

**A.S.C. POLICY 4.5  
REAL ESTATE PROGRAMS**

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### PREAMBLE

This policy is issued as a guide to persons and companies wishing to qualify a prospectus with the Alberta Securities Commission (the "Commission") for the purpose of financing a real estate program through a distribution of securities. The Commission and the Director of the Commission (the "Director") will always exercise their discretion in applying the guidelines contained in this policy and, in exercising their discretion, may modify or waive certain guidelines while still remaining consistent with the spirit of the policy if, in their opinion and in light of the entire fact situation, circumstances justify variation therefrom.

### 1. GENERAL

#### 1.1 *Application*

The type of entities to which these guidelines apply are Real Estate Programs as defined at item 1.3.13 of this policy and whose primary intention is the operation, or development and resale, of specific property. The Commission, under special circumstances, may consider accepting a Program with a non-specified property or blind pool. The requirements that are to be met to qualify Units for such a Non-Specified Property Program are incorporated in item 7 of this policy. In addition to the foregoing, the entities may be structured to qualify for certain tax concessions as offered under Federal income tax legislation. The securities offered shall be in the form of Units representing divided or

undivided interests in holdings involving land and/or buildings.

A Program may be offered by a number of vehicles including partnerships or by way of contractual arrangement only. The terminology herein applies, with whatever modifications may be required, to all forms of Real Estate Programs.

## 1.2 *Form*

The contents of a prospectus for a Program should comply with Form 12 of the Regulations (the "Regulations") made under the Alberta Securities Act (the "Act") for an industrial company although presentation need not follow the order set out therein. These guidelines describe Commission policy on particular aspects of a Program and on specialized disclosure requirements for certain Item numbers in Form 12 (referred to in these guidelines as "Item").

## 1.3 *Definitions*

Reference is made to the appropriate section of the Act and the Regulations for definitions therein and used in this policy. The following definitions are not in the Act or the Regulations and shall have the following meaning in this policy and when used as defined terms in a prospectus:

- 1.3.1 "Appraised Value" means value according to an appraisal made by an independent qualified appraiser.
- 1.3.2 "Assessments" means an additional amount of capital which may be required or requested of a Unitholder beyond the original subscription price.
- 1.3.3 "Audited Financial Statements" means financial statements prepared in accordance with generally accepted accounting principles and accompanied by the report of an auditor who is acceptable to the Director.
- 1.3.4 "Capital Contribution" means the gross amount of investment in a Program by a Unitholder or all Unitholders as the case may be.
- 1.3.5 "Cash Flow" means cash funds provided from Program operations without deduction for depreciation but after deducting cash funds used to make all other disbursements including debt payments, capital improvements and replacements.

- 1.3.6 "Cash Flow Guarantee" means a non recoverable commitment by the promoter or guarantor to provide monies to fund a deficiency in net cash flow.
- 1.3.7 "General Partner" means the person or company who is a party to the Unitholders Agreement and is, pursuant to that agreement, responsible for the administration of the Program.
- 1.3.8 "Non-Specified Property Program" means a Program where, at the time of offer to investors, less than 75% of the net proceeds from the sale of Units is allocated to the purchase, construction, or improvement of specific property, or a Program in which the proceeds from any sale or refinancing of properties may be reinvested in other Projects or properties.
- 1.3.9 "Organization and Offering Expenses" means those expenses incurred in connection with the formation and organization of a Program and the qualification and subsequent offering and distribution of Units in the Program including sales commissions paid to dealers in connection with the distribution.
- 1.3.10 "Program" means a Real Estate Program.
- 1.3.11 "Project" means the developed property of a Program.
- 1.3.12 "Property Management Fee" means the fee paid for day-to-day professional property management services in connection with a Program.
- 1.3.13 "Real Estate Program" (or "Program") means any entity, other than a company or mutual fund trust, formed and operated for the primary purpose of investment in and the operation of or gain from an interest in real property and, without restricting the generality of the foregoing, includes a limited or general partnership, joint venture, trust, unincorporated association, unincorporated syndicate or other unincorporated organization.
- 1.3.14 "Related Parties" means the Sponsor(s) and their directors and senior officers and the underwriter.
- 1.3.15 "Sponsor" means a promoter as defined in the Act and any person or company who will manage or participate in the management of a Program including the General Partner and any associate or affiliate of any such

person or company, but does not include a person or company whose only relationship with a Program is that of a property manager, underwriter, lawyer or accountant who are independent of the Sponsor and whose only compensation with respect to a Program is for professional services.

1.3.16 "Unitholder" means the holder of a Unit in a Program.

