

699157

\_\_\_\_\_  
(Requestor's Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City/State/Zip/Phone #)

☐

PICK-UP

☐

WAIT

☐

MAIL

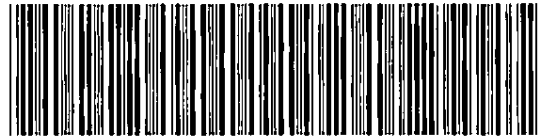
\_\_\_\_\_  
(Business Entity Name)

\_\_\_\_\_  
(Document Number)

Certified Copies \_\_\_\_\_ Certificates of Status \_\_\_\_\_

Special Instructions to Filing Officer.

Office Use Only



600396696136

D.T.#157

INVESTORS REALTY TRUST

D.T.

157

FILED IN OFFICE OF DEPARTMENT  
OF STATE, STATE OF FLORIDA,  
by ld, on 5-17-71

RICHARD (DICK) STONE  
SECRETARY OF STATE



THE CAPITOL  
TALLAHASSEE 32304

RICHARD (DICK) STONE  
SECRETARY OF STATE

May 17, 1971

William P. Johnston, Esquire  
Attorney at Law  
American Trust Building  
Nashville, Tennessee 37201

Dear Sir:

Subject: INVESTORS REALTY TRUST

This will acknowledge receipt of the following documents for the above captioned corporation:

- ☒ 1. Check in the amount of \$ 155.
- ☒ 2. Articles of Incorporation (Declaration of Trust)
- ☐ 3. Amendment to Articles of Incorporation
- ☐ 4. Articles of Merger or Consolidation
- ☐ 5. Certificate of Withdrawal received and filed
- ☐ 6. Limited Partnership

Enclosed please find:

- ☐ 1. Invoice No. in the amount of \$
- ☐ 2. Resident Agent Form (to be completed and returned for filing).
- ☒ 3. Certified copy (s)
- ☐ 4. Certificate Under Seal
- ☐ 5. Photocopy (s)
- ☐ 6. A refund of \$ will be forwarded later
- ☐ 7. Enclosures or details of filing:

Filed: April 30, 1971

Sincerely,

RICHARD (DICK) STONE  
Secretary of State

By  
Murray McLaughlin, Chief  
Bureau of Corporation Records

MM/ 14

corp-2  
1-5-71

Enclosures

INVESTORS REALTY TRUST.

William P. Johnston

10th

April

1971

D. L. LARSEN  
LAWRENCE DORTCH  
WILLIAM WALLER, JR.  
MACLIN P. DAVIS, JR.  
ROBERT G. MCCULLOUGH

AMERICAN TRUST BUILDING  
NASHVILLE, TENNESSEE 37201

16151 244-6380

May 13, 1971

ROBERT C. HENDON, JR.  
JAMES R. CHESHIRE, III  
C. JUDSON HARTWOOD, JR.  
WILLIAM E. MARTIN  
WILLIAM L. BROOKS  
WILLIAM P. JOHNSTON

Department of State  
State Capitol  
Tallahassee, Florida

Attention: Mr. Dubois

Re: Investors Realty Trust

Gentlemen:

Enclosed herewith is the Affidavit of the undersigned with respect to Investors Realty Trust.

If there is anything further you need to complete the Trust's qualification in Florida, please do not hesitate to telephone me collect.

Thank you very much for your consideration in this matter.

Very truly yours,

*William P. Johnston*

William P. Johnston

WPJ:ljd

Enclosure

and the great seal of the State, at Nashville, this

day of April in the year of our

nineteen hundred 71

*Johnston*  
Secretary of State

WILLIAM MALLER, JR.  
MACLIN P. DAVIS, JR.  
ROBERT J. MCCULLOUGH

ROBERT C. HENDON, JR.  
JAMES R. CHESHIRE, III  
C. JUDSON HARWOOD, JR.  
WILLIAM E. MARTIN  
WILLIAM L. BROOKS  
WILLIAM P. JOHNSTON

April 27, 1971

Department of State  
Corporations Division  
Capitol Building  
Tallahassee, Florida 32301

Attention: Miss Jane Holt

Re: Investors Realty Trust

Gentlemen:

With respect to the above-captioned real estate investment trust organized and existing under the laws of the State of Tennessee, I hereby request that the enclosed Re-stated Declaration of Trust, as certified by the Secretary of State of Tennessee, be filed with your office. To this end, I am enclosing this firm's check in the amount of \$155.00 for the filing and for the issuance by your office of a certified copy of the document, which I request you return to me at your earliest possible convenience. I also enclose a self-addressed, stamped envelope for your use in this regard.

Thank you for your consideration.

Very truly yours,

*William P. Johnston*

William P. Johnston

FOREIGN SECTION

WPU:ljd

Enclosures

C. TEX	
FILED	150.00
C. S. F.	5.00
2. F. F.	
F. C. Y.	
S. A. O.	
F. M.	155.00
UNITED STATES	
1971	

FILED  
APR 30 8 57 AM '71  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

APR 29 7 09 AM '71  
APR 29 6 09 AM '71  
0980 444 45  
09700 444 1501

D.T.  
107

and the Great Seal of the State, at Nashville, this 21st

day of April in the year of our Lord

nineteen hundred 71

*William P. Johnston*  
Secretary of State

AFFIDAVIT

I, WILLIAM P. JOHNSTON, Attorney-at-Law, Nashville Tennessee, do hereby certify that I am familiar with the organization and general affairs of Investors Realty Trust, a business trust organized and existing under the laws of the State of Tennessee, and that Donald W. MacLeod is the duly elected and acting President and Managing Trustee of Investors Realty Trust.

Dated this 13th day of May, 1971.

William P. Johnston  
William P. Johnston  
WALLER LANSDEN DORRICH & DAVIS  
1200 American Trust Building  
Nashville, Tennessee 37201

STATE OF TENNESSEE

COUNTY OF DAVIDSON

Before me this 13th day of May, 1971 appeared William P. Johnston and executed this document for the purposes herein contained.

Thomas F. Narred  
Notary Public

My Commission expires: 10/30/73

IN WITNESS WHEREOF, I have hereto affixed my signature and the Great Seal of the State, at Nashville, this 21st day of April in the year of our Lord nineteen hundred 71

Johnston  
Secretary of State

# State of Tennessee

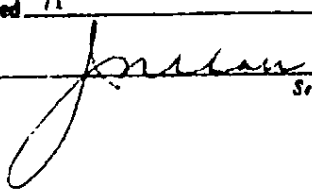


## Department of State

I, JOE C. CARR, Secretary of State of the  
State of Tennessee, do hereby certify that the attached  
is a true and correct copy of the RESTATED  
DECLARATION OF TRUST of  
INVESTORS REALTY TRUST  
which was recorded in this office at Nashville, Tennessee  
on April 21, 1971 in Corporation Record Amendment  
Book P-53, Page 7106.

FILED  
APR 30 8 57 AM '71  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

IN WITNESS WHEREOF, I have hereto affixed my signature  
and the Great Seal of the State, at Nashville, this 21st  
day of April in the year of our Lord  
nineteen hundred 71

  
Secretary of State



---

**INVESTORS**

**REALTY**

**TRUST**

**RESTATED**

**DECLARATION OF TRUST**

**As Filed April 21, 1971**

---

1971 APR 21 PM 1:41

## TABLE OF CONTENTS

### ARTICLE I

#### NAME, PRINCIPAL PLACE OF BUSINESS AND TITLE TO PROPERTY

##### SECTION

1.1. Name of Trust	2
1.2. Shortened Form of Name	2
1.3. Principal Place of Business	2
1.4. Title to Property	2

### ARTICLE II

#### POWERS OF TRUSTEES

2.1. Control Over Trust Property, etc.	2
2.2. Purchase of Property for Securities, etc.	3
2.3. Purchase of Securities, etc.	3
2.4. Designation of Holder of Legal Title	4
2.5. Borrowings on Behalf of Trust	4
2.6. Loans and Investment of Funds; Reserves	4
2.7. Payment of Taxes	4
2.8. Exercise Rights of Ownership of Securities	4
2.9. Delegation of Duties and Employment of Certain Persons	5
2.10. Collection of Monies Due, etc.	5
2.11. Deposit of Funds	6
2.12. Determination of Capital or Income	6
2.13. Value of Properties; Independent Appraisals; Revaluation	6
2.14. Fiscal Year; Accounting Methods	7
2.15. Joint Venture	7
2.16. Management and Advisory Agreements; Limitation on Expenses	7
2.17. F.H.A. Rules and Regulations	8
2.18. Unenumerated Powers	8
2.19. Transactions with Affiliates	8

### ARTICLE III

#### INVESTMENT OBJECTIVES AND POLICIES

3.1. General Investment Objectives	9
3.2. Additional Mortgage Investments	9
3.3. Temporary Investments	10
3.4. Operation through Borrowed Funds; Limitation	10
3.5. Limitations on Investments	10

### ARTICLE IV

#### LIMITATIONS OF LIABILITY OF SHAREHOLDERS, TRUSTEES AND OTHERS

4.1. Limitation of Personal Liability	11
4.2. Limitations of Liability to Trust; Indemnification; Bonds	11
4.3. No Duty of Inquiry on Persons Dealing with Trust; Provision in Every Written Undertaking; Insurance	12

157A APR 21 PM 1 41

## ARTICLE V

### SHARES OF BENEFICIAL INTEREST AND OTHER SECURITIES

5.1. Authorization and Characteristics of Shares	13
5.2. Share Certificates	13
5.3. Issuance of Additional Shares; Scrip	13
5.4. Issuance of Warrants	14
5.5. Disclosure of Holdings and Redemptions to Comply with Internal Revenue Code	14
5.6. Preemptive Rights	15
5.7. Issuance and Transfer of Debt Obligations	16

## ARTICLE VI

### TRANSFER OF SHARES AND OTHER SECURITIES; RECORD DATES

6.1. Share Register	16
6.2. Transfer Agents and Registrars	16
6.3. Deposit of Certificates with Transfer Agent, etc.	16
6.4. Transfer of Shares	17
6.5. Transfer of Shares by Operation of Law	17
6.6. Joint Tenants; Fiduciaries	17
6.7. Limitation of Trust Liability on Transfers; Receipts	18
6.8. Notice to Shareholders	18
6.9. Loss, etc. of Certificates	18
6.10. Record Dates	18

## ARTICLE VII

### CHARACTERISTICS OF SHARES

7.1. Ownership of Trust Property in Trustees	19
7.2. Shares are Personal Property; Death of Shareholder	19
7.3. Trustees' Rights as Shareholders	19
7.4. Repurchase of Shares by the Trust	19
7.5. No Personal Liability	20

## ARTICLE VIII

### MEETINGS OF SHAREHOLDERS

8.1. Annual and Special Meetings	20
8.2. Notice of Meetings	20
8.3. Shareholder Action Not Binding on Trustees	20
8.4. Voting; Proxies	21
8.5. Quorum	21

## ARTICLE IX

### REPORTS AND DISTRIBUTIONS TO SHAREHOLDERS

9.1. Annual Distributions	21
9.2. Statement Regarding Source of Distribution	22

1  
4  
1  
PM  
12  
APR  
1961

9.3. Reports to Shareholders and Others	22
9.4. Inspection of Records	22

## ARTICLE X

### TRUSTEES

10.1. Number, Term of Office, Vacancies, etc.	23
10.2. Resignation	23
10.3. Removal	23
10.4. Effect of Death etc. of Trustee	23
10.5. Vacancies	24
10.6. Meetings; Action Taken without Meeting	24
10.7. Compensation; Limitation	24
10.8. Bylaws	24
10.9. Executive Committee	25
10.10. Consulting Committee	25
10.11. Fiduciary Duty	25

## ARTICLE XI

### OFFICERS

11.1. Composition; Election; Compensation	25
11.2. Vacancies	26
11.3. Managing Trustee	26
11.4. President	26
11.5. Secretary	26
11.6. Treasurer	26
11.7. Duties	26

## ARTICLE XII

### DURATION OF TRUST

## ARTICLE XIII

### TERMINATION OR AMENDMENT OF TRUST

13.1. Shareholder Vote Required	27
13.2. Creation of Entity to Acquire Assets and Liabilities of Trust; Transfer of Assets or Merger	28
13.3. Consistency with Internal Revenue Code	28

## ARTICLE XIV

### MISCELLANEOUS

14.1. Definition of "Trustee"	29
14.2. Applicable Law	29
14.3. Counterparts	29

## ARTICLE XV

### COMPLIANCE WITH PROVISIONS OF INTERNAL REVENUE CODE

1971 APR 21 PM 1 41

**RESTATED  
DECLARATION OF TRUST**

This DECLARATION OF TRUST is made effective as of the 1st day of July, 1969, by and between INVESTORS REALTY TRUST (formerly AMERICAN SECURITY REAL ESTATE INVESTMENT TRUST), hereinafter called the "Trust," and D. W. JOHNSTON, DONALD W. MACLEOD, D. R. BUTTREY and KERMIT C. STENGEL, JR., hereinafter called the "Trustees,"

**WITNESSETH:**

WHEREAS, the Trustees desire to form a business trust for profit for the purpose of acquiring, holding, managing, improving, dealing with and disposing of property, real and personal, including mortgages, deeds of trust and other interests therein, wherever situated, in such manner as to qualify as a "real estate investment trust" under the provisions of Sections 856, 857 and 858 of the United States Internal Revenue Code of 1954, as amended, and the Regulations issued thereunder (said Code and Regulations as amended to the time in question being hereinafter referred to as the "Internal Revenue Code"), and

WHEREAS, in the furtherance of such purpose, the Trustees, acting pursuant to directions by Crescent Properties Company, have taken title, as of June 30, 1969, to certain real estate distributed to them as a return of capital, and may hereafter acquire cash and other property, and shall hold, manage and dispose of all such property as such Trustees may determine in the manner hereinafter stated;

NOW, THEREFORE, the Trustees hereby declare that they will hold all property of every type and description which they are acquiring or may hereafter acquire as such Trustees, together with the proceeds thereof, in trust, to manage, and dispose of the same for the benefit of the holders (hereinafter referred to as "shareholders") from time to time of the shares of beneficial interest (hereinafter referred to as "shares") being issued to the stockholders of Crescent Properties Company and to be otherwise issued hereunder in the manner and subject to the stipulations contained herein, to wit:

FILED  
APR 30 8 57 AM '71  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

APR 1 12 1961

## ARTICLE I

NAME, PRINCIPAL PLACE OF BUSINESS AND  
TITLE TO PROPERTY

SECTION 1.1. The name of the Trust shall be "INVESTORS REALTY TRUST" and, so far as may be practicable, the business of the Trust shall be conducted and transacted under such name, which (and the words "the Trust" and "this Trust" wherever used in this Declaration) shall refer to the Trustees as Trustees, but not individually or personally, and shall not refer to the officers, agents, employees or shareholders of this Trust.

SECTION 1.2. The Trustees may designate a shortened form of the name for business use by this Trust as they in their discretion determine appropriate.

SECTION 1.3. The principal place of business shall be in Nashville, Tennessee, at such address as the Trustees may from time to time designate; the Trustees may change the principal place of business to any other location as they in their discretion determine appropriate. The Trust may have such other offices or places of business as the Trustees may from time to time determine.

SECTION 1.4. All property subject from time to time to this Declaration of Trust shall be vested in the Trustees and held by and transferred to the Trustees as joint tenants with rights of survivorship as Trustees, except as provided in Section 2.4 hereof.

## ARTICLE II

## POWERS OF TRUSTEES

SECTION 2.1. The Trustees shall have, without other or further authorization, full and absolute power, control and authority over the Trust property held by them at any time hereunder and over the business of the Trust to the same extent as if the Trustees were the sole owners of such property and business in their own right, subject only to limitations herein expressly stated and to the superior control of the shareholders so far as the same is herein expressly stated. No person (the word "person"

1971 APR 21 PM 1 41

whenever used in this Declaration, to be deemed to mean any individual, association, trust, partnership, corporation or other entity) shall in any event be bound to see to the application of any money or property paid to or delivered to the Trustees or their authorized representatives. No investment or reinvestment of the Trust property hereunder shall be deemed improper because of its speculative character, or because a greater proportion of the Trust property is invested therein than is usual for Trustees, or, subject to the provisions of Section 2.19, by reason of any interest therein, direct or indirect, of the Trustees or any other party whatsoever. Without restricting or limiting the generality of the foregoing, such powers of the Trustees shall include among others the powers enumerated in Sections 2.2 to 2.19, inclusive, of this Article II.

SECTION 2.2. The Trustees shall have power, as principal, agent or otherwise, for such consideration as they may deem proper, to purchase for cash, through the issuance of shares, notes, debentures, warrants or other securities, or otherwise acquire, and hold, manage, lease for a term extending beyond the possible termination of the Trust or for a lesser term, improve (including improvements by lessees), convey, sell, exchange, mortgage (with or without power of sale), release, partition, or otherwise deal in, real estate of any type and description, and any interests therein and appurtenances thereto, including but not limited to air rights and mineral rights, and buildings and structures and tangible personal property of any type and description situated thereon or elsewhere, located in any part of the United States of America, its territories and possessions and such other countries as the Trustees may select, and to erect, construct, alter, repair, demolish or otherwise physically affect any real estate, buildings or structures of any type or description so located.

SECTION 2.3. The Trustees shall have power, as principal, agent or otherwise, for such consideration as they may deem proper, to purchase for cash, through the issuance of shares, notes, debentures, warrants or other securities, or otherwise acquire, and hold, sell, exchange, pledge, collect, pay in, and in any manner deal in, stocks, bonds, notes, certificates of indebtedness or other obligations, secured or unsecured, or other securities and, in general, any property or rights (legal or equitable) owned, held, created, or issued by or representing an interest in any corporation, business trust (including the business trust created by these presents), partnership or other organization, whether domestic or foreign, any individual, the United States of America, or any of the several states or territories or any political division thereof.

1971 APR 21 PM 1 41

SECTION 2.4 The Trustees shall have power to cause legal title to any of the property held by this Trust to be held in the name of the Trust, one or more of the Trustees, one or more of the officers or employees of the Trustees or any other person, on such terms, in such manner, and with all powers to mortgage, sell, transfer, lease, convey, restrict or otherwise deal therein, without the joinder of any beneficiary or Trustee and without disclosure that the Trust is interested therein, as the Trustees hereunder may determine; provided, that the interest of the Trust therein is appropriately protected.

SECTION 2.5. The Trustees shall have power to borrow money for the purposes of this Trust and to give notes, debentures, bonds or other evidences of indebtedness therefor or to enter into other obligations on behalf of the Trust, including the power to endorse or guarantee the payment of any notes or other obligations of any person and to make contracts of guaranty or suretyship, and to mortgage and pledge the real and personal property of this Trust or any part thereof to secure such notes, debentures, bonds or other evidences of indebtedness or obligations, subject, however, to the provisions of Section 3.4 hereof. Any of such notes, debentures, bonds or other evidences of indebtedness of the Trust may, at the discretion of the Trustees, without vote of the shareholders, be convertible into shares of the Trust at such time and upon such terms as the Trustees may prescribe.

SECTION 2.6. The Trustees shall have power to lend money and to invest and to reinvest any funds of the Trust as they shall determine; and to create a reserve fund or reserve funds for such purposes as they deem advisable, and to invest or reinvest the same in such manner as they may determine, provided such arrangements will not prevent the distribution of net income as required in Section 9.1 hereof.

SECTION 2.7. The Trustees shall have power to pay all taxes or assessments, of whatsoever kind or nature, imposed upon or against the Trustees in connection with the Trust property or income, or upon or against the Trust property or any part thereof, to settle and compromise disputed tax liabilities, and for the foregoing purposes to make such returns and do all such other acts and things as may be deemed by the Trustees necessary or desirable.

SECTION 2.8. The Trustees shall have power to exercise all of the rights, powers and privileges appertaining to the ownership of all or any part of the securities forming part of the Trust property to the same ex-

1971 APR 21 PM 1 41



tent that an individual might and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, and for such purposes to give proxies or powers of attorney to one or more persons, with or without the power of substitution, which proxies and powers of attorney may be for meetings or action generally or for any particular meetings or action and may include the exercise of discretionary powers.

SECTION 2.9. The Trustees shall have power to delegate from time to time, to such one or more of their number or to such other person or persons as the Trustees may deem best, the doing of such things and the execution of such deeds or other instruments, either in the names of the Trustees or as their attorney or attorneys or otherwise, as the Trustees may from time to time deem expedient; to appoint or contract with any one or more of themselves or any firm in which one or more of the Trustees may be members, or with any other person, to carry on and supervise all or any part of the active management of the property and business of the Trust, with such rights and such compensation, subject to the provisions of Section 2.16, as the Trustees may deem proper; and to employ such clerical assistants as they deem necessary to the transaction of the business of the Trust and such other persons, including consultants, accountants, technical advisers, investment advisers, attorneys, brokers, corporate fiduciaries, depositaries and other agents, (including a corporation, partnership, or trust of which one or more of the Trustees is an officer, director, stockholder, member or trustee, or in any way directly or indirectly interested) as the Trustees may deem proper and fix their duties, periods of employment and compensation.

