

3.2 Provisions of Agreement. The Trustees shall not enter into any agreement with the Adviser pursuant to the provisions of Section 3.1 hereof unless (i) such agreement has an initial term of not more than one year (except that any such agreement entered into prior to the first public offering of Securities of the Trust may have an initial term of not more than two years), (ii) its renewal or extension provisions, if any, shall provide for renewals or extensions of not more than one year in length, (iii) such agreement can be terminated upon no more than 60 days' written notice from the Trust, upon either a vote of a majority of the Trustees or by a vote of the holders of not less than a majority of the Shares then outstanding and entitled to vote, at a meeting duly called for such purpose and (iv) such agreement shall limit the fees realized by the Adviser by requiring that the Adviser must refund to the Trust at least annually the amount, if any, by which the aggregate expenses of the Trust for such year (excluding (a) the cost of borrowed money; (b) taxes on income and real property and all other taxes applicable to the Trust; (c) legal, auditing, underwriting, transfer agent's, warrant 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 Securities of the Trust; (d) fees and expenses paid to independent contractors employed by or on behalf of the Trust; (e) costs of insurance; (f) expenses of organizing or terminating the Trust; (g) 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 of the Trust, including the cost of printing and mailing checks, certificates for Securities, proxy solicitation materials and reports to such holders; and (h) 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), exceed the lesser of:

(a) $1\frac{1}{2}\%$ of the average monthly book value of the invested assets of the Trust, including undisbursed portions of closed loans and other closed investments of the Trust for such year; or

(b) the greater of

(i) $1\frac{1}{2}\%$ of the average month-end Net Assets of the Trust for such year; or

(ii) 25% of the Trust's net income for such year, excluding provision for realized capital gains and losses from the disposition of assets of the Trust and before deducting regular and incentive advisory fees and depreciation, depletion and amortization.

3.3 Independence of Trustees. After the first public offering of Securities of the Trust not more than 49% of the total number of Trustees or of the total number of members of any Investment Committee may be Affiliates of the Adviser; provided, however, that if at any time the percentage of all Trustees or of members of such Investment Committee who are Affiliates of the Adviser becomes more than 49% of the total number of Trustees or members of such Investment Committee then in office, because of the death, resignation, removal or change in affiliation of a Trustee or member of such Investment Committee who is not such an Affiliate, such requirement shall not be applicable for a period of 60 days, during which time a majority of all the Trustees then in office shall appoint a sufficient number of other individuals as Trustees or as members of such Investment Committee so that there is again not more than 49% of the total number of all Trustees or members of such Investment Committee then in office who are Affiliates of the Adviser. The Trustees shall at all times endeavor to comply with such requirement, but failure so to comply shall not affect the validity or effectiveness of any action of the Trustees or of the Investment Committee as the case may be.