1.3.17 "Unit(s)" means a non divisible interest in a Program.

## 2. DISTRIBUTION SPREAD (Item 1 of Form 12)

2.1 A firm subscription price to the public shall be required.

2.2 A Unit shall not be priced at less than \$2,500 except in instances where the investor may, at a later date, use the Units to acquire a condominium unit or units from the Program and such is disclosed in the prospectus in which case such Units shall not be transferred or assigned in blocks of less than \$2,500 based on their original purchase price.

2.3 Where provision is made for deferred payment of the subscription price,

2.3.1 the initial cash payment shall not be less than the greater of 15% of the total subscription price and \$2,500 and shall be payable within the time period permitted by item 3.4.1 or such longer period as the Director may allow or by item 3.5.1 if the issuer opts for the extended offering period. Notwithstanding the foregoing, the Director shall be satisfied that the proceeds available to the Program are adequate to accomplish the purpose stated in the prospectus,

2.3.2 the final balance shall be paid to the Program within 5 years of the date of the prospectus,

2.3.3 the amount of the initial payment, the due dates and amounts of all subsequent payments and the interest payable on such subsequent payments shall be disclosed in the prospectus, and

2.3.4 the subscription price made up of cash and notes from the subscriber should be payable to the limited partnership and assigned to the promoter and, if secured, shall not be secured by a charge against any Program assets.

2.4 All Organization and Offering Expenses shall be disclosed as a footnote to the table if payable by the Program.

3. PLAN OF DISTRIBUTION (Item 2 of Form 12)

3.1 Disclose the provinces in which the Units will be offered.

3.2 The subscription form shall require a representation from each subscriber that he is purchasing as principal and disclosure of this requirement shall be provided on the face page of the prospectus.

3.3 Where provision is made for deferred payment of the subscription price,

3.3.1 disclose the details as referred to in item 2.3.3,

3.3.2 disclose the consequences of default in any deferred payment by a Unitholder,

3.3.3 if the Units are to be sold upon default in payment by a Unitholder,

3.3.3.1 disclose that concurrently with a manager sending notice of default to a Unitholder, the manager shall have published for 3 days in one daily newspaper of general circulation in a principal city in Alberta a notice inviting written offers to purchase such Units within 30 days, or

3.3.3.2 disclose the method by which all Unitholders in the Program will be advised of any Units which as a result of default are available for sale and the method and time within which an offer to purchase such Units may be made, and

3.3.3.3 disclose that in either situation described in item 3.3.3.1 or 3.3.3.2 the manager shall sell the Units at the highest price tendered, and

3.3.4 cross-reference item 3.3.2 to risk factors.

3.4 In the case of a firm underwriting or a best efforts offering of an issuer that does not require an extended distribution period, disclose

3.4.1 that if 100% of the Units offered are not subscribed for within the time period

- permitted by the Regulations, all monies shall be refunded to the subscribers without interest or deductions,
- 3.4.2 the name of a trustee, acceptable to the Director, who is to hold all subscription funds until the minimum subscription is reached and all other conditions of closing are met, and
  - 3.4.3 the conditions the trustee has to observe with regard to the dispersal of the funds.
- 3.5 If an offering is on a best efforts basis and a minimum amount of funds is required by an issuer, an issuer may extend the offering period beyond the maximum time permitted under the Regulations provided the prospectus discloses
- 3.5.1 that the offering may not continue for more than 120 days from the date of issuance of the receipt for the prospectus and that 100% of the Units offered must be subscribed for within such 120 day period,
  - 3.5.2 that, in addition to any withdrawal rights prescribed by the Act, investors subscribing within the first 60 days of a 120 day offering period shall have a right of withdrawal beginning on the 61st day and ending on the earlier of the date of dosing or the 90th day of the 120 day period. If the offering period is less than 120 days, the period during which such investors shall be entitled to withdrawal shall be equal to one-half of the number of days between the 61st day and the last day of the offering period,
  - 3.5.3 the name of a trustee, acceptable to the Director, who is to hold all subscription funds until 100% of the Units offered are subscribed for and all other conditions of closing are met,
  - 3.5.4 the conditions the trustee has to observe with regard to the dispersal of funds, and
  - 3.5.5 that reasonable interest shall be credited to subscribers on subscriptions to closing or return of the funds whether or not the offering closes and, if the offering does not close, subscription funds will be returned promptly to subscribers by the trustee without deduction.
- 3.6 Under a separate heading entitled "Closing of Offering", state the conditions for the closing, including:
- 3.6.1 subscriptions and payments for the offering have been received in accordance with item 3.4.1 or 3.5. 1,