SECTION 2.10. The Trustees shall have power to collect, sue for, receive and receipt for all sums of money coming due to this Trust; to consent to the extension of the time for payment, or to the renewal, with or without security, of any bonds or other securities or obligations or the payment or delivery of any debts or property; to engage or intervene in, prosecute, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or things relating to the Trust property; to be parties to reorganizations and to transfer to and deposit with any corporation committee, voting trustee or other person any stocks, bonds, or other securities or obligations of any corporation, trust, association, or other organization, the securities of which form a part of the Trust property, for the purposes of any reorganization of any such corporation, trust, association, or other organization, or otherwise to participate in any arrangement for enforcing or protect-

1 1 PM 12 21 1971

ing the interests of the Trustees as the owners or holders of such stocks, bonds, or other securities or obligations and to pay any assessment levied in connection with such reorganization or arrangement; to execute and enter into releases, agreements, and other instruments; incur and pay any charges or expenses which, in the opinion of the Trustees, are necessary or incidental to or proper for carrying out any of the purposes of this Trust; and to pay or satisfy any debts or claims upon any evidence that the Trustees shall think sufficient.

SECTION 2.11. The Trustees shall have power to deposit any moneys or securities included in the Trust property with any one or more banks, trust companies, or other banking institutions deemed by the Trustees to be responsible, such moneys or securities to be subject to withdrawal on notice or upon demand in such manner as the Trustees may determine, and the Trustees shall have no responsibility for any loss which may occur by reason of the failure of the person with whom the moneys or securities have been deposited properly to the account therefor.

SECTION 2.12. The Trustees shall have power to determine conclusively whether any moneys, securities, or other properties of the Trust are, for the purposes of the Trust, to be considered as capital or income and in what manner any expenses or disbursements are to be borne as between capital and income, whether or not in the absence of this provision such expense or disbursement would ordinarily be charged to capital or to income.

SECTION 2.13. The Trustees shall have power to determine conclusively the value of any of the real estate, securities, or other properties of this Trust and of any services, securities, property or other consideration hereafter to be acquired by this Trust; provided, however, that the consideration paid for real property acquired by the Trust shall be based upon the fair market value of the property as determined by a real estate appraisal prepared by a qualified, disinterested, independent appraiser unless there is a record of uninterrupted payment of principal and interest for the preceding five (5) years on any encumbrance which may exist on the property and the earnings of the property, before depreciation, during the preceding five (5) years are such that when capitalized annually at an 8% rate the capitalized figure approximates the purchase price paid or to be paid for the property. The Trustees shall also have the power to revalue the real estate, securities, or other properties of the Trust from time to time in accordance with methods of evaluation consistently applied and to keep the books of the Trust and render reports to the shareholders of the Trust on the basis of the figures so adopted.

42  
1 PM  
APR 21  
1971

SECTION 2.14. The Trustees shall have power to determine the fiscal year of the Trust and the method or form in which its accounts shall be kept and from time to time to change the fiscal year or method or form of accounts.

SECTION 2.15. The Trustees shall have the power to participate in a joint venture or partnership and to this end may appoint any one Trustee or officer of the Trust to act on behalf of the Trust with respect to the joint venture or partnership.

SECTION 2.16. The Trustees shall have the power to enter into a contract with such other parties (herein called the "Adviser"), on such terms as the Trustees deem advisable, for the management of the trust assets and investments, said contract to be termed the "Management and Advisory Agreement," and the Trustees may grant or delegate such authority to the Adviser as the Trustees may, in their sole discretion, deem necessary or desirable; provided, however, that the Trustees are to retain at all times the absolute and exclusive control over the management of the Trust and its property and the disposition thereof. Such Management and Advisory Agreement initially may not be for a period longer than three years and thereafter shall not be for a period of more than a year and, in any event, shall be terminable without penalty by either party, or by the holders of a majority of the outstanding shares of the Trust, on sixty days' notice. The agreement must be approved annually by a majority of the Trustees not affiliated with the Adviser. All operating expenses of the Trust during any fiscal year, including fees paid to the Adviser, shall not exceed the greater of (i)  $1\frac{1}{2}\%$  of the quarterly average net assets of the Trust (net assets being defined as total invested assets at cost, before deducting depreciation reserves, less liabilities) or (ii) 25% of net income, excluding provision for depreciation and realized capital gains and losses and extraordinary items, and before deducting the Adviser's compensation and in no event may the annual operating expenses of the Trust during any fiscal year exceed  $1\frac{1}{2}\%$  of the quarterly average total invested assets of the Trust. "Operating expenses" for this purpose shall be defined as the total annual expenses of every character, other than the following: (1) interest and discounts and other costs of borrowed money; (2) taxes; (3) legal, auditing, underwriting, transfer agent's, registrar's and indenture trustee's and other fees and listing, registration, printing and other expenses and taxes incurred in connection with the issuance, distribution, transfer, registration and stock exchange listing of the Trust's securities; (4) fees and expenses paid to independent contractors employed by or on behalf of the Trust; (5) costs of insurance; (6) expenses of organizing, amending or terminating the Trust; (7) all expenses

42  
PM 1  
1971 APR 21  
1161

connected with distributions and communications to holders of securities of the Trust and the other bookkeeping and clerical work necessary in maintaining relations with holders of securities, including the cost of printing and mailing checks, certificates for securities, proxy solicitation materials and reports to such holders; (8) expenses directly connected with the acquisition, disposition and ownership of mortgage loans or other property, including, to the extent not paid by borrowers from the Trust, the costs of appraisal, legal services, brokerage and sales commissions, as well as the costs of foreclosure, maintenance, repair and improvement of property; and (9) provision for depletion, depreciation and amortization and provisions for losses. Not more than 49% of the Trustees or of any executive committee of the Trustees shall be affiliated (i.e., a director, officer, partner, trustee, employee or holder of more than 1% ownership interest) with the Adviser or its affiliates at any time, except that, upon death or resignation of an unaffiliated Trustee, such provision shall not be applicable for a period of 60 days.

SECTION 2.17. If the Trust shall be a so-called "F.H.A. Approved Mortgage," the Trustees are authorized and shall act pursuant to the rules and regulations of the Federal Housing Administration, and otherwise in accordance with the provisions of the National Housing Act or regulations promulgated thereunder, in purchasing, selling or otherwise disposing of any mortgage or mortgages or partial interest in such mortgage or mortgages insured by the Federal Housing Administration.

SECTION 2.18. The Trustees shall have the power to do all such matters and things as in their judgment will promote or advance the business which they are authorized to carry on although such matters or things are not herein specifically mentioned. In addition thereto, the Trustees shall have such powers, rights and duties as are prescribed by Tennessee Code Annotated, Section 48-1801 to 48-1804, inclusive.

SECTION 2.19. No Trustee, officer or Adviser of the Trust, or any person affiliated with any such persons, shall sell any property or assets to the Trust or purchase any property or assets from the Trust, directly or indirectly, nor shall any such person receive any commission or other remuneration, directly or indirectly, in connection with the purchase or sale of Trust assets, except pursuant to transactions that are fair and reasonable to the shareholders of the Trust and relate to: (1) the acquisition of property or assets at the formation of the Trust or shortly thereafter that is fully disclosed in the prospectus; (2) the acquisition by the Trust of federally insured or guaranteed mortgages at prices not exceeding the currently quoted prices at which the Federal National Mortgage

42  
1 PM  
1971 APR 21

Association is purchasing comparable mortgages; (3) the acquisition of other mortgages on terms not less favorable to the Trust than similar transactions involving unaffiliated parties; or (4) the acquisition by the Trust of other property at prices not exceeding the fair market value thereof as determined by independent appraisal. All such transactions and all other transactions in which any such persons have any direct or indirect interest shall be approved by a majority of the Trustees, including a majority of the independent Trustees, but not less than three. All commissions or remuneration received by the Adviser or any affiliate of the Adviser in connection with the purchase or sales of Trust assets shall be deducted from the advisory fee.

For the purposes of this Section 2.19 the term "independent contractor" means an "independent contractor," as defined in Section 856(d) (3) of the Internal Revenue Code, which furnishes or renders services to tenants of, or manages or operates real property owned by, the Trust.

### ARTICLE III

#### INVESTMENT OBJECTIVES AND POLICIES

SECTION 3.1. The general investment objectives of the Trust are to provide the shareholders with:

- (1) primarily, long-term capital appreciation potential and reasonably assured gradually increasing income through real estate ownership; and
- (2) secondarily, participation in the income from first mortgage construction loans.

No limitation is hereby set with respect to the proportion of the Trust's total assets which are to be invested in either real estate investment medium mentioned in this Section 3.1.

SECTION 3.2. The general purpose of the Trust is to invest in real estate equities and mortgage loans. In addition to first mortgage construction loans, the Trustees may acquire for investment so-called "permanent" mortgage loans, "development" mortgage loans, land loans, "warehousing" loans, "stand-by" loans, and "gap" loans and may make commitments to make any such investments. In addition to the investments specifically mentioned herein, the Trustees are authorized to make such other investments as they deem in the best interests of the Trust and its shareholders; provided, however, that the Trustees act to the best of their ability to at all times make investments in such a manner as to be consistent with the requirements of the Internal Revenue Code with respect to the composition of the Trust's investments and the derivation of its income.

1971 APR 21 PM 1 42

Association is purchasing comparable mortgages; (3) the acquisition of other mortgages on terms not less favorable to the Trust than similar transactions involving unaffiliated parties; or (4) the acquisition by the Trust of other property at prices not exceeding the fair market value thereof as determined by independent appraisal. All such transactions and all other transactions in which any such persons have any direct or indirect interest shall be approved by a majority of the Trustees, including a majority of the independent Trustees, but not less than three. All commissions or remuneration received by the Adviser or any affiliate of the Adviser in connection with the purchase or sales of Trust assets shall be deducted from the advisory fee.

For the purposes of this Section 2.19 the term "independent contractor" means an "independent contractor," as defined in Section 856(d) (3) of the Internal Revenue Code, which furnishes or renders services to tenants of, or manages or operates real property owned by, the Trust.

### ARTICLE III

#### INVESTMENT OBJECTIVES AND POLICIES

SECTION 3.1. The general investment objectives of the Trust are to provide the shareholders with:

- (1) primarily, long-term capital appreciation potential and reasonably assured gradually increasing income through real estate ownership; and
- (2) secondarily, participation in the income from first mortgage construction loans.

No limitation is hereby set with respect to the proportion of the Trust's total assets which are to be invested in either real estate investment medium mentioned in this Section 3.1.

SECTION 3.2. The general purpose of the Trust is to invest in real estate equities and mortgage loans. In addition to first mortgage construction loans, the Trustees may acquire for investment so-called "permanent" mortgage loans, "development" mortgage loans, land loans, "warehousing" loans, "stand-by" loans, and "gap" loans and may make commitments to make any such investments. In addition to the investments specifically mentioned herein, the Trustees are authorized to make such other investments as they deem in the best interests of the Trust and its shareholders; provided, however, that the Trustees act to the best of their ability to at all times make investments in such a manner as to be consistent with the requirements of the Internal Revenue Code with respect to the composition of the Trust's investments and the derivation of its income.

1971 APR 21 PM 1 42

SECTION 3.3. To the extent the Trust's funds are not otherwise invested, the Trust is permitted to invest in obligations issued or guaranteed by states or the federal government, or agencies thereof, as well as obligations of banks and savings institutions which are members of the F.D.I.C., obligations of the Federal Home Loan Bank System, obligations of the Federal National Mortgage Association, debt securities of corporate or other entities which are listed on a recognized securities exchange (but not more than 5% of the total assets of the Trust), and commercial paper, bankers' acceptances, loan participation certificates and other similar instruments of bank credit.

SECTION 3.4. In the furtherance of the investment objectives and policies, the Trustees are authorized to operate on a "leveraged" basis through the borrowing of funds; provided, however, that under no circumstances shall the Trustees incur indebtedness if, after giving effect thereto, the total indebtedness of the Trust would exceed 500% of the Trust's net assets. The total amount of encumbrance to which all of the real property of the trust shall be subject shall not be more than 75% of the fair market value of said property as confirmed by a competent independent appraiser. Real property subject to FHA or other governmentally insured encumbrance shall not be subject to the aforesaid 75% limitation.

SECTION 3.5. In limitation of the foregoing general statement of investment policies, the Trustees shall not:

(a) Invest more than five per cent (5%) of the total assets of the Trust in unimproved real property and loans secured by unimproved real property.

(b) Invest in commodities.

(c) Invest more than one per cent (1%) of its assets in real estate contracts of sale.

(d) Invest in any real property which is subject to a mortgage, deed of trust or other encumbrance to other than a bank, insurance company, mortgage banker or other institutional lender, except in the case of a purchase money mortgage.

(e) Engage in any short sale.

(f) Engage in trading as opposed to investment activities.

(g) Engage in the underwriting or the agency distribution of securities issued by others.

(h) Invest in junior mortgages other than junior mortgages which would normally have an original term not exceeding 120 months (except

1971 APR 21 PM 1 42

in the case of "gap" loans and "wrap-around" junior loans, and also in such an amount that the total indebtedness represented by the first mortgage and the amount loaned or advanced under the junior mortgage does not exceed 85% of the appraised fair market value of the property as improved.

(i) Invest in junior mortgages of the type otherwise permitted in an amount exceeding 10% of the total assets of the Trust.

(j) Invest in any mortgage loan if any obligor thereunder shall be primarily liable to the Trust in an amount exceeding 15% of the Trust's capital, surplus and subordinated debt.

(k) Issue shares which are "redeemable securities" as defined in Section 2 (a) (31) of the Investment Company Act of 1940, as amended.

(l) Hold securities in any corporate or other entity holding investments or engaging in activities prohibited by this Section 3.5; provided, however, that not more than 5% of the total assets of the Trust may be invested in securities of any other real estate investment trust and any securities listed for trading on a national securities exchange.

#### ARTICLE IV

##### LIMITATIONS OF LIABILITY OF SHAREHOLDERS, TRUSTEES AND OTHERS

SECTION 4.1. No shareholder, Trustee, officer or agent of this Trust shall be held to any personal liability in connection with Trust property or the affairs of this Trust, save only that arising from his own bad faith, wilful misfeasance, negligence, or reckless disregard of his duties; and all persons shall look solely to the Trust property for satisfaction of claims of any nature arising in connection with the affairs of this Trust. If the Trustees or any officers, agents or shareholders of the Trust are made parties to any suit or proceeding to enforce any such obligation or liability, they shall not on account thereof be held to any personal liability except as aforesaid. As used in this Section 4.1 and Section 4.2, "negligence" of a Trustee shall mean his failure to exercise that degree of care which an ordinary prudent trustee of a real estate investment trust would exercise under the same or similar circumstances.

SECTION 4.2. No Trustee, officer, or agent of this Trust shall be liable to this Trust, or to any shareholder, officer or agent thereof, on account of his own acts, negligence or defaults (including without limitation the



failure to compel in any way any former or acting Trustee to redress any breach of trust) except for such of his own acts, negligence and defaults as arise from his own bad faith, wilful misfeasance, negligence or reckless disregard of his duties. Except as aforesaid, each Trustee, officer and agent shall be entitled to reimbursement out of the Trust property for his reasonable expenses and outlays and to be exonerated and indemnified, to the extent that independent counsel for the Trust may deem lawful from time to time, for or against any and all loss, expenses and liability arising out of or in connection with the affairs of the Trust or which he may suffer because he is a Trustee hereunder. The Trustees shall not be obligated to give any bond or surety or other security for the performance of any of their duties.

SECTION 4.3. No purchaser, lender, transfer agent or other person dealing with the Trustees or with any officer or agent of the Trust shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by the Trustees or by their authorized officers or agents or be liable for the application of money or property paid, loaned or delivered to or on the order of the Trustees or of any such officer or agent. Every note, obligation, contract, instrument, certificate, share or undertaking, and every other act or thing whatsoever, executed in connection with the Trust shall be conclusively taken to have been executed or done only in their or his capacity as Trustees or Trustee under this Declaration of Trust or in the capacity of officer or agent of the Trust. Every such note, obligation, contract, instrument, certificate, share or undertaking made or issued by one or more of the Trustees or by any such officer or agent in his capacity as such shall recite that it is executed or made by them or him not individually but as Trustees or Trustee under this Declaration of Trust or as such officer or agent, and that the obligations thereof are not binding upon any of the Trustees, shareholders, officers or agents of the Trust, personally, but bind only the Trust property, and may contain any further recital which they or he may deem appropriate, but the omission of such recital shall not operate to impose personal liability on any of the Trustees, shareholders, officers or agents of the Trust. The Trustees shall, at all times, maintain insurance for the protection of the Trust, its shareholders, Trustees, officers and agents in such amounts and against such risks as the Trustees in their sole judgment shall deem advisable.

## ARTICLE V

### SHARES OF BENEFICIAL INTEREST AND OTHER SECURITIES

SECTION 5.1. No more than one class of shares of beneficial interest may be issued by the Trust. There shall be 10,000,000 shares of beneficial interest authorized for issuance which may be issued from time to time pursuant to this Declaration of Trust. All of such shares shall have a par value of One Dollar (\$1.00) each; all shall have equal voting power; and all shall represent an equal beneficial interest in all assets of the Trust and, in the event of liquidation of the Trust, shall have equal rights of distribution. Shareholders shall have no preemptive rights with respect to shares of the Trust except as set forth in Section 5.6, and shall have no rights of redemption and no conversion rights. All such shares as are issued, the full consideration for which has been paid or delivered, shall be deemed fully paid and not liable to any further call or assessment thereon and the holder of such shares shall not be liable for any further payments therefor. A transfer fee may be charged by the Trustees for recording in the Trust records the change in ownership of any share.

SECTION 5.2 Every shareholder shall be entitled to receive a certificate in such form as the Trustees shall from time to time approve specifying the number of shares held by him. The certificates in the form so approved shall be treated as negotiable and title thereto and to the shares represented thereby shall be transferred by delivery thereof to the same extent in all respects as a stock certificate and the shares represented thereby of an ordinary business corporation. Such certificates shall be signed by a Trustee and shall be countersigned by another Trustee or authorized employee of the Trust and may be countersigned by a transfer agent and registered by a registrar. Certificates may be signed or countersigned by the facsimile signature of a Trustee or authorized employee of the Trust; provided that any certificates so signed shall not be valid unless manually countersigned by a transfer agent, or a Trustee or a duly authorized employee of the Trust. There shall be filed with each transfer agent, if any, a copy of the form of certificate so approved by the Trustees and such form shall continue to be used unless and until the Trustees approve some other form.

SECTION 5.3. The Trustees in their discretion may from time to time, without vote of the shareholders, issue shares of this Trust, in addition to those already issued, to such party or parties, for such property or consideration, at such time or times, and on such term or terms as the Trustees

1971 APR 21 PM 1 42

may determine, and may in such manner acquire other assets (real, personal or mixed) and businesses, and no prior offering thereof to any of the shareholders hereunder need to be made except as provided in Section 5.6 hereof. In connection with any issuance of shares, the Trustees may issue fractional shares or, in lieu thereof, may provide for the issuance of scrip and may determine the terms of such scrip including, without limiting the generality of the foregoing, the time within which any such scrip must be surrendered for exchange into shares and the rights, if any, of holders of scrip to receive proportional distributions and to redeem scrip for cash. The provisions of Section 5.2 and Article VI relative to certificates for shares shall apply so far as applicable to such scrip, except that such scrip may, in the discretion of the Trustees, be signed by an authorized employee of the Trust or a transfer agent, if any, alone.

SECTION 5.4. The Trustees, in their discretion, may from time to time, without vote of the shareholders except as provided in Section 5.6, issue share purchase warrants (herein referred to as "warrants") which shall entitle the holders thereof to subscribe to shares and/or fractional shares or scrip at such time or times and on such terms as the Trustees may prescribe, including, without limiting the generality of the foregoing, the times within which any such warrants must be exercised and the consideration which shall not be less than the fair market value at the date of grant to be paid for such shares. Warrants may be issued to such parties and for such consideration as the Trustees may from time to time determine, including the issuance of detachable or nondetachable warrants as an inducement to persons acquiring or underwriting notes, debentures, bonds or other obligations, or shares, of the Trust; provided, however, that the exercise price of such warrants shall not be less than the fair market value (determined as provided in Section 5.5) of the shares on the date on which the Trustees establish said exercise price. The provisions of Section 5.2 and Article VI relative to certificates for shares shall apply so far as appropriate to such warrants, except that such warrants may, in the discretion of the Trustees, be signed by an authorized employee of the Trust or a transfer agent, if any, alone. The Trustees may not issue options or warrants to purchase the securities of the Trust to the Adviser of the Trust or any person affiliated with the Adviser, or to any other persons at exercise prices less than the fair market value of such securities on the date of grant.

SECTION 5.5. The shareholders shall upon demand disclose to the Trustees in writing such information with respect to direct and indirect ownership of shares as the Trustees deem necessary to comply with the provisions of the Internal Revenue Code or to comply with the require-

1971 APR 21 PM 1 42

ments of any other taxing authority. If the Trustees shall, at any time and in good faith, be of the opinion that direct or indirect ownership of shares of the Trust has or may become concentrated to an extent which is contrary to the requirements of Section 856(a) (5) and (6) of the Internal Revenue Code, then the Trustees shall have the power (i) to call for redemption a number of such concentrated shares sufficient, in the opinion of the Trustees, to maintain or bring the direct or indirect ownership of shares of the Trust into conformity with the requirements of said Section 856(a) (5) and (6) and (ii) to refuse to transfer shares to any person whose acquisition of the shares in question would, in the opinion of the Trustees, result in a violation of said Section 856(a) (5) or (6). The redemption price shall be equal to the fair market value of the shares as reflected in the latest bid quotation for the shares (if then traded over-the-counter) or the closing sale price (if then listed on a national securities exchange) on the business day preceding the day on which notice of redemption is sent, or, if no quotations or closing sale price for the shares are available, as otherwise determined in good faith by the Trustees. From and after the date fixed for redemption by the Trustees, the holder of any shares so called for redemption shall cease to be entitled to dividends, voting rights and other benefits with respect to such shares excepting only the right to payment of the redemption price fixed as aforesaid. For the purposes of this Section 5.5, the term "individual" shall be construed as defined in Section 542(a) (2) of the Internal Revenue Code, or any successor provision, and "ownership" of shares shall be determined as provided in Section 544 of the Internal Revenue Code.

