

MORTGAGE OF REAL ESTATE

continue, be considered as though beneficially owned by the Trustee for the purpose of paragraphs (6), (7), and (8) of this subdivision (d).

The specifications of percentages in paragraphs (5) to (9), inclusive, of this subdivision (d) shall not be construed as indicating that the ownership of such percentage of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of paragraph (3) or (7) of this subdivision (d).

For the purposes of paragraphs (6), (7), (8) and (9) of this subdivision (d) only, (A) the terms "security" and "securities" shall include only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay moneys lent to a person by one or more banks, trust companies or banking firms or any certificate of interest or participation in any such note or evidence of indebtedness; (B) an obligation shall be deemed to be in default when a default in payment of principal shall have continued for thirty (30) days or more and shall not have been cured; and (C) the Trustee shall not be deemed to be the owner or holder of (i) any security which it holds as collateral security (as trustee or otherwise) for an obligation which is not in default as above defined, or (ii) any security which it holds as collateral security under this Indenture, irrespective of any default hereunder, or (iii) any security which it holds as agent for collection, or as custodian, escrow agent or depository, or in any similar representative capacity.

The percentage of voting securities and other securities specified in this Section shall be calculated in accordance with the following provisions:

(aa) A specified percentage of the voting securities of the Trustee, the Company or any other person referred to in this Section (each of whom is referred to as a "person" in this paragraph) means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

(bb) A specified percentage of a class of securities of a person means such percentage of the aggregate amount of securities of the class outstanding.

(cc) The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to capital shares, and the number of units if relating to any other kind of security.

(dd) The term "outstanding" means issued and not held by or for the account of the issuer. The following securities shall not be deemed outstanding within the meaning of this definition;

(1) Securities of an issuer held in a sinking fund relating to securities of the issuer of the same class;

(2) Securities of an issuer held in a sinking fund relating to another class of securities of the issuer, if the obligation evidenced by such other class of securities is not in default as to principal or interest or otherwise.

(3) Securities pledged by the issuer thereof as security for an obligation of the issuer not in default as to principal or interest or otherwise;

(4) Securities held in escrow if placed in escrow by the issuer thereof; provided, however, that any voting securities of an issuer shall be deemed outstanding if any person other than the issuer is entitled to exercise the voting rights thereof.

(ee) A security shall be deemed to be of the same class as another security if both securities confer upon the holder or holders thereof substantially the same rights and privileges, provided, however, that, in the case of secured evidences of indebtedness, all of which are issued under a single indenture, differences in the interest rates or maturity dates of various series thereof shall not be deemed sufficient to constitute such series different classes, and provided, ^{further,} that, in the case of unsecured evidences of indebtedness, differences in the interest rates or maturity dates thereof shall not be deemed sufficient to constitute them securities of different classes, whether or not they are issued under a single indenture.

The provisions of this Section which have been made specifically applicable to the Trustee, shall apply to the Corporate Trustee, the Individual Trustee and, if a separate or co-trustee is appointed pursuant to Section 103 hereof, to any separate or co-trustee, except that in case of the resignation of the Individual Trustee or a separate or co-trustee such resignation and the appointment of a successor shall (subject to the provisions of subdivision (c) of this Section) be governed by the provisions of paragraph (3) of Section 103 hereof.

The term "underwriter" when used with reference to the Company means every person, who, within three (3) years prior to the time as of which the determination is made, has purchased from the Company with a view to, or has sold for the Company in connection with, the distribution of any security of the Company outstanding at such time, or had participated or has had a direct or indirect participation in any such undertaking, or has participated or has had a participation in the direct or indirect underwriting of any such undertaking, but such term shall not include a person whose interest was limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.