

Person directly or indirectly owns, controls or holds with power to vote five percent (5%) or more of the outstanding voting securities or (D) which directly or indirectly owns, controls or holds with power to vote five percent (5%) or more of the outstanding voting securities of such Person and (ii) with respect to the Trust, the Advisor and any other investment adviser, manager or independent contractor (as that term is defined in Section 856(d)(3) of the Internal Revenue Code) of the Trust.

(d) *Annual Meeting of Shareholders.* "Annual Meeting of Shareholders" shall have the meaning set forth in the first sentence of Section 6.7.

(e) *Annual Report.* "Annual Report" shall have the meaning set forth in Section 6.9.

(f) *Appraisal.* "Appraisal" shall mean the fair market value, as of the date of the appraisal, of Real Property in its existing state or in a state as to be created or improved, as determined by the Trustees or as determined by any bank, insurance company or other Person which makes appraisals in connection with its lending or services activities or as determined by a disinterested Person having no interest in the Real Property, provided, however, that, any such Person, is, in the sole judgment of the Trustees properly qualified to make a determination; provided further that an appraisal shall be included within the meaning of the term Appraisal as used herein upon which the Trustees may in good faith rely if it is made on behalf of a Person or Persons other than the Trust at or prior to the time of the investment by the Trust if the Trust is acquiring an interest (either in whole or in part) in the investment with respect to which such appraisal is or has been made.

(g) *Construction Loans.* "Construction Loans" shall mean Mortgage Loans incurred to finance all or part of the cost of acquiring and improving land (including leaseholds therein) and the construction or improvement of buildings and other improvements thereon.

(h) *Declaration.* "Declaration" shall mean this Declaration of Trust and all amendments or modifications thereof. References in this Declaration to "herein" and "hereunder" shall be deemed to refer to this Declaration and shall not be limited to the particular text, article or section in which such words appear.

(i) *Development Loans.* "Development Loans" shall mean Mortgage Loans incurred to finance all or part of the cost of acquiring and improving vacant land and developing it into a site or sites suitable for the construction of buildings thereon or suitable for other residential, commercial, industrial or public uses.

(j) *Equity Investments.* "Equity Investments" shall mean investments in Real Property (other than Mortgage Loans), or in borrowing or leasing entities or other organizations owning, operating or managing Real Property.

(k) *Equity Participations.* "Equity Participations" shall mean participations acquired in connection with making any Real Property Investment including, but not limited to, participations in contingent interest based upon operating revenues, participations in the ownership of Real Property, participations in rental based upon operating revenues or based upon a percentage of sales or room rents, or participations in the ownership of borrowing or leasing entities or other organizations owning, operating or managing Real Property.

(l) *First Mortgage.* "First Mortgage" shall mean a Mortgage which takes priority or precedence over all other charges or liens upon the Real Property and which must be satisfied before such other charges are entitled to participate in the proceeds of any sale. Such priority shall not be deemed as abrogated by liens for taxes, or assessments which are not delinquent or remain payable without penalty, contracts (other than contracts for repayment of borrowed moneys), or leases, mechanic's and materialman's liens for work performed and materials furnished which are not in default or are in good faith being contested and other claims normally deemed in the same local jurisdiction not to abrogate the priority of a first mortgage.

(m) *First Mortgage Loans.* "First Mortgage Loans" shall mean Mortgage Loans secured or collateralized at the time of acquisition thereof by the Trust by First Mortgages.

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