SECTION 5.6. Shareholders shall have preemptive rights with respect to any shares, warrants or other rights to purchase shares of the Trust sold, offered or issued at any time, except that shareholders shall have no preemptive rights with respect to any shares, warrants or other rights to purchase shares (and no offering of any such securities need be made to shareholders or any of them) which shall be sold, offered or issued at any time in connection with any one or more of the following transactions:

- (a) the granting to employees of the Trust of options to purchase shares pursuant to any "qualified stock option plan" as that term is defined in Section 422 of the Internal Revenue Code, or any successor provision, or the sale of shares pursuant to the exercise of such an option; or
- (b) any sale, offer or issue of securities as a part or all of the consideration for the acquisition by the Trust of any interest or investment in real estate, mortgages or other properties; or

1971 APR 21 PM 1 42

(c) any sale, offer or issue of securities in connection with any public or private financing by the Trust.

SECTION 5.7. The Trustees may issue debentures, bonds, notes or other evidences of indebtedness, and these instruments shall have such rights as Trustees determine and shall be transferable and registered, if required, as the Trustees determine appropriate; provided, however, the Trustees may not issue debt securities to the public unless the historical cash flow of the Trust or the substantiated future cash flow of the Trust, excluding extraordinary items, is sufficient to cover the interest on the debt securities.

## ARTICLE VI

### TRANSFER OF SHARES AND OTHER SECURITIES; RECORD DATES

SECTION 6.1. A register shall be kept by or on behalf of the Trustees, under the direction of the Trustees, which shall show the number of shares of beneficial interest held by each beneficiary respectively and the numbers of the certificates representing the same and on which all transfers thereof may be recorded. Only holders of shares of record as shown by such register shall be entitled to vote or to receive payment of any dividend or other distribution and to have notice given to him as herein provided, and that only when he has given his address to a transfer agent or such other officer or agent of the Trustees as shall keep the said register for entry thereon.

SECTION 6.2. The Trustees shall have power to employ a transfer agent or transfer agents and a registrar or registrars. If employed they shall perform the duties usually performed by transfer agents and registrars of certificates of stock in a corporation except as modified by the Trustees.

SECTION 6.3. Signed certificates for shares in blank may be deposited with any transfer agent of this Trust or with an employee of the Trust to be used by the transfer agent or employee as the case may be in accordance with authority conferred upon it or said employee as occasion may require and, in so doing, the signers of such certificate shall not be responsible for any loss resulting therefrom. In case any one or more Trustees, officers, or other persons who shall have signed certificates shall resign before such certificates shall have been actually issued, such cer-

1971 APR 21 PM 1 42

certificates may nevertheless be issued with the same effect as though the person who signed such certificates had not ceased to be such authorized person.

SECTION 6.4. Except as limited by Section 5.5. above or by other reasonable restriction, notice of which shall be printed on the face of said shares, shares shall be transferable on the records of the Trust. Such transfers may be made (other than by operation of law) only by the record holder thereof, or by his agent thereunto duly authorized in writing, upon delivery to the Trustees or their authorized employees or transfer agent of the certificate or certificates therefor properly endorsed or accompanied by duly executed instrument or instruments of transfer, together with such evidence of the genuineness of each such endorsement, execution and authorization and of other matters as may be reasonably required. Upon such delivery, the transfer shall be recorded on the register of the Trust and a new certificate for the shares so transferred shall be issued to the transferee and, in case of a transfer of only a part of the shares represented by any certificate, a new certificate for the residue thereof shall be issued to the transferor. Until such record is made, the shareholder of record shall be deemed to be the holder of such shares for all purposes hereof and neither the Trustees nor any transfer agent or registrar nor any officer or agent of the Trustees shall be affected by any notice of the proposed transfer. The Trustees shall not be liable to either transferor or transferee for any delays in effectuating a transfer.

SECTION 6.5. Any person becoming entitled to any shares in consequence of the death, bankruptcy or insolvency of any shareholder, or otherwise by operation of law, shall be recorded as the holder of the shares and receive a new certificate for the same upon production of the proper evidences thereof and delivery of the existing certificates to the Trustees or a transfer agent of this Trust. Until such record is made, the shareholder of record shall be deemed to be entitled to the shares so registered and neither the Trustees nor any transfer agent or registrar nor any officer, agent or employee of the Trustees shall be affected by any notice of such death, bankruptcy, insolvency or other event.

SECTION 6.6. The Trustees may treat two or more persons holding any share as joint tenants of the entire interest therein unless their ownership is expressly otherwise recorded on the register of the Trust, but no entry shall be made in the register or in any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any share; provided, however, that any person recorded as a holder of any

1971 APR 21 PM 1 42

share may, subject to the provisions hereinafter contained, be described in the register or in any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

SECTION 6.7. The Trustees shall not, nor shall the shareholders or any officer, transfer agent or other agent of this Trust or of the Trustees, be bound to see to the execution of any trust, express, implied or constructive, or of any charge, pledge or equity to which any of the shares of the Trust or any interests therein are subject, or to ascertain or inquire whether any sale or transfer of any such shares or interest therein by any shareholder or his personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein except the persons recorded as such shareholders. The receipt or purported receipt of the person in whose name any share is recorded, or, if such share is recorded in the names of more than one person, the receipt or purported receipt of any one of such persons, or of the duly authorized agent of any such person or persons, shall be a sufficient discharge for all dividends and other money and for all shares, bonds, obligations, and other property payable, issuable or deliverable in respect to such share and from all liability to see to the application thereof.

SECTION 6.8. Any and all notices to which shareholders hereunder may be entitled and any and all communications shall be deemed duly served or given if mailed, postage prepaid, addressed to shareholders of record at their last known post office address as recorded on the register of the Trustees.

SECTION 6.9. In case of the loss, mutilation or destruction of any certificate of shares hereunder, the Trustees may issue or cause to be issued a new certificate on such terms as they may see fit.

SECTION 6.10. For the purpose of determining the shareholders who are entitled to vote or act at any meeting or any adjournment thereof, or who are entitled to participate in any dividend, the Trustees may from time to time close the transfer books for such period, not exceeding forty days, as the Trustee may determine; or without closing the transfer books the Trustees may fix a date not less than ten days and not more than forty days prior to the date of any meeting of shareholders or dividend payment as a record date for the determination of shareholders entitled to vote at such meeting or any adjournment thereof or to receive such dividend; and any shareholder who was a shareholder at the time so fixed shall be enti-

1971 APR 21 PM 1 42

ted to vote at such meeting or any adjournment thereof or to receive such dividend even though he has since that date disposed of such shares, and no shareholder becoming such after said date shall be so entitled to vote at said meeting or any adjournment thereof or to receive such dividend.

## ARTICLE VII

### CHARACTERISTICS OF SHARES

SECTION 7.1. The ownership of the Trust property of every description and the right to the conduct of any business hereinbefore described are vested exclusively in the Trustees, and the shareholders shall have no interest therein other than the beneficial interest conferred by their shares issued hereunder, and they shall have no right to call for any partition or division of any property, profits, rights or interests.

SECTION 7.2. The shares issued hereunder shall be personal property giving only the rights in this instrument and in the certificates therefor specifically set forth. The death of a shareholder during the continuance of this Trust shall not terminate the Trust nor give his or her legal representative a right to an accounting or to take any action, in the courts or otherwise, against other shareholders or the Trustees or the property held hereunder, but shall simply entitle the legal representatives of the deceased shareholder to demand and receive a new certificate for shares in place of the certificate held by the deceased shareholder upon the issuance of which such legal representative shall succeed to all rights of the deceased shareholder under this Trust.

SECTION 7.3. The Trustees, or any of them, may, in their individual capacity, purchase and otherwise acquire, or sell and otherwise dispose of, shares issued hereunder and in so doing shall be subject to the same limitations as a director of an ordinary business corporation.

SECTION 7.4. The Trustees may, on behalf of the Trust, at any time purchase or otherwise acquire outstanding shares in the Trust for such consideration and on such terms as they may deem proper. Shares so purchased or acquired by the Trustees on behalf of the Trust shall not, so long as they belong to the Trust, receive dividends or distributions or be entitled to any voting rights or be deemed outstanding for any purpose hereunder. Such shares may, in the discretion of the Trustees, be can-

42  
1971 APR 21 PM 1



shall and shall be deemed to have been so received and shall be outstanding and transferred at such times, to such parties and for such consideration as the Trustees may determine.

SECTION 7.5. The shareholders shall not be subject to any personal liability for the acts or obligations of the Trust and every written undertaking made by the Trust shall contain a provision that such undertaking is not binding upon any of the shareholders personally and that the parties contracting with the Trust shall look only to the assets of the Trust for the satisfaction of any obligations under such contracts or undertakings. Upon the payment by any shareholder of any liability incurred by reason of being a shareholder of the Trust, such shareholder will be entitled to reimbursement from the general assets of the Trust.

## ARTICLE VIII

### MEETINGS OF SHAREHOLDERS

SECTION 8.1. Annual meetings of the shareholders shall be held at such place and time as the Trustees may designate after delivery to shareholders of the annual report described in Section 9.3 and, in any event, within six months after the end of each fiscal year. Special meetings of the shareholders shall be called at any time and place when ordered by a majority of the Trustees, or upon the written request of the holders of twenty-five (25%) percent of the outstanding shares, specifying the purpose or purposes for which such meeting is called. If for any reason the annual meeting of the shareholders as herein provided for shall be omitted, a special meeting of the shareholders may subsequently be held in lieu thereof and the business of the annual meeting may be transacted thereat.

SECTION 8.2. Notice of all meetings of the shareholders shall be given by the Trustees by mail to each shareholder at his registered address, mailed not less than ten days and not more than forty days before the meeting. No business shall be transacted at any special meeting of the shareholders unless notice of such business has been given in the call for the meeting. Any adjourned meeting may be held as adjourned without further notice.

SECTION 8.3. No action taken by the shareholders at any meeting other than the election of Trustees or an action of the type specified in Sections 10.1, 10.3, 13.1 and 13.2 hereof (and then only if such action is

1971 APR 21 PM 1 43

taken by the percentage of shares therein specified) shall in any way bind the Trustees.

SECTION 8.4. At any meeting of the shareholders, any holder of shares entitled to vote thereat may vote by proxy. Pursuant to a resolution of a majority of the Trustees, proxies of the shareholders may be solicited in the name of one or more of the Trustees or one or more of the officers, employees or representatives of the Trust. Each full share shall be entitled to one vote. Fractional shares shall not be entitled to any vote. When any share is held jointly by two or more persons, any one of them may vote at any meeting, in person or by proxy, in respect of such share, but if more than one of them shall be present at such meeting, in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such share. If the holder of any share is a minor or a person of unsound mind, and subject to guardianship or to the legal control of any other person as regards the charge or management of such share, he may vote by his guardian or such other person appointed by him or having such control, and such vote may be given in person or by proxy.

SECTION 8.5. The presence, in person or by proxy, of the holders of a majority of the shares issued, outstanding, and entitled to vote, shall be necessary to constitute a quorum at all meetings of shareholders for the transaction of business. If a quorum shall not be present a majority of the shareholders entitled to vote, present in person or represented by proxy, shall have power to adjourn from time to time the meeting until a quorum shall be present and represented.

## ARTICLE IX

### REPORTS AND DISTRIBUTIONS TO SHAREHOLDERS

SECTION 9.1. The Trustees shall from time to time distribute ratably among the shareholders such proportion of the net profits and surplus (including capital or paid-in surplus) held by the Trustees as they may deem proper, except that they shall distribute annually such amount of the real estate investment trust taxable income, as determined under Section 857 of the Internal Revenue Code, as may from time to time be required by said Internal Revenue Code in order that this Trust qualify and continue to be qualified as a real estate investment trust within the meaning of the Internal Revenue Code; the Trustees shall make such com-

1971 APR 21 PM 1 43

putation of real estate investment trust taxable income in good faith, but they shall not be liable for errors in computation. Distributions may be made in cash or property (including without limitation any kind of obligations of the Trust or any assets thereof) and the Trustees may distribute ratably among the shareholders additional shares issuable hereunder in such manner and on such terms as the Trustees may deem proper. The amount of all distributions and the time of declaration and payment thereof shall be wholly in the discretion of the Trustees. Such distributions may be made even though the stated capital and capital or paid in surplus of this Trust at the time of any distribution exceeds the net assets of the Trust, based either on the market value (as determined by the Trustees under Section 2.13 hereinabove) or the depreciated cost of the investments and other assets of the Trust, subject to the provisions of the laws of the State of Tennessee.

SECTION 9.2. All distributions to shareholders shall be accompanied by a statement in writing, advising the shareholders of the source of the funds so distributed so that distributions of income and returns of capital will clearly be distinguished; but if the source thereof is not then determinable, the communication shall so state and shall disclose the approximate effect of the distribution upon stated capital, capital surplus and earned surplus, in which event the definitive statement of the source of funds distributed shall be forwarded to shareholders within sixty days after the close of the fiscal year in which the distribution is made.

SECTION 9.3. The Trustees shall cause to be prepared and shall furnish to the shareholders, within 120 days after the end of each fiscal year, an annual report containing financial statements of the Trust audited by independent public accountants, including a balance sheet as at the end of such year and statements of income and surplus for such year. A copy of such report, including the opinion of such independent public accountants, shall be filed with the administrator of any state securities commission which shall request same. In addition, interim reports of operations, containing a current balance sheet (which may be unaudited) and other pertinent information regarding the Trust and its activities in the quarter covered by the report, shall be furnished within 60 days after the end of each of the first three fiscal quarters to the administrator of any state securities commission which shall request the same.

SECTION 9.4. The records of the Trust shall be open to inspection by shareholders of the Trust to the same extent as is permitted shareholders of corporations under Tennessee law, and shall be open to inspection at

any reasonable time by the administrator of any state securities commission which shall request such inspection.

## ARTICLE X

### TRUSTEES

SECTION 10.1. The number of Trustees shall be a minimum of three with such additional number as the Trustees determine appropriate from time to time. All Trustees shall hold office for a term of one year and until their successors are elected at the next annual meeting of shareholders and shall qualify. When a vacancy in the number of Trustees shall occur, until such vacancy is filled as provided in Section 10.5, the continuing or surviving Trustee or Trustees, regardless of their number, shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Declaration of Trust.

SECTION 10.2. Any Trustee may resign his Trust by instrument in writing signed by him and delivered or mailed to the Managing Trustee, and such resignation shall take effect immediately or at a later date according to its terms.

SECTION 10.3. Any or all of the Trustees may be removed and a new Trustee may be elected to take the place of each Trustee so removed (provided the aggregate number of Trustees after such removal and election shall not be less than three) either (i) at any meeting of the shareholders called for the purpose, by the affirmative vote of the holders of not less than a majority of the shares then outstanding hereunder and entitled to vote, or (ii) at any meeting of the shareholders called for the purpose of acting upon a recommendation of a majority of the Trustees as to the removal and election of one or more Trustees, by the adoption of such recommendation by an affirmative vote of not less than a majority in interest of the shares then present and voting.

SECTION 10.4. The death, resignation, or removal of any one or more of the Trustees shall not operate to annul the Trust or to revoke any existing agency created pursuant to the terms of this Declaration of Trust.

SECTION 10.5. In case a vacancy in the number of Trustees shall occur through death, resignation, incompetence or other incapacity to exercise the duties of the office, or removal (unless the vacancy occurring through

1971 APR 21 PM 1 20

removal has already been filed by the shareholders acting pursuant to the provisions of Section 10.5 hereof), the remaining Trustee or Trustees may fill such vacancy by appointing, by an instrument in writing signed by a majority of the remaining Trustees, such person as they or he in their or his absolute discretion shall see fit, subject to the approval, at the next annual meeting, of the holders of a majority of the shares of the Trust then present and voting. Thereupon the Trust property shall vest in the new Trustee or Trustees jointly with the continuing Trustee or Trustees without any further act or conveyance.

SECTION 10.6. Meetings of the Trustees shall be held from time to time upon the call of the Managing Trustee or of any two or more of the other Trustees. Notice of any meetings shall be given not less than three days before the meeting but may be waived by the Trustees either before or after such meeting. The Trustees may take any action which they are required or permitted to take without a meeting on the written consent, setting forth the action so taken, of all the Trustees entitled to vote thereon. At any meeting a majority of the Trustees shall constitute a quorum. The terms "majority of the Trustees" whenever used herein shall mean more than one-half of the total number of Trustees then in office when three or more Trustees are in office, and shall mean one Trustee if only one Trustee is in office, and shall mean both Trustees if only two Trustees are in office. Any deed, mortgage, lease or other instrument or writing executed by one or more of the Trustees shall be valid and binding upon the Trustees and upon the Trust when authorized by a vote or writing passed or signed as above provided.

SECTION 10.7. The Trustees may receive reasonable compensation for their general services as Trustees hereunder, and such compensation for special services as they may in good faith deem advisable. The annual aggregate compensation of the Trustees, excluding expenses, shall not, however, exceed one fourth of one percent of net assets of the Trust (as defined in Section 2.16) determined at the close of the preceding fiscal year; provided, however, that such limitation shall apply only for fiscal years beginning on or after July 1, 1973.

SECTION 10.8. The Trustees may adopt, and from time to time amend or repeal, bylaws for the conduct of their business, and in such bylaws may define duties of their officers, agents, servants, and representatives.

SECTION 10.9. The Trustees, acting unanimously, may appoint from among their own number an executive committee of two or more persons to whom they, acting unanimously, may delegate such of the powers here-

1971 APR 21 PM 1 43

is given to the Trustees as they may deem expedient, except as herein otherwise provided.

SECTION 10.10. The Trustees may appoint a consulting committee. Members of this committee shall not be Trustees or officers of the Trust, but may be shareholders or retired Trustees. They shall be entitled to such remuneration for their services as the Trustees from time to time deem appropriate. The Trustees may at any time remove any member and may appoint new or additional members. Any member of this committee may resign by giving written notice of his resignation to the Trustees. It shall be the duty of the consulting committee to consult with and advise the Trustees as to the investment of the Trust property and other matters relating to the business and affairs of the Trust. This committee shall have no power or authority to make any contract or incur any liability whatever or to take any action binding upon the Trust, the Trustees, or the shareholders. The provisions of Article IV hereinabove and elsewhere in this instrument relative to exemption from personal liability of the Trustees, officers, and agents of the Trustees, officers, and agents of the Trust shall apply in all respects to members of the consulting committee.

SECTION 10.11. The Trustees shall not, in dealing with any Trustee or Trustees individually, or any investment adviser, officer or employee of the Trust, enter into any transactions contrary to the obligations which would be imposed upon fiduciaries acting under this Declaration of Trust by the Tennessee courts of equity.

## ARTICLE XI

### OFFICERS

SECTION 11.1. The officers of the Trust shall consist of a Managing Trustee, a President, a Secretary, a Treasurer, and such other officers, assistant officers and agents as may be deemed necessary by the Trustees, each of whom shall be elected annually by the Trustees. Any two or more offices may be held by the same person, except the offices of President and Secretary. Officers need not be Trustees or shareholders of the Trust. The Trustees shall fix the compensation of all officers whom they may elect or appoint.

1971 APR 21 PM 1 43

**SECTION 11.2.** Whenever vacancies shall occur in any office by death, resignation, increase in the number of offices of the Trust, or otherwise, the same shall be filled by the Trustees at any regular or special meeting, and the officer so elected shall hold office until the successor is chosen and qualified.

**SECTION 11.3.** The Managing Trustee shall preside at all meetings of the Trustees and shareholders. He shall have active executive management of the operations of the Trust, subject, however, to the control of the Trustees.

**SECTION 11.4.** The President shall have active executive management of the operations of the Trust, subject, however, to the control of the Managing Trustee. In the absence of the Managing Trustee, he shall preside at meetings of the shareholders and he shall perform such other duties as the Trustees from time to time may prescribe.

**SECTION 11.5.** The Secretary shall attend all meetings of the shareholders and of the Trustees and shall keep a true and complete record of the proceedings of these meetings. He shall be custodian of the records of the Trust. He shall attend to the giving of all notices and shall perform such other duties as the Trustees from time to time may prescribe.

**SECTION 11.6.** The Treasurer shall keep correct and complete records of account showing accurately at all times the financial condition of the Trust. He shall be the legal custodian of all monies, notes, securities and other valuables that may from time to time come into the possession of the Trust. He shall furnish at meetings of the Trustees, or whenever requested, a statement of the financial condition of the Trust and shall perform such other duties as the Trustees may from time to time prescribe.

**SECTION 11.7.** The duties of other officers elected by the Trustees shall be such as are customary to their respective offices and as shall be given them by the Trustees.

## ARTICLE XII

### DURATION OF TRUST

Unless this Trust shall be earlier terminated in accordance with the provisions of Article XIII hereof, it shall continue until the expiration of twenty years after the death of the last of such of the children of the following named persons as were alive on the 1st day of June, 1969:

1971 APR 21 PM 1 43

The children of Ernest C. Stangel, Sr., all of whom reside at 171  
Pine, Nashville, Tennessee, namely:

Marc E. Stangel, born January 10, 1966;  
Christian S. Stangel, born March 28, 1969; and  
Eric L. Stangel, born July 10, 1961.

