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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

☑ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2004

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ **to** _____

Commission file number: 001-32136

Arbor Realty Trust, Inc.

(Exact name of registrant as specified in its charter)

Maryland	**20-0057959**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
333 Earle Ovington Boulevard, Suite 900 Uniondale, New York	**11553**
(Address of principal executive offices)	(Zip Code)

(516) 832-8002
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, $0.01 par value	**New York Stock Exchange (NYSE)**

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☑ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☑

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act).

Yes ☐ No ☑

The aggregate market value of the registrant's voting common stock held by non-affiliates of the registrant as of June 30, 2004, was approximately $291.8 million, computed by reference to the closing price of the common stock of the registrant on such date as reported on the NYSE. As of March 28, 2005, the registrant had issued and outstanding 16,741,122 shares of common stock, par value $0.01 per share.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the definitive proxy statement for the registrant's 2005 Annual Meeting of Stockholders (the "2005 Proxy Statement"), to be filed within 120 days after the end of the registrant's fiscal year ending December 31, 2004, is incorporated by reference into Part III of this Annual Report on Form 10-K.

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FORWARD LOOKING STATEMENTS

The information contained in this annual report on Form 10-K is not a complete description of our business or the risks associated with an investment in Arbor Realty Trust, Inc. We urge you to carefully review and consider the various disclosures made by us in this report.

This report contains certain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements relate to, among other things, the operating performance of our investments and financing needs. Forward-looking statements are generally identifiable by use of forward-looking terminology such as "may," "will," "should," "potential," "intend," "expect," "endeavor," "seek," "anticipate," "estimate," "overestimate," "underestimate," "believe," "could," "project," "predict," "continue" or other similar words or expressions. Forward-looking statements are based on certain assumptions, discuss future expectations, describe future plans and strategies, contain projections of results of operations or of financial condition or state other forward-looking information. Our ability to predict results or the actual effect of future plans or strategies is inherently uncertain. Although we believe that the expectations reflected in such forward-looking statements are based on reasonable assumptions, our actual results and performance could differ materially from those set forth in the forward-looking statements. These forward-looking statements involve risks, uncertainties and other factors that may cause our actual results in future periods to differ materially from forecasted results. Factors that could have a material adverse effect on our operations and future prospects include, but are not limited to, changes in economic conditions generally and the real estate market specifically; adverse changes in the financing markets we access affecting our ability to finance our loan and investment portfolio; changes in interest rates; the quality and size of the investment pipeline and the rate at which we can invest our cash; impairments in the value of the collateral underlying our loans and investments; changes in the markets; legislative/regulatory changes; completion of pending investments; the availability and cost of capital for future investments; competition within the finance and real estate industries; and other risks detailed from time to time in our SEC reports. Readers are cautioned not to place undue reliance on any of these forward-looking statements, which reflect our management's views as of the date of this report. The factors noted above could cause our actual results to differ significantly from those contained in any forward-looking statement. For a discussion of our critical accounting policies, see "Management's Discussion and Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries — Significant Accounting Estimates and Critical Accounting Policies" under Item 7 of this report.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. We are under no duty to update any of the forward-looking statements after the date of this report to conform these statements to actual results.

PART I

ITEM 1. *BUSINESS*

Overview

We are a specialized real estate finance company which invests in a diversified portfolio of structured finance assets in the multi-family and commercial real estate market. We invest primarily in real estate-related bridge and mezzanine loans, including junior participating interests in first mortgages, and preferred equity and, in limited cases, discounted mortgage notes and other real estate-related assets, which we refer to collectively as structured finance investments. We also invest in mortgage-related securities. Our principal business objective is to maximize the difference between the yield on our investments and the cost of financing these investments to generate cash available for distribution, facilitate capital appreciation and maximize total return to our stockholders.

We are organized to qualify as a real estate investment trust ("REIT") for federal income tax purposes. We commenced operations in July 2003 and conduct substantially all of our operations and investing activities through our operating partnership, Arbor Realty Limited Partnership, and its wholly-owned subsidiaries. We serve as the general partner of our operating partnership, and own an approximately 81% partnership interest in our operating partnership as of December 31, 2004.

We are externally managed and advised by Arbor Commercial Mortgage, LLC ("ACM"), a national commercial real estate finance company which specializes in debt and equity financing for multi-family and commercial real estate, pursuant to the terms of a management agreement described below. We believe ACM's experience and reputation positions it to originate attractive investment opportunities for us. Our management agreement with ACM was developed to capitalize on synergies with ACM's origination infrastructure, existing business relationships and management expertise.

We believe the financing of multi-family and commercial real estate offers significant growth opportunities that demand customized financing solutions. ACM has granted us a right of first refusal to pursue all structured finance investment opportunities identified by ACM. ACM continues to originate and service multi-family and commercial mortgage loans under Fannie Mae, Federal Housing Administration and conduit commercial lending programs. We believe that the customer relationships established from these lines of business may generate additional real estate investment opportunities for our business.

Our Corporate History

On July 1, 2003, ACM contributed a portfolio of structured finance investments to our operating partnership. Concurrently with this contribution, we and our operating partnership entered into a management agreement with ACM pursuant to which ACM manages our investments for a base management fee and incentive compensation, and the nine person asset management group of ACM became our employees.

In exchange for ACM's contribution of structured finance investments, our operating partnership issued approximately 3.1 million units of limited partnership interest, or operating partnership units, and approximately 0.6 million warrants to purchase additional operating partnership units at an initial exercise price of $15.00 per operating partnership unit to ACM. Concurrently, we, our operating partnership and ACM entered into a pairing agreement. Pursuant to the pairing agreement, each operating partnership unit issued to ACM and issuable to ACM upon exercise of its warrants for additional operating partnership units in connection with the contribution of initial assets was paired with one share of the Company's special voting preferred stock. In October 2004, ACM exercised these warrants and currently holds approximately 3.8 million operating partnership units, constituting an approximately 19% limited partnership interest in our operating partnership. ACM may redeem each of these operating partnership units for cash or, at our election, one share of our common stock. We granted ACM certain demand and other registration rights with respect to the shares of common stock that may be issued upon redemption of these operating

partnership units. Each of these operating partnership units is also paired with one share of our special voting preferred stock entitling ACM to one vote on all matters submitted to a vote of our stockholders. ACM currently holds approximately 19% of the voting power of our outstanding stock. If ACM redeems these operating partnership units, an equivalent number of shares of our special voting preferred stock will be redeemed and cancelled.

Concurrently with ACM's contribution of investments to our operating partnership, we sold 1.6 million of our units, each consisting of five shares of our common stock and one warrant to purchase an additional share of common stock at an initial exercise price of $15.00 per share, for $75.00 per unit in a private placement and agreed to register the shares of common stock underlying these units and warrants for resale under the Securities Act of 1933. On July 13, 2004, we registered approximately 9.6 million shares of common stock underlying these units and warrants. As of March 28, 2005, approximately 1.5 million warrants were exercised, of which 0.5 million were exercised "cashless", for a total of 1.2 million common shares issued pursuant to their exercise.

In April 2004, we closed our initial public offering in which we issued and sold 6.3 million shares of common stock and a selling stockholder sold 22,500 shares of common stock, each at $20.00 per share. Concurrently with the initial public offering, we sold 0.5 million shares of common stock at the initial public offering price directly to an entity wholly-owned by one of our directors. The underwriters of our initial public offering exercised their overallotment option and, in May 2004, we issued and sold an additional 0.5 million shares of our common stock pursuant to such exercise.

In January 2005, we completed a non-recourse collateralized debt obligation ("CDO") transaction, whereby $469 million of real estate related and other assets were contributed to a newly-formed consolidated subsidiary, Arbor Realty SR, Inc., which issued $305 million of investment grade-rated floating-rate notes in a private placement. These proceeds were used to repay outstanding debt and resulted in a decreased cost of funds relating to the CDO assets.

Our Investment Strategy

Our principal business objectives are to invest in bridge and mezzanine loans, including junior participating interests in first mortgages, preferred equity and other real estate related assets in the multifamily and commercial real estate market and actively manage our investment portfolio in order to generate cash available for distribution, facilitate capital appreciation and maximize total return to our stockholders. We believe we can achieve these objectives through the following business and growth strategies:

Provide Customized Financing. We provide financing customized to the needs of our borrowers. We target borrowers who have demonstrated a history of enhancing the value of the properties they operate, but whose options may be limited by conventional bank financing and who may benefit from the sophisticated structured finance products we offer

Focus on a Niche Market in Smaller Loan Balances. We focus on loans with principal amounts under $40 million, which many larger lending firms do not target. We can afford to invest the time and effort required to close loans of this size because of our relatively efficient cost structure.

Execute Transactions Rapidly. We act quickly and decisively on proposals, provide commitments and close transactions within a few weeks and sometimes days, if required. We believe that rapid execution attracts opportunities from both borrowers and other lenders that would not otherwise be available. We believe our ability to structure flexible terms and close loans in a timely manner gives us a competitive advantage over lending firms that also serve the market for loans with principal amounts under $40 million.

Manage and Maintain Credit Quality. A critical component of our success in the real estate finance sector is our ability to manage the real estate risk that is underwritten by our manager and us. We actively manage and maintain the credit quality of our portfolio by using the expertise of our asset management group, which has a proven track record of structuring and repositioning structured finance investments to improve the credit quality and yield on managed investments.

Use Arbor Commercial Mortgage's Relationships with Existing Borrowers. We capitalize on ACM's reputation in the commercial real estate finance industry. ACM has relationships with over 400 distinct borrowers nationwide. Since ACM's originators offer senior mortgage loans as well as our structured finance products, we are able to benefit from its existing customer base and use its senior lending business as a potential refinance vehicle for our structured finance assets.

Offer Broader Products and Expand Customer Base. We have the ability to offer a larger number of financing alternatives than ACM has been able to offer to its customers in the past. Our potential borrowers are able to choose from products offering longer maturities and larger principal amounts than ACM could previously offer.

Leverage the Experience of Executive Officers and Arbor Commercial Mortgage and Our Employees. Our executive officers and employees, and those of ACM, have extensive experience originating and managing structured commercial real estate investments. Our senior management team has on average over 20 years experience in the financial services industry including prior experience in managing and operating a public company, the predecessor of ACM.

Our Targeted Investments

We actively pursue lending and investment opportunities with property owners and developers who need interim financing until permanent financing can be obtained. We target transactions under $40 million where we believe we have competitive advantages, particularly our lower cost structure and in house capabilities. Our structured finance investments generally have maturities of two to five years, depending on type, have extension options when appropriate, and generally require a balloon payment of principal at maturity. Borrowers in the market for these types of loans include, but are not limited to, owners or developers seeking either to acquire or refurbish real estate or to pay down debt and reposition a property for permanent financing.

Our investment program emphasizes the following general categories of real estate related activities:

Bridge Financing. We offer bridge financing products to borrowers who are typically seeking short term capital to be used in an acquisition of property. The borrower has usually identified an undervalued asset that has been under managed and/or is located in a recovering market. From the borrower's perspective, shorter term bridge financing is advantageous because it allows time to improve the property value through repositioning the property without encumbering it with restrictive long term debt.

The bridge loans we make typically range in size from $3 million to $30 million and are predominantly secured by first mortgage liens on the property. The term of the loan typically is up to five years. Historically, interest rates have ranged from 3.00% to 9.00% over 30-day LIBOR. Additional yield enhancements may include origination fees, deferred interest and participating interests, which are equity interests in the borrower that share in a percentage of the underlying cash flows of the property. Borrowers usually use the proceeds of a conventional mortgage to repay a bridge loan.

Mezzanine Financing. We offer mezzanine financing in the form of loans that are subordinate to a conventional first mortgage loan and senior to the borrower's equity in a transaction. These loans may be in the form of a junior participating interest in the senior debt. Mezzanine financing may take the form of loans secured by pledges of ownership interests in entities that directly or indirectly control the real property or subordinated loans secured by second mortgage liens on the property. We may also require additional collateral such as personal guarantees, letters of credit and/or additional collateral unrelated to the property.

Our mezzanine loans typically range in size from $3 million to $35 million and have terms of up to seven years. Historically, interest rates have ranged from 5.00% to 12.00% over 30-day LIBOR,

occasionally with an interest rate floor. As in the case with our bridge loans, the yield on these investments may be enhanced by prepaid and deferred interest payments, yield look-backs and participating interests.

We hold our mezzanine loans through subsidiaries of our operating partnership that are pass-through entities for tax purposes or taxable subsidiary corporations.

Preferred Equity Investments. We provide financing by making preferred equity investments in entities that directly or indirectly own real property. In cases where the terms of a first mortgage prohibit additional liens on the ownership entity, investments structured as preferred equity in the entity owning the property serve as viable financing substitutes. With preferred equity investments, we typically become a special limited partner or member in the ownership entity.

Real Property Acquisitions. We may purchase existing real estate for repositioning and/or renovation and then disposition at an anticipated significant return. From time to time, we may identify real estate investment opportunities. In these situations, we may act solely on our own behalf or in partnership with other investors. Typically, these transactions are analyzed with the expectation that we will have the ability to sell the property within a one to two year time period, achieving a significant return on invested capital. In connection with these transactions, speed of execution is often the most critical component to success. We may seek to finance a portion of the acquisition price through short term financing. Repayment of the short term financing will either come from the sale of the property or conventional permanent debt.

Note Acquisitions. We may acquire real estate notes from lenders in situations where the borrower wishes to restructure and reposition its short term debt and the lender wishes, for a variety of reasons (such as risk mitigation, portfolio diversification or other strategic reasons), to divest certain assets from its portfolio. These notes may be acquired at a discount. In such cases, we intend to use our management resources to resolve any dispute concerning the note or the property securing it and to identify and resolve any existing operational or any other problems at the property. We will then either restructure the debt obligation for immediate resale or sale at a later date or reposition it for permanent financing. In some instances, we may take title to the property underlying the real estate note.

Mortgage-Related Securities. We invest in certificates issued by the Government National Mortgage Association, or GNMA, Federal National Mortgage Association, or FNMA, or the Federal Home Loan Mortgage Association, or FHLMC that are collateralized by whole pools of fixed or adjustable rate residential or commercial mortgage loans. We refer to these mortgage-related securities as agency-sponsored whole loan pool certificates. The adjustable rate mortgage-related securities include adjustable-rate FHLMC ARM and FNMA ARM certificates, which are generally evidenced by pools of mortgage loans with a fixed rate of interest for the first three years with annual interest adjustments thereafter and GNMA ARM certificates, which have a fixed rate of interest for the first three years with annual adjustments in relation to the Treasury index thereafter. Unlike conventional fixed-income securities which provide for periodic fixed interest payments and principal payments at maturity and specified call dates, mortgage-related securities provide for monthly payments of interest and principal that, in effect, are a "pass-through" of the monthly payments made by the borrowers on the residential or commercial mortgage loans underlying such securities, net of any fees paid to the issuer or guarantor of such securities. Additional payments on the securities are made when repayments of principal are made due to the sale of the underlying property, refinancing or foreclosure, net of fees or costs that may be incurred. Some mortgage-related securities (such as securities issued by GNMA) are described as "modified pass-through" because they entitle the holder to receive all interest and principal payments owed on the mortgage pool, net of certain fees, at scheduled payment dates regardless of whether or not the mortgagor makes the payment.

The rate of prepayments on the underlying mortgage loans affect the price and volatility of mortgage-related securities and may have the effect of shortening or extending the effective maturity of the security beyond what was anticipated at the time of our investment in such securities. The yield and maturity characteristics of mortgage-related securities differ from conventional fixed-income securities in that the principal amount of mortgage-related securities may be prepaid at any time because the underlying

mortgage loans may be prepaid at any time. Therefore, some mortgage-related securities may have less potential for growth in value than conventional fixed-income securities with comparable maturities. In addition, the rate of prepayments tends to increase in periods of falling interest rates. During such periods, the reinvestment of prepayment proceeds by us will generally be at lower rates than the rates that were carried by the obligations that have been prepaid. To the extent that we purchase mortgage-related securities at a premium, prepayments (which may be made without penalty) may result in loss of our principal investment to the extent of the premium paid.

Our Structured Finance Investments

We own a diversified portfolio of structured finance investments consisting primarily of real estate-related bridge and mezzanine loans as well as preferred equity investments and mortgage-backed securities.

At December 31, 2004, we had 61 loans and investments in our portfolio, totaling $842 million. These loans and investments were for 31 multi-family properties, 9 condo properties, 13 office properties, 3 hotels, 2 commercial properties, 2 retail properties, and 1 co-op property. There are no loans or investments in the portfolio that are non-performing. We continue to actively manage all loans and investments in the portfolio and believe that our strict underwriting and active asset management enable us to maintain the credit quality of our portfolio.

The overall yield on our portfolio in 2004 was 8.80% on average assets of $635.1 million. This yield was computed by dividing the interest income earned during the year by the average assets during the year. Our cost of funds in 2004 was 4.80% on average borrowings of $383.8 million. This cost of funds was computed by dividing the interest expense incurred during the year by the average borrowings during the year. Our average net investment (average assets less average borrowings) in 2004 was $251.3 million, resulting in average leverage (average borrowings divided by average assets) of 60.4%. The net interest income earned in 2004 yielded a 15.2% return on our average net investment during the year. This yield was computed by dividing the net interest (interest income less interest expense) earned in 2004 by the average equity (computed as average assets minus average borrowings) invested during the year. Our business plan contemplates that our leverage ratio will be approximately 65% to 70%. However, our leverage will not exceed 80% of the value of our assets in the aggregate unless approval to exceed the 80% limit is obtained from our board of directors.

STRUCTURED FINANCE INVESTMENT PORTFOLIO
As of December 31, 2004

The following tables set forth information regarding our bridge and mezzanine loans, preferred equity investments and other real estate-related assets as of December 31, 2004.

(Dollars in Thousands) Type	Asset Class	Number	Unpaid Principal	Weighted Average Pay Rate	Weighted Average Remaining Maturity (months)
Bridge Loans					
	MultiFamily	13	$ 102,743	6.73%	21.5
	Office	2	24,640	6.69%	11.2
	Hotel	2	52,491	6.95%	35.6
	Condo	4	96,420	6.92%	11.4
	Other	2	5,764	7.62%	19.7
		23	282,058	6.85%	19.7
Mezzanine Loans					
	MultiFamily	13	105,790	10.46%	27.8
	Office	11	287,500	10.17%	17.5
	Condo	5	84,449	8.47%	20.6
	Retail	2	42,433	11.25%	12.8
	Other	1	3,500	5.81%	18.0
		32	523,672	10.01%	19.7
Preferred Equity					
	MultiFamily	5	34,791	8.19%	8.5
Other					
	Hotel	1	1,933	7.39%	224.0
Total		61	$ 842,454	8.87%	19.7

(Dollars in Thousands) Geographic Location	Unpaid Principal	12/31/04 Percentage[1]
New York	$ 462,053	55%
Florida	111,686	13%
New Jersey	63,940	8%
Maryland	53,498	6%
Diversified	67,433	8%
Other[2]	83,844	10%
Total	$ 842,454	100%

(1) Based on a percentage of the total unpaid principal balance of the underlying loans.

(2) No other individual state makes up more than 4% of the total.

Our Investments in Mortgage-Related Securities

In 2004, we invested $57.4 million (including $0.1 million of purchased interest) in agency-sponsored whole pool certificates. $20.6 million of these securities were issued by FNMA and $36.7 million were issued by FHLMC. Pools of FNMA and FHLMC adjustable rate residential mortgage loans underlie these securities. The underlying mortgage loans bear interest at a weighted average fixed rate for three years and adjusts annually thereafter and have a weighted average coupon rate of 3.8%. We receive monthly payments of interest and principal on these securities based on the monthly interest and principal payments that are made on the underlying mortgage loans. At December 31, 2004, these securities were financed under a $100 million repurchase agreement, maturing July 2005, at a rate of one-month LIBOR plus 0.15%. At December 31, 2004, the amortized cost of these securities was $47.1 million and the amount outstanding on the repurchase agreement related to the financing of these securities was $44.2 million. These investments had a weighted average balance of $51.9 million for the year with an average yield of 2.08%. These assets were financed by borrowings with a weighted average balance of $50.3 million and an average cost of of funds of 1.24%.

The table below sets forth information regarding our investments in mortgage-related securities as of December 31, 2004. These securities have a fixed interest rate until March 2007, and adjust annually thereafter.

(Dollars in Thousands)	Amortized Cost	Unrealized Loss	Market Value	Maturity	Initial Interest Rate
FHLMC Security	$ 21,821	$ (214)	$ 21,607	3/2034	3.80%
FHLMC Security	9,045	(108)	8,937	3/2034	3.76%
FNMA Security	16,246	(207)	16,039	3/2034	3.80%
Total	$ 47,112	$ (529)	$ 46,583		

Regulatory Aspects of Our Investment Strategy

Real Estate Exemption from Investment Company Act. We believe that we conduct and we intend to conduct our business at all times in a manner that avoids registration as an investment company under the Investment Company Act of 1940. There is an exemption from registration for entities that are primarily engaged in the business of purchasing or otherwise acquiring "mortgages and other liens on and interests in real estate." This exemption generally requires us to maintain at least 55% of our assets directly in qualifying real estate assets. Assets that qualify for purposes of this 55% test include, among other things, real estate, mortgage loans and agency-sponsored whole loan pool certificates. Our bridge loans secured by first mortgage liens on the underlying properties' loans secured by second mortgage liens on the underlying properties and agency-sponsored whole loan pool certificates generally qualify for purposes of this 55% test. We believe that these assets and certain of our mezzanine loans are in excess of 55% of our assets as of December 31, 2004 to qualify for purposes of the 55% test. The percentage of our assets that we invest in agency-sponsored whole loan pool certificates may decrease if we determine that we do not need to purchase such certificates for purposes of meeting the 55% test. If the Securities and Exchange Commission ("SEC") takes a position or makes an interpretation more favorable to us, we may have greater flexibility in the investments we make. Our investments in mortgage-related securities are limited to agency-sponsored whole loan pool certificates which qualify for purposes of the 55% test. Our investment guidelines provide that no more than 15% of our assets may consist of any type of the mortgage-related securities and that the percentage of our investments in mortgage-related securities as compared to our structured finance investments be monitored on a regular basis.

Management Agreement

On July 1, 2003, we and our operating partnership entered into a management agreement with ACM. On January 19, 2005, we, our operating partnership, Arbor Realty SR, Inc., one of our subsidiaries and ACM entered into an amended and restated management agreement with substantially the same terms as the original management agreement in order to add Arbor Realty SR, Inc. as a beneficiary of ACM's services. Pursuant to the terms of the management agreement, our manager has agreed to service and manage our investments and to provide us with structured finance investment opportunities, finance and other services necessary to operate our business. Our manager is required to provide a dedicated management team to provide these services to us, the members of which will devote such of their time to our management as our independent directors reasonably deem necessary and appropriate, commensurate with our level of activity from time to time. We rely to a significant extent on the facilities and resources of our manager to conduct our operations. For performing services under the management agreement, ACM receives a base management fee and incentive compensation calculated as described in "Management's Discussion and Analysis of Financial Condition and Results of Operations – Arbor Realty Trust Inc. and Subsidiaries" under Item 7 of this report.

Operations

Our Manager's Investment Services. Under the management agreement, ACM is responsible for sourcing originations, providing underwriting services and processing approvals for all loans and other investments in our portfolio. ACM also provides certain administrative loan servicing functions with respect to our loans and investments. We are able to capitalize on ACM's well established operations and services in each area described below.

Origination. Our manager sources the origination of most of our investments. ACM has a network of 15 sales offices located in Atlanta, Georgia; Bethesda, Maryland; Bloomfield Hills, Michigan; Boston, Massachusetts; Chicago, Illinois; Dallas, Texas; Woodland Hills, California; Rochester, New York; New York, New York; San Francisco, California; Pasadena, California; Manhattan Beach California; Salt Lake City, Utah; Charlotte, North Carolina; and Uniondale, New York. These offices are staffed by approximately 21 loan originators who solicit property owners, developers and mortgage loan brokers. In some instances, the originators accept loan applications meeting our underwriting criteria from a select group of mortgage loan brokers. While a large portion of ACM's marketing effort occurs at the branch level, ACM also markets its products in industry publications and targeted direct mailings. ACM markets structured finance products and our product offerings using the same methods. Once potential borrowers have been identified, ACM determines which financing products best meet the borrower's needs. Loan originators in every branch office are able to offer borrowers the full array of ACM's and our structured finance products. After identifying a suitable product, ACM works with the borrower to prepare a loan application. Upon completion by the borrower, the application is forwarded to ACM's underwriters for due diligence.

Underwriting. ACM's loan originators work in conjunction with its underwriters who perform due diligence on all proposed transactions prior to loan approval and commitment. The underwriters analyze each loan application in accordance with the guidelines set forth below in order to determine the loan's conformity with respect to such guidelines. In general, ACM's underwriting guidelines require it to evaluate the following: the historic and in place property revenues and expenses; the potential for near term revenue growth and opportunity for expense reduction and increased operating efficiencies; the property's location, its attributes and competitive position within its market; the proposed ownership structure, financial strength and real estate experience of the borrower and property management; third party appraisal, environmental and engineering studies; market assessment, including property inspection, review of tenant lease files, surveys of property comparables and an analysis of area economic and demographic trends; review of an acceptable mortgagee's title policy and an "as built" survey; construction quality of the property to determine future maintenance and capital expenditure requirements; and the requirements for any reserves, including those for immediate repairs or rehabilitation, replacement reserves, tenant

improvement and leasing commission costs, real estate taxes and property casualty and liability insurance. Key factors considered in credit decisions include, but are not limited to, debt service coverage, loan to value ratios and property, financial and operating performance. Consideration is also given to other factors, such as additional forms of collateral and identifying likely strategies to effect repayment. ACM will refine its underwriting criteria based upon actual loan portfolio experience and as market conditions and investor requirements evolve.

Investment Approval Process. ACM applies its established investment approval process to all loans and other investments proposed for our portfolio before submitting each proposal to us for final approval. A written report is generated for every loan or other investment that is submitted to ACM's credit committee for approval. The report includes a description of the prospective borrower and any guarantors, the collateral and the proposed use of investment proceeds, as well as borrower and property consolidated financial statements and analysis. In addition, the report summarizes an analysis of borrower liquidity, net worth, cash investment, income, credit history and operating experience. If the transaction is approved by a majority of ACM's credit committee, it is presented for approval to our credit committee, which consists of our chief executive officer, chief credit officer, and executive vice president of structured finance. All transactions require the approval of a majority of the members of our credit committee. Following the approval of any such transaction, ACM's underwriting and servicing departments, together with our asset management group, assure that all loan approval terms have been satisfied and that they conform with lending requirements established for that particular transaction. If our credit committee and our independent directors reject the loan and our independent directors allow ACM or one of its affiliates to pursue it, ACM will have the opportunity to execute the transaction.

Servicing. ACM services our loans and investments through its internal servicing operations. Our manager currently services an expanding portfolio, consisting of approximately 600 loans with outstanding balances of $3.5 billion through its loan administration department in Buffalo, New York. ACM's loan servicing operations are designed to provide prompt customer service and accurate and timely information for account follow up, financial reporting and management review. Following the funding of an approved loan, all pertinent loan data is entered into ACM's data processing system, which provides monthly billing statements, tracks payment performance and processes contractual interest rate adjustments on variable rate loans. Our manager utilizes the operations of its loan administration department to service our portfolio with the same efficiency, accuracy and promptness. ACM also works closely with our asset management group to ensure the appropriate level of customer service and monitoring of these loans.

Our Asset Management Operations. Our asset management group is comprised of fifteen employees. Prior to our formation, the asset management group successfully managed numerous transactions, including complex restructurings, refinancings and asset dispositions for ACM.

Effective asset and portfolio management is essential to maximizing the performance and value of a real estate investment. The asset management group customizes an asset management plan with the loan originators and underwriters to track each investment from origination through disposition. This group monitors each investment's operating history, local economic trends and rental and occupancy rates and evaluates the underlying property's competitiveness within its market. This group assesses potential operational and financial performance of each investment in order to evaluate and ultimately improve its operations and financial viability. The asset management group performs frequent onsite inspections, conducts meetings with borrowers and evaluates and participates in the budgeting process, financial and operational review and renovation plans of each of the underlying properties. As an asset and portfolio manager, the asset management group focuses on increasing the productivity of on site property managers and leasing brokers. This group communicates the status of each transaction against its established asset management plan to senior management in order to enhance and preserve capital, as well as to avoid litigation and potential exposure.

Timely and accurate identification of an investment's operational and financial issues and each borrower's objectives is essential to implementing an executable loan workout and restructuring process. Since existing management may not have the requisite expertise to manage the workout process effectively, the asset management group determines current operating and financial status of an asset or portfolio and

performs liquidity analysis of properties and ownership entities and then, if appropriate, identifies and evaluates alternatives in order to maximize the value of an investment.

Our asset management group continues to provide its services to ACM on a limited basis pursuant to an asset management services agreement between ACM and us. The asset management services agreement will be effective throughout the term of our management agreement and during the origination period described in the management agreement. In the event the services provided by our asset management group pursuant to this agreement exceed by more than 15% per quarter the level anticipated by our board of directors, we will negotiate in good faith with our manager an adjustment to our manager's base management fee under the management agreement, to reduce the scope of the services, the quantity of serviced assets or the time required to be devoted to the services by our asset management group.

Operating Policies and Strategies

Investment Guidelines. Our board of directors has adopted general guidelines for our investments and borrowings to the effect that: (1) no investment will be made that would cause us to fail to qualify as a REIT; (2) no investment will be made that would cause us to be regulated as an investment company under the Investment Company Act; (3) no more than 25% of our equity, determined as of the date of such investment, will be invested in any single asset; (4) our leverage will generally not exceed 80% of the value of our assets, in the aggregate; (5) we will not co-invest with our manager or any of its affiliates unless such co-investment is otherwise in accordance with these guidelines and its terms are at least as favorable to us as to our manager or the affiliate making such co-investment; (6) no more than 15% of our gross assets may consist of mortgage-related securities.

Financing Policies. We finance the acquisition of our structured finance investments primarily by borrowing against or "leveraging" our existing portfolio and using the proceeds to acquire additional mortgage assets. We expect to incur debt such that we will maintain an equity to assets ratio no greater than 20%, although the actual ratio may be lower from time to time depending on market conditions and other factors deemed relevant by our manager. Our charter and bylaws do not limit the amount of indebtedness we can incur, and the board of directors has discretion to deviate from or change our indebtedness policy at any time. However, we intend to maintain an adequate capital base to protect against various business environments in which our financing and hedging costs might exceed the net interest income from our investments.

Our investments are financed primarily by floating rate secured notes collateralized by certain of our structured finance investments and through our floating rate warehouse lines of credit, loan repurchase agreements and other financing facilities with institutional lenders. Although we expect that these will be the principal means of leveraging our investments, we may issue preferred stock or secured or unsecured notes of any maturity if it appears advantageous to do so.

Credit Risk Management Policy. We are exposed to various levels of credit and special hazard risk depending on the nature of our underlying assets and the nature and level of credit enhancements supporting our assets. We originate or purchase mortgage loans that meet our minimum debt service coverage standards. ACM, as our manager, our asset management group and our chief credit officer review and monitor credit risk and other risks of loss associated with each investment. In addition, ACM seeks to diversify our portfolio of assets to avoid undue geographic, issuer, industry and certain other types of concentrations. Our board of directors monitors the overall portfolio risk and reviews levels of provision for loss.

Interest Rate Risk Management Policy. To the extent consistent with our election to qualify as a REIT, we follow an interest rate risk management policy intended to mitigate the negative effects of major interest rate changes. We minimize our interest rate risk from borrowings by attempting to structure the key terms of our borrowings to generally correspond to the interest rate term of our assets.

We may enter into hedging transactions to protect our investment portfolio from interest rate fluctuations and other changes in market conditions. These transactions may include interest rate swaps, the

purchase or sale of interest rate collars, caps or floors, options, mortgage derivatives and other hedging instruments. These instruments may be used to hedge as much of the interest rate risk as ACM determines is in the best interest of our stockholders, given the cost of such hedges and the need to maintain our status as a REIT. In general, income from hedging transactions does not constitute qualifying income for purposes of the REIT gross income requirements. To the extent, however, that we enter into a hedging contract to reduce interest rate risk on indebtedness incurred to acquire or carry real estate assets, any income that we derive from the contract, while comprising nonqualifying income for purposes of the REIT 75% gross income test, would not give rise to nonqualifying income for purposes of the 95% gross income test. ACM may elect to have us bear a level of interest rate risk that could otherwise be hedged when it believes, based on all relevant facts, that bearing such risk is advisable.

To date, the only hedging transaction we have entered into was an interest rate swap in December 2004 in connection with the issuance of floating rate secured notes collateralized by certain of our structured finance investments. The notional amount of the interest rate swap agreement approximates the amount of the floating rate secured notes. We will receive interest payments on the notional amount based on three-month LIBOR and pay interest on the notional amount based on one-month LIBOR.

Disposition Policies. Although there are no current plans to dispose of properties or other assets within our portfolio, ACM evaluates our asset portfolio on a regular basis to determine if it continues to satisfy our investment criteria. Subject to certain restrictions applicable to REITs, ACM may cause us to sell our investments opportunistically and use the proceeds of any such sale for debt reduction, additional acquisitions or working capital purposes.

Equity Capital Policies. Subject to applicable law, our board of directors has the authority, without further stockholder approval, to issue additional authorized common stock and preferred stock or otherwise raise capital, including through the issuance of senior securities, in any manner and on the terms and for the consideration it deems appropriate, including in exchange for property. We may in the future issue common stock in connection with acquisitions. We also may issue units of partnership interest in our operating partnership in connection with acquisitions of property. We may, under certain circumstances, repurchase our common stock in private transactions with our stockholders, if those purchases are approved by our board of directors. Our board of directors has no present intention of causing us to repurchase any shares, and any action would only be taken in conformity with applicable federal and state laws and the applicable requirements for qualifying as a REIT, for so long as the board of directors concludes that we should continue to qualify as a REIT.

Conflicts of Interest Policies. We, our executive officers and ACM face conflicts of interests because of our relationships with each other. Mr. Kaufman is our chief executive officer and the chief executive officer of ACM and serves on our credit committee. Mr. Ivan Kaufman and entities controlled by him own approximately 90% of the outstanding membership interests of ACM. Mr. Herbst is our chief financial officer and the chief financial officer of ACM and has a minority ownership interest in ACM. In addition, Mr. Weber, our executive vice president of structured finance and two of our directors, Mr. Joseph Martello and Mr. Walter Horn, have minority ownership interests in ACM. Mr. Horn also serves as our secretary and general counsel. Mr. Martello serves as the trustee and co-trustee of two separate trusts through which Mr. Kaufman owns an equity interest in ACM.

We have implemented several policies, through board action and through the terms of our constituent documents and of our agreements with ACM, to help address these conflicts of interest:

- Our charter requires that a majority of our board of directors be independent directors and that only our independent directors make any determination on our behalf with respect to the relationships or transactions that present a conflict of interest for our directors or officers.

- Our board of directors has adopted a policy that decisions concerning our management agreement with ACM, including termination, renewal and enforcement thereof or our participation in any transactions with ACM or its affiliates outside of the management

agreement, including our ability to purchase securities and mortgage or other assets from or to sell securities and assets to ACM, must be reviewed and approved by a majority of our independent directors.

- Our management agreement provides that our determinations to terminate the management agreement for cause or because the management fees are unfair to us or because of a change in control of our manager will be made by a majority vote of our independent directors.

- Our independent directors will periodically review the general investment standards established for ACM under the management agreement.

- Our management agreement with ACM provides that ACM may not assign duties under the management agreement, except to certain affiliates of ACM, without the approval of a majority of our independent directors.

- Our management agreement provides that decisions to approve or reject investment opportunities rejected by our credit committee that ACM or Mr. Kaufman wish to pursue will be made by a majority of our independent directors.

Our board of directors has approved the operating policies and the strategies set forth above. The board of directors has the power to modify or waive these policies and strategies, or amend our agreements with ACM, without the consent of our stockholders to the extent that the board of directors (including a majority of our independent directors) determines that such modification or waiver is in the best interest of our stockholders. Among other factors, developments in the market that either affect the policies and strategies mentioned herein or that change our assessment of the market may cause our board of directors to revise its policies and strategies. However, if such modification or waiver involves the relationship of, or any transaction between, us and our manager or any affiliate of our manager, the approval of a majority of our independent directors is also required. We may not, however, amend our charter to change the requirement that a majority of our board consist of independent directors or the requirement that our independent directors approve related party transactions without the approval of two thirds of the votes entitled to be cast by our stockholders.

Compliance with Federal, State and Local Environmental Laws

Properties that we may acquire, and the properties underlying our structured finance investments and mortgage-related securities, are subject to various federal, state and local environmental laws, ordinances and regulations. Under these laws, ordinances and regulations, a current or previous owner of real estate (including, in certain circumstances, a secured lender that succeeds to ownership or control of a property) may become liable for the costs of removal or remediation of certain hazardous or toxic substances or petroleum product releases at, on, under or in its property. These laws typically impose cleanup responsibility and liability without regard to whether the owner or control party knew of or was responsible for the release or presence of the hazardous or toxic substances. The costs of investigation, remediation or removal of these substances may be substantial and could exceed the value of the property. An owner or control party of a site may be subject to common law claims by third parties based on damages and costs resulting from environmental contamination emanating from a site. Certain environmental laws also impose liability in connection with the handling of or exposure to materials containing asbestos. These laws allow third parties to seek recovery from owners of real properties for personal injuries associated with materials containing asbestos. Our operating costs and the values of these assets may be adversely affected by the obligation to pay for the cost of complying with existing environmental laws, ordinances and regulations, as well as the cost of complying with future legislation, and our income and ability to make distributions to our stockholders could be affected adversely by the existence of an environmental liability with respect to properties we may acquire. We will endeavor to ensure that these properties are in compliance in all material respects with all federal, state and local laws, ordinances and regulations regarding hazardous or toxic substances or petroleum products.

Competition

Our net income depends, in large part, on our manager's ability to originate structured finance investments with spreads over our borrowing costs. In originating these investments, our manager competes with other mortgage REITs, specialty finance companies, savings and loan associations, banks, mortgage bankers, insurance companies, mutual funds, institutional investors, investment banking firms, other lenders, governmental bodies and other entities, some of which may have greater financial resources and lower costs of capital available to them. In addition, there are numerous mortgage REITs with asset acquisition objectives similar to ours, and others may be organized in the future. The effect of the existence of additional REITs may be to increase competition for the available supply of structured finance assets suitable for purchase by us. Competitive variables include market presence and visibility, size of loans offered and underwriting standards. To the extent that a competitor is willing to risk larger amounts of capital in a particular transaction or to employ more liberal underwriting standards when evaluating potential loans, our origination volume and profit margins for our investment portfolio could be impacted. Our competitors may also be willing to accept lower returns on their investments and may succeed in buying the assets that we have targeted for acquisition. Although management believes that we are well positioned to continue to compete effectively in each facet of our business, there can be no assurance that we will do so or that we will not encounter further increased competition in the future that could limit its ability to compete effectively.

Employees

We currently have twenty-one employees, including Mr. Kovarik, our chief credit officer, Mr. Weber, our executive vice president of structured finance, and Mr. Kilgore, our executive vice president of securitization. Mr. Kaufman, our chief executive officer, Mr. Herbst, our chief financial officer and Mr. Horn, our general counsel and secretary, each of whom is a full time employee of our manager, perform the duties required pursuant to the management agreement with our manager and our bylaws.

Corporate Governance and Internet Address

We emphasize the importance of professional business conduct and ethics through our corporate governance initiatives. Our board of directors consists of a majority of independent directors; the audit, nominating/corporate governance, and compensation committees of our board of directors are composed exclusively of independent directors. We have adopted corporate governance guidelines and a code of business conduct and ethics, which delineate our standards for our officers and directors, and employees of our manager.

Our internet address is www.arborrealtytrust.com. We make available, free of charge through a link on our site, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to such reports, if any, as filed with the SEC as soon as reasonably practicable after such filing. Our site also contains our code of business conduct and ethics, code of ethics for senior financial officers, corporate governance guidelines, and the charters of the audit committee, nominating/corporate governance committee and compensation committee of our board of directors.

RISK FACTORS

Our business is subject to various risks, including the risks list below. If any of these risks actually occur, our business, financial condition and results of operations could be materially adversely affected and the value of our common stock could decline.

- We are substantially controlled by ACM, our manager and its controlling equity owner, Mr. Kaufman.
- We are dependent on our manager with whom we have conflicts of interest.
- Our directors have approved very broad investment guidelines for our manager and do not approve each investment decision made by our manager.
- Our manager has broad discretion to invest funds and may acquire structured finance assets where the investment returns are substantially below expectations or that result in net operating losses.
- We depend on key personnel with long standing business relationships, the loss of whom could threaten our ability to operate our business successfully.
- We may be unable to invest excess equity capital on acceptable terms or at all, which would adversely affect our operating results.
- The majority of our investments as of December 31, 2004 are mezzanine loans which are subject to a greater risk of loss than loans with a first priority lien on the underlying real estate.
- We invest in multi-family and commercial real estate loans, which involve a greater risk of loss than single-family real estate loans.
- Volatility of values of multi-family and commercial properties may adversely affect our loans and investments.
- We may be unable to generate sufficient revenue from operations to pay our operating expenses and to pay dividends to our stockholders.
- We may need to borrow funds under our credit facilities in order to satisfy our REIT distribution requirements, and a portion of our distributions may constitute a return of capital. Debt service on any borrowings for this purpose will reduce our cash available for distribution.
- Failure to maintain an exemption from the Investment Company Act would adversely affect our results of operations.
- If we fail to remain qualified as a REIT, we will be subject to tax as a regular corporation and could face substantial tax liability.
- Our charter generally does not permit ownership in excess of 9.6% of our capital stock, and attempts to acquire our capital stock in excess of this limit are ineffective without the prior approval of our board of directors.

