the PARTICIPANT representation part of the subscription agreement.
- E. *Completion of Sale.*
1. The SPONSOR or any PERSON selling PROGRAM INTERESTS on behalf of the SPONSOR or PROGRAM may not complete a sale of PROGRAM INTERESTS to a PARTICIPANT until at least five business day after the date the PARTICIPANT receives a final PROSPECTUS.
 2. The SPONSOR or the PERSON designated by the SPONSOR shall send each PARTICIPANT a confirmation of his or her purchase.
- F. *Minimum Investment.* The ADMINISTRATOR may require a minimum initial and subsequent cash investment amount.

IV. FEES—COMPENSATION—EXPENSES.

- A. *Fees, Compensation, and Expenses to be Reasonable.*
1. The total amount of consideration of all kinds which may be paid directly or indirectly to all parties shall be reasonable.
 2. The PROSPECTUS must fully disclose and itemize all consideration which may be received from the PROGRAM directly or indirectly by the SPONSOR, its AFFILIATES and underwriters, what the consideration is for and how and when it will be paid. This shall be set forth in one location in tabular form.
- B. *Organization and Offering Expenses.* All ORGANIZATION AND OFFERING EXPENSES incurred in order to sell PROGRAM INTERESTS shall be reasonable and shall comply with all statutes, rules, and regulations imposed in connection with the offering of other securities in the state.
- C. *Investment in Mortgages.*

1. FRONT-END FEES paid to the SPONSOR shall be in accordance with this subsection.
 - a. The SPONSOR shall be required to commit a substantial portion of the PROGRAM'S CAPITAL CONTRIBUTIONS toward INVESTMENT IN MORTGAGES. The remaining CAPITAL CONTRIBUTIONS may be used to pay FRONT-END FEES. The total amount of FRONT-END FEES, whenever paid and from whatever source, shall be limited to an amount equal to the initial amount of CAPITAL CONTRIBUTIONS not applied to INVESTMENT IN MORTGAGES.
 2. At a minimum, the SPONSOR shall commit a percentage of the CAPITAL CONTRIBUTIONS to INVESTMENT IN MORTGAGES which is equal to 82%. [Refer to Section IV.I.1.c. of these Guidelines for the minimum required INVESTMENT IN MORTGAGES for a PROGRAM electing an ASSET-BASED FEE.]
 3. If the SPONSOR enters into an INVESTMENT IN MORTGAGES commitment in excess of that specified in paragraph 2. of this subsection, the SPONSOR may take a fully participating CARRIED INTEREST equal to 1.0% for the-first 2.5% of additional INVESTMENT IN MORTGAGES, 1.0%.for the next 2.0% of additional INVESTMENT IN MORTGAGES, and 1.0% for each 1.0% of additional INVESTMENT IN MORTGAGES thereafter.
 4. For PROGRAMS whose total CAPITAL CONTRIBUTIONS do not exceed \$2 million, the ADMINISTRATOR may reduce the required amount of INVESTMENT IN MORTGAGES to 71%.
 5. Notwithstanding the language in paragraph 4. of this subsection, the \$2 million limitation is intended to be a benchmark figure and may be adjusted upward or downward by the ADMINISTRATOR based on the marketplace in the ADMINISTRATOR'S jurisdiction.
- D. *Promotional Interest.* An interest in the PROGRAM will be allowed as a PROMOTIONAL INTEREST and PROGRAM MANAGEMENT FEE, provided the amount or percentage of such interest is reasonable. Such an interest will be considered presumptively reasonable if it is within the limitations expressed in paragraphs 1-3 of this subsection.
1. an interest equal to:
 - a. 10% of distributions from CASH AVAILABLE FOR DISTRIBUTION; and
 - b. 15% of CASH AVAILABLE FOR DISTRIBUTION and cash to be distributed from the net proceeds remaining from CAPITAL TRANSACTIONS in the PROGRAM'S mortgages after payment to investors from such proceeds, an amount equal to 100% of CAPITAL CONTRIBUTIONS, plus an amount equal to 6.0% of CAPITAL CONTRIBUTIONS per annum cumulative. The 6.0% cumulative return may be reduced, but not below zero, by the aggregate amount of prior distributions to investors from CASH AVAILABLE FOR DISTRIBUTION. The SPONSOR'S interest in CASH AVAILABLE FOR DISTRIBUTION

and proceeds of CAPITAL TRANSACTIONS provided for in this Section IV.D.1.b. may be increased 1% for each percentage point below 10% that the SPONSOR accepts in its interest in CASH AVAILABLE FOR DISTRIBUTION, allowed under Section IV.D.1.a.

2. Dissolution and liquidation of the PROGRAM. The distribution of assets upon dissolution and liquidation of the PROGRAM shall conform to the applicable subordination provisions of paragraph 1. of this subsection, and appropriate language shall be included in the PROGRAM agreement.
 3. The maximum dollar amount of the SPONSOR'S distributive share permitted under paragraph 1. or 2. of this subsection may not be increased by any allocation to the SPONSOR made for the purpose of satisfying the requirements of the Internal Revenue Code, applicable regulations, or any Revenue Ruling or Revenue Procedure. In the absence of adequate justification provided under subsection IV.C.(3) of this section for any unsubordinated participation in cash to be distributed from the net proceeds remaining from the CAPITAL TRANSACTIONS in the PROGRAM'S mortgages, the Administrator may require an express limitation in the PROGRAM agreement that the dollar amount of the SPONSOR'S distributive share will not exceed the maximum amount that would be allowable under paragraphs (1) or (2) of this subsection.
- E. *Real Estate Brokerage Commissions on Resale of Property.* The total compensation paid to all PERSONS for the sale of a property held by the PROGRAM as the result of foreclosure shall be limited to a competitive real estate commission, not to exceed 6.0% of the contract price for the sale of the property. If the SPONSOR provides a substantial amount of the services in the sales effort, he may receive up to 1/2 of the competitive real estate commission, not to exceed 3.0%, and subordinated as in subsection D. of this section. If the SPONSOR participates with an independent broker on resale, the subordination requirement shall apply only to the commission earned by the SPONSOR.
- F. *Property Management Fee.* Should the SPONSOR or its AFFILIATES perform property management services with respect to a foreclosed property as permitted under subsection IV.A.1. of this section, the fees paid to the SPONSOR or its AFFILIATES shall be the lesser of the maximum fees set forth in paragraphs 1.-3. of this subsection, or the fees which are competitive for similar services in the same geographic area. Included in such fees shall be bookkeeping services and fees paid to nonrelated PERSONS for property management services.
1. In the case of a residential property, the maximum PROPERTY MANAGEMENT FEE (included all rent-up, leasing, and re-leasing fees and bonuses, and leasing related services, paid to any PERSON) shall be 5.0% of the gross revenues from such property.
 2. In the case of industrial and commercial property, except as set forth in paragraph 3. of this subsection, the maximum PROPERTY MANAGEMENT FEE from such leases shall be 6.0% of the gross revenues where the SPONSOR or its AFFILIATES includes leasing, re-leasing, and leasing related services. Conversely the maximum PROPERTY MANAGEMENT FEE from such leases shall be 3.0% of the gross revenues where the SPONSOR or its AFFILIATES do not perform the leasing, re-leasing, and leasing related services with respect to the property.

3. In the case of industrial and commercial properties which are leased on a long term (10 or more years) net (or similar) bases, the maximum PROPERTY MANAGEMENT FEE from such leases shall be 1.0% of the gross revenues, except for a one time initial leasing fee of 3.0% of the gross revenues on each lease payable over the first five full years of the original term of the lease.
- G. *Insurance Services.* The SPONSOR or his AFFILIATE may provide insurance brokerage services in connection with obtaining insurance on a PROGRAM property held as the result of foreclosure so long as the cost of providing such service, including cost of the insurance, is no greater than the lowest quote obtained from two unaffiliated insurance agencies and the coverage and terms are likewise comparable. In no event may such services be provided by the SPONSOR or his AFFILIATES unless they are independently engaged in the business of providing such services to other than AFFILIATES and at least 75% of their insurance brokerage service gross revenue is derived from other than AFFILIATES.
- H. *Mortgage Servicing Fee.* The SPONSOR or its AFFILIATES may provide mortgage servicing, for which it may be paid a fee, which, when added to all other fees paid in connection with the servicing of a particular mortgage, does not exceed the lesser of the customary, competitive fee for the provision of such mortgage services on that type of mortgage or 1/4 of 1.0% of the principal outstanding in such loan.
- I. *Asset Based Fee.*
1. Eligibility. A PROGRAM may elect to compensate the SPONSOR according to the provisions of this section only if the PROGRAM meets all of the following:
 - a. The PROSPECTUS states that a primary investment objective of the PROGRAM is to generate and to distribute CASH FLOW from PROGRAM operations.
 - b. The anticipated life of the PROGRAM does not exceed 20 years from the date the offering is declared effective by the Securities and Exchange Commission ("SEC"). However, the partnership agreement may provide that the PROGRAM will be extended by the affirmative vote of a majority of the PARTICIPANTS.
 - c. The PROGRAM will invest not less than 84% of the CAPITAL CONTRIBUTIONS as the INVESTMENT IN MORTGAGES. The remaining CAPITAL CONTRIBUTIONS may be used to pay FRONT-END FEES. The total amount of FRONT-END FEES, whenever paid, shall be limited to the initial amount of CAPITAL CONTRIBUTIONS not applied to INVESTMENT IN MORTGAGES. Of this INVESTMENT IN MORTGAGES, not more than 3.0% of the CAPITAL CONTRIBUTIONS may be included as a working capital reserve.
 2. Computation. The annual asset-based fee shall be 0.75% of the BASE AMOUNT. On CAPITAL CONTRIBUTIONS temporarily held while awaiting INVESTMENT IN MORTGAGES, the ASSET BASED FEE shall be 0.5% of those CAPITAL CONTRIBUTIONS. The SPONSOR may also be allowed the following additional fees and compensation:

- a. a PROPERTY MANAGEMENT FEE as provided in subsection F. of this section;
 - b. real estate commissions as provided in subsection E. of this section;
 - c. a back-end promotional interest as provided in subsection D.1.b. of this section;
 - d. fees for insurance services as allowed by subsection G. of this section;
 - e. FRONT-END FEES limited as provided in subsection I.1.c. of this section;
 - f. reimbursement for PROGRAM expenses as provided in Section V.D. of these guidelines (relating to Conflicts of Interest and Investment Restrictions);
 - g. fees, interest, and other charges as allowed in Section V.I.3. of these guidelines (relating to Conflicts of Interest and Investment Restrictions);
 - h. additional CARRIED INTEREST as provided in subsection C.3. of this section; and
 - i. except as provided in a. through h. of this paragraph, the SPONSOR shall receive no fees or other compensation from the PROGRAM.
3. Limitations. An election to compensate the SPONSOR with an ASSET BASED FEE as provided in this subsection shall be subject to the following limitations:
- a. The PROGRAM may reinvest the proceeds from CAPITAL TRANSACTIONS in its mortgages during the 7 years following the date of its effectiveness with the SEC. No deduction for FRONT-END FEES shall be allowed on such reinvestments. Such reinvested proceeds shall not count toward satisfaction of PARTICIPANTS' return of capital or preferred return under Sections IV.D.1. and 2. Beginning on a date 7 years after the date of effectiveness with the SEC, no reinvestment of the proceeds from CAPITAL TRANSACTIONS shall be allowed.
 - b. The ASSET BASED FEE may be accrued without interest when PROGRAM funds are not available for its payment. Any accrued ASSET BASED FEE may be paid from the next available cash flow or net proceeds from CAPITAL TRANSACTIONS in mortgages. No ASSET BASED FEE may be paid from PROGRAM reserves.
 - c. A SPONSOR that is terminated and entitled to compensation from the PROGRAM as provided in the partnership documents and governed by Section II.F. of these guidelines (relating to Requirements of SPONSORS) shall be paid the ASSET BASED FEE through the date of such termination.
 - d. Except as modified by this paragraph, all other portions of this statement of policy shall apply where appropriate to PROGRAMS electing an ASSET BASED FEE.

V. CONFLICTS OF INTEREST AND INVESTMENT RESTRICTIONS.

A. *Sales, Leases, and Related PROGRAM Transactions.*

1. Sales of mortgages to PROGRAM. A PROGRAM shall not acquire a mortgage in which a SPONSOR has an interest unless:
 - a. However, the SPONSOR may acquire a mortgage in its own name and temporarily hold title thereto for the purpose of facilitating the acquisition of such mortgage, provided that such mortgage is purchased by the PROGRAM for a price no greater than the cost of such mortgage to the SPONSOR, except compensation in accordance with Section IV. of these guidelines (relating to Fees—Compensation—Expenses), and provided there is no other benefit arising out of such transaction to the SPONSOR apart from compensation otherwise permitted by these sections. Accordingly, all income generated and expenses associated with mortgage so acquired shall be treated as belonging to the PROGRAM. The SPONSOR shall not sell a mortgage to the PROGRAM pursuant to this subparagraph if the cost of the mortgage exceeds the funds reasonably anticipated to be available to the PROGRAM to purchase the mortgage. The PROSPECTUS and the PROGRAM agreement shall set forth in a manner satisfactory to the ADMINISTRATOR the methodology to be utilized for determining which mortgages will ultimately be transferred to the PROGRAM when the cost of the mortgage acquired by the SPONSOR on behalf of the PROGRAM exceeds PROGRAM funds available to purchase the mortgage.

OR
 - b. The purchase is made from a PROGRAM formed by the SPONSOR pursuant to the rights of first refusal required by subsection V.G. of this section. In such a case the purchase price should be no more than fair market value as determined by an independent appraisal.
2. Sales to the SPONSOR. A PROGRAM shall not sell a mortgage to the SPONSOR unless all of the following criteria are met:
 - (i) the PROGRAM does not have sufficient offering proceeds available to retain the mortgage (or contract rights related thereto);
 - (ii) the PROSPECTUS discloses that the SPONSOR will purchase all mortgages (or contract rights) that the PROGRAM does not have sufficient proceeds to retain;
 - (iii) the SPONSOR pays the PROGRAM an amount in cash equal to the cost of the mortgage (or contract rights) to the PROGRAM (including all cash payments and carrying costs related thereto);
 - (iv) the SPONSOR assumes all of the PROGRAM'S

- obligations and liabilities incurred in connection with the holding of the mortgage (or contract rights) by the PROGRAM;
- (v) the sale to the SPONSOR occurs not later than 90 days following the termination date of the offering;
 - (vi) the methodology to be used by the SPONSOR in determining which mortgages it will purchase in the event that the PROGRAM's offering proceeds are insufficient to retain all mortgages must be fully disclosed in the PROSPECTUS.
- 3. Dealing with related PROGRAMS. A PROGRAM shall not acquire a mortgage from, or sell a mortgage to a PROGRAM in which the SPONSOR has an interest.
 - 4. Sales of Foreclosed Properties. A PROGRAM shall not sell a foreclosed property to the SPONSOR or to a PROGRAM in which the SPONSOR has an interest.
- B. *Exclusive Agreement.* A PROGRAM shall not give a SPONSOR an exclusive right or employment to sell or otherwise dispose of PROGRAM mortgages or other PROGRAM assets.
- C. *Commissions on Reinvestment or Distribution.* A PROGRAM shall not pay, directly or indirectly, a commission or fee (except as permitted under Section IV. of these guidelines (relating to Fees—Compensation—Expenses)) to a SPONSOR in connection with the reinvestment or distribution of the proceeds of a CAPITAL TRANSACTION.
- D. *Services Rendered to the PROGRAM by the SPONSOR.*
- 1. Expenses of the PROGRAM.
 - a. All expenses of the PROGRAM shall be billed directly to and paid by the PROGRAM. The SPONSOR may be reimbursed for the actual cost of goods and materials used for or by the PROGRAM and obtained from entities unaffiliated with the SPONSOR. The SPONSOR may be reimbursed for the administrative services necessary to the prudent operation of the PROGRAM provided that the reimbursement shall be at the lower of the SPONSOR's actual cost or the amount the PROGRAM would be required to pay to independent parties for comparable administrative services in the same geographical location. No reimbursement shall be permitted for services for which the SPONSOR is entitled to compensation by way of a separate fee. Excluded from the allowable reimbursement (except as permitted under Section IV.C.1. of these guidelines (relating to Fees—Compensation—Expenses)) shall be:
 - (i) rent or depreciation, utilities, capital equipment, other administrative items; and
 - (ii) salaries, fringe benefits, travel expenses, and other administrative items incurred or allocated to any controlling PERSONS of the SPONSOR or AFFILIATES.
 - b. Controlling PERSON, for purpose of this section, includes but is not limited to, any PERSON, whatever their title, who performs functions for the SPONSOR similar to those of:
 - (i) chairman or member of the board of directors;

- (ii) executive management, such as the president, vice-president or senior vice-president, corporate secretary, or treasurer;
 - (iii) senior management, such as the vice-president of an operating division who reports directly to executive management; or
 - (iv) those holding 5.0% or more equity interest in the SPONSOR or a PERSON having the power to direct or cause the direction of the SPONSOR, whether through the ownership of voting securities, by contract, or otherwise.
 - c. The annual PROGRAM report must contain a breakdown of the costs reimbursed to the SPONSOR. Within the scope of the annual audit of the SPONSOR's financial statement, the independent certified public accountants must verify the allocation of such costs to the PROGRAM. The method of verification shall at a minimum provide:
 - (i) a review of the time records of individual employees, the costs of whose services were reimbursed; and
 - (ii) a review of the specific nature of the work performed by each such employee.
 - d. The methods of verification shall be in accordance with generally accepted auditing standards and shall accordingly include such tests of the accounting records and such other auditing procedures which the SPONSOR's independent certified public accountants consider appropriate in the circumstance. The additional costs of such verification will be itemized by said accountants on a PROGRAM by PROGRAM basis and may be reimbursed to the SPONSOR by the PROGRAM in accordance with this subsection only to the extent that such reimbursement when added to the cost for administrative services rendered does not exceed the competitive rate for such services as determined in this paragraph. The PROSPECTUS must disclose in tabular form an estimate of such proposed expenses for the next fiscal year together with a breakdown by year of such expenses reimbursed in each of the last five public PROGRAMS formed by the SPONSOR.
- 2. Other goods and services. Except as provided in Section IV. of these guidelines (relating to Fees—Compensation—Expenses) and paragraph V.D.1. of this subsection, other goods and services may be provided by the SPONSOR for the PROGRAM only if all of the following criteria are met.
 - a. The goods or services must be necessary to the prudent operation of the PROGRAM.
 - b. The compensation, price, or fee must be equal to either:
 - (i) the lesser of 90% of the compensation, price, or fee of any nonaffiliated PERSON who is rendering comparable services or selling or leasing comparable goods on competitive terms in the same geographic location or
 - 90% of the compensation, price, or fee charged by the SPONSOR for rendering comparable services or selling