The children of James E. Foran, all of whom reside at Yale Avenue,  
Winnipeg, Manitoba, Canada, namely:

Allan F. Foran, born August 22, 1962;  
James M. Foran, born October 10, 1964;  
Neil B. Foran, born March 30, 1966;  
Jennifer L. Foran, born November 18, 1967; and  
Colin E. Foran, born November 15, 1969.

The children of Theodore D. Taubeneck, all of whom reside at 171  
LongueVue Drive, Mt. Lebanon, Pennsylvania, namely:

Steven Taubeneck, born October 20, 1952;  
Ann Taubeneck, born January 23, 1954;  
David Taubeneck, born July 23, 1955;  
Lee Taubeneck, born September 28, 1956;  
Kathrine Taubeneck, born September 24, 1958;  
Amy Taubeneck, born October 17, 1959;  
Beth Taubeneck, born January 30, 1962;  
Molly Taubeneck, born October 28, 1963; and  
Paul Taubeneck, born March 31, 1965.

### ARTICLE XIII

#### TERMINATION OR AMENDMENT OF TRUST

SECTION 13.1. The provisions of this Declaration of Trust may be amended or altered, except as to the exemptions from personal liability of the shareholders and the prohibitions of assessments upon shareholders, or the Trust may be terminated, only with the consent of the holders of at least two-thirds of the shares then outstanding. Notwithstanding the foregoing, after fifteen days' written notice to the shareholders of the proposed action, the Trustees may (subject to the rights of shareholders to rescind such action at the next meeting of shareholders), from time to time by a majority vote of the Trustees, amend or alter the provisions of this Declaration of Trust, without the vote or assent of the shareholders.

1971 APR 21 PM 1 43



to the extent deemed by the Trustees in good faith to be necessary to meet the requirements for qualification as a real estate investment trust under the provisions of the Internal Revenue Code or any regulations or rulings thereunder promulgated by the Treasury Department or any interpretation of such statutory provisions or regulations contained in any court decision. A certificate signed and acknowledged by a Trustee that such action was taken in accordance with, and by the affirmative vote required by, this Declaration of Trust shall be recorded as provided by law. Upon the termination of the Trust the Trustees may sell all the Trust property and, after paying or providing for all outstanding obligations and receiving due security against any possible or contingent liabilities that may arise against them, divide the net proceeds or distribute the remaining assets in kind among the shareholders in proportion to their respective interests and ownership of shares. The powers of the Trustees shall continue until the affairs of the Trust have been wound up.

SECTION 13.2. At any meeting of the Trustees called for the purpose, the Trustees may by the affirmative vote of two-thirds of the total number of Trustees, or by an instrument signed by all of the Trustees, and with the consent of the holders of at least two-thirds of the shares then outstanding, direct the organization of a corporation, association, trust, or other organization to take over the Trust property and carry on the affairs of the Trust, and sell, convey and transfer the Trust property to any such corporation, association, trust or organization in exchange for shares or securities thereof, or beneficial interests therein, and the assumption by such transferee of the liabilities of the Trust, and thereupon to terminate the Trust, and deliver such shares to shareholders of this Trust in redemption of their shares in the Trust; or cause all or any part of the assets of the Trust to be transferred to one or more corporations already in existence in exchange for capital stock of such corporation or corporations and thereafter either continue to hold stock of such corporation as part of Trust property or distribute the capital stock of such corporation or corporations pro rata to the shareholders in proportion to their respective share holdings in the Trust; or cause this Trust to be merged or consolidated with any other corporation, association, trust or other organization.

SECTION 13.3. The provisions of Sections 10.1, 10.3, 13.1 and 13.2 giving the shareholders the right to elect and remove Trustees and the right to amend and terminate the Trust shall be subject to the requirements of the Internal Revenue Code. If any provision granting or limiting such shareholders' rights shall conflict with the requirements of the Internal

57 1 PM 21 1971 APR 14/



Revenue Code, such provision shall be deemed to be void and without any force or effect ab initio, and the Trustees shall promptly notify the shareholders of such fact, but the Trustees shall not be liable for any action taken pursuant to any such provision upon the vote of the Trustees required hereunder. In the event that the provisions relating to the election of Trustees by the shareholders of the Trust shall be deemed to be without force or effect, the Trustees then in office shall be deemed to be the qualified and acting Trustees until such time as their successor Trustees have been named and qualified. At the next meeting of shareholders after the Trustees shall have notified the shareholders that any or all of the shareholders' rights under Sections 10.1, 10.3, 13.1 and 13.2 created such a conflict and therefore shall be without force and effect, there shall be submitted to the shareholders, for their approval or disapproval by a majority of those voting, the question as to whether such shareholders' right or rights should be continued.

#### ARTICLE XIV

##### MISCELLANEOUS

SECTION 14.1. The term "Trustee" as herein used shall mean, where the context admits, such of the undersigned or their duly elected and qualified successors as shall be at the time be acting as Trustees hereunder.

SECTION 14.2. This instrument is executed by the Trustees to be recorded in Davidson County, State of Tennessee, and with reference to the laws thereof, and the rights of all parties and the construction and effect of every provision hereof shall be subject to and construed according to the laws of said State.

SECTION 14.3. This Declaration of Trust may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

EX-1 194 12 1984 1161



**ARTICLE IV**

**COMPLIANCE WITH PROVISIONS OF INTERNAL REVENUE CODE**

The Trustees, in exercising the powers herein granted to them, shall exercise due diligence to so conduct the affairs of the Trust as to qualify the Trust and its shareholders, as promptly as possible, for the income tax treatment provided by Part II, Subchapter 1, of the Internal Revenue Code as presently existing or as hereinafter amended from time to time; provided, however, that no Trustee, officer or agent of this Trust shall be liable for any act or omission resulting in the loss of tax benefits under that law, except for that arising from his own bad faith, wilful misfeasance, gross negligence, or reckless disregard of his duties.

1974 APR 12 PM 1:24

1. The date the original Declaration of Trust was filed by the Secretary of State was June 29, 1969.

2. The foregoing Restated Declaration of Trust restates the text of the Declaration of Trust, as previously amended, without making any further amendment or change and was duly adopted at a meeting of the Trustees on April 21, 1971.

3. The names and addresses of the Trustees of the Trust as of the date hereof are as follows:

Donald W. MacLeod  
15th Floor  
Third Nat. Bank Bldg.  
Nashville, Tenn. 37219

Jack W. Burd  
First Mortgage Corp.  
1512 Willow Lawn Dr.  
Richmond, Va. 23214

Buford Ellington  
807 Glen Leven Dr.  
Nashville, Tenn. 37204

Herschel L. Greer  
Guaranty Mortgage Co.  
311 7th Avenue, N.  
Nashville, Tenn. 37219

J. Owen Howell, Jr., President  
GENESCO Inc.  
111 7th Avenue, N.  
Nashville, Tenn. 37219

John N. Maguire  
The Mortgage Corp. of America  
1175 N. E. 125th St.  
North Miami, Fla. 33161

D. W. Johnston  
Third National Bank  
Nashville, Tenn. 37202

Kermit C. Stengel, Jr.  
Third Nat. Bank Bldg.  
Nashville, Tenn. 37219

Louis P. Wolfert  
1111 S. Jefferson Davis Parkway  
P. O. Box 13766  
New Orleans, La. 70125

Dated April 21, 1971.

INVESTORS REALTY TRUST

By   
Donald W. MacLeod,  
Managing Trustee and President

1971 APR 21 PM 1 45

I, JOE C. CARR, Secretary of State, do hereby certify  
that the RESTATED DECLARATION OF TRUST, with certificate  
attached, the foregoing of which is a true copy, was this day  
registered and certified to by me. This the 21st day of April, 1971.

JOE C. CARR,  
SECRETARY OF STATE

FEE: \$22.00

DT

157

DT/57

D. T. #157

**INVESTORS REALTY TRUST**

**Amendment**

**FILED IN OFFICE OF DEPARTMENT  
OF STATE, STATE OF FLORIDA,  
by mb , on 1-31-72**

**RICHARD (DICK) STONE  
SECRETARY OF STATE**



RICHARD (DICK) STONE  
SECRETARY OF STATE

STATE OF FLORIDA  
**Department of State**  
THE CAPITOL  
TALLAHASSEE 32304

ROY L. ALLEN, DIRECTOR  
DIVISION OF CORPORATIONS

February 2, 1972

William P. Johnston, Esquire  
Attorney At Law  
American Trust Building  
Nashville, Tennessee 37201

Dear Sir:

Subject: **INVESTORS REALTY TRUST**

This will acknowledge receipt of the following documents for the above captioned corporation:

- ☒ 1. Check in the amount of \$ 15.
- ☐ 2. Articles of Incorporation
- ☒ 3. Amendment to Articles of Incorporation (Declaration of Trust)
- ☐ 4. Articles of Merger or Consolidation
- ☐ 5. Certificate of Withdrawal received and filed
- ☐ 6. Limited Partnership

Enclosed please find:

- ☐ 1. Invoice No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_
- ☐ 2. Resident Agent Form (to be completed and returned for filing).
- ☐ 3. Certified copy (s)
- ☐ 4. Certificate Under Seal
- ☐ 5. Photocopy (s)
- ☐ 6. A refund of \$ \_\_\_\_\_ will be forwarded later
- ☐ 7. Enclosures or details of filing:

Filed: January 31, 1972.

Sincerely,

RICHARD (DICK) STONE  
Secretary of State

By  
Murray McLaughlin, Chief  
Bureau of Corporation Records

RM/mb

corp-2  
1-5-71

Enclosures



LAW OFFICES  
**WALLER LANSDEN DORTCH & DAVIS**  
AMERICAN TRUST BUILDING  
NASHVILLE, TENNESSEE 37201

TELEPHONE  
(615) 244-6380

WILLIAM WALLER  
D. L. LANSDEN  
LAWRENCE DORTCH  
WILLIAM WALLER, JR.  
MACLIN P. DAVIS, JR.  
ROBERT G. McCULLOUGH

January 27, 1972

ROBERT C. HENDON, JR.  
JAMES R. CHESHIRE, III  
C. JUDSON HARWOOD, JR.  
WILLIAM E. MARTIN  
WILLIAM L. BROOKS  
WILLIAM P. JOHNSTON

Department of State  
Corporations Division  
Capitol Building  
Tallahassee, Florida 32304

Attention: Miss Jane Holt

Re: Investors Realty Trust

Gentlemen:

On behalf of Investors Realty Trust, a real estate investment trust organized under the laws of the State of Tennessee and qualified to do business in the State of Florida, I am enclosing herewith Articles of Amendment to the Restated Declaration of Trust for filing in your office, together with this firm's check in the amount of \$15.00 in payment of the fee incident to such filing and the issuance by your office of a certified copy of the Articles of Amendment. Please return the certified copy of the Articles of Amendment to the undersigned. To this end I enclose self-addressed stamped envelope.

Thank you for your consideration in this matter.

Very truly yours,

*William P. Johnston*  
William P. Johnston

WPJ:ljd

Enclosures

JAN 31 1 36 PM '72  
12100 \*\*\*\*15.00

FILED

SECRETARY OF STATE	
TALLAHASSEE, FLORIDA	
SEARCHED	15
TOTAL	
BALANCE DUE	
REFUND	

# State of Tennessee



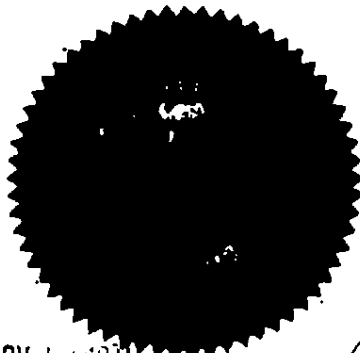
## Department of State

I, JOE C. CARR, Secretary of State of the State  
of Tennessee, do hereby certify that the attached is a true  
and correct copy of the Articles of Amendment to the  
Restated Declaration of Trust of

### INVESTORS REALTY TRUST

which was recorded in this office at Nashville, Tennessee  
on November 12, 1971 in Corporation Record Amendment  
Book P-54, Page 1322.

FILED  
JAN 31 1 36 PM '72  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA



IN WITNESS WHEREOF, I have hereto affixed my signature  
and the Great Seal of the State, at Nashville, this 12th  
day of November in the year of our Lord  
nineteen hundred 71

*Joe C. Carr*

Secretary of State

REC'D NOV 1 1971

J.C.

COUNTY, TENN.

PAGE 139

139

NOVEMBER 12, 1971

P-54, PAGE 1322

ARTICLES OF AMENDMENT  
TO THE  
RESTATED DECLARATION OF TRUST  
OF  
INVESTORS REALTY TRUST

Pursuant to the provisions of Section 48-303 of the Tennessee General Corporation Act, Tennessee Code Annotated Section 48-1804 and Section 13.1 of the Restated Declaration of Trust, the undersigned unincorporated business trust adopts the following Articles of Amendment to its Restated Declaration of Trust:

1. The name of the trust is Investors Realty Trust.

2. The amendments adopted are:

(a) The following shall be inserted as the penultimate sentence of Section 2.16:

" 'Operating expenses' for this purpose shall include costs of loan administration not paid by the borrower and mortgage servicing fees paid by the Trust."

(b) After the term "cost of insurance" in Section 2.16(5), there shall be inserted:

"(not including the cost of any Trustees' or officers' liability or indemnification insurance)."

3. The amendments were duly proposed by the Board of Trustees of the Trust and were duly adopted by the holders of two thirds (2/3) of the Shares of Beneficial Interest of the Trust then outstanding at the Annual Meeting of Shareholders' on October 27, 1971.

Dated November 10, 1971.

INVESTORS REALTY TRUST

By Donald W. MacLeod  
Donald W. MacLeod  
President and Managing Trustee

FILED  
JAN 31 1 36 PM '72  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

51 11 AM '71 NOV 12

P-54, PAGE 1323

I, JOE C. CARR, Secretary of State, do hereby certify  
that this amendment to charter, with certificate attached, the  
foregoing of which is a true copy, was this day registered and  
certified to by me. This the 12th day of November, 1971.

JOE C. CARR,

SECRETARY OF STATE

FEE: \$10.00

141



Filed 9:50 O'clock A M.

Registered to Heul  
Beck 217 No. 139  
J. B. Beck & Co.

DT

RECEIVED

VIDEO COMPLETE

MICROFILM ROLL 9

157

(b)

DT 157 (b)

C-464

D.T. #157 (b)

INVESTORS REALTY TRUST

AMENDMENT

FILED IN OFFICE OF DEPARTMENT  
OF STATE, STATE OF FLORIDA,  
by lp, on 10-19-73

RICHARD (DICK) STONE  
SECRETARY OF STATE



## Secretary of State

STATE OF FLORIDA  
THE CAPITOL  
TALLAHASSEE 32304

RICHARD (DICK) STONE  
SECRETARY OF STATE

C T Corporation System  
1820 First National Bank Tower  
Atlanta, Georgia 30303

Attn: George F. Robinson

D.T.#157

Dear Mr. Robinson:

October 24, 1973

Subject: INVESTORS REALTY TRUST

This will acknowledge receipt of the following documents for the above captioned corporation:

- xx 1. Check in the amount of \$ 15.
  - 2. Articles of Incorporation
  - xx 3. Amendment to Articles of Incorporation (Declaration of Trust)
  - 4. Articles of Merger or Consolidation
  - 5. Certificate of Withdrawal received and filed
  - 6. Limited Partnership
- Enclosed please find:
- 1. Invoice No. in the amount of \$
  - 2. Certified Copy (s)
  - 3. Certificate under Seal
  - 4. Photocopy (s)
  - 5. A refund of \$ will be forwarded later
  - 6. Enclosures or details of filing:

Filed: October 19, 1973

Sincerely,

NOTE: INVESTORS REALTY TRUST  
was filed on April 30, 1971.

RICHARD (DICK) STONE  
Secretary of State

By *David S. Jones*  
David S. Jones, Chief  
Bureau of Corporation Records

corp-2  
7/23/73

DSJ/ lp  
Enclosures



# C T CORPORATION SYSTEM



Associated with The Corporation Trust Company

1820 FIRST NATIONAL BANK TOWER, ATLANTA, GA. 30303 - (404) 858-1010

October 17, 1973

RE: INVESTORS REALTY TRUST

COUNSEL: Boulton, Cummings, Conners & Berry  
James I. Vance Berry  
First American Center  
Nashville, Tennessee 37201

*OL*

Secretary of State  
Corporation Department  
Tallahassee, Florida 32304

Gentlemen:

Pursuant to the instructions of counsel listed above we are enclosing herewith for filing on behalf of the above Investment Trust and a certified copy of the Amended and Restated Declaration of Trust as filed with the Secretary of State of Tennessee on May 7, 1973. 60380 \*\*\*\*15.00

Our check in payment of the required filing fee is enclosed, would you please return the usual evidence of filing to this office. We would also appreciate your advice in this office as to the date this trust was authorized in your state.

Very truly yours,

C T CORPORATION SYSTEM

*George F. Robinson*  
George F. Robinson  
Assistant Secretary

GFR/kp  
Encl.

Check # 3849 \$15.00  
Job # H 7902

PRIVILEGE TAX	
C. TAX	
FILING	15
C. COPY	
R. A. FEE	
P. COPY	
SEARCH	
TOTAL	15
BALANCE DUE	
REFUND	

FILED  
OCT 19 8 43 AM 1973  
TALLAHASSEE, FLORIDA

State of Tennessee

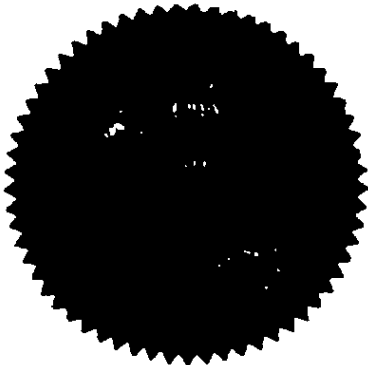


Department of State

I, JOE C. CARR, Secretary of State of the State of Tennessee, do hereby certify that the attached is a true and correct copy of the Amended and Restated Declaration of Trust of

INVESTORS REALTY TRUST

which was recorded in this office at Nashville, Tennessee on May 7, 1973 in Corporation Record Amendment Book P-54, Page 5744.



IN WITNESS WHEREOF, I have hereto affixed my signature and the Great Seal of the State, at Nashville, this 12th day of October in the year of our Lord nineteen hundred 73

A handwritten signature in ink, appearing to read "Joe C. Carr", written over a horizontal line.  
Secretary of State

FILED  
OCT 19 8 43 AM 1973  
RECORDING  
NASHVILLE, TENN.

