

**FIRST AMENDED AND RESTATED DECLARATION ON TRUST
OF
THE EQUITABLE LIFE MORTGAGE AND REALTY INVESTORS**

THE DECLARATION OF TRUST OF THE EQUITABLE LIFE MORTGAGE AND REALTY INVESTORS made the 15th day of September, 1970 by THOMAS F. MURRAY, DONALD R. WAUGH, JR., and HOWARD E. THOMAS (such persons, so long as they shall continue in office in accordance with the terms of this Declaration of Trust, and all other persons who at the time in question have been duly elected or appointed as trustees in accordance with the provisions of this Declaration of Trust and are then in office, are hereinafter together called the "Trustees") and filed in the office of the Secretary of the Commonwealth of Massachusetts and the office of the Clerk of the City of Boston, Massachusetts is hereby amended and restated in its entirety pursuant to the provisions of Section 13.1 thereof to read as follows:

1. The Trustees desire to form a trust for the principal purpose of raising capital and investing such capital in obligations secured by Mortgages on Real Property and in Real Property and interests therein or related thereto.
2. The Trustees desire that such trust qualify as a "real estate investment trust" under the REIT Provisions of the Internal Revenue Code.
3. The Trustees may hereafter acquire, hold, invest and dispose of certain assets as Trustees in the manner hereinafter stated.
4. The beneficial interest in the trust assets shall be divided into transferable shares of beneficial interest, evidenced by certificates therefor, as hereinafter provided.

DECLARATION

NOW, THEREFORE, the Trustees hereby declare that they will hold all property of every type and description which they may acquire as such Trustees, together with the proceeds thereof, in trust, to manage and dispose of the same for the benefit of the holders of record from time to time of the certificates for Shares being issued and to be issued hereunder and in the manner and subject to the provisions hereof, to wit:

ARTICLE I
THE TRUST

SECTION 1.1. *Name.* The name of the trust created by this Declaration of Trust shall be "The Equitable Life Mortgage and Realty Investors" (hereinafter called the "Trust") and so far as may be practicable the Trustees shall conduct the Trust's activities, execute all documents and sue or be sued under that name, which name, (and the word "Trust" wherever used in this Declaration of Trust, except where the context otherwise requires) shall refer to the Trustees in their capacity as Trustees, and not individually or personally, and shall not refer to the officers, agents, employees or Shareholders of the Trust or of such Trustees. Should the Trustees determine that the use of such name is not practicable, legal or convenient, they may use such other designation or they may adopt such other name for the Trust as they deem proper and the Trust may hold property and conduct its activities under such designation or name subject, however, to the limitations contained in the next succeeding paragraph.

If The Equitable Life Assurance Society of the United States or any parent, subsidiary or successor thereof (hereinafter called "The Equitable") shall cease, for any reason, to render to the Trust the services of Adviser (as defined in Section 1.4 hereof) pursuant to the contract referred to in Section 3.1 hereof or any renewal, extension or assignment of such contract, or if any notice is given which with the lapse of time may result in such cessation, then the Trustees and the Trust shall forthwith, upon the written request of The Equitable and without any vote or consent of the Shareholders being required (a) cease to use the words "Equitable Life" or "Equitable" or any words similar thereto and

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