- 3.6.2 a tax opinion has been furnished by the independent legal counsel or accountant of the issuer or, if required by the Director, an advance tax ruling has been received by the issuer,
  - 3.6.3 a certified copy of an insurance policy, a survey certificate and evidence of payment of taxes have been received,
  - 3.6.4 a legal opinion, as to title verifying the proper registered owner and that such ownership is subject only to those permitted encumbrances described in the prospectus, has been received,
  - 3.6.5 a certified copy of a development permit and/or a building permit, issued by the appropriate city or municipality and, in the event of the building permit being conditional, an architectural or engineering certificate evidencing satisfactory compliance with the conditions attached to the building permit, has been received,
  - 3.6.6 a legal opinion that the registered mortgage as described in the prospectus is in place or, where it is acceptable to the Director, that a firm mortgage commitment is in place and has been received, and
  - 3.6.7 a legal opinion has been received that any required amendments and/or registrations as may be necessary or desirable have been made to admit subscribers as Unitholders. For example, in the case of a limited partnership, a notice to Amend a Certificate of Limited Partnership has been made.
- 3.7 If Related Parties demonstrate the financial responsibility to complete the Project and to fulfill all their other commitments and obligations to the Program and the Unitholders, then Related Parties as a group will be permitted to acquire,
- 3.7.1 not more than 25% of the Units or such lesser percentage as is permitted under the terms of the mortgage commitment provided by the Program's mortgage lender where such lender requires a minimum level of investor participation as a condition of releasing mortgage funds to the Program;
  - 3.7.2 in the case of a firm underwriting, or a best efforts offering where a minimum amount of funds is not required, or a best efforts offering where a minimum amount of funds is required but the issuer does not opt for the extended offering period as permitted under item 3.5, such number of Units as the Director may permit.
- 3.8 Voting rights of Related Parties may be subject to restriction as required by the Unitholders Agreement as referred to in item 13.1.7.

4. USE OF PROCEEDS (Item 5 of Form 12)

- 4.1 Disclose, in tabular form, information regarding the financing of the total Project through interim financing, the mortgage and other financing sources. The minimum amount offered shall be the maximum amount unless otherwise permitted by the Director, in which event the information shall be with respect to the minimum offering and the maximum offering.
- 4.2 Funds (including subscription cash proceeds, subscription note proceeds, interim financing, and mortgage financing, etc.) shall not be commingled with other funds of the Sponsor and shall be kept in a separate bank account in the name of the Program and withdrawn or, in the case of notes held by the Program, assigned, hypothecated, pledged or transferred only:
- 4.2.1 for development costs in stages as services are provided and costs are incurred, and
- 4.2.2 for construction costs in stages in accordance with the architect's or engineer's certificate of completion and as costs are incurred.
- 4.3 The Director may require that all funds of the Program be held by a trust company under a special agreement.
- 4.4 Disclosure of items 4.2, and 4.3 if applicable, shall be made in the prospectus.

5. NAME AND INCORPORATION OF ISSUER (Item 8 of Form 12)

- 5.1 The Commission shall, in the case of a limited partnership or trust, require that the issuer be in formal existence on or before the date of issue of a receipt for the prospectus and the Director may require satisfactory evidence that the issuer has been formed.

6. DESCRIPTION OF BUSINESS (Item 9 of Form 12)

- 6.1 State the investment objectives and policies of the Program and how they may be amended or revised.
- 6.2 A Program prior to or upon closing of the offering, shall have purchased or leased property for the Project and such transaction shall be fully disclosed in the prospectus.
- 6.3 State the location of the property and whether or not developed. Include information as to the present or proposed use of the property and its suitability and adequacy for such use.

- 6.4 Disclose particulars of the Project including the location, square footage, description of floor plans, number of rental units, forecasted growth income per unit, average current growth income per unit, current vacancy rate, current vacancy rates in the area, amenities, growth income, if any, from amenities and any other relevant information necessary to give an investor an understanding of the operation of the Project.
- 6.5 Realistic artist's conceptions devoid of embellishments, promotional enhancements and acceptable to the Director will be permitted.
- 6.6 Provide a map of the city indicating the location of the Project.
- 6.7 Disclose the cost per square foot of the Project calculated as follows: by including in the numerator the total cost of the Project (including the property, the development and construction costs and the cost of obtaining the benefit of the various services and commitments) and, in the denominator, the total rentable square footage of the Project. The rentable square footage should include enclosed space only and exclude parking facilities, balconies, etc. The total square footage of common area should be disclosed separately as a lump sum.
- 6.8 If the Project is not complete provide the date on which construction began or is to begin and the estimated completion date. Also provide information as to the present stage of completion, whether the construction is on schedule and whether any delays are expected which may prevent completion as scheduled.
- 6.9 Disclose the salient terms of the interim financing, if applicable, and the mortgage, including without limitation the estimated down-payment, leverage ratio, prepaid interest, balloon payment(s), prepayment penalties, due-on-sale or encumbrance clauses and the possible adverse effects thereof.
- 6.10 State that upwards refinancing will not be permitted during the first term of the existing first mortgage. After the first term, upwards refinancing shall be subject to approval of the Unitholders and to item 13.1.7.
- 6.11 Provide information about the title to each property comprising the Project, including disclosure as to title opinions, performance bonds and completion guarantees which are in place.
- 6.12 Disclose the terms of any material leases or encumbrances affecting the property.
- 6.13 Name the person or company (the "Vendor") from whom the Program has purchased or will purchase the property or the Project and the price paid or payable by the Program and