---

**INVESTORS  
REALTY  
TRUST**

**AMENDED AND RESTATED  
DECLARATION OF TRUST**

**As Filed May 7, 1973**

**FILED  
OCT 19 8 43 AM 1973  
DEPARTMENT OF REVENUE  
TALLAHASSEE, FLORIDA**

## TABLE OF CONTENTS

### ARTICLE I

#### NAME, PRINCIPAL PLACE OF BUSINESS AND TITLE TO PROPERTY

SECTION	2
1.1. Name of Trust	2
1.2. Shortened Form of Name	2
1.3. Principal Place of Business	2
1.4. Title to Property	2

### ARTICLE II

#### POWERS OF TRUSTEES

2.1. Control Over Trust Property, etc.	2
2.2. Purchase of Property for Securities, etc.	3
2.3. Purchase of Securities, etc.	4
2.4. Designation of Holder of Legal Title	4
2.5. Borrowings on Behalf of Trust	4
2.6. Loans and Investment of Funds; Reserves	4
2.7. Payment of Taxes	4
2.8. Exercise Rights of Ownership of Securities	5
2.9. Delegation of Duties and Employment of Certain Persons	5
2.10. Collection of Monies Due, etc.	6
2.11. Deposit of Funds	6
2.12. Determination of Capital or Income	6
2.13. Value of Properties; Independent Appraisals; Revaluation	7
2.14. Fiscal Year; Accounting Methods	7
2.15. Joint Venture	7
2.16. Management and Advisory Agreements; Limitation on Expenses	8
2.17. F.H.A. Rules and Regulations	8
2.18. Unenumerated Powers	8
2.19. Transactions with Affiliates	8

### ARTICLE III

#### INVESTMENT OBJECTIVES AND POLICIES

3.1. General Investment Objectives	9
3.2. Additional Mortgage Investments	9
3.3. Temporary Investments	10
3.4. Operation through Borrowed Funds; Limitation	10
3.5. Limitations on Investments	10

### ARTICLE IV

#### LIMITATIONS OF LIABILITY OF SHAREHOLDERS, TRUSTEES AND OTHERS

4.1. Limitation of Personal Liability	11
4.2. Limitations of Liability to Trust; Indemnification; Bonds	11
4.3. No Duty of Inquiry on Persons Dealing with Trust; Provision in Every Written Undertaking; Insurance	12

## ARTICLE V

### SHARES OF BENEFICIAL INTEREST AND OTHER SECURITIES

5.1. Authorization and Characteristics of Shares	18
5.2. Share Certificates	18
5.3. Issuance of Additional Shares; Scrip	18
5.4. Issuance of Warrants	14
5.5. Disclosure of Holdings and Redemptions to Comply with Internal Revenue Code	15
5.6. Preemptive Rights	15
5.7. Issuance and Transfer of Debt Obligations	16

## ARTICLE VI

### TRANSFER OF SHARES AND OTHER SECURITIES; RECORD DATES

6.1. Share Register	16
6.2. Transfer Agents and Registrars	16
6.3. Deposit of Certificates with Transfer Agent, etc.	16
6.4. Transfer of Shares	17
6.5. Transfer of Shares by Operation of Law	17
6.6. Joint Tenants; Fiduciaries	17
6.7. Limitation of Trust Liability on Transfers; Receipts	18
6.8. Notice to Shareholders	18
6.9. Loss, etc. of Certificates	18
6.10. Record Dates	18

## ARTICLE VII

### CHARACTERISTICS OF SHARES

7.1. Ownership of Trust Property in Trustees	19
7.2. Shares are Personal Property; Death of Shareholder	19
7.3. Trustees' Rights as Shareholders	19
7.4. Repurchase of Shares by the Trust	19
7.5. No Personal Liability	20

## ARTICLE VIII

### MEETINGS OF SHAREHOLDERS

8.1. Annual and Special Meetings	20
8.2. Notice of Meetings	20
8.3. Shareholder Action Not Binding on Trustees	20
8.4. Voting; Proxies	21
8.5. Quorum	21

## ARTICLE IX

### REPORTS AND DISTRIBUTIONS TO SHAREHOLDERS

9.1. Annual Distributions	21
9.2. Statement Regarding Source of Distribution	22

### III

9.3. Reports to Shareholders and Others .....	22
9.4. Inspection of Records .....	22

## ARTICLE X

### TRUSTEES

10.1. Number, Term of Office, Vacancies, etc. ....	23
10.2. Resignation .....	23
10.3. Removal .....	23
10.4. Effect of Death etc. of Trustee .....	23
10.5. Vacancies .....	24
10.6. Meetings; Action Taken without Meeting .....	24
10.7. Compensation; Limitation .....	24
10.8. Bylaws .....	24
10.9. Executive Committee .....	25
10.10. Consulting Committee .....	25
10.11. Fiduciary Duty .....	25

## ARTICLE XI

### OFFICERS

11.1. Composition; Election; Compensation .....	26
11.2. Vacancies .....	26
11.3. Managing Trustee .....	26
11.4. President .....	26
11.5. Secretary .....	26
11.6. Treasurer .....	26
11.7. Duties .....	26

## ARTICLE XII

### DURATION OF TRUST

## ARTICLE XIII

### TERMINATION OR AMENDMENT OF TRUST

13.1. Shareholder Vote Required .....	27
13.2. Creation of Entity to Acquire Assets and Liabilities of Trust; Transfer of Assets or Merger .....	28
13.3. Consistency with Internal Revenue Code .....	28

## ARTICLE XIV

### MISCELLANEOUS

14.1. Definition of "Trustee" .....	29
14.2. Applicable Law .....	29
14.3. Counterparts .....	29

## ARTICLE XV

### COMPLIANCE WITH PROVISIONS OF INTERNAL REVENUE CODE

## AMENDED AND RESTATED DECLARATION OF TRUST

This DECLARATION OF TRUST is made effective as of the 1st day of July, 1969, by and between INVESTORS REALTY TRUST (formerly AMERICAN SECURITY REAL ESTATE INVESTMENT TRUST), hereinafter called the "Trust," and D. W. JOHNSTON, DONALD W. MACLEOD, D. R. BUTTREY and KERRIT C. STENGEL, JR., hereinafter called the "Trustees,"

### WITNESSETH:

WHEREAS, the Trustees desire to form a business trust for profit for the purpose of acquiring, holding, managing, improving, dealing with and disposing of property, real and personal, including mortgages, deeds of trust and other interests therein, wherever situated, in such manner as to qualify as a "real estate investment trust" under the provisions of Sections 856, 857 and 858 of the United States Internal Revenue Code of 1954, as amended, and the Regulations issued thereunder (said Code and Regulations as amended to the time in question being hereinafter referred to as the "Internal Revenue Code"), and

WHEREAS, in the furtherance of such purpose, the Trustees, acting pursuant to directions by Crescent Properties Company, have taken title, as of June 30, 1969, to certain real estate distributed to them as a return of capital, and may hereafter acquire cash and other property, and shall hold, manage and dispose of all such property as such Trustees may determine in the manner hereinafter stated;

Now, THEREFORE, the Trustees hereby declare that they will hold all property of every type and description which they are acquiring or may hereafter acquire as such Trustees, together with the proceeds thereof, in trust, to manage, and dispose of the same for the benefit of the holders (hereinafter referred to as "shareholders") from time to time of the shares of beneficial interest (hereinafter referred to as "shares") being issued to the stockholders of Crescent Properties Company and to be otherwise issued hereunder in the manner and subject to the stipulations contained herein, to wit:

FILED  
OCT 19 8 43 AM 1973  
RECEIVED  
TALLAHASSEE  
FLORIDA

**ARTICLE I****NAME, PRINCIPAL PLACE OF BUSINESS AND  
TITLE TO PROPERTY**

**SECTION 1.1.** The name of the Trust shall be "INVESTORS REALTY TRUST" and, so far as may be practicable, the business of the Trust shall be conducted and transacted under such name, which (and the words "the Trust" and "this Trust" wherever used in this Declaration) shall refer to the Trustees as Trustees, but not individually or personally, and shall not refer to the officers, agents, employees or shareholders of this Trust.

**SECTION 1.2.** The Trustees may designate a shortened form of the name for business use by this Trust as they in their discretion determine appropriate.

**SECTION 1.3.** The principal place of business shall be in Nashville, Tennessee, at such address as the Trustee may from time to time designate; the Trustees may change the principal place of business to any other location as they in their discretion determine appropriate. The Trust may have such other offices or places of business as the Trustees may from time to time determine.

**SECTION 1.4.** All property subject from time to time to this Declaration of Trust shall be vested in the Trustees and held by and transferred to the Trustees as joint tenants with rights of survivorship as Trustees, except as provided in Section 2.4 hereof.

**ARTICLE II****POWERS OF TRUSTEES**

**SECTION 2.1.** The Trustees shall have, without other or further authorization, full and absolute power, control and authority over the Trust property held by them at any time hereunder and over the business of the Trust to the same extent as if the Trustees were the sole owners of such property and business in their own right, subject only to limitations herein expressly stated and to the superior control of the shareholders so far as the same is herein expressly stated. No person (the word "person"



whenever used in this Declaration, to be deemed to mean any individual, association, trust, partnership, corporation or other entity) shall in any event be bound to see to the application of any money or property paid to or delivered to the Trustees or their authorized representatives. No investment or reinvestment of the Trust property hereunder shall be deemed improper because of its speculative character, or because a greater proportion of the Trust property is invested therein than is usual for Trustees, or, subject to the provisions of Section 2.19, by reason of any interest therein, direct or indirect, of the Trustees or any other party whatsoever. Without restricting or limiting the generality of the foregoing, such powers of the Trustees shall include among others the powers enumerated in Sections 2.2 to 2.19, inclusive, of this Article II.

SECTION 2.2. The Trustees shall have power, as principal, agent or otherwise, for such consideration as they may deem proper, to purchase for cash, through the issuance of shares, notes, debentures, warrants or other securities, or otherwise acquire, and hold, manage, lease for a term extending beyond the possible termination of the Trust or for a lesser term, improve (including improvements by lessees), convey, sell, exchange, mortgage (with or without power of sale), release, partition, or otherwise deal in, real estate of any type and description, and any interests therein and appurtenances thereto, including but not limited to air rights and mineral rights, and buildings and structures and tangible personal property of any type and description situated thereon or elsewhere, located in any part of the United States of America, its territories and possessions and such other countries as the Trustees may select, and to erect, construct, alter, repair, demolish or otherwise physically affect any real estate, buildings or structures of any type or description so located.

SECTION 2.3. The Trustees shall have power, as principal, agent or otherwise, for such consideration as they may deem proper, to purchase for cash, through the issuance of shares, notes, debentures, warrants or other securities, or otherwise acquire, and hold, sell, exchange, pledge, collect, pay in, and in any manner deal in, stocks, bonds, notes, certificates of indebtedness or other obligations, secured or unsecured, or other securities and, in general, any property or rights (legal or equitable) owned, held, created, or issued by or representing an interest in any corporation, business trust (including the business trust created by these presents), partnership or other organization, whether domestic or foreign, any individual, the United States of America, or any of the several states or territories or any political division thereof.

SECTION 2.4 The Trustees shall have power to cause legal title to any of the property held by this Trust to be held in the name of the Trust, one or more of the Trustees, one or more of the officers or employees of the Trustees or any other person, on such terms, in such manner, and with all powers to mortgage, sell, transfer, lease, convey, restrict or otherwise deal therein, without the joinder of any beneficiary or Trustee and without disclosure that the Trust is interested therein, as the Trustees hereunder may determine; provided, that the interest of the Trust therein is appropriately protected.

SECTION 2.5. The Trustees shall have power to borrow money for the purposes of this Trust and to give notes, debentures, bonds or other evidences of indebtedness therefor or to enter into other obligations on behalf of the Trust, including the power to endorse or guarantee the payment of any notes or other obligations of any person and to make contracts of guaranty or suretyship, and to mortgage and pledge the real and personal property of this Trust or any part thereof to secure such notes, debentures, bonds or other evidences of indebtedness or obligations, subject, however, to the provisions of Section 3.4 hereof. Any of such notes, debentures, bonds or other evidences of indebtedness of the Trust may, at the discretion of the Trustees, without vote of the shareholders, be convertible into shares of the Trust at such time and upon such terms as the Trustees may prescribe.

SECTION 2.6. The Trustees shall have power to lend money and to invest and to reinvest any funds of the Trust as they shall determine; and to create a reserve fund or reserve funds for such purposes as they deem advisable, and to invest or reinvest the same in such manner as they may determine, provided such arrangements will not prevent the distribution of net income as required in Section 3.1 hereof.

SECTION 2.7. The Trustees shall have power to pay all taxes or assessments, of whatsoever kind or nature, imposed upon or against the Trustees in connection with the Trust property or income, or upon or against the Trust property or any part thereof, to settle and compromise disputed tax liabilities, and for the foregoing purposes to make such returns and do all such other acts and things as may be deemed by the Trustees necessary or desirable.

SECTION 2.8. The Trustees shall have power to exercise all of the rights, powers and privileges appertaining to the ownership of all or any part of the securities forming part of the Trust property to the same ex-

tent that an individual might and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, and for such purposes to give proxies or powers of attorney to one or more persons, with or without the power of substitution, which proxies and powers of attorney may be for meetings or action generally or for any particular meetings or action and may include the exercise of discretionary powers.

SECTION 2.9. The Trustees shall have power to delegate from time to time, to such one or more of their number or to such other person or persons as the Trustees may deem best, the doing of such things and the execution of such deeds or other instruments, either in the names of the Trustees or as their attorney or attorneys or otherwise, as the Trustees may from time to time deem expedient; to appoint or contract with any one or more of themselves or any firm in which one or more of the Trustees may be members, or with any other person, to carry on and supervise all or any part of the active management of the property and business of the Trust, with such rights and such compensation, subject to the provisions of Section 2.16, as the Trustees may deem proper; and to employ such clerical assistants as they deem necessary to the transaction of the business of the Trust and such other persons, including consultants, accountants, technical advisers, investment advisers, attorneys, brokers, corporate fiduciaries, depositaries and other agents, (including a corporation, partnership, or trust of which one or more of the Trustees is an officer, director, stockholder, member or trustee, or in any way directly or indirectly interested) as the Trustees may deem proper and fix their duties, periods of employment and compensation.

SECTION 2.10. The Trustees shall have power to collect, sue for, receive and receipt for all sums of money coming due to this Trust; to consent to the extension of the time for payment, or to the renewal, with or without security, of any bonds or other securities or obligations or the payment or delivery of any debts or property; to engage or intervene in, prosecute, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or things relating to the Trust property; to be parties to reorganizations and to transfer to and deposit with any corporation committee, voting trustee or other person any stocks, bonds, or other securities or obligations of any corporation, trust, association, or other organization, the securities of which form a part of the Trust property, for the purposes of any reorganization of any such corporation, trust, association, or other organization, or otherwise to participate in any arrangement for enforcing or protect-

ing the interests of the Trustees as the owners or holders of such stocks, bonds, or other securities or obligations and to pay any assessment levied in connection with such reorganization or arrangement; to execute and enter into releases, agreements, and other instruments; incur and pay any charges or expenses which, in the opinion of the Trustees, are necessary or incidental to or proper for carrying out any of the purposes of this Trust; and to pay or satisfy any debts or claims upon any evidence that the Trustees shall think sufficient.

SECTION 2.11. The Trustees shall have power to deposit any moneys or securities included in the Trust property with any one or more banks, trust companies, or other banking institutions deemed by the Trustees to be responsible, such moneys or securities to be subject to withdrawal on notice or upon demand in such manner as the Trustees may determine, and the Trustees shall have no responsibility for any loss which may occur by reason of the failure of the person with whom the moneys or securities have been deposited properly to the account therefor.

SECTION 2.12. The Trustees shall have power to determine conclusively whether any moneys, securities, or other properties of the Trust are, for the purposes of the Trust, to be considered as capital or income and in what manner any expenses or disbursements are to be borne as between capital and income, whether or not in the absence of this provision such expense or disbursement would ordinarily be charged to capital or to income.

SECTION 2.13. The Trustees shall have power to determine conclusively the value of any of the real estate, securities, or other properties of this Trust and of any services, securities, property or other consideration hereafter to be acquired by this Trust; provided, however, that the consideration paid for real property acquired by the Trust shall be based upon the fair market value of the property as determined by a real estate appraisal prepared by a qualified, disinterested, independent appraiser unless there is a record of uninterrupted payment of principal and interest for the preceding five (5) years on any encumbrance which may exist on the property and the earnings of the property, before depreciation, during the preceding five (5) years are such that when capitalized annually at an 8% rate the capitalized figure approximates the purchase price paid or to be paid for the property. The Trustees shall also have the power to revalue the real estate, securities, or other properties of the Trust from time to time in accordance with methods of evaluation consistently applied and to keep the books of the Trust and render reports to the shareholders of the Trust on the basis of the figures so adopted.

SECTION 2.14. The Trustees shall have power to determine the fiscal year of the Trust and the method or form in which its accounts shall be kept and from time to time to change the fiscal year or method or form of accounts.

SECTION 2.15. The Trustees shall have the power to participate in a joint venture or partnership and to this end may appoint any one Trustee or officer of the Trust to act on behalf of the Trust with respect to the joint venture or partnership.

SECTION 2.16. The Trustees shall have the power to enter into a contract with such other parties (herein called the "Adviser"), on such terms as the Trustees deem advisable, for the management of the trust assets and investments, said contract to be termed the "Management and Advisory Agreement," and the Trustees may grant or delegate such authority to the Adviser as the Trustees may, in their sole discretion, deem necessary or desirable; provided, however, that the Trustees are to retain at all times the absolute and exclusive control over the management of the Trust and its property and the disposition thereof. Such Management and Advisory Agreement initially may not be for a period longer than three years and thereafter shall not be for a period of more than a year and, in any event, shall be terminable without penalty by either party, or by the holders of a majority of the outstanding shares of the Trust, on sixty days' notice. The agreement must be approved annually by a majority of the Trustees not affiliated with the Adviser. All operating expenses of the Trust during any fiscal year, including fees paid to the Adviser, shall not exceed the greater of (i)  $1\frac{1}{2}\%$  of the quarterly average net assets of the Trust (net assets being defined as total invested assets at cost, before deducting depreciation reserves, less liabilities) or (ii) 25% of net income, excluding provision for depreciation and realized capital gains and losses and extraordinary items, and before deducting the Advisor's compensation and in no event may the annual operating expenses of the Trust during any fiscal year exceed  $1\frac{1}{2}\%$  of the quarterly average total invested assets of the Trust. "Operating expenses" for this purpose shall be defined as the total annual expenses of every character, other than the following: (1) interest and discounts and other costs of borrowed money; (2) taxes; (3) legal, auditing, underwriting, transfer agent's, registrar's and indenture trustee's and other fees and listing, registration, printing and other expenses and taxes incurred in connection with the issuance, distribution, transfer, registration and stock exchange listing of the Trust's securities; (4) fees and expenses paid to independent contractors employed by or on behalf of the Trust; (5) costs of insurance (not including the cost of any Trustees' or officers' liability or indemnification insurance); (6) expenses of organizing, amending or terminating the Trust;

(7) all expenses connected with distributions and communications to holders of securities of the Trust and the other bookkeeping and clerical work necessary in maintaining relations with holders of securities, including the cost of printing and mailing checks, certificates for securities, proxy solicitation materials and reports to such holders; (8) expenses directly connected with the acquisition, disposition and ownership of mortgage loans or other property, including, to the extent not paid by borrowers from the Trust, the costs of appraisal, legal services, brokerage and sales commissions, as well as the costs of foreclosure, maintenance, repair and improvement of property; and (9) provision for depletion, depreciation and amortization and provisions for losses. "Operating expenses" for this purpose shall include costs of loan administration not paid by the borrower and mortgage servicing fees paid by the Trust. Not more than 49% of the Trustees or of any executive committee of the Trustees shall be affiliated (i.e., a director, officer, partner, trustee, employee or holder of more than 1% ownership interest) with the Adviser or its affiliates at any time, except that, upon death or resignation of an unaffiliated Trustee, such provision shall not be applicable for a period of 60 days.

**SECTION 2.17.** If the Trust shall be a so-called "F.H.A. Approved Mortgagee," the Trustees are authorized and shall act pursuant to the rules and regulations of the Federal Housing Administration, and otherwise in accordance with the provisions of the National Housing Act or regulations promulgated thereunder, in purchasing, selling or otherwise disposing of any mortgage or mortgages or partial interest in such mortgage or mortgages insured by the Federal Housing Administration.

**SECTION 2.18.** The Trustees shall have the power to do all such matters and things as in their judgment will promote or advance the business which they are authorized to carry on although such matters or things are not herein specifically mentioned. In addition thereto, the Trustees shall have such powers, rights and duties as are prescribed by Tennessee Code Annotated, Section 48-1801 to 48-1804, inclusive.

**SECTION 2.19.** No Trustee, officer or Adviser of the Trust, or any person affiliated with any such persons, shall sell any property or assets to the Trust or purchase any property or assets from the Trust, directly or indirectly, nor shall any such person receive any commission or other remuneration, directly or indirectly, in connection with the purchase or sale of Trust assets, except pursuant to transactions that are fair and reasonable to the shareholders of the Trust and relate to: (1) the acquisition of property or assets at the formation of the Trust or shortly thereafter that is fully disclosed in the prospectus; (2) the acquisition by the Trust of federally insured or guaranteed mortgages at prices not exceeding the currently quoted prices at which the Federal National Mortgage

Association is purchasing comparable mortgages; (3) the acquisition of other mortgages on terms not less favorable to the Trust than similar transactions involving unaffiliated parties; or (4) the acquisition by the Trust of other property at prices not exceeding the fair market value thereof as determined by independent appraisal. All such transactions and all other transactions in which any such persons have any direct or indirect interest shall be approved by a majority of the Trustees, including a majority of the independent Trustees, but not less than three. All commissions or remuneration received by the Adviser or any affiliate of the Adviser in connection with the purchase or sales of Trust assets shall be deducted from the advisory fee.

For the purposes of this Section 2.19 the term "independent contractor" means an "independent contractor," as defined in Section 856(d) (8) of the Internal Revenue Code, which furnishes or renders services to tenants of, or manages or operates real property owned by, the Trust.

### ARTICLE III

#### INVESTMENT OBJECTIVES AND POLICIES

**SECTION 3.1.** The general investment objectives of the Trust are to provide the shareholders with:

- (1) primarily, long-term capital appreciation potential and reasonably assured gradually increasing income through real estate ownership; and
- (2) secondarily, participation in the income from first mortgage construction loans.

No limitation is hereby set with respect to the proportion of the Trust's total assets which are to be invested in either real estate investment medium mentioned in this Section 3.1.

**SECTION 3.2.** The general purpose of the Trust is to invest in real estate equities and mortgage loans. In addition to first mortgage construction loans, the Trustees may acquire for investment so-called "permanent" mortgage loans, "development" mortgage loans, land loans, "warehousing" loans, "stand-by" loans, and "gap" loans and may make commitments to make any such investments. In addition to the investments specifically mentioned herein, the Trustees are authorized to make such other investments as they deem in the best interests of the Trust and its shareholders; provided, however, that the Trustees act to the best of their ability to at all times make investments in such a manner as to be consistent with the requirements of the Internal Revenue Code with respect to the composition of the Trust's investments and the derivation of its income.

**SECTION 3.3.** To the extent the Trust's funds are not otherwise invested, the Trust is permitted to invest in obligations issued or guaranteed by states or the federal government, or agencies thereof, as well as obligations of banks and savings institutions which are members of the F.D.I.C., obligations of the Federal Home Loan Bank System, obligations of the Federal National Mortgage Association, debt securities of corporate or other entities which are listed on a recognized securities exchange (but not more than 5% of the total assets of the Trust), and commercial paper, bankers' acceptances, loan participation certificates and other similar instruments of bank credit.

**SECTION 3.4.** In the furtherance of the investment objectives and policies, the Trustees are authorized to operate on a "leveraged" basis through the borrowing of funds; provided, however, that under no circumstances shall the Trustees incur indebtedness if, after giving effect thereto, the total indebtedness of the Trust would exceed 500% of the Trust's net assets. The total amount of encumbrance to which all of the real property of the trust shall be subject shall not be more than 75% of the fair market value of said property as confirmed by a competent independent appraiser. Real property subject to FHA or other governmentally insured encumbrance shall not be subject to the aforesaid 75% limitation.