- (ii) or leasing comparable goods on competitive terms; or if at least 95% of gross revenues attributable to the business of rendering such services or selling or leasing such goods are derived from PERSONS other than AFFILIATES, the compensation, price, or fee charged by a nonaffiliated PERSON who is rendering comparable services or selling or leasing comparable goods on competitive terms in the same geographic location.
 - c. The goods or services shall be provided pursuant to a written contract which precisely describes such goods or services and all compensation to be paid. The contract may be modified in any material respect only by the vote of a majority in interest of the PARTICIPANTS and shall be terminable without penalty on 60 days' notice.
 - d. The goods and services provided and the written contract referred to in subparagraph c. of this paragraph must be fully disclosed in the PROSPECTUS.
 - e. The SPONSOR must have been previously engaged in the business of rendering services or selling or leasing such goods as an ordinary and ongoing business for a period of at least three years.
 - f. The SPONSOR must receive at least 33% of gross revenues for such goods or services from PERSONS other than AFFILIATES.
 - g. Except as provided in Section IV. of these guidelines (relating to Fees—Compensation—Expenses), paragraph V.D.1. of this subsection, and other than as provided in subparagraphs b., d., e., and f. of this paragraph, the SPONSOR may provide additional goods and services to the PROGRAM if all of the following criteria are met:
 - (i) the goods or services may only be provided by the SPONSOR in extraordinary circumstances;
 - (ii) the compensation, price, or fee must be competitive with the compensation, price, or fee, of any non-AFFILIATED PERSON who is rendering comparable services or selling or leasing comparable goods on competitive terms which could reasonably be made available to the PROGRAM;
 - (iii) the fees and other terms of the contract shall be fully disclosed;
 - (iv) the SPONSOR must be previously engaged in the business of rendering such services or selling or leasing such goods, independently of the PROGRAM and as an ordinary and ongoing business;
 - (v) there must be compliance with subparagraphs a. and c. of this Section V.D.2.
- E. *Rebates, Kickbacks, and Reciprocal Arrangements.*
 - 1. No rebates or give-ups may be received by the SPONSOR nor may the SPONSOR participate in any reciprocal business arrangement which would circumvent these rules. Furthermore, the PROSPECTUS and

PROGRAM charter documents shall contain language prohibiting the rebates or give-ups as well as language prohibiting reciprocal business arrangements which would circumvent the restrictions against dealing with AFFILIATES or promoters.

2. No SPONSOR shall directly or indirectly pay or award any commissions or other compensation to any PERSON engaged by a potential investor for investment advice as an inducement to such adviser to advise the purchaser of interests in a particular PROGRAM; provided, however, that this clause shall not prohibit the normal sales commissions payable to a registered broker-dealer or other properly licensed PERSON for selling PROGRAM interests.
- F. *Commingling of Funds.* The funds of a PROGRAM shall not be commingled with the funds of any other PERSON. Nothing contained in this subsection however, shall prohibit a SPONSOR from establishing a master fiduciary account pursuant to which separate subtrust accounts are established for the benefit of AFFILIATED PROGRAMS, provided, that PROGRAM funds are protected from claims of such other PROGRAMS and/or creditors. The prohibition of this subsection shall not apply to investments meeting the requirements of subsection G. of this section.
- G. *Investments In or With Other PROGRAMS.*
1. The PROGRAM shall be permitted to invest in general partnerships or joint ventures (including entities in limited liability company and limited liability partnership form) with non-AFFILIATES that own and operate one or more particular mortgages if the PROGRAM, alone or together with any publicly registered AFFILIATE of the PROGRAM meeting the requirements of paragraph 2. of this subsection acquires a controlling interest in such a general partnership or joint venture, but in no event shall duplicate fees be permitted. For purposes of this paragraph, "controlling interest" means an equity interest possessing the power to direct or cause the direction of the management and policies of the general partnership or joint venture, including the authority to:
 - a. review all contracts entered into by the general partnership or joint venture that will have a material effect on its business or assets;
 - b. cause a sale of the mortgage or its interest therein subject in certain cases where required by the partnership or joint venture agreement, to limits as to time, minimum amounts, and/or a right of first refusal by the joint venture partner or consent of the joint venture partner;
 - c. approve budgets and major capital expenditures subject to a stated minimum amount;
 - d. veto any sale of the mortgage, or, alternatively, to receive a specified preference on sale or proceeds; and
 - e. exercise a right of first refusal on any desired sale by the joint venture partner of its interest in the mortgage except for transfer to an AFFILIATE of the joint venture partner.
 2. The PROGRAM shall be permitted to invest in general partnerships or joint ventures with other publicly registered AFFILIATES of the PROGRAM if all the following conditions are met:
 - a. the PROGRAMS have substantially identical investment objectives.

- b. there are no duplicate fees.
 - c. the compensation to SPONSORS is substantially identical in each PROGRAM.
 - d. each PROGRAM must have a right of first refusal to buy if the other PROGRAMS wish to sell assets held in the joint venture.
 - e. The investment of each PROGRAM is on substantially the same terms and conditions.
 - f. the PROSPECTUS discloses the potential risk of impasse on joint venture decisions since no PROGRAM may have the right to buy the asset from the partnership or joint venture, it may not have the resources to do so.
3. The PROGRAM shall be permitted to invest in general partnerships or joint ventures with AFFILIATES other than publicly registered AFFILIATES of the PROGRAM only under the following conditions:
- a. the investment is necessary to relieve the SPONSOR from any commitment to purchase a mortgage entered into in compliance with subsection V.A.1.a. of this section prior to the closing of the offering period of the PROGRAM;
 - b. there are no duplicate fees;
 - c. the investment of each entity is on substantially the same terms and conditions;
 - d. the PROGRAM provides for a right of first refusal to buy if the SPONSOR wishes to sell a mortgage held in the joint venture; and
 - e. the PROSPECTUS discloses the potential risk of impasse on joint venture decisions.
4. Other than as specifically permitted in paragraphs 2. and 3. of this subsection, the PROGRAM shall not be permitted to invest in general partnerships or joint ventures with AFFILIATES.
5. A PROGRAM shall be permitted to invest in general partnership interests of limited partnerships only if the PROGRAM alone or together with any publicly registered AFFILIATE of the PROGRAM meeting the requirements of paragraph 2. of this subsection acquires a "controlling interest" as defined in paragraph V.H.1. of this subsection, no duplicate fees are permitted, no additional compensation beyond that permitted by Section IV. of these guidelines (relating to Fees—Compensation—Expenses), shall be paid to the SPONSOR, and the PROGRAM agreement shall comply with this section.
6. A PROGRAM that is an "upper-tier PROGRAM" shall be permitted to invest in interests of other PROGRAMS (the "lower-tier PROGRAMS") only if all of the following conditions are met.
- a. If the SPONSOR of the lower-tier PROGRAM is a SPONSOR of the upper-tier PROGRAM, the PROGRAM agreement of the upper-tier PROGRAM shall:
 - (i) prohibit the PROGRAM from investing in such lower-tier PROGRAM unless the PROGRAM agreement of the lower-tier PROGRAM contains provisions complying with Section

- IX.F. of these Guidelines (relating to Miscellaneous Provisions) and provisions acknowledging privity between the lower-tier SPONSOR and the PARTICIPANTS, and
 - (ii) provide that compensation payable in the aggregate from both tiers shall not exceed the amounts permitted under Section IV. of these guidelines (relating to Fees—Compensation—Expenses).
 - b. If the SPONSOR of the lower-tier PROGRAM is not a SPONSOR of the upper-tier PROGRAM, the PROGRAM agreement of the upper-tier PROGRAM shall prohibit that PROGRAM from investing in the lower-tier PROGRAM unless the PROGRAM agreement of the lower-tier contains provisions complying with Sections II.E. and F. of these Guidelines (relating to Requirements of SPONSORS); VII. A.-D., H. and J (relating to Rights and Obligations of PARTICIPANTS); and IX.C. of these Guidelines (relating to Miscellaneous Provisions); and shall provide that the compensation payable at both tiers shall not exceed the amounts permitted in Section IV. of these Guidelines (relating to Fees—Compensation—Expenses).
 - c. Each lower-tier PROGRAM shall have as its PARTICIPANTS only publicly registered upper-tier PROGRAMS, provided, however, that special limited partners (or PARTICIPANTS holding comparable interests) not AFFILIATED with the SPONSOR shall be permitted if the interests taken result in no diminution in the control exercisable by the other PARTICIPANTS.
 - d. No PROGRAM may be structured with more than two tiers.
 - e. The PROGRAM agreement of the upper-tier PROGRAM must contain a prohibition against duplicate fees.
 - f. The PROGRAM agreement of the upper-tier PROGRAM must provide that the PARTICIPANTS in the upper-tier PROGRAM can, upon the vote of a majority in interest and without the concurrence of the SPONSOR, direct the SPONSOR Of the upper-tier PROGRAM (acting on behalf of the upper-tier PROGRAM) to the any action permitted to a PARTICIPANT (e.g. the upper-tier PROGRAM) in the lower-tier PROGRAM.
 - g. The PROSPECTUS must fully and prominently disclose the two-tiered arrangement and any risks related thereto.
7. Notwithstanding subsections V.G.6.b. through g. of this section, if the SPONSOR of the lower-tier PROGRAM is not a SPONSOR of the upper-tier PROGRAM, an upper-tier PROGRAM may invest in a lower-tier PROGRAM that holds a particular mortgage to be qualified pursuant

to the Internal Revenue Code of 1986, Section 42(g) as amended, if PARTICIPANTS in both tiers are provided all of the rights and obligations required by Section VII. of these Guidelines (relating to Rights and Obligations of PARTICIPANTS) and the PROGRAM agreement of the upper-tier PROGRAM agreement contains a prohibition against payment of duplicate fees.

