**Section 350.40 Characteristics of ADC Lending Transactions Implying Unauthorized Investments in Real Estate or a Joint Venture**

Factors which are relevant, if applicable, in determining whether the risks and rewards to the state bank as a result of an ADC lending transaction are similar to those associated with an unauthorized investment in real estate or a joint venture include the following:

a) The state bank agrees to provide more than 90% of the necessary funds to acquire and develop the property. Although the borrower has title to the property, its equity interest is less than 10% of the funds needed to acquire and develop the property;

b) The state bank funds the interest and fees during the term of the loan by adding interest and fees to the loan balance;

c) The state bank funds the loan commitment or origination fees or both by including them in the amount of the loan;

d) The loan is secured only by the acquisition, development or construction project. The state bank has no legal right to liquidate other assets of the borrower and the borrower does not guarantee the loan;

e) The ADC lending transaction will not generate income for the state bank unless the property is sold to independent third parties, the borrower obtains refinancing from another source or the property is put to productive use and generates sufficient net cash flow to service debt principal and interest; and

f) The ADC lending transaction is structured so that foreclosure during the project's development is not possible because the borrower is not required to make any loan payments until the project is complete and therefore the loan cannot become delinquent.