**SECTION 3.5.** In limitation of the foregoing general statement of investment policies, the Trustees shall not:

(a) Invest more than five per cent (5%) of the total assets of the Trust in unimproved real property and loans secured by unimproved real property

(b) Invest in commodities.

(c) Invest more than one per cent (1%) of its assets in real estate contracts of sale.

(d) Invest in any real property which is subject to a mortgage, deed of trust or other encumbrance to other than a bank, insurance company, mortgage banker or other institutional lender, except in the case of a purchase money mortgage

(e) Engage in any short sale

(f) Engage in trading as opposed to investment activities.

(g) Engage in the underwriting or the agency distribution of securities issued by others

(h) Invest in junior mortgages other than junior mortgages which would normally have an original term not exceeding 120 months (except



in the case of "gap" loans and "wrap-around" junior loans) and are in such an amount that the total indebtedness represented by the first mortgage and the amount loaned or advanced under the junior mortgage does not exceed 85% of the appraised fair market value of the property as improved.

(i) Invest in junior mortgages of the type otherwise permitted in an amount exceeding 20% of the total assets of the Trust.

(j) Invest in any mortgage loan if any obligor thereunder shall be primarily liable to the Trust in an amount exceeding 15% of the Trust's capital, surplus and subordinated debt.

(k) Issue shares which are "redeemable securities" as defined in Section 2 (a) (31) of the Investment Company Act of 1940, as amended.

(l) Hold securities in any corporate or other entity holding investments or engaging in activities prohibited by this Section 3.5; provided, however, that not more than 5% of the total assets of the Trust may be invested in securities of any other real estate investment trust and any securities listed for trading on a national securities exchange.

## ARTICLE IV

### LIMITATIONS OF LIABILITY OF SHAREHOLDERS, TRUSTEES AND OTHERS

**SECTION 4.1.** No shareholder, Trustee, officer or agent of this Trust shall be held to any personal liability in connection with Trust property or the affairs of this Trust, save only that arising from his own bad faith, wilful misfeasance, negligence, or reckless disregard of his duties; and all persons shall look solely to the Trust property for satisfaction of claims of any nature arising in connection with the affairs of this Trust. If the Trustees or any officers, agents or shareholders of the Trust are made parties to any suit or proceeding to enforce any such obligation or liability, they shall not on account thereof be held to any personal liability except as aforesaid. As used in this Section 4.1 and Section 4.2, "negligence" of a Trustee shall mean his failure to exercise that degree of care which an ordinary prudent trustee of a real estate investment trust would exercise under the same or similar circumstances.

**SECTION 4.2.** No Trustee, officer, or agent of this Trust shall be liable to this Trust, or to any shareholder, officer or agent thereof, on account of his own acts, negligence or defaults (including without limitation the

failure to compel in any way any former or acting Trustee to redress any breach of trust) except for such of his own acts, negligence and defaults as arise from his own bad faith, wilful misfeasance, negligence or reckless disregard of his duties. Except as aforesaid, each Trustee, officer and agent shall be entitled to reimbursement out of the Trust property for his reasonable expenses and outlays and to be exonerated and indemnified, to the extent that independent counsel for the Trust may deem lawful from time to time for or against any and all loss, expenses and liability arising out of or in connection with the affairs of the Trust or which he may suffer because he is a Trustee hereunder. The Trustees shall not be obligated to give any bond or surety or other security for the performance of any of their duties.

**SECTION 4.3** No purchaser, lender, transfer agent or other person dealing with the Trustees or with any officer or agent of the Trust shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by the Trustees or by their authorized officers or agents or be liable for the application of money or property paid, loaned or delivered to or on the order of the Trustees or of any such officer or agent. Every note, obligation, contract, instrument, certificate, share or undertaking, and every other act or thing whatsoever, executed in connection with the Trust shall be conclusively taken to have been executed or done only in their or his capacity as Trustees or Trustee under this Declaration of Trust or in the capacity of officer or agent of the Trust. Every such note, obligation, contract, instrument, certificate, share or undertaking made or issued by one or more of the Trustees or by any such officer or agent in his capacity as such shall recite that it is executed or made by them or him, not individually but as Trustees or Trustee under this Declaration of Trust or as such officer or agent, and that the obligations thereof are not binding upon any of the Trustees, shareholders, officers or agents of the Trust, personally, but bind only the Trust property, and may contain any further recital which they or he may deem appropriate, but the omission of such recital shall not operate to impose personal liability on any of the Trustees, shareholders, officers or agents of the Trust. The Trustees shall, at all times, maintain insurance for the protection of the Trust, its shareholders, Trustees, officers and agents in such amounts and against such risks as the Trustees in their sole judgment shall deem advisable.

## ARTICLE V

## SHARES OF BENEFICIAL INTEREST AND OTHER SECURITIES

SECTION 5.1. No more than one class of shares of beneficial interest may be issued by the Trust. There shall be 10,000,000 shares of beneficial interest authorized for issuance which may be issued from time to time pursuant to this Declaration of Trust. All of such shares shall have a par value of One Dollar (\$1.00) each; all shall have equal voting power; and all shall represent an equal beneficial interest in all assets of the Trust and, in the event of liquidation of the Trust, shall have equal rights of distribution. Shareholders shall have no preemptive rights with respect to shares of the Trust except as set forth in Section 5.6, and shall have no rights of redemption and no conversion rights. All such shares as are issued, the full consideration for which has been paid or delivered, shall be deemed fully paid and not liable to any further call or assessment thereon and the holder of such shares shall not be liable for any further payments therefor. A transfer fee may be charged by the Trustees for recording in the Trust records the change in ownership of any share.

SECTION 5.2. Every shareholder shall be entitled to receive a certificate in such form as the Trustees shall from time to time approve specifying the number of shares held by him. The certificates in the form so approved shall be treated as negotiable and title thereto and to the shares represented thereby shall be transferred by delivery thereof to the same extent in all respects as a stock certificate and the shares represented thereby of an ordinary business corporation. Such certificates shall be signed by a Trustee and shall be countersigned by another Trustee or authorized employee of the Trust and may be countersigned by a transfer agent and registered by a registrar. Certificates may be signed or countersigned by the facsimile signature of a Trustee or authorized employee of the Trust; provided that any certificates so signed shall not be valid unless manually countersigned by a transfer agent, or a Trustee or a duly authorized employee of the Trust. There shall be filed with each transfer agent, if any, a copy of the form of certificate so approved by the Trustees and such form shall continue to be used unless and until the Trustees approve some other form.

SECTION 5.3. The Trustees in their discretion may from time to time, without vote of the shareholders, issue shares of this Trust, in addition to those already issued, to such party or parties, for such property or consideration, at such time or times, and on such term or terms as the Trustees

may determine, and may in such manner acquire other assets (real, personal or mixed) and businesses, and no prior offering thereof to any of the shareholders hereunder need to be made except as provided in Section 5.6 hereof. In connection with any issuance of shares, the Trustees may issue fractional shares or, in lieu thereof, may provide for the issuance of scrip and may determine the terms of such scrip including, without limiting the generality of the foregoing, the time within which any such scrip must be surrendered for exchange into shares and the rights, if any, of holders of scrip to receive proportional distributions and to redeem scrip for cash. The provisions of Section 5.2 and Article VI relative to certificates for shares shall apply so far as applicable to such scrip, except that such scrip may, in the discretion of the Trustees, be signed by an authorized employee of the Trust or a transfer agent, if any, alone.

SECTION 5.4. The Trustees, in their discretion, may from time to time, without vote of the shareholders except as provided in Section 5.6, issue share purchase warrants (herein referred to as "warrants") which shall entitle the holders thereof to subscribe to shares and/or fractional shares or scrip at such time or times and on such terms as the Trustees may prescribe, including, without limiting the generality of the foregoing, the times within which any such warrants must be exercised and the consideration which shall not be less than the fair market value at the date of grant to be paid for such shares, except as set forth in this Section 5.4. Warrants may be issued to such parties and for such considerations as the Trustees may from time to time determine, including the issuance of detachable or nondetachable warrants as an inducement to persons acquiring or underwriting notes, debentures, bonds or other obligations, or shares, of the Trust, provided, however, that the exercise price of such warrants shall not be less than the fair market value (determined as provided in Section 5.5) of the shares on the date on which the Trustees establish said exercise price, except as set forth in this Section 5.4. The provisions of Section 5.2 and Article VI relative to certificates for shares shall apply so far as appropriate to such warrants, except that such warrants may, in the discretion of the Trustees, be signed by an authorized employee of the Trust or a transfer agent, if any, alone. The Trustees may not issue options or warrants to purchase the securities of the Trust to the Adviser of the Trust or any person affiliated with the Adviser, or to any other persons at exercise prices less than the fair market value of such securities on the date of grant, except as set forth in the following sentence. Notwithstanding the foregoing restrictions of this Section 5.4 the Trust may issue, in connection with a public offering of its securities, warrants to purchase shares at a price per share less than the fair market value of the shares at the time such warrants are issued and may permit the exercise of warrants previously issued in connection with a public offering of its securities at a price per share less than the fair market value of the shares at the time such warrants were issued.

**SECTION 5.5.** The shareholders shall upon demand disclose to the Trustees in writing such information with respect to direct and indirect ownership of shares as the Trustees deem necessary to comply with the provisions of the Internal Revenue Code or to comply with the requirements of any other taxing authority. If the Trustees shall, at any time and in good faith, be of the opinion that direct or indirect ownership of shares of the Trust has or may become concentrated to an extent which is contrary to the requirements of Section 856(a)(5) and (6) of the Internal Revenue Code, then the Trustees shall have the power (i) to call for redemption a number of such concentrated shares sufficient, in the opinion of the Trustees, to maintain or bring the direct or indirect ownership of shares of the Trust into conformity with the requirements of said Section 856(a)(5) and (6) and (ii) to refuse to transfer shares to any person whose acquisition of the shares in question would, in the opinion of the Trustees, result in a violation of said Section 856(a)(5) or (6). The redemption price shall be equal to the fair market value of the shares as reflected in the latest bid quotation for the shares (if then traded over-the-counter) or the closing sale price (if then listed on a national securities exchange) on the business day preceding the day on which notice of redemption is sent, or, if no quotations or closing sale price for the shares are available, as otherwise determined in good faith by the Trustees. From and after the date fixed for redemption by the Trustees, the holder of any shares so called for redemption shall cease to be entitled to dividends, voting rights and other benefits with respect to such shares excepting only the right to payment of the redemption price fixed as aforesaid. For the purposes of this Section 5.5, the term "individual" shall be construed as defined in Section 542(a)(2) of the Internal Revenue Code, or any successor provision, and "ownership" of shares shall be determined as provided in Section 544 of the Internal Revenue Code.

**SECTION 5.6.** Shareholders shall have preemptive rights with respect to any shares, warrants or other rights to purchase shares of the Trust sold, offered or issued at any time, except that shareholders shall have no preemptive rights with respect to any shares, warrants or other rights to purchase shares (and no offering of any such securities need be made to shareholders or any of them) which shall be sold, offered or issued at any time in connection with any one or more of the following transactions:

(a) the granting to employees of the Trust of options to purchase shares pursuant to any "qualified stock option plan" as that term is defined in Section 422 of the Internal Revenue Code or any successor provision, or the sale of shares pursuant to the exercise of such an option; or

(b) any sale, offer or issue of securities as a part or all of the consider-

ation for the acquisition by the Trust of any interest or investment in real estate, mortgages or other properties; or

(c) any sale, offer or issue of securities in connection with any public or private financing by the Trust.

SECTION 5.7. The Trustees may issue debentures, bonds, notes or other evidences of indebtedness, and these instruments shall have such rights as Trustees determine and shall be transferable and registered, if required, as the Trustees determine appropriate; provided, however, the Trustees may not issue debt securities to the public unless the historical cash flow of the Trust or the substantiated future cash flow of the Trust, excluding extraordinary items, is sufficient to cover the interest on the debt securities.

## ARTICLE VI

### TRANSFER OF SHARES AND OTHER SECURITIES; RECORD DATES

SECTION 6.1. A register shall be kept by or on behalf of the Trustees, under the direction of the Trustees, which shall show the number of shares of beneficial interest held by each beneficiary respectively and the numbers of the certificates representing the same and on which all transfers thereof may be recorded. Only holders of shares of record as shown by such register shall be entitled to vote or to receive payment of any dividend or other distribution and to have notice given to him as herein provided, and that only when he has given his address to a transfer agent or such other officer or agent of the Trustees as shall keep the said register for entry thereon.

SECTION 6.2. The Trustees shall have power to employ a transfer agent or transfer agents and a registrar or registrars. If employed they shall perform the duties usually performed by transfer agents and registrars of certificates of stock in a corporation except as modified by the Trustees.

SECTION 6.3. Signed certificates for shares in blank may be deposited with any transfer agent of this Trust or with an employee of the Trust to be used by the transfer agent or employee as the case may be in accordance with authority conferred upon it or said employee as occasion may require and, in so doing, the signers of such certificate shall not be responsible for any loss resulting therefrom. In case any one or more Trustees, officers, or other persons who shall have signed certificates shall resign before such certificates shall have been actually issued, such cer-

tificates may nevertheless be issued with the same effect as though the person who signed such certificates had not ceased to be such authorized person.

SECTION 6.4. Except as limited by Section 5.5. above or by other reasonable restriction notice of which shall be printed on the face of said shares, shares shall be transferable on the records of the Trust. Such transfers may be made (other than by operation of law) only by the record holder thereof, or by his agent thereunto duly authorized in writing, upon delivery to the Trustees or their authorized employees or transfer agent of the certificate or certificates therefor properly endorsed or accompanied by duly executed instrument or instruments of transfer, together with such evidence of the genuineness of each such endorsement, execution and authorization and of other matters as may be reasonably required. Upon such delivery, the transfer shall be recorded on the register of the Trust and a new certificate for the shares so transferred shall be issued to the transferee and, in case of a transfer of only a part of the shares represented by any certificate a new certificate for the residue thereof shall be issued to the transferor. Until such record is made, the shareholder of record shall be deemed to be the holder of such shares for all purposes hereof and neither the Trustees nor any transfer agent or registrar nor any officer or agent of the Trustees shall be affected by any notice of the proposed transfer. The Trustees shall not be liable to either transferor or transferee for any delays in effectuating a transfer.

SECTION 6.5. Any person becoming entitled to any shares in consequence of the death, bankruptcy or insolvency of any shareholder, or otherwise by operation of law, shall be recorded as the holder of the shares and receive a new certificate for the same upon production of the proper evidences thereof and delivery of the existing certificates to the Trustees or a transfer agent of this Trust. Until such record is made, the shareholder of record shall be deemed to be entitled to the shares so registered and neither the Trustees nor any transfer agent or registrar nor any officer, agent or employee of the Trustees shall be affected by any notice of such death, bankruptcy, insolvency or other event.

SECTION 6.6. The Trustees may treat two or more persons holding any share as joint tenants of the entire interest therein unless their ownership is expressly otherwise recorded on the register of the Trust, but no entry shall be made in the register or in any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any share, provided however, that any person recorded as a holder of any

share may, subject to the provisions hereinafter contained, be described in the register or in any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

**SECTION 6.7.** The Trustees shall not, nor shall the shareholders or any officer, transfer agent or other agent of this Trust or of the Trustees, be bound to see to the execution of any trust, express, implied or constructive, or of any charge, pledge or equity to which any of the shares of the Trust or any interests therein are subject, or to ascertain or inquire whether any sale or transfer of any such shares or interest therein by any shareholder or his personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein except the persons recorded as such shareholders. The receipt or purported receipt of the person in whose name any share is recorded, or, if such share is recorded in the names of more than one person, the receipt or purported receipt of any one of such persons, or of the duly authorized agent of any such person or persons, shall be a sufficient discharge for all dividends and other money and for all shares, bonds, obligations, and other property payable, issuable or deliverable in respect to such share and from all liability to see to the application thereof.

**SECTION 6.8.** Any and all notices to which shareholders hereunder may be entitled and any and all communications shall be deemed duly served or given if mailed, postage prepaid, addressed to shareholders of record at their last known post office address as recorded on the register of the Trustees.

**SECTION 6.9.** In case of the loss, mutilation or destruction of any certificate of shares hereunder, the Trustees may issue or cause to be issued a new certificate on such terms as they may see fit.

**SECTION 6.10.** For the purpose of determining the shareholders who are entitled to vote or act at any meeting or any adjournment thereof, or who are entitled to participate in any dividend, the Trustees may from time to time close the transfer books for such period, not exceeding forty days, as the Trustees may determine; or without closing the transfer books the Trustees may fix a date not less than ten days and not more than forty days prior to the date of any meeting of shareholders or dividend payment as a record date for the determination of shareholders entitled to vote at such meeting or any adjournment thereof or to receive such dividend; and any shareholder who was a shareholder at the time so fixed shall be enti-



tioned to vote at such meeting or any adjournment thereof or to receive such dividend even though he has since that date disposed of such shares, and no shareholder becoming such after said date shall be so entitled to vote at said meeting or any adjournment thereof or to receive such dividend.

## ARTICLE VII

### CHARACTERISTICS OF SHARES

**SECTION 7.1.** The ownership of the Trust property of every description and the right to the conduct of any business hereinbefore described are vested exclusively in the Trustees, and the shareholders shall have no interest therein other than the beneficial interest conferred by their shares issued hereunder, and they shall have no right to call for any partition or division of any property, profits, rights or interests.

**SECTION 7.2** The shares issued hereunder shall be personal property giving only the rights in this instrument and in the certificates therefor specifically set forth. The death of a shareholder during the continuance of this Trust shall not terminate the Trust nor give his or her legal representative a right to an accounting or to take any action, in the courts or otherwise, against other shareholders or the Trustees or the property held hereunder, but shall simply entitle the legal representatives of the deceased shareholder to demand and receive a new certificate for shares in place of the certificate held by the deceased shareholder upon the issuance of which such legal representative shall succeed to all rights of the deceased shareholder under this Trust.

**SECTION 7.3** The Trustees, or any of them, may, in their individual capacity, purchase and otherwise acquire, or sell and otherwise dispose of, shares issued hereunder and in so doing shall be subject to the same limitations as a director of an ordinary business corporation.

**SECTION 7.4** The Trustees may, on behalf of the Trust, at any time purchase or otherwise acquire outstanding shares in the Trust for such consideration and on such terms as they may deem proper. Shares so purchased or acquired by the Trustees on behalf of the Trust shall not, so long as they belong to the Trust, receive dividends or distributions or be entitled to any voting rights or be deemed outstanding for any purpose hereunder. Such shares may, in the discretion of the Trustees, be can-

celled and treated as authorized but unissued or may be treated as issued but not outstanding and transferred at such times, to such parties, and for such consideration as the Trustees may determine.

SECTION 7.5. The shareholders shall not be subject to any personal liability for the acts or obligations of the Trust and every written undertaking made by the Trust shall contain a provision that such undertaking is not binding upon any of the shareholders personally and that the parties contracting with the Trust shall look only to the assets of the Trust for the satisfaction of any obligations under such contracts or undertakings. Upon the payment by any shareholder of any liability incurred by reason of being a shareholder of the Trust, such shareholder will be entitled to reimbursement from the general assets of the Trust.

## ARTICLE VIII

### MEETINGS OF SHAREHOLDERS

SECTION 8.1. Annual meetings of the shareholders shall be held at such place and time as the Trustees may designate after delivery to shareholders of the annual report described in Section 9.3 and, in any event, within six months after the end of each fiscal year. Special meetings of the shareholders shall be called at any time and place when ordered by a majority of the Trustees, or upon the written request of the holders of twenty-five (25%) percent of the outstanding shares, specifying the purpose or purposes for which such meeting is called. If for any reason the annual meeting of the shareholders as herein provided for shall be omitted, a special meeting of the shareholders may subsequently be held in lieu thereof and the business of the annual meeting may be transacted thereat.

SECTION 8.2. Notice of all meetings of the shareholders shall be given by the Trustees by mail to each shareholder at his registered address, mailed not less than ten days and not more than forty days before the meeting. No business shall be transacted at any special meeting of the shareholders unless notice of such business has been given in the call for the meeting. Any adjourned meeting may be held as adjourned without further notice.

SECTION 8.3. No action taken by the shareholders at any meeting other than the election of Trustees or an action of the type specified in Sections 10.1, 10.3, 13.1 and 13.2 hereof (and then only if such action is

taken by the percentage of shares therein specified) shall in any way bind the Trustees.

**SECTION 8.4.** At any meeting of the shareholders, any holder of shares entitled to vote thereat may vote by proxy. Pursuant to a resolution of a majority of the Trustees, proxies of the shareholders may be solicited in the name of one or more of the Trustees or one or more of the officers, employees or representatives of the Trust. Each full share shall be entitled to one vote. Fractional shares shall not be entitled to any vote. When any share is held jointly by two or more persons, any one of them may vote at any meeting, in person or by proxy, in respect of such share, but if more than one of them shall be present at such meeting, in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such share. If the holder of any share is a minor or a person of unsound mind, and subject to guardianship or to the legal control of any other person as regards the charge or management of such share, he may vote by his guardian or such other person appointed by him or having such control, and such vote may be given in person or by proxy.