H. *Lending practices.*

1. No loans may be made by the PROGRAM to the SPONSOR or an AFFILIATE, except as provided in subsection V.H.2. of this section and II.D.4. of these guidelines (relating to Requirements of SPONSORS).
2. The PROGRAM may provide mortgage loans to PROGRAMS formed by or AFFILIATED with the SPONSOR in those circumstances in which such activities have been fully justified the ADMINISTRATOR. These AFFILIATED transactions must at the minimum meet the following conditions:
 - a. the circumstances under which the loans will be made and the actual terms of the loan must be fully disclosed in the PROSPECTUS; or
 - b. an independent and qualified adviser must issue a letter of opinion to the effect that any proposed loan to an AFFILIATE of the PROGRAM is fair and at least as favorable to the PROGRAM as a loan to an unaffiliated borrower in similar circumstances. In addition, the SPONSORS will be required to obtain a letter of opinion from the independent adviser in connection with any disposition, renegotiation, or other subsequent transaction involving loans made to a SPONSOR or an AFFILIATE of the SPONSOR. The independent adviser must be identified in the initial PROGRAM PROSPECTUS. The independent adviser's compensation must be paid by the SPONSOR and not be reimbursable by the PROGRAM;
 - c. loans made to third parties, the proceeds of which are used to purchase or refinance a property or other asset in which the SPONSOR or an AFFILIATE has an equity or security interest, must meet the requirements of subparagraph a. or b. of this paragraph.
3. On loans made available to the PROGRAM by the SPONSOR, the SPONSOR may not receive interest or similar charges or fees in excess of the amount which would be charged by unrelated lending institutions on comparable loans for the same purpose, in the same locality of the property if the loan is made in connection with a particular property. No prepayment charge or penalty shall be required by the SPONSOR on a loan to the PROGRAM secured by either a first or junior or all-inclusive trust deed, mortgage, or encumbrance on the property, except to the extent that such prepayment charge or penalty is attributable to the underlying encumbrance.
4. The SPONSOR shall be prohibited from providing FINANCING except as permitted by paragraph 3. of this subsection, in which case there will be independent advisers for each publicly registered party to the transaction.

COMMENT A: Full disclosure of the terms of the loans and the circumstances under which they will be made includes, but is not limited to identification of the borrower(s) and the property(ies) securing the loan(s), a description of the parameters of the loan(s) or model loan documents, disclosure of the SPONSOR'S or the AFFILIATES' interest in such property, and a description of the terms and circumstances surrounding such interest.

COMMENT B: In order for the adviser to be considered qualified and independent, the following conditions must be met:

- (i) The adviser must be a long-established, nationally recognized investment banking firm, accounting firm, mortgage banking firm, real estate financial consulting firm or advisory firm;
- (ii) The adviser must have a staff of real estate professionals;
- (iii) The compensation of the adviser must be determined and embodied in a written contract before the opinion is rendered;
- (iv) If an adviser has been engaged to render a fairness opinion who is not the adviser previously engaged by the PROGRAM to render this or the preceding fairness opinion, the SPONSOR shall inform the investors (by no later than the next annual report) of the date when such adviser was engaged, and whether there were any disagreements with the former adviser on any matters of valuation, assumptions, methodology, accounting principles and practice, or disclosure, which disagreements, if not resolved to the satisfaction of the former adviser would have caused his to make reference, in connection with the fairness opinion, to the subject matter of the disagreement or decline to give an opinion;
- (v) The adviser, directly or indirectly, has no interest in, nor any material business or professional relationship with, the PROGRAM, the SPONSOR, the borrower, or any AFFILIATES thereof. Independence will be considered to be impaired if, for example, during the period of the adviser's engagement, or at any time of expressing his opinion, he or his firm: (i) has, or was committed to acquire any direct or indirect ownership interest in the PROGRAM, SPONSOR, borrower, or AFFILIATES thereof, or (ii) had any joint closely held business investment with the PROGRAM, SPONSOR, borrower, or any AFFILIATE thereof, which was material in relation to the adviser's net worth; or (iii) had any loan to or from the PROGRAM, SPONSOR, borrower, or AFFILIATES thereof.

The foregoing examples are not intended to be all-inclusive. However, for purposes of determining whether or not a business or professional relationship or joint investment is material, the gross revenue derived by the adviser from the PROGRAM, SPONSOR, borrower, and their AFFILIATES shall be deemed material if it exceeds 5% of the annual gross revenue derived by the adviser from all sources, or exceeds 5% of the individual's or advisory firm's net worth (on an estimated fair market value basis).

- I. *Requirement for Real Property Appraisal.* Every mortgage loan originated, purchased or otherwise acquired by the PROGRAM must be supported by a current appraisal prepared by a competent, independent appraiser. The appraisal shall be maintained in the SPONSOR'S records for at least five years, and shall be made available for inspection and duplication by any PARTICIPANT. The PROSPECTUS shall contain notice of this right. Also a mortgagee's or owner's

title insurance policy or commitment as to the priority of a mortgage or the condition of title shall be obtained. Further, the SPONSOR of the PROGRAM shall observe the following policies in connection with investing in or making mortgage loans.

1. The PROGRAM may not invest in or make mortgage loans on any one property which would exceed, in the aggregate, an amount equal to 20% of the CAPITAL CONTRIBUTIONS to be raised by the PROGRAM.
2. The PROGRAM may not invest in or make mortgage loans to or from any one borrower which would exceed, in the aggregate, an amount greater than 20% of the CAPITAL CONTRIBUTIONS to be raised by the PROGRAM.
3. The PROGRAM may not invest in or make mortgage loans on unimproved real property in an amount in excess of 25% of the CAPITAL CONTRIBUTIONS to be raised by the PROGRAM.
4. The PROGRAM shall not invest in real estate contracts of sale otherwise known as land sale contracts unless such contracts of sale are in recordable form and are appropriately recorded in the chain of title.
5.
 - a. The PROGRAM normally shall not make or invest in mortgage loans on any one property if at the time of the acquisition of the mortgage the aggregate amount of all mortgage loans outstanding on the property, including the loans of the PROGRAM. Would exceed an amount equal to 85% of the appraised value of the property as determined by an independent appraisal, unless substantial justification exists because of the presence of other underwriting criteria.
 - b. If the total amount of all mortgage loans outstanding on any one property, including the loans of the PROGRAM, exceeds 80% of the value of the property, and such loans are not supported by the presence of other underwriting criteria, the minimum financial suitability standards for PARTICIPANTS shall be increased to a minimum annual gross income of \$85,000, and a minimum net worth of \$330,000. For purposes of this paragraph V.I.5, the "aggregate amount of all mortgage loans outstanding on the property, including the loans of the PROGRAM," shall include all interest (excluding contingent participations in income and/or appreciation in value of the mortgaged property), the current payment of which may be deferred pursuant to the terms of such loans. This restriction applies to all loans, including construction loans.
6. The PROGRAM is permitted to borrow money when it has taken over the operation of a property in order to prevent defaults under existing loans, or there otherwise is a need for additional capital with respect to such a property.

COMMENT: This Section provides certain minimum standards in connection with the investment in or making of mortgage loans by a PROGRAM. The standards may be exceeded for a particular registration if the mortgage loans are

supported by sound underwriting criteria, such as the net worth of the borrower; the credit rating of the borrower based on historical financial performance; or collateral adequate to justify waiver of application of this Section. The standards may also be exceeded where program mortgage loans are or will be insured or guaranteed by a government or a government agency; where the loan is secured by a pledge or assignment of other real estate or another real estate mortgage; where rents are assigned under a lease where a tenant or tenants have demonstrated through historical net worth and cash flow the ability to satisfy the terms of the lease; or where similar criteria are presented that are satisfactory to the Administrator.

J. *PROGRAM indebtedness.*

1. The PROGRAM shall not incur indebtedness at its commencement.
2. The total amount of indebtedness incurred by the PROGRAM shall at no time exceed the sum of 70% of the aggregate fair market value of all PROGRAM mortgages.