ITEM 2. *PROPERTIES*

Arbor Commercial Mortgage, our manager, leases our shared principal executive and administrative offices, located at 333 Earle Ovington Boulevard in Uniondale, New York.

ITEM 3. *LEGAL PROCEEDINGS*

We are not involved in any litigation nor, to our knowledge, is any litigation threatened against us.

ITEM 4. *SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS*

No matters were submitted to a vote of our security holders during the fourth quarter of 2004.

PART II

ITEM 5. *MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES*

Market Information

Our common stock has been listed on the New York Stock Exchange under the symbol "ABR" since our initial public offering in April 2004. The following table sets forth for the indicated periods the high, low and last sales prices for our common stock, as reported on the New York Stock Exchange, and the dividends declared and paid with respect to such periods:

	High	Low	Last	Dividends Declared
2003(1)				
June 24, 2003 to June 30, 2003	N/A	N/A	N/A	N/A
Third Quarter	N/A	N/A	N/A	$0.25
Fourth Quarter	N/A	N/A	N/A	$0.25
2004				
First Quarter(1)	N/A	N/A	N/A	$0.38
April 1, 2004 to April 6, 2004(2)	N/A	N/A	N/A	$0.02
April 7, 2004 to June 30, 2004(3)	$21.00	$18.40	$19.95	$0.33
Third Quarter	$22.21	$18.05	$22.20	$0.43
Fourth Quarter(4)	$24.85	$20.25	$24.54	$0.47

(1) We were formed in June 2003 as a Maryland corporation and became a publicly traded company after the pricing of our public offering on April 6, 2004.

(2) Represents the portion of the second quarter of 2004 prior to our initial public offering.

(3) When combined with the $0.02 paid for the period April 1 through April 6, represents a regular quarterly dividend of $0.35 per share.

(4) On January 13, 2005, we declared distributions of $0.47 per share of common stock, payable with respect to the three months ended December 31, 2004 to stockholders of record at the close of business on January 31, 2005.

We are organized and conduct our operations to qualify as a real estate investment trust, or a REIT, which requires that we distribute at least 90% of taxable income. Therefore, we intend to continue to declare quarterly distributions on our common stock. No assurance, however, can be given as to the amounts or timing of future distributions as such distributions are subject to our earnings, financial condition, capital requirements and such other factors as our board of directors deems relevant.

On March 18, 2005, the closing sale price for our common stock, as reported on the NYSE, was $25.68. As of March 18, 2005, there were 3,336 record holders of our common stock. This figure does not reflect the beneficial ownership of shares held in nominee name.

Equity Compensation Plan Information

Information regarding securities authorized for issuance under our equity compensation plans which is set forth under the caption "Equity Compensation Plan Information" of the 2005 Proxy Statement is incorporated herein by reference.

Recent Issuances of Unregistered Securities

During the quarter ending December 31, 2004, we issued a total of 422,204 shares of common stock upon the exercise of 430,016 warrants to purchase shares of our common stock and received a total of approximately $6.3 million in proceeds as a result of the exercise of such warrants. These warrants were originally issued and sold as part of units, each consisting of five shares of common stock and one warrant. Pursuant to the terms of the warrant agreement, dated as of July 1, 2003, each of the warrants are exercisable from July 13, 2004 to July 1, 2005 for one share of common stock at an initial exercise price of $15 in cash or a number of shares of common stock or warrants deemed to have a fair market value equivalent to the cash exercise price. Of the total number of shares of common stock issued upon the exercise of such warrants, 418,748 shares were issued in consideration of the payment of the cash exercise price and 3,456 shares were issued in consideration of the holder of the related warrant surrendering shares of common stock or additional warrants in lieu of the cash exercise price. Funds received from the exercise of warrants were initially used to pay down debt outstanding under our credit facilities.

The issuance and sale of the shares of common stock issued upon the exercise of these warrants was not registered under the Securities Act in reliance on the exemption from registration provided by Section 4(2) thereof. These transactions did not involve any public offering of common stock, the holders of the warrants had adequate access to information about us through our public filings with the SEC, and an appropriate legend was placed on the certificates evidencing the shares of common stock issued to the exercising holders of the warrants.

On November 3, 2004, we issued 22,498 shares of common stock to ACM as payment of the incentive compensation earned by ACM for the quarter ending September 30, 2004. The issuance of these 22,498 shares as payment for ACM's incentive compensation was not registered under the Securities Act in reliance on the exemption from registration provided by Section 4(2) thereof.

ITEM 6. ***SELECTED FINANCIAL DATA***

SELECTED CONSOLIDATED FINANCIAL INFORMATION OF ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

The following tables present selected historical consolidated financial information as of December 31, 2004 and 2003 and for the year ended December 31, 2004 and the period from June 24, 2003 (inception) to December 31, 2003. The selected historical consolidated financial information presented below under the captions ''Consolidated Income Statement Data'' and ''Consolidated Balance Sheet Data'' have been derived from our audited consolidated financial statements and include all adjustments, consisting only of normal recurring accruals, which management considers necessary for a fair presentation of the historical consolidated financial statements for such period. The information presented under the caption ''Consolidated Income Statement Data'' for the period ended December 31, 2003 is not necessarily indicative of any other interim period. In addition, since the information presented below is only a summary and does not provide all of the information contained in our historical consolidated financial statements, including the related notes, you should read it in conjunction with ''Management's Discussion and Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries'' and our historical consolidated financial statements, including the related notes, included elsewhere in this report.

	Year ended December 31, 2004	Period from June 24, 2003 (Inception) to December 31, 2003
Consolidated Income Statement Data:		
Interest income	$ 57,927,230	$ 10,012,449
Other income	42,265	156,502
Total revenue	57,969,495	10,168,951
Management fees – related party	3,614,830	587,734
Total expenses	27,545,997	5,452,865
Net income .	25,072,682	3,407,919
Earnings per share, basic	1.81	0.42
Earnings per share, diluted[1][2]	1.78	0.42
Dividends declared per common share[3]	1.16	0.50

	At December 31, 2004	At December 31, 2003
Consolidated Balance Sheet Data		
Loans and investments, net	$ 831,783,364	$ 286,036,610
Related party loans, net	7,749,538	35,940,881
Total assets	912,295,177	338,164,432
Repurchase agreements	409,109,372	113,897,845
Notes payable	165,771,447	58,630,626
Total liabilities	589,292,273	183,416,716
Minority interest	60,249,731	43,631,602
Total stockholders' equity	262,753,173	111,116,114

	Year ended December 31, 2004	Period from June 24, 2003 (Inception) to December 31, 2003
Other Data		
Total originations	$ 782,301,133	$ 186,289,922

(1) As of December 31, 2004, ACM, our manager, earned incentive management fees totaling $1.6 million. Based on the terms of the management agreement, ACM elected to be paid its incentive management fee in common shares

totaling 66,141. These shares were anti-dilutive and have been excluded from the calculation of diluted earnings per share.

(2) The warrants underlying the units issued in the private placement at $75.00 per unit have an initial exercise price of $15.00 per share and expire on July 1, 2005. This exercise price is equal to the price per share of common stock underlying the units and approximates the market value of our common stock at December 31, 2003. Therefore, the assumed exercise of the warrants was not considered to be dilutive for purposes of calculating diluted earnings per share.

(3) On January 13, 2005 our board of directors authorized and we declared a distribution to our stockholders of $0.47 per share of common stock, payable with respect to the quarter ended December 31, 2004, to stockholders of record at the close of business on January 31, 2005. We made this distribution on February 15, 2005.

SELECTED CONSOLIDATED FINANCIAL INFORMATION OF THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES

On July 1, 2003, Arbor Commercial Mortgage contributed a portfolio of structured finance investments and related liabilities to our operating partnership. In addition, certain employees of Arbor Commercial Mortgage became our employees. These assets, liabilities and employees represented a substantial portion of Arbor Commercial Mortgage's structured finance business.

The tables on the following page present selected historical consolidated financial information of the structured finance business of Arbor Commercial Mortgage at the dates and for the periods indicated. The structured finance business did not operate as a separate legal entity or business division or segment of Arbor Commercial Mortgage but as an integrated part of Arbor Commercial Mortgage's consolidated business. Accordingly, the statements of revenue and direct operating expenses do not include charges from Arbor Commercial Mortgage for corporate general and administrative expense because Arbor Commercial Mortgage considered such items to be corporate expenses and did not allocate them to individual business units. These expenses included costs for Arbor Commercial Mortgage's executive management, corporate facilities and overhead costs, corporate accounting and treasury functions, corporate legal matters and other similar costs. The selected consolidated financial information presented under the caption ''Consolidated Statement of Revenue and Direct Operating Expenses Data'' for the years ended December 31, 2002 and 2001, the six months ended June 30, 2003 and under the caption ''Consolidated Statement of Assets and Liabilities Data'' as of December 31, 2002 and 2001 have been derived from the audited consolidated financial statements of the structured finance business of Arbor Commercial Mortgage included elsewhere in this report. The selected consolidated financial information presented under the caption ''Consolidated Statement of Revenue and Direct Operating Expenses Data'' for the six months ended June 30, 2003 is not necessarily indicative of the results of any other interim period or the year ended December 31, 2003. The selected consolidated financial information presented under the caption ''Consolidated Statement of Revenue and Direct Operating Expenses Data'' for the year ended December 31, 2000 and the caption ''Consolidated Statement of Assets and Liabilities Data'' as of December 31, 2000 have also been derived from the audited consolidated financial statements of the structured finance business of Arbor Commercial Mortgage. The selected consolidated financial information presented under the caption ''Consolidated Statement of Assets and Liabilities Data'' as of December 31, 2000 has been derived from the unaudited consolidated financial statements of the structured finance business of Arbor Commercial Mortgage.

The selected consolidated financial information presented under the caption ''Consolidated Statement of Revenue and Direct Operating Expenses Data'' for the six months ended June 30, 2002 have been derived from the unaudited interim consolidated financial statements of Arbor Commercial Mortgage's structured finance business and include all adjustments, consisting only of normal recurring accruals, which management considers necessary for a fair presentation of the historical consolidated financial information for such periods. The selected consolidated financial information presented under the caption ''Consolidated Statement of Revenue and Direct Operating Expenses Data'' for the six-month period ended June 30, 2002 are not necessarily indicative of the results of any other interim period or the year ended December 31, 2002.

The consolidated financial statements of Arbor Commercial Mortgage's structured finance business included in this report represent the consolidated financial position and results of operations of Arbor Commercial Mortgage's structured finance business during certain periods and at certain dates when Arbor Commercial Mortgage previously held our initial assets, as well as several other structured finance investments that we did not acquire in connection with our formation transactions. See ''Arbor Realty Trust, Inc.'' Accordingly, the historical financial results of Arbor Commercial Mortgage's structured finance business are not indicative of our future performance. In addition, since the information presented is only a summary and does not provide all of the information contained in the consolidated financial statements of Arbor Commercial Mortgage's structured finance business, including related notes, you should read it in conjunction with ''Management's Discussion and Analysis of Financial Condition and Results of Operations of the Structured Finance Business of Arbor Commercial Mortgage, LLC and Subsidiaries''

and the consolidated financial statements of Arbor Commercial Mortgage's structured finance business, including related notes, contained elsewhere in this report.

Consolidated Statement of Revenue and Direct Operating Expenses Data:

	Six Months Ended June 30,		Year Ended December 31,		
	2003	2002	2002	2001 (1)	2000 (1)
		(Unaudited)			
Interest Income	$ 7,688,465	$ 7,482,750	$ 14,532,504	$ 14,667,916	$ 10,707,551
Income from the real estate held for sale, net of operating expenses			-	-	-
Other income	1,552,414	553,625	1,090,106	1,668,215	652,970
Total revenue	9,240,879	8,036,375	15,622,610	16,336,131	11,360,521
Total direct operating expenses	5,737,688	8,344,302	13,639,755	10,997,800	9,227,274
Revenue in excess of direct operating expenses before gain on sale of loans and real estate and income from equity affiliates	3,503,191	(307,927)	1,982,855	5,338,331	2,133,247
Gain on sale of loans and real estate	1,024,268	7,006,432	7,470,999	3,226,648	1,880,825
Income from equity affiliates	-	601,100	632,350	1,403,014	5,028,835
Revenue, gain on sale of loans and real estate and income from equity affiliates in excess of direct operating expenses	4,527,459	7,299,605	10,086,204	9,967,993	9,042,907

Consolidated Statement of Assets and Liabilities Data:

	At December 31,		
	2002	2001	2000
			(Unaudited)
Loans and investments, net	$ 172,142,511	$ 160,183,066	$ 85,547,323
Related party loans, net	15,952,078	15,880,207	-
Investment in equity affiliates	2,586,026	2,957,072	20,506,417
Total assets	200,563,236	183,713,747	119,110,446
Notes payable and repurchase agreements	141,836,477	132,409,735	70,473,501
Total liabilities	144,280,806	134,086,301	72,266,700
Net assets	56,282,430	49,627,446	46,843,746

Other Data (Unaudited):

	Six Months Ended June 30,		Year Ended December 31,		
	2003	2002	2002	2001	2000
Total Originations	$ 117,965,000	$ 30,660,000	$ 130,043,000	$ 86,700,000	$ 108,378,000

(1) In June 1998, Arbor Commercial Mortgage entered into a joint venture with SFG I, an affiliate of Nomura Asset Capital Corp., for the purpose of acquiring up to $250 million of structured finance investments. Arbor Commercial Mortgage and SFG I each made 50% of the capital contributions to the joint venture and shared profits equally. Nomura Asset Capital Corp. provided financing to the joint venture in the form of a repurchase agreement. On July 31, 2001, Arbor Commercial Mortgage purchased SFG I's interest in this venture. This buyout was accounted for by the purchase accounting method. Prior to the purchase, net income from this venture was recorded in income from equity affiliates

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

You should read the following discussion in conjunction with the sections of this report entitled "Risk Factors", "Forward-Looking Statements", and "Selected Consolidated Financial Information of Arbor Realty Trust, Inc. and Subsidiaries" and the historical consolidated financial statements of Arbor Realty Trust, Inc. and Subsidiaries, including related notes, included elsewhere in this report.

Overview

We are a Maryland corporation that was formed in June 2003 to invest in real estate-related bridge and mezzanine loans, including junior participating interests in first mortgages, preferred equity and, in limited cases, discounted mortgage notes and other real estate-related assets, which we refer to collectively as structured finance investments. We also invest in mortgage-related securities. We conduct substantially all of our operations through our operating partnership and its wholly-owned subsidiaries.

Our operating performance is primarily driven by the following factors:

- *Net interest income earned on our investments* — Net interest income represents the amount by which the interest income earned on our assets exceeds the interest expense incurred on our borrowings. If the yield earned on our assets increases or the cost of borrowings decreases, this will have a positive impact on earnings. Net interest income is also directly impacted by the size of our asset portfolio.

- *Credit quality of our assets* — Effective asset and portfolio management is essential to maximizing the performance and value of a real estate/mortgage investment. Maintaining the credit quality of our loans and investments is of critical importance. Loans that do not perform in accordance with their terms may have a negative impact on earnings.

- *Cost control* — We seek to minimize our operating costs, which consist primarily of employee compensation and related costs, management fees and other general and administrative expenses. As the size of the portfolio increases, certain of these expenses, particularly employee compensation expenses, may increase.

We are organized and conduct our operations to qualify as a real estate investment trust, or a REIT and to comply with the provisions of the Internal Revenue Code of 1986, as amended, or the Code with respect thereto. A REIT is generally not subject to federal income tax on that portion of its REIT-taxable income which is distributed to its stockholders provided that at least 90% of its REIT-taxable income is distributed and provided that certain other requirements are met. Certain of our assets that produce non-qualifying income may be held in taxable REIT subsidiaries. Unlike other subsidiaries of a REIT, the income of a taxable REIT subsidiary is subject to Federal and state income taxes. As our taxable REIT subsidiaries have had minimal activity since their inception, we have determined that no provision for income taxes is necessary at this time.

On July 1, 2003, Arbor Commercial Mortgage ("ACM"), our manager, contributed $213.1 million of structured finance assets, encumbered by $169.2 million of borrowings in exchange for an equity interest in our operating partnership represented by 3,146,724 units of limited partnership interest and 629,345 warrants to acquire additional units of limited partnership interest. In addition, certain employees of ACM became our employees. We are externally managed and advised by ACM and pay ACM a management fee in accordance with a management agreement. ACM originates, underwrites and services all structured finance assets on behalf of our operating partnership.

Concurrently with ACM's asset contribution, we consummated a private placement of 1.6 million units, each consisting of five shares of our common stock and one warrant to purchase one share of common stock, for $75.00 per unit, resulting in gross proceeds of $120.2 million. Gross proceeds from the private placement combined with the concurrent equity contribution by ACM totaled approximately $164.1 million in equity capital.

On April 13, 2004, we sold 6,750,000 shares of our common stock at a price to the public of $20.00 per share, for net proceeds of approximately $124.4 million after deducting the underwriting discount and the other estimated offering expenses. On May 11, 2004, we issued and sold 524,200 additional shares of common stock, for net proceeds of approximately $9.8 million after deducting the underwriting discount pursuant to the exercise of a portion of the over-allotment option granted to the underwriters of our initial public offering. Additionally, as of December 31, 2004, we issued 973,354 shares of common stock from the exercise of warrants originally issued as a component of units on July 1, 2003, for proceeds of $12.9 million.

Changes in Financial Condition

During the year, we originated fifty-three loans and investments totaling $782.3 million, of which $746.1 million was funded as of December 31, 2004. Of the new loans and investments, twenty-three were mezzanine loans totaling $387.5 million, twenty were bridge loans totaling $300.8 million, five were junior participating interests totaling $84.5 million, and five were direct equity investments totaling $9.6 million. We have received full satisfaction of nineteen loans totaling $181.4 million and partial repayment on seven loans totaling $40.0 million. Also, we had sold one equity investment totaling $3.0 million, two equity investments convert to loans totaling $6.7 million and we recorded a $0.5 million distribution for one of our equity investments.

Since December 31, 2004, we have originated seven loans totaling approximately $134.7 million. In addition, we have received $145.9 million for the repayment in full of ten loans and $36.0 million for the partial repayment of two loans.

Our loan portfolio balance at December 31, 2004 was $842.5 million, with a weighted average current interest pay rate of 8.87%, as compared to $323.5 million, with a weighted average interest pay rate of 7.49%, at December 31, 2003. At December 31, 2004, advances on financing facilities totaled $530.7 million, with a weighted average funding cost of 5.05% as compared to $172.5 million, with a weighted average funding cost of 3.40%, at December 31, 2003. Additionally, our joint venture investment portfolio at December 31, 2004 was $5.3 million as compared to $5.9 million at December 31, 2003.

In March 2004, we purchased $57.4 million (including $0.1 million of purchased interest) of agency-sponsored whole pool mortgage-related securities. Pools of FNMA and FHLMC adjustable rate residential mortgage loans underlie these mortgage-related securities. We receive payments based on the payments that are made on these mortgage loans. The underlying mortgage loans have a fixed rate of interest for three years and adjust annually thereafter. These loans have a weighted average coupon rate of 3.8%. Of these mortgage-related securities, $20.6 million were issued by FNMA and $36.7 million were issued by FHLMC. At December 31, 2004, the amortized cost of these securities was $47.1 million. We are carrying these securities at their estimated fair value of $46.6 million, which resulted in a $0.5 million unrealized loss that was recorded in other comprehensive loss. At December 31, 2004, the outstanding balance on the financing of these securities was $44.2 million.

On January 19, 2005 the Company completed a non-recourse collateralized debt obligation ("CDO") transaction, whereby a portfolio of real estate-related assets were contributed to a consolidated subsidiary which issued $305 million of investment grade-rated floating-rate notes in a private placement. The subsidiary retained the equity interest in the issuer with a value of approximately $164 million. The notes are secured by a portfolio of real estate-related assets with a face value of approximately $441 million, consisting primarily of bridge loans, mezzanine loans and junior participating interests in first mortgages, and by approximately $28 million of cash available for acquisitions of loans and other permitted investments. The notes have an initial weighted average spread of approximately 77 basis points over

three-month LIBOR. The facility has a four-year replenishment period that allows the principal proceeds from repayments of the collateral assets to be reinvested in qualifying replacement assets, subject to certain conditions. The Company intends to own the portfolio of real estate-related assets until its maturity and will account for this transaction on its balance sheet as a financing. These proceeds were used to repay outstanding debt with higher costs of funds. In connection with the CDO, the Company entered into an interest rate swap agreement to hedge its exposure to the risk of changes in the difference between three-month LIBOR and one-month LIBOR.

Sources of Operating Revenues

We derive our operating revenues primarily through interest received from making real estate-related bridge and mezzanine loans and preferred equity investments. Interest income earned on these loans and investments represented approximately 96% and 98% of our total revenues in 2004 and for the period ended December 31, 2003, respectively.

Interest income is also derived from profits of equity participation interests. In 2004, interest income from participation interests represented approximately $1.2 million or 2% of total revenues. No income was derived from this source in 2003.

We also derive interest income from our investments in mortgage related securities. In 2004, interest on these investments represented approximately 2% of our total revenues. No income was derived from this source in 2003.

Additionally, we also derive operating revenues from other income that represents loan structuring and miscellaneous asset management fees associated with our loans and investments portfolio. Revenue from other income represented less than 1% and 2% of our total revenues in 2004 and the period ended December 31, 2003, respectively.

Gain on Sale of Loans and Real Estate and Income from Equity Affiliates

We may derive income from the gain on sale of loans and real estate. We may acquire (1) real estate for our own investment and, upon stabilization, disposition at an anticipated return and (2) real estate notes generally at a discount from lenders in situations where the borrower wishes to restructure and reposition its short term debt and the lender wishes to divest certain assets from its portfolio. No such income has been recorded to date.

We also derive income from equity affiliates relating to joint ventures that were formed with equity partners to acquire, develop and/or sell real estate assets. Such investments are recorded under the equity method. We record our share of net income from the underlying properties in which we invest through these joint ventures. In 2004, income from equity affiliates totaled $525,000.

Significant Accounting Estimates and Critical Accounting Policies

Management's discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with U.S. Generally Accepted Accounting Principles ("GAAP"). The preparation of financial statements in conformity with GAAP requires the use of estimates and assumptions that could affect the reported amounts in our consolidated financial statements. Actual results could differ from these estimates. A summary of our significant accounting policies is presented in Note 2 to our consolidated financial statements, which appear in "Financial Statements and Supplementary Data." Set forth below is a summary of the accounting policies that management believes are critical to the preparation of the consolidated financial statements included in this report. Certain of the accounting policies used in the preparation of these consolidated financial statements are particularly important for an understanding of the financial position and results of operations presented in the historical consolidated financial statements included in this report and require the application of significant judgment by management and, as a result, are subject to a degree of uncertainty.

Loans and Investments

SFAS No. 115 requires that at the time of purchase, we designate a security as held to maturity, available for sale, or trading depending on ability and intent. Securities held for sale are reported at fair value, while securities and investments held to maturity are reported at amortized cost. We do not have any trading securities at this time.

Loans held for investment are intended to be held to maturity and, accordingly, are carried at cost, net of unamortized loan origination costs and fees, unless such loan or investment is deemed to be impaired. We invest in preferred equity interests that allow us to participate in a percentage of the underlying property's cash flows from operations and proceeds from a sale or refinancing. At the inception of each such investment, management must determine whether such investment should be accounted for as a loan, joint venture or as real estate. To date, management has determined that all such investments are properly accounted for and reported as loans.

Specific valuation allowances are established for impaired loans based on the fair value of collateral on an individual loan basis. The fair value of the collateral is determined by an evaluation of operating cash flow from the property during the projected holding period, and estimated sales value computed by applying an expected capitalization rate to the stabilized net operating income of the specific property, less selling costs, discounted at market discount rates. If upon completion of the valuation, the fair value of the underlying collateral securing the impaired loan is less than the net carrying value of the loan, an allowance is created with a corresponding charge to the provision for loan losses. An allowance for each loan would be maintained at a level believed adequate by management to absorb probable losses. As of December 31, 2004, no impairment has been identified and no valuation allowances have been established.

Available-For-Sale Securities

We invest in agency-sponsored whole pool mortgage related securities. Pools of Federal National Mortgage Association, or FNMA, and Federal Home Loan Mortgage Corporation, or FHLMC, adjustable rate residential mortgage loans underlie these mortgage related securities. We receive payments from the payments that are made on these underlying mortgage loans, which have a fixed rate of interest for three years and adjust annually thereafter. These securities are carried at their estimated fair value with unrealized gains and losses excluded from earnings and reported in other comprehensive income pursuant to SFAS No. 115 "Accounting for Certain Investments in Debt and Equity Securities." Unrealized losses other than temporary losses are recognized currently in income.

Revenue Recognition

Interest Income. Interest income is recognized on the accrual basis as it is earned from loans, investments and available-for-sale securities. In many instances, the borrower pays an additional amount of interest at the time the loan is closed, an origination fee, and deferred interest upon maturity. In some cases interest income may also include the amortization or accretion of premiums and discounts arising at the purchase or origination. This additional income, net of any direct loan origination costs incurred, is deferred and accreted into interest income on an effective yield or "interest" method adjusted for actual prepayment activity over the life of the related loan or available-for-sale security as a yield adjustment. Income recognition is suspended for loans when in the opinion of management a full recovery of income and principal becomes doubtful. Income recognition is resumed when the loan becomes contractually current and performance is demonstrated to be resumed. Several of the loans provide for accrual of interest at specified rates, which differ from current payment terms. Interest is recognized on such loans at the accrual rate subject to management's determination that accrued interest and outstanding principal are ultimately collectible, based on the underlying collateral and operations of the borrower. If management cannot make this determination regarding collectibility, interest income above the current pay rate is recognized only upon actual receipt. Additionally, interest income is recorded when earned from equity participation interests, referred to as equity kickers. These equity kickers have the potential to generate

additional revenues to the Company as a result of excess cash flows being distributed and/or as appreciated properties are sold or refinanced.

Derivatives and Hedging Activities

In accordance with FAS 133, the carrying values of interest rate swaps, as well as the underlying hedged liability, if applicable, are reflected at their fair value. We rely on quotations from a third party to determine these fair values. Derivatives that are not hedges are adjusted to fair value through income. If the derivative is a hedge, depending on the nature of the hedge, changes in the fair value of the derivative are either offset against the change in the fair value of the hedged liability through earnings or recognized in other comprehensive income until the hedged item is recognized in earnings. The ineffective portion of a derivative's change in fair value is immediately recognized in earnings.

Because the valuations of our hedging activities are based on estimates, the fair value may change if our estimates are inaccurate. For the effect of hypothetical changes in market interest rates on our interest rate swaps, see the Market Risk section.

Recently Issued Accounting Pronouncements

In January 2003, the Financial Accounting Standards Board ("FASB") issued FASB Interpretation No. 46, "Consolidation of Variable Interest Entities" ("FIN 46"), which requires a variable interest entity ("VIE") to be consolidated by its primary beneficiary ("PB"). The PB is the party that absorbs a majority of the VIE's anticipated losses and/or a majority of the expected returns.

In December 2003, the FASB revised FIN 46 ("FIN 46(R)"), delaying the effective date for certain entities created before February 1, 2003 and making other amendments to clarify the application of the guidance. FIN 46(R) is effective no later than the end of the first interim or annual period ending after December 15, 2003 for entities created after January 31, 2003 and for entities created before February 1, 2003, no later than the end of the first interim or annual period ending after March 15, 2004. As required, we adopted the guidance of FIN 46(R) accordingly.

In adopting FIN 46 and FIN 46(R), we have evaluated our loans and investments and investments in equity affiliates to determine whether they are VIE's. This evaluation resulted in us determining that our mezzanine loans, preferred equity investments and investments in equity affiliates were potential variable interests. For each of these investments, we have evaluated (1) the sufficiency of the fair value of the entities' equity investments at risk to absorb losses, (2) that as a group the holders of the equity investments at risk have (a) the direct or indirect ability through voting rights to make decisions about the entities' significant activities, (b) the obligation to absorb the expected losses of the entity and their obligations are not protected directly or indirectly, (c) the right to receive the expected residual return of the entity and their rights are not capped, (3) the voting rights of some of these investors are proportional to their obligations to absorb the expected losses of the entity, their rights to receive the expected returns of the equity, or both, and (4) that substantially all of the entities' activities do not involve or are not conducted on behalf of an investor that has disproportionately few voting rights. As of December 31, 2004, we have identified four loans and investments which were made to entities determined to be VIE's. A summary of our identified VIE's is presented in Note 2 of our consolidated financial statements, which appear in "Financial Statements and Supplementary Data". For the four VIE's identified, we have determined that we are not the primary beneficiaries and as such the VIE's should not be consolidated in our financial statements. For all other investments, we have determined they are not VIE's. As such, we have continued to account for these loans and investments as a loan or joint venture, as appropriate.

In March 2004, the SEC released SAB 105, "Application of Accounting Principles to Loan Commitments," providing guidance on how to account for a commitment to purchase a mortgage loan prior to funding the loan. SAB 105 requires that these commitments be recorded at fair value with changes in fair value recognized in current earnings and was intended to eliminate the diversity in industry practice that existed relating to the accounting for loan commitments. SAB 105 is effective for loan commitments

entered into after March 31, 2004. Our method of accounting for loan commitments is consistent with the guidance provided by SAB 105.

In December 2003, the Accounting Standards Executive Committee of the American Institute of Certified Public Accountants issued SOP 03-3, "Accounting for Certain Loans or Debt Securities Acquired in a Transfer." SOP 03-3 addresses the accounting for acquired impaired loans, which are loans that show evidence of having deteriorated in terms of credit quality since their origination. SOP 03-3 is effective for loans acquired after December 31, 2004. We do not expect the adoption of SOP 03-3 to have a material effect on our financial condition, results of operations, or liquidity.

In June 2004, the FASB issued EITF 03-01, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments." EITF 03-01 requires an investor to determine when an investment is considered impaired, evaluate whether that impairment is other than temporary, and, if the impairment is other than temporary, recognize an impairment loss equal to the difference between the investment's cost and its fair value. The guidance also includes accounting considerations subsequent to the recognition of an other-than-temporary impairment and requires certain disclosures about unrealized losses that have not been recognized as other-than-temporary impairments. The impairment loss recognition and measurement guidance was to be applicable to other-than-temporary impairment evaluations in reporting periods beginning after June 15, 2004. In September 2004, the FASB proposed additional guidance related to debt securities that are impaired because of interest rate and/or sector spread increases, and delayed the effective date of EITF 03-01. We do not expect the adoption of EITF 03-01 to have a material effect on our financial condition, results of operations, or liquidity. EITF 03-01 also includes disclosure requirements for investments in an unrealized loss position for which other-than-temporary impairments have not been recognized. These disclosures are included in our report for the year ended December 31, 2004 as required by the EITF.

In December 2004, the FASB published SFAS 123(R) entitled "Share-Based Payment." It requires all public companies to report share-based compensation expense at the grant date fair value of the related share-based awards. We are required to adopt the provisions of the standard effective for periods beginning after June 15, 2005. We believe that our current method of accounting for share-based payments is consistent with SFAS 123(R).

Results of Operations

The following table sets forth our results of operations for the year ended December 31, 2004 and for the period from June 24, 2003 (Inception) to December 31, 2003:

	Year Ended December 31, 2004	Period June 24, 2003 (Inception) to December 31, 2003
Revenue:		
Interest income	$ 57,927,230	$ 10,012,449
Other income	42,265	156,502
Total revenue	57,969,495	10,168,951
Expenses:		
Interest expense	19,372,575	1,669,731
Employee compensation and benefits	2,325,727	940,336
Stock based compensation	324,343	1,721,367
Selling and administrative	1,908,522	533,697
Management fee – related party	3,614,830	587,734
Total expenses	27,545,997	5,452,865
Income before minority interest and income from equity affiliates	30,423,498	4,716,086
Income from equity affiliates	525,000	—
Income before minority interest	30,948,498	4,716,086
Income allocated to minority interest	5,875,816	1,308,167
Net income	$ 25,072,682	$ 3,407,919

Revenue

Interest income increased $47.9 million, or 479%, to $57.9 million in 2004 from $10.0 million for the period ended December 31, 2003. This increase was due to a full year's results in 2004 as compared to a partial year's results in 2003, a 149% increase in the average balance of the loan and investment portfolio from $254.9 million for the period ended December 31, 2003 to $635.1 million in 2004 due to increased loan and investment originations, as well as a 14% increase in the average yield on the assets from 7.7% to 8.8% as a result of increased market interest rates. In addition, interest income in 2004 included a $1.2 million participation interest earned and received on one of our loans as compared to no participation interest recorded during the period ending December 31, 2003. Interest income from available for sale securities in 2004 was $1.1 million, with an average available for sale securities balance of $51.9 million and an average yield of 2.1%. There was no interest income recorded from available for sale securities during the period ended December 31, 2003.

Other income decreased $114,000, or 73%, to $42,000 in 2004 from $157,000 for the period ended December 31, 2003. This income represents loan structuring and miscellaneous asset management fees associated with our loan and investment portfolio.

Expenses

Interest expense increased $17.7 million, or 1060%, to $19.4 million in 2004 from $1.7 million for the period ended December 31, 2003. This increase was due to a full year's results in 2004 as compared to a partial year's results in 2003, a 315% increase in the average debt financing on our loan and investment portfolio from $92.5 million for the period ended December 31, 2003 to $383.8 million in 2004 due to increased loan and portfolio originations, as well as a 37% increase in the average cost of these borrowings from 3.5% to 4.8% as a result of increased market interest rates. In addition, interest expense on debt financing of our available-for-sale securities portfolio in 2004 was $0.6 million, with an average debt financing on our available for sale securities balance of $50.3 million and an average yield of 1.24%. There

was no interest expense recorded from available for sale securities during the period ended December 31, 2003.

Employee compensation and benefits expense increased $1.4 million, or 147%, to $2.3 million in 2004 from $0.9 million for the period ended December 31, 2003. This increase was due to a full year's results in 2004 as compared to a partial year's results in 2003 combined with the expansion of staffing needs associated with strengthening our organization as a publicly traded company in 2004. These expenses represent salaries, benefits, and incentive compensation for those employed by us during these periods.

Stock-based compensation expense decreased $1.4 million, or 82%, to $0.3 million in 2004 from $1.7 million for the period ended December 31, 2003. This decrease was primarily due to a greater portion of the restricted stock grants vesting for the period ended December 31, 2003 partially offset by a full year's results in 2004 as compared to a partial year's results in 2003. This expense represents the cost of restricted stock granted to certain of our employees, executive officers and directors and certain executive officers and employees of our manager. Of the total shares granted, two-thirds of the shares granted vested immediately and the remaining one-third vests over three years. The amount of compensation expense recorded for the period ended December 31, 2003 represents the full expense of the initial two-thirds vesting and a ratable portion of the expense of the unvested shares. The amount of expense in 2004 represents a ratable portion of the expense of the unvested shares.

Selling and administrative expense increased $1.4 million, or 258%, to $1.9 million in 2004 from $0.5 million for the period ended December 31, 2003. This increase was directly attributable to a full year's results in 2004 as compared to a partial year's results in 2003 combined with an increase in professional fees, including legal and accounting services, insurance expense and director's fees associated with operating a public company since our filing in 2004.

Management fees increased $3.0 million, or 515%, to $3.6 million in 2004 from $2.0 million for the period ended December 31, 2003. This increase was directly attributable to a full year's results in 2004 as compared to a partial year's results in 2003, combined with $1.6 million in incentive management fees recorded in 2004 not earned during the period ended December 31, 2003 due to the requirements for incentive compensation not satisfied, as well as an increase in the average base management fees associated with increased stockholder's equity directly attributable to greater profits and contributed capital.

Income From Equity Affiliates

Income from equity affiliates was $525,000 in 2004. This amount represents an allocation of income from one of our joint venture interests. For the period ended December 31, 2003, no income from equity affiliates was recorded.

Income Allocated to Minority Interest

Income allocated to minority interest increased $4.6 million, or 349%, to $5.9 million in 2004 from $1.3 million for the period ended December 31, 2003. These amounts represent the portion of our income allocated to our manager. This increase was due to a full year's results in 2004 as compared to a partial year's results in 2003, combined with a 556% increase in income before minority interest, partially offset by a decrease in our manager's limited partnership interest in us. Our manager owned a 18.7% and 27.7% limited partnership interest in our operating partnership and was allocated 18.7% and 27.7% at December 31, 2004 and 2003, respectively.

Liquidity and Capital Resources

Sources of Liquidity

Liquidity is a measurement of the ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund loans and investments and other general business needs. Our primary sources of funds for liquidity consist of funds raised from our private equity offering in July 2003,

net proceeds from our initial public offering of our common stock in April 2004, the issuance of floating rate notes pursuant to a CDO (described below) in January 2005, borrowings under credit agreements, net cash provided by operating activities, repayments of outstanding loans and investments, funds from junior and senior loan participation arrangements and the future issuance of common, convertible and/or preferred equity securities.

In 2003, we received gross proceeds from the private placement totaling $120.2 million, which combined with ACM's equity contribution of $43.9 million, resulted in total contributed capital of $164.1 million. These proceeds were used to pay down borrowings under our existing credit facilities.

In 2004, we sold 6,750,000 shares of our common stock in a public offering on April 13, 2004 for net proceeds of approximately $125.4 million. We used the proceeds to pay down indebtedness. In addition, in May 2004 the underwriters exercised a portion of their over allotment option, which resulted in the issuance of 524,200 additional shares for net proceeds of approximately $9.8 million. Additionally, in 2004, 1.3 million common stock warrants were exercised which resulted in proceeds of $12.9 million. Also, Arbor Realty Limited Partnership ("ARLP"), the operating partnership of Arbor Realty Trust received proceeds of $9.4 million from the exercise of ACM's warrants for a total of 629,345 operating partnership units.

We also maintain liquidity through one warehouse credit agreement, one unsecured revolving credit agreement, five master repurchase agreements, and one secured term credit facility with seven different financial institutions. London interbank offered rate, or LIBOR, refers to one-month LIBOR unless specifically stated.

We have a $250.0 million warehouse credit agreement with a financial institution, dated as of July 1, 2003, with a term of three years and bears interest at LIBOR plus pricing of 2.00% to 2.75%, varying on type of asset financed. In the event this facility is not renewed, we have nine months to repay all outstanding advances. In addition to LIBOR-based interest obligations, this warehouse credit facility includes a profit sharing agreement, whereby the institution shares in the net interest spread of the assets financed. The profit sharing component represents the percentage of the net profits earned over the life of a loan that are payable to the lender upon repayment of the underlying investment. Net profits are based on interest income, interest expense and deferred interest payable at repayment of an investment. At December 31, 2004, the outstanding balance under this facility was $137.2 million with a current weighted average note rate of 4.87%. On January 19, 2005, $36 million of this facility was paid down in connection with the CDO (see below). In addition, on March 29, 2005 we terminated this facility scheduled to expire in June, 2006. We simultaneously repaid all indebtedness outstanding on that date. This debt underlying certain of our assets was transferred to our other facilities described below.

We have a $100.0 million master repurchase agreement with a second financial institution, as amended in December 2004, that has a term expiring in June 2005 and bears interest at LIBOR plus pricing of 2.00% to 2.75%, varying on type of asset financed. At December 31, 2004, the outstanding balance under this facility was $19.5 million with a current weighted average note rate of 5.43%. Subsequent to December 31, 2004, $7 million of this facility was paid down in connection with the CDO (see below).

We have a $350.0 million master repurchase agreement with Wachovia Bank National Association, dated as of December 23, 2003, with a term of three years and bears interest at LIBOR plus pricing of 0.94% to 3.65%, varying on type of asset financed. In July 2004, this repurchase agreement was amended increasing the amount of available financing from $250 million to $350 million and amending certain terms of this agreement, which were generally more favorable to us. This amendment has a expiration date of July 2005. In December 2004, we amended this facility on a temporary basis which provided for an increase in the amount of financing available under this facility from $350 million to $430 million, and expired in February 2005. At December 31, 2004, the outstanding balance under this facility was $324.4 million with a current weighted average note rate of 4.63%. Subsequent to December 31, 2004, $203 million of this facility was paid down in connection with the CDO (see below). In addition, we have a $100 million repurchase agreement with the same financial institution as above that we entered into for the purpose of financing our securities available for sale. This agreement expires on July 2005 and has an

interest rate of LIBOR plus 0.15%. At December 31, 2004, the outstanding balance under this facility was $44.2 million with a current weighted average note rate of 2.36%.

We entered into a $21 million repurchase agreement with a fourth financial institution, dated July 30, 2004 for the purpose of financing a $30 million mezzanine loan which was purchased from this institution. The agreement provides for a 70% advance rate of the current loan balance, interest to be paid monthly at LIBOR plus 1.50%, and has a term that will expire in April 2005. Subsequent to December 31, 2004, this loan was contributed to the portfolio of the CDO and the debt financing was paid in full (see below).

We have a $50.0 million master repurchase agreement with a fifth financial institution, dated as of July 1, 2003, which matures in November 2005 and bears interest at LIBOR plus pricing of 2.00% to 2.75%, varying on type of asset financed. This facility has not yet been utilized.

We have a $50.0 million unsecured revolving credit agreement with a sixth financial institution, dated December 7, 2004, with a term of one year with two one-year extension options and an interest rate of LIBOR plus 7.00%. This revolving credit facility is primarily used to manage the timing difference between when new loans and investments are closed and when they are financed within one of the warehouse credit or master repurchase agreements. At December 31, 2004, the outstanding balance under this facility was $15.0 million with a current weighted average note rate of 9.37%.

In January 2005, we closed a $50 million term credit facility with a seventh financial institution who beneficially owned approximately 7.1% of our outstanding common stock as of December 31, 2004. This agreement has a term of one year with two six-month renewal options and bears interest at LIBOR plus 6.00%. On February 28, 2005, the outstanding balance under this facility was $30.0 million with a current weighted average note rate of 8.72%.