**SECTION 8.5.** The presence, in person or by proxy, of the holders of a majority of the shares issued, outstanding, and entitled to vote, shall be necessary to constitute a quorum at all meetings of shareholders for the transaction of business. If a quorum shall not be present a majority of the shareholders entitled to vote present in person or represented by proxy, shall have power to adjourn from time to time the meeting until a quorum shall be present and represented.

## ARTICLE IX

### REPORTS AND DISTRIBUTIONS TO SHAREHOLDERS

**SECTION 9.1.** The Trustees shall from time to time distribute ratably among the shareholders such proportion of the net profits and surplus (including capital or paid-in surplus) held by the Trustees as they may deem proper, except that they shall distribute annually such amount of the real estate investment trust taxable income, as determined under Section 857 of the Internal Revenue Code, as may from time to time be required by said Internal Revenue Code in order that this Trust qualify and continue to be qualified as a real estate investment trust within the meaning of the Internal Revenue Code; the Trustees shall make such com-

putation of real estate investment trust taxable income in good faith, but they shall not be liable for errors in computation. Distributions may be made in cash or property (including without limitation any kind of obligations of the Trust or any assets thereof) and the Trustees may distribute ratably among the shareholders additional shares issuable hereunder in such manner and on such terms as the Trustees may deem proper. The amount of all distributions and the time of declaration and payment thereof shall be wholly in the discretion of the Trustees. Such distributions may be made even though the stated capital and capital or paid in surplus of this Trust at the time of any distribution exceeds the net assets of the Trust based either on the market value (as determined by the Trustees under Section 2.13 hereinafter) or the depreciated cost of the investments and other assets of the Trust, subject to the provisions of the laws of the State of Tennessee.

SECTION 9.2. All distributions to shareholders shall be accompanied by a statement in writing, advising the shareholders of the source of the funds so distributed so that distributions of income and returns of capital will clearly be distinguished; but if the source thereof is not then determinable, the communication shall so state and shall disclose the approximate effect of the distribution upon stated capital, capital surplus and earned surplus, in which event the definitive statement of the source of funds distributed shall be forwarded to shareholders within sixty days after the close of the fiscal year in which the distribution is made.

SECTION 9.3. The Trustees shall cause to be prepared and shall furnish to the shareholders, within 120 days after the end of each fiscal year, an annual report containing financial statements of the Trust audited by independent public accountants, including a balance sheet as at the end of such year and statements of income and surplus for such year. A copy of such report, including the opinion of such independent public accountants, shall be filed with the administrator of any state securities commission which shall request same. In addition, interim reports of operations, containing a current balance sheet (which may be unaudited) and other pertinent information regarding the Trust and its activities in the quarter covered by the report, shall be furnished within 60 days after the end of each of the first three fiscal quarters to the administrator of any state securities commission which shall request the same.

SECTION 9.4. The records of the Trust shall be open to inspection by shareholders of the Trust to the same extent as is permitted shareholders of corporations under Tennessee law, and shall be open to inspection at

any reasonable time by the administrator of any state securities commission which shall request such inspection.

## ARTICLE X

### TRUSTEES

SECTION 10.1. The number of Trustees shall be a minimum of three with such additional number as the Trustees determine appropriate from time to time. All Trustees shall hold office for a term of one year and until their successors are elected at the next annual meeting of shareholders and shall qualify. When a vacancy in the number of Trustees shall occur, until such vacancy is filled as provided in Section 10.5, the continuing or surviving Trustee or Trustees, regardless of their number shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Declaration of Trust.

SECTION 10.2. Any Trustee may resign his Trust by instrument in writing signed by him and delivered or mailed to the Managing Trustee, and such resignation shall take effect immediately or at a later date according to its terms.

SECTION 10.3. Any or all of the Trustees may be removed and a new Trustee may be elected to take the place of each Trustee so removed (provided the aggregate number of Trustees after such removal and election shall not be less than three) either (i) at any meeting of the shareholders called for the purpose by the affirmative vote of the holders of not less than a majority of the shares then outstanding hereunder and entitled to vote, or (ii) at any meeting of the shareholders called for the purpose of acting upon a recommendation of a majority of the Trustees as to the removal and election of one or more Trustees, by the adoption of such recommendation by an affirmative vote of not less than a majority in interest of the shares then present and voting.

SECTION 10.4. The death, resignation, or removal of any one or more of the Trustees shall not operate to annul the Trust or to revoke any existing agency created pursuant to the terms of this Declaration of Trust.

SECTION 10.5. In case a vacancy in the number of Trustees shall occur through death, resignation, incompetence or other incapacity to exercise the duties of the office, or removal (unless the vacancy occurring through

removal has already been filed by the shareholders acting pursuant to the provisions of Section 10.3 hereof), the remaining Trustee or Trustees may fill such vacancy by appointing, by an instrument in writing signed by a majority of the remaining Trustees, such person as they or he in their or his absolute discretion shall see fit, subject to the approval at the next annual meeting of the holders of a majority of the shares of the Trust then present and voting. Thereupon the Trust property shall vest in the new Trustee or Trustees jointly with the continuing Trustee or Trustees without any further act or conveyance.

SECTION 10.6. Meetings of the Trustees shall be held from time to time upon the call of the Managing Trustee or of any two or more of the other Trustees. Notice of any meetings shall be given not less than three days before the meeting but may be waived by the Trustees either before or after such meeting. The Trustees may take any action which they are required or permitted to take without a meeting on the written consent, setting forth the action so taken, of all the Trustees entitled to vote thereon. At any meeting a majority of the Trustees shall constitute a quorum. The terms "majority of the Trustees" whenever used herein shall mean more than one-half of the total number of Trustees then in office when three or more Trustees are in office, and shall mean one Trustee if only one Trustee is in office, and shall mean both Trustees if only two Trustees are in office. Any deed, mortgage, lease or other instrument or writing executed by one or more of the Trustees shall be valid and binding upon the Trustees and upon the Trust when authorized by a vote in writing passed or signed as above provided.

SECTION 10.7. The Trustees may receive reasonable compensation for their general services as Trustees hereunder, and such compensation for special services as they may in good faith deem advisable. The annual aggregate compensation of the Trustees, excluding expenses, shall not, however, exceed one fourth of one percent of net assets of the Trust (as defined in Section 2.16) determined at the close of the preceding fiscal year; provided, however, that such limitation shall apply only for fiscal years beginning on or after July 1, 1973.

SECTION 10.8. The Trustees may adopt, and from time to time amend or repeal, bylaws for the conduct of their business, and in such bylaws may define duties of their officers, agents, servants, and representatives.

SECTION 10.9. The Trustees, acting unanimously, may appoint from among their own number an executive committee of two or more persons to whom they, acting unanimously, may delegate such of the powers here-

is given to the Trustees as they may deem expedient, except as herein otherwise provided.

**SECTION 10.10.** The Trustees may appoint a consulting committee. Members of this committee shall not be Trustees or officers of the Trust, but may be shareholders or retired Trustees. They shall be entitled to such remuneration for their services as the Trustees from time to time deem appropriate. The Trustees may at any time remove any member and may appoint new or additional members. Any member of this committee may resign by giving written notice of his resignation to the Trustees. It shall be the duty of the consulting committee to consult with and advise the Trustees as to the investment of the Trust property and other matters relating to the business and affairs of the Trust. This committee shall have no power or authority to make any contract or incur any liability whatever or to take any action binding upon the Trust, the Trustees, or the shareholders. The provisions of Article IV hereinabove and elsewhere in this instrument relative to exemption from personal liability of the Trustees, officers, and agents of the Trustees, officers, and agents of the Trust shall apply in all respects to members of the consulting committee.

**SECTION 10.11.** The Trustees shall not, in dealing with any Trustee or Trustees individually, or any investment adviser, officer or employee of the Trust, enter into any transactions contrary to the obligations which would be imposed upon fiduciaries acting under this Declaration of Trust by the Tennessee courts of equity.

## ARTICLE XI

### OFFICERS

**SECTION 11.1.** The officers of the Trust shall consist of a Managing Trustee, a President, a Secretary, a Treasurer, and such other officers, assistant officers and agents as may be deemed necessary by the Trustees, each of whom shall be elected annually by the Trustees. Any two or more offices may be held by the same person, except the offices of President and Secretary. Officers need not be Trustees or shareholders of the Trust. The Trustees shall fix the compensation of all officers whom they may elect or appoint.

The children of Kermit C. Stengel, Jr., all of whom reside at Gerald Place, Nashville, Tennessee, namely:

Marc K. Stengel, born January 10, 1966;  
Christian S. Stengel, born March 28, 1969; and  
Eric L. Stengel, born July 10, 1961.

The children of James E. Foran, all of whom reside at Yale Avenue, Winnipeg, Manitoba, Canada, namely:

Allan F. Foran, born August 22, 1962;  
James M. Foran, born October 10, 1964;  
Neil B. Foran, born March 30, 1966;  
Jennifer L. Foran, born November 18, 1967; and  
Colin E. Foran, born November 15, 1969.

The children of Theodore D. Taubeneck, all of whom reside at 171 LongueVue Drive, Mt. Lebanon, Pennsylvania, namely:

Steven Taubeneck, born October 20, 1952;  
Ann Taubeneck, born January 23, 1954;  
David Taubeneck, born July 23, 1956;  
Lee Taubeneck, born September 28, 1956;  
Kathrine Taubeneck, born September 24, 1958;  
Amy Taubeneck, born October 17, 1959;  
Beth Taubeneck, born January 30, 1962;  
Molly Taubeneck, born October 28, 1963; and  
Paul Taubeneck, born March 31, 1965.

## ARTICLE XIII

### TERMINATION OR AMENDMENT OF TRUST

SECTION 13.1. The provisions of this Declaration of Trust may be amended or altered, except as to the exemptions from personal liability of the shareholders and the prohibitions of assessments upon shareholders, or the Trust may be terminated, only with the consent of the holders of at least two-thirds of the shares then outstanding. Notwithstanding the foregoing, after fifteen days' written notice to the shareholders of the proposed action, the Trustees may (subject to the rights of shareholders to rescind such action at the next meeting of shareholders), from time to time by a majority vote of the Trustees, amend or alter the provisions of this Declaration of Trust, without the vote or assent of the shareholders,



to the extent deemed by the Trustees in good faith to be necessary to meet the requirements for qualification as a real estate investment trust under the provisions of the Internal Revenue Code or any regulations or rulings thereunder promulgated by the Treasury Department or any interpretation of such statutory provisions or regulations contained in any court decision. A certificate signed and acknowledged by a Trustee that such action was taken in accordance with and by the affirmative vote required by this Declaration of Trust shall be recorded as provided by law. Upon the termination of the Trust the Trustees may sell all the Trust property and, after paying or providing for all outstanding obligations and receiving due security against any possible or contingent liabilities that may arise against them, divide the net proceeds or distribute the remaining assets in kind among the shareholders in proportion to their respective interests and ownership of shares. The powers of the Trustees shall continue until the affairs of the Trust have been wound up.

SECTION 13.2. At any meeting of the Trustees called for the purpose, the Trustees may by the affirmative vote of two-thirds of the total number of Trustees, or by an instrument signed by all of the Trustees, and with the consent of the holders of at least two-thirds of the shares then outstanding, direct the organization of a corporation, association, trust, or other organization to take over the Trust property and carry on the affairs of the Trust, and sell, convey and transfer the Trust property to any such corporation, association, trust or organization in exchange for shares or securities thereof, or beneficial interests therein, and the assumption by such transferee of the liabilities of the Trust, and thereupon to terminate the Trust, and deliver such shares to shareholders of this Trust in redemption of their shares in the Trust, or cause all or any part of the assets of the Trust to be transferred to one or more corporations already in existence in exchange for capital stock of such corporation or corporations and thereafter either continue to hold stock of such corporation as part of Trust property or distribute the capital stock of such corporation or corporations pro rata to the shareholders in proportion to their respective share holdings in the Trust; or cause this Trust to be merged or consolidated with any other corporation, association, trust or other organization.

SECTION 13.3. The provisions of Sections 10.1, 10.3, 13.1 and 13.2 giving the shareholders the right to elect and remove Trustees and the right to amend and terminate the Trust shall be subject to the requirements of the Internal Revenue Code. If any provision granting or limiting such shareholders' rights shall conflict with the requirements of the Internal

Revenue Code, such provision shall be deemed to be void and without any force or effect *ab initio*, and the Trustees shall promptly notify the shareholders of such fact, but the Trustees shall not be liable for any action taken pursuant to any such provision upon the vote of the Trustees required hereunder. In the event that the provisions relating to the election of Trustees by the shareholders of the Trust shall be deemed to be without force or effect, the Trustees then in office shall be deemed to be the qualified and acting Trustees until such time as their successor Trustees have been named and qualified. At the next meeting of shareholders after the Trustees shall have notified the shareholders that any or all of the shareholders' rights under Sections 10.1, 10.3, 13.1 and 13.2 created such a conflict and therefore shall be without force and effect, there shall be submitted to the shareholders, for their approval or disapproval by a majority of those voting, the question as to whether such shareholders' right or rights should be continued.

## ARTICLE XIV

### MISCELLANEOUS

SECTION 14.1. The term "Trustee" as herein used shall mean, where the context admits, each of the undersigned or their duly elected and qualified successors as shall be at the time be acting as Trustees hereunder.

SECTION 14.2. This instrument is executed by the Trustees to be recorded in Davidson County, State of Tennessee, and with reference to the laws thereof, and the rights of all parties and the construction and effect of every provision hereof shall be subject to and construed according to the laws of said State.

SECTION 14.3. This Declaration of Trust may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

## ARTICLE XV

## COMPLIANCE WITH PROVISIONS OF INTERNAL REVENUE CODE

The Trustees, in exercising the powers herein granted to them, shall exercise due diligence to so conduct the affairs of the Trust as to qualify the Trust and its shareholders, as promptly as possible, for the income tax treatment provided by Part II, Subchapter J, of the Internal Revenue Code as presently existing or as hereinafter amended from time to time; provided, however, that no Trustee, officer or agent of this Trust shall be liable for any act or omission resulting in the loss of tax benefits under that law, except for that arising from his own bad faith, wilful misfeasance, gross negligence, or reckless disregard of his duties.

I, JOE C. CARR, Secretary of State, do hereby certify  
that this amendment to charter, with certificate attached, the foregoing  
of which is a true copy, was this day registered and certified to by me.  
This the 7th day of May, 1973.

JOE C. CARR,  
SECRETARY OF STATE

FEE: \$23.50

# CORPORATION ANNUAL REPORT

① 69157  
CHARTER 4-1968

4/30/71  
DATE REC'D OR FILED IN  
DATE QUALIFIED IN I. A.

③ BCC ENV. OPL  
BACH

③ CHANGE TO

YEAR OF LAST REFORM  
FILED IN THIS OFFICE

YEARS: THIS REPORT  
COVERS

[illegible]

4. CHANGE TO

MEMPHIS, ARIZONA  
FEDERAL BUREAU OF INVESTIGATION  
MEMPHIS, TN 38219

7/11/73 TN 37219

**STREET ADDRESS CHANGE**

ST Corporation System  
100 Biscayne Blvd.  
Miami, Dade County, Florida 33132

**REGISTERED AGENT NAME CHANGE  
AND/OR ADDRESS CHANGE  
INCLUDE REGISTERED OFFICE ADDRESS**

[illegible]**SIGNATURE**

Mr. Tolson Pres. & Sec. Secretary Tel. no. 259-26

DATE: March 11, 1974

CONFIDENTIAL

# CORPORATION ANNUAL REPORT

106000 \*\*\*\*15

① 599157  
CHARTER NUMBER

② 4/30/71  
DATE REC. ON FILE  
DATE QUALIFIED

③ 550  
DEVELOP BACK

YEAR OF LAST REPORT  
FILED IN THIS OFFICE  
1972  
1973  
1974

④ FED EMPLOYER ID NO 62-6085970

⑤ CHANGE TO

PLEASE READ INSTRUCTIONS ON BACK

INVESTORS REALTY TRUST

12th Floor, Third National Bank Bldg.  
Nashville, Tennessee 37219

⑥ STREET ADDRESS CHANGE

None of record for these years, but  
now use:

CT Corporation System  
100 Biscayne Blvd.  
Miami, Dade County, Fla. 33132

⑦ REGISTERED AGENT NAME CHANGE  
AND/OR ADDRESS CHANGE  
INCLUDE REGISTERED OFFICE ADDRESS

NAME AND TITLE	STREET ADDRESS	CITY, STATE	TITLE MUST BE SHOWN
Nald W. MacLeod	3rd National Bank Bldg.	Nashville, Tenn.	Trustee Pres.
vid L. Hattis	3rd National Bank Bldg.	Nashville, Tenn.	Trustee VP/S
nn W. Campbell	3rd National Bank Bldg.	Nashville, Tenn.	Trustee
L. Greer	3rd National Bank Bldg.	Nashville, Tenn.	Trustee
ndall H. Hagner, Jr.	3rd National Bank Bldg.	Nashville, Tenn.	Trustee
Owen Howell, Jr.	3rd National Bank Bldg.	Nashville, Tenn.	Trustee
W. Johnston	3rd National Bank Bldg.	Nashville, Tenn.	Trustee
hn N. Macuire	3rd National Bank Bldg.	Nashville, Tenn.	Trustee
ermit C. Stengel, Jr.	3rd National Bank Bldg.	Nashville, Tenn.	Trustee
uis P. Wolfert	3rd National Bank Bldg.	Nashville, Tenn.	Trustee

CERTIFY THAT: AS AN OFFICER OF THE CORPORATION EMPLOYED TO PREPARE THIS REPORT AS REQUIRED BY CHAPTER 897, FLORIDA STATUTES, I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED ON THIS REPORT SHALL HAVE THE SAME LEGAL EFFECT AS THAT OF THE CORPORATION.

SIGNATURE

Treasurer

TEL 259-2635

May 17, 1976

AMENDMENT

699157

INVESTORS REALTY TRUST

AMEND TO TRUST

FILED: 4/5/77

lc  
2/2/77

699157



BRUCE A. SMATHERS  
SECRETARY OF STATE

## Secretary of State

STATE OF FLORIDA  
THE CAPITOL  
TALLAHASSEE 323104

April 6, 1977  
F. R. RITTER, Director  
Division of Corporations  
904/488-3140

DAVID C. MACNAMARA  
ASSISTANT SECRETARY OF STATE

C T CORPORATION SYSTEM  
1820 First National Bank Tower  
Atlanta, Ga. 30303  
Attn: George F. Robinson

SUBJECT: INVESTORS REALTY TRUST

DOCUMENT NUMBER: 699157

This will acknowledge receipt of the following:

1. XX Check(s) totalling \$ 10.00
2. \_\_\_\_\_ Articles of Incorporation filed
3. \_\_\_\_\_ Amendments to Articles of Incorporation filed
4. \_\_\_\_\_ Articles of Merger or Consolidation filed
5. \_\_\_\_\_ Certificate of Withdrawal filed
6. \_\_\_\_\_ Limited Partnership filed
7. \_\_\_\_\_ Limited Partnership Annual Report filed
8. \_\_\_\_\_ Trademark Application filed
9. \_\_\_\_\_ Application for qualification filed \_\_\_\_\_. It is no longer required to issue a permit. A certificate under seal to this effect may be obtained for \$5.
10. \_\_\_\_\_ Reinstatement filed
11. \_\_\_\_\_ Articles of Dissolution filed
12. XX OTHER: Amendment to Declaration of Trust filed 4/5/77.

1. \_\_\_\_\_ Certified Copies
2. \_\_\_\_\_ Certificate Under Seal
3. \_\_\_\_\_ Photocopy(ies).
4. \_\_\_\_\_ OTHER



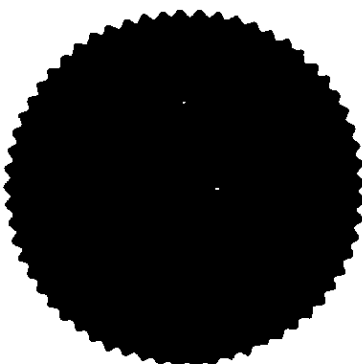
State of Tennessee



Department of State

RECEIVED  
JAN 5 9 33 AM '77  
DEPARTMENT OF STATE  
TALLAHASSEE, FLORIDA

I, GENTRY CROWELL, Secretary of State of the State of Tennessee, do hereby certify that the annexed is a true and correct copy of the Articles of Amendment of the Amended and Restated Declaration of Trust of INVESTORS REALTY TRUST, which was filed in this office on November 18, 1976 in Book P-56, Page 3484.



IN WITNESS WHEREOF, I have hereto affixed my signature and the Great Seal of the State, at Nashville, this 22nd day of March in the year of our Lord nineteen hundred Seventy-Seven

Gentry Crowell  
Secretary of State

5025052 JAN 246

ARTICLES OF AMENDMENT  
TO THE AMENDED AND RESTATED DECLARATION OF TRUST OF  
INVESTORS REALTY TRUST

Pursuant to the provisions of Tennessee Code Annotated Sections 48-303 and 48-1804, and pursuant to the provisions of Section 13.1 of the Restated Declaration of Trust of Investors Realty Trust, the undersigned, an unincorporated business trust of the State of Tennessee, adopts the following amendments to its Restated Declaration of Trust heretofore filed in the Office of the Secretary of State of Tennessee on May 7, 1973, as follows:

1. The name of this Trust is Investors Realty Trust.
2. The amendments adopted are set forth in Exhibit A hereto, underlined words in Exhibit A being added to the provisions of the quoted provisions of the Amended and Restated Declaration of Trust, and bracketed words being deleted therefrom, it being stipulated that those portions of the Amended and Restated Declaration of Trust not set forth in Exhibit A shall continue in effect, unamended.