the other salient terms of any agreements relating thereto.

6.14 When the Vendor and the Program are not at arm's-length,

6.14.1 reference is made to item 9.12, and

6.14.2 disclose the person or company from whom the Vendor purchased the property or Project, the date of such purchase and the cost (including carrying charges) to the Vendor.

7. NON-SPECIFIED PROPERTY PROGRAMS (BLIND POOL)

7.1 In special circumstances, the Director may permit a Non-Specified Property Program (Blind Pool). In such circumstances the promoter shall be required to meet the financial responsibility and other criteria as required by the Director. The use of financial forecasts or projections in either the prospectus or the sales literature of a Non-Specified Property Program is prohibited. Any representations 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 such a Program are not permitted.

8. RISK FACTORS (Item 10 of Form 12)

8.1 Under the heading "Risk Factors", in short concise paragraphs, subtitles allowable, disclose the following as applicable:

8.1.1 there is no market for the Units;

8.1.2 the risk of non-completion and delays in construction;

8.1.3 the risk that the Program or Unitholders may be responsible for cost overruns if there is no fixed price contract with independent third parties;

8.1.4 the risk of operating losses in the early years of the Program;

8.1.5 the risk that the Project may not have sufficient Cash Flow to meet obligations in the short term;

8.1.6 the risk that the Cash Flow Guarantee or the cash deficiency loan may be insufficient to meet the Cash Flow requirements;

8.1.7 the risk that the financial status of the guarantor may be such that he or it will be

unable to honor his or its obligations with respect to the Cash Flow Guarantee. Also disclose the total contingent liabilities of the guarantor and segregate by type;

- 8.1.8 the risk of possible Assessments and the effect of non-payment thereof;
  - 8.1.9 the risk of loss of any Capital Contributions made by the Unitholders upon default under the deferred payment plan;
  - 8.1.10 the risk that existing mortgage financing may not be renewable at economic rates or in required amounts;
  - 8.1.11 the risk that the continuing value of the investment will be dependent upon the expertise of the manager and/or Sponsor in developing and managing the Project;
  - 8.1.12 the risk of reassessment by Revenue Canada giving rise to additional tax liability;
  - 8.1.13 the risk of additional tax liability to the Unitholders upon disposition or deemed disposition of the Project or the Unit;
  - 8.1.14 risk of continuing liability and obligation by the Unitholder to the Program after the Unitholder defaults;
  - 8.1.15 the risk of loss of limited liability of the Unitholders and the circumstances when such loss may arise;
  - 8.1.16 any other risks associated with real estate ownership.
- 8.2 The face page shall state in bold face type that, "This offering is speculative and it is essential that the investor consider the risk factors set out in the prospectus (pages .....) in assessing the merits of the investment."
- 8.3 The prospectus summary shall also summarize the risk aspects of the offering, the type of investors to whom the investment may be suited, and that prospective purchasers should consult their own professional advisers in order to assess the tax, legal, and other aspects of an investment in the Units.

## 9. CONFLICT OF INTEREST

- 9.1 Under a separate heading, disclose both actual and potential areas of conflict of interest between a Sponsor and the Program.