In January 2005, we completed a non-recourse collateralized debt obligation ("CDO") transaction, whereby $469 million of real estate related and other assets were contributed to a newly-formed consolidated subsidiary which issued $305 million of investment grade-rated floating-rate notes in a private placement. These proceeds were used to repay outstanding debt under our current facilities totaling $267 million. By contributing these real estate assets to the CDO, this transaction resulted in a decreased cost of funds relating to the CDO assets and created capacity in our existing credit facilities.

On March 15, 2005, we, through a newly-formed wholly-owned subsidiary of its operating partnership, issued $27.1 million of junior subordinated notes in a private placement. These securities are unsecured, have a maturity of 29 years, pay interest quarterly at a floating rate of interest based on LIBOR and, absent the occurrence of special events, are not redeemable during the first five years.

The warehouse credit agreement, unsecured revolving credit agreement, and the master repurchase agreements require that we pay interest monthly, based on pricing over LIBOR. The amount of our pricing over LIBOR varies depending upon the structure of the loan or investment financed pursuant to the warehouse credit agreement or the master repurchase agreement.

The warehouse credit agreement, the master repurchase agreements and the secured term credit facility require that we pay down borrowings under these facilities pro-rata as principal payments on our loans and investments are received. In addition, if upon maturity of a loan or investment we decide to grant the borrower an extension option, the financial institutions have the option to extend the borrowings or request payment in full on the outstanding borrowings of the loan or investment extended. The financial institutions also have the right to request immediate payment of any outstanding borrowings on any loan or investment that is at least 60 days delinquent.

As of December 31, 2004, these facilities had an aggregate capacity of $1.0 billion and borrowings were approximately $561.3 million.

Each of the credit facilities contains various financials covenants and restrictions, including minimum net worth and debt-to-equity ratios. In addition to the financial terms and capacities described above, our credit facilities generally contain covenants that prohibit us from effecting a change in control, disposing of or encumbering assets being

financed and restrict us from making any material amendment to our underwriting guidelines without approval of the lender. If we violate these covenants in any of our credit facilities, we could be required to repay all or a portion of our indebtedness before maturity at a time when we might be unable to arrange financing for such repayment on attractive terms, if at all. Violations of these covenants may result in our being unable to borrow unused amounts under our credit facilities, even if repayment of some or all borrowings is not required. As of December 31, 2004 we are in compliance with all covenants and restrictions under these credit facilities.

In addition, we have entered into two junior loan participations with a total outstanding balance at December 31, 2004 of $10.6 million. These participation borrowings have maturity dates equal to the corresponding mortgage loan and are secured by the participant's interest in the mortgage loan. Interest expense is based on a portion of the interest received from the loan.

We entered into one senior loan participation with a total outstanding balance as of December 31, 2004 of $3.0 million. Interest expense relating to this senior participation was based on 50% of the net spread on the loan. In January 2005, the senior loan participation was repaid in full.

We believe our existing sources of funds will be adequate for purposes of meeting our short-term liquidity (within one year) and long-term liquidity needs. Our short-term and long-term liquidity needs include ongoing commitments to repay borrowings, fund future investments, fund operating costs and fund distributions to our stockholders. Our loans and investments are financed under existing credit facilities and their credit status is continuously monitored; therefore, these loans and investments are expected to generate a generally stable return. Our ability to meet our long-term liquidity and capital resource requirements is subject to obtaining additional debt and equity financing. If we are unable to renew our sources of financing on substantially similar terms or at all, it would have an adverse effect on our business and results of operations. Any decision by our lenders and investors to enter into such transactions with us will depend upon a number of factors, such as our financial performance, compliance with the terms of our existing credit arrangements, industry or market trends, the general availability of and rates applicable to financing transactions, such lenders' and investors' resources and policies concerning the terms under which they make such capital commitments and the relative attractiveness of alternative investment or lending opportunities.

To maintain our status as a REIT under the Internal Revenue Code, we must distribute annually at least 90% of our taxable income. These distribution requirements limit our ability to retain earnings and thereby replenish or increase capital for operations. However, we believe that our significant capital resources and access to financing will provide us with financial flexibility and market responsiveness at levels sufficient to meet current and anticipated capital requirements, including expected new lending and investment opportunities.

In order to maximize the return on our funds, cash generated from operations is generally used to temporarily pay down borrowings under credit facilities whose primary purpose is to fund our new loans and investments. When making distributions, we borrow the required funds by drawing on credit capacity available under our credit facilities. To date, all distributions have been funded in this manner. All funds borrowed to make distributions have been repaid by funds generated from operations.

Contractual Commitments

As of December 31, 2004, we had the following material contractual obligations (payments in thousands):

	Payments due by period (1)				
Contractual Obligations	2005	2006-2007	2008-2009	Thereafter	Total
Structured transaction facility	$ 54,265	$ 46,962	$ —	$ 35,972	$ 137,199
Repurchase agreements	103,346	58,036	16,775	230,953	409,110
Unsecured credit facility	15,000	—	—	—	15,000
Loan participations	3,000	10,572	—	—	13,572
Outstanding unfunded commitments(2)	4,653	30,067	1,417	—	36,137
Management fee (3)	N/A	N/A	N/A	N/A	N/A
Totals	$ 180,264	$ 145,637	$ 18,192	$ 266,925	$ 611,018

(1) Represents amounts due based on contractual maturities.
(2) In accordance with certain of our loans and investments, we have outstanding unfunded commitments of $36.1 million as of December 31, 2004, that we are obligated to fund as the borrowers meet certain requirements. Specific requirements include but are not limited to property renovations, building construction, and building conversions based on criteria met by the borrower in accordance with the loan agreements.
(3) This contract does not have fixed and determinable payments; refer to section entitled “Management Agreement” below.
(4) We have contractual obligations to make future payments in connection with short-term and long-term debt described in the section entitled “Liquidity and Capital Resources”.
(5) In connection with the CDO transaction in January 2005, $36 million of the structured transaction facility scheduled to mature in 2006, $28 million of the repurchase agreement scheduled to mature in 2005 and $203 million of the repurchase agreements scheduled to mature in 2006 were repaid. The CDO has a four-year replenishment period.

Management Agreement

Base Management Fees. In exchange for the services that ACM provides us pursuant to the management agreement, we pay our manager a monthly base management fee in an amount equal to:

(1) 0.75% per annum of the first $400 million of our operating partnership’s equity (equal the month-end value computed in accordance with GAAP of total partners’ equity in our operating partnership, plus or minus any unrealized gains, losses or other items that do not affect realized net income),

(2) 0.625% per annum of our operating partnership’s equity between $400 million and $800 million, and

(3) 0.50% per annum of our operating partnership’s equity in excess of $800 million.

The base management fee is not calculated based on the manager’s performance or the types of assets its selects for investment on our behalf, but it is affected by the performance of these assets because it is based on the value of our operating partnership’s equity. We incurred $2.0 million and $0.6 million in base management fees for services rendered in 2004 and the period ended December 31, 2003, respectively.

Incentive Compensation. Pursuant to the management agreement, our manager is also entitled to receive incentive compensation in an amount equal to:

(1) 25% of the amount by which:

(a) our operating partnership's funds from operations per operating partnership unit, adjusted for certain gains and losses, exceeds

(b) the product of (x) the greater of 9.5% per annum or the Ten Year U.S. Treasury Rate plus 3.5%, and (y) the weighted average of (i) $15.00, (ii) the offering price per share of our common stock (including any shares of common stock issued upon exercise of warrants or options) in any subsequent offerings (adjusted for any prior capital dividends or distributions), and (iii) the issue price per operating partnership unit for subsequent contributions to our operating partnership, multiplied by

(2) the weighted average of our operating partnership's outstanding operating partnership units.

In 2004, our manager earned a total of $1.6 million of incentive compensation and elected to receive it in 66,141 shares of common stock. Our manager did not earn incentive compensation for the period ended December 31, 2003.

We pay the annual incentive compensation in four installments, each within 60 days of the end of each fiscal quarter. The calculation of each installment is based on results for the 12 months ending on the last day of the fiscal quarter for which the installment is payable. These installments of the annual incentive compensation are subject to recalculation and potential reconciliation at the end of such fiscal year. Subject to the ownership limitations in our charter, at least 25% of this incentive compensation is payable to our manager in shares of our common stock having a value equal to the average closing price per share for the last twenty days of the fiscal quarter for which the incentive compensation is being paid.

The incentive compensation is accrued as it is earned. In accordance with Issue 4(b) of EITF 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services," the expense incurred for incentive compensation paid in common stock is determined using the valuation method described above and the quoted market price of our common stock on the last day of each quarter. At December 31 of each year, we remeasure the incentive compensation paid to our manager in the form of common stock in accordance with Issue 4(a) of EITF 96-18 which discusses how to measure at the measurement date when certain terms are not known prior to the measurement date. Accordingly, the expense recorded for such common stock is adjusted to reflect the fair value of the common stock on the measurement date when the final calculation of the annual incentive compensation is determined. In the event that the annual incentive compensation calculated as of the measurement date is less than the four quarterly installments of the annual incentive compensation paid in advance, our manager will refund the amount of such overpayment in cash and we would record a negative incentive compensation expense in the quarter when such overpayment is determined.

Origination Fees. Our manager is entitled to 100% of the origination fees paid by borrowers under each of our bridge loan and mezzanine loans that do not exceed 1% of the loan's principal amount. We retain 100% of the origination fee that exceeds 1% of the loan's principal amount.

Term and Termination. The management agreement has an initial term of two years and is renewable automatically for an additional one year period every year thereafter, unless terminated with six months' prior written notice. If we terminate or elect not to renew the management agreement in order to manage our portfolio internally, we are required to pay a termination fee equal to the base management fee and incentive compensation for the 12-month period preceding the termination. If, without cause, we terminate or elect not to renew the management agreement for any other reason, including a change of control of us, we are required to pay a termination fee equal to two times the base management fee and incentive compensation paid for the 12-month period preceding the termination.

Inflation

In our two most recent fiscal years, inflation and changing prices have not had a material effect on our net income and revenue. Changes in the general level of interest rates prevailing in the economy in response to changes in the rate of inflation generally have little effect on our income because most of our

interest-earning assets and interest-bearing liabilities have floating rates of interest. However, the value of our interest-earning assets, our ability to realize gains from the sale of assets, and the average life of our interest-earning assets, among other things, may be effected. See "Quantitative and Qualitative Disclosures about Market Risk" below.

Related Party Transactions

Related Party Loans

As of December 31, 2004, we had a $7.75 million first mortgage loan and as of December 31, 2003, this first mortgage loan had an outstanding principal amount of $13.5 million and we had a $1.2 million second mortgage loan, each of which bore interest at a variable rate of one month LIBOR plus 4.25% and matures in March 2005. Each of these loans were made to a not-for-profit corporation that holds and manages investment property from the endowment of a private academic institution. Two of our directors are members of the board of trustees of the borrower under each of these loans and the private academic institution. Interest income recorded from these loans in 2004 and 2003 was approximately $0.9 million and $0.4 million, respectively.

ACM has a 50% non-controlling interest in a joint venture, which was formed to acquire, develop and/or sell real estate assets. At December 31, 2004 and 2003, ACM's investment in this joint venture was approximately $2.6 million. All loans outstanding to this joint venture were repaid in full in 2004. At December 31, 2003, we had a $16.0 million bridge loan outstanding to the joint venture, which was collateralized by a first lien position on a commercial real estate property. This loan was funded by ACM in June 2003 and was purchased by us in July 2003. The loan required monthly interest payments based on one month LIBOR and was repaid in full in 2004. We had agreed to provide the borrower with additional mezzanine financing in the amount of up to $8.0 million. The mezzanine financing required interest payments based on one month LIBOR and was repaid in full in 2004. Interest income recorded from these loans for the period ended December 31, 2004 and 2003 was approximately $0.8 million and $0.5 million, respectively.

Our $16.0 million bridge loan to the joint venture was contributed by ACM as one of the structured finance assets contributed to us on July 1, 2003 at book value, which approximates fair value. At the time of contribution, ACM also agreed to provide a limited guarantee of the loan's principal amount based any profits realized on its retained 50% interest in the joint venture with the borrower and ACM's participating interests in borrowers under three other contributed structured finance assets.

At the time of ACM's origination of three of the structured finance assets that it contributed to us on July 1, 2003 at book value, which approximates fair value, each of the property owners related to these contributed assets granted ACM participating interests that share in a percentage of the cash flows of the underlying properties. Upon contribution of the structured finance assets, ACM retained these participating interests and its 50% non-controlling interest in the joint venture to which it had made the $16.0 million bridge loan. ACM agreed that if any portion of the outstanding amount of any of these four contributed assets is not paid at its maturity or repurchase date, ACM will pay to us, subject to the limitation described below, the portion of the unpaid amount of the contributed asset up to the total amount then received by ACM due to the realization of any profits on its retained interests associated with any other of the four contributed assets (which had an aggregate balance of $48.3 million as of December 31, 2003). However, ACM will no longer be obligated to make such payments to us when the remaining accumulated principal amount of the four contributed assets, collectively, falls below $5 million and none of the four contributed assets are in default. In 2004, two of these investments matured and the borrowers paid the amount due in full. The remaining two investments have an aggregate balance of $22.3 million as of December 31, 2004.

As of December 31, 2004, approximately $0.3 million of interest payments from borrowers due from ACM was included in other assets. These payments were remitted in January 2005. As of December 31, 2004, approximately $0.6 million of interest reserve payments due to ACM was included in other liabilities. These payments were remitted in January 2005.

In 2003, ACM received a brokerage fee for services rendered in arranging a loan facility for a borrower. A portion of the loan facility was provided by us. We were credited $0.1 million of this brokerage fee which represented our proportionate share of the loan facility provided to the borrower and is included in other assets at December 31, 2003, which was received in January 2004.

Other Related Party Transactions

ACM contributed the majority of its structured finance portfolio to our operating partnership pursuant to a contribution agreement. The contribution agreement contains representations and warranties concerning the ownership and terms of the structured finance assets it contributed and other customary matters. ACM has agreed to indemnify us and our operating partnership against breaches of those representations and warranties. In connection with its asset contribution ACM has also agreed to guaranty a portion of the principal amount of four contributed assets in which ACM has retained a participating interest or a joint venture interest in the borrower. In 2004, two of these investments matured and the borrowers paid the amounts due in full.

In exchange for ACM's asset contribution, we issued to ACM approximately 3.1 million operating partnership units, each of which ACM may redeem for one share of our common stock or an equivalent amount in cash, at our election, and approximately 629,000 warrants, each of which entitles ACM to purchase one additional operating partnership unit at an initial exercise price of $15.00. The operating partnership units and warrants for additional operating partnership units issued to ACM were valued at approximately $43.9 million at July 1, 2003, based on the price offered to investors in our units in the private placement, adjusted for the initial purchaser's discount. We also granted ACM certain demand and other registration rights with respect to the shares of common stock issuable upon redemption of its operating partnership units. In October 2004, ACM exercised all of its warrants for a total of 629,345 operating partnership units and proceeds of $9.4 million.

Each of the approximately 3.7 million operating partnership units owned by ACM is paired with one share of our special voting preferred stock that entitles the holder to one vote on all matters submitted to a vote of our stockholders. As operating partnership units are redeemed for shares of our common stock or cash an equivalent number of shares of special voting preferred stock will be redeemed and cancelled. As a result of the ACM asset contribution and the related formation transactions, ACM owns approximately a 19% limited partnership interest in our operating partnership and the remaining 81% interest in our operating partnership is owned by us. In addition, ACM has approximately 19% of the voting power of our outstanding stock.

We and our operating partnership have entered into a management agreement with ACM pursuant to which ACM has agreed to provide us with structured finance investment opportunities and loan servicing as well as other services necessary to operate our business. As discussed above in ''— Contractual Commitments,'' we have agreed to pay our manager an annual base management fee and incentive compensation each fiscal quarter and share with ACM a portion of the origination fees that we receive on loans we originate with ACM pursuant to this agreement.

Under the terms of the management agreement, ACM is also required to provide us with a right of first refusal with respect to all structured finance transactions identified by ACM or its affiliates. We have agreed not to pursue, and to allow ACM to pursue, any real estate opportunities other than structured finance transactions.

In addition, Mr. Kaufman has entered into a non-competition agreement with us pursuant to which he has agreed not to pursue structured finance investment opportunities, except as approved by our board of directors.

We and our operating partnership have also entered into a services agreement with ACM pursuant to which our asset management group provides asset management services to ACM. In the event the services

provided by our asset management group pursuant to the agreement exceed by more than 15% per quarter the level of activity anticipated by our board of directors, we will negotiate in good faith with our manager an adjustment to our manager's base management fee under the management agreement, to reflect the scope of the services, the quantity of serviced assets or the time required to be devoted to the services by our asset management group.

MANAGEMENT'S DISCUSSION & ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES

You should read the following discussion in conjunction with the sections of this report entitled "Risk Factors", "Forward-Looking Statements" and "Selected Consolidated Financial Information of the Structured Finance Business of Arbor Commercial Mortgage, LLC and Subsidiaries" and the historical consolidated financial statements of the structured finance business of Arbor Commercial Mortgage, including related notes, included elsewhere in this report.

Overview and Basis of Presentation

On July 1, 2003 ACM contributed a portfolio of structured finance investments and related liabilities to our operating partnership. In addition, certain employees of ACM related to its structured finance business became our employees. These assets, liabilities and employees represented a substantial portion of ACM's structured finance business, which historically invested in real estate related bridge and mezzanine loans, preferred equity and other real estate related assets.

The structured finance business of ACM is not a separate legal entity and the assets and liabilities associated with ACM's structured finance business are components of a larger business. We obtained the information in the consolidated financial statements included elsewhere in this report from ACM's consolidated historical accounting records.

The structured finance business of ACM never operated as a separate business segment or division of ACM, but as an integrated part of ACM's consolidated business. Accordingly, the statements of revenue and direct operating expenses do not include charges from ACM for corporate general and administrative expense because ACM considered such items to be corporate expenses and did not allocate them to individual business units. These expenses included costs for ACM's executive management, corporate facilities and overhead costs, corporate accounting and treasury functions, corporate legal matters and other similar costs.

The information in the statements of revenue and direct operating expenses include the revenue and direct operating expenses that relate to the structured finance business. Direct operating expenses include interest expense applicable to the funding costs of the structured finance business loans and investments, salaries and related fringe benefit costs, provision for loan losses and other expenses directly associated with revenue-generating activities. Direct operating expenses also include allocations of certain expenses, such as telephone, office equipment rental and maintenance, office supplies and marketing, which were directly associated with the structured finance business and were allocated based on headcount of the structured finance business in relation to the total headcount of ACM. All of these allocations are based on assumptions that management believes are reasonable under the circumstances.

The consolidated financial statements in this report do not include a statement of cash flows because the structured finance business did not maintain a separate cash balance. Other than the debt required to fund the loans and investments of the structured finance business, operating activities of the structured finance business were funded by ACM.

Since the structured finance business never operated as a separate business division or segment of ACM, the consolidated financial statements included in this report are not intended to be a complete presentation of the historical financial position, results of operations and cash flows of the structured finance business. These consolidated financial statements were prepared for inclusion in this report and do not purport to reflect the financial position or results of operations that would have resulted if the structured finance business had operated as a separate company. The historical consolidated financial information included in this report is not likely to be indicative of our financial position, results of operations or cash

flows for any future period. See "Risk Factors — Our historical consolidated financial information is not likely to be indicative of our future performance or financial position as a separate company."

Sources of Operating Revenues

We derive our operating revenues primarily from interest received from making real estate related bridge and mezzanine loans and preferred equity investments. We provide bridge loans secured by first lien mortgages on the property to borrowers who are typically seeking short term capital to be used in an acquisition of property. The bridge loans we make typically range in size from $1 million to $25 million and have terms of up to seven years. We provide real property owners with mezzanine loans that are secured by pledges of ownership interests in entities that directly or indirectly control the real property or second mortgages. These loans typically range in size from $2 million to $15 million and have terms of up to seven years. We also make preferred equity investments in entities that directly or indirectly own real property. Interest represented 83% and 93% of total revenue for the six months ended June 30, 2003 and June 30, 2002, respectively. Interest represented 93% and 90% of total revenue for the years ended December 31, 2002 and December 31, 2001, respectively.

We also derive operating revenue from other income that includes several types of income that are recorded upon receipt. Certain of our loans and investments provide for additional payments based on the borrower's operating cash flow, appreciation of the underlying collateral, payments calculated based on timing of when the loan pays off and changes in interest rates. Such amounts are not readily determinable and are recorded as other income upon receipt. Other income also includes the recognition of deferred revenue on loans that prepay, asset management fees related to our loans and investment portfolio and satisfactions on impaired loans in excess of carrying values. Other income represented 17% and 7% of total revenue for the six months ended June 30, 2003 and June 30, 2002, respectively. Other income represented 7% and 10% of total revenue for the years ended December 31, 2002 and December 31, 2001, respectively.

Gain on Sale of Loans and Real Estate and Income from Equity Affiliates

We also derive income from the gain on sale of loans and real estate. We acquire (1) real estate for our own investment and, upon stabilization, disposition at an anticipated return and (2) real estate notes generally at a discount from lenders in situations where the borrower wishes to restructure and reposition its short term debt and the lender wishes to divest certain assets from its portfolio.

In addition, we derive income from equity affiliates relating to joint ventures that ACM's structured finance business formed with equity partners to lend to, acquire, develop and/or sell real estate assets. These investments are recorded under the equity method. We record our share of net income from the underlying properties invested in through these joint ventures.

Significant Accounting Estimates and Critical Accounting Policies

Set forth below is a summary of the accounting policies that management believes are critical to the preparation of the consolidated financial statements included in this report. Certain of the accounting policies used in the preparation of these consolidated financial statements are particularly important for an understanding of the financial position and results of operations presented in the historical consolidated financial statements included in this report and require the application of significant judgment by management and, as a result, are subject to a degree of uncertainty.

Real Estate Owned

Real estate owned represents commercial real estate property that the structured finance business of ACM owns and operates. Such assets are not depreciated and are carried at the lower of cost or fair value less cost to sell. Management reviews its real estate assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable.

Loans and Investments

Loans held for investment are intended to be held to maturity and, accordingly, are carried at cost, net of unamortized loan origination costs and fees, unless such loan or investment is deemed to be impaired.

ACM's structured finance business historically invested in preferred equity interests that allowed ACM to participate in a percentage of the underlying property's cash flows from operations and proceeds from a sale or refinancing. At the inception of each such investment, management must determine whether such investment should be accounted for as a loan, joint venture or as real estate. To date, management has determined that all such investments are properly accounted for and reported as loans.

Specific valuation allowances are established for impaired loans based on the fair value of collateral on an individual loan basis. The fair value of the collateral is determined by an evaluation of operating cash flow from the property during the projected holding period, and estimated sales value computed by applying an expected capitalization rate to the stabilized net operating income of the specific property, less selling costs, discounted at market discount rates. If upon completion of the valuation, the fair value of the underlying collateral securing the impaired loan is less than the net carrying value of the loan, an allowance is created with a corresponding charge to the provision for loan losses. The allowance for each loan is maintained at a level believed adequate by management to absorb probable losses.

Revenue Recognition

The revenue recognition policies for ACM's structured finance business are as follows:

Interest Income. Interest income is recognized on the accrual basis as it is earned. In most instances, the borrower pays an additional amount of interest at the time the loan is closed, an origination fee, and deferred interest upon maturity of the loan. This additional income as well as any direct loan origination costs incurred, is deferred and recognized over the life of the related loan as a yield adjustment. Income recognition is suspended for loans when in the opinion of management a full recovery of income and principal becomes doubtful. Income recognition is resumed when the loan becomes contractually current and performance is demonstrated to be resumed. Several of the loans provide for accrual of interest at specified rates, which differ from current payment terms. Interest is recognized on such loans at the accrual rate subject to management's determination that accrued interest and outstanding principal are ultimately collectible, based on the underlying collateral and operations of the borrower. If management cannot make this determination regarding collectibility, interest income is recognized only upon actual receipt.

Results of Operations

Six Months Ended June 30, 2003 and 2002

Revenue. The following table sets forth the components of revenue:

	Six Months Ended June 30,		Increase	
	2003	2002	Amount	Percent
Interest income	$ 7,688,465	$ 7,482,750	$ 205,715	3%
Other income	1,552,414	553,625	998,789	180%
Total revenue	$ 9,240,879	$ 8,036,375	$ 1,204,504	15%

Interest income increased $0.2 million, or 3%, to $7.7 million for the six months ended June 30, 2003 from $7.5 million for the six months ended June 30, 2002. This increase was primarily due to a 21% increase in the weighted average balance of loans and investment partially offset by a 15% decrease in the weighted average effective interest rate of loans and investments primarily due to a decline in market interest rates. Most of our loans and investments are variable rate instruments based on LIBOR. The negative impact to interest income as a result of the decrease in market interest rates was partially offset by interest rate floors that were in effect on many of our loans and investments.

Other income increased $1.0 million, or 180%, to $1.6 million for the six months ended June 30, 2003 from $0.6 million for the six months ended June 30, 2002. This increase was primarily attributable to (a) the partial satisfaction of an impaired loan for an amount $0.4 million in excess of the loan's carrying value resulting in the recognition of other income for this amount (b) increased funds received on paid off loans of $0.3 million and (c) increased accelerated amortization of revenue of $0.4 million on loans with early payoffs.

Expenses. The following table sets forth the components of direct operating expenses:

	Six Months Ended June 30,		Increase/ (Decrease)	
	2003	2002	Amount	Percent
Interest expense	$ 3,468,275	$ 3,370,777	$ 97,498	3%
Employee compensation and benefits	1,751,147	1,410,272	340,875	24%
Selling and administrative	458,266	368,253	90,013	24%
Provision for loan losses	60,000	3,195,000	(3,135,000)	(98)%
Total direct operating expenses	$ 5,737,688	$ 8,344,302	$ (2,606,614)	(31)%

Interest expense increased $ 0.1 million, or 3%, to $3.5 million for the six months ended June 30, 2003 from $3.4 million for the six months ended June 30, 2002. This increase is primarily attributable to a 26% increase in the weighted average borrowings partially offset by a 19% decrease in the weighted average effective financing rate primarily due to a decline in market interest rates.

Employee compensation and benefits increased $0.3 million, or 24%, to $1.8 million for the six months ended June 30, 2003 from $1.4 million for the six months ended June 30, 2002. This increase reflects increased staffing levels associated with the increased loan and investments opportunities.

Selling and administrative expenses increased $0.1 million, or 24%, to $0.5 million for the six months ended June 30, 2003 from $0.4 million for the six months ended June 30, 2002. This increase was primarily attributable to operating expenses incurred in 2003 for a real estate owned asset, and increased marketing expenses associated with the growth of the lending and investment activities.

Provision for loan losses decreased $3.1 million, or 98%, to $0.1 million for the six months ended June 30, 2003 from $3.2 million for the six months ended June 30, 2002. This decrease was directly attributable to a $3.1 million provision for loan losses recorded in 2002 prior to this loan being foreclosed and reclassified to real estate owned. This provision was recorded to reflect this asset at its estimated fair value.

Gain on Sale of Loans and Real Estate and Income from Equity Affiliates. The following table sets forth our gain on sale of loans and real estate and income from equity affiliates:

	Six Months Ended June 30,		(Decrease)	
	2003	2002	Amount	Percent
Gain on sale of loans and real estate	$ 1,024,268	$ 7,006,432	$ (5,982,164)	(85)%
Income from equity affiliates	—	$ 601,100	$ (601,100)	—

Gain on sale of loans and real estate decreased $6.0 million, or 85%, to $1.0 million for the six months ended June 30, 2003 from $7.0 million for the six months ended June 30, 2002. This decrease was primarily attributable to a $6.8 million gain on the sale of a joint venture interest in March 2002 partially offset by a $0.9 million gain on the partial liquidation of a joint venture interest in 2003.

Income from equity affiliates for the six months ended June 30, 2002 consist of net income from a joint venture interest recognized prior to the sale of that joint venture interest in March 2002.

Years Ended December 31, 2002 and 2001

Revenue. The following table sets forth the components of revenue:

	Year Ended December 31,		(Decrease)	
	2002	2001	Amount	Percent
Interest income	$ 14,532,504	$ 14,667,916	$ (135,412)	(1)%
Other income	1,090,106	1,668,215	(578,109)	(35)%
Total revenue	$ 15,622,610	$ 16,336,131	($713,521)	(4)%

Interest income decreased $0.1 million, or 1%, to $14.5 million for 2002 from $14.7 million for 2001. This decrease was primarily due to a 16% decrease in the weighted average effective interest rate of loans and investments primarily due to a decline in market interest rates partially offset by a 17% increase in the weighted average balance of loans and investment. Most of our loans and investments are variable rates instruments based on LIBOR. The negative impact to interest income as a result of the decrease in market interest rates was partially offset by interest rate floors that were in effect on many of our loans and investments.

Other income decreased $0.6 million, or 35%, to $1.1 million for 2002 from $1.7 million for 2001. This decrease was primarily attributable to decreased extension fees earned of $0.2 million and decreased funds received on paid off loans of $0.4 million.

Expenses. The following table sets forth the components of direct operating expenses:

	Year Ended December 31,		Increase/ (Decrease)	
	2002	2001	Amount	Percent
Interest expense	$ 6,586,640	$ 7,029,374	$ (442,734)	(6)%
Employee compensation and benefits	2,827,191	2,888,603	(61,412)	(2)%
Selling and administrative	910,924	839,823	71,101	8%
Provision for loan losses	3,315,000	240,000	3,075,000	1,281%
Total direct operating expenses	$ 13,639,755	$ 10,997,800	$ 2,641,955	24%

Interest expense decreased $0.4 million, or 6%, to $6.6 million for 2002 from $7.0 million for 2001. This decrease is primarily attributable to a 20% decrease in the weighted average effective financing rate due to a decline in market interest rates partially offset by a 17% increase in the weighted average borrowings.

Employee compensation and benefits remained relatively stable from 2001 to 2002.

Selling and administrative expenses increased $0.1 million, or 8%, to $0.9 million for 2002 from $0.8 million for 2001. This increase was primarily attributable to increased legal expenses associated with the asset management and restructuring of our loans and investments portfolio.

Provision for loan losses increased $3.1 million, or 1,281%, to $3.3 million for 2002 from $0.2 million for 2001. This increase was directly attributable to a $3.1 million provision for possible loan losses recorded in 2002 prior to this loan being foreclosed on and reclassified as real estate owned. This provision was recorded to reflect this asset at its estimated fair value.

Gain on Sale of Loans and Real Estate and Income from Equity Affiliates. The following table sets forth our gain on sale of loans and real estate and income from equity affiliates:

	Year Ended December 31,		Increase/ (Decrease)	
	2002	2001	Amount	Percent
Gain on sale of loans and real estate	$ 7,470,999	$ 3,226,648	$ 4,244,351	132%
Income from equity affiliates	$ 632,350	$ 1,403,014	$ (770,664)	(55)%

Gain on sale of loans and real estate increased $4.2 million, or 132%, to $7.5 million for 2002 from $3.2 million for 2001. This increase was primarily attributable to a $6.8 million gain on the sale of a joint venture interest in March 2002 partially offset by a $2.2 million gain from the sale of property from a joint venture interest and a $0.3 million decrease in income from the sale of foreclosed loans.

Income from equity affiliates decreased $0.8 million, or 55%, to $0.6 million for 2002 from $1.4 million for 2001. This decrease was primarily attributable to a $0.9 million decrease in net income from joint venture interests due to dissolutions of joint ventures in 2001 and 2002, partially offset by a $0.1 million increase in net income from other joint venture interest.

Pro Forma Effect of Arbor Commercial Mortgage's Asset Contribution on Results of Operations

We were formed in June 2003 to operate as a real estate investment trust and to expand the structured finance business of ACM. On July 1, 2003, we completed a private placement of our units, each consisting of five shares of our common stock and one warrant to purchase one share of our common stock. Gross

proceeds from the private placement totaled $120.2 million. In exchange for a commensurate equity ownership in our operating subsidiary, ACM contributed $213.1 million of structured finance assets subject to $169.2 million of borrowings supported by $43.9 million of equity. These assets and liabilities were contributed at book value, which approximates fair value, and represent 88% of the assets and 98% of the liabilities of ACM's structured finance business as of June 30, 2003. In addition, certain employees of ACM were transferred to us.

We are externally managed and advised by ACM and pay ACM a management fee in accordance with the terms of the management agreement. ACM also sources originations, provides underwriting services and services all structured finance assets on our behalf. As a result, the operating expenses as presented in the historical consolidated financial statements of ACM's structured finance business would have been affected had we been formed at an earlier time. Employee compensation and benefits expense would have decreased by $0.9 million and $1.5 million for the six months ended June 30, 2003 and year ended December 31, 2002, respectively, because these costs would have been borne by ACM under terms of the management agreement. Similarly, selling and administrative expense would have decreased by $0.1 million and $0.1 million for the six months ended June 30, 2003 and year ended December 31, 2002, respectively.

In accordance with the management agreement, we will pay ACM a management fee, composed of a base management fee and incentive compensation. The base management fee is 0.75% per annum of the first $400 million of equity. The incentive compensation is equal to (1) 25% of the amount that our funds from operations per operating partnership unit, adjusted for certain gains and losses, exceeds the product of (x) 9.5% per annum or the Ten Year U.S. Treasury Rate plus 3.5%, whichever is greater and (y) the weighted average of the book value of the net assets contributed by ACM to our operating partnership per operating partnership unit, the offering price per share in the private placement, the offering price per share of our common stock in subsequent offerings and the issue price per operating partnership unit for subsequent contributions to our operating partnership, multiplied by (2) the weighted average of our operating partnership's outstanding units.

This pro forma information does not reflect the results of the private placement. However, gross proceeds from the private placement totaled $120.2 million, which combined with ACM's equity contribution of $43.9 million, resulted in total contributed capital of $164.1 million. Offering expenses of $10.1 million were paid or accrued by us, resulting in stockholders equity and minority interest of $154.0 million as a result of the private placement.

The pro forma consolidated financial information is limited to adjustments that are directly attributable to the private placement, expected to have a continuing impact on us and are factually supportable. These adjustments are based on the assumption that certain compensation and benefits expenses and certain selling and administrative expenses incurred by the structured finance business of ACM would not have been incurred if we had been in operation during the periods presented. The pro forma financial results do not include what the impact would have been had the gross proceeds from the private placement been available to the structured finance business of ACM during the entire period. Had these proceeds been available to the structured finance business of ACM during the entire period, there would have been an impact on certain revenues and expenses, including the management fees payable pursuant to the management agreement. The management fees are calculated based on such factors as funds from operations and equity of our operating partnership, each as defined in the management agreement. Such amounts represent speculative and forward-looking information that is not factually supportable.

The financial statements of the structured finance business of ACM include the results of operations of the structured finance business segment of ACM and are not limited to the results of the structured finance assets that were transferred to Arbor Realty Trust. Accordingly, the results of certain investments in equity affiliates that were not transferred to Arbor Realty Trust have been included in the financial statements of the structured finance business of ACM because they were included in the structured finance business segment even though the operating results from these equity affiliates have not been material to the structured finance business segment as a whole. In addition, ACM retained certain transactions in its structured finance portfolio with a net book value of approximately $27.8 million, primarily because they

were not deemed to be suitable investments for Arbor Realty Trust. Had these retained assets been excluded from the financial statements of the structured finance business of ACM, additional adjustments to the expense base would have been necessary to estimate what expenses would have been had these assets not been in the portfolio. Such adjustments would have been speculative. Lastly, operating results for assets that matured before the contribution of structured finance assets to Arbor Realty Trust, but were in the portfolio of assets of the structured finance business of ACM during the reporting period are also included in these statements.

Liquidity and Capital Resources

Liquidity is a measurement of the ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain loans and investments and other general business needs. On July 1, 2003, ACM contributed a portfolio of structured finance investments and related liabilities to our operating partnership. In addition, certain employees of ACM became our employees. These assets, liabilities and employees represented a substantial portion of the structured finance business of ACM.

On July 1, 2003 we completed the private placement, resulting in gross proceeds of $120.2 million. Gross proceeds from the private placement combined with the concurrent equity contribution by ACM totaled approximately $164.1 in equity capital.

Subsequent to and as a result of the private placement, substantially all of the operations of the structured finance business of ACM have been conducted by us. Therefore, a description of the liquidity and capital resources of the structured finance business of ACM is not presented. A description of our liquidity and capital resources is presented in the section of this report entitled “Management’s Discussion & Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries — Liquidity and Capital Resources.”

Related Party Transactions

Related Party Loans

ACM has a 50% non-controlling interest in a joint venture, which was formed to acquire, develop and/or sell real estate assets. At June 30, 2003, December 31, 2002 and 2001, ACM’s structured finance business’ investments in this joint venture were approximately $2.6 million, $2.3 million and $1.8 million, respectively. This investment is accounted for under the equity method. At June 30, 2003 and December 31, 2002, ACM had a $16.0 million bridge loan outstanding to the joint venture, which is collateralized by a first lien position on a commercial real estate property. There is a limited guarantee on the loan of 50% by the chief executive officer of ACM and 50% by the key principal of the joint venture. The loan requires monthly interest payments based on one month LIBOR and matures in May 2006. ACM agreed to provide the borrower with additional mezzanine financing in the amount of up to $8.0 million. The mezzanine financing requires interest payments based on one month LIBOR and matures in May 2006. The loan will be funded in two equal installments of $4.0 million. The funding will be drawn down as construction progresses. The interest on the first component, which was funded by ACM in June 2003, will be earned on the full $4.0 million, while the interest on the second component, which has yet to be funded, will be earned as the $4.0 million is drawn down. This additional financing is secured by a second mortgage lien on the property. In addition, an interest and renovation reserve totaling $2.5 million is in place to cover both the bridge and mezzanine loans. Interest income recorded from these loans was approximately $0.2 million, $0.4 million and $0.1 million for the periods ended June 30, 2003, December 31, 2002 and 2001, respectively.

In June 2003, ACM invested approximately $0.8 million in exchange for a 12.5% non-controlling interest in a joint venture, which were formed to acquire, develop and/or sell real estate assets. This investment is accounted for under the equity method. In June, 2003, ACM made two mezzanine loans secured by a second lien position in the ownership interests of the borrower and the property to these joint ventures totaling $6.0 million outstanding. The loans require monthly interest payments based on one

month LIBOR and mature in May 2006. Interest income recorded from these loans was approximately $8,000 for the period ended June 30, 2003.

Related Party Formation Transactions

ACM contributed the majority of its structured finance portfolio to our operating partnership pursuant to a contribution agreement. The contribution agreement contains representations and warranties concerning the ownership and terms of the structured finance assets it contributed and other customary matters. ACM has agreed to indemnify us and our operating partnership against breaches of those representations and warranties.

In exchange for ACM's asset contribution, we issued to ACM approximately 3.1 million operating partnership units, each of which ACM may redeem for one share of our common stock or an equivalent amount in cash, at our election, and approximately 629,000 warrants, each of which entitles ACM to purchase one additional operating partnership unit at an initial exercise price of $15.00. The operating partnership units and warrants for additional operating partnership units issued to ACM were valued at approximately $43.9 million at July 1, 2003, based on the price offered to investors in our units in the private placement, adjusted for the initial purchaser's discount. We have also granted ACM certain demand and other registration rights with respect to the shares of common stock issuable upon redemption of its operating partnership units.

Each of the approximately 3.1 million operating partnership units received by ACM was paired with one share of our special voting preferred stock that entitles the holder to one vote on all matters submitted to a vote of our stockholders. As operating partnership units were redeemed for shares of our common stock or cash an equivalent number of shares of special voting preferred stock was redeemed and cancelled. As a result of ACM's asset contribution and the related formation transactions, ACM owns approximately a 28% limited partnership interest in our operating partnership and the remaining 72% interest in our operating partnership is owned by us. In addition, ACM has approximately 28% of the voting power of our outstanding stock (without giving effect to the exercise of ACM's warrants for additional operating partnership units).

We and our operating partnership have entered into a management agreement with ACM pursuant to which ACM has agreed to provide us with structured finance investment opportunities and loan servicing as well as other services necessary to operate our business. ACM is also required to provide us with a right of first refusal with respect to all structured finance identified by ACM or its affiliates. We have agreed not to pursue, and to allow ACM to pursue, any real estate opportunities other than structured finance transactions. As discussed above in "Management's Discussion & Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries — Contractual Commitments," we have agreed to pay our manager an annual base management fee and incentive compensation each fiscal quarter and share with ACM a portion of the origination fees that we receive on loans we originate with ACM pursuant to this agreement.

We and our operating partnership have also entered into a services agreement with ACM pursuant to which our asset management group provides asset management services to ACM. In the event the services provided by our asset management group pursuant to the agreement exceed by more than 15% per quarter the level of activity anticipated by our board of directors, we will negotiate in good faith with our manager an adjustment to our manager's base management fee under the management agreement, to reflect the scope of the services, the quantity of serviced assets or the time required to be devoted to the services by our asset management group.

Quantitative and Qualitative Disclosures about Market Risk

Since the consummation of the private placement and the related formation transactions, substantially all of the operations of the structured finance business of ACM have been conducted by us. Therefore, quantitative and qualitative disclosures about market risk relating to the structured finance

business of ACM is not presented. A description of market risks relating to our business is presented in this Item 7A of this report under "Quantitative and Qualitative Disclosures about Market Risk."

ITEM 7A. ***QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK***

Market risk is the exposure to loss resulting from changes in interest rates, foreign currency exchange rates, commodity prices, equity prices and real estate values. The primary market risks that we are exposed to are real estate risk, interest rate risk, market value risk and prepayment risk.