The foregoing amendments were duly adopted and proposed to the shareholders of Investors Realty Trust by the Trustees of said Trust at a meeting of Trustees duly held on March 15, 1976. In turn, said amendments were duly adopted by the holders of more than two-thirds (2/3) of the shares of beneficial interest of the Trust then outstanding at the Annual Meeting of Shareholders of Investors Realty Trust held June 21, 1976.

7/2 1976 PM 3 39


NOVEMBER 18, 1976

P-56, PAGE 3486

5005062 247

Dated November 17, 1976.

INVESTORS REALTY TRUST

By   
Donald W. MacLeod, President and  
Managing Trustee

PU 3 39

**EXHIBIT A**

**AMENDMENTS TO THE  
AMENDED AND RESTATED DECLARATION OF TRUST  
OF INVESTORS REALTY TRUST**

This DECLARATION OF TRUST is made effective as of the 1st day of July, 1969, by and between INVESTORS REALTY TRUST (formerly AMERICAN SECURITY REAL ESTATE INVESTMENT TRUST), hereinafter called the "Trust," and D. W. JOHNSTON, DONALD W. MACLEOD, D. R. BUTTERY and KERRIT C. STENGEL, JR., hereinafter called the "Trustees,"

**WITNESSETH:**

WHEREAS, the Trustees desire to form a business trust for profit for the purpose of acquiring, holding, managing, improving, dealing with and disposing of property, real and personal, including mortgages, deeds of trust and other interests therein, wherever situated, in such manner as to be eligible to qualify from time to time at the discretion of the Trustees as a "real estate investment trust" under the provisions of Sections 856, 857 and 858 of the United States Internal Revenue Code of 1954, as amended, and the Regulations issued thereunder (said Code and Regulations as amended to the time in question being hereinafter referred to as the "Internal Revenue Code"), and

WHEREAS, in the furtherance of such purpose, the Trustees, acting pursuant to directions by Crescent Properties Company, have taken title, as of June 30, 1969, to certain real estate distributed to them as a return of capital, and may hereafter acquire cash and other property, and shall hold, manage and dispose of all such property as such Trustees may determine in the manner hereinafter stated;

NOW, THEREFORE, the Trustees hereby declare that they will hold all property of every type and description which they are acquiring or may hereafter acquire as such Trustees, together with the proceeds thereof, in trust, to manage, and dispose of the same for the benefit of the holders (hereinafter referred to as "shareholders") from time to time of the shares of beneficial interest (hereinafter referred to as "shares") being issued to the stockholders of Crescent Properties Company and to be otherwise issued hereunder in the manner and subject to the stipulations contained herein, to wit:

• • • • •

FIN 3 33

20015092 IAC 249

## ARTICLE II

### POWERS OF TRUSTEES

• • • • •

**SECTION 2.8** The Trustees shall have power to lend money and to invest and to reinvest any funds of the Trust as they shall determine; and to create a reserve fund or reserve funds for such purposes as they deem advisable, and to invest or reinvest the same in such manner as they may determine, provided such arrangements shall [will] not prevent the Trustees from making any distribution pursuant to [of net income as required in] Section 9.1 hereof.

• • • • •

**SECTION 2.19.** No Trustee, officer or Adviser of the Trust, or any person affiliated with any such persons, shall sell any property or assets to the Trust or purchase any property or assets from the Trust, directly or indirectly, nor shall any such person receive any commission or other remuneration, directly or indirectly, in connection with the purchase or sale of Trust assets, except pursuant to transactions that are fair and reasonable to the shareholders of the Trust and relate to: (1) the acquisition of property or assets at the formation of the Trust or shortly thereafter that is fully disclosed in the prospectus; (2) the acquisition by the Trust of federally insured or guaranteed mortgages at prices not exceeding the currently quoted prices at which the Federal National Mortgage Association is purchasing comparable mortgages; (3) the acquisition of other mortgages on terms not less favorable to the Trust than similar transactions involving unaffiliated parties; or (4) the acquisition by the Trust of other property at prices not exceeding the fair market value thereof as determined by independent appraisal. All such transactions and all other transactions in which any such persons have any direct or indirect interest shall be approved by a majority of the Trustees, including a majority of the independent Trustees, but not less than three. All commissions or remuneration received by the Adviser or any affiliate of the Adviser in connection with the purchase or sales of Trust assets shall be deducted from the advisory fee.

[For the purposes of this Section 2.19 the term "independent contractor" means an "independent contractor," as defined in Section 856(d) (3) of the Internal Revenue Code, which furnishes or renders services to tenants of, or manages or operates real property owned by, the Trust.]

5005092 Rev. 251

persons shall look solely to the Trust property for satisfaction of claims of any nature arising in connection with the affairs of this Trust. If the Trustees or any officers, agents or shareholders of the Trust are made parties to any suit or proceeding to enforce any such obligation or liability, they shall not on account thereof be held to any personal liability except as aforesaid. As used in this Section 4.1 and Section 4.2, "negligence" of a Trustee shall mean his failure to exercise that degree of care [which an ordinary prudent trustee of a real estate investment trust would exercise under the same or similar circumstances.] required of a trustee of a trust organized in accordance with the Tennessee "Massachusetts Trust Act of 1961" as the same may be amended from time to time; however, "negligence" shall not mean or include any act or omission resulting in increased income tax or the loss of any tax benefits available to the Trust or its shareholders under either the provisions of the Internal Revenue Code applicable to a real estate investment trust or any other provisions of the Internal Revenue Code.

• • • • •

## ARTICLE V

### SHARES OF BENEFICIAL INTEREST AND OTHER SECURITIES

• • • • •

SECTION 5.5. The shareholders shall upon demand disclose to the Trustees in writing such information with respect to direct and indirect ownership of shares as the Trustees deem necessary to comply with the provisions of the Internal Revenue Code or to comply with the requirements of any other taxing authority. If the Trustees shall, at any time, when the Trust is being, or intended to be, operated in a manner so as to qualify as a real estate investment trust under the Internal Revenue Code, [and in good faith] be of the good faith opinion that direct or indirect ownership of shares of the Trust has or may become concentrated to an extent which is contrary to the requirements of Section 856(a) (5) and (6) of the Internal Revenue Code, then the Trustees shall have the power (i) to call for redemption a number of such concentrated shares sufficient, in the opinion of the Trustees, to maintain or bring the direct or indirect ownership of shares of the Trust into conformity with the requirements of said Section 856(a) (5) and (6) and (ii) to refuse to transfer shares to any person whose acquisition of the shares in question would, in the opinion of the Trustees, result in a violation of said Section 856(a) (b) or (6). The redemption price shall be equal to the fair market value of the shares as reflected in the latest bid quotation for the shares (if then traded over-the-counter) or the closing sale price (if then listed on a national securities exchange) on the business day preceding the day on which notice of redemption is sent, or, if no quotations or closing sale price for the shares are available, as otherwise determined in good faith by the Trustees. From and after the date fixed for redemption by the Trustees, the holder of any shares so called for redemption shall cease to be entitled to dividends, voting rights and other benefits with respect to such shares excepting only the right to payment of the redemption price fixed as aforesaid. For the purposes of this Section 5.5, the term "individual" shall be construed as defined in Section 512(a) (2) of the Internal Revenue Code, or any successor provision, and "ownership" of shares shall be determined as provided in Section 514 of the Internal Revenue Code.

• • • • •

10.5.35

## ARTICLE IX

3005092 252

## REPORTS AND DISTRIBUTIONS TO SHAREHOLDERS

SECTION 9.1. The Trustees [shall] may, at their discretion, from time to time distribute ratably among the shareholders such proportion of the net profits and surplus (including capital or paid-in surplus) held by the Trustees as they may deem proper, including such amounts as they may determine to be necessary or appropriate in order that the Trust may qualify for taxation as a real estate investment trust under the Internal Revenue Code with respect to any taxable period. The Trustees shall have no obligation to make any such distribution or to take (or fail to take) any other action necessary to enable the Trust to qualify as such a real estate investment trust with respect to any period. The Trustees shall not be liable for any errors in computation with respect to any distribution, [except that they shall distribute annually such amount of the real estate investment trust taxable income, as determined under Section 857 of the Internal Revenue Code, as may from time to time be required by said Internal Revenue Code in order that this Trust qualify and continue to be qualified as a real estate investment trust within the meaning of the Internal Revenue Code; the Trustees shall make such computation of real estate investment trust taxable income in good faith, but they shall not be liable for errors in computation.] Distributions may be made in cash or property (including without limitation any kind of obligations of the Trust or any assets thereof) and the Trustees may distribute ratably among the shareholders additional shares issuable hereunder in such manner and on such terms as the Trustees may deem proper. The amount of all distributions and the time of declaration and payment thereof shall be wholly in the discretion of the Trustees. Such distributions may be made even though the stated capital and capital or paid-in surplus of this Trust at the time of any distribution exceeds the net assets of the Trust, based either on the market value (as determined by the Trustees under Section 2.13 hereinabove) or the depreciated cost of the investments and other assets of the Trust, subject to the provisions of the laws of the State of Tennessee.

. . . . .

## ARTICLE XIII

## TERMINATION OR AMENDMENT OF TRUST

SECTION 13.1. The provisions of this Declaration of Trust may be amended or altered, except as to the exemptions from personal liability of the shareholders and the prohibitions of assessments upon shareholders, or the Trust may be terminated, only with the consent of the holders of at least two-thirds of the shares then outstanding. Notwithstanding the foregoing, after fifteen days' written notice to the shareholders of the proposed action, the Trustees may (subject to the rights of shareholders to rescind such action at the next meeting of shareholders), from time to time by a majority vote of the Trustees, amend or alter the provisions of this Declaration of Trust, without the vote or assent of the shareholders, to the extent deemed by the Trustees in good faith to be necessary to meet the requirements for qualification as a real estate investment trust under the

E00A5092 253

provisions of the Internal Revenue Code or any regulations or rulings thereunder promulgated by the Treasury Department or any interpretation of such statutory provisions or regulations contained in any court decision [...]. If the Trustees determine that it is in the interest of the Trust that the Trust be, or be eligible to be, operated in a manner so as to qualify as a real estate investment trust under the provisions of the Internal Revenue Code. A certificate signed and acknowledged by a Trustee that such action was taken in accordance with, and by the affirmative vote required by, this Declaration of Trust shall be recorded as provided by law. Upon the termination of the Trust the Trustees may sell all the Trust property and, after paying or providing for all outstanding obligations and receiving due security against any possible or contingent liabilities that may arise against them, divide the net proceeds or distribute the remaining assets in kind among the shareholders in proportion to their respective interests and ownership of shares. The powers of the Trustees shall continue until the affairs of the Trust have been wound up.

• • • • •

[SECTION 13.3. The provisions of Sections 10.1, 10.3, 13.1 and 13.2 giving the shareholders the right to elect and remove Trustees and the right to amend and terminate the Trust shall be subject to the requirements of the Internal Revenue Code. If any provision granting or limiting such shareholders' rights shall conflict with the requirements of the Internal Revenue Code, such provision shall be deemed to be void and without any force or effect, *ab initio*, and the Trustees shall promptly notify the shareholders of such fact, but the Trustees shall not be liable for any action taken pursuant to any such provision upon the vote of the Trustees required hereunder. In the event that the provisions relating to the election of Trustees by the shareholders of the Trust shall be deemed to be without force or effect, the Trustees then in office shall be deemed to be the qualified and acting Trustees until such time as their successor Trustees have been named and qualified. At the next meeting of shareholders after the Trustees shall have notified the shareholders that any or all of the shareholders' rights under Sections 10.1, 10.3, 13.1 and 13.2 created such a conflict and therefore shall be without force and effect, there shall be submitted to the shareholders, for their approval or disapproval by a majority of those voting, the question as to whether such shareholders' right or rights should be continued.]

• • • • •

## ARTICLE XV

### FEDERAL TAX STATUS

#### AND

### COMPLIANCE WITH PROVISIONS OF INTERNAL REVENUE CODE

SECTION 15.1. The Trustees shall have, without other or further authorization, the power to determine from time to time whether or not the Trust shall operate so as to qualify as, and elect to be taxed as, a real estate investment trust under the provisions of the Internal Revenue Code.



5045092 (A) 254

SECTION 15.2. If the Trustees determine that the Trust shall be operated in a manner so as to qualify as a real estate investment trust under the provisions of the Internal Revenue Code then, (T) the Trustees, in exercising the powers granted to them, shall exercise due diligence to so conduct the affairs of the Trust as to qualify the Trust and its shareholders [as promptly as possible] for the income tax treatment provided by Part II, Subchapter J, of the Internal Revenue Code as presently existing or as hereinafter amended from time to time; provided, however, that no Trustee, officer or agent of this Trust shall be liable for any act or omission resulting in the loss of tax benefits under that law, except for that arising from his own bad faith, willful misfeasance, gross negligence, or reckless disregard of his duties.

I, JOE C. CARR, Secretary of State, do hereby certify that  
this amendment to charter, with certificate attached, the foregoing  
of which is a true copy, was this day registered and certified to by me.  
This the 12th day of November, 1974.

JOE C. CARR,

SECRETARY OF STATE

FEB 8 1975

SEE IMPORTANT DISSOLUTION NOTICE ON OTHER SIDE



CORPORATION ANNUAL REPORT

1977

THIS REPORT MUST BE ACCOMPANIED BY A \$5 FEE.

Form CDP 820

READ NOTICE AND INSTRUCTIONS BEFORE MAKING ENTRIES

1. Name and Address of Corporation Principal Office

2. Enter Change of Address of Corporation Principal Office. P.O. Box Number Alone is NOT Sufficient.

Street Address  
Changed to Address

P.O. Box No.  
shown in item 1

City

State Zip Code

3. Date Incorporated or Qualified To Do Business in Florida

4-30-71

4. Federal Employer Identification Number (FEIN)

62-6085970

5. Date of Last Report

6. Names and Street Addresses of Each Officer and Director

Name of Officer and Director	Title	Director (X)	Street Address of Each Officer and Director (Do NOT Use Post Office Box Numbers)	City and State
Donald E. MacLeod	Pres	X	6540 Powers Ferry Rd NW	Atlanta, GA
Carol A. Batts	V.P.	X	"	"
Glen M. Thomas	Treas	X	"	"
Norman G. Gibbs, Jr		X	"	"
Bartholomew Weaver		X	"	"
J. Owen Howell, Jr		X	"	"
O. W. Johnston		X	"	"
John R. McGuire		X	"	"
Kerrin J. Stewart, Jr		X	"	"
Louis P. Holtz		X	"	"

7. Registered Agent Information

If you wish to change Registered Agent on this form, attach all new information here

Street Address (Do NOT Use P.O. Box Number)  
CIT Corporation System / 100 Biscayne Blvd.

City, State and Zip Code  
Miami, Florida 33132

Street Address (Do NOT Use P.O. Box Number)  
City, State and Zip Code

8. An affidavit of the filer must be signed and dated. This report must be signed by one of the following: The President, Vice President, Secretary, Assistant Secretary, or Treasurer of the Corporation. If the Corporation is in the hands of a receiver or trustee, shall be executed on behalf of the Corporation by the receiver or trustee.

No Other Person Will Be Accepted. Your Report Will Be Returned If It Does NOT Bear An Authorized Signature

I Certify That I Am An Officer or Director of the Corporation or the Receiver or Trustee Empowered to Execute This Report as Required by Chapter 820, F.S. I Understand My Signature On This Report Shall Have The Same Legal Effect As If Made Under Oath

Typed Name of Filer

Title

Treasurer

Signature

KR 6/21/77

Telephone Number  
404/911-4400

Date  
June 13, 1977

THIS REPORT MUST BE ACCOMPANIED BY THE \$5 FEE

D. - #157

NAME: INVESTORS REALTY TRUST

PRINCIPAL PLACE OF BUSINESS: Tennessee ✓

TERM OF EXISTENCE: Perpetual

FILED: April 30, 1971 ✓

- (a) Amendment to D.T. filed 1-31-72
- (b) Amend to D.T. filed 10-19-73.

A handwritten signature, possibly "J. H. H.", is enclosed within a hand-drawn circle.

699157

October 16, 1992

State System

RE: INVESTORS REALTY TRUST (TENN. DOM.)  
MORGAN FINANCIAL GROUP, INC. (DEL. DOM.)  
PREFERRED HEATING AND AIR CONDITIONING COMPANY, INC. (TEX. DOM.)

Secretary of State  
Corporate Records Bureau  
Division of Corporation  
409 East Gains Street  
Tallahassee, Fla. 32399

Dear Sir:

We enclose resignation executed in duplicate, by the agent for service of process for each of the above corporations. Also enclosed are 2 checks in the amount of \$ 35.00 each to cover the required filing fee.

Please acknowledge receipt by signing and returning the enclosed carbon copy of this letter. For your convenience, we enclose a stamped self addressed envelope. Also enclose is a check for \$ 87.50 to cover the required filing fee.

Very truly yours,

C T CORPORATION SYSTEM

*Theresa Alfieri*  
Theresa Alfieri  
Senior Supervisor

TA: dj  
enclosure

FILED  
22 OCT 20 11:03  
TALLAHASSEE, FLA.

*18*  
*17*  
*16*  
*15*  
*14*



Florida Department of State, Jim Smith, Secretary of State

FILED  
92 OCT 20 AM 11:03  
TALLAH  
FLORIDA

## RESIGNATION OF REGISTERED AGENT

Pursuant to the provisions of sections 607.0502(2) or 607.1509, Florida Statutes, the

undersigned, C T CORPORATION SYSTEM hereby resigns as  
(name of registered agent)

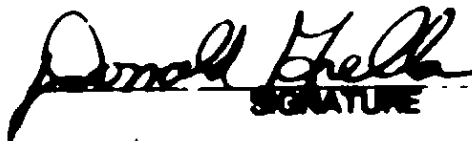
Registered Agent for INVESTORS REALTY TRUST  
(name of corporation)

ORGANIZED UNDER THE LAWS OF THE STATE OF MISSISSIPPI

A copy of this resignation was mailed to the above listed corporation at its last known address.

IRT Properties Company  
200 Galleria Pkwy. NW, Ste. 1400  
Atlanta, Ga. 30339

The agency is terminated and the office discontinued on the 31st day after the date on which the statement was filed.

  
SIGNATURE

### FEE FOR FILING THIS DOCUMENT:

\$87.00-Active Corporation

\$35.00-Administratively Dissolved Corporation

NOTE: THE FILING FEE FOR THE 1978 ANNUAL REPORT IS \$10.

THE FILING FEE FOR THE 1979 ANNUAL REPORT IS \$10.

**CORPORATION  
ANNUAL REPORT**



STATE OF FLORIDA  
DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS

**1979**

THIS REPORT MUST BE ACCOMPANIED BY A FEE OF \$10.00  
RECEIVED BY THE DIVISION OF CORPORATIONS

**READ NOTICE AND INSTRUCTIONS ON OTHER SIDE BEFORE MAKING ENTRIES**

1 Name and Address of Corporation Principal Office

699157  
INVESTORS REALTY TRUST  
6540 POWERS FERRY RD. N.W.  
ATLANTA, GA. 30339

If above address is in effect in any way enter the correct address  
in Item 2. Include Zip Code

2 Enter Change of Address of Corporation Principal Office. P.O. Box Number Alone is NOT Sufficient

Street Address \_\_\_\_\_  
P.O. Box No. \_\_\_\_\_  
City \_\_\_\_\_  
State \_\_\_\_\_ Zip Code \_\_\_\_\_

3 Date Incorporated or Qualified  
To Do Business in Florida

4/30/1971

4 Federal Employer  
Identification Number  
(FEIN)

62-6085970

5 Date of  
Last Report

1978

6 Names and Street Addresses of Each Officer and Director

Names of Officers and Directors	Title	Street Address of Each Officer and Director (Do NOT Use Post Office Box Numbers)	City and State
MACLEOD, DONALD W.	P/D	6540 POWERS FERRY RD. NW	ATLANTA, GA.
JONES, W. BENJAMIN	S	6540 POWERS FERRY RD NW	ATLANTA, GA.
THOMAS, MARY M.	T	6540 POWERS FERRY RD. NW	ATLANTA, GA.
MITCHELL, JAMES M. ASSIST		6540 POWERS FERRY RD. NW	ATLANTA, GA.
<del>XXXXXXXXXXXX</del>	DOX	<del>XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX</del>	<del>XXXXXXXXXXXX</del>
GIBBS, HOMER B.	D	6540 POWERS FERRY RD. NW	ATLANTA, GA.
Cowan, Joel H.	V	6540 Powers Ferry Rd., NW	Atlanta, Georgia

**Registered Agent Information**

Name

C T CORPORATION SYSTEM

Street Address (Do NOT Use P.O. Box Number)

100 BISCAYNE BLVD

City, State and Zip Code

MIAMI, FL

33132

If you wish to change Registered Agent on this form, enter old name in parenthesis below

Name

Street Address (Do NOT Use P.O. Box Number)

City, State and Zip Code

See signature restrictions under instructions on reverse side of this form.

I certify that I am an Officer of the Corporation, the Receiver or Trustee Empowered to Execute  
This Report as Required by Chapter 807 F.S. I further certify that I understand my Signature on  
This Report Shall Have the Same Legal Effects As if Made Under Oath

Print Name of Signing Officer

Mary M. Thomas

Title

Treasurer

*Q. 3-29*  
Signature Number

404/955-4406

January 16, 1979

NOTE: THE FILING FEE FOR THE 1979 ANNUAL REPORT IS \$10.