K. *Appraisal and Compensation.*

1. In connection with a proposed ROLL-UP, an appraisal of all PROGRAM assets shall be obtained from a competent, independent expert. If the appraisal will be included in a PROSPECTUS used to offer the securities of a ROLL-UP ENTITY, the appraisal shall be filed with the Securities and Exchange Commission and the states as an Exhibit to the Registration Statement for the offering. Accordingly, an issuer using the appraisal shall be subject to liability for violation of the Securities Act of 1933, Section 11, and comparable provisions under state laws for any material misrepresentations or material omissions in the appraisal. PROGRAM assets shall be appraised on a consistent basis. The appraisal shall be based on an evaluation of all relevant information, and shall indicate the value of the PROGRAM's assets as of a date immediately prior to the announcement of the proposed ROLL-UP. The appraisal shall assume an orderly liquidation of the PROGRAM's assets over a 12 month period. The terms of the engagement of the independent expert shall clearly state that the engagement is for the benefit of the PROGRAM and its PARTICIPANTS. A summary of the independent appraisal, indicating all material assumptions underlying the appraisal, shall be included in a report to the PARTICIPANTS in connection with a proposed ROLL-UP.
2. In connection with a proposed ROLL-UP the PERSON sponsoring the ROLL-UP shall offer to PARTICIPANTS who vote "no" on the proposal the choice of:
 - A. accepting the securities of the ROLL-UP ENTITY offered in the proposed ROLL-UP; or
 - B. one of the following:
 - (i) remaining as PARTICIPANTS in the PROGRAM and preserving their interests therein on the same terms and conditions as existed previously; or
 - (ii) receiving cash in an amount equal to the PARTICIPANTS' pro-rata share of the appraised value of the net assets of the PROGRAM.
3. The PROGRAM shall not participate in any proposed ROLL-UP which

would result in PARTICIPANTS having democracy rights in the ROLL-UP ENTITY which are less than those provided for under Section VII.A. and B. of these guidelines (relating to Rights and Obligations of PARTICIPANTS). If the ROLL-UP ENTITY is a corporation, the voting rights of PARTICIPANTS shall correspond to the voting rights provided for in these guidelines to the greatest extent possible.

4. The PROGRAM shall not participate in any proposed ROLL-UP which includes a provision which would operate to materially impede or frustrate the accumulation of shares by any purchaser of the securities of the ROLL-UP ENTITY (except to the minimum extent necessary to preserve the tax status of the ROLL-UP ENTITY). The PROGRAM shall not participate in a proposed ROLL-UP which would limit the ability of a PARTICIPANT to exercise the voting rights of its securities of the ROLL-UP ENTITY on the basis of the number of PROGRAM interests held by that PARTICIPANT.
5. The PROGRAM shall not participate in any proposed ROLL-UP in which the PARTICIPANTS' rights of access to the records of the ROLL-UP ENTITY will be less than those provided for under Section VII.D. of these guidelines relating to Rights and Obligations of PARTICIPANTS).
6. The PROGRAM shall not participate in any proposed ROLL-UP in which any of the costs of the transaction would be borne by the PROGRAM if the ROLL-UP is not approved by the PARTICIPANTS.

VI. NON-SPECIFIED MORTGAGE PROGRAMS.

- A. *Minimum Capitalization.* A non-specified mortgage PROGRAM shall provide for minimum cash gross proceeds from the offering of not less than \$1 million to be available for INVESTMENT IN MORTGAGES.
- B. *Experience of SPONSOR.* For non-specified mortgage PROGRAMS, the SPONSOR or at least one of its principals must establish that he has the equivalent of not less than five years' experience in the real estate business in an executive capacity and two years' experience in the management and acquisition of the type of mortgage loans to be acquired or otherwise must demonstrate to the satisfaction of the ADMINISTRATOR that he has sufficient knowledge and experience to acquire and manage the type of mortgages proposed to be acquired by the non-specified mortgage PROGRAM.
- C. *Statement of Investment Objectives.* A non-specified mortgage PROGRAM shall state types of mortgages in which it proposes to invest or originate. The size and characteristics of such mortgage loans shall be consistent with the objectives of the PROGRAM and the experience of the SPONSORS. As a minimum, the following restrictions on investment objectives shall be observed.
 - (1) The statement of investment objectives shall indicate whether the PROGRAM will enter into joint venture arrangements and the projected extent thereof.
 - (2) The statement of investment objectives shall not include a quantitative estimate of the PROGRAM's anticipated economic performance or anticipated return to investors (in the form of distributable funds or tax benefits). The presentation of a proposed level of economic performance or return to investors (in the form of distributable funds or tax benefits) in connection with a non-specified mortgage PROGRAM is prohibited by Section VIII.C. of these guidelines (relating to Disclosure and

Marketing Requirements).

- D. *Period of Offering and Expenditure of Proceeds.* Subject to compliance with applicable state securities laws and regulations, an offering of securities in a non-specified mortgage PROGRAM may extend for up to two years from the date of original effectiveness provided that the minimum amount of PROGRAM interests necessary to satisfy the greater of the minimum capitalization requirements of subsection A. of this section or the impound requirements set by the PROGRAM is sold within one year of commencement of the offering. While the proceeds of an offering are awaiting investment in mortgage loans, the proceeds may be temporarily invested in short-term highly liquid investments where there is appropriate safety of principal, such as U.S. Treasury Bonds or Bills. Any proceeds of the offering of PROGRAM interests not invested within the later of two years after commencement of the offering or one year after the termination of the offering (except for necessary, operating capital) shall be distributed pro rata to the PARTICIPANTS as a return of capital so long as the adjusted INVESTMENT IN MORTGAGES is in compliance with Section IV.C. of these guidelines (relating to Fees—Compensation—Expenses).
- E. *Multiple PROGRAMS.* The method for the allocation of the acquisition of mortgages by two or more PROGRAMS of the same SPONSOR seeking to acquire similar types of properties shall be reasonable. The method also shall, be described in the PROSPECTUS.

VII. RIGHTS AND OBLIGATIONS OF PARTICIPANTS.

- A. *Meetings.* Meetings of the PROGRAM may be called by the SPONSOR or the PARTICIPANTS holding more than 10% of the then outstanding PROGRAM interests, for any matters for which the PARTICIPANTS may vote as set forth in the PROGRAM agreement. Upon receipt of a written request either in PERSON or by certified mail stating the purpose(s) of the meeting, the SPONSOR shall provide all PARTICIPANTS, within 10 days after receipt of said request, written notice (either in PERSON or by certified mail) of a meeting and the purpose of such meeting to be held on a date not less than 15 nor more than 60 days after receipt of said request, at a time and place convenient to PARTICIPANTS.
- B. *Voting Rights of Limited Partners.*
1. To the extent permitted by the law of the state of formation, the PROGRAM agreement shall provide that a majority of the outstanding PROGRAM interests may, without necessity for concurrence by the general partner, vote to:
 - a. amend the PROGRAM agreement;
 - b. remove the SPONSOR(s);
 - c. elect a new SPONSOR(s);
 - d. approve or disapprove the sale or liquidation of all or substantially all of the assets of the PROGRAM except pursuant to a plan disclosed in the final PROSPECTUS; and
 - e. dissolve the PROGRAM.
 2. Without concurrence of a majority of the outstanding PROGRAM interests, the SPONSOR(s) may not:
 - a. amend the PROGRAM agreement except for amendments which do not adversely affect the rights of PARTICIPANTS;
 - b. voluntarily withdraw as a SPONSOR unless such withdrawal would not affect the tax status of the PROGRAM and would not

- materially adversely affect the PARTICIPANT;
- c. appoint a new SPONSOR(s);
 - d. sell all or substantially all of the PROGRAM's assets other than in the ordinary course of the PROGRAM's business;
 - e. cause the merger or other reorganization of the PROGRAM; or
 - f. dissolve the PROGRAM. Notwithstanding subparagraph c. of this paragraph, an additional SPONSOR may be appointed without obtaining the consent of the PARTICIPANTS if the addition of such PERSON is necessary to preserve the tax status of the PROGRAM, such PERSON has no authority to manage or control the PROGRAM under the PROGRAM agreement, there is no change in the identity of PERSONS who have authority to manage or control the PROGRAM, and the admission of such PERSON as an additional general partner does not materially adversely affect the PARTICIPANTS.
3. Any amendment to the PROGRAM agreement which modifies the compensation or distributions to which a SPONSOR is entitled or which affects the duties of a SPONSOR may be conditioned upon the consent of the SPONSOR. With respect to any PROGRAM interests owned by the SPONSOR, the SPONSOR may not vote or consent on matters submitted to the PARTICIPANTS regarding the removal of the SPONSOR or regarding any transaction between the PROGRAM and the SPONSOR. In determining the existence of the requisite percentage of PROGRAM interests necessary to approve a matter on which the SPONSOR may not vote or consent, any PROGRAM interests owned by the SPONSOR shall not be included.
 4. If the law of the State of formation provides that the PROGRAM will dissolve upon termination of a SPONSOR(s) unless the remaining SPONSOR(s) continues the existence of the PROGRAM, the PROGRAM agreement shall obligate the remaining SPONSOR(s) to continue the PROGRAM's existence; and if there will be no remaining SPONSOR(S), the termination of the last SPONSOR shall not be effective for a period of at least 120 days during which time a majority of the outstanding PROGRAM INTERESTS shall have the right to elect a SPONSOR who shall agree to continue the existence of the PROGRAM.
 5. The PROGRAM agreement shall provide for a successor SPONSOR where the only SPONSOR of the PROGRAM is an individual.
- C. Reports to Holders of PROGRAM INTERESTS. The PROGRAM agreement shall provide that the SPONSOR shall cause to be prepared and distributed to the holders of PROGRAM interests during each year the following reports:
1. In the case of a PROGRAM registered under the Securities Exchange Act of 1934, Section 12(g), within 60 days after the end of each quarter of the PROGRAM, a report containing:
 - a. a balance sheet, which may be unaudited;
 - b. a statement of income for the quarter then ended, which may be unaudited; and
 - c. a statement of cash flows for the quarter then ended, which may be unaudited; and
 - d. other pertinent information regarding the PROGRAM and its activities during the quarter covered by the report.

