Letter of Comment No: / File Reference: FSPSOP789A

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From: Robert Syatos [mailto:rsvatos@conam.com]

Sent: Monday, February 07, 2005 12:27 PM

To: Director - FASB

Cc: trefnes@kpmg.com; jdavis@kpmg.com **Subject:** File Reference No. FSPSOP78-9-a

FASB Staff:

Thank you for the opportunity to provide comments with respect to proposed FSP SOP 78-9-a. I am disappointed to see that the board has directed the FASB Staff to consider the consolidation of limited partnerships by an investor who is the general partner regardless of his ownership interest strictly because of a presumption of control. There are a variety of reasons why we, as a smaller, privately held real estate company with a variety of general partner interests are opposed to the proposal.

The resulting financial statements will be of little use to our commercial bankers, mortgage lenders and prospective limited partner investors because the assets, liabilities, revenues and expenses will be grossly overstated as a result of the consolidation of these limited partnerships in which our actual ownership percentage is generally less than 10%. FASB Concept 1, "Objectives of Financial Reporting by Business Enterprises", paragraph 34 provides potentially the most concise explanation of our objection to the proposal. It states, "Financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit, and similar decisions. The information should be comprehensible to those who have a reasonable understanding of business and economic activities and are willing to study the information with reasonable diligence."

Our banks and mortgage lenders want to know the operating results and financial condition of our real estate company whose business it is to syndicate real estate limited partnerships and limited liability companies. Even now, they have little interest in the consolidated summarized GAAP results of operations of those limited partnerships which we are required to disclose in the footnotes to the financial statements in accordance with APB No.18. They realize that the summarized GAAP income statement poorly represents the economic reality of these real estate partnerships due to the depreciation expense which is being recorded on what has historically been an appreciating investment asset. The equity method of accounting for general partner investments provides a more effective means for the users of our financial statements to assess our company's financial condition.

Secondly, the cost of consolidating these limited partnerships whose own financial statements are generally prepared on the basis of Federal Income Tax Accounting principles will need to be born strictly by the general partner as the consolidated statements of the general partner provide no direct benefit to the individual limited partnerships and as stated above, go so far as to make the financial statements much less useful as these limited partners attempt to evaluate the financial condition of our company as the sponsor of the investment as they evaluate whether to make additional investments.

Thirdly, the requirement to consolidate these limited partnerships, potentially resulting in greater losses being recognized on the financial statements of the real estate company who is the general partner as compared to the equity method of accounting for these real estate ventures, clearly ignores the fact that, in most real estate ventures utilizing high leverage non-recourse financing, the general partner is in no way liable for the debt over basis that results from the depreciation of the real estate assets. Consequently, in order to avoid this adverse

financial reporting result caused by the proposed consolidation of its limited partnerships, the general partner is put in the position to reevaluate and reduce its use of leverage and, thus, adversely affect the investment returns it provides to its limited partners, the very customers it depends upon for future investment partnerships.

Lastly, the ongoing control and participating rights which will be deemed to overcome the presumption of control are specifically those rights that could expose the limited partners to unlimited potential liability as a decider of facts may quickly characterize these partners not as passive limited partners but participating general partners and thus liable for the debts and obligations of the limited partnership. I would not be surprised if many of our limited partners refused to accept the additional rights required to be given them in order to avoid our need to consolidate and even less appealing, choose to invest the real estate portion of their portfolio in other than privately managed limited partnerships.

I would strongly suggest that the staff not alter its current accounting guidance and require consolidation by the general partner in few instances other than those instances where a majority of ownership resides with the general partner or control, in a more traditional sense, is clearly in the hands of the general partner.

I appreciate both the opportunity to provide these comments on the proposed FSP and the Board's willingness to consider the views of its constituents in its work.

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