- 9.2 Organization charts shall be included clearly displaying:
- 9.2.1 the relationship between the promoter, General Partner, contractor, developer, manager, sales agent, guarantor and the Program, and
  - 9.2.2 the relationship between the Sponsors of the Program.
- 9.3 A Sponsor shall not in any of its dealing with the Program, through either individual or a series of transactions,
- 9.3.1 receive consideration for property or compensation for services from the Program such that it appears to the Director that an unconscionable consideration has been paid or given or is intended to be paid or given, or
  - 9.3.2 receive such consideration which in the opinion of the Director is not in the public interest.
- 9.4 If a Sponsor had an interest in the property prior to its acquisition by the Program, then the consideration paid or to be paid for the property shall not be in excess of its fair market value as established in compliance with an appraisal prepared in accordance with item 9.12.
- 9.5 A Program will not ordinarily be permitted to sell or lease property to the Sponsor except that a Program may lease property to the Sponsor under a lease-back arrangement on terms no more favourable to the Sponsor than those negotiated between parties at arm's length. Any arrangements contemplated or in place at the closing shall be fully described in the prospectus.
- 9.6 A Program shall not pay, directly or indirectly, a commission or fee to a Sponsor in connection with the reinvestment of the proceeds of the sale, exchange, or refinancing of the Program's property unless the commission or fee is approved by the Unitholders in accordance with item 13.1.7.
- 9.7 Any services, including the sale or lease of property or goods to or on behalf of the Program performed by the Sponsor for the Program, must meet the following criteria:
- 9.7.1 the compensation, price or fee paid to the Sponsor and the price of any property or goods sold or leased to the Program must be competitive with the compensation, price or fee that would be payable to any other person or company at arm's length with the Program who is rendering comparable services or providing comparable property or goods which could reasonably be made

available to the Program,

- 9.7.2 all services, property or goods for which the Sponsor is to receive compensation shall be the subject of a written contract which precisely describes the services to be rendered or the goods or property to be sold or leased and all compensation to be paid,
  - 9.7.3 the fees and other terms of the contract shall be fully disclosed in the prospectus, and
  - 9.7.4 the Sponsor must be previously engaged in the business of rendering such services independently of the Program and as an ordinary and ongoing business or otherwise must demonstrate sufficient knowledge and experience to perform the services as proposed.
- 9.8 A Sponsor shall not pay or award any commission or other compensation directly or indirectly to any person or company engaged by a potential investor for investment advice as an inducement to such persons or companies to advise the potential purchasers of Units provided, however, that this stipulation shall not prohibit, the normal sales commission payable to a registered dealer or other properly registered persons or companies for selling Units.
- 9.9 A Sponsor may be reimbursed out of subscriptions and Program revenues for all actual and necessary expenses of the Program, including an allocable portion of the Sponsor's general and administrative overhead determined in accordance with generally accepted accounting principles. Overhead costs shall be disclosed in the prospectus.
- 9.10 A Sponsor shall not be permitted to construct or develop the Project or render any services in connection with such development or construction unless the following conditions are satisfied:
- 9.10.1 the Sponsor's involvement is pursuant to agreements in place prior to the issuance of the receipt for the prospectus, and
  - 9.10.2 the specific terms of the development and construction of identifiable properties and buildings are ascertainable and fully disclosed in the prospectus.
- 9.11 If financing is made available to the Program by the Sponsor, the Sponsor shall not receive interest or other financing charges or fees in excess of the amount which would be charged by an unrelated lending institution on comparable loans for the same purpose in the same locality of the property. No prepayment charge or penalty shall be payable to the Sponsor

on a loan to the Program secured by an encumbrance on the property, except to the extent that such prepayment charge or penalty is payable to an arm's length holder of the underlying encumbrance of an "all-inclusive" or "wrap-around" note or mortgage (the "all-inclusive note" herein).

9.11.1 An all-inclusive note may be used to finance the Project by the Program only if the following conditions are complied with:

9.11.1.1 the Sponsor shall not receive interest on the amount of the underlying encumbrances included in the all-inclusive note in excess of that payable to the lender on that underlying encumbrance,

9.11.1.2 the Program shall receive credit on its obligation under the all-inclusive note for payments made directly on the underlying encumbrance, and

9.11.1.3 ordinarily a bank, trust company, savings and loan company or similar institution shall collect payments (other than any initial payment of prepaid interest not to be applied to the underlying encumbrance) on the all-inclusive note and make disbursements therefrom to the holder of the underlying encumbrance prior to making any disbursement to the Sponsor subject to the requirements of item 9.11.1.1. Alternatively, all payments on the all-inclusive note and underlying encumbrance shall be made directly by the Program.

9.12 All acquisitions by the Program involving non-arm's length persons or companies must be supported by an appraisal prepared by a qualified independent appraiser. The prospectus shall disclose that the appraisals are available for inspection at the office of the issuer during the period of distribution and for a period of 30 days thereafter. A copy of the appraisal shall also form part of the public record with the Commission.

9.12.1 An originally signed appraisal together with a certificate of qualification and independence and a consent letter from the appraiser shall be filed with final materials.