Real Estate Risk

Commercial mortgage assets may be viewed as exposing an investor to greater risk of loss than residential mortgage assets since such assets are typically secured by larger loans to fewer obligors than residential mortgage assets. Multi-family and commercial property values and net operating income derived from such properties are subject to volatility and may be affected adversely by a number of factors, including, but not limited to, national, regional and local economic conditions (which may be adversely affected by industry slowdowns and other factors), local real estate conditions (such as an oversupply of housing, retail, industrial, office or other commercial space); changes or continued weakness in specific industry segments; construction quality, age and design; demographic factors; retroactive changes to building or similar codes; and increases in operating expenses (such as energy costs). In the event net operating income decreases, a borrower may have difficulty repaying our loans, which could result in losses to us. In addition, decreases in property values reduce the value of the collateral and the potential proceeds available to a borrower to repay our loans, which could also cause us to suffer losses. Even when the net operating income is sufficient to cover the related property's debt service, there can be no assurance that this will continue to be the case in the future.

Interest Rate Risk

Interest rate risk is highly sensitive to many factors, including governmental monetary and tax policies, domestic and international economic and political considerations and other factors beyond our control.

Our operating results will depend in large part on differences between the income from our loans and our borrowing costs. Most of our loans and borrowings are variable-rate instruments, based on LIBOR. The objective of this strategy is to minimize the impact of interest rate changes on our net interest income. Many of our loans and borrowings are subject to various interest rate floors. As a result, the impact of a change in interest rates may be different on our interest income than it is on our interest expense. Based on the loans and liabilities as of December 31, 2004, and assuming the balances of these loans and liabilities remain unchanged for the subsequent twelve months, a 1% increase in LIBOR would increase our annual net income and cash flows by approximately $2.3 million because the principal amount of loans that would be subject to an interest rate adjustment under this scenario is greater than the amount of liabilities that would subject to an interest rate adjustment. A 1% decrease in LIBOR would decrease our annual net income and cash flows by approximately $1.7 million because the principal amount of loans exceeds the amount of liabilities partially offset by the fact that the principal amount of loans currently subject to interest rate floors (and, therefore, would not be subject to a downward interest rate adjustment) exceeds the amount of liabilities currently subject to interest rate floors. As the size of the portfolio increases, a decline in interest rates may have a negative impact on our net income.

In the event of a significant rising interest rate environment and/or economic downturn, defaults could increase and result in credit losses to us, which could adversely affect our liquidity and operating results. Further, such delinquencies or defaults could have an adverse effect on the spreads between interest-earning assets and interest-bearing liabilities.

We invest in securities, which are designated as available-for-sale. These securities are adjustable rate securities that have a fixed component for three years and, thereafter, generally reset annually. These securities are financed with a repurchase agreement that bears interest at a rate of one month LIBOR plus .15%. Since the repricing of the debt obligations occurs more quickly than the repricing of the securities, on average our cost of borrowings will rise more quickly in response to an increase in market interest rates than the earnings rate on the securities. This will result in a reduction our net interest income

and cash flows related to these securities. Based on the securities and borrowings as of December 31, 2004, and assuming the balances of these securities and borrowings remain unchanged for the subsequent twelve months, a 1% increase in LIBOR would reduce our annual net income and cash flows by approximately $0.4 million. A 1% decrease in LIBOR would increase our annual net income and cash flows by approximately $0.4 million.

In connection with the CDO described in "Management's Discussion and Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries, the Company entered into two interest rate swap agreements to hedge its exposure to the risk of changes in the difference between three-month LIBOR and one-month LIBOR interest rates. These interest rate swaps became necessary due to the investor's return being paid based on a three-month LIBOR index while the assets contributed to the CDO are yielding interest based on a one-month LIBOR index.

These swaps were executed on December 21, 2004 with a notional amount of $469 million and expire in January 2012. The market value of these interest rate swaps is dependent upon existing market interest rates and swap spreads, which change over time. If there were a 50 basis point decrease in forward interest rates, the value of these interest rate swaps would have increased by approximately $21,000. If there were a 50 basis point increase in forward interest rates, the value of these interest rate swaps would have decreased by approximately $25,000 at December 31, 2004.

Our hedging transactions using derivative instruments also involve certain additional risks such as counterparty credit risk, the enforceability of hedging contracts and the risk that unanticipated and significant changes in interest rates will cause a significant loss of basis in the contract. The counterparties to our derivative arrangements are major financial institutions with high credit ratings with which we and our affiliates may also have other financial relationships. As a result, we do not anticipate that any of these counterparties will fail to meet their obligations. There can be no assurance that we will be able to adequately protect against the foregoing risks and will ultimately realize an economic benefit that exceeds the related amounts incurred in connection with engaging in such hedging strategies.

We utilize interest rate swaps to limit interest rate risk. Derivatives are used for hedging purposes rather than speculation. We do not enter into financial instruments for trading purposes.

Market Value Risk

Our available-for-sale securities are reflected at their estimated fair value with unrealized gains and losses excluded from earnings and reported in other comprehensive income pursuant to SFAS No. 115 "Accounting for Certain Investments in Debt and Equity Securities." The estimated fair value of these securities fluctuate primarily due to changes in interest rates and other factors; however, given that these securities are guaranteed as to principal and/or interest by an agency of the U.S. Government, such fluctuations are generally not based on the creditworthiness of the mortgages securing these securities. Generally, in a rising interest rate environment, the estimated fair value of these securities would be expected to decrease; conversely, in a decreasing interest rare environment, the estimated fair value of these securities would be expected to increase.

Prepayment Risk

As we receive repayments of principal on these securities, premiums paid on such securities are amortized against interest income using the effective yield method through the expected maturity dates of the securities. In general, an increase in prepayment rates will accelerate the amortization of purchase premiums, thereby reducing the interest income earned on the securities.

ITEM 8. ***FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA***

INDEX TO THE CONSOLIDATED FINANCIAL STATEMENTS OF ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

All other schedules are omitted because they are not applicable or the required information is shown in the consolidated financial statements or notes thereto.

Report of Independent Registered Public Accounting Firm

The Board of Directors and stockholders of
Arbor Realty Trust, Inc. and Subsidiaries

We have audited the accompanying consolidated balance sheets of Arbor Realty Trust, Inc. and Subsidiaries (the ''Company'') as of December 31, 2004 and 2003, and the related consolidated statements of income, stockholders' equity, and cash flows for the year ended December 31, 2004 and for the period from June 24, 2003 (Inception) to December 31, 2003. Our audits also included the financial statement schedule listed in the index at Item 8. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Arbor Realty Trust, Inc. and Subsidiaries at December 31, 2004 and 2003, and the consolidated results of their operations and their cash flows for the year ended December 31, 2004 and for the period from June 24, 2003 (Inception) to December 31, 2003, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

/s/ Ernst & Young LLP

New York, New York
February 28, 2005
except for Note 16, as to which the date is
March 29, 2005

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

	December 31, 2004	December 31, 2003
Assets:		
Cash	$ 6,401,701	$ 6,115,525
Loans and investments, net	831,783,364	286,036,610
Related party loans, net	7,749,538	35,940,881
Available-for-sale securities, at fair value	46,582,592	-
Investment in equity affiliates	5,254,733	5,917,542
Other assets	14,523,249	4,153,874
Total Assets	$ 912,295,177	$ 338,164,432
Liabilities and Stockholders' Equity:		
Repurchase agreements	$ 409,109,372	$ 113,897,845
Notes payable	165,771,447	58,630,626
Due to borrowers	8,587,070	8,409,945
Other liabilities	5,824,384	2,478,300
Total liabilities	589,292,273	183,416,716
Minority interest	60,249,731	43,631,602
Stockholders' equity:		
Preferred stock, $0.01 par value: 100,000,000 shares authorized; 3,776,069 and 3,146,724 shares issued and outstanding as of December 31, 2004 and 2003, respectively	37,761	31,467
Common stock, $0.01 par value: 500,000,000 shares authorized; 16,467,218 and 8,199,567 shares issued and outstanding as of December 31, 2004 and 2003, respectively	164,672	81,996
Additional paid-in capital	254,427,982	112,215,649
Retained earnings (distribution in excess of earnings)	8,813,138	(691,865)
Deferred compensation	(160,780)	(521,133)
Accumulated other comprehensive loss	(529,600)	-
Total stockholders' equity	262,753,173	111,116,114
Total liabilities and stockholders' equity	$ 912,295,177	$ 338,164,432

See notes to consolidated financial statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

CONSOLIDATED INCOME STATEMENTS

	For the year ended December 31, 2004	Period June 24, 2003 (inception) to December 31, 2003
Revenue:		
Interest income	$ 57,927,230	$ 10,012,449
Other income	42,265	156,502
Total revenue	57,969,495	10,168,951
Expenses:		
Interest expense	19,372,575	1,669,731
Employee compensation and benefits	2,325,727	940,336
Stock based compensation	324,343	1,721,367
Selling and administrative	1,908,522	533,697
Management fee - related party	3,614,830	587,734
Total expenses	27,545,997	5,452,865
Income before minority interest and income from equity affiliates	30,423,498	4,716,086
Income from equity affiliates	525,000	-
Income before minority interest	30,948,498	4,716,086
Income allocated to minority interest	5,875,816	1,308,167
Net income	$ 25,072,682	$ 3,407,919
Basic earnings per common share	$ 1.81	$ 0.42
Diluted earning per common share	$ 1.78	$ 0.42
Dividends declared per common share	$ 1.16	$ 0.50
Weighted average number of shares of common stock outstanding:		
Basic	13,814,199	8,199,567
Diluted	17,366,015	11,346,291

See notes to consolidated financial statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

FOR THE PERIOD JUNE 24, 2003 (INCEPTION) TO DECEMBER 31, 2003

AND FOR THE YEAR ENDED DECEMBER 31, 2004

	Comprehensive Income	Preferred Stock Shares	Preferred Stock Par Value	Common Stock Shares	Common Stock Par Value	Additional Paid-in Capital	Retained earnings (distributions in excess of earnings)	Deferred Compensation	Accumulated Other Comprehensive Loss	Total
Initial capitalization		-	$ -	67	$ 1	$ 1,004	$ -	$ -	$ -	$ 1,005
Issuance of preferred stock		3,146,724	31,467							31,467
Issuance of common stock, net				8,050,000	81,980	109,972,160				110,054,140
Deferred compensation				149,500	15	2,242,485		(2,242,500)		-
Stock based compensation								1,721,367		1,721,367
Distributions-common stock							(4,099,784)			(4,099,784)
Net income	3,407,919						3,407,919			3,407,919
Balance-December 31, 2003	3,407,919	3,146,724	$ 31,467	8,199,567	$ 81,996	$ 112,215,649	$ (691,865)	$ (521,133)	$ -	$111,116,114
Issuance of preferred stock		629,345	6,294							6,294
Issuance of common stock, net				7,274,200	72,742	134,115,399				134,188,141
Issuance of common stock from warrant exercise				973,354	9,733	12,862,937				12,872,670
Issuance of common stock from incentive compensation				22,498	225	499,234				499,459
Stock based compensation								324,343		324,343
Distributions-common stock							(15,567,679)			(15,567,679)
Forfeited unvested restricted stock				(2,401)	(24)	(35,986)		36,010		-
Adjustment to minority interest from increased ownership in ARLP						(5,229,251)				(5,229,251)
Net income	25,072,682						25,072,682			25,072,682
Net unrealized loss on securities available for sale	(529,600)								(529,600)	(529,600)
Balance-December 31, 2004	$ 24,543,082	3,776,069	$ 37,761	16,467,218	$ 164,672	$ 254,427,982	$ 8,813,138	$ (160,780)	$ (529,600)	$262,753,173

See notes to consolidated financial statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS

	For the year ended December 31, 2004	Period June 24, 2003 (Inception) to December 31, 2003
Operating activities:		
Net income	$ 25,072,682	$ 3,407,919
Adjustments to reconcile net income to cash provided by operating activities		
Stock based compensation	324,343	1,721,367
Minority interest	5,875,816	1,308,167
Amortization and accretion of interest	(1,431,146)	(553,990)
Non-cash incentive compensation to manager	1,623,106	-
Income from equity affiliates	(525,000)	-
Changes in operating assets and liabilities:		
Others assets	(6,192,238)	(2,405,470)
Other liabilities	2,163,060	1,717,467
Deferred origination fees	1,163,039	627,734
Net cash provided by operating activities	28,073,662	5,823,194
Investing activities:		
Loans and investments originated and purchased, net	(733,136,181)	(186,382,155)
Payoffs and paydowns of loans and investments	221,425,780	75,940,655
Due to borrowers	177,125	8,409,945
Securities available for sale	(57,228,552)	-
Prepayments on securities available for sale	9,722,630	-
Contributions to equity affiliates	(9,562,190)	(5,917,542)
Distributions from equity affiliates	3,525,000	-
Net cash used in investing activities	(565,076,338)	(107,949,097)
Financing activities:		
Proceeds from notes payable and repurchase agreements	605,600,178	71,047,671
Payoffs and paydowns of notes payable and repurchase agreements	(203,247,830)	(67,699,042)
Issuance of common stock	158,356,670	120,200,978
Exercise of warrants from minority interest	9,440,175	31,467
Offering expenses paid	(11,236,483)	(9,385,000)
Distributions paid to minority interest	(3,920,819)	(1,573,362)
Distributions paid on common stock	(15,567,679)	(4,099,784)
Payment of deferred financing costs	(2,135,360)	(281,500)
Net cash provided by financing activities	537,288,852	108,241,428
Net increase in cash	286,176	6,115,525
Cash at beginning of period	6,115,525	-
Cash at end of period	$ 6,401,701	$ 6,115,525
Supplemental cash flow information:		
Cash used to pay interest	$ 18,547,842	$ 1,378,637
Supplemental schedule of non-cash financing and investing activities:		
Accrued offering expenses	$ 59,377	$ 760,833
Conversion of investment in equity affiliates to loan	$ 6,700,000	$ -
Loans and investments, net contributed	$ -	$ 213,076,639
Notes payable and repurchase agreements contributed	$ -	$ 169,179,843

See notes to consolidated financial statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 1 — Description of Business and Basis of Presentation

Arbor Realty Trust, Inc. (the "Company") is a Maryland corporation that was formed in June 2003 to invest in real estate related bridge and mezzanine loans, preferred equity and, in limited cases, mortgage backed securities, discounted mortgage notes and other real estate related assets. The Company has not invested in any discounted mortgage notes for the periods presented. The Company conducts substantially all of its operations through its operating partnership, Arbor Realty Limited Partnership ("ARLP").

On July 1, 2003 Arbor Commercial Mortgage, LLC ("ACM'') contributed $213.1 million of structured finance assets and $169.2 million of borrowings supported by $43.9 million of equity in exchange for a commensurate equity ownership in ARLP. In addition, certain employees of ACM were transferred to ARLP. These assets, liabilities and employees represent a substantial portion of ACM's structured finance business (the "SF Business''). The Company is externally managed and advised by ACM and pays ACM a management fee in accordance with a management agreement. ACM also sources originations, provides underwriting services and services all structured finance assets on behalf of ARLP.

On July 1, 2003 the Company completed a private equity offering of units, each consisting of five shares of common stock and one warrant to purchase one share of common stock. Gross proceeds from the private equity offering totaled $120.2 million. Gross proceeds from the private equity offering combined with the concurrent equity contribution by ACM totaled approximately $164.1 million in equity capital. The Company paid and accrued offering expenses of $10.1 million resulting in stockholders' equity and minority interest of $154.0 million as a result of the private placement.

On April 13, 2004 the Company sold 6,750,000 shares of its common stock in a public offering at a price to the public of $20.00 per share, for net proceeds of approximately $124.4 million after deducting the underwriting discount and the other estimated offering expenses. The Company used the proceeds to pay down indebtedness. After giving effect to this offering, the Company had 14,949,567 shares of common stock outstanding. In addition, on May 6, 2004, the underwriters exercised a portion of their over-allotment option, which resulted in the issuance of 524,200 additional shares on May 11, 2004. The Company received net proceeds of approximately $9.8 million after deducting the underwriting discount. Additionally, in 2004, 2,401 shares of unvested restricted stock were forfeited. On November 3, 2004, ACM, the manager of our company elected to be paid its third quarter incentive management in shares of common stock totaling 22,498. Additionally, as of December 31, 2004, the Company issued 973,354 shares of common stock from the exercise of warrants under its Warrant Agreement dated July 1, 2003, the "Warrant Agreement". After giving effect to this, the Company had 16,467,218 shares issued and outstanding.

The accompanying consolidated financial statements include the financial statements of the Company, its wholly owned subsidiaries, and partnerships or other joint ventures in which the Company controls. Entities which we do not control and entities which are variable interest entities (see Note 2), which we are not the primary beneficiaries, are accounted for under the equity method. All significant intercompany transactions and balances have been eliminated.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 2 — Summary of Significant Accounting Policies

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. Generally Accepted Accounting Principles ("GAAP") requires management to make estimates and assumptions in determining the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Reclassifications

Certain prior year amounts have been reclassified to conform to current period presentation.

Cash and Cash Equivalents

All highly liquid investments with original maturities of three months or less are considered to be cash equivalents. The Company places its cash and cash equivalents in high quality financial institutions. The consolidated account balances at each institution periodically exceeds FDIC insurance coverage and the Company believes that this risk is not significant.

Loans and Investments

SFAS No. 115 requires that at the time of purchase, we designate a security as held to maturity, available for sale, or trading depending on ability and intent. Securities held for sale are reported at fair value, while securities and investments held to maturity are reported at amortized cost. We do not have a trading security at this time. Loans held for investment are intended to be held to maturity and, accordingly, are carried at cost, net of unamortized loan origination costs and fees, unless such loan or investment is deemed to be impaired.

The Company invests in preferred equity interests that, in some cases, allow the Company to participate in a percentage of the underlying property's cash flows from operations and proceeds from a sale or refinancing. At the inception of each such investment, management must determine whether such investment should be accounted for as a loan, joint venture or as real estate. To date, management has determined that all such investments are properly accounted for and reported as loans.

Specific valuation allowances are established for impaired loans based on the fair value of collateral on an individual loan basis. The fair value of the collateral is determined by an evaluation of operating cash flow from the property during the projected holding period, and estimated sales value computed by applying an expected capitalization rate to the stabilized net operating income of the specific property, less selling costs, discounted at market discount rates. As of December 31, 2004 and 2003, no impairment has been identified and no valuation allowances have been established.

If upon completion of the valuation, the fair value of the underlying collateral securing the impaired loan is less than the net carrying value of the loan, an allowance is created with a corresponding charge to the provision for loan losses. An allowance for each loan would be maintained at a level believed adequate by management to absorb probable losses.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 2 — Summary of Significant Accounting Policies (Continued)

Available-For-Sale Securities

The Company invests in agency-sponsored whole pool mortgage related securities. Pools of Federal National Mortgage Association, or FNMA, and Federal Home Loan Mortgage Corporation, or FHLMC, adjustable rate residential mortgage loans underlie these mortgage related securities. The Company receives payments from the payments that are made on these underlying mortgage loans, which have a fixed rate of interest for three years and adjust annually thereafter. These securities are carried at their estimated fair value with unrealized gains and losses excluded from earnings and reported in other comprehensive income pursuant to SFAS No. 115 "Accounting for Certain Investments in Debt and Equity Securities." Unrealized losses other than temporary losses are recognized currently in income. The estimated fair value of these securities fluctuate primarily due to changes in interest rates and other factors; however, given that these securities are guaranteed as to principal and/or interest by an agency of the U.S. Government, such fluctuations are generally not based on the creditworthiness of the mortgages securing these securities.

Revenue Recognition

Interest income — Interest income is recognized on the accrual basis as it is earned on loans, investments and available-for-sale securities. In some instances, the Company receives an additional amount of interest at the time the loan is closed, an origination fee, and deferred interest upon maturity. In some cases, interest income may also include the amortization or accretion of premiums and discounts arising at the purchase or origination. This additional income, net of any direct loan origination costs incurred, is deferred and accreted into interest income on an effective yield or "interest" method adjusted for actual prepayment activity over the life of the related loan or available-for-sale security as a yield adjustment. Income recognition is suspended for loans when in the opinion of management a full recovery of income and principal becomes doubtful. Income recognition is resumed when the loan becomes contractually current and performance is demonstrated to be resumed. Several of the loans provide for accrual of interest at specified rates, which differ from current payment terms. Interest is recognized on such loans at the accrual rate subject to management's determination that accrued interest and outstanding principal are ultimately collectible, based on the underlying collateral and operations of the borrower. If management cannot make this determination regarding collectibility, interest income is recognized only upon actual receipt. Additionally, interest income is recorded when earned from equity participation interests, referred to as equity kickers. These equity kickers have the potential to generate additional revenues to the Company as a result of excess cash flows being distributed and/or as appreciated properties are sold or refinanced.

Other income — Other income represents fees received for loan structuring and miscellaneous asset management fees associated with the Company's loans and investments portfolio.

Gain on Sale of Loans and Real Estate

For the sale of loans and real estate, recognition occurs when all the incidence of ownership passes to the buyer.

Income from Equity Affiliates

The Company invests in joint ventures that are formed to acquire, develop and/or sell real estate assets. Such investments are recorded under the equity method. The Company records its share of the net income from the underlying properties.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 2 — Summary of Significant Accounting Policies (Continued)

Other Comprehensive Income (Loss)

SFAS No. 130 "Reporting comprehensive income", divides comprehensive income into net income and other comprehensive income (loss), which includes unrealized gains and losses on available for sale securities.

Income Taxes

The Company is organized and conducts its operations to qualify as a real estate investment trust ("REIT") and to comply with the provisions of the Internal Revenue Code with respect thereto. A REIT is generally not subject to federal income tax on that portion of its REIT taxable income ("Taxable Income") which is distributed to its stockholders, provided that at least 90% of Taxable Income is distributed and provided that certain other requirements are met. Certain assets of the Company that produce non-qualifying income may be held in taxable REIT subsidiaries. Unlike other subsidiaries of a REIT, the income of a taxable REIT subsidiary is subject to Federal and state income taxes. As the taxable REIT subsidiaries of the Company have had minimal activity since their inception, the Company has determined that no provision for income taxes is necessary at this time.

Earnings Per Share

In accordance with the Statement of Financial Accounting standards No. 128 ("SFAS No. 128"), the Company presents both basic and diluted earnings per share. Basic earnings per share excludes dilution and is computed by dividing net income available to common stockholders by the weighted average number of shares outstanding for the period. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock, where such exercise or conversion would result in a lower earnings per share amount.

Derivatives and Hedging Activities

We account for derivative financial instruments in accordance with Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended by Statement of Financial Accounting Standards No. 138, "Accounting for Certain Derivative Instruments and Certain Hedging Activities." Statement of Financial Accounting Standards No. 133 requires an entity to recognize all derivatives as either assets or liabilities in the consolidated balance sheets and to measure those instruments at fair value. Additionally, the fair value adjustments will affect either shareholders' equity or net income depending on whether the derivative instrument qualifies as a hedge for accounting purposes and, if so, the nature of the hedging activity.

In the normal course of business, we may use a variety of derivative financial instruments to manage, or hedge, interest rate risk. These derivative financial instruments must be effective in reducing its interest rate risk exposure in order to qualify for hedge accounting. When the terms of an underlying transaction are modified, or when the underlying hedged item ceases to exist, all changes in the fair value of the instrument are marked-to-market with changes in value included in net income for each period until the derivative instrument matures or is settled. Any derivative instrument used for risk management that does not meet the hedging criteria is marked-to-market with the changes in value included in net income.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 2 — Summary of Significant Accounting Policies (Continued)

Derivatives are used for hedging purposes rather than speculation. We rely on quotations from a third party to determine these fair values.

Recently Issued Accounting Pronouncements

In January 2003, the Financial Accounting Standards Board ("FASB") issued FASB Interpretation No. 46, "Consolidation of Variable Interest Entities" ("FIN 46"), which requires a variable interest entity ("VIE") to be consolidated by its primary beneficiary ("PB"). The PB is the party that absorbs a majority of the VIE's anticipated losses and/or a majority of the expected returns.

In December 2003, the FASB revised FIN 46 ("FIN 46(R)"), delaying the effective date for certain entities created before February 1, 2003 and making other amendments to clarify the application of the guidance. FIN 46(R) is effective no later than the end of the first interim or annual period ending after December 15, 2003 for entities created after January 31, 2003 and for entities created before February 1, 2003, no later than the end of the first interim or annual period ending after March 15, 2004. As required, the Company adopted the guidance of FIN 46(R) accordingly.

In adopting FIN 46 and FIN 46-R, the Company has evaluated its loans and investments and investments in equity affiliates to determine whether they are VIE's. This evaluation resulted in the Company determining that its mezzanine loans, preferred equity investments and investments in equity affiliates were potential variable interests. For each of these investments, the Company has evaluated (1) the sufficiency of the fair value of the entities' equity investments at risk to absorb losses, (2) that as a group the holders of the equity investments at risk have (a) the direct or indirect ability through voting rights to make decisions about the entities' significant activities, (b) the obligation to absorb the expected losses of the entity and their obligations are not protected directly or indirectly, (c) the right to receive the expected residual return of the entity and their rights are not capped, (3) the voting rights of these investors are proportional to their obligations to absorb the expected losses of the entity, their rights to receive the expected returns of the equity, or both, and (4) that substantially all of the entities' activities do not involve or are not conducted on behalf of an investor that has disproportionately few voting rights. As of December 31, 2004, the Company has identified four loans and investments which were made to entities determined to be VIE's. The following is a summary of the identified VIE's as of December, 31, 2004.

Type	Carrying Amount	Property	Location
Loan and investment	$ 46,500,000	Office	New York
Loan and investment	44,533,333	Retail	Various
Loan	23,272,420	Condo	New York
Loan	7,749,538	Multifamily	Indiana

For the four VIE's identified, the Company has determined that they are not the primary beneficiaries of the VIE's and as such the VIE's should not be consolidated in the Company's financial statements. For all other investments the Company has determined they are not VIE's. As such, the Company has continued to account for these loans and investments as a loan or joint venture, as appropriate.

On March 9, 2004, the SEC released SAB 105, "Application of Accounting Principles to Loan Commitments," providing guidance on how to account for a commitment to purchase a mortgage loan prior to funding the loan. SAB 105 requires that these commitments be recorded at fair value with changes in fair

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 2 — Summary of Significant Accounting Policies (Continued)

value recognized in current earnings and was intended to eliminate the diversity in industry practice that existed relating to the accounting for loan commitments. SAB 105 is effective for loan commitments entered into after March 31, 2004. Our method of accounting for loan commitments is consistent with the guidance provided by SAB 105.

In December 2003, the Accounting Standards Executive Committee of the American Institute of Certified Public Accountants issued SOP 03-3, "Accounting for Certain Loans or Debt Securities Acquired in a Transfer." SOP 03-3 addresses the accounting for acquired impaired loans, which are loans that show evidence of having deteriorated in terms of credit quality since their origination. SOP 03-3 is effective for loans acquired after December 31, 2004. We do not expect the adoption of SOP 03-3 to have a material effect on our financial condition, results of operations, or liquidity.

In June 2004, the FASB issued EITF 03-01, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments." EITF 03-01 requires an investor to determine when an investment is considered impaired, evaluate whether that impairment is other than temporary, and, if the impairment is other than temporary, recognize an impairment loss equal to the difference between the investment's cost and its fair value. The guidance also includes accounting considerations subsequent to the recognition of an other-than-temporary impairment and requires certain disclosures about unrealized losses that have not been recognized as other-than-temporary impairments. The impairment loss recognition and measurement guidance was to be applicable to other-than-temporary impairment evaluations in reporting periods beginning after June 15, 2004. In September 2004, the FASB proposed additional guidance related to debt securities that are impaired because of interest rate and/or sector spread increases, and delayed the effective date of EITF 03-01. We do not expect the adoption of EITF 03-01 to have a material effect on our financial condition, results of operations, or liquidity. EITF 03-01 also includes disclosure requirements for investments in an unrealized loss position for which other-than-temporary impairments have not been recognized. These disclosures are included in the year ended December 31, 2004 as required by the EITF.

In December 2004, the FASB published SFAS 123(R) entitled "Share-Based Payment." It requires all public companies to report share-based compensation expense at the grant date fair value of the related share-based awards. We are required to adopt the provisions of the standard effective for periods beginning after June 15, 2005. We believe that our current method of accounting for share-based payments is consistent with SFAS 123(R).

Note 3 — Loans and Investments

	December 31,		December 31, 2004		
	2004	2003			
	Unpaid Principal		Loan Count	Wtd. Avg. Pay Rate	Wtd. Avg. Remaining Maturity (months)
Bridge loans	$ 274,307,422	$ 127,971,220	22	6.86%	20.2
Mezzanine loans	523,672,333	124,210,000	32	10.01%	19.7
Preferred equity investments	34,791,297	33,428,173	5	8.19%	8.5
Other.	1,932,899	1,967,867	1	7.39%	224.0
	834,703,951	287,577,260	60	8.87%	19.9
Unearned revenue.	(2,920,587)	(1,540,650)			
Loans and investments, net	$ 831,783,364	$ 286,036,610			

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 3 — Loans and Investments (Continued)

Bridge loans are loans to borrowers who are typically seeking short term capital to be used in an acquisition of property and are predominantly secured by first mortgage liens on the property.

Mezzanine loans are loans that are subordinate to a conventional first mortgage loan and senior to the borrower's equity in a transaction. These loans may be in the form of a junior participating interest in the senior debt. Mezzanine financing may take the form of loans secured by pledges of ownership interests in entities that directly or indirectly control the real property or subordinated loans secured by second mortgage liens on the property.

A preferred equity investment is another form of financing in which preferred equity investments in entities that directly or indirectly own real property are formed. In cases where the terms of a first mortgage prohibit additional liens on the ownership entity, investments structured as preferred equity in the entity owning the property serve as viable financing substitutes. With preferred equity investments, the Company typically becomes a special limited partner or member in the ownership entity.

Concentration of Credit Risk

Loans and investments that can potentially subject the Company to concentrations of credit risk. The Company is subject to concentration risk in that, as of December 31, 2004, the unpaid principal balance related to 16 loans with five unrelated borrowers represented approximately 38.1% of total assets. The Company had 61 loans and investments as of December 31, 2004. Also, no single loan or investment represented at least 10% of the Company's total assets in 2004, and revenue from any single borrower did not account for at least 10% of the Company's total revenues.

As of December 31, 2003, the unpaid principal balance related to ten loans with three unrelated borrowers represented approximately 41% of total assets. The Company had 33 loans and investments as of December 31, 2003.

In addition, as of December 31, 2003, the Company had a $35.0 million loan which represents approximately 10% of total assets, and two loans secured by one property totaling $45.0 million which represents approximately 13% of total assets. Summarized financial and other information related to these transactions is described in footnote 5, "Investment in equity affiliates".

Geographic Concentration Risk

As of December 31, 2004, 55%, 13%, 8% and 6% of the outstanding balance of the Company's loans and investments portfolio had underlying properties in New York, Florida, New Jersey and Maryland, respectively. As of December 31, 2003, 32%, 14%, 12%, 8% and 8% of the outstanding balance of the structured finance investments of the Company had underlying properties in New York, Maryland, Florida, Nevada and New Jersey, respectively.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 4 — Available-For-Sale Securities

The following is a summary of the Company's available-for-sale securities at December 31, 2004.

	Face Value	Amortized Cost	Unrealized Loss	Estimated Fair Value
Federal Home Loan Mortgage Corporation, variable rate security, fixed rate of interest for three years at 3.797% and adjustable rate interest thereafter, due March 2034 (including unamortized premium of $481,073)	$ 21,340,233	$ 21,821,306	$ (214,320)	$ 21,606,986
Federal Home Loan Mortgage Corporation, variable rate security, fixed rate of interest for three years at 3.758% and adjustable rate interest thereafter, due March 2034 (including unamortized premium of $208,212)	8,837,206	9,045,418	(108,793)	8,936,625
Federal National Mortgage Association, variable rate security, fixed rate of interest for three years at 3.800% and adjustable rate interest thereafter, due March 2034 (including unamortized premium of $404,499)	15,840,969	16,245,468	(206,487)	16,038,981
	$ 46,018,408	$ 47,112,192	$ (529,600)	$ 46,582,592

As of December 31, 2004, all available-for-sale securities were carried at their estimated fair market value based on current market quotes received from financial sources that trade such securities.

During the year ended December 31, 2004, the Company received prepayments of $9.7 million on these securities and amortized $394,000 of the premium paid for these securities against interest income.

These securities are pledged as collateral for borrowings under a repurchase agreement — See Note 6.

Note 5 — Investment in Equity Affiliates

As of December 31, 2004 and 2003, the Company had approximately $5.3 million and $5.9 million of investments in equity affiliates, respectively, which are described below.

In October 2004, the Company invested $0.5 million in exchange for a 8.7% non-managing preferred interest in a joint venture that was formed to operate as a real estate business, to acquire, own, manage, develop, and sell real estate assets. The Company accounts for this investment under the equity method.

As of December 31, 2003 and 2004, the Company had two mezzanine loans totaling $45 million outstanding to a 450 Partners Mezz III LLC, a wholly-owned subsidiary of 450 Westside Partners, LLC and the owner of 100% of the outstanding membership interests in 450 Partners Mezz II LLC who used the proceeds to acquire and renovate an office building. The loans require monthly interest payments based on one month LIBOR and mature in January 2006. In addition, as of December 31, 2003, the Company had a $3.0 million equity interest in an affiliate of the borrower. The Company accounts for this investment under the equity method. This interest was sold in January 2004. In August 2004, the Company invested $1.5 million in exchange for a preferred interest in this joint venture. The Company has retained participating profits interests in several affiliates of the borrower aggregating approximately 29%.

In December 2003, the Company invested approximately $2.1 million in exchange for a 50% non- controlling interest in Prime Outlets Member, LLC, which owns 15% of a real estate holding company that owns and operates factory outlet centers. The Company accounts for this investment under the equity method. As of December 31, 2004 and 2003, the Company had a mezzanine loan outstanding to an affiliate entity of the joint venture for $32.4 million and $35.0 million, respectively. In addition, the Company had

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 5 — Investment in Equity Affiliates (Continued)

a $10.0 million senior loan participation interest outstanding to an affiliate entity of the joint venture as of December 31, 2004. The loans require monthly interest payments based on one month LIBOR and mature in January 2006. Additionally, the Company has a 16.7% carried profits interest in the borrowing entity. The Company received $1.2 million of distributions from this investment in 2004 as a result of the 16.7% carried profits interest which was recorded in interest income. In addition, The Company received $0.5 million from its 50% non-controlling interest in this joint venture, which was recorded as income from equity affiliates.

In June 2003, ACM invested approximately $818,000 in exchange for a 12.5% preferred interest in a joint venture, which owns and operates two commercial properties. The Company purchased this investment from ACM in August 2003. The Company contributed an additional $297,000 to the investment in 2004. The Company accounts for this investment under the equity method. In addition, as of December 31, 2004, the Company had a $4.7 million bridge loan and a $3.5 million mezzanine loan outstanding to affiliated entities of the joint venture. As of December 31, 2003, these loans had outstanding balances of $4.8 million and $3.5 million, respectively. The loans require monthly interest payments based on one month LIBOR and mature in November 2006 and June 2006, respectively.

The condensed combined balance sheets for the unconsolidated investments in equity affiliates at December 31, 2004 and 2003, are as follows (amounts in thousands):

	December 31,	
	2004	**2003**
Condensed Combined Balance Sheets		
Assets:		
Cash and cash equivalents	$ 56,615	$ 2,650
Real estate assets	944,565	587,324
Other assets	86,087	72,546
Total assets	$ 1,087,267	$ 662,520
Liabilities:		
Notes payable	941,718	531,387
Other liabilities	24,935	6,638
Total liabilities	966,653	538,025
Equity	120,614	124,495
Total liabilities and equity	$ 1,087,267	$ 662,520

The condensed combined statements of operations for the unconsolidated investments in equity affiliates for the years ended December 31,2004 and 2003, are as follows (amounts in thousands):

	2004	**2003**
Condensed Combined Statements of Operations		
Revenue:		
Rental income	$ 102,751	$ 69,067
Reimbursement income	44,031	31,668
Other income	20,538	9,065
Total revenues	$ 167,320	$ 109,800
Expenses:		
Operating expenses	60,181	38,473
Interest expense	51,225	23,233
Depreciation and amortization	24,594	18,725
Other expenses	17,506	8,156
Total expenses	153,506	88,587
Net income	$ 13,814	$ 21,213

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 6 — Notes Payable and Repurchase Agreements

The Company utilizes warehouse lines of credit, repurchase agreements, unsecured credit facilities, and loan participations to finance its loans and investments. Borrowings underlying these arrangements are primarily secured by a significant amount of the Company's loans and investments.

The following table outlines our borrowings under the Company's repurchase agreements as of December 31, 2004 and 2003:

	December 31, 2004		December 31, 2003	
	Debt Carrying Value	Collateral Carrying Value	Debt Carrying Value	Collateral Carrying Value
Repurchase agreement, financial institution, $100 million committed line, expiration June 2005, interest is variable based on one-month LIBOR; the weighted average note rate was 5.43% and 3.41%, respectively	19,531,197	28,430,000	63,722,845	81,424,053
Repurchase agreement, Wachovia Bank National Association, $430 million committed line, expiration December 2006, interest is variable based on one-month LIBOR; the weighted average note rate was 4.63% and 3.71%, respectively	324,388,739	493,071,885	50,175,000	80,000,000
Repurchase agreement, financial institution, $100 million committed line, expiration July 2005, interest is variable based on one-month LIBOR; the weighted average note rate was 2.36% as of December 31, 2004	44,189,436	46,582,592	-	-
Repurchase agreement, financial institution, $21 million committed line, expiration April 2005, interest is variable based on one-month LIBOR; the weighted average note rate was 3.79% as of December 31, 2004	21,000,000	30,000,000	-	-
Repurchase agreement, financial institution, $50 million committed line, expiration November 2005, interest rate variable based on one-month LIBOR	-	-	-	-
Total repurchase agreements	$ 409,109,372	$ 598,084,477	$ 113,897,845	$ 161,424,053

The following table outlines our borrowings under the Company's notes payable as of December 31, 2004 and 2003:

	December 31, 2004		December 31, 2003	
	Debt Carrying Value	Collateral Carrying Value	Debt Carrying Value	Collateral Carrying Value
Structured transaction facility, financial institution, $250 million committed line, expiration June 2006, interest rate variable based on one-month LIBOR; the weighted average note rate was 4.87% and 3.54%, respectively	$ 137,199,447	$ 185,254,895	$ 58,630,626	$ 74,603,822
Unsecured credit facility, financial institution, $50 million committed line, expiration December 2005, interest is variable based on one-month LIBOR; the weighted average note rate was 9.37%	15,000,000	-	-	-
Junior loan participation, maturity March 2006, secured by Company's interest in a second mortgage loan with a principal balance of $25 million, participation interest is based on a portion of the interest received from the loan, the loan's interest is variable based on one-month LIBOR	4,419,500	4,419,500	-	-
Junior loan participation, maturity September 2006, secured by Company's interest in a second mortgage loan with a principal balance of $35 million, participation interest is based on a portion of the interest received from the loan, the loan's interest is variable based on one-month LIBOR.	6,152,500	6,152,500	-	-
Senior loan participation, maturity August 2005, secured by Company's interest in a first mortgage loan with a principal balance of $25 million, participation interest is based on 50% of the net spread of the loan, the loan is variable based on one-				
month LIBOR	3,000,000	3,000,000	-	-
Total notes payable	$ 165,771,447	$ 198,826,895	$ 58,630,626	$ 74,603,822

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 6 — Notes Payable and Repurchase Agreements (Continued)

The $100 million repurchase agreement with a expiration date of July 2005, was entered into for the purpose of financing our securities available for sale. The current borrowings equate to 96% of the estimated fair value of the securities (net of principal payment receivables of $468,000) and bear interest at a rate of one month LIBOR plus .15%. This agreement has a term of one year and will expire in July 2005.

The $250 million structured transaction facility contains profit-sharing arrangements between the Company and the lender, which provide for profit sharing percentages ranging from 17.5% to 45.0% of net interest income of the loans and investments financed. This cost is included in interest expense. On March 28, 2005 we terminated this facility. See note 16 subsequent events.

The warehouse credit agreement, the master repurchase agreements and the secured term credit facility require that the Company pay down borrowings under these facilities pro-rata as principal payments on our loans and investments are received.

Each of the credit facilities contains various financial covenants and restrictions, including minimum net worth and debt-to-equity ratios. The Company is in compliance with all financial covenants and restrictions for the periods presented.

Note 7 — Minority Interest

On July 1, 2003, ACM contributed $213.1 million of structured finance assets and $169.2 million of borrowings supported by $43.9 million of equity in exchange for a commensurate equity ownership in ARLP, the Company's operating partnership. This transaction was accounted for as minority interest and entitled ACM to a 28% interest in ARLP as of December 31, 2003.

On April 13, 2004, the Company sold 6,750,000 shares of its common stock in an initial public offering and a concurrent offering to one of the Company's directors. On May 6, 2004, the underwriters of the initial public offering exercised a portion of their over-allotment option, which resulted in the issuance of 524,200 additional shares on May 11, 2004. On October 12, 2004 ACM exercised warrants for 629,345 operating partnership units which increased ACM's limited partnership interest to 19%. Additionally, the Company issued 973,354 shares of common stock from the exercise of warrants under the Warrant Agreement for the year ended December 31, 2004. These transactions resulted in a 9% decrease in ACM's interest in ARLP. As of December 31, 2004, minority interest was adjusted by $5.2 million to properly reflect ACM's 19% limited partnership interest in ARLP.

