

participate or allot a participation, render advice and service, with or without remuneration, to each and every participant in such loan or other investment.

4.4. **Limitation on Operating Expenses.** Each contract made with the Advisor shall provide that, within 120 days after the end of any Fiscal Year which begins on a date following the effective date of the Trust's first Registration Statement filed under the Securities Act of 1933, the Advisor will refund to the Trust (or, at the election of the Trustees, reduce its compensation payable by) (A) the amount, if any, by which the Operating Expenses of the Trust during such Fiscal Year exceeded the lesser of (a) 1.2% of the Average Value of Invested Assets for such Fiscal Year or (b) the greater of (i) 1.2% of the Month-End Average Net Assets of the Trust for such Fiscal Year or (ii) 25% of the Net Income of the Trust for such Fiscal Year and (B) the amount, if any, by which the aggregate of fees and expenses (including travel expenses and other out-of-pocket expenses) paid to Trustees who are not affiliates of the Advisor and expenses of the type referred to in clause (m) of the definition of Operating Expenses contained in this Section 4.4 during such Fiscal Year exceeded 0.3% of the Average Value of Invested Assets for such Fiscal Year.

For purposes of this Section 4.4 the following terms shall have the meanings set forth below:

(a) "Average Value" for any period shall mean the arithmetic average of the aggregate Value of the assets reflected in the computation at the close of the last business day of each month during the period to which such computation relates.

(b) "Average Value of Invested Assets" shall mean the Average Value of the Trust's total assets (without deduction of any liabilities) plus the undisbursed commitments of the Trust in respect of closed loans or other closed investments, but excluding good will and other intangible assets, cash, cash items and obligations of municipal, state and the federal governments and governmental agencies (other than obligations secured by a lien on real property owned, or to be acquired, by such governments or governmental agencies and securities of the Federal Housing Administration, the Federal National Mortgage Administration, and other governmental agencies issuing securities backed by a pool of mortgages).

(c) "Value" of an asset or assets shall mean the value of such asset or assets on the books of the Trust, reduced by provision for amortization, depreciation or depletion but before deducting any indebtedness or other liability in respect thereof. Depreciable assets shall be valued at the lesser of fair market value (in the judgment of the Trustees) or cost less straight-line depreciation.

(d) "Fiscal Year" shall mean any period for which an income tax return is submitted to the Internal Revenue Service and which is treated by the Internal Revenue Service as a reporting period.

(e) "Net Income" for any period shall mean the net income of the Trust for such period computed on the basis of its results of operations for such period, after deduction of all expenses other than the regular, incentive and additional compensation payable to the Advisor or fees payable to any mortgage servicer, and excluding extraordinary items and gains and losses from the disposition of assets of the Trust.

(f) "Month-End Average Net Assets" shall mean the Average Value of all the assets of the Trust minus all the liabilities of the Trust, reflected in the computation at the close of each month during the period to which such computation relates.

(g) "Operating Expenses" during any Fiscal Year shall mean the aggregate annual expenses of every character regarded as operating expenses in accordance with generally accepted accounting principles, as determined by the independent public or certified accountants who shall have reported on the financial statements of the Trust at the end of and for such Fiscal Year but excluding

(a) interest, discount and other costs of borrowed money;

(b) taxes on income and taxes and assessments on real property and all other taxes (including license fees) applicable to the Trust;

(c) legal, audit, accounting, underwriting, brokerage, listing, registration and other fees, printing, engraving and other expenses and taxes incurred in connection with the issuance, distribution, transfer, registration and stock exchange listing of the Trust's securities;