9.12.2 A summary of the appraisal shall be included in the prospectus.

10. PROMOTERS (Item 15 of Form 12)

- 10.1 Disclose the business experience of the promoter and the property manager for the past 5 years or such lesser period as the Director may allow.
  - 10.1.1 The Director will consider the business experience of the promoter and the property manager in considering whether it would be contrary to the public interest to issue a receipt for a prospectus.
- 10.2 To demonstrate the business experience of the promoter, a "track record" shall be provided in tabular form of all offerings made in the past 5 years by the promoter, or the most recent 15 offerings which have achieved turnover to the respective Program for a period of at least one year where such offerings were made within a shorter period of time. As a minimum, the following details shall be disclosed:
  - 10.2.1 name and location of each Project, date of offering, total cost of each project, number of rental units, rentable square footage determined in accordance with item 6.7, and the present vacancy rate of each Project,
  - 10.2.2 budget and actual dates of completion and turnover,
  - 10.2.3 budget and actual results for the most current 3 years to reflect gross revenue (rents, etc.), rental assistance loans, operating expenses and other disbursements including debt servicing, capital improvements and replacements and net Cash Flow or deficiency in respect to each Project (see Schedule A),
  - 10.2.4 state below the table in bold face type that, "It should not be assumed that the present offering will have returns, if any, similar to the above".
  - 10.2.5 state below the table whether or not Unitholders have suffered any tax reassessments on other Programs with which the promoter was associated.
- 10.3 Audited Financial Statements of the promoter, General Partner and guarantor (if applicable) shall be included in the prospectus. Consideration may be given by the Director to permit exclusion of such financial statements where the promoter has provided sufficient justification for so doing.
  - 10.3.1 Where necessary, the Director may require financial statements of all entities which comprise the organizational relationship chart to be submitted to the Commission for review by the staff.
  - 10.3.2 Where deemed necessary the Director may, in light of the financial situation of

such persons or companies, require irrevocable letters of credit and/or escrowing of promissory notes.

10.3.3 The promoter and guarantor, if not already reporting issuers, shall be required to provide an undertaking to the Director to provide financial statements to the Commission, in the case of the promoter until such time as the Project is turned over to the Program and in the case of the guarantor until such time as its guarantee no longer subsists. Unless the Director otherwise permits, such financial statements shall be provided to the Unitholders upon request and payment of a reasonable fee and shall be placed on the Commission's public file. Disclosure of this fact shall be provided in the prospectus.

10.3.4 Where the General Partner is a shell company or is not adequately capitalized in relation to its financial commitments and obligations to the Program, the commitments and obligations of the General Partner will be required to be guaranteed by a financially responsible party.

10.4 Tabulate in one place all direct and indirect compensation including but not limited to acquisition fees, development fees, construction fees, Property Management Fees, Organization and Offering Fees, equity or participating interest and commissions of any kind payable to the Sponsor. All fees paid should be disclosed in this section individually, in total, and as a percentage of the Project cost.

10.5 Notwithstanding item 3.7.1 a Sponsor may be permitted an interest in the Program as a promotional or carried interest provided such interest, together with all other fees or compensation, is acquired in accordance with item 9.3. Disclose such promotional or carried interest on the face page.

## 11. ISSUANCE OF UNITS (Item 19 of Form 12)

11.1 State the minimum number of Units an investor must purchase. If a Unit represents an interest in an unincorporated syndicate disclose whether the interest in the Project is divided or undivided.

11.2 Disclose that fractionization of Units will not be permitted.

11.3 Describe the material attributes of the Units as provided in the Unitholders Agreement including rights and restrictions, priorities and preferences, assessability and circumstances when limited liability may be lost.

11.4 Restrictions on the assignment of Units or the substitution of Unitholders will be allowed only to the extent that they relate to residency and are required to maximize tax benefits to Unitholders.

12. OTHER MATERIAL FACTS (Item 32 of Form 12)

12.1 *Income Tax*

So that prospective Unitholders may accurately evaluate income tax consequences which may flow to them, it is essential that clear and explicit taxation disclosure be made under a separate heading in the prospectus. The tax section of the prospectus shall not contain any statements which are inconsistent with any statements made in the forecasts sections of the prospectus.

12.1.1 The opening remarks under income tax disclosure shall

12.1.1.1 identify the independent professional lawyer or accountant taking responsibility for the tax opinion in the prospectus,

12.1.1.2 include bold face warnings that tax considerations ordinarily make the Units offered more suitable for Unitholders having a high taxable income;

12.1.1.2.1 tax considerations ordinarily make the Units offered more suitable for Unitholders having a high taxable income;

12.1.1.2.2 those acquiring the Units with a view to obtaining tax advantages should consult a tax advisor who is knowledgeable in the field; and

12.1.1.2.3 regardless of any tax benefits which may be obtained, a decision to purchase the Units offered should be based primarily on an appraisal of the merits of the investment as such and on a Unitholder's ability to bear possible loss.