2. In the case of all PROGRAMS, within 75 days after the end of each PROGRAM's fiscal year, all information necessary for the preparation of the PARTICIPANTS' federal income tax returns.
 3. In the case of all PROGRAMS, within 120 days after the end of each PROGRAMS' fiscal year, an annual report containing:
 - a. audited financial statements accompanied by an auditor's report which, for purposes of this section only, may contain a qualified, adverse, or disclaimer opinion or explanatory paragraph;
 - b. a report of the activities of the PROGRAM during the period covered by the report; and
 - c. where forecasts have been provided to the holders of PROGRAM INTERESTS, a table comparing the forecasts previously provided with the actual results during the period covered by the report,
 4. Such report shall set forth distributions to PARTICIPANTS for the period covered thereby and shall separately identify distributions from:
 - a. CASH FLOW from operations during the period;
 - b. CASH FLOW from operations during a prior period which had been held as reserves;
 - c. proceeds from CAPITAL TRANSACTIONS;
 - d. lease payments on net leases with builders and sellers; and
 - e. reserves from the gross proceeds of the offering originally obtained from the PARTICIPANTS.
- D. *Access to Records.* Every PARTICIPANT shall at all times have access to the records of the PROGRAM and may inspect and copy any of them. The limited partnership agreement, by-laws, or other PROGRAM agreement shall include the following provisions regarding access to the list of PARTICIPANTS:
1. An alphabetical list of names, addresses, and business telephone numbers of the PARTICIPANTS of the PROGRAM along with the number of PROGRAM interests held by each of them (the "PARTICIPANT list") shall be maintained as a part of the books and records of the PROGRAM and shall be available for inspection by any PARTICIPANT or its designated agent at the home office of the PROGRAM upon the request of the PARTICIPANT.
 2. The PARTICIPANT list shall be updated at least quarterly to reflect changes in the information contained therein.
 3. A copy of the PARTICIPANT list shall be mailed to any PARTICIPANT requesting the PARTICIPANT list within ten days of the request. The copy of the PARTICIPANT list shall be printed in alphabetical order, on white paper, and in a readily readable type size (in no event smaller than 10-point type). A reasonable charge for copy work may be charged by the PROGRAM.
 4. The purposes for which a PARTICIPANT may request a copy of the PARTICIPANT list include, without limitation, matters relating to PARTICIPANT's voting rights under the PROGRAM agreement, tender offers, and the exercise of PARTICIPANT'S rights under federal proxy laws; and
 5. If the SPONSOR of the PROGRAM neglects or refuses to exhibit, produce, or mail a copy of the PARTICIPANT list as requested, the

SPONSOR shall be liable to any PARTICIPANT requesting the list for the costs, including attorneys' fees, incurred by that PARTICIPANT for compelling the production of the PARTICIPANT list, and for actual damages suffered by any PARTICIPANT by reason of such refusal or neglect. It shall be a defense that the actual purpose and reason for the requests for inspection or for a copy of the PARTICIPANT list is to secure such list of PARTICIPANTS or other information for the purpose of selling such list or copies thereof, or of using the same for a commercial purpose other than in the interest of the applicant as a PARTICIPANT relative to the affairs of the PROGRAM. The SPONSOR may require the PARTICIPANT requesting the PARTICIPANT list to represent that the list is not requested for a commercial purpose unrelated to the PARTICIPANT'S interest in the PROGRAM. The remedies provided, hereunder to PARTICIPANTS requesting copies of the PARTICIPANT list are in addition to, and shall not in any way limit, other remedies available to PARTICIPANTS under federal law, or the laws of any state.

- E. *Admission of PARTICIPANTS.* Admission of PARTICIPANTS to the PROGRAM shall be subject to the following:
1. *Admission of Original PARTICIPANTS.* Upon the original sale of PROGRAM INTERESTS by the PROGRAM, the purchasers should be admitted as PARTICIPANTS not later than 15 days after the release from impound of the purchaser's funds to the PROGRAM, and thereafter purchasers should be admitted into the PROGRAM not later than the last day of the calendar month following the date their subscription was accepted by the PROGRAM. Subscriptions shall be accepted or rejected by the PROGRAM within 30 days of their receipt; if rejected, all funds should be returned to the subscriber within 10 business days.
 2. *Admission of Substituted PARTICIPANTS and Recognition of Assignees.* The PROGRAM shall amend the certificates of the PROGRAM least once each calendar quarter to effect the substitution of substituted PARTICIPANTS, although the SPONSOR may elect to do so more frequently. In the case of assignments, where the assignee does not become a substituted PARTICIPANT, the PROGRAM shall recognize the assignment not later than the last day of the calendar month following receipt of notice of assignment and required documentation.
 3. *Rights of Assignees.*
 - a. Except where deemed inappropriate by the ADMINISTRATOR, PERSONS holding PROGRAM interests by assignment from entities holding limited partnership interests in a PROGRAM for the purpose of assigning all or a portion of such interests to PERSONS investing in such PROGRAM (hereinafter the "assignor") shall be expressly granted the same rights as if they were limited partners except as prohibited by applicable local law including, but not limited to, the rights enumerated in this section.
 - b. The assignment agreement and PROSPECTUS shall provide that the assignor's management shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the assignees, whether or not in the

assignor management's possession or control, and that the management of the assignor shall not employ, or permit another to employ such funds or assets in any manner except for the exclusive benefit of the assignees. In addition, the agreement shall not permit the assignees to contract away the fiduciary duty owed to the assignees by the assignor's management under the common law of agency.

- F. *Redemption of PROGRAM INTERESTS.* Ordinarily, the PROGRAM and the SPONSOR may not be mandatorily obligated to redeem or repurchase any of its PROGRAM interests, although the PROGRAM and the SPONSOR may not be precluded from purchasing such outstanding interests if such purchase does not impair the capital or the operation of the PROGRAM. Notwithstanding the foregoing, a mortgage PROGRAM may provide for mandatory redemption rights under the following necessitous circumstances:
1. death or legal incapacity of the owner, or
 2. a substantial reduction in the owner's NET WORTH or income provided that:
 - a. the PROGRAM has sufficient cash to make the purchase;
 - b. the purchase will not be in violation of applicable legal requirements;
 - c. not more than 15% of the outstanding units are purchased in any year; and
 - d. where the purchase price is not mutually agreed upon, the matter shall be submitted to arbitration.
- G. *Transferability of PROGRAM INTERESTS.* Restrictions on assignment of PROGRAM INTERESTS or on the substitution of a PARTICIPANT are generally disfavored and will be allowed only if:
1. they comply with the safe harbor provisions of Internal Revenue Service Notice 88-75 (or other safe harbors adopted by the Internal Revenue Service that protect against treatment as a publicly traded partnership); or
 2. they are intended to preserve the tax status of the PROGRAM or the characterization or treatment of income or loss;
 3. in the case of paragraph (2) of this subsection any restriction must be affirmatively supported by an opinion of counsel;
 4. The PROGRAM agreement shall require the SPONSOR to eliminate or modify any restriction on substitution or assignment at such time as the restriction is no longer necessary.
- H. *Dividend Reinvestment Plans.* A PROGRAM may offer PARTICIPANTS the opportunity to elect to have cash distributions reinvested in the PROGRAM or subsequent PROGRAMS if the following conditions are met:
1. the PROGRAM and subsequent PROGRAMS in which the PARTICIPANTS reinvest are registered or exempted under the state's blue sky laws;
 2. counsel for the PROGRAM submits an opinion that the pooling of the funds for reinvestment is not in itself a security;
 3. the subsequent PROGRAM has substantially identical investment objectives as the original PROGRAM;
 4. the PARTICIPANTS are free to elect to revoke reinvestment within a reasonable time and such right is fully disclosed in the offering

- documents;
5. prior to each reinvestment the PARTICIPANTS receive a current updated disclosure document which contains at a minimum the following information:
 - a. the minimum investment amount;
 - b. the type or source of proceeds (e.g., cash distributions from operations or CAPITAL TRANSACTIONS) which may be reinvested;
 - c. the tax consequences of the reinvestment to the PARTICIPANTS;
 6. counsel for the PROGRAM submits an opinion that different consideration paid on reinvestment is not in violation of the state law (the difference arises when one PARTICIPANT agrees to payment of commission to the broker-dealer and another PARTICIPANT does not agree to payment of commission);
 7. the broker-dealer or the issuer assumes responsibility for blue sky compliance and performance of due diligence responsibilities and has contacted the PARTICIPANTS to ascertain whether the PARTICIPANTS continue to meet the state's suitability standard for participation in each reinvestment;
 8. if a broker-dealer is involved, it shall obtain in writing an agreement from the client by which the client agrees to the payment of compensation to the broker-dealer in connection with individual reinvestment.
- I. *Special Reports.* Within 60 days after the end of each quarter during which there have been mortgage loan originations or acquisitions, a "special report" (which may be part of the quarterly report) shall be sent to all PARTICIPANTS until the proceeds of the offering are committed or returned to the investors. The report shall disclose the amount of the mortgage loan, disclose the terms of the loan, identify the borrower, identify the property securing the mortgage loan, and disclose the appraised value of the property.
- J. *Arbitration of Disputes.* Except as permitted in Section II.F. of these guidelines (relating to Requirements of SPONSORS), no provision requiring mandatory arbitration of disputes between the PARTICIPANT and the SPONSOR or the PROGRAM is permitted. Nothing contained herein shall apply to preexisting contracts between broker-dealers and PARTICIPANTS.