Note 8 — Commitments and Contingencies

As of December 31, 2004, we had the following material contractual obligations (payments in thousands):

	Payments due by period (1)				
Contractual Obligations	2005	2006-2007	2008-2009	Thereafter	Total
Structured transaction facility	$ 54,265	$ 46,962	$ -	$ 35,972	$ 137,199
Repurchase agreements	103,346	58,036	16,775	230,953	409,110
Unsecured credit facility	15,000	-	-	-	15,000
Loan participations	3,000	10,572	-	-	13,572
Outstanding unfunded commitments(2)	4,653	30,067	1,417	-	36,137
Management fee (3)	N/A	N/A	N/A	N/A	N/A
Totals	$ 180,264	$ 145,637	$ 18,192	$ 266,925	$ 611,018

(1) Represents amounts due based on contractual maturities.
(2) In accordance with certain of our loans and investments, we have outstanding unfunded commitments of $36.1 million as of December 31, 2004, that we are obligated to fund as the borrowers meet certain requirements. Specific requirements include but are not limited to property renovations, building construction, and building conversions based on criteria met by the borrower in accordance with the loan agreements.
(3) This contract does not have fixed and determinable payments; refer to section entitled “Management Agreement” below.
(4) We have contractual obligations to make future payments in connection with short-term and long-term debt described in the section entitled “Liquidity and Capital Resources”.
(5) In connection with the CDO transaction in January 2005, $36 million of the structured transaction facility scheduled to mature in 2006, $28 million of the repurchase agreement scheduled to mature in 2005 and $203 million of the repurchase agreements scheduled to mature in 2006 were repaid. The CDO has a four-year replenishment period.

Litigation

The Company currently is neither subject to any material litigation nor, to management’s knowledge, is any material litigation currently threatened against the company.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 9 — Stockholders' Equity

Common Stock

The Company's charter provides for the issuance of up to 500 million shares of common stock, par value $0.01 per share, and 100 million shares of preferred stock, par value $0.01 per share.

The Company was incorporated in June 2003 and was initially capitalized through the sale of 67 shares of common stock for $1,005.

On July 1, 2003 the Company completed a private placement for the sale of 1,610,000 units (including an over-allotment option), each consisting of five shares of the Company's common stock and one warrant to purchase one share of common stock, at $75.00 per unit, for proceeds of approximately $110.1 million, net of expenses. 8,050,000 shares of common stock were sold in the offering. In addition, the Company issued 149,500 shares of stock under the stock incentive plan as described below under "Deferred Compensation".

On April 13, 2004, the Company sold 6,750,000 shares of its common stock in a public offering at a price to the public of $20.00 per share, for net proceeds of approximately $125.4 million after deducting the underwriting discount and the other estimated offering expenses. The Company used the proceeds to pay down indebtedness. After giving effect to this offering, the Company had 14,949,567 shares of common stock outstanding. In addition, on May 6, 2004, the underwriters exercised a portion of their over-allotment option, which resulted in the issuance of 524,200 additional shares on May 11, 2004. The Company received net proceeds of approximately $9.8 million after deducting the underwriting discount. In 2004, 2,401 shares of unvested restricted stock were forfeited. In addition, on November 2, 2004, ACM, the manager of our company elected to be paid its third quarter incentive management in shares of common stock totaling 22,498. Moreover, for the year ended December 31, 2004, the Company issued 973,354 shares of common stock from the exercise of warrants under the Warrant Agreement and received net proceeds of $12.9 million. After giving effect to these transactions, the Company had 16,467,218 shares issued and outstanding.

Deferred Compensation

The Company has a stock incentive plan, under which the board of directors has the authority to issue shares of stock to certain directors, officers and employees of the Company and ACM. Under the stock incentive plan, 185,000 shares of common stock were reserved for issuance pursuant to restricted stock awards. 147,500 restricted stock awards were made upon consummation of the private placement of units on July 1, 2003 and 2,000 restricted stock awards were made subsequently to certain directors. As of December 31, 2003 and 2004, 149,500 shares of restricted stock were awarded and were outstanding. Of the shares awarded, two-thirds vested immediately and the remaining one-third will vest ratably over three years on the anniversary date of the initial award. Dividends were paid on the restricted shares as dividends were paid on shares of the Company's common stock whether or not they are vested. For accounting purposes, the Company measures the compensation costs for these shares as of the date of the grant, with subsequent remeasurement for any unvested shares granted to non-employees of the Company with such amounts expensed against earnings, at the grant date (for the portion that vest immediately) or ratably over the respective vesting periods. The Company accounts for the stock incentive plan to employees of the Company and employees of ACM under the fair value method. Fair value at the grant date was $15.00 per share, which was based on the selling price of the common stock offered in our private equity offering. For

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 9 — Stockholders' Equity (Continued)

the period from June 24, 2003 (inception) to December 31, 2003 and the year ended December 31, 2004, compensation expense related to this plan totaled $1.7 million and $0.3 million, respectively. Such amounts appear on the Company's Consolidated Income Statement under "stock-based compensation expense.'' In February 2005, 1,000 restricted shares were issued to each of four independent members of the board of directors under the stock incentive plan. One third of the restricted stock granted to each of these directors were vested as of the date of grant, another one third will vest on January 31, 2006 and the remaining third will vest on January 31, 2007.

Warrants

In connection with the private placement of units by the Company on July 1, 2003, the Company issued warrants to acquire 1,610,000 shares of common stock, as adjusted for dilution, at $15.00 per share. Concurrently, ACM was issued warrants to purchase 629,345 operating partnership units at $15.00 per share. In July 2004, these warrants became eligible for exercise through a cash payment or by surrendering additional warrants or shares of common stock in a "cashless" transaction. These warrants expire on July 1, 2005.

For the year ended December 31, 2004, 1,321,975 common stock warrants were exercised for a total amount of $12.9 million and 973,354 common shares were issued. Of these totals, 115,176 common shares were issued from 463,797 warrants from a "cashless" exercise. As of December 31, 2004, there were 288,025 common stock warrants outstanding. On October 12, 2004, ACM exercised all of its warrants for a total of 629,345 operating partnership units of ARLP and proceeds of $9.4 million. Subsequent to December 31, 2004 and as of February 24, 2005, 38,558 common stock warrants were exercised each for one share of equivalent common stock.

Preferred Stock

Concurrent with the formation of the Company, ACM contributed a portfolio of structured finance investments and related debt to ARLP, the operating partnership of the Company, in exchange for 3,146,724 units of limited partnership interest in ARLP and warrants to purchase an additional 629,345 operating partnership units. Concurrently, the Company, ARLP and ACM entered into a pairing agreement. Pursuant to the pairing agreement, each operating partnership unit issued to ACM and issuable to ACM upon exercise of its warrants for additional operating partnership units in connection with the contribution of initial assets was paired with one share of the Company's special voting preferred stock. The preferred stock was issued to ACM by the Company in exchange for a capital contribution in the amount of $31,467. Each share of special voting preferred stock entitles the holder to one vote on all matters submitted to a vote of the Company's stockholders. A holder of special voting preferred stock will not be entitled to any regular or special dividend payments or other distributions, other than a $0.01 per share liquidation preference. The Company has classified and designated 5,000,000 shares of its 100,000,000 authorized shares of preferred stock as special voting preferred stock. In 2004, ACM exercised 629,345 warrants in exchange for operating partnership units resulting in the issuance of 629,345 shares of preferred stock.

Note 10 — Earnings Per Share

Earnings per share is computed in accordance with SFAS No. 128, Earnings Per Share. Basic earnings per share ("EPS") is calculated by dividing net income by the weighted average number of shares of common stock outstanding during each period inclusive of unvested restricted stock which participate fully

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 10 — Earnings Per Share (Continued)

in dividends. Diluted EPS is calculated by dividing income before minority interest by the weighted average number of shares of common stock outstanding plus the additional dilutive effect of common stock equivalents during each period. The Company's common stock equivalents are its operating partnership units, warrants to purchase additional shares of common stock and warrants to purchase additional operating partnership units. The dilutive effect of the warrants is calculated using the treasury stock method.

As of December 31, 2003, the exercise price of the warrants approximated the market value of the common stock therefore, they were not considered to be dilutive for purposes of calculating diluted earnings per share.

In 2004, ACM, the manager of our Company, earned incentive management fees totaling $1.6 million. Based on the terms of the management agreement, ACM elected to be paid its incentive management fee in common shares totaling 66,141, of which 43,643 were issued in 2005. These 43,643 shares were anti-dilutive and have been excluded from the calculation of diluted EPS.

The following is a reconciliation of the numerator and denominator of the basic and diluted net earnings per share computations for the year ended December 31, 2004 and for the period June 24, 2003 (inception) to December 31, 2003.

	For the Year Ended December 31, 2004		For the Period Ended December 31, 2003	
	Basic	Diluted	Basic	Diluted
Net income	$ 25,072,682	$ 25,072,682	$ 3,407,919	$ 3,407,919
Add: Income allocated to minority interest		5,875,816		1,308,167
Earnings per EPS calculation	$ 25,072,682	$ 30,948,498	$ 3,407,919	$ 4,716,086
Weighted average number of common shares outstanding	13,814,199	13,814,199	8,199,567	8,199,567
Weighted average number of operating partnership units		3,286,387		3,146,724
Dilutive effect of warrants		265,429		
Total weighted average common shares outstanding	13,814,199	17,366,015	8,199,567	11,346,291
Earnings per common share	$ 1.81	$ 1.78	$ 0.42	$ 0.42

Note 11 — Related Party Transactions

Related Party Loans:

	December 31, 2004	December 31, 2003
Bridge loans	$ 7,749,538	$ 30,809,391
Mezzanine loans	-	5,131,490
Related party loans, net	$ 7,749,538	$ 35,940,881

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 11 — Related Party Transactions (Continued)

The Company had a $7.75 million first mortgage loan as of December 31, 2004 and 2003, had a $13.75 million first mortgage loan and $1.2 million second mortgage loan, which beared interest at a variable rate of one month LIBOR plus 4.25% and matures in March 2005, outstanding to a not-for-profit corporation that holds and manages investment property from the endowment of a private academic institution. Two of the Company's directors are members of the board of trustees of the borrower and that institution. Interest income recorded from these loans for the year ended December 31, 2004 and 2003 was approximately $860,000 and $402,000, respectively.

ACM has a 50% non-controlling interest in a joint venture, which was formed to acquire, develop and/or sell real estate assets. At December 31, 2004 and 2003, ACM's investment in this joint venture was approximately $2.6 million. All loans outstanding to this joint venture were repaid in full in 2004. At December 31, 2003, we had a $16.0 million bridge loan outstanding to the joint venture, which was collateralized by a first lien position on a commercial real estate property. This loan was funded by ACM in June 2003 and was purchased by us in July 2003. The loan required monthly interest payments based on one month LIBOR and was repaid in full in 2004. We had agreed to provide the borrower with additional mezzanine financing in the amount of up to $8.0 million. The mezzanine financing required interest payments based on one month LIBOR and was repaid in full in 2004. Interest income recorded from these loans for the period ended December 31, 2004 and 2003 was approximately $848,000 and $486,000, respectively.

The Company's $16.0 million bridge loan to the joint venture was contributed by ACM as one of the structured finance assets contributed to the Company on July 1, 2003 at book value, which approximates fair value. At the time of contribution, ACM also agreed to provide a limited guarantee of the loan's principal amount based any profits realized on its retained 50% interest in the joint venture with the borrower and ACM's participating interests in borrowers under three other contributed structured finance assets.

At the time of ACM's origination of three of the structured finance assets that it contributed to us on July 1, 2003 at book value, which approximates fair value, each of the property owners related to these contributed assets granted ACM participating interests that share in a percentage of the cash flows of the underlying properties. Upon contribution of the structured finance assets, ACM retained these participating interests and its 50% non-controlling interest in the joint venture to which it had made the $16.0 million bridge loan. ACM agreed that if any portion of the outstanding amount of any of these four contributed assets is not paid at its maturity or repurchase date, ACM will pay to us, subject to the limitation described below, the portion of the unpaid amount of the contributed asset up to the total amount then received by ACM due to the realization of any profits on its retained interests associated with any other of the four contributed assets (which had an aggregate balance of $48.3 million as of December 31, 2003). However, ACM will no longer be obligated to make such payments to us when the remaining accumulated principal amount of the four contributed assets, collectively, falls below $5 million and none of the four contributed assets were in default. In 2004, two of these investments matured and the borrowers paid the amount due in full. The remaining two investments have an aggregate balance of $22.3 million as of December 31, 2004.

In addition, as of December 31, 2004, approximately $0.3 million of interest payments from borrowers due from ACM were included in other assets. These payments were remitted in January 2005. As of December 31, 2004, approximately $0.6 million of interest reserve payments due to ACM were included in other liabilities. These payments were remitted in January 2005.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 11 — Related Party Transactions (Continued)

In 2003, ACM received a brokerage fee for services rendered in arranging a loan facility for a borrower. A portion of the loan facility was provided by the Company. The Company was credited $146,918 of this brokerage fee which represented the Company's proportionate share of the loan facility provided to the borrower and is included in other assets at December 31, 2003, which was received in January 2004.

Note 12 — Distributions

In order to qualify as a REIT, the Company must currently distribute at least 90% of its taxable income and must distribute 100% of its taxable income in order not to be subject to corporate federal income taxes on retained income. The Company anticipates it will distribute all of its taxable income to its stockholders. Because taxable income differs from cash flow from operations due to non-cash revenues or expenses (such as depreciation), in certain circumstances, the Company may generate operating cash flow in excess of its distributions or, alternatively, may be required to borrow to make sufficient distribution payments.

During the year ended December 31, 2004 the Company declared and paid distributions totaling $15.6 million, or $1.16 per share. For the period of June 24, 2003 (inception) to December 31, 2003, the Company declared and paid distributions totaling $4.1 million, or $0.50 per share. For tax purposes, 100% of dividends declared in 2004 are classified as ordinary income.

On January 13, 2005, the Company declared distributions of $0.47 per share of common stock, payable with respect to the three months ended December 31, 2004 to stockholders of record at the close of business on January 31, 2005. These distributions were subsequently paid on February 15, 2005. Subsequent to December 31, 2004 and through the date of record, 38,558 common stock warrants were exercised each for one share of equivalent common stock.

Note 13 — Management Agreement

The Company and ARLP have entered into a management agreement with ACM which has an initial term of two years with automatic one year extensions, subject to certain termination rights. After the initial two year term, the Company will be able to terminate the management agreement without cause for any reason upon six months' prior written notice to ACM. If the Company terminates the management agreement without cause, or gives ACM notice of non-renewal, in order to manage its operations internally, the Company will be required to pay ACM a termination fee equal to the base management fee and the incentive compensation earned by ACM during the 12-month period preceding the termination. If, without cause, the Company terminates the management agreement or elects not to renew it for any other reason, the Company will be required to pay ACM a termination fee equal to two times the base management fee and the incentive compensation earned by ACM during the 12-month period preceding the termination.

The Company's chief executive officer is also ACM's chief executive officer and controlling equity owner. ACM has agreed to provide the Company with structured finance investment opportunities and loan servicing as well as other services necessary to operate its business. The Company's chief executive officer, chief financial officer and general counsel and secretary are not employees of the Company. The Company relies to a significant extent on the facilities and resources of ACM to conduct its operations. The management agreement requires ACM to manage the business affairs in conformity with the policies and the general investment guidelines that are approved and monitored by the Company's board of directors. ACM's management of the Company is under the direction or supervision of the Company's board of directors.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 13 — Management Agreement (Continued)

For performing services under the management agreement, the Company pays ACM an annual base management fee payable monthly in cash as a percentage of ARLP's equity and equal to 0.75% per annum of the equity up to $400 million, 0.625% per annum of the equity from $400 million to $800 million and 0.50% per annum of the equity in excess of $800 million. For purposes of calculating the base management fee, equity equals the month end value computed in accordance with GAAP of (1) total partners' equity in ARLP, plus or minus (2) any unrealized gains, losses or other items that do not affect realized net income.

The Company also pays ACM incentive compensation each fiscal quarter, calculated as (1) 25% of the amount by which (a) ARLP's funds from operations per unit of partnership interest in ARLP, adjusted for certain gains and losses, exceeds (b) the product of (x) 9.5% per annum or the Ten Year U.S. Treasury Rate plus 3.5%, whichever is greater, and (y) the weighted average of book value of the net assets contributed by ACM to ARLP per ARLP partnership unit, the offering price per share of the Company's common equity in the private offering on July 1, 2003 and subsequent offerings and the issue price per ARLP partnership unit for subsequent contributions to ARLP, multiplied by (2) the weighted average of ARLP's outstanding partnership units. At least 25% of this incentive compensation is paid to ACM in shares of the Company's common stock, subject to ownership limitations in the Company's charter. With respect to all loans and investments originated during the term of the management agreement, the Company has also agreed with ACM that the Company pays ACM an amount equal to 100% of the origination fees paid by the borrower up to 1% of the loan's principal amount.

The incentive compensation is measured annually in arrears; provided, however, ACM shall receive quarterly installments thereof in advance. The quarterly installments are calculated based on the results for the period of twelve months ending on the last day of the fiscal quarter with respect to which such installment is payable. Each quarterly installment payment is deemed to be an advance of a portion of the incentive fee payable for the year. At least 25% of this incentive compensation fee is paid to ACM in shares of the Company's common stock. For purposes of determining the number of shares that are paid to ACM to satisfy the common stock portion of the incentive management fee from and after the date the Company's common shares are publicly traded, each common share shall have a value equal to the average closing price per common share based on the last twenty days of the fiscal quarter with respect to which the incentive fee is being paid. The incentive compensation fee is accrued as it is earned. In accordance with Issue 4(b) of EITF 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services,'' the expense incurred for incentive fee paid in common stock is determined using the amount of stock calculated as noted above and the quoted market price of the stock on the last day of each quarter. At December 31, the Company remeasures the incentive fee expense paid to ACM in shares of the company's common stock in accordance with the guidance provided by Issue 4(a) of EITF 96-18, which discusses how to measure at the measurement date when certain terms are not known prior to the measurement date. Accordingly, expense recorded related to common stock issued as a portion of incentive fee was adjusted to reflect the fair value of the stock on the measurement date when the final calculation of total incentive fee was determined. In the event the calculated incentive compensation for the full year is an amount less than the total of the installment payments made to ACM for the year, ACM will refund to the Company the amount of such overpayment in cash regardless of whether such installments were paid in cash or common stock. In such case, the Company would record a negative incentive fee expense in the quarter when such overpayment is determined. In 2004, the full year incentive fee was greater than the sum of the quarterly installments.

ACM is responsible for all costs incident to the performance of its duties under the management agreement, including compensation of its employees, rent for facilities and other "overhead'' expenses. The Company is required to pay or reimburse ACM for all expenses incurred on behalf of the

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 13 — Management Agreement (Continued)

Company in connection with the raising of capital or the incurrence of debt, interest expenses, taxes and license fees, litigation and extraordinary or non recurring expenses.

Under the terms of the management agreement, ACM is also required to provide the Company with a right of first refusal with respect to all structured finance transactions identified by ACM or its affiliates. The Company has agreed not to pursue, and to allow ACM to pursue, any real estate opportunities other than structured finance transactions. In addition, ACM's chief executive officer, Ivan Kaufman, has entered into a non-competition agreement with the Company pursuant to which he has agreed not to pursue structured finance investment opportunities, except as approved by the board of directors of the Company.

For the year ended December 31, 2004, ACM earned incentive compensation installments totaling $1,623,000, of which $499,000 was elected by ACM to be paid in 22,498 shares of common stock in November 2004. As of December 31, 2004, ACM's fourth quarter installment of $1,124,000 was included in other liabilities. As provided for in the management agreement, ACM elected to receive this entire incentive compensation fee in common stock. This fee was paid in February 2005 in common shares totaling 43,643. No incentive compensation was earned or paid in the period June 24, 2003 (inception) to December 31, 2003.

For the year ended December 31, 2004, ACM earned $1,992,000 in base management fees, of which approximately $188,000 of fees were due to ACM for the month ended December 31, 2004. They were included in other liabilities and paid subsequently in January 2005. In the period June 24, 2003 (inception) to December 31, 2003, ACM earned $588,000 in base management fees.

Note 14 — Due to Borrowers

Due to borrowers represents borrowers' funds held by the Company to fund certain expenditures or to be released at the Company's discretion upon the occurrence of certain pre-specified events, and to serve as additional collateral for borrowers' loans. While retained, these balances earn interest on behalf of the borrower in accordance with the specific loan terms they are associated with.

Note 15 — Fair Value of Financial Instruments

SFAS No. 107 requires disclosure of the estimated fair value of an entity's assets and liabilities considered to be financial instruments. The following table summarizes the carrying values and the estimated fair values of financial instruments as of December 31, 2004 and 2003. Fair value estimates are dependent upon subjective assumptions and involve significant uncertainties resulting in variability in estimates with changes in assumptions.

	December 31, 2004		December 31, 2003	
	Carrying Value	Estimated Fair Value	Carrying Value	Estimated Fair Value
Financial assets:				
Loans and investments, net	$ 831,783,364	$ 831,783,364	$ 286,036,610	$ 286,036,610
Related party loans, net	7,749,538	7,749,538	35,940,881	35,940,881
Available-for-sale securities	46,582,593	46,582,593	—	—
Financial liabilities:				
Notes payable and repurchase agreements	574,880,819	574,880,819	172,528,471	172,528,471

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 15 — Fair Value of Financial Instruments (Continued)

The following methods and assumptions were used by the Company in estimating the fair value of each class of financial instrument:

Loans and Investments, Net: Fair values of variable-rate loans and investments with no significant change in credit risk are based on carrying values. Fair values of other loans and investments are estimated using discounted cash flow methodology, using discount rates, which, in the opinion of management, best reflect current market interest rates that would be offered for loans with similar characteristics and credit quality.

Related Party Loans, Net: Fair values of variable-rate loans and investments with no significant change in credit risk are based on carrying values. Fair values of other loans and investments are estimated using discounted cash flow methodology, using discount rates, which, in the opinion of management, best reflect current market interest rates that would be offered for loans with similar characteristics and credit quality.

Notes Payable and Repurchase Agreements: Fair values approximate the carrying values reported in the balance sheets.

Available-for-Sale Securities: Fair values are approximated on current market quotes received from financial sources that trade such securities.

Note 16 — Subsequent Events

On January 19, 2005 the Company completed a non-recourse collateralized debt obligation ("CDO") transaction, whereby a portfolio of real estate related assets was contributed to a consolidated subsidiary which issued $305 million of investment grade-rated floating-rate notes in a private placement. The subsidiary retained the equity interest in the issuer with a value of approximately $164 million. The notes are secured by a portfolio of real estate-related assets with a face value of approximately $441 million, consisting primarily of bridge loans, mezzanine loans and junior participating interests in first mortgages, and by approximately $28 million of cash available for acquisitions of loans and other permitted investments. The notes have an initial weighted average spread of approximately 77 basis points over three-month LIBOR. The facility has a four-year replenishment period that allows the principal proceeds from repayments of the collateral assets to be reinvested in qualifying replacement assets, subject to certain conditions. The Company intends to own the portfolio of real estate-related assets until its maturity and will account for this transaction on its balance sheet as a financing. In connection with the CDO, the Company entered into two interest rate swap agreements to hedge its exposure to the risk of changes in the difference between three-month LIBOR and one-month LIBOR. These interest rate swaps became necessary due to the investor's return being paid based on a three-month LIBOR index while the assets contributed to the CDO are yielding interest based on a one-month LIBOR index. These swaps were executed on December 21, 2004 with notional amounts of $469 million and expire in January 2012. As of December 31, 2004, the market value of these swaps was insignificant to the financial statements.

On January 31, 2005 the Company entered into a $50 million credit facility with a shareholder who beneficially owned approximately 7.1% of our outstanding common stock as of December 31, 2004. The facility includes a $30 million term loan, a $10 million term loan and a $10 million revolving facility. The facility is secured by loans and investments in the Company's portfolio. The facility has a term of one year with two six-month renewal options and bears interest at a spread over LIBOR.

On March 15, 2005 the Company, through a newly-formed wholly-owned subsidiary of its operating partnership, issued $27.1 million of junior subordinated notes in a private placement. These securities are unsecured, have a maturity of 29 years, pay interest quarterly at a floating rate of interest based on LIBOR and, absent the occurrence of special events, are not redeemable during the first five years.

On March 29, 2005 we terminated the Company's $250 million structured transaction facility scheduled to expire in June 2006. We simultaneously repaid all indebtedness outstanding on that date. This debt underlying certain of our assets were transferred to our other facilities.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 17 — Summary Quarterly Consolidated Financial Information -Unaudited

The following tables represent summarized quarterly financial data of the Company which, in the opinion of management, reflects all adjustments, consisting only of normal recurring adjustments, necessary for a fair presentation of the Company's results of operations:

Net income shown agrees with the Company's quarterly report(s) on Form 10-Q as filed with the Securities and Exchange Commission. However, individual line items vary from such report(s) due to participation's interest recorded as an offset to Interest Income, during subsequent periods being retroactively reclassified to Interest Expense for the third and fourth quarter's of 2004.

For the year ended December 31, 2004:	For the Three Months Ended			
	December 31,	September 30,	June 30,	March 31,
Revenue:				
Interest income	$ 20,674,843	$ 17,149,646	$ 11,939,350	$ 8,163,391
Other income	6,636	9,098	5,427	21,104
Total revenue	20,681,479	17,158,744	11,944,777	8,184,495
Expenses:				
Interest expense	7,539,501	5,898,637	3,310,544	2,623,893
Employee compensation and benefits	646,720	448,564	617,137	613,306
Stock based compensation	67,544	49,792	92,806	114,201
Selling and administrative	752,793	544,575	366,843	244,311
Management fee – related party	1,721,928	1,058,845	540,939	293,118
Total expenses	10,728,486	8,000,413	4,928,269	3,888,829
Income before minority interest and income from equity affiliates	9,952,993	9,158,331	7,016,508	4,295,666
Income from equity affiliates	525,000	-	-	-
Income before minority interest	10,477,993	9,158,331	7,016,508	4,295,666
Income allocated to minority interest	1,923,558	1,524,359	1,236,560	1,191,339
Net Income	$ 8,554,435	$ 7,633,972	$ 5,779,948	$ 3,104,327
Basic earnings per common share	$ 0.52	$ 0.48	$ 0.39	$ 0.38
Diluted earnings per common share	$ 0.52	$ 0.47	$ 0.38	$ 0.38

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2004

Note 17 — Summary Quarterly Consolidated Financial Information -Unaudited (Continued)

For the period June 24, 2003 to December 31, 2003:	For the Three Months Ended	
	December 31,	September 30,
Revenue:		
Interest income	$ 5,342,459	$ 4,669,990
Other income	156,002	500
Total revenue	5,498,461	4,670,490
Expenses:		
Interest expense	947,877	721,854
Employee compensation and benefits	493,491	446,845
Stock based compensation.	133,693	1,587,674
Selling and administrative	400,393	133,304
Management fee – related party	294,233	293,501
Total expense	2,269,687	3,183,178
Income before minority interest and income from equity affiliates	3,228,774	1,487,312
Income from equity affiliates	-	-
Income before minority interest	3,228,774	1,487,312
Income allocated to minority interest	895,610	412,557
Net Income	$ 2,333,164	$ 1,074,755
Basic earnings per common share	$ 0.28	$ 0.13
Diluted earnings per common share	$ 0.28	$ 0.13

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
Schedule IV — Loans and other Lending Investments
December 31, 2004

Type	Location	Periodic Payment Terms	Maturity Date	Interest Pay Rate Index (1)	Interest Accrual Rate Index	Prior Liens	Face Amount	Carrying Amount(4)
Bridge Loans								
Co-op(3)	New York, NY	Interest Only	10/2005	Fixed 10%	N/A	$ -	$ 1,100,000	$ 1,100,000
Multifamily	Indiana, IN	Interest Only	3/2005	Libor + 4.25%	N/A	-	7,749,538	7,749,538
Multifamily	Ontario, CA	Interest Only	4/2005	Libor + 4.00% Floor 5.50%	N/A	-	9,130,000	9,110,278
Multifamily	Baltimore, MD	Interest Only	5/2006	Libor + 3.50% Floor 5.00%	N/A	-	1,487,380	1,468,142
Multifamily	Baltimore, MD	Interest Only	5/2006	Libor + 4.50% (Year 1); Libor + 6.50% (Year 2); Libor + 7.50% (Year 3) Libor Floor 2.00%	N/A	(2)	4,725,569	4,765,224
Commercial	Brooklyn, NY	Interest Only	10/2006	Libor + 4.75%	N/A	-	4,663,944	4,633,402
Residential(3)	Westbury, NY	Interest Only	12/2004	Fixed 12%	N/A	-	450,000	450,000
Office	Montvale, NJ	Interest Only	1/2007	Libor + 6.00% Floor 7.50%	N/A	-	4,640,000	4,629,602
Condo Conversion	New York, NY	Interest Only	2/2005	Libor + 5.00% Libor Floor 1.10%	N/A	-	47,347,742	47,348,563
Hotel	New York, NY	Interest Only	3/2006	Libor + 5.50%	Libor + 5.50%	-	22,490,871	22,290,048
Hotel	Miami Beach, FL	Interest Only	3/2009	Libor + 4.00% (Year 1-2); Libor + 5.00% (Year 3-5)	N/A	-	30,000,000	29,642,464
Multifamily	Altamonte Springs, FL	Interest Only	6/2007	Libor + 3.50% Floor 4.75%	N/A	-	24,226,562	24,025,930
Condo Conversion	New York, NY	Interest Only	7/2007	Libor + 4.00%	N/A	-	26,287,960	26,333,165
Condo Conversion	Miami Beach, FL	Interest Only	7/2005	Libor + 4.70% Libor Floor 1.19%	N/A	-	5,691,581	5,644,960
Multifamily	Clearwater, FL	Interest Only	8/2007	Libor + 4.00% Libor Floor 1.10%	N/A	-	11,278,500	11,175,053
Office	New York, NY	Interest Only	8/2005	Libor + 4.00% Libor Floor 1.42%	N/A	-	20,000,000	19,962,059
Multifamily	Owensboro, KY	Interest Only	9/2006	Libor + 6.50% Libor Floor 1.50%	N/A	-	4,200,000	4,162,887
Condo	Miami, FL	Interest Only	9/2005	Libor + 4.50% Libor Floor 1.86%	N/A	-	17,092,313	17,023,911
Multifamily	Baltimore, MD	Interest Only	12/2006	Libor + 6.37% Libor Floor 1.50%	N/A	-	8,690,000	8,609,209
Multifamily	New York, NY	Interest Only	12/2005	Libor + 5.00% Libor Floor 1.75%	N/A	-	8,451,000	8,380,354
Multifamily	New York, NY	Interest Only	12/2005	Libor + 5.00% Libor Floor 1.75%	N/A	-	7,509,000	7,446,229
Multifamily	Tampa, FL	Interest Only	4/2005	Libor + 3.00% Libor Floor 2.40%	N/A	-	7,645,000	7,645,000
Multifamily	Marion, IN	Interest Only	12/2009	Libor + 4.00% Libor Floor 2.42%	N/A	-	7,200,000	7,164,000
						$ -	**$ 282,056,960**	**$ 280,760,018**

(1) References to LIBOR are to one-month LIBOR unless specifically stated otherwise.

(2) The Company has a loan that consists of a portfolio of four properties. The Company has a first mortgage lien on two of the four properties in the portfolio underlying this loan. This loan is also secured by a pledge of 99.99% of the equity interests relating to the two other properties in the portfolio. Third party lenders have first mortgage liens on two of the four properties, totaling $14,114,030 as of December 31, 2004.

(3) Reflects loans that have been extended during the period.

(4) The carrying amounts approximate the federal income tax basis. Also, as of December 31, 2004, there were no loans delinquent.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

SCHEDULE IV — LOANS AND OTHER LENDING INVESTMENTS (Continued)
DECEMBER 31, 2004

Type	Location	Periodic Payment Terms	Maturity Date	Interest Pay Rate Index (1)	Interest Accrual Rate Index	Prior Liens	Face Amount	Carrying Amount(2)
Mezzanine Loans								
Commercial	Brooklyn, NY	Interest Only	6/2006	Pay Libor + 3.50% Floor Pay 5.00%	Libor + 8.00%	7,565,825	3,500,000	3,500,000
Multifamily	Glassboro, NJ	Interest Only	5/2006	Libor + 7.00% Floor 10.00%	N/A	11,000,000	2,000,000	2,000,000
Multifamily	New Jersey	Interest Only	4/2005	Libor + 5.25% Floor 6.75%	N/A	13,757,446	3,000,000	3,000,000
Multifamily	Baltimore, MD	Interest Only	9/2005	Libor + 5.50% (Year 1); Libor + 6.50% (Year 2); Libor + 7.50% (Year 3) Libor Floor 2.00%	N/A	58,012,731	11,520,000	11,527,584
Retail	Various	Principal and Interest	1/2006	Libor + 8.50% Floor 9.50%	N/A	336,000,000	32,433,333	32,326,180
Office	New York, NY	Principal and Interest	1/2006	12.30% Fixed	N/A	285,000,000	30,000,000	30,000,000
Office	New York, NY	Interest Only	1/2006	Libor + 11.50% Libor Floor 1.5%	N/A	270,000,000	15,000,000	15,000,000
Condo Conversion	New York, NY	Interest Only	2/2005	Libor + 6.00% Libor Floor 1.10%	N/A	47,347,742	11,280,000	11,347,155
Office	New York, NY	Interest Only	1/2006	Libor + 5.75% Libor Floor 1.75%(year1); Libor Floor 2.00%(thereafter)	N/A	150,000,000	35,000,000	35,000,000
Office	New York, NY	Interest Only	1/2006	Libor + 7.50%	N/A	173,000,000	30,000,000	30,011,230
Office	New York, NY	Interest Only	5/2006	Libor + 9.00%	N/A	166,000,000	2,000,000	1,995,144
Office	New York, NY	Interest Only	5/2006	Libor + 7.00%	N/A	168,000,000	25,000,000	24,939,734
Multifamily	Silver Spring, MD	Interest Only	2/2009	Libor + 4.25%	N/A	-	20,000,000	20,000,000
Retail	Various	Interest Only	12/2005	Libor + 9.985% Libor Floor 1.17%	N/A	336,000,000	10,000,000	10,000,000
Residential Condos	Honolulu, HI	Interest Only	6/2007	Libor + 5.00% Libor Floor 1.10%	Libor + 7.00%	14,707,419	30,566,275	30,525,814
Multifamily	Altamonte Springs, FL	Interest Only	6/2007	Libor + 7.25% Floor 8.50%	N/A	24,374,801	2,867,000	2,848,317
Multifamily	Cary, NC	Interest Only	3/2006	Libor + 5.50%	N/A	13,050,000	10,450,000	10,450,000
Office	New York, NY	Interest Only	1/2006	Libor + 4.295%	N/A	141,500,000	31,500,000	31,291,555
Multifamily	Phoenix, AZ	Interest Only	7/2007	Libor + 6.50% Libor Floor 1.32%	N/A	22,435,000	5,250,000	5,228,392

(1) References to LIBOR are to one-month LIBOR unless specifically stated otherwise.
(2) The carrying amounts approximate the federal income tax basis. Also, as of December 31, 2004, there were no loans delinquent.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

SCHEDULE IV — LOANS AND OTHER LENDING INVESTMENTS (Continued)
DECEMBER 31, 2004

Type	Location	Periodic Payment Terms	Maturity Date	Interest Pay Rate Index (1)	Interest Accrual Rate Index	Prior Liens	Face Amount	Carrying Amount (3)
Mezzanine Loans (Continued)								
Multifamily	Phoenix, AZ	Interest Only	7/2007	Libor + 6.50% Libor Floor 1.32%	N/A	24,235,000	4,750,000	4,730,450
Office	New York, NY	Interest Only	8/2006	Libor + 6.50%	N/A	135,000,000	30,000,000	30,007,628
Condo	Brooklyn, NY	Interest Only	8/2006	Libor + 5.00% Libor Floor 1.36%	Libor + 9.00%	6,091,823	4,330,405	4,330,405
Condo	New York, NY	Interest Only	2/2007	Libor + 7.00%	Fixed 14%	43,721,984	23,272,420	23,160,979
Office	Various	Interest Only	3/2006	Libor + 11.90% Libor Floor 1.50%	N/A	100,000,000	25,000,000	24,909,288
Office	New York, NY	Interest Only	9/2006	Libor + 9.00%	N/A	235,000,000	35,000,000	34,941,426
Office	New York, NY	Interest Only	6/2006	Libor + 6.90% Libor Floor 1.75%	N/A	79,000,000	29,000,000	28,251,768
Multifamily	Orlando. FL	Interest Only	12/2007	Libor + 6.50% Libor Floor 2.09%	N/A	23,512,500	4,500,000	4,478,602
Multifamily	New York, NY	Interest Only	12/2005	Fixed 12%	N/A	8,451,000	1,859,000	1,843,397
Multifamily	New York, NY	Interest Only	12/2005	Fixed 12%	N/A	7,509,000	2,011,000	1,994,122
Multifamily	Tampa, FL	Interest Only	12/2009	Libor + 5.50% Libor Floor 1.50%	N/A	7,645,000	2,582,900	2,543,286
Condo Conversion	New York, NY	Interest Only	7/2005	Fixed 10%	Fixes 14%	58,627,742	15,000,000	14,775,000
Multifamily	Various within New Jersey	Interest Only	1/2007	Fixed 12%	Fixed 15%	-	35,000,000	35,000,000
						$2,966,545,013	**$ 523,672,333**	**$ 521,957,456**
Preferred Equity:								
Multifamily(2)	Various within Texas	Interest Only	1/2005	6M Libor + 4.50% Floor 9.56%	N/A	9,595,828	2,107,867	2,107,867
Multifamily	Baltimore, MD	Interest Only	11/2006	Libor + 4.50% (Year 1); Libor + 6.50% (Year 2); Libor + 7.50% (Year 3) Libor Floor 2.00%	N/A	11,517,106	7,074,430	7,171,998
Multifamily	Various within New Jersey	Interest Only	4/2005	Libor + 5.25% Floor 6.75%	N/A	186,781,622	19,300,000	19,300,000
Multifamily	Denver, CO	Interest Only	3/2005	Libor + 6.00% Floor 10.00%	N/A	23,134,729	2,440,000	2,440,000
Multifamily	Winter Haven, FL	Interest Only	12/2005	Libor + 6.00% Libor Floor 1.75%	N/A	7,888,235	3,869,000	3,862,664
						$ 238,917,520	**$ 34,791,297**	**$ 34,882,529**
Hotel	Miami, FL		8/2023	7.39% Fixed	N/A	$ -	$ 1,932,899	$ 1,932,899
						$3,205,462,533	**842,453,489**	**$ 839,532,902**

(1) References to LIBOR are to one-month LIBOR unless specifically stated otherwise.

(2) LIBOR for this loan refers to six-month LIBOR.

(3) The carrying amounts approximate the federal income tax basis. Also, as of December 31, 2004, there were no loans delinquent.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

SCHEDULE IV – LOANS AND OTHER LENDING INVESTMENTS (Continued)
DECEMBER 31, 2004

The following table reconciles the Company's loans and investments carrying amounts from January 1, 2004 to December 31, 2004:

Balance – January 1, 2004	$	321,977,491
Additions during period:		
New loan originations		772,738,943
Funding of unfunded loan commitments(1)		21,669,789
Accretion of unearned revenue		2,497,449
Deductions during period:		
Loan payoffs		(181,405,651)
Loan partial payoffs		(40,020,129)
Unfunded loan commitments(1)		(54,047,601)
Unearned revenue		(3,877,389)
Balance – December 31, 2004	$	839,532,902

(1) In accordance with certain of our loans and investments, we have outstanding unfunded commitments that we are obligated to fund as the borrowers meet certain requirements. Specific requirements include but are not limited to property renovations, building construction, and building conversions based on criteria met by the borrower in accordance with the loan agreements.

INDEX TO THE CONSOLIDATED FINANCIAL STATEMENTS OF THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Members of
Arbor Commercial Mortgage, LLC

We have audited the accompanying consolidated statement of revenue and direct operating expenses of the Structured Finance Business (the "SF Business" or the "Company") of Arbor Commercial Mortgage, LLC and Subsidiaries ("ACM") for the year ended December 31, 2002. This financial statement is the responsibility of ACM's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The accompanying financial statement was prepared for the purpose of complying with the rules and regulations of the Securities and Exchange Commission for inclusion in the registration Statement on form S-11 of Arbor Realty Trust, Inc. and do not purport to be a complete presentation of the results of operations that would have resulted if the SF Business had operated as an unaffiliated independent company.

In our opinion the financial statement referred to above present fairly, in all material respects, the revenue and direct operating expenses of the SF Business of ACM for the year ended December 31, 2002, in conformity with accounting principles generally accepted in the United States of America.

/s/ Grant Thornton LLP

New York, New York
October 23, 2003

Report of Independent Registered Public Accounting Firm

To the Members of
Arbor Commercial Mortgage, LLC

We have audited the accompanying consolidated statement of revenue and direct operating expenses of the Structured Finance Business (the "SF Business") or (the "Company") of Arbor Commercial Mortgage, LLC and Subsidiaries ("ACM") for the six month period ended June 30, 2003. This financial statement is the responsibility of ACM's management. Our responsibility is to express an opinion on this financial statement based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provide a reasonable basis for our opinion.

The accompanying financial statement was prepared for the purpose of complying with the rules and regulations of the Securities and Exchange Commission and does not purport to be a complete presentation of the results of operations that would have resulted if the SF Business had operated as an unaffiliated independent company.

In our opinion, the financial statement referred to above presents fairly, in all material respects, the revenue and direct operating expenses of the SF Business of ACM for the six month period ended June 30, 2003, in conformity with U.S. generally accepted accounting principles.