12.1.2 The prospectus shall state

12.1.2.1 the tax treatment of the Program and how it affects Unitholders including, where applicable, comments on the following:

- 12.1.2.1.1 tax treatment on a Unit including tax consequences on distribution of income and capital,
- 12.1.2.1.2 tax treatment of first-time costs,
- 12.1.2.1.3 tax consequences on the disposition or deemed disposition of a Unit including the tax consequences where the proceeds on disposition are less than the adjusted cost base of the Unit, and
- 12.1.2.1.4 tax consequences on the disposition or deemed disposition of the Project,
- 12.1.2.2 the advantages to be obtained by the Unitholders in the current year and the continuing taxation benefits in future years, and
- 12.1.2.3 where a forecasted tax deferral table is included, that the underlying assumptions are realistic and shall contain a warning at the bottom of the table in accordance with item 12.2.1.1.3.

## 12.2 Earnings Forecasts

### 12.2.1 Rental Property Forecasts

- 12.2.1.1 The Commission is of the opinion that an earnings forecast of the most probable results of operations is useful to investors contemplating the acquisition of Units evidencing an interest in a Program. Forecasts, if used in any way in connection with the public offering, shall be included in the prospectus and be in accordance with the following guidelines:
  - 12.2.1.1.1 Forecasts shall be prepared in accordance with the CICA Accounting Guidelines and reviewed in accordance with CICA Auditing Guidelines.
  - 12.2.1.1.2 Forecasts included in a preliminary prospectus shall be accompanied by the auditors' comments. The comments shall be signed or, if the comments are not signed, there shall be filed at the time the preliminary prospectus is filed, a letter addressed

to the Commission and signed by the auditor in which he shall make a statement with respect to his review of the forecasts as may be appropriate in the circumstances and acceptable to the Director.

12.2.1.1.3 The forecasts must contain disclosure in bold face type that:

12.2.1.1.3.1 the forecasts have been prepared with due care,

12.2.1.1.3.2 the assumptions on which the forecasts are based are considered the most reasonable and the most realistic individually, in relation to each other and taken together, and

12.2.1.1.3.3 the assumptions form an integral part of the forecast data, that actual results will probably vary from the forecasts and that such variations may be material.

12.2.1.1.4 The issuer shall also provide the Unitholders and the Commission with a reconciliation between the original forecast included in the prospectus and the issuer's annual financial statements and reasons for significant differences shall be disclosed. The reconciliation should be in detail at least equivalent to that of the forecasts.

12.2.1.1.5 The annual reconciliation referred to in item 12.2.1.1.4 must be distributed with the annual audited financial statements of the total Program for each year covered by the forecasts.

## 12.2.2 Other Real Estate Forecasts

12.2.2.1 Where forecasts are to be included for Programs and the income

from the Program results from other than rental income, such as a hotel project, in addition to the guidelines set forth in item 12.2.1 the following will be applicable.

12.2.2.1.1 An independent feasibility study acceptable to the Director will be required to support the forecasts.

12.2.2.1.2 The person or company preparing the feasibility study shall submit a signed feasibility study together with a certificate of qualification and independence and a consent letter.

12.2.2.1.3 The person or company preparing the feasibility study shall be named in the prospectus as having prepared such study.

12.2.2.1.4 The prospectus shall disclose that the feasibility study is available for inspection during the period of distribution and for 30 days thereafter at a specified place.

12.2.2.2 In the event that an existing Project is being acquired by the Program, the prospectus may include the actual annual operating results of the Project for up to 5 years provided that the most recent 2 years are accompanied by an auditor's report.

### 3. MATERIAL CONTRACTS (Item 30 of Form 12)

#### 13.1 Unitholder's Agreement

13.1.1 The Unitholders Agreement shall provide that the General Partner shall exercise its powers and discharge its duties honestly, in good faith, and with a view to the best interests of the Unitholders. The General Partner shall not be permitted to use any assets of the Program for its own benefit or advantage.