VIII. DISCLOSURE AND MARKETING REQUIREMENTS.

- A. *Sales Promotional Efforts.*
1. Sales literature. Sales literature, sales presentations (including prepared presentations to prospective investors at group meetings), and advertising used in the offer or sale of PROGRAM INTERESTS shall conform in all applicable respects to requirements of filing, disclosure, and adequacy currently imposed on sales literature, sales presentations, and advertising used in the sale of corporate securities.
- B. *Contents of PROSPECTUS.* The PROSPECTUS shall meet the requirements of Guide 5 of the Securities and Exchange Commission. The use of proceeds tabular summary required by Guide 5 shall include a separate line item for estimated ACQUISITION AND ORIGINATION EXPENSES to be incurred by the PROGRAM. All of the information required to be set forth in the use of proceeds tabular summary by Guide 5 shall also be provided for estimated ACQUISITION

AND ORIGINATION EXPENSES, including an estimate of ACQUISITION AND ORIGINATION EXPENSES to be paid to the SPONSOR. The description of the method for the allocation of the acquisition of mortgages by two or more PROGRAMS of the same SPONSOR shall meet the requirements of Section VI.E. of these guidelines (relating to Non-specified Property PROGRAMS). The ADMINISTRATOR may require additional disclosure if, in the ADMINISTRATOR's opinion, specific facts concerning the offering require it.

C. *Forecasts.*

1. Use of forecasts. The presentation of predicted future results of operations of real estate PROGRAMS shall be permitted but not required for specified mortgage PROGRAMS and shall be prohibited for non-specified mortgage PROGRAMS. The covers of the PROSPECTUS must contain in bold face language one of the following statements.
 - a. For specified mortgage PROGRAMS: FORECASTS ARE CONTAINED IN THIS PROSPECTUS (OFFERING CIRCULAR). ANY PREDICTIONS AND REPRESENTATIONS, WRITTEN OR ORAL, WHICH DO NOT CONFORM TO THOSE CONTAINED IN THE PROSPECTUS (OFFERING CIRCULAR) SHALL NOT BE PERMITTED.
 - b. For non-specified mortgage PROGRAMS: THE USE OF FORECASTS IN THIS OFFERING IS PROHIBITED. ANY REPRESENTATIONS TO THE CONTRARY AND ANY PREDICTIONS, WRITTEN OR ORAL, AS TO THE AMOUNT OR CERTAINTY OF ANY PRESENT OR FUTURE CASH BENEFIT OR TAX CONSEQUENCE WHICH MAY FLOW FROM AN INVESTMENT IN THIS PROGRAM IS NOT PERMITTED.
2. Presentation of forecasts. Forecasts for specified mortgage PROGRAMS shall be included in the PROSPECTUS or sales material of the PROGRAM only if they comply with the following requirements.
 - a. General. Forecasts shall be realistic in their predictions and shall clearly identify the assumptions made with respect to all material features of the presentation. Forecasts shall be examined by an independent certified public accountant in accordance with the Statement on Standards for Accountant's Services on Prospective Financial Information and the Guide For Prospective Financial Statements, as promulgated by the American Institute of Certified Public Accountants. The accountant's examination report shall be included in the PROSPECTUS. No forecasts shall be permitted in any sales literature which does not appear in the sales literature, all forecasts must be presented.
 - b. Material information. Forecasts shall include all the following information:
 - (i) Annual predicted revenue by source; including the occupancy rate used in predicting rental revenue.
 - (ii) Annual predicted expenses.

- (iii) Debt obligation—annual payment for principal and interest, points and financing fees, shown as dollars, not percentages.
 - (iv) The loan-to-value standard to be followed by the PROGRAM.
 - (v) Predicted annual cash flow.
 - (vi) Predicted annual taxable income or loss and a simplified explanation of the tax treatment of such results; assumed tax brackets may not be used.
 - (vii) Accounting policies—e.g., with respect to points, financing costs, and depreciation.
- c. Presentation.
- (i) Caveat. Forecasts shall prominently display a statement to the effect that they represent a mere prediction of future events based on assumptions which may or may not occur and may not be relied upon to indicate the actual results which will be obtained.
 - (ii) Additional guidelines. Explanatory notes describing assumptions made and referring to risk factors should be integrated with tabular and numerical information.
- d. Additional disclosures and limitations.
- (i) Forecasts shall be for a period at least equivalent to the anticipated holding period for the mortgage, or 10 years, whichever is shorter, and project a final disposition of mortgages.
3. No quantitative estimate of anticipated return. The PROSPECTUS and sales material shall not include a quantitative estimate of a PROGRAM'S anticipated economic performance or anticipated return to PARTICIPANTS (in the form of distributable funds or tax benefits), except as permitted under subsection C. of this section.

IX. MISCELLANEOUS PROVISIONS.

- A. *Reserves.* Provisions should be made for adequate reserves in the future by retention of a reasonable percentage of proceeds from the offering and regular receipts for normal repairs, replacements, and contingencies. Normally, not less than 1.0% of the offering proceeds will be considered adequate.
- B. *Reinvestment of Cash Flow.* Reinvestment of cash flow (excluding proceeds resulting from a CAPITAL TRANSACTION) shall not be allowed. Proceeds of CAPITAL TRANSACTIONS may be reinvested only within 7 years of the original effectiveness of the PROGRAM'S registration. The partnership agreement and the PROSPECTUS shall set forth that reinvestment of proceeds of a CAPITAL TRANSACTION will not take place unless sufficient cash will be distributed to pay any state or federal income tax (assuming investors are in a specified tax bracket) created by the disposition or refinancing of mortgage. Such a prohibition must be contained in the PROSPECTUS.
- C. *Financial Information Required on Application.* In any offering of interests by a PROGRAM, the PROGRAM shall provide as an exhibit to the application the

following financial information.

1. Financial statements of PROGRAM. The PROSPECTUS shall include audited financial statements of the PROGRAM for each of the last three fiscal years (or for the life of the PROGRAM, if less), provided that the only audited balance sheet that shall be required shall be as of the end of the most recent fiscal year of the PROGRAM. When a PROGRAM has operated less than one fiscal year, audited financial statements are not required unless requested by the ADMINISTRATOR.
 2. Balance sheet of corporate SPONSOR. Audited financial statements consisting only of an audited balance sheet for each corporate SPONSOR as of the end of the SPONSOR's most recent fiscal year shall be included in the PROSPECTUS.
 3. Other SPONSORS. A balance sheet for each non-corporate SPONSOR (including individual partners or individual joint ventures of a SPONSOR) as of a date not more than 135 days prior to the date of filing the application shall be submitted. Such balance sheet shall be prepared in accordance with generally accepted accounting principles and reviewed and reported upon by an independent certified public accountant under the review standards set forth by the American Institute of Certified Public Accountants, and shall be signed and sworn to by such SPONSOR. A representation of the amount of such NET WORTH must be included in the PROSPECTUS, or in the alternative, a representation that such SPONSOR meets the NET WORTH requirements of Section II.B. of these guidelines (relating to Requirements of Sponsors) shall be so included.
 4. Interim Financial information. Where an audited balance sheet required by this subsection is as of a date more than 90 days prior to the date of filing, an unaudited balance sheet as of date not more than 90 days prior to the date of filing shall also be provided. Where the application is made in coordination with a Registration Statement submitted to the Securities and Exchange Commission pursuant to the Securities Act of 1933, an interim unaudited balance sheet as of a date not more than 135 days prior to the date of filing shall be provided only if the audited balance sheet is as of a date more than 134 days prior to the date of filing. Interim unaudited statements of income, partners' equity, and cash flows shall also be provided with the unaudited balance sheet in instances where such statements are required by this subsection as part of the audited financial statements for the last fiscal year. The ADMINISTRATOR may require the interim unaudited information to be included in the PROSPECTUS when the audited information required by this section must be included.
 5. Filing of other statements. The ADMINISTRATOR may permit the omission of one or more of the statements required under this subsection and the filing (in substitution thereof) of appropriate statements and verifying financial information having comparable relevance to an investor in determining whether to invest in the PROGRAM. Such substitution will only be allowed where the ADMINISTRATOR finds this would be consistent with the protection of investors.
- D. *Opinions of Counsel.* The application for qualification and registration shall contain a favorable ruling from the Internal Revenue Service or an opinion of independent counsel to the effect that the issuer will be taxed as a "partnership"

and not as an "association" for federal income tax purposes. An opinion of counsel shall be in form and substance satisfactory to the ADMINISTRATOR, and shall be unqualified except to the extent permitted by the ADMINISTRATOR. However, an opinion of counsel may be based on reasonable assumptions, such as:

1. facts or proposed operations as set forth in the offering circular or PROSPECTUS and organizational documents;
2. the absence of future changes in applicable laws;
3. the securities offered are paid for;
4. compliance with certain procedures such as the execution and delivery of certain documents and the filing of a certificate of limited partnership or an amended certificate; and
5. the continued maintenance of or compliance with certain financial, ownership, or other requirements by the issuer or SPONSOR.