/s/ ERNST & YOUNG
February 27, 2004
New York, New York

THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF REVENUE AND DIRECT OPERATING EXPENSES

	Six Months Ended June 30, 2003	Year Ended December 31, 2002
Revenue:		
Interest income	$ 7,688,465	$ 14,532,504
Other income	1,552,414	1,090,106
Total revenue	9,240,879	15,622,610
Direct operating expenses:		
Interest expense	3,468,275	6,586,640
Employee compensation and benefits	1,751,147	2,827,191
Selling and administrative	458,266	910,924
Provision for loan losses	60,000	3,315,000
Total direct operating expenses	5,737,688	13,639,755
Revenue in excess of direct operating expenses before gain on sale of loans and real estate and income from equity affiliates	3,503,191	1,982,855
Gain on sale of loans and real estate	1,024,268	7,470,999
Income from equity affiliates	–	632,350
Revenue, gain on sale of loans and real estate and income from equity affiliates in excess of direct operating expenses	$ 4,527,459	$ 10,086,204

See notes to consolidated financial statements.

THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2002, and for the Six Months Ended June 30, 2003

Note 1 — Description of Business and Basis of Presentation

On July 1, 2003 Arbor Commercial Mortgage, LLC (''ACM'') contributed a portfolio of structured finance investments and related debt to Arbor Realty Limited Partnership (''ARLP''), the operating partnership of Arbor Realty Trust, Inc. (''ART''). In addition, certain employees of ACM were transferred to ARLP. These assets, liabilities and employees represent a substantial portion of ACM's structured finance business (''SF Business'') or (the ''Company''). Through its SF Business, ACM invests in real estate related bridge and mezzanine loans, preferred equity and other real estate related assets.

The SF Business of Arbor Commercial Mortgage, LLC is not a legal entity and the assets and liabilities associated with the SF Business are components of a larger business. Accordingly, the information included in the accompanying consolidated financial statements has been obtained from ACM's consolidated historical accounting records. The SF Business never operated as a separate business entity or division of ACM but rather as an integrated part of ACM's consolidated business. Accordingly, the statements of revenue and direct operating expenses do not include charges from ACM for corporate general and administrative expense because ACM considered such items to be corporate expenses and did not allocate them to individual business units. Such expenses included costs for ACM's executive management, corporate facilities and overhead costs, corporate accounting and treasury functions, corporate legal matters and other similar costs.

The statements of revenue and direct operating expenses include the revenue and direct operating expenses that relate to the SF Business. Direct operating expenses include interest expense applicable to the funding costs of the SF Business loans and investments, salaries and related fringe benefit costs, provision for loan losses and other expenses directly associated with revenue-generating activities. Direct operating expenses also include allocations of certain expenses, such as telephone, office equipment rental and maintenance, office supplies and marketing, which were directly associated with the SF Business and were allocated based on headcount of the SF Business in relation to the total headcount of ACM. All of these allocations are based on assumptions that management believes are reasonable under the circumstances.

A statement of cash flows is not presented because the SF Business did not maintain a separate cash balance. Other than the debt required to fund the loans and investments made by the SF Business, its operating activities were funded by ACM. Because the SF Business never operated as a separate business or division of ACM, the accompanying consolidated financial statements are not intended to be a complete presentation of the historical financial position, results of operations and cash flows of the SF Business. The historical operating results of the SF Business may not be indicative of the future operating results of ART. The accompanying consolidated financial statements were prepared for inclusion in the Form S-11 of ART and do not purport to reflect the assets and liabilities or results of operations that would have resulted if the SF Business had operated as an unaffiliated independent company.

The consolidated financial statements include the financial statements of ACM, its wholly owned subsidiaries, and partnerships or other joint ventures in which ACM holds, directly or indirectly, over fifty percent of the outstanding voting shares. When partnership voting interest are not clearly indicated, ACM reviews other factors to determine control, such as whether ACM is entitled to over 50% of the profits and losses of the partnership. Additionally, for investments in limited partnerships, ACM reviews the rights and obligations of the general partner and the limited partners to determine if in substance the general partner controls such entity. These rights and obligations include such items as whether the limited partner has the right to replace the general partner, approve the sale or refinancing of the partnership assets or approve the acquisition of additional significant partnership assets. In instances where AMC has a majority voting interest but minority partners have significant participation, such as the right to establish operating and

THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2002, and for the Six Months Ended June 30, 2003

Note 1 — Description of Business and Basis of Presentation (continued)

capital decisions of the entity, ACM does not consolidate this entity. Based on this criteria, investments in partnerships or joint ventures that ACM does not control are accounted for under the equity method.

Note 2 — Summary of Significant Accounting Policies

Use of Estimates

The preparation of consolidated financial statements in conformity with accounting principals generally accepted in the United States of America requires management to make estimates and assumptions in determining the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Real Estate Owned

Real estate owned represents commercial real estate property acquired through foreclosure or deed in lieu of foreclosure that the SF Business owns and operates. Such assets are classified as held for sale and not depreciated. They are carried at the lower of cost or fair value less cost to sell. The Company reviews its real estate assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable.

Loans and Investments

Loans held for investment are intended to be held to maturity and, accordingly, are carried at cost, net of unamortized loan origination costs and fees, unless such loan or investment is deemed to be impaired.

The SF Business invests in preferred equity interests that allow the SF Business to participate in a percentage of the underlying property's cash flows from operations and proceeds from a sale or refinancing. At the inception of each such investment, management must determine whether such investment should be accounted for as a loan, joint venture or as real estate. To date, management has determined that all such investments are properly accounted for and reported as loans.

Specific valuation allowances are established for impaired loans based on the fair value of collateral on an individual loan basis. The fair value of the collateral is determined by an evaluation of operating cash flow from the property during the projected holding period, and estimated sales value computed by applying an expected capitalization rate to the stabilized net operating income of the specific property, less selling costs, discounted at market discount rates. If upon completion of the valuation, the fair value of the underlying collateral securing the impaired loan is less than the net carrying value of the loan, an allowance is created with a corresponding charge to the provision for loan losses. The allowance for each loan is maintained at a level believed adequate by management to absorb probable losses.

Revenue Recognition

The revenue recognition policies of the SF Business are as follows:

Interest income — Interest income is recognized on the accrual basis as it is earned. In most instances, the borrower pays an origination fee, an additional amount of interest at the time the loan is closed, and deferred interest upon maturity of the loan. This additional income, as well as any direct loan origination

costs incurred, is deferred and recognized over the life of the related loan as a yield adjustment. Income recognition is suspended for loans when in the opinion of management a full recovery of income and principal becomes doubtful. Income recognition is resumed when the loan becomes contractually current and performance is demonstrated to be resumed Several of the loans provide for accrual of interest at specified rates, which differ from current payment terms. Interest is recognized on such loans at the accrual rate subject to management's determination that accrued interest and outstanding principal are ultimately collectible, based on the underlying collateral and operations of the borrower. If management cannot make this determination regarding collectibility, interest income is recognized only upon actual receipt.

THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2002, and for the Six Months Ended June 30, 2003

Note 2 — Summary of Significant Accounting Policies (continued)

Other income — Other income includes several types of income which are recorded upon receipt. Certain of the Company's loans and investments provide for additional payments based on the borrower's operating cash flow, appreciation of the underlying collateral, payments calculated based on the timing of when the loan pays off and changes in interest rates. Such amounts are not readily determinable and are recorded as other income upon receipt.

Gain on Sale of Loans and Real Estate

For the sale of loans and real estate, recognition occurs when all the incidence of ownership passes to the buyer.

Income from Equity Affiliates

The SF Business has several joint ventures that were formed to lend to, acquire, develop and/or sell real estate assets. Such investments are recorded under the equity method. The Company records its share of the net income from the underlying properties. The gain or loss on disposition of a joint venture interest is recorded as gain on sale of loans and real estate.

Income Taxes

No provision or benefit for income taxes has been provided in the accompanying consolidated financial statements due to the fact that the SF Business was not operated as a stand-alone unit and no allocation of ACM's income tax provision/benefit has been made to the SF Business. ACM is a limited liability company (which is taxed as a partnership), and accordingly, the taxable income or loss of ACM is included in the federal and state income tax returns of ACM's individual members.

Note 3 — Selected Cash Flow Information

A statement of cash flows is not presented because the SF Business did not maintain a separate cash balance. Other than the debt required to fund the loans and investments of the SF Business, operating activities were funded by ACM. Selected cash flow from investing and financing activities is presented below.

	June 30, 2003	December 31, 2002
Cash flows from investing activities:		
Loans and investments originated	$ (117,176,849)	$ (116,810,564)
Payoffs and paydowns of loans and investments	76,106,055	105,608,865
Cash flows from financing activities:		
Proceeds from notes payable and repurchase agreements	93,228,860	86,853,319
Payoffs and paydowns of notes payable and repurchase agreements	(64,019,933)	77,426,577

THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2002, and for the Six Months Ended June 30, 2003

Note 4 — Loans and Investments

A bridge loan was foreclosed and reclassified as real estate owned in 2002. Prior to foreclosure, the Company in 2002 recorded a provision for loan losses of $3,075,000 to reflect this asset at its estimated fair value, excluding an estimated $300,000 of foreclosure cost. This amount was charged-off when the loan was reclassified as real estate owned.

A mezzanine loan was deemed to be impaired in 2002 and a $240,000 provision for loan losses was recorded to reflect this loan at its estimated fair value in 2002 and $60,000 in the six months ended June 30, 2003. In accordance with the Company's policy for revenue recognition, income recognition has been suspended on this loan.

Note 5 — Business Acquisitions and Investment in Equity Affiliates

The Company had a 26% interest in a joint venture, which owns and operates a multi-family real estate property. In March of 2002, the Company sold its investment in the joint venture and recorded a gain of $6.8 million. The Company received net income from this joint venture of $588,600 prior to the sale in 2002.

The Company has several other joint ventures that were formed to acquire, develop and/or sell real estate assets which the Company does not control. The Company recorded net income from these joint ventures of $43,750 in 2002.

Note 6 — Commitments and Contingencies

Litigation

In the normal course of business, the Company is subject to various legal proceedings and claims, the resolution of which, in management's opinion, will not have a material adverse effect on the financial position or the results of operations of the Company.

Note 7 — Related Party Transactions

The Company has a 50% non-controlling interest in a joint venture, which was formed to acquire, develop and/or sell real estate assets. At December 31, 2002, the Company's investments in this joint venture were approximately $2.3 million. The Company accounts for this investment under the equity method. At December 31, 2002, the Company had a bridge loan outstanding to the joint venture, which is collateralized by a first lien position on a commercial real estate property. There is a limited guarantee on the loan of 50% by the chief executive officer of ACM and 50% by the key principal of the joint venture. In connection with the joint venture agreement the Company has agreed to provide the borrower with additional mezzanine financing. The loan will be funded in two equal installments. The funding will be drawn down as construction progresses. This additional financing is secured by a second mortgage lien on

THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2002, and for the Six Months Ended June 30, 2003

Note 7 — Related Party Transactions (continued)

the property. In addition, an interest and renovation reserve is in place to cover both the bridge and mezzanine loans. Interest income recorded from these loans was approximately $449,000 for the year ended December 31, 2002.

In June 2003, the Company invested approximately $818,000 in exchange for a 12.50% preferred interest in a joint venture, which owns and operates two commercial properties. The Company accounts for this investment under the equity method. In June 2003, the Company funded two mezzanine loans to this joint venture. Interest income recorded from these loans was approximately $8,000 for the period ended June 30, 2003.

Note 8 — Subsequent Events

In June 2003 ART, a real estate investment trust was formed to invest in structured finance assets, particularly real estate related bridge and mezzanine loans, preferred equity and, in limited cases, discounted mortgage notes and other real estate related assets. On July 1, 2003 in exchange for a commensurate equity ownership in ART's operating subsidiary ARLP, ACM contributed $213.1 million of structured finance assets and $169.2 million of borrowings supported by $43.9 million of equity. In addition, certain employees of ACM were transferred to ARLP. These assets, liabilities and employees represent the substantial portion of ACM's SF Business.

On July 1, 2003 ART completed a private placement of ART's units, each consisting of five shares of common stock and one warrant to purchase one share of common stock. Gross proceeds from the private financing combined with the concurrent equity contribution by ACM totaled approximately $164 million in equity capital. ART will be externally managed and advised by ACM and will pay ACM a management fee in accordance with the management agreement. ACM will also originate, underwrite and service all structured finance assets on behalf of ARLP.

Note 9 — Unaudited Pro Forma Consolidated Financial Information

In June, 2003 ACM formed ART, a newly organized real estate investment trust to operate and expand its SF Business. On July 1, 2003 ART completed a private placement of ART's units, each consisting of five shares of ART's common stock and one warrant to purchase one share of common stock. Gross proceeds from the private financing totaled $120.2 million. In exchange for a commensurate equity ownership in ART's operating subsidiary, ARLP, ACM contributed $213.1 million of structured finance assets and $169.2 million of borrowings supported by $43.9 million of equity. These assets and liabilities were contributed at book value, which approximates market value, and represent 88% of the assets and 98% of the liabilities of the SF Business as of June 30, 2003. In addition, certain employees of ACM were transferred to ARLP.

ART will be externally managed and advised by ACM and will pay ACM a management fee in accordance with the terms of the management agreement among ACM, ART and ARLP. ACM will also source originations, provide underwriting services and service all structured finance assets on behalf of ARLP. As a result, the operating expenses as presented in the historical consolidated financial statements would have been affected had ART been formed at an earlier time. Employee compensation and benefits expense would have decreased by $895,811 and $1,518,890 for the six months ended June 30, 2003 and year ended December 31, 2002, respectively, because these costs would have been borne by ACM under terms of the management agreement. Similarly, selling and administrative expense would have decreased

THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2002, and for the Six Months Ended June 30, 2003

Note 9 — Unaudited Pro Forma Consolidated Financial Information (continued)

by $65,752 and $127,753 for the six months ended June 30, 2003 and year ended December 31, 2002, respectively.

In accordance with the terms of the management agreement, ACM will receive a management fee, composed of a base management fee and incentive compensation. The annual base management fee is payable monthly in cash as a percentage of ARLP's equity and equal to 0.75% per annum of the equity up to $400 million, 0.625% per annum of the equity from $400 million to $800 million and 0.50% per annum of the equity in excess of $800 million. For purposes of calculating the base management fee, equity equals the month end value computed in accordance with generally accepted accounting principles of (1) total partners' equity in ARLP, plus or minus (2) any unrealized gains, losses or other items that do not affect realized net income.

ART will also pay ACM incentive compensation each fiscal quarter, calculated as (1) 25% of the amount by which (a) ARLP's funds from operations per unit of partnership interest in ARLP, adjusted for certain gains and losses, exceeds (b) the product of (x) 9.5% per annum or the 10 year Treasury Rate plus 3.5%, whichever is greater, and (y) the weighted average of book value of the net assets contributed by ACM to ARLP per ARLP partnership unit, the offering price per share of ART's common equity in the private offering on July 1, 2003 and subsequent offerings and the issue price per ARLP partnership unit for subsequent contributions to ARLP, multiplied by (2) the weighted average of Arbor Realty Limited Partnership's outstanding partnership units. At least 25% of this incentive compensation is paid to ACM in shares of ART's common stock, subject to ownership limitations in ART's charter. ART has also agreed to share with ACM a portion of the origination fees that it receives on loans it originates through ACM.

The incentive compensation will be measured annually in arrears; provided, however, ACM shall receive quarterly installments thereof in advance. The quarterly installments will be calculated based on the results for the period of twelve months ending on the last day of the fiscal quarter with respect to which such installment is payable. Each quarterly installment payment will be deemed to be an advance of a portion of the incentive fee payable for the year. In the event the calculated incentive compensation for the full year is an amount less that the total of the installment payments made to ACM for the year, ACM will refund to ART the amount of such overpayment in cash. In such case, ART would record a negative incentive fee expense in the quarter when such overpayment is determined. The incentive compensation will be accrued as it is earned.

This pro forma information does not reflect the results of the private financing. However, gross proceeds from the private financing totaled $120.2 million, which combined with ACM's equity contribution of $43.9 million, resulted in total contributed capital of $164.1 million. Offering expenses of $10.1 million were paid by ART, resulting in stockholders equity and minority interest of ART of $154.0 million at its inception.

The pro forma consolidated financial information is limited to adjustments that are directly attributable to the private placement, expected to have a continuing impact on ART and are factually supportable. These adjustments are based on the assumption that certain compensation and benefits expenses and certain selling and administrative expenses incurred by the SF Business would not have been incurred if ART had been in operation during the periods presented. The pro forma financial results do not include what the impact would have been had the gross proceeds from the private financing been available to the Company during the entire period. Had these proceeds been available to the Company during the entire period, there would have been an impact on certain revenues and expenses, including the management fees payable pursuant to the management agreement. The management fees are calculated based on such factors as funds

THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2002, and for the Six Months Ended June 30, 2003

Note 9 — Unaudited Pro Forma Consolidated Financial Information (continued)

from operations and the equity of ARLP, each as defined in the management agreement. Such amounts represent speculative and forward-looking information that is not factually supportable.

The financial statements of the SF Business include the results of operations of the structured finance business segment of ACM and are not limited to the results of the structured finance assets that were transferred to ART. Accordingly, the results of certain investments in equity affiliates that were not transferred to ART have been included in the financial statements of the SF Business because they were included in the structured finance business segment even though the operating results from these equity affiliates have not been material to the structured finance business segment as a whole. In addition, ACM retained certain transactions in its structured finance portfolio with a net book value of approximately $27.8 million, primarily because they were not deemed to be suitable investments for ART. Had these retained assets been excluded from the financial statements of the SF Business, additional adjustments to the expense base would have been necessary to estimate what expenses would have been had these assets not been in the portfolio. Such adjustments would have been speculative. Lastly, operating results for assets that matured before the contribution of structured finance assets to ART, but were in the portfolio of assets of the SF Business during the reporting period are also included in these statements.

ITEM 9. ***CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE***

Not applicable.

ITEM 9A. ***CONTROLS AND PROCEDURES***

Disclosure Controls and Procedures. Our management, with the participation of our chief executive officer and chief financial officer, has evaluated the effectiveness of our "disclosure controls and procedures" (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based upon such evaluation, our chief executive officer and chief financial officer have concluded that, as of the end of such period, our disclosure controls and procedures are effective in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by us in the reports we file or submit under the Exchange Act and are effective in ensuring that information required to be disclosed by us in the reports that we file or submit under the Exchange Act of 1934 is accumulated and communicated to our management, including our chief executive officer and chief financial officer, as appropriate to allow timely decisions regarding required disclosure.

Internal Controls Over Financial Reporting. There have not been any changes in our internal controls over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the fiscal year to which this report relates that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. ***OTHER INFORMATION***

Not applicable.

PART III

ITEM 10. *DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT*

The information regarding our directors and executive officers set forth under the captions "Board of Directors" and "Executive Officers" of the 2005 Proxy Statement is incorporated herein by reference.

The information regarding compliance with Section 16(a) of the Securities Exchange Act of 1934 set forth under the caption "Security Ownership of Certain Beneficial Owners and Management" in the 2005 Proxy Statement is incorporated herein by reference.

The information regarding our code of ethics for our chief executive and other senior financial officers under the caption "Senior Officer Code of Ethics and Code of Business Conduct and Ethics" in the 2005 Proxy Statement is incorporated herein by reference.

ITEM 11. *EXECUTIVE COMPENSATION*

The information contained in the section captioned "Executive Compensation" of the 2005 Proxy Statement is incorporated herein by reference.

ITEM 12. *SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT*

The information contained in the section captioned "Security Ownership of Certain Beneficial Owners & Management" of the 2005 Proxy Statement is incorporated herein by reference.

ITEM 13. *CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS*

The information contained in the section captioned "Certain Relationships and Related Transactions" of the 2005 Proxy Statement is incorporated herein by reference.

ITEM 14. *PRINCIPAL ACCOUNTANT FEES AND SERVICES*

The information regarding our independent accountant's fees and services in the sections captioned "Independent Accountants' Fees" and "Audit Committee Pre-Approval Policy" of the 2005 Proxy Statement is incorporated herein by reference.

PART IV

ITEM 15. *EXHIBITS AND FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K*

(a) and (c) Financial Statements and Schedules.

See the "Index to the Consolidated Financial Statements of Arbor Realty Trust, Inc. and Subsidiaries" and the "Index to the Consolidated Financial Statements of the Structured Finance Business of Arbor Commercial Mortgage, LLC and Subsidiaries," each included in Item 8 of this report.

(b) Exhibits.

See the Index to Exhibits on the following page.

INDEX TO EXHIBITS

Exhibit Number	Description of Exhibit
2.1	Contribution Agreement, dated July 1, 2003, by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC and Arbor Realty Limited Partnership*
2.2	Guaranty, dated July 1, 2003, made by Arbor Commercial Mortgage, LLC and certain wholly-owned subsidiaries of Arbor Commercial Mortgage, LLC in favor of Arbor Realty Limited Partnership, ANMB Holdings, LLC and ANMB Holdings II, LLC*
2.3	Indemnity Agreement, dated July 1, 2003 by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC, Ivan Kaufman and Arbor Realty Limited Partnership*
3.1	Articles of Incorporation of the Registrant*
3.2	Articles Supplementary of the Registrant*
3.3	Bylaws of the Registrant*
4.1	Form certificate for common stock*
4.2	Form of certificate for Units issued on July 1, 2003*
4.3	Form of certificate for Warrants issued on July 1, 2003 (included as Exhibit A to Exhibit 4.4) *
4.4	Warrant Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and American Stock Transfer & Trust Company*
4.5	Registration Rights Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and JMP Securities, LLC*
10.1	Amended and Restated Management Agreement, dated January 19, 2005, by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC, Arbor Realty Limited Partnership and Arbor Realty SR, Inc.
10.2	Services Agreement, dated July 1, 2003, by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC and Arbor Realty Limited Partnership*
10.3	Non-Competition Agreement, dated July 1, 2003, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership and Ivan Kaufman*
10.4	Second Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated January 19, 2005, by and among Arbor Commercial Mortgage, LLC, Arbor Realty Limited Partnership, Arbor Realty LPOP, Inc. and Arbor Realty GPOP, Inc.
10.5	Warrant Agreement, dated July 1, 2003, between Arbor Realty Limited Partnership, Arbor Realty Trust, Inc. and Arbor Commercial Mortgage LLC*
10.6	Registration Rights Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and Arbor Commercial Mortgage, LLC*
10.7	Pairing Agreement, dated July 1, 2003, by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC, Arbor Realty Limited Partnership, Arbor Realty LPOP, Inc., and Arbor Realty GPOP, Inc. *
10.8	2003 Omnibus Stock Incentive Plan, (as amended and restated on July 29, 2004)*
10.9	Form of Restricted Stock Agreement*
10.10	Benefits Participation Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and Arbor Management, LLC*
10.11	Form of Indemnification Agreement*
10.12	Structured Facility Warehousing Credit and Security Agreement, dated July 1, 2003, between Arbor Realty Limited Partnership and Residential Funding Corporation*
10.13	Amended and Restated Loan Purchase and Repurchase Agreement, dated July 12, 2004, by and among Arbor Realty Funding LLC, as seller, Wachovia Bank, National Association, as purchaser, and Arbor Realty Trust, Inc., as guarantor.**
10.14	Master Repurchase Agreement, dated as of November 18, 2002, by and between Nomura Credit and Capital, Inc. and Arbor Commercial Mortgage, LLC*
10.15	Assignment and Assumption Agreement, dated as of July 1, 2003, by and between Arbor Commercial Mortgage, LLC and Arbor Realty Limited Partnership.*
10.16	Subscription Agreement between Arbor Realty Trust, Inc. and Kojaian Ventures, L.L.C.*
10.17	Revolving Credit Facility Agreement, dated as of December 7, 2004, by and between Arbor

Exhibit Number	Description of Exhibit
	Realty Trust, Inc., Arbor Realty Limited Partnership and Watershed Administrative LLC and the lenders named therein.
10.18	Indenture, dated January 19, 2005, by and between Arbor Realty Mortgage Securities Series 2004-1, Ltd., Arbor Realty Mortgage Securities Series 2004-1 LLC, Arbor Realty SR, Inc. and Lasalle Bank National Association.
10.19	Note Purchase Agreement, dated January 19, 2005, by and between Arbor Realty Mortgage Securities Series 2004-1, Ltd., Arbor Realty Mortgage Securities Series 2004-1 LLC and Wachovia Capital Markets, LLC.
21.1	Subsidiaries of Arbor Realty Trust, Inc.
23.1	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.
23.2	Consent of Grant Thornton LLP, Independent Registered Public Accounting Firm.
31.1	Certification of CEO pursuant to 18 U.S.C. 1350, Section 302 Sarbanes-Oxley Act of 2002.
31.2	Certification of CFO pursuant to 18 U.S.C. 1350, Section 302 Sarbanes-Oxley Act of 2002.
32.1	Certification of CEO pursuant to 18 U.S.C. 1350, Section 906 Sarbanes-Oxley Act of 2002.
32.2	Certification of CFO pursuant to 18 U.S.C. 1350, Section 906 Sarbanes-Oxley Act of 2002.

* Incorporated by reference to the registrant's Registration Statement on Form S-11 (Registration No. 333-110472), which was originally filed with the Securities and Exchange Commission on November 13, 2003.

** Filed as Exhibit 10.8 to the Form 10-Q of the registrant for the quarter ended June 30, 2004.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized on March 31, 2005.

ARBOR REALTY TRUST, INC.

By: /s/ Ivan Kaufman
Name: Ivan Kaufman
Title: Chief Executive Officer

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, this report has been signed below on behalf of the Registrant in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Ivan Kaufman Ivan Kaufman	Chairman of the Board of Directors, Chief Executive Officer and President (Principal Executive Officer)	March 31, 2005
/s/ Frederick C. Herbst Frederick C. Herbst	Chief Financial Officer (Principal Financial Officer)	March 31, 2005
/s/ Jonathan A. Bernstein Jonathan A. Bernstein	Director	March 31, 2005
/s/ William Helmreich William Helmreich	Director	March 31, 2005
/s/ C. Michael Kojaian C. Michael Kojaian	Director	March 31, 2005
/s/ Melvin F. Lazar Melvin F. Lazar	Director	March 31, 2005
/s/ Walter K. Horn Walter K. Horn	Director	March 31, 2005
/s/ Joseph Martello Joseph Martello	Director	March 31, 2005

EXHIBIT 10.1

AMENDED AND RESTATED
MANAGEMENT AND ADVISORY AGREEMENT

THIS AMENDED AND RESTATED MANAGEMENT AND ADVISORY AGREEMENT is made as January 18, 2005 (the "Agreement") by and among ARBOR REALTY TRUST, INC., a Maryland corporation ("Parent REIT"), ARBOR REALTY LIMITED PARTNERSHIP, a Delaware limited partnership (the "Operating Partnership"), ARBOR REALTY SR, INC., a Maryland corporation ("Sub-REIT" and together with the Parent REIT and the Operating Partnership, the "Company"), and ARBOR COMMERCIAL MORTGAGE, LLC, a New York limited liability company (together with its permitted assigns, "Manager").

WITNESSETH:

WHEREAS, Parent REIT, Manager and the Operating Partnership have entered into that certain Management and Advisory Agreement, dated as of July 1, 2003 (the "Original Management Agreement").

WHEREAS, Parent REIT currently conducts its operations and makes substantially all of its investments through the Operating Partnership;

WHEREAS, Parent REIT intends to cause the Operating Partnership to contribute substantially all of the assets directly or indirectly held by the Operating Partnership to Sub-REIT in exchange for shares of common stock of Sub-REIT;

WHEREAS, a subsidiary of the Sub-REIT has been formed in order to issue debt and equity securities collateralized by certain of the assets to be contributed by the Operating Partnership to Sub-REIT (the "CDO Financing");

WHEREAS, in order to maintain Parent REIT's qualification as a REIT (as defined below) upon consummation of the CDO Financing, Parent REIT intends to make its investments primarily through the Sub-REIT and its subsidiaries and cause Sub-REIT to qualify as a REIT for federal income tax purposes; and

WHEREAS, Parent REIT, Manager and the Operating Partnership desire to amend and restate the Original Management Agreement in its entirety on the terms and conditions hereinafter set forth in order to add Sub-REIT as a party.

NOW THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

1. Definitions. The following terms have the meanings assigned them:

(a) "Agreement" has the meaning assigned in the first paragraph.

(b) "Board of Directors" means the Board of Directors of Parent REIT.

(c) "Change of Control" means a change in the direct or indirect (i) beneficial ownership of more than fifty percent (50%) of the combined voting power (of any Person together with any affiliates of such Person or Persons otherwise associated or acting in concert with such Person) of Manager's then outstanding equity interests, or (ii) power to direct or control the management policies of Manager, whether through the ownership of beneficial equity interests, common directors or officers, by contract or otherwise. Change of Control shall not include public offerings of the capital stock of Manager or any assignment of this Agreement by Manager as permitted hereby and in accordance with the terms hereof.

(d) "Code" means the Internal Revenue Code of 1986, as amended.

(e) "Common Share" means a share of capital stock of Parent REIT now or hereafter authorized and issued as common voting stock of Parent REIT.

(f) "Company" has the meaning assigned in the first paragraph.

(g) "Company Account" has the meaning assigned in Section 5.

(h) "Company Target Investments" means multifamily and commercial mortgage loans and customized financing transactions, including bridge loans, mezzanine loans, preferred equity investments, note acquisitions and participation interests in owners of real properties.

(i) "Company Termination Notice" has the meaning assigned in Section 13(b).

(j) "Deferred Interest" has the meaning assigned in Section 8(c).

(k) "Effective Termination Date" has the meaning assigned in Section 13(b).

(l) "Excess Funds" has the meaning assigned in Section 2(f).

(m) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(n) "Expenses" has the meaning assigned in Section 9.

(o) "Funds from Operations" has the meaning assigned by the National Association of Real Estate Investment Trusts and means net income (computed in accordance with GAAP) excluding gains (or losses) from debt restructuring and sales of property, plus depreciation and amortization on real estate assets, and after adjustments for unconsolidated partnerships and joint ventures.

(p) "GAAP" means generally accepted accounting principles in effect in the U.S. on the date such principles are applied, consistently applied.

(q) "Governing Instruments" means, with respect to any Person, the articles of incorporation and bylaws in the case of a corporation, the certificate of limited partnership (if applicable) and partnership agreement in the case of a general or limited partnership or the articles of formation and operating agreement in the case of a limited liability company.

(r) "Guidelines" has the meaning assigned in Section 2(b)(i).

(s) "Incentive Fee" has the meaning assigned in Section 8(d)(i).

(t) "Incentive Fee Payment" has the meaning assigned in Section 8(d)(ii).

(u) "Independent Directors" means the members of the Board of Directors who are not officers or employees of Manager or the Company and who are otherwise "independent" in accordance with Parent REIT's Governing Instruments.

(v) "Invested Equity" has the meaning assigned in Section 8(a)(i).

(w) "Investment Company Act" means the Investment Company Act of 1940, as amended.

(x) "Investments" means the investments of the Company.

(y) "Management Fee" has the meaning assigned in Section 8(a)(i).

(z) "Management Fee Payment" has the meaning assigned in Section 8(a)(ii).

(aa) "Manager" has the meaning assigned in the first paragraph.

(bb) "Manager Indemnified Party" has the meaning assigned in Section 11(b).

(cc) "Manager Parties" has the meaning assigned in Section 3(b).

(dd) "Manager Target Investments" has the meaning assigned in Section 3(c).

(ee) "Manager Termination Notice" has the meaning assigned in Section 13(d).

(ff) "Notice of Proposal to Negotiate" has the meaning assigned in Section 13(c).

(gg) "Non-Competition Agreement" means that certain Non-Competition Agreement, dated as of July 1, 2003, among Parent REIT, the Operating Partnership and Principal.

(hh) "OP Unit" means a unit of partnership interest in the Operating Partnership now or hereafter authorized and issued as a unit of partnership interest in the Operating Partnership.

(ii) "Operating Partnership" has the meaning assigned in the first paragraph.

(jj) "Parent REIT" has the meaning assigned in the first paragraph.

(kk) "Person" means any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

(ll) "Principal" means Ivan Kaufman, an individual.

(mm) "REIT" means a corporation or trust which qualifies as a real estate investment trust in accordance with Sections 856 through 860 of the Code.

(nn) "Services Agreement" means that certain Services Agreement, dated as of July 1, 2003, among Parent REIT, the Operating Partnership and Manager.

(oo) "Subsidiary" means any entity of which Parent REIT directly or indirectly owns the majority of the outstanding voting equity interests, any partnership, the general partner of which is Parent REIT or any subsidiary of Parent REIT and any limited liability company, the managing member of which is Parent REIT or any subsidiary of Parent REIT.

(pp) "Ten Year U.S. Treasury Rate" means the arithmetic average of the weekly average yield to maturity for actively traded current coupon U.S. Treasury fixed interest rate securities (adjusted to constant maturities of ten (10) years) published by the Federal Reserve Board during a fiscal year, or, if such rate is not published by the Federal Reserve Board, any Federal Reserve Bank or agency or department of the federal government selected by the Company. If the Company determines in good faith that the Ten Year U.S. Treasury Rate cannot be calculated as provided above, then the rate will be the arithmetic average of the per annum average yields to maturities, based upon closing asked prices on each business day during a quarter, for each actively traded marketable U.S. Treasury fixed interest rate security with a final maturity date not less than eight (8) and not more than twelve (12) years from the date of the closing asked prices as chosen and quoted for each business day in each such quarter in New York City by at least three (3) recognized dealers in U.S. government securities selected by the Company.

(qq) "U.S." means United States of America.

2. Appointment and Duties of Manager.

(a) Appointment. The Company hereby appoints Manager to manage the Investments of the Company subject to the further terms and conditions set forth in this Agreement, and Manager hereby agrees to use its commercially reasonable efforts to perform each of the duties set forth herein. The appointment of Manager shall be exclusive to Manager except to the extent that Manager otherwise agrees, in its sole and absolute discretion, and except to the extent that Manager elects pursuant to the terms of this Agreement to cause the duties of Manager hereunder to be provided by third parties.

(b) Duties. Manager, in its capacity as manager of the Investments and the day-to-day operations of the Company, at all times will be subject to the supervision of the

Board of Directors and the board of directors of the Sub-REIT and will have only such functions and authority as the Company may delegate to it, including, without limitation, the functions and authority identified herein and delegated to Manager hereby. Manager will be responsible for the day-to-day operations of the Company and will perform (or cause to be performed) such services and activities relating to the Investments and operations of the Company as may be appropriate, including, without limitation:

(i) serving as the Company's consultant with respect to the periodic review of the investment criteria and parameters for Investments, borrowings and operations, any modifications to which shall be approved by a majority of the Independent Directors (such policy guidelines as are in effect on the date hereof, as the same may be modified with such approval, the "Guidelines"), and other policies for approval by the Board of Directors;

(ii) investigation, analysis and selection of investment opportunities;

(iii) with respect to prospective investments by the Company and dispositions of Investments, conducting negotiations with real estate brokers, sellers and purchasers, and their respective agents and representatives, investment bankers, mortgage bankers and owners of privately and publicly held real estate companies;

(iv) coordinating and managing operations of any joint venture or co-investment interests held by the Company and conducting all matters with the joint venture or co-investment partners;

(v) providing executive and administrative personnel, office space and office services required in rendering services to the Company;

(vi) administering the day to day operations of the Company and performing and supervising the performance of such other administrative functions necessary in the management of the Company as may be agreed upon by Manager and the Board of Directors, including, without limitation, collection of interest, fee and other income, payment of the Company's debts and obligations, payment of dividends or distributions to the holders of the Common Shares and maintenance of appropriate back-office infrastructure to perform such administrative functions;

(vii) communicating on behalf of the Company with the holders of any equity or debt securities of the Parent REIT or its Subsidiaries as required to satisfy the reporting and other requirements of any governmental entities or agencies or trading markets and to maintain effective relations with such holders;

(viii) counseling the Company in connection with policy decisions to be made by the Board of Directors or the board of directors or similar governing bodies of the Subsidiaries;

(ix) evaluating and recommending to the Board of Directors hedging strategies and, as the Board of Directors shall request or Manager shall deem appropriate, engaging in hedging activities on behalf of the Company, in a manner consistent with

such strategies, as so modified from time to time, Parent REIT's status as a REIT, Sub-REIT's status as a REIT and the Guidelines;

(x) counseling Parent REIT and Sub-REIT regarding the maintenance of their status as REITs and monitoring compliance with the various REIT qualification tests and other rules set out in the Code and the Treasury Regulations promulgated thereunder;

(xi) counseling the Company regarding the maintenance of its exemption from the Investment Company Act and monitoring compliance with the requirements for maintaining such exemption;

(xii) assisting the Company in developing criteria for debt and equity financing that is specifically tailored to the Company's investment objectives, making available to the Company its knowledge and experience with respect to Company Target Investments and other real estate and real estate-related transactions and serving as the originating lender of such investments comprising Company Target Investments;

(xiii) representing and making recommendations to the Company in connection with its investment in a diversified portfolio of Company Target Investments and other real estate transactions with select borrowers and principals;

(xiv) investing and re-investing any moneys and securities of the Company (including investing in short-term investments pending investment in Investments, payment of fees, costs and expenses or payments of dividends or distributions to stockholders and partners of the Company) and advising the Company with respect to its capital structure and capital raising;

(xv) causing the Company to retain qualified accountants and legal counsel, as applicable, to assist in developing appropriate accounting and compliance procedures and testing systems with respect to financial reporting obligations, as applicable, and Parent REIT and Sub-REIT's compliance with the provisions of the Code applicable to REITs and the Treasury Regulations promulgated thereunder and to conduct quarterly compliance reviews with respect thereto;

(xvi) causing the Company to qualify to do business in all applicable jurisdictions and to obtain and maintain all appropriate licenses;

(xvii) assisting the Company in complying with all regulatory requirements applicable to the Company in respect of its business activities, including preparing or causing to be prepared all financial statements required under applicable regulations and contractual undertakings and all reports and documents required under the Exchange Act;

(xviii) taking all necessary actions to enable the Company to make required tax filings and reports, including, with respect to Parent REIT and Sub-REIT, soliciting stockholders for required information to the extent provided by the provisions of the Code applicable to REITs and the Treasury Regulations promulgated thereunder;

(xix) handling and resolving all claims, disputes or controversies (including all litigation, arbitration, settlement or other proceedings or negotiations) in which the Company may be involved or to which the Company may be subject arising out of the Company's day-to-day operations, subject to such limitations or parameters as may be imposed from time to time by the Board of Directors;

(xx) using commercially reasonable efforts to cause expenses incurred by or on behalf of the Company to be reasonable, customary and within any budgeted parameters or expense guidelines set by the Board of Directors from time to time;

(xxi) using commercially reasonable efforts to cause the Company to comply with all applicable laws; and

(xxii) performing such other services as may be required from time to time for management and other activities relating to the Investments of the Company as the Board of Directors shall reasonably request or Manager shall deem appropriate under particular circumstances.

(c) Subcontracts. Manager may enter into agreements with other parties, including its affiliates, for the purpose of engaging one or more property and/or asset managers for and on behalf, and at the sole cost and expense, of the Company to provide property management, asset management, leasing, development and/or similar services to the Company with respect to the Investments, pursuant to property management agreement(s) and/or asset management agreement(s) with terms which are then customary for agreements regarding the management of assets similar in type, quality and value to the assets of the Company; provided, that any such agreements entered into with affiliates of Manager shall be (i) on terms no more favorable to such affiliate then would be obtained from a third party on an arm's-length basis, and (ii) to the extent the same do not fall within the provisions of the Guidelines, approved by a majority of the Independent Directors.

(d) Service Providers. Manager may retain for and on behalf of the Company such services of accountants, legal counsel, appraisers, insurers, brokers, transfer agents, registrars, developers, investment banks, financial advisors, banks, other lenders and other Persons, including Manager's affiliates, as Manager deems necessary or advisable in connection with the management and operations of the Company; provided, that any agreements entered into with affiliates of Manager to perform any such services shall be (i) on terms no more favorable to such affiliate then would be obtained from a third party on an arm's-length basis, and (ii) to the extent the same do not fall within the provisions of the Guidelines, approved by a majority of the Independent Directors. The Company shall pay all expenses, and reimburse Manager for Manager's expenses incurred on its behalf, in connection with any such services to the extent such expenses are reimbursable by the Company to Manager pursuant to Section 9.

(e) Reporting Requirements.

(i) As frequently as Manager may deem necessary or advisable, or at the direction of the Board of Directors, Manager shall prepare, or cause to be prepared, with respect to any Investment (i) at the Company's sole cost and expense, an appraisal

prepared by an independent real estate appraiser, (ii) reports and information on the Company's operations and Investment performance, and (iii) such other information reasonably requested by the Company. The Company shall pay all expenses, and reimburse Manager for Manager's expenses incurred on its behalf, in connection with the foregoing clauses (ii) and (iii) to the extent such expenses are reimbursable by the Company to Manager pursuant to Section 9.

(f) Manager shall prepare, or cause to be prepared, at the sole cost and expense of the Company, all reports, financial or otherwise, with respect to Parent REIT, the Operating Partnership, Sub-REIT and the other Subsidiaries reasonably required by the Board of Directors in order for Parent REIT, the Operating Partnership, Sub-REIT and the other Subsidiaries to comply with their Governing Instruments or any other materials required to be filed with any governmental entity or agency, and shall prepare, or cause to be prepared, all materials and data necessary to complete such reports and other materials including, without limitation, an annual audit of the Company's books of account by a nationally recognized independent accounting firm of good reputation.

(i) Manager shall prepare regular reports for the Board of Directors to enable the Board of Directors to review the Company's acquisitions, portfolio composition and characteristics, credit quality, performance and compliance with the Guidelines and policies approved by the Board of Directors.

(g) Excess Funds. Notwithstanding anything contained in this Agreement to the contrary, except to the extent that the payment of additional moneys is proven by the Company to have been required as a direct result of Manager's acts or omissions which result in the right of the Company to terminate this Agreement pursuant to Section 15 and except as expressly provided in Section 11(c), Manager shall not be required to expend money ("Excess Funds") in excess of that contained in any applicable Company Account or otherwise made available by the Company to be expended by Manager hereunder.