13.1.2 The General Partner shall not attempt to pass on to Unitholders any unlimited liability as may be imposed upon it by law. The Unitholders Agreement may provide for indemnification of the General Partner only

where:

- 13.1.2.1 the General Partner has acted honestly, in good faith and in a manner that is in the best interests of the Unitholders and in accordance with his fiduciary obligations to the Unitholders, and
  - 13.1.2.2 the conduct of the General Partner does not constitute negligence or willful or wanton misconduct.
- 13.1.3 The Program shall not incur the cost of that portion of liability insurance which insures a General Partner for any liability for which the General Partner is not permitted to be indemnified under item 13.1.2.
- 13.1.4 The General Partner shall not be permitted to resign or be removed if removal or resignation of the General Partner would:
- 13.1.4.1 accelerate or cause to be due and payable to the Sponsor any indebtedness of the Program other than payments due in the normal course such as management fees, except if approved in accordance with item 13.1.7; or
  - 13.1.4.2 result in dissolution or winding up of the Program.
- 13.1.5 Approval of the Unitholders by special resolution shall be required for the following:
- 13.1.5.1 amendment of the Unitholders Agreement; and
  - 13.1.5.2 voluntary dissolution.
- 13.1.6 Approval of the Unitholders by ordinary resolution shall be required for the following:
- 13.1.6.1 sale of the Project; and
  - 13.1.6.2 changes in the auditors of the Program.
- 13.1.7 Related Parties will be entitled to vote Units acquired to a maximum of 25% of the total votes entitled to vote upon a resolution, except that Related Parties will not be entitled to vote on the following matters:

- 13.1.7.1 removal of the General Partner, when the General Partner is an affiliate or associate of the promoter;
- 13.1.7.2 matters referred to at items 6.10, 9.6 and 13.1.4. 1.
- 13.1.8 The Unitholders Agreement shall specifically provide that the restriction on voting as provided in item 13.1.7.1 may not be amended.
- 13.1.9 Any restrictions on assignment of Units shall be provided in the Unitholders Agreement (reference is made to item 11.4).
- 13.1.10 The General Partner shall file such documents or certificates to admit a substituted Unitholder or to permit the transfer of Units as may be required by applicable law within 30 days after the end of the month in which such transfer is requested in prescribed form.
- 13.1.11 The General Partner of the Project shall be required to call an annual meeting of Unitholders within 15 months after closing of the offering, and subsequently not later than 15 months after holding the last preceding annual meeting.
- 13.1.12 The holders of not less than 10% of the voting rights of the Program may request the General Partner to call a meeting of Unitholders for the purpose stated in the request.
- 13.1.13 Where provision is made for the repurchase of Units from Unitholders by the Sponsor or by the Program, the conditions of such repurchase shall be detailed, together with the method employed to ensure a reasonable valuation of Units.
- 13.1.14 A date shall be specified by which annual income tax information will be provided to Unitholders.
- 13.1.15 The Unitholders Agreement shall be attached at the end of the prospectus following the certificate page.
- 13.1.16 The prospectus shall contain under the appropriate section, disclosure of the foregoing and all other salient points of the Unitholders Agreement.

## 13.2 *Property Management Agreement*

- 13.2.1 A property management agreement for a minimum period of 5 years will be required to be executed and in force prior to the issuance of the receipt for the prospectus.

13.2.2 The property manager shall contractually agree to exercise its duties honestly, in good faith and in the best interest of the Unitholders. and in connection therewith to exercise the degree of care, diligence and skill that a reasonably prudent manager would exercise in comparable circumstances. Where the Unitholders are not parties to the property management agreement, steps shall be taken to ensure that such an agreement can be enforced by the Unitholders directly or through the General Partner.

13.2.3 Indemnification of the manager and the provision for insurance will be permitted only under those circumstances as set forth by items 13.1.2 and 13.1.3 as the case may be.

13.3 *Construction and Development Agreement*

13.3.1 If the Project is not completed prior to issuance of the receipt for the prospectus, construction and development agreements will be required to be executed and in force prior to the issuance of the receipt, unless otherwise permitted by the Director.

13.3.2 When construction and development is to be carried out by a Sponsor, items 13.2.2 and 13.2.3 shall apply.

13.4 *Financial Guarantees and Cash Flow Loans*

13.4.1 Disclose in the prospectus specific details of any guarantees, loans or other financial commitments provided for the benefit of the Unitholders including specifically any limits, restrictions or obligations to repay monies advanced by the guarantor.

Effective date: March 15, 1987

**SCHEDULE A TO ITEM 10.2.3 OF A.S.C. POLICY 4.5**

**RECONCILIATION OF FORECASTS TO ACTUAL RESULTS AND VARIANCE**

	<u>Year ended</u>		
	Actual Results	Forecasts	Variance
A. Income			
B. Disbursements			
Cash flow before Debt Service	_____	_____	_____
	_____	_____	_____
C. Debt Service:			
Principal			
Interest			
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____