E. *Supplemental information.* The ADMINISTRATOR may request from counsel as supplemental information such supporting legal memoranda and an analysis as he shall deem appropriate under the circumstances. To the extent the opinion of counsel or Internal Revenue Service ruling is based on the maintenance of or compliance with certain requirements or conditions by the issuer or SPONSOR the offering circular or PROSPECTUS shall contain representations that such requirements or conditions will be met and the partnership agreement shall, to the extent practicable, contain provisions requiring such compliance. There shall be included also an opinion of independent counsel to the effect that the securities being offered are duly authorized or created and validly issued interests in the issuer, and that the liability of the public investors will be limited to their respective total agreed upon investment in the issuer. The ADMINISTRATOR may request an opinion of counsel concerning tax aspects when this appears necessary for the protection of investors.

F. *Provisions of Partnership Agreement.* The requirements and/or provisions of appropriate portions of the following sections shall be included in the partnerships agreement: I.B. of these guidelines (relating to Definitions); II.A.-F. of these guidelines (relating to Requirements of SPONSORS); IV.C.-I. of these guidelines (relating to Fees—Compensation—Expenses); V. A.-K. of these guidelines (relating to Conflicts of Interest and Investment Restrictions); VI.C. and D. of these guidelines (relating to Non-specified Mortgage PROGRAMS); VII A.-F., H., J. and K. of these guidelines (relating to Rights and Obligations of PARTICIPANTS), and subsections A.-B. of this section.

G. *General Instructions—Mortgage Program Guidelines.*

1. The Cross Reference Sheet should be completed with the application for registration.
2. Sections which are not applicable should be noted as such.
3. Provisions of the PROGRAM which vary from the guidelines must be explained by footnote; for example, if the PROGRAM uses a defined term which is different from the guidelines definition, the variance must be explained. Footnotes should be numbered sequentially in the column designated footnotes and should be presented on a rider identified as footnotes with each footnote on the rider numerically corresponding to the footnote identified on the Cross Reference Sheet.
4. A section is provided at the bottom of each page of the Cross Reference Sheet for additional or supplemental cross references. Lines are provided in the event additional cross references are needed with respect to

subsections of the guidelines not specifically identified on the top of the page, or in the event there were insufficient lines to present all relevant cross references with respect to an item appearing on that page.

5. The last page of The Cross Reference Sheet should be executed by preparer.

6. These general instructions should be removed before filing with the ADMINISTRATOR.

H. *Amendments and Supplements.* A redlined copy of all amendments and supplements to an application shall be filed with the ADMINISTRATOR as soon as the amendment or supplement is available.

MORTGAGE GUIDELINES CROSS REFERENCE SHEET

(See IX.G. General Instructions to Mortgage Program Guidelines)

Name of Applicant: _____

<i>Guideline Section</i>	<i>Section Number Partnership Agreement</i>	<i>Page Number Prospectus</i>	<i>Footnote See Instruction 3</i>
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I. B. DEFINITIONS

1.	Acquisition and Origination Expenses	_____	_____	_____
2.	Acquisition and Origination Fees	_____	_____	_____
4.	Affiliate	_____	_____	_____
5.	Assessments	_____	_____	_____
6.	Asset Based Fee	_____	_____	_____
7.	Audited Financial Statements	_____	_____	_____
8.	Base Amount	_____	_____	_____
9.	Capital Contribution	_____	_____	_____
10.	Capital Transaction	_____	_____	_____
11.	Carried Interest	_____	_____	_____
12.	Cash Available for Distribution	_____	_____	_____
13.	Cash Flow	_____	_____	_____
14.	Competitive Real Estate Commission	_____	_____	_____
16.	Financing	_____	_____	_____
17.	Front-End Fees	_____	_____	_____

Additional or Supplemental Cross References

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

18.	Independent Expert	_____	_____	_____
19.	Investment in Mortgages	_____	_____	_____
20.	Net Worth	_____	_____	_____
21.	Non-Specified Mortgage Programs	_____	_____	_____
22.	Organization and Offering Expenses	_____	_____	_____
23.	Participant	_____	_____	_____
24.	Person	_____	_____	_____
25.	Program	_____	_____	_____
26.	Program Interest	_____	_____	_____
27.	Program Management Fee	_____	_____	_____
28.	Property Management	_____	_____	_____
30.	Purchase Price	_____	_____	_____
31.	Roll-up	_____	_____	_____
32.	Roll-up Entity	_____	_____	_____
33.	Specified Mortgage Program	_____	_____	_____
34.	Sponsor	_____	_____	_____

II. REQUIREMENTS OF SPONSORS

A.	Experience	_____	_____	_____
B.	Net Worth Requirement of Sponsor	_____	_____	_____
C.	Reports to Administrator	_____	_____	_____
D.	Liability and Indemnification	_____	_____	_____

Additional or Supplemental Cross References

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

E.	Fiduciary Responsibility	_____	_____	_____
F.	Terminated Sponsor	_____	_____	_____
III. SUITABILITY OF PARTICIPANTS				
B.	Income and NET WORTH Standards	_____	_____	_____
C.	Determination that Sale to a Participant is Suitable and Appropriate	_____	_____	_____
D.	Subscription Agreements	_____	_____	_____
E.	Completion of Sale	_____	_____	_____
F.	Minimum Investment	_____	_____	_____
IV. FEES—COMPENSATION—EXPENSES				
A.	Fees, Compensation, and Expenses to be Reasonable	_____	_____	_____
B.	Organization and Offering Expenses	_____	_____	_____
C.	Investment in Mortgages	_____	_____	_____
D.	Promotional Interest	_____	_____	_____
E.	Real Estate Brokerage Commissions	_____	_____	_____
F.	Property Management Fee	_____	_____	_____
G.	Insurance Services	_____	_____	_____
H.	Mortgage Servicing Fee	_____	_____	_____
I.	Asset Based Fee	_____	_____	_____
	1. Eligibility	_____	_____	_____

Additional or Supplemental Cross References

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

- 2. Computation _____
- 3. Limitations _____

V. CONFLICTS OF INTEREST AND INVESTMENT RESTRICTIONS

- A. Sales, Leases and Related PROGRAM Transactions _____
 - 1. Sales of Mortgages to PROGRAM _____
 - 2. Sales to the SPONSOR _____
 - 3. Dealing with related PROGRAMS _____
 - 4. Sales of Foreclosed Properties _____
- B. Exclusive Agreement _____
- C. Commissions on Reinvestment or Distribution _____
- D. Services Rendered to the PROGRAM By the SPONSOR _____
 - 1. Expenses of the PROGRAM _____
 - 2. Other goods and services. _____
- E. Rebates, Kickbacks, and Reciprocal Arrangements _____
- F. Commingling of Funds _____
- G. Investments In or With Other Programs _____
- H. Lending Practices _____
- I. Requirement for Real Property Appraisal _____
- J. PROGRAM Indebtedness _____

Additional or Supplemental Cross References

K.	Appraisal and Compensation	_____	_____	_____
VI. NON-SPECIFIED MORTGAGE PROGRAMS				
A.	Minimum Capitalization	_____	_____	_____
B.	Experience of SPONSOR	_____	_____	_____
C.	Statement of Investment Objectives	_____	_____	_____
D.	Period of Offering and Expenditure of Proceeds	_____	_____	_____
E.	Multiple PROGRAMS	_____	_____	_____
VII. RIGHTS AND OBLIGATIONS FOR PARTICIPANTS				
A.	Meetings	_____	_____	_____
B.	Voting Rights of Limited Partners	_____	_____	_____
C.	Reports to Holders of PROGRAMS INTERESTS	_____	_____	_____
D.	Access to Records	_____	_____	_____
E.	Admission of PARTICIPANTS	_____	_____	_____
F.	Redemption of PROGRAMS INTERESTS	_____	_____	_____
G.	Transferability of PROGRAM INTERESTS	_____	_____	_____
H.	Dividend Reinvestment Plans	_____	_____	_____
I.	Special Reports	_____	_____	_____
J.	Arbitration of Disputes	_____	_____	_____
VIII. DISCLOSURE AND MARKETING REQUIREMENTS				
B.	Contents of PROSPECTUS	_____	_____	_____

Additional or Supplemental Cross References

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

C. Forecasts _____

IX. MISCELLANEOUS PROVISIONS

A. Reserves _____

B. Reinvestment of Cash Flow _____

C. Financial Information Required on Application _____

D. Opinions of Counsel _____

E. Supplemental Information _____

F. Provision of Partnership Agreement _____

Additional or Supplemental Cross References

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Response to this cross reference sheet
has been prepared by:

Name: _____

Title: _____