(h) Reliance by Manager. In performing its duties under this Section 2, Manager shall be entitled to rely reasonably on qualified experts and professionals (including, without limitation, accountants, legal counsel and other professional service providers) hired by Manager.

3. Dedication; Right of First Refusal; Exclusivity; Survival.

(a) Devotion of Time. Manager will provide a dedicated management team, including the Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer of Manager, to provide the management services to be provided by Manager to the Company hereunder, the members of which team shall devote such of their time to the management of the Company as the Independent Directors deem necessary and appropriate, commensurate with the level of activity of the Company from time to time. The Company shall have the benefit of Manager's best judgment and effort in rendering services and, in furtherance of the foregoing, Manager shall not undertake activities which, in its reasonable judgment, will substantially adversely affect the performance of its obligations under this Agreement.

(b) Additional Activities; Right of First Refusal. Except to the extent set forth in Section 3(a) and subject to the provisions of this Section 3(b), Manager and any of its affiliates, and any of the officers and employees of any of the foregoing (the "Manager Parties"), may engage in other businesses and render services of any kind to any other Person, including investment in, or advisory service to others investing in, Company Target Investments and other real estate and real estate-related transactions; provided, however, prior to any Manager Party engaging in transactions involving or rendering services relating to Company Target Investments other than on behalf of or to the Company, if (i) such transaction is consistent with the Company's investment objectives and within the Guidelines, and (ii) the parameters of the transaction are of a character which would not adversely affect the status of Parent REIT or Sub-REIT as REITs, Manager shall offer such investment opportunity to the Company by delivering to the Company's credit committee a written description thereof containing the economic and other material terms of the transaction. The credit committee shall have five (5) days to accept or reject the offer by a majority vote of the members of the credit committee. If the credit committee rejects the offer, Manager shall present the investment opportunity to the Independent Directors who shall have five (5) days to accept or reject the offer by majority vote. If the Independent Directors reject the offer and allow Manager to pursue the investment opportunity, any Manager Party may pursue the same provided the economic and other material terms thereof are not materially more beneficial to the applicable Manager Party than the economic and other material terms to the Company would have been under the transaction described in the original offer. If the economic and other material terms of the transaction to be engaged in by the applicable Manager Party are modified so that the benefits thereof to the applicable Manager Party are materially more beneficial to the applicable Manager Party than such terms to the Company would have been under the transaction described in the original offer, then Manager must offer the revised transaction opportunity to the Company and the provisions of this Section 3(b) shall apply to the revised offer as though it were an original offer. If the Company accepts, either by majority vote of the credit committee or the Independent Directors, an investment opportunity offered by Manager hereunder, the Company must reimburse Manager for its expenses relating thereto to the extent the same would be reimbursable by the Company to Manager pursuant to Section 9. For the avoidance of doubt, the Manager Parties may not pursue an investment opportunity offered to the Company hereunder without the Independent Directors' permission to do so as otherwise contemplated in this Section 3(b).

(c) Manager Exclusivity Rights. Manager and any other Manager Party may, and the Company agrees not to, pursue any investment opportunities consisting of multifamily and commercial mortgage loans that meet the underwriting and approval guidelines of (i) Fannie Mae, (ii) the Federal Housing Administration, and (iii) conduit commercial lending programs secured by first liens on real property (collectively, "Manager Target Investments").

(d) Officers, Employees, Etc. Manager, members, partners, officers, employees and agents of Manager or affiliates of Manager may serve as directors, officers, employees, agents, nominees or signatories for Parent REIT, the Operating Partnership, Sub-REIT or any other Subsidiary, to the extent permitted by their Governing Instruments, as may be amended from time to time, or by any resolutions duly adopted by the Board of Directors pursuant to Parent REIT's Governing Instruments. When executing documents or otherwise acting in such capacities for Parent REIT, the Operating Partnership, Sub-REIT or such other

Subsidiary, such Persons shall use their respective titles with respect to Parent REIT, the Operating Partnership, Sub-REIT or such other Subsidiary.

(e) Survival; Origination Period. For a period of one (1) year following the expiration or earlier termination of this Agreement, Manager shall continue (and have the exclusive right, if (i) the Company did not terminate this Agreement for cause, or (ii) Manager terminated this Agreement for cause, as cause for each party is determined in accordance with Section 15) to serve as the originating lender of investments comprising Company Target Investments as contemplated under Section 2(b)(xii), and the provisions and terms of Sections 3(b), 3(c) and 8(b) shall continue to apply. For the avoidance of doubt, Manager will not earn the Management Fee or the Incentive Fee during this one (1) year period.

4. Agency. Manager shall act as agent of the Company in making, acquiring, financing and disposing of Investments, disbursing and collecting the Company's funds, paying the debts and fulfilling the obligations of the Company, supervising the performance of professionals engaged by or on behalf of the Company and handling, prosecuting and settling any claims of or against the Company, the Board of Directors, holders of Parent REIT, the Operating Partnership, Sub-REIT or any other Subsidiary's securities or the Company's representatives or properties.

5. Bank Accounts. At the direction of the Board of Directors, Manager may establish and maintain one or more bank accounts in the name of Parent REIT, the Operating Partnership, Sub-REIT or any other Subsidiary (any such account, a "Company Account"), collect and deposit funds into any such Company Account or Company Accounts and disburse funds from any such Company Account or Company Accounts, under such terms and conditions as the Board of Directors may approve. Manager shall from time-to-time render appropriate accountings of such collections and payments to the Board of Directors and, upon request, to the auditors of Parent REIT.

6. Records; Confidentiality.

(a) Records. Manager shall maintain appropriate books of account and records relating to services performed under this Agreement, and such books of account and records shall be accessible for inspection by representatives of Parent REIT, the Operating Partnership, Sub-REIT or any other Subsidiary at any time during normal business hours upon one (1) business day's advance written notice.

(b) Confidentiality. Manager shall keep confidential any nonpublic information obtained in connection with the services rendered under this Agreement and shall not disclose any such information (or use the same except in furtherance of its duties under this Agreement), except: (i) with the prior written consent of the Board of Directors; (ii) to legal counsel, accountants and other professional advisors, so long as Manager informs such Persons of the confidential nature of such information and directs them to treat such information confidentially; (iii) to appraisers in the ordinary course of business; (iv) to governmental officials having jurisdiction over Manager; (v) as required by law or legal process to which Manager or any Person to whom disclosure is permitted hereunder is a party or in connection with Manager's assertion in any judicial or nonjudicial proceeding of any claim, counterclaim or defense against

the Company; or (vi) information which has previously become available through the actions of a Person other than Manager not resulting from Manager's violation of this Section 6(b). The provisions of this Section 6(b) shall survive the expiration or earlier termination of this Agreement.

7. Obligations of Manager; Restrictions.

(a) Asset Representations and Warranties. Manager shall require each seller or transferor of investment assets to the Company to make such representations and warranties regarding such assets as may, in the judgment of Manager, be necessary and appropriate. In addition, Manager shall take such other action as it deems necessary or appropriate with regard to the protection of the Investments.

(b) Restrictions. Manager shall refrain from any action that, in its sole judgment made in good faith, (i) is not in compliance with the Guidelines, (ii) would adversely affect the status of Parent REIT or Sub-REIT as REITs, or (iii) would violate any law, rule or regulation of any governmental body or agency having jurisdiction over Parent REIT, the Operating Partnership, Sub-REIT or any other Subsidiary or that would otherwise not be permitted by such Person's Governing Instruments. If Manager is ordered to take any such action by the Board of Directors, Manager shall promptly notify the Board of Directors of Manager's judgment that such action would adversely affect such status or violate any such law, rule or regulation or Governing Instruments. Notwithstanding the foregoing, Manager, its directors, officers, stockholders and employees shall not be liable to Parent REIT, the Operating Partnership, Sub-REIT or any other Subsidiary, the Board of Directors, Parent REIT or Sub-REIT's stockholders or the Operating Partnership's partners for any act or omission by Manager, its directors, officers, stockholders or employees except as provided in Section 11.

(c) Interested Party Transaction. Manager shall not (i) consummate any transaction which would involve the acquisition by the Company of property in which Manager or any of its affiliates has an ownership interest or the sale by the Company of property to Manager or any of its affiliates, or (ii) under circumstances where Manager is subject to an actual or potential conflict of interest because it manages both the Company and another Person (not an affiliate of the Company) with which the Company has a contractual relationship, take any action constituting the granting to such other Person of a waiver, forebearance or other relief, or the enforcement against such other Person of remedies, under or with respect to the applicable contract, unless such transaction or action, as the case may be and in each case, is approved by a majority of the Independent Directors.

(d) Joint Ventures. The Company shall not invest in joint ventures with Manager or any of its affiliates, unless such Investment is (i) made in accordance with the Guidelines, and (ii) approved in advance by a majority of the Independent Directors.

(e) Board of Director Review. The Board of Directors periodically reviews the Guidelines and the Company's portfolio of Investments. If a majority of the Independent Directors determine in their periodic review of transactions that a particular transaction does not comply with the Guidelines, then a majority of the Independent Directors will consider what corrective action, if any, can be taken.

(f) Insurance. Manager shall at all times during the term of this Agreement (including the initial term and any renewal term) maintain a tangible net worth equal to or greater than $1,000,000. In addition, Manager shall maintain "errors and omissions" insurance coverage and such other insurance coverage which is customarily carried by property, asset and investment managers performing functions similar to those of Manager under this Agreement with respect to assets similar to the Investments of the Company, in an amount which is comparable to that customarily maintained by other managers or servicers of similar assets.

8. Compensation.

(a) Management Fee.

(i) During the term of this Agreement, the Company shall pay Manager an annual management fee (the "Management Fee") based on Equity, as follows:

(A) 0.75% per annum of Equity up to $400,000,000 of Equity;

(B) in the event that Equity is greater than $400,000,000, the amount set forth in clause (A) above plus 0.625% per annum of Equity in excess of $400,000,000 and up to $800,000,000; and

(C) in the event that Equity is greater than $800,000,000, the amounts set forth in clauses (A) and (B) above plus 0.5% per annum of Equity in excess of $800,000,000.

"Equity" means, computed in accordance with GAAP as of the end of each calendar month, (1) the total equity of Parent REIT and all limited partners of the Operating Partnership, plus or minus, as applicable (2) any unrealized gains, losses or other items that do not affect realized net income of the Operating Partnership.

(ii) The Management Fee shall be payable in arrears in cash, in monthly installments, and Manager shall calculate each installment thereof (taking into account any reductions of the Management Fee pursuant to Section 8(c) hereof and Section 1(c) of the Services Agreement), and deliver such calculation to the Board of Directors, within fifteen (15) days following the last day of each calendar month. The Company shall pay Manager each installment of the Management Fee (each, a "Management Fee Payment") within twenty (20) days following the last day of the calendar month with respect to which such Management Fee Payment is payable.

(iii) The provisions of this Section 8(a) shall survive the expiration or earlier termination of this Agreement; provided, however, the Management Fee is subject to adjustment pursuant to and in accordance with the provisions of Section 13(c).

(b) Origination Fees. With respect to Manager's origination of Company Target Investments consisting of bridge and mezzanine loans pursuant to Section 2(b)(xii), the Company shall pay Manager an amount equal to the origination fee paid by the borrower thereunder, up to a maximum amount of one percent (1.0%) of the original principal amount of

such loan. Any remaining portion of the origination fee shall be retained by the Company. The provisions of this Section 8(b) shall survive the expiration or earlier termination of this Agreement and the one-year origination period described in Section 3(e).

(c) Waiver of Deferred Interest. Manager agrees to cooperate with the Company with respect to the characterization of exit fees payable by the applicable borrower under any of the Investments as interest or deferred interest pursuant to the terms of the applicable loan documents ("Deferred Interest") in such a manner that the characterization thereof as interest or deferred interest is reasonably likely to be accepted for U.S. federal income tax purposes. With respect to Investments other than the initial assets contributed by Manager to the Operating Partnership on July 1, 2003, Manager shall use commercially reasonable efforts to structure the applicable loan documents in a manner intended to achieve such characterization of exit fees. With respect to the Investments whose terms provide for the payment of Deferred Interest, the Company agrees to waive any or all Deferred Interest payable in accordance with the terms of the applicable loan documents or if such borrowers refinance their respective loans with permanent financing consisting of Manager Target Investments. To the extent that any such Deferred Interest is so waived, the Management Fee Payment due to Manager for the month in which such waiver is made shall be reduced by an amount equal to fifty percent (50%) of the amount of the Deferred Interest waived. In the event the aggregate of any such debits then available and unapplied against a Management Fee Payment exceeds the amount of the Management Fee Payment payable for any given calendar month, the excess unapplied debit shall be carried over and applied as a credit against the Management Fee Payment otherwise payable in the next succeeding calendar month or months until fully applied. In the event, upon the expiration or earlier termination of this Agreement, any excess debits remain to be applied against the Management Fee Payments, Manager shall pay to the Company the amount of such excess unapplied debits.

(d) Incentive Fee.

(i) In addition to the Management Fee, the Company shall pay Manager an annual incentive fee (the "Incentive Fee") on a cumulative, but not compounding, basis, equal to the product of (A) twenty-five percent (25%) of the dollar amount by which (1)(a) the Operating Partnership's Funds from Operations (before giving effect to payment of the Incentive Fee) per OP Unit (based on the weighted average number of OP Units outstanding, including OP Units issued to Parent REIT corresponding to outstanding Common Shares), plus (b) gains (or losses) from debt restructuring and sales of property per OP Unit (based on the weighted average number of OP Units outstanding, including OP Units issued to Parent REIT corresponding to outstanding Common Shares), exceed (2) the product of (a) the weighted average (based on Common Shares and OP Units) of (i) the book value per OP Unit of the net assets contributed by Manager to the Operating Partnership on July 1, 2003, (ii) $15, (iii) the offering price per Common Share (including Common Shares issued upon the exercise of warrants or options) at any secondary Common Share offerings by Parent REIT (adjusted for any prior capital dividends or distributions), and (iv) the issue price per OP Unit for subsequent contributions to the Operating Partnership, and (b) the greater of (i) nine and one-half percent (9.5%) per annum, and (ii) the Ten Year U.S. Treasury Rate plus three and one-half percent (3.5%) per annum, and (B) the weighted average number of OP

Units outstanding, including OP Units issued to Parent REIT corresponding to outstanding Common Shares.

(ii) The Incentive Fee shall be payable annually in arrears; provided, however, Manager shall receive quarterly installments thereof in advance, and Manager shall calculate each such installment based on the period of twelve (12) months ending on the last day of the fiscal quarter with respect to which such installment is payable (provided, for calendar year 2003, such calculations shall be based on the period of three (3) or six (6) months, as applicable, ending on the last day of the fiscal quarter with respect to which such installment is payable), and deliver such calculation to the Board of Directors, within forty-five (45) days following the last day of each fiscal quarter. The Company shall pay Manager each installment of the Incentive Fee (each, an "Incentive Fee Payment") within sixty (60) days following the last day of the fiscal quarter with respect to which such Incentive Fee Payment is payable.

(iii) Twenty-five percent (25%) of the Incentive Fee shall (subject to the remaining provisions of this Section 8(d)(iii)) be payable to Manager in Common Shares, and the remainder thereof shall be paid in cash; provided, Manager may (subject to the remaining provisions of this Section 8(d)(iii)) elect, by so indicating in the installment calculation delivered to Board of Directors, to receive more than twenty-five percent (25%) of the Incentive Fee in the form of Common Shares; provided, however, Manager may not receive payment of any portion of the Incentive Fee in the form of Common Shares, either automatically or by election, if such payment would result a violation of the Common Share ownership restrictions set forth in Parent REIT's Governing Instruments. For purposes of determining the Common Share equivalent of the amount of the Incentive Fee payable in Common Shares, (A) prior to the date the Common Shares are publicly traded, each Common Share shall have a value equal to the book value per Common Share on the last day of the fiscal quarter with respect to which the Incentive Fee is being paid, and (B) from and after the date the Common Shares are publicly traded, each Common Share shall have a value equal to the average of the closing price per Common Share of the last (20) trading days of the fiscal quarter with respect to which the Incentive Fee is being paid. Manager's receipt of Common Shares in accordance herewith shall be subject to all applicable securities exchange rules and securities laws (including, without limitation, prohibitions on insider trading).

(iv) Each Incentive Fee Payment shall be deemed to be an advance of a portion of the Incentive Fee payable for the subject fiscal year. Manager shall calculate the Incentive Fee payable during the immediately preceding fiscal year (or partial fiscal year, if applicable, following the expiration or earlier termination of this Agreement), and deliver such calculation to the Board of Directors, within seventy-five (75) days following (A) the last day of each fiscal year during the term, and (B) the date of expiration or earlier termination of this Agreement. If the amount of the Incentive Fee for such fiscal year (or partial fiscal year, if applicable) exceeds the sum of the Incentive Fee Payments made during such fiscal year (or partial fiscal year, if applicable), the Company shall pay Manager the amount of such underpayment, subject to the provisions of Section 8(d)(iii), within fifteen (15) days after the date Manager delivers such calculation to the Board of Directors. If the amount of the Incentive Fee for such fiscal

year (or partial fiscal year, if applicable) is less than the sum of the Incentive Fee Payments made during such fiscal year (or partial fiscal year, if applicable), Manager shall refund to the Company the amount of such overpayment, in cash, within fifteen (15) days after the date Manager delivers such calculation to the Board of Directors.

(v) The provisions of this Section 8(d) shall survive the expiration or earlier termination of this Agreement.

9. Expenses. The Company shall pay all of its expenses and shall reimburse Manager for documented expenses of Manager incurred on its behalf in accordance with this Agreement (collectively, the "Expenses"). Expenses include all costs and expenses which are expressly designated elsewhere in this Agreement as the Company's expenses, together with the following:

(a) expenses in connection with the issuance and transaction costs incident to the acquisition, disposition and financing of Investments;

(b) legal, accounting, tax and auditing fees and expenses of third parties for services rendered for the Company by providers retained by Manager;

(c) compensation, benefits and expenses of the Independent Directors and the Company's employees;

(d) travel and other out-of-pocket expenses incurred by the Company's employees in connection with the purchase, financing, refinancing, sale or other disposition of Investments;

(e) compensation and expenses of the Company's custodian and transfer agent, if any;

(f) the cost of liability insurance to indemnify (i) the Company's directors and officers, (ii) Manager and its directors and employees, and (iii) the underwriters in connection with any securities offerings of Parent REIT, the Operating Partnership, Sub-REIT or any other Subsidiary;

(g) any litigation, arbitration or similar costs incurred by Manager on behalf of the Company relating to or arising from any claim, dispute or action brought by or against the Company;

(h) costs associated with the establishment and maintenance of any credit facilities or other indebtedness of the Company (including, without limitation, commitment and origination fees, legal fees, closing and other costs) or any securities offerings of Parent REIT, the Operating Partnership, Sub-REIT or any other Subsidiary;

(i) costs incurred in raising capital for the Company, including fees and expenses of investment banks, financial advisors, banks and other lenders;

(j) key man life insurance costs for the Chief Executive Officer of Parent REIT;

(k) expenses relating to interest payments, dividends or distributions in cash or any other form made or caused to be made by the Board of Directors to or on account of the holders of securities or units of Parent REIT, the Operating Partnership, Sub-REIT or any other Subsidiary, including, without limitation, in connection with any dividend reinvestment plan;

(l) expenses relating to the production and distribution of communications to holders of securities or units of Parent REIT, the Operating Partnership, Sub-REIT or any other Subsidiary and other bookkeeping and clerical work necessary to maintain relations with the holders of such securities or units and to comply with the continuous reporting and other requirements of governmental entities or agencies, including, without limitation, (i) costs of preparing and filing required reports with the Securities and Exchange Commission, (ii) costs payable by Parent REIT to any transfer agent or registrar in connection with the listing and/or trading of the Common Shares on any exchange, (iii) fees payable by Parent REIT to any such exchange in connection with its listing, and (iv) costs of preparing, printing and mailing Parent REIT's annual report to its shareholders and proxy materials with respect to any meeting of Parent REIT's shareholders;

(m) other costs and expenses relating to the Company's business and investment operations, including, without limitation, the costs and expenses of acquiring, owning, protecting, maintaining, developing and disposing of Investments, including taxes, license fees and appraisal, reporting, audit and legal fees; and

(n) such other extraordinary or non-recurring expenses as are incurred by Manager in connection with the performance of its services hereunder, provided, to the extent the same are incurred with respect to matters that do not fall within the provisions of the Guidelines, such expenses are approved by a majority of the Independent Directors.

Without regard to the amount of compensation received under this Agreement by Manager, Manager shall bear the following expenses: (i) the wages and salaries of Manager's officers and employees; (ii) rent attributable to the offices occupied by Manager separate from the office maintained for the Company; and (iii) all other "overhead" expenses of Manager. The foregoing notwithstanding, Manager agrees that it shall provide, at its expense, office space to the Company's employees.

10. Expense Reports and Reimbursements. Manager shall prepare a statement documenting the Expenses incurred during, and deliver the same to the Company within forty-five (45) days following, each fiscal quarter. Expenses incurred by Manager on behalf of the Company shall be reimbursed by the Company within sixty (60) days following each fiscal quarter. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement and the one-year origination period described in Section 3(e).

11. Limits of Manager Responsibility; Indemnification.

(a) Limits of Manager Responsibility. Manager assumes no responsibility under this Agreement other than to render the services set forth herein in good faith and shall not

be responsible for any action of the Board of Directors in following or declining to follow any advice or recommendations of Manager, including as set forth in Section 7(b). Manager, its members, managers, officers and employees will not be liable to Parent REIT, Sub-REIT, the Operating Partnership, any other Subsidiary, the Board of Directors, Parent REIT or the Sub-REIT's stockholders, the Operating Partnership's partners or any other Subsidiary's stockholders or partners for any acts or omissions by Manager, its members, managers, officers or employees pursuant to or in accordance with this Agreement, except as otherwise expressly provided in Section 11(c).

(b) Indemnification by Company. Parent REIT, Sub-REIT and/or the Operating Partnership shall, to the full extent lawful, reimburse, indemnify and hold Manager, its members, managers, officers and employees and each other Person, if any, controlling Manager (each, a "Manager Indemnified Party") harmless for and from any and all expenses, losses, damages, liabilities, demands, charges and claims of any nature whatsoever (including reasonable attorneys' fees and disbursements), excluding any claims by Manager's employees relating to the terms and conditions of their employment by Manager, in respect of or arising out of (i) any acts or omissions of such Manager Indemnified Party made in good faith in the performance of Manager's duties hereunder and not constituting such Manager Indemnified Party's bad faith, willful misconduct, gross negligence or material breach (beyond any applicable cure period) of Manager's duties under this Agreement, and (ii) the Company's or any of its shareholder's, director's, officer's or employee's bad faith, willful misconduct, gross negligence or material breach (beyond any applicable cure period) of the Company's obligations under this Agreement.

(c) Indemnification by Manager. Manager shall, to the full extent lawful, reimburse, indemnify and hold each of Parent REIT, Sub-REIT and the Operating Partnership, its shareholders, directors, officers and employees and each other Person, if any, controlling Parent REIT, Sub-REIT or the Operating Partnership harmless for and from any and all expenses, losses, damages, liabilities, demands, charges and claims of any nature whatsoever (including reasonable attorneys' fees and disbursements) in respect of or arising out of (i) Manager's or any of its member's, manager's, officer's or employee's bad faith, willful misconduct, gross negligence or material breach (beyond any applicable cure period) of Manager's duties under this Agreement, and (ii) any claims by Manager's employees relating to the terms and conditions of their employment by Manager.

(d) Survival. The provisions of this Section 11 shall survive the expiration or earlier termination of this Agreement and the one-year origination period described in Section 3(e).

12. No Joint Venture. Nothing in this Agreement shall be construed to make the Company and Manager partners or joint venturers or impose any liability as such on either of them.

13. Term; Termination.

(a) Term. This Agreement shall remain in full force and effect for a period of two (2) years following the date hereof and, unless terminated by the Company or Manager as

set forth below, shall be renewed automatically for successive one (1) year periods thereafter, until this Agreement is terminated in accordance with the terms hereof.

(b) Non-Renewal/Termination Without Cause by Company. If the Company elects not to renew this Agreement at the expiration of the initial term or any renewal term thereafter as set forth in Section 13(a), or otherwise desires at any time after the expiration of the initial term to terminate this Agreement without cause, the Company shall deliver to Manager at least six (6) months' prior written notice thereof (the "Company Termination Notice"). In the Company Termination Notice, the Company shall specify the date, not less than six (6) months from the date of the Company Termination Notice, on which this Agreement shall terminate (the "Effective Termination Date"). For the avoidance of doubt, the Company shall not have the right to terminate this Agreement without cause during the initial term hereof.

(c) Unfair Manager Compensation. The Company may terminate this Agreement in accordance with the terms and provisions of Section 13(b), effective upon six (6) months' prior written notice to Manager and payment to Manager of a termination fee equal to two (2) times the amount of the Management Fee and the Incentive Fee earned by Manager during the period of twelve (12) full calendar months most recently ended prior to such termination, for any reason. If such reason arises from a decision made by majority vote of the Independent Directors that the Management Fee payable to Manager is unfair, the Company shall not have the foregoing termination right in the event Manager agrees to continue to perform its duties hereunder at a fee that the Independent Directors determine to be fair; provided, however, Manager shall have the right to renegotiate the Management Fee by delivering to the Company, not less than three (3) months prior to the pending Effective Termination Date, written notice (a "Notice of Proposal to Negotiate") of its intention to renegotiate the Management Fee. Thereupon, the Company and Manager shall endeavor to negotiate the Management Fee in good faith. Provided that the Company and Manager agree to a revised Management Fee (or other compensation structure) within three (3) months following the Company's receipt of the Notice of Proposal to Negotiate, the Company Termination Notice shall be deemed of no force and effect, and this Agreement shall continue in full force and effect on the terms stated herein, except that the Management Fee shall be the revised Management Fee (or other compensation structure) then agreed upon by the Company and Manager. The Company and Manager agree to execute and deliver an amendment to this Agreement setting forth such revised Management Fee promptly upon reaching an agreement regarding same. In the event that the Company and Manager are unable to agree to a revised Management Fee during such three (3) month period, this Agreement shall terminate on the Effective Termination Date. The Company's obligation to pay the termination fee set forth in this Section 13(c) shall survive the termination of this Agreement.

(d) Non-Renewal/Termination Without Cause by Manager. If Manager elects not to renew this Agreement at the expiration of the initial term or any renewal term thereafter as set forth in Section 13(a), or otherwise desires at any time after the expiration of the initial term to terminate this Agreement without cause, Manager shall deliver to the Company at least six (6) months' prior written notice thereof (the "Manager Termination Notice"). In the Manager Termination Notice, Manager shall specify the date, not less than six (6) months from the date of the Manager Termination Notice, on which this Agreement shall terminate. This Agreement shall terminate on the date specified in the Manager Termination Notice. For the avoidance of

doubt, Manager shall not have the right to terminate this Agreement without cause during the initial term hereof.

(e) Termination Fees.

(i) Payable by Company. In the event the Company elects not to renew or terminates this Agreement without cause as permitted under Section 13(b) as a result of its decision to manage its assets internally, the Company shall pay to Manager, on the effective date of such termination, a termination fee equal to the amount of the Management Fee and the Incentive Fee earned by Manager during the period of twelve (12) full calendar months most recently ended prior to such termination. In the event the Company elects not to renew or terminates this Agreement without cause for any reason other than a decision to manage its assets internally, the termination fee payable by the Company to Manager shall be equal to two (2) times the amount of the Management Fee and the Incentive Fee earned by Manager during the period of twelve (12) full calendar months most recently ended prior to such termination. The Company's obligation to pay a termination fee shall survive the termination of this Agreement.

(ii) Payable by Manager. Prior to the third (3rd) anniversary of the date hereof, in the event Manager: (A) elects not to renew or terminates this Agreement without cause (but only as permitted under Section 13(d)) within two (2) years after a Change of Control occurred or within two (2) years after Manager executed an agreement that would result in a Change of Control; or (B) delivered a Manager Termination Notice indicating its election not to renew or to terminate this Agreement (but only as permitted under Section 13(d)), then a Change of Control occurs or Manager executes an agreement that will result in a Change of Control within one (1) year thereafter, Manager shall pay to the Company, on the effective date of termination of this Agreement, a termination fee equal to two (2) times the amount of the Management Fee and the Incentive Fee earned by Manager during the period of twelve (12) full calendar months most recently ended prior to such termination. Manager's obligation to pay such termination fee shall survive the termination of this Agreement.

(f) Survival. If this Agreement is terminated pursuant to this Section 13, such termination shall be without any further liability or obligation of either party to the other, except as otherwise expressly provided herein.

14. Assignment.

(a) Manager Assignment. Except as set forth in Section 14(c), this Agreement shall terminate at the Company's election and without payment of any termination fee, and any such assignment shall be null and void, in the event of its assignment, in whole or in part, by Manager, unless Manager obtains the prior written consent of Parent REIT and a majority of the Independent Directors; provided, however, no such consent shall be required in the case of an assignment by Manager to any affiliate whose day-to-day business and operations are managed and supervised by Principal. Any permitted assignment by Manager shall bind the assignee in the same manner as Manager is bound by the terms of this Agreement, and Manager shall be liable to the Company for all errors or omissions of the assignee under any such

assignment. In addition, the assignee shall execute and deliver to the Company a counterpart of this Agreement naming such assignee as Manager. For purposes of this Section 14(a) and Section 14(c), "affiliate" means any Person controlling, controlled by or under common control with Manager, and "control" means the direct or indirect ownership of at least fifty-one percent (51%) of the beneficial equity interests in and voting power of such Person (and "controlling" and "under common control with" have meanings correlative to the foregoing).

(b) Parent REIT Assignment. This Agreement shall not be assigned by Parent REIT without Manager's prior written consent; provided, however, no such consent shall be required in the case of an assignment by Parent REIT to (i) a Subsidiary to which Parent REIT is also assigning its general partnership interest in the Operating Partnership, or (ii) a REIT or other organization which is a successor (by merger, consolidation or purchase of assets) to Parent REIT, in which case such successor organization shall be bound under this Agreement and by the terms of such assignment in the same manner as Parent REIT is bound by the terms of this Agreement.

(c) Manager Affiliate Subcontract and Partial Assignment. Notwithstanding any provision of this Agreement, Manager may subcontract and assign any or all of its responsibilities under Sections 2(b), (c) and (d) to any of its affiliates whose day-to-day business and operations are managed and supervised by Principal in accordance with the terms of this Agreement applicable to any such subcontract or assignment, and the Company hereby consents to any such subcontract and assignment. In addition, provided that Manager provides prior written notice to the Company for informational purposes only, nothing contained in this Agreement shall preclude any pledge, hypothecation or other transfer of any amounts payable to Manager under this Agreement.

15. Termination for Cause.

(a) By Company. The Company may terminate this Agreement, by a majority vote of the Independent Directors and without payment of a termination fee, if:

(i) Manager commits fraud or acts or fails to act in a manner that constitutes gross negligence in the performance of its duties hereunder;

(ii) Manager misappropriates or embezzles Company funds;

(iii) Manager commits some other willful violation of this Agreement in its corporate capacity (as distinguished from the acts of any employees of Manager which are taken without the complicity of Principal);

(iv) Parent REIT removes Principal from the position of Chief Executive Officer of Parent REIT for cause (as cause is defined in and interpreted in accordance with the Non-Competition Agreement);

(v) a Change of Control occurs;

(vi) Principal is no longer Chief Executive Officer of Manager (provided such condition is not a result of Principal's death, disability or incapacity); or

(vii) Manager defaults in the performance or observance of any material term, condition or covenant contained in this Agreement to be performed or observed on its part, and such default continues for a period of thirty (30) days after written notice thereof from the Company specifying such default and requesting that the same be remedied within such thirty (30) day period; provided, however, Manager shall have an additional sixty (60) days to cure such default if (A) such default cannot reasonably be cured with in thirty (30) days but can be cured within ninety (90) days, and (B) Manager shall have commenced to cure such default within the initial thirty (30) day period and thereafter diligently proceeds to cure the same within ninety (90) days of the date of the Company's original notice of the default.

Termination of this Agreement pursuant to this Section 15(a) shall become effective, in case of the foregoing (A) clauses (i) through (iv), upon seven (7) days' prior written notice to Manager, (B) clauses (v) and (vi), upon thirty (30) days' prior written notice to Manager, and (C) clause (vii), in the event of Manager's failure to cure and provided the Company has delivered to Manager a termination notice, upon the expiration of the applicable cure period.

(b) By Manager. Manager may terminate this Agreement, without payment of a termination fee, if the Company defaults in the performance or observance of any material term, condition or covenant contained in this Agreement to be performed or observed on its part, and such default continues for a period of thirty (30) days after written notice thereof from Manager specifying such default and requesting that the same be remedied within such thirty (30) day period. This Agreement shall terminate, in the event of the Company's failure to cure and provided Manager has delivered to the Company a termination notice, upon the expiration of such thirty (30) day cure period.

16. Action Upon Termination or Expiration of Origination Period. From and after the effective date of termination of this Agreement pursuant to Sections 13, 14 or 15 or the expiration of the origination period described in Section 3(e), as applicable, Manager shall not be entitled to compensation for further services under this Agreement but shall be paid all compensation accruing to the date of termination or expiration of the origination period, as applicable, and a termination fee, if applicable. Upon such termination or expiration, Manager shall forthwith:

(a) after deducting any accrued compensation and reimbursement for Expenses to which it is then entitled, pay over to the Company all money collected and held for the account of the Company pursuant to this Agreement;

(b) deliver to the Board of Directors a full accounting, including a statement showing all payments collected and all money held by it, covering the period following the date of the last accounting furnished to the Board of Directors with respect to the Company; and

(c) deliver to the Board of Directors all property and documents of the Company provided to or obtained by Manager pursuant to or in connection with this Agreement, including all copies and extracts thereof in whatever form, then in Manager's possession or under its control.

17. Release of Money or other Property Upon Written Request. Manager agrees that any money or other property of the Company held by Manager under this Agreement shall be held by Manager as custodian for the Company, and Manager's records shall be clearly and appropriately marked to reflect the ownership of such money or other property by the Company. Upon the receipt by Manager of a written request signed by a duly authorized officer of the Company requesting Manager to release to the Company any money or other property then held by Manager for the account of the Company under this Agreement, Manager shall release such money or other property to the Company within a reasonable period of time, but in no event later than sixty (60) days following such request. Manager shall not be liable to the Company, the Independent Directors, Parent REIT or Sub-REIT's stockholders or the Operating Partnership's partners for any acts or omissions by the Company in connection with the money or other property released to the Company in accordance with the terms hereof. The Company shall indemnify Manager and its members, managers, officers and employees against any and all expenses, losses, damages, liabilities, demands, charges and claims of any nature whatsoever which arise in connection with Manager's release of such money or other property to the Company in accordance with the terms of this Section 17. Indemnification pursuant to this Section 17 shall be in addition to any right of Manager to indemnification under Section 11.

18. Notices. Unless expressly provided otherwise in this Agreement, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of (a) personal delivery, (b) delivery by a reputable overnight courier, (c) delivery by facsimile transmission against answerback, or (d) delivery by registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

If to Parent REIT, Sub-REIT
or the Operating Partnership:

Arbor Realty Trust, Inc.
333 Earle Ovington Boulevard, Suite 900
Uniondale, New York 11553
Attention: Frederick C. Herbst
Facsimile: 516-832-8043

If to Manager:

Arbor Commercial Mortgage, LLC
333 Earle Ovington Boulevard
Uniondale, New York 11553
Attention: Frederick C. Herbst
Facsimile: 516-832-8043

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 18 for the giving of notice.

19. Binding Nature of Agreement; Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided in this Agreement.

20. Entire Agreement. This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter of this Agreement. The express terms of this Agreement control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms of this Agreement. This Agreement may not be modified or amended other than by an agreement in writing signed by the parties hereto.

21. Governing Law. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of New York, notwithstanding any New York or other conflict-of-law provisions to the contrary.

22. Indulgences, Not Waivers. Neither the failure nor any delay on the part of a party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

23. Titles Not to Affect Interpretation. The titles of sections, paragraphs and subparagraphs contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation of this Agreement.

24. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts of this Agreement, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

25. Provisions Separable. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

26. Principles of Construction. Words used herein regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. All references to recitals, sections, paragraphs and schedules are to the recitals, sections, paragraphs and schedules in or to this Agreement unless otherwise specified.

27. Amendments. This Agreement may be amended only in a writing signed by the parties hereto; provided the same has been approved by a majority of the Independent Directors. The approval of the holders of the Common Shares shall not be required for any amendments to this Agreement.

28. References to Original Management Agreement

Any reference to the Original Management Agreement in any other document executed in connection with the Original Management Agreement or this Agreement shall be deemed to refer to this Agreement.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Manager:

ARBOR COMMERCIAL MORTGAGE, LLC,
a New York limited liability company

By: /s/ Frederick C. Herbst
Name: Frederick C. Herbst
Title: Chief Financial Officer

Parent REIT:

ARBOR REALTY TRUST, INC.,
a Maryland corporation

By: /s/ Frederick C. Herbst
Name: Frederick C. Herbst
Title: Chief Financial Officer

Operating Partnership:

ARBOR REALTY LIMITED PARTNERSHIP,
a Delaware limited partnership

By: Arbor Realty GPOP, Inc.,
a Delaware corporation,
its general partner

By: /s/ Frederick C. Herbst
Name: Frederick C. Herbst
Title: Treasurer

Sub-REIT:

ARBOR REALTY SR, INC.,
a Maryland corporation

By: /s/ Frederick C. Herbst
Name: Frederick C. Herbst
Title: Chief Financial Officer

EXHIBIT 10.4

SECOND AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

ARBOR REALTY LIMITED PARTNERSHIP

a Delaware limited partnership

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS THE TRANSFEROR DELIVERS TO THE PARTNERSHIP AN OPINION OF COUNSEL SATISFACTORY TO THE PARTNERSHIP, IN FORM AND SUBSTANCE SATISFACTORY TO THE PARTNERSHIP, TO THE EFFECT THAT THE PROPOSED SALE, TRANSFER OR OTHER DISPOSITION MAY BE EFFECTED WITHOUT REGISTRATION UNDER THE SECURITIES ACT AND UNDER APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

dated as of January 18, 2005

SECOND AMENDED AND RESTATED AGREEMENT
OF
LIMITED PARTNERSHIP
OF
ARBOR REALTY LIMITED PARTNERSHIP

THIS SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF ARBOR REALTY LIMITED PARTNERSHIP (the "Partnership"), dated as of January 18, 2005, is entered into by and among ARBOR REALTY GPOP, INC., a Delaware corporation (the "General Partner"), ARBOR REALTY LPOP, INC., a Delaware corporation (the "Initial Limited Partner"), ARBOR COMMERCIAL MORTGAGE, LLC, a New York limited liability company, as a limited partner ("ACM" and together with the Initial Limited Partner, the "Limited Partners") and ARBOR REALTY TRUST, INC., a Maryland corporation that intends to elect to be taxed as a real estate investment trust (the "Parent REIT").

WHEREAS, the Partnership was formed by the General Partner and the Initial Limited Partner as a limited partnership under the laws of the State of Delaware on June 24, 2003;

WHEREAS, the General Partner and the Initial Limited Partner entered that certain Agreement of Limited Partnership of Arbor Realty Limited Partnership on June 24, 2003;

WHEREAS, the General Partner, the Limited Partners and the Parent REIT entered into that certain Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership (the "First Amended Partnership Agreement") on July 1, 2003 in order to admit ACM to the Partnership as a limited partner; and

WHEREAS, the General Partner, the Limited Partners and the Parent REIT desire to amend the Amended Partnership Agreement so as to allow for the transfer of assets from the Partnership to Arbor Realty SR, Inc. (the "Sub-REIT"), a Maryland corporation that intends to elect to be taxed as a real estate investment trust.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINED TERMS

The following definitions shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the terms used in this Agreement.

"Act" means the Delaware Revised Uniform Limited Partnership Act (6 Del. C. § 17-101 et seq.), as it may be amended from time to time, and any successor to such statute.

"Actions" has the meaning set forth in Section 7.7 hereof.

"Additional Funds" has the meaning set forth in Section 4.3.A hereof.

"Additional Limited Partner" means a Person who is admitted to the Partnership as a Limited Partner pursuant to Section 4.2 and Section 12.2 hereof and who is shown as such on the books and records of the Partnership.

"Adjusted Capital Account Deficit" means, with respect to any Partner, the deficit balance, if any, in such Partner's Capital Account as of the end of the relevant Partnership Year, after giving effect to the following adjustments:

(i) decrease such deficit by any amounts that such Partner is obligated to restore pursuant to this Agreement or by operation of law upon liquidation of such Partner's Partnership Interest or is deemed to be obligated to restore pursuant to the penultimate sentence of each of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) increase such deficit by the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of "Adjusted Capital Account Deficit" is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Adjustment Factor" means 1.0; provided, however, that in the event that:

(i) the Parent REIT (a) declares or pays a dividend on its outstanding REIT Shares in REIT Shares or makes a distribution to all holders of its outstanding REIT Shares in REIT Shares, (b) splits or subdivides its outstanding REIT Shares or (c) effects a reverse stock split or otherwise combines its outstanding REIT Shares into a smaller number of REIT Shares, the Adjustment Factor shall be adjusted by multiplying the Adjustment Factor previously in effect by a fraction, (i) the numerator of which shall be the number of REIT Shares issued and outstanding on the record date for such dividend, distribution, split, subdivision, reverse split or combination (assuming for such purposes that such dividend, distribution, split, subdivision, reverse split or combination has occurred as of such time) and (ii) the denominator of which shall be the actual number of REIT Shares (determined without the above assumption) issued and outstanding on the record date for such dividend, distribution, split, subdivision, reverse split or combination;

(ii) the Parent REIT distributes any rights, options or warrants to all holders of its REIT Shares to subscribe for or to purchase or to otherwise acquire REIT Shares (or other securities or rights convertible into, exchangeable for or exercisable for REIT Shares) at a price per share less than the Value of a REIT Share on the record date for such distribution (each a "Distributed Right"), then the Adjustment Factor shall be adjusted by multiplying the Adjustment Factor previously in effect by a fraction (a) the numerator of which shall be the number of REIT Shares issued and outstanding on the record date plus the maximum number of REIT Shares purchasable under such Distributed Rights and (b) the denominator of which shall be the number of REIT Shares issued and outstanding on the record date plus a fraction (1) the numerator of which is the maximum number of REIT Shares purchasable under such Distributed Rights times the minimum purchase price per REIT Share under such Distributed Rights and (2) the denominator of which is the Value of a REIT Share as of the record date; provided, however, that, if any such Distributed Rights expire or become no longer exercisable, then the Adjustment Factor shall be adjusted, effective retroactive to the date of distribution of the Distributed Rights, to reflect a reduced maximum number of REIT Shares or any change in the minimum purchase price for the purposes of the above fraction; and

(iii) the Parent REIT shall, by dividend or otherwise, distribute to all holders of its REIT Shares evidences of its indebtedness or assets (including securities, but excluding any dividend or distribution referred to in subsection (i) above), which evidences of indebtedness or assets relate to assets not received by the Parent REIT pursuant to a pro rata distribution by the Partnership, then the Adjustment Factor shall be adjusted to equal the amount determined by multiplying the Adjustment Factor in effect immediately prior to the close of business on the date fixed for determination of shareholders entitled to receive such distribution by a fraction (i) the numerator of which shall be such Value of a REIT Share on the date fixed for such determination and (ii) the denominator of which shall be the Value of a REIT Share on the dates fixed for such determination less the then fair market value (as determined by the General Partner, whose determination shall be conclusive)

of the portion of the evidences of indebtedness or assets so distributed applicable to one REIT Share.

Any adjustments to the Adjustment Factor shall become effective immediately after the effective date of such event, retroactive to the record date, if any, for such event, provided, however, that any Limited Partner may waive, by written notice to the General Partner, the effect of any adjustment to the Adjustment Factor applicable to the Partnership Common Units held by such Limited Partner, and, thereafter, such adjustment will not be effective as to such Partnership Common Units. For illustrative purposes, examples of adjustments to the Adjustment Factor are set forth on Exhibit B attached hereto.

"Affiliate" means, with respect to any Person, any Person directly or indirectly controlling or controlled by or under common control with such Person. For the purposes of this definition, "control" when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" means this Second Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, as it may be amended, supplemented or restated from time to time.

"Applicable Percentage" has the meaning set forth in Section 8.6.B hereof.

"Appraisal" means, with respect to any assets, the written opinion of an independent third party experienced in the valuation of similar assets, selected by the General Partner in good faith. Such opinion may be in the form of an opinion by such independent third party that the value for such property or asset as set by the General Partner is fair, from a financial point of view, to the Partnership.

"Assignee" means a Person to whom one or more Partnership Common Units have been Transferred in a manner permitted under this Agreement, but who has not become a Substituted Limited Partner, and who has the rights set forth in Section 11.5 hereof.

"Available Cash" means, with respect to any period for which such calculation is being made,

(i) the sum, without duplication, of:

(1) the Partnership's Net Income or Net Loss (as the case may be) for such period,

(2) Depreciation and all other noncash charges to the extent deducted in determining Net Income or Net Loss for such period,

(3) the amount of any reduction in reserves of the Partnership referred to in clause (ii)(6) below (including, without limitation, reductions resulting because the General Partner determines such amounts are no longer necessary),

(4) the excess, if any, of the net cash proceeds from the sale, exchange, disposition, financing or refinancing of Property for such period over the gain (or loss, as the case may be), if any, recognized from such sale, exchange, disposition, financing or refinancing during such period (excluding Terminating Capital Transactions), and

(5) all other cash received (including amounts previously accrued as Net Income and amounts of deferred income) or any net amounts borrowed by the Partnership for such period that was not included in determining Net Income or Net Loss for such period;

(ii) less the sum, without duplication, of:

(1) all principal debt payments made during such period by the Partnership,

(2) capital expenditures made by the Partnership during such period,

(3) investments in any entity (including loans made thereto) to the extent that such investments are not otherwise described in clause (ii)(1) or clause (ii)(2) above,

(4) all other expenditures and payments not deducted in determining Net Income or Net Loss for such period (including amounts paid in respect of expenses previously accrued),

(5) any amount included in determining Net Income or Net Loss for such period that was not received by the Partnership during such period,

(6) the amount of any increase in reserves (including, without limitation, working capital reserves) established during such period that the General Partner determines are necessary or appropriate in its sole and absolute discretion, and

(7) any amount distributed or paid in redemption of any Limited Partner Interest or Partnership Units including, without limitation, any Cash Amount paid.

Notwithstanding the foregoing, Available Cash shall not include (a) any cash received or reductions in reserves, or take into account any disbursements made, or reserves established, after dissolution and the commencement of the liquidation and winding up of the Partnership or (b) any Capital Contributions, whenever received.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

"Capital Account" means, with respect to any Partner, the Capital Account maintained by the General Partner for such Partner on the Partnership's books and records in accordance with the following provisions:

A. To each Partner's Capital Account, there shall be added such Partner's Capital Contributions, such Partner's distributive share of Net Income and any items in the nature of income or gain that are specially allocated pursuant to Section 6.3 hereof, and the principal amount of any Partnership liabilities assumed by such Partner or that are secured by any property distributed to such Partner.

B. From each Partner's Capital Account, there shall be subtracted the amount of cash and the Gross Asset Value of any property distributed to such Partner pursuant to any provision of this Agreement, such Partner's distributive share of Net Losses and any items in the nature of expenses or losses that are specially allocated pursuant to Section 6.3 hereof, and the principal amount of any liabilities of such Partner assumed by the Partnership or that are secured by any property contributed by such Partner to the Partnership.

C. In the event any interest in the Partnership is Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent that it relates to the Transferred interest.

D. In determining the principal amount of any liability for purposes of subsections (A) and (B) hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

E. The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Sections 1.704-1(b) and 1.704-2, and shall be interpreted and applied in a manner consistent with such Regulations. If the General Partner shall determine that it is prudent to modify the manner in which the Capital Accounts are maintained in order to comply with such Regulations, the General Partner may make such modification provided that such modification will not have a material effect on the amounts distributable to any Partner without such Partner's Consent. The General Partner also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q) and (ii) make any appropriate modifications in the event that unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b) or Section 1.704-2.

"Capital Account Deficit" has the meaning set forth in Section 13.2.C hereof.

"Capital Contribution" means, with respect to any Partner, the amount of money and the initial Gross Asset Value of any Contributed Property that such Partner contributes to the Partnership pursuant to Section 4.1, 4.2 or 4.3 hereof or is deemed to contribute pursuant to Section 4.4 hereof.

"Cash Amount" means, with respect to a Tendering Party, an amount of cash equal to the product of (A) the Value of a REIT Share and (B) such Tendering Party's REIT Shares Amount determined as of the date of receipt by the General Partner of such Tendering Party's Notice of Redemption or, if such date is not a Business Day, the immediately preceding Business Day; provided, however, that,

(1) in the event of a Declination not followed by an Offering Funding, the Cash Amount shall be an amount of cash equal to the product of (x) 100% minus such Tendering Party's Applicable Percentage, and (y) the product of the amounts contemplated by clauses (A) and (B) above, and

(2) in the event of a Declination followed by an Offering Funding, the Cash Amount shall be an amount of cash equal to the product of: (i) the amount contemplated by clause (B) above, (ii)100% minus such Tendering Party's Applicable Percentage, and (iii) the Offering Value. The term "Offering Value" shall be the quotient obtained by dividing the Offering Funding Amount by the number of Offering Funding Shares sold in such Offering Funding.

"Certificate" means the Certificate of Limited Partnership of the Partnership filed in the office of the Secretary of State of the State of Delaware, as amended from time to time in accordance with the terms hereof and the Act.

"Charter" means the Articles of Incorporation of the Parent REIT filed with the State Department of Assessments and Taxation of Maryland, as amended, supplemented or restated from time to time.

"Class A Preferred Units" have the meaning set forth in Section 4.11 hereof.

"Closing Price" has the meaning set forth in the definition of "Value."

"Code" means the Internal Revenue Code of 1986, as amended and in effect from time to time or any successor statute thereto, as interpreted by the applicable Regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

"Company Employees" means the employees of the Partnership, the Parent REIT and any of their subsidiaries.

"Consent" means the consent to, approval of, or vote in favor of a proposed action by a Partner given in accordance with Article 14 hereof.

"Consent of the Limited Partners" means the Consent of a Majority in Interest of the Limited Partners, which Consent shall be obtained prior to the taking of any action for which it is required by this Agreement and, except as otherwise provided in this Agreement, may be given or withheld by a Majority in Interest of the Limited Partners.

"Contributed Property" means each item of Property or other asset, in such form as may be permitted by the Act, but excluding cash, contributed or deemed contributed to the Partnership (or deemed contributed by the Partnership to a "new" partnership pursuant to Code Section 708).

"Controlled Entity" means, as to any Limited Partner, (a) any corporation more than fifty percent (50%) of the outstanding voting stock of which is owned by such Limited Partner or such Limited Partner's Family Members, (b) any trust, whether or not revocable, of which such Limited Partner or such Limited Partner's Family Members are the sole beneficiaries, (c) any partnership of which such Limited Partner is the managing partner and in which such Limited Partner or such Limited Partner's Family Members hold partnership interests representing at least twenty-five percent (25%) of such partnership's capital and profits and (d) any limited liability company of which such Limited Partner is the manager or managing member and in which such Limited Partner or such Limited Partner's Family Members hold membership interests representing at least twenty-five percent (25%) of such limited liability company's capital and profits.

"Cut-Off Date" means the fifth (5th) Business Day after the General Partner's receipt of a Notice of Redemption.

"Debt" means, as to any Person, as of any date of determination, (i) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services; (ii) all amounts owed by such Person to banks or other Persons in respect of reimbursement obligations under letters of credit, surety bonds and other similar instruments guaranteeing payment or other performance of obligations by such Person; (iii) all indebtedness for borrowed money or for the deferred purchase price of property or services secured by any lien on any property owned by such Person, to the extent attributable to such Person's interest in such property, even though such Person has not assumed or become liable for the payment thereof; and (iv) lease obligations of such Person that, in accordance with generally accepted accounting principles, should be capitalized.

"Declination" has the meaning set forth in Section 8.6.D hereof.

"Depreciation" means, for each Partnership Year or other applicable period, an amount equal to the federal income tax depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or period, Depreciation shall be in an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year or period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the General Partner.

"Distributed Right" has the meaning set forth in the definition of "Adjustment Factor."

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Family Members" means, as to a Person that is an individual, such Person's spouse, ancestors, descendants (whether by blood or by adoption), brothers and sisters and inter vivos or testamentary

trusts of which only such Person and his spouse, ancestors, descendants (whether by blood or by adoption), brothers and sisters are beneficiaries.

"Funding Debt" means any Debt incurred by or on behalf of the Parent REIT for the purpose, in whole or in part, of providing funds to the Partnership.

"General Partner" means Arbor Realty GPOP, Inc., a Delaware corporation, and its successors and assigns, as the general partner of the Partnership in their capacities as general partner of the Partnership; provided, however, that as the context requires, references herein to the General Partner shall also mean the General Partner's corporate parent, the Parent REIT.

"General Partner Interest" means the Partnership Interest held by the General Partner, which Partnership Interest is an interest as a general partner under the Act. A General Partner Interest may be expressed as a number of Partnership Common Units, Partnership Preferred Units or any other Partnership Units.

"General Partner Loan" has the meaning set forth in Section 4.3.D hereof.

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset as determined by the General Partner and agreed to by the contributing Partner. In any case in which the General Partner and the contributing Partner are unable to agree as to the gross fair market value of any contributed asset or assets, such gross fair market value shall be determined by Appraisal.

(b) The Gross Asset Values of all Partnership assets immediately prior to the occurrence of any event described in clause (i), clause (ii), clause (iii), clause (iv) or clause (v) hereof shall be adjusted to equal their respective gross fair market values, as determined by the General Partner using such reasonable method of valuation as it may adopt, as of the following times:

(i) the acquisition of an additional interest in the Partnership (other than in connection with the execution of this Agreement but including, without limitation, acquisitions pursuant to Section 4.2 hereof or contributions or deemed contributions by the General Partner pursuant to Section 4.2 hereof) by a new or existing Partner in exchange for more than a de minimis Capital Contribution, if the General Partner reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership;

(ii) the distribution by the Partnership to a Partner of more than a de minimis amount of Property as consideration for an interest in the Partnership, if the General Partner reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership;

(iii) the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

(iv) upon the admission of a successor General Partner pursuant to Section 12.1 hereof; and

(v) at such other times as the General Partner shall reasonably determine necessary or advisable in order to comply with Regulations Sections 1.704-1(b) and 1.704-2.

(c) The Gross Asset Value of any Partnership asset distributed to a Partner shall be the gross fair market value of such asset on the date of distribution as determined by the distributee and the General Partner provided that, if the distributee is the General Partner or if the distributee and the General Partner cannot agree on such a determination, such gross fair market value shall be determined by Appraisal.

(d) The Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted pursuant to this subsection (d) to the extent that the General Partner reasonably determines that an adjustment pursuant to subsection (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (d).

(e) If the Gross Asset Value of a Partnership asset has been determined or adjusted pursuant to subsection (a), subsection (b) or subsection (d) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Income and Net Losses.

"Holder" means either (a) a Partner or (b) an Assignee, owning a Partnership Unit, that is treated as a member of the Partnership for federal income tax purposes.

"Incapacity" or "Incapacitated" means, (i) as to any Partner who is an individual, death, total physical disability or entry by a court of competent jurisdiction adjudicating such Partner incompetent to manage his or her person or his or her estate; (ii) as to any Partner that is a corporation or limited liability company, the filing of a certificate of dissolution, or its equivalent, or the revocation of the corporation's charter; (iii) as to any Partner that is a partnership, the dissolution and commencement of winding up of the partnership; (iv) as to any Partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the Partnership; (v) as to any trustee of a trust that is a Partner, the termination of the trust (but not the substitution of a new trustee); or (vi) as to any Partner, the bankruptcy of such Partner. For purposes of this definition, bankruptcy of a Partner shall be deemed to have occurred when (a) the Partner commences a voluntary proceeding seeking liquidation, reorganization or other relief of or against such Partner under any bankruptcy, insolvency or other similar law now or hereafter in effect, (b) the Partner is adjudged as bankrupt or insolvent, or a final and nonappealable order for relief under any bankruptcy, insolvency or similar law now or hereafter in effect has been entered against the Partner, (c) the Partner executes and delivers a general assignment for the benefit of the Partner's creditors, (d) the Partner files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Partner in any proceeding of the nature described in clause (b) above, (e) the Partner seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator for the Partner or for all or any substantial part of the Partner's properties, (f) any proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or other similar law now or hereafter in effect has not been dismissed within one hundred twenty (120) days after the commencement thereof, (g) the appointment without the Partner's consent or acquiescence of a trustee, receiver or liquidator has not been vacated or stayed within ninety (90) days of such appointment, or (h) an appointment referred to in clause (g) above is not vacated within ninety (90) days after the expiration of any such stay.

"Indemnitee" means (i) any Person made a party to a proceeding by reason of its status as (A) the General Partner, (B) the Parent REIT or (C) a director of the General Partner or the Parent REIT or an officer or employee of the Partnership, the Parent REIT or the General Partner and (ii) such other Persons (including Affiliates of the General Partner or the Partnership) as the General Partner may designate from time to time (whether before or after the event giving rise to potential liability), in its sole and absolute discretion.

"Independent Director" shall have the meaning assigned to such term in the Charter, provided that if the Parent REIT has completed a Qualified Public Offering, the term "Independent Director" shall have the meaning assigned to such term under the rules and regulations of the principal national securities exchange or interdealer quotation system on which the REIT Shares are then listed.

"Initial Limited Partner" means Arbor Realty LPOP, Inc., a Delaware corporation.

"Interest" means interest, original issue discount and other similar payments or amounts paid by the Partnership for the use or forbearance of money.

"IRS" means the Internal Revenue Service, which administers the internal revenue laws of the United States.

"Junior Share" means a share of capital stock of the Parent REIT now or hereafter authorized or reclassified that has dividend rights, or rights upon liquidation, winding up and dissolution, that are inferior or junior to the REIT Shares.

"Limited Partner" means any Person named as a Limited Partner in Exhibit A attached hereto, as such Exhibit A may be amended from time to time, or any Substituted Limited Partner or Additional Limited Partner, in such Person's capacity as a Limited Partner in the Partnership.

"Limited Partner Interest" means a Partnership Interest of a Limited Partner in the Partnership representing a fractional part of the Partnership Interests of all Limited Partners and includes any and all benefits to which the holder of such a Partnership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. A Limited Partner Interest may be expressed as a number of Partnership Common Units, Partnership Preferred Units or other Partnership Units.

"Liquidating Event" has the meaning set forth in Section 13.1 hereof.

"Liquidator" has the meaning set forth in Section 13.2.A hereof.

"Majority in Interest of the Limited Partners" means Limited Partners holding more than fifty percent (50%) of the outstanding Partnership Common Units held by all Limited Partners.

"Market Price" has the meaning set forth in the definition of "Value."

"Net Income" or "Net Loss" means, for each Partnership Year of the Partnership, an amount equal to the Partnership's taxable income or loss for such year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Net Income (or Net Loss) pursuant to this definition of "Net Income" or "Net Loss" shall be added to (or subtracted from, as the case may be) such taxable income (or loss);

(b) Any expenditure of the Partnership described in Code Section 705(a)(2)(B) or treated as a Code Section 705(a)(2)(B) expenditure pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income (or Net Loss) pursuant to this definition of "Net Income" or "Net Loss," shall be subtracted from (or added to, as the case may be) such taxable income (or loss);

(c) In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to subsection (b) or subsection (c) of the definition of "Gross Asset Value," the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Loss;

(d) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization and other cost recovery deductions that would otherwise be taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Partnership Year;

(f) To the extent that an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Partner's interest in the Partnership, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Income or Net Loss; and

(g) Notwithstanding any other provision of this definition of "Net Income" or "Net Loss," any item that is specially allocated pursuant to Section 6.3 hereof shall not be taken into account in computing Net Income or Net Loss. The amounts of the items of Partnership income, gain, loss or deduction available to be specially allocated pursuant to Section 6.3 hereof shall be determined by applying rules analogous to those set forth in this definition of "Net Income" or "Net Loss."

"New Securities" means (i) any rights, options, warrants or convertible or exchangeable securities having the right to subscribe for or purchase REIT Shares or Preferred Shares, excluding Preferred Shares, Junior Shares and grants under the Stock Option Plans, or (ii) any Debt issued by the General Partner that provides any of the rights described in clause (i).

"Nonrecourse Deductions" has the meaning set forth in Regulations Section 1.704-2(b)(1), and the amount of Nonrecourse Deductions for a Partnership Year shall be determined in accordance with the rules of Regulations Section 1.704-2(c).

"Nonrecourse Liability" has the meaning set forth in Regulations Section 1.752-1(a)(2).

"Notice of Redemption" means the Notice of Redemption substantially in the form of Exhibit C attached to this Agreement.

"Offering Funding" has the meaning set forth in Section 8.6.D(2) hereof.

"Offering Funding Amount" means the dollar amount equal to (i) the product of (x) the number of Offering Funding Shares sold in an Offering Funding and (y) the offering price per share of such Offering Funding Shares in such Offering Funding, less (ii) the aggregate underwriting discounts and commissions in such Offering Funding.

"Offering Funding Shares" has the meaning set forth in Section 8.6.D(2) hereof.

"Ownership Limit" means the applicable restriction or restrictions on ownership of shares of the Parent REIT imposed under the Charter.

"Paired Common Unit" has the meaning set forth in the Pairing Agreement.

"Pairing Agreement" means the Pairing Agreement by and among the Parent REIT, the General Partner, the Initial Limited Partner, the Partnership, and ACM, dated as of July 1, 2003.

"Parent REIT" means Arbor Realty Trust, Inc., a Maryland corporation that intends to be taxed as a REIT and the corporate parent of the General Partner and the Initial Limited Partner.

"Partner" means the General Partner or a Limited Partner, and "Partners" means the General Partner and the Limited Partners.

"Partner Minimum Gain" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

"Partner Nonrecourse Debt" has the meaning set forth in Regulations Section 1.704-2(b)(4).

"Partner Nonrecourse Deductions" has the meaning set forth in Regulations Section 1.704-2(i)(2), and the amount of Partner Nonrecourse Deductions with respect to a Partner Nonrecourse Debt for a Partnership Year shall be determined in accordance with the rules of Regulations Section 1.704-2(i)(2).

"Partnership" means the limited partnership formed under the Act and pursuant to this Agreement, and any successor thereto.

"Partnership Common Unit" means a fractional share of the Partnership Interests of all Partners issued pursuant to Sections 4.1 and 4.2 hereof, but does not include any Partnership Preferred Unit or any other Partnership Unit specified in a Partnership Unit Designation or this Agreement as being other than a Partnership Common Unit; provided, however, that the General Partner Interest and the Limited Partner Interests shall have the differences in rights and privileges as specified in this Agreement. The ownership of Partnership Common Units may (but need not, in the sole and absolute discretion of the General Partner) be evidenced by the form of certificate for Partnership Common Units attached hereto as Exhibit D.

"Partnership Interest" means an ownership interest in the Partnership held by either a Limited Partner or the General Partner and includes any and all benefits to which the holder of such a Partnership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. A Partnership Interest may be expressed as a number of Partnership Common Units, Partnership Preferred Units or other Partnership Units.

"Partnership Junior Unit" means a fractional share of the Partnership Interests that the General Partner has authorized pursuant to Section 4.1 or Section 4.2 or Section 4.3 hereof that has distribution rights, or rights upon liquidation, winding up and dissolution, that are inferior or junior to the Partnership Common Units.

"Partnership Minimum Gain" has the meaning set forth in Regulations Section 1.704-2(b)(2), and the amount of Partnership Minimum Gain, as well as any net increase or decrease in Partnership Minimum Gain, for a Partnership Year shall be determined in accordance with the rules of Regulations Section 1.704-2(d).

"Partnership Preferred Unit" means a fractional share of the Partnership Interests that the General Partner has authorized pursuant to Section 4.1, Section 4.2 or Section 4.3 hereof that has distribution rights, or rights upon liquidation, winding up and dissolution, that are superior or prior to the Partnership Common Units.

"Partnership Record Date" means a record date established by the General Partner for the distribution of Available Cash pursuant to Section 5.1 hereof, which record date shall generally be the same as the record date established by the General Partner for a distribution to its shareholders of some or all of its portion of such distribution.

"Partnership Unit" shall mean a Partnership Common Unit, a Partnership Preferred Unit, a Partnership Junior Unit or any other fractional share of the Partnership Interests that the General Partner has authorized pursuant to Section 4.1, Section 4.2 or Section 4.3 hereof.

"Partnership Unit Designation" shall have the meaning set forth in Section 4.2 hereof.

"Partnership Year" means the fiscal year of the Partnership, which shall be the calendar year.

"Percentage Interest" means, as to each Partner, its interest, if any, in the Partnership Common Units as determined by dividing the Partnership Common Units owned by such Partner by the total number of Partnership Common Units then outstanding as specified in Exhibit A attached hereto, as such

Exhibit may be amended from time to time. To the extent that the Partnership issues more than one class or series of Partnership Interests, the interest of such class or series shall be determined as set forth in this Agreement or any amendment hereto.

"Person" means an individual or a corporation, partnership, trust, unincorporated organization, association, limited liability company or other entity.

"Preferred Share" means a share of capital stock of the Parent REIT now or hereafter authorized or reclassified that has dividend rights, or rights upon liquidation, winding up and dissolution, that are superior or prior to the REIT Shares.

"Primary Offering Notice" has the meaning set forth in Section 8.6.F(4) hereof.

"Property" or "Properties" means any assets and property of the Partnership such as, but not limited to, interests in real property and personal property, including, without limitation, fee interests, interests in ground leases, interests in limited liability companies, joint ventures or partnerships, interests in mortgages, and Debt instruments as the Partnership may hold from time to time and "Property" shall mean any one such asset or property.

"Qualified Public Offering" means the sale in a public offering registered under the Securities Act of shares of common stock in which the REIT Shares are listed on a national securities exchange or interdealer quotation system.

"Qualified REIT Subsidiary" means a qualified REIT subsidiary of the Parent REIT within the meaning of Code Section 856(i)(2).

"Qualified Transferee" means an "accredited investor" as defined in Rule 501 promulgated under the Securities Act.

"Qualifying Party" means (a) a Limited Partner, (b) an Additional Limited Partner, or (c) a Substituted Limited Partner succeeding to all or part of a Limited Partner Interest of (i) a Limited Partner, or (ii) an Additional Limited Partner, in each case other than the Initial Limited Partner.

"Redemption" has the meaning set forth in Section 8.6.A hereof.

"Registration Rights Agreement" means the Registration Rights Agreement between Parent REIT and JMP Securities LLC, dated as of July 1, 2003.

"Regulations" means the applicable income tax regulations under the Code, whether such regulations are in proposed, temporary or final form, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Regulatory Allocations" has the meaning set forth in Section 6.3.B(viii) hereof.

"Restricted Partnership Common Units" has the meaning set forth in Section 4.12 hereof.

"REIT" means a real estate investment trust qualifying under Code Section 856.

"REIT Consideration" means the aggregate number of REIT Shares equal to the product of the REIT Shares Amount and the Applicable Percentage.

"REIT Partner" means (a) a Partner, including, without limitation, the General Partner, that is, or has made an election to qualify as, a REIT, (b) any Qualified REIT Subsidiary of any Partner that is, or has made an election to qualify as, a REIT and (c) any Partner that is a Qualified REIT Subsidiary of a REIT.

"REIT Party" means the Parent REIT, the General Partner and/or the Initial Limited Partner.

"REIT Payment" has the meaning set forth in Section 15.11 hereof.

"REIT Requirements" means the requirements for qualification as a REIT under the Code and regulations, including, without limitation, the distribution requirements contained in Section 857(a) of the Code.

"REIT Share" means a share of the Parent REIT's Common Stock, par value $.01 per share. Where relevant in this Agreement, "REIT Shares" includes shares of the Parent REIT's Common Stock, par value $.01 per share, issued upon conversion of Preferred Shares or Junior Shares.

"REIT Shares Amount" means a number of REIT Shares equal to the product of (a) the number of Tendered Units and (b) the Adjustment Factor in effect on the Specified Redemption Date with respect to such Tendered Units; provided, however, that, in the event that the Parent REIT issues to all holders of REIT Shares as of a certain record date rights, options, warrants or convertible or exchangeable securities entitling the Parent REIT's shareholders to subscribe for or purchase REIT Shares, or any other securities or property (collectively, the "Rights"), with the record date for such Rights issuance falling within the period starting on the date of the Notice of Redemption and ending on the day immediately preceding the Specified Redemption Date, which Rights will not be distributed before the relevant Specified Redemption Date, then the REIT Shares Amount shall also include such Rights that a holder of that number of REIT Shares would be entitled to receive, expressed, where relevant hereunder, in a number of REIT Shares determined by the General Partner in good faith.

"Related Party" means, with respect to any Person, any other Person whose ownership of shares of the General Partner's capital stock would be attributed to the first such Person under Code Section 544 (as modified by Code Section 856(h)(1)(B)).

"Rights" has the meaning set forth in the definition of "REIT Shares Amount."

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Services Agreement" means any management, development or advisory agreement with a property and/or asset manager for the provision of property management, asset management, leasing, development and/or similar services with respect to the Properties and any agreement for the provision of services of accountants, legal counsel, appraisers, insurers, brokers, transfer agents, registrars, developers, financial advisors and other professional services.

"Single Funding Notice" has the meaning set forth in Section 8.6.D(3) hereof.

"Special Voting Preferred Stock" means shares of Special Voting Preferred Stock, $0.01 par value per share, of Parent REIT, as designated by articles supplementary to the Charter and subject to the Pairing Agreement.

"Specified Redemption Date" means the later of (a) the tenth (10th) Business Day after the receipt by the General Partner of a Notice of Redemption or (b) in the case of a Declination followed by an Offering Funding, the Business Day next following the date of the closing of the Offering Funding; provided, however, that the Specified Redemption Date, as well as the closing of a Redemption, or an acquisition of Tendered Units by a REIT Party pursuant to Section 8.6.B hereof, on any Specified Redemption Date, may be deferred, in the REIT Party's sole and absolute discretion, for such time (but in any event not more than one hundred fifty (150) days in the aggregate) as may reasonably be required to effect, as applicable, (i) an Offering Funding or other necessary funding arrangements, (ii) compliance with the Securities Act or other law (including, but not limited to, (a) state "blue sky" or other securities laws and (b) the expiration or termination of the applicable waiting period, if any, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as

amended) and (iii) satisfaction or waiver of other commercially reasonable and customary closing conditions and requirements for a transaction of such nature.

"Stock Option Plan" means any stock option plan hereafter adopted by the Partnership or the Parent REIT.

"Subsidiary" means, with respect to any Person, any other Person (which is not an individual) of which a majority of (i) the voting power of the voting equity securities or (ii) the outstanding equity interests is owned, directly or indirectly, by such Person.

"Substituted Limited Partner" means a Person who is admitted as a Limited Partner to the Partnership pursuant to Section 11.4 hereof.

"Tax Items" has the meaning set forth in Section 6.4.A hereof.

"Tendered Units" has the meaning set forth in Section 8.6.A hereof.

"Tendering Party" has the meaning set forth in Section 8.6.A hereof.

"Terminating Capital Transaction" means any sale or other disposition of all or substantially all of the assets of the Partnership or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the assets of the Partnership; except that sales or other dispositions of assets to a Subsidiary will not be deemed a Terminating Capital Transaction.

"Transfer," when used with respect to a Partnership Unit, or all or any portion of a Partnership Interest, means any sale, assignment, bequest, conveyance, devise, gift (outright or in trust), pledge, encumbrance, hypothecation, mortgage, exchange, transfer or other disposition or act of alienation, whether voluntary or involuntary or by operation of law; provided, however, that when the term is used in Article 11 hereof, "Transfer" does not include (a) any Redemption of Partnership Common Units by the Partnership, or acquisition of Tendered Units by a REIT Party, pursuant to Section 8.6 hereof or (b) any redemption of Partnership Units pursuant to any Partnership Unit Designation. The terms "Transferred" and "Transferring" have correlative meanings.

"Unitholder" means the General Partner or any Holder of Partnership Units.

"Value" means, on any date of determination with respect to a REIT Share, the average of the daily Market Prices for ten (10) consecutive trading days immediately preceding the date of determination except that, as provided in Section 4.4.B. hereof, the Market Price for the trading day immediately preceding the date of exercise of a stock option under any Stock Option Plans shall be substituted for such average of daily market prices for purposes of Section 4.4 hereof; provided, however, that for purposes of Section 8.6, the "date of determination" shall be the date of receipt by the General Partner of a Notice of Redemption or, if such date is not a Business Day, the immediately preceding Business Day. The term "Market Price" on any date shall mean, with respect to any class or series of outstanding REIT Shares, the Closing Price for such REIT Shares on such date. The "Closing Price" on any date shall mean the last sale price for such REIT Shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such REIT Shares, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if such REIT Shares are not listed or admitted to trading on the New York Stock Exchange, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such REIT Shares are listed or admitted to trading or, if such REIT Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if such REIT Shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such REIT Shares selected by the Board of Directors of the General Partner or, in the event that no trading price

is available for such REIT Shares, the fair market value of the REIT Shares, as determined in good faith by the Board of Directors of the General Partner.

In the event that the REIT Shares Amount includes Rights (as defined in the definition of "REIT Shares Amount") that a holder of REIT Shares would be entitled to receive, then the Value of such Rights shall be determined by the General Partner acting in good faith on the basis of such quotations and other information as it considers, in its reasonable judgment, appropriate.

"Warrants" mean warrants to purchase additional Partnership Common Units pursuant to the Warrant Agreement.

"Warrant Agreement" means the Warrant Agreement between the Partnership, the Parent REIT, and ACM, dated as of July 1, 2003.

ARTICLE II
ORGANIZATIONAL MATTERS

Section 2.1 Organization. The Partnership is a limited partnership organized pursuant to the provisions of the Act and upon the terms and subject to the conditions set forth in this Agreement. Except as expressly provided herein to the contrary, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Act. The Partnership Interest of each Partner shall be personal property for all purposes.

Section 2.2 Name. The name of the Partnership is **"Arbor Realty Limited Partnership."** The Partnership's business may be conducted under any other name or names deemed advisable by the General Partner, including the name of the General Partner or any Affiliate thereof. The words "Limited Partnership," "LP," "L.P.," "Ltd." or similar words or letters shall be included in the Partnership's name where necessary for the purposes of complying with the laws of any jurisdiction that so requires. The General Partner in its sole and absolute discretion may change the name of the Partnership at any time and from time to time and shall notify the Partners of such change in the next regular communication to the Partners.

Section 2.3 Registered Office and Agent; Principal Office. The address of the registered office of the Partnership in the State of Delaware is located at 1209 Orange Street, Wilmington, Delaware, 19801, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office is The Corporation Trust Company. The principal office of the Partnership is located at 333 Earle Ovington Blvd., Suite 900, Uniondale, NY 11553, or such other place as the General Partner may from time to time designate by notice to the Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner deems advisable.

Section 2.4 Power of Attorney.

A. Each Limited Partner and each Assignee hereby irrevocably constitutes and appoints the General Partner, any Liquidator, and authorized officers and attorneys-in-fact of each, and each of those acting singly, in each case with full power of substitution, as its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead to:

(1) execute, swear to, seal, acknowledge, deliver, file and record in the appropriate public offices (a) all certificates, documents and other instruments (including, without limitation, this Agreement and the Certificate and all amendments, supplements or restatements thereof) that the General Partner or the Liquidator deems appropriate or necessary to form, qualify or continue the existence or qualification of the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability to the extent provided by applicable law) in the State of Delaware and in all other jurisdictions in which the Partnership may conduct business or own property; (b) all instruments that the General Partner or the Liquidator deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance

with its terms; (c) all conveyances and other instruments or documents that the General Partner or the Liquidator deems appropriate or necessary to reflect the dissolution and liquidation of the Partnership pursuant to the terms of this Agreement, including, without limitation, a certificate of cancellation; (d) all conveyances and other instruments or documents that the General Partner or the Liquidator deems appropriate or necessary to reflect the distribution or exchange of assets of the Partnership pursuant to the terms of this Agreement; (e) all instruments relating to the admission, withdrawal, removal or substitution of any Partner pursuant to, or other events described in, Article 11, Article 12 or Article 13 hereof or the Capital Contribution of any Partner; and (f) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges relating to Partnership Interests; and

(2) execute, swear to, acknowledge and file all ballots, consents, approvals, waivers, certificates and other instruments appropriate or necessary, in the sole and absolute discretion of the General Partner or the Liquidator, to make, evidence, give, confirm or ratify any vote, consent, approval, agreement or other action that is made or given by the Partners hereunder or is consistent with the terms of this Agreement or appropriate or necessary, in the sole and absolute discretion of the General Partner or the Liquidator, to effectuate the terms or intent of this Agreement.

Nothing contained herein shall be construed as authorizing the General Partner or the Liquidator to amend this Agreement except in accordance with Article 14 hereof or as may be otherwise expressly provided for in this Agreement.

B. The foregoing power of attorney is hereby declared to be irrevocable and a special power coupled with an interest, in recognition of the fact that each of the Limited Partners and Assignees will be relying upon the power of the General Partner or the Liquidator to act as contemplated by this Agreement in any filing or other action by it on behalf of the Partnership, and it shall survive and not be affected by the subsequent Incapacity of any Limited Partner or Assignee and the Transfer of all or any portion of such Limited Partner's or Assignee's Partnership Units or Partnership Interest and shall extend to such Limited Partner's or Assignee's heirs, successors, assigns and personal representatives. Each such Limited Partner or Assignee hereby agrees to be bound by any representation made by the General Partner or the Liquidator, acting in good faith pursuant to such power of attorney; and each such Limited Partner or Assignee hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the General Partner or the Liquidator, taken in good faith under such power of attorney. Each Limited Partner or Assignee shall execute and deliver to the General Partner or the Liquidator, within fifteen (15) days after receipt of the General Partner's or the Liquidator's request therefor, such further designation, powers of attorney and other instruments as the General Partner or the Liquidator, as the case may be, deems necessary to effectuate this Agreement and the purposes of the Partnership.

Section 2.5 Term. Pursuant to Section 17-217(d) of the Act, the term of the Partnership commenced on June 24, 2003 and shall continue until the Partnership is dissolved pursuant to the provisions of Article 13 hereof or as otherwise provided by law.

ARTICLE III
PURPOSE

Section 3.1 Purpose and Business. The purpose and nature of the Partnership is to conduct any business, enterprise or activity permitted by or under the Act; provided, however, such business and arrangements and interests may be limited to and conducted in such a manner as to permit the Parent REIT, in the so le and absolute discretion of the General Partner, at all times to be classified as a REIT. In connection with the foregoing, the Partnership shall have full power and authority to enter into, perform and carry out contracts of any kind, to borrow and lend money and to issue and guarantee evidence of indebtedness, whether or not secured by mortgage, deed of trust, pledge or other lien and, directly or indirectly, to acquire and construct additional Properties necessary, useful or desirable in connection wit h its business.

Section 3.2 Powers.

A. The Partnership shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described herein and for the protection and benefit of the Partnership.

B. The Partnership may contribute from time to time Partnership capital or Property to one or more of its Subsidiaries or newly formed entities solely in exchange for equity interests therein (or in a wholly-owned subsidiary entity thereof).

C. Notwithstanding any other provision in this Agreement, the General Partner may cause the Partnership not to take, or to refrain from taking, any action that, in the judgment of the General Partner, in its sole and absolute discretion, (i) could adversely affect the ability of the Parent REIT to continue to qualify as a REIT, (ii) could subject the Parent REIT to any additional taxes under Code Section 857 or Code Section 4981 or any other related or successor provision of the Code, or (iii) could violate any law or regulation of any governmental body or agency having jurisdiction over Parent REIT or the General Partner, their securities or the Partnership.

Section 3.3 Partnership Only for Partnership Purposes. This Agreement shall not be deemed to create a company, venture or partnership between or among the Partners with respect to any activities whatsoever other than the activities within the purposes of the Partnership as specified in Section 3.1 hereof. Except as otherwise provided in this Agreement, no Partner shall have any authority to act for, bind, commit or assume any obligation or responsibility on behalf of the Partnership, its properties or any other Partner. No Partner, in its capacity as a Partner under this Agreement, shall be responsible or liable for any indebtedness or obligation of another Partner, and the Partnership shall not be responsible or liable for any indebtedness or obligation of any Partner, incurred either before or after the execution and delivery of this Agreement by such Partner, except as to those responsibilities, liabilities, indebtedness or obligations incurred pursuant to and as limited by the terms of this Agreement and the Act.

Section 3.4 Representations and Warranties by the Parties.

A. Each Partner (including, without limitation, each Additional Limited Partner or Substituted Limited Partner as a condition to becoming an Additional Limited Partner or a Substituted Limited Partner, respectively) that is an individual represents and warrants to each other Partner that (i) the consummation of the transactions contemplated by this Agreement to be performed by such Partner will not result in a breach or violation of, or a default under, any material agreement by which such Partner or any of such Partner's property is bound, or any statute, regulation, order or other law to which such Partner is subject, (ii) subject to the last sentence of this Section 3.4.A, such Partner is neither a "foreign person" within the meaning of Code Section 1445(f) nor a "foreign partner" within the meaning of Code Section 1446(e), (iii) such Partner does not own, directly or indirectly, (a) nine and nine tenths percent (9.9%) or more of the total combined voting power of all classes of stock entitled to vote, or nine and nine tenths percent (9.9%) or more of the total number of shares of all classes of stock, of any corporation that is a tenant of either (I) the Parent REIT, the General Partner or any Qualified REIT Subsidiary, (II) the Partnership or (III) any partnership, venture or limited liability company of which the Parent REIT, the General Partner, any Qualified REIT Subsidiary or the Partnership is a member or (b) an interest of nine and nine tenths percent (9.9%) or more in the assets or net profits of any tenant of either (I) the Parent REIT, the General Partner or any Qualified REIT Subsidiary, (II) the Partnership or (III) any partnership, venture, or limited liability company of which the Parent REIT, the General Partner, any Qualified REIT Subsidiary or the Partnership is a member and (iv) this Agreement is binding upon, and enforceable against, such Partner in accordance with its terms. Notwithstanding anything contained herein to the contrary, in the event that the representation contained in the foregoing clause (ii) would be inaccurate if given by a Partner, such Partner (w) shall not be required to make and shall not be deemed to have made such representation, if it delivers to the General Partner in connection with or prior to its execution of this Agreement written notice that it may not truthfully make such representation, (x) hereby agrees that it is subject to, and hereby authorizes the General Partner to withhold, all withholdings to which such a "foreign person" or "foreign partner", as applicable, is subject under the Code and (y) hereby agrees to cooperate fully with the General Partner with respect to such withholdings, including by effecting the timely completion and delivery to the General Partner of all governmental forms required in connection therewith.

B. Each Partner (including, without limitation, each Additional Limited Partner or Substituted Limited Partner as a condition to becoming an Additional Limited Partner or a Substituted Limited Partner, respectively) that is not an individual represents and warrants to each other Partner(s) that (i) all transactions contemplated by this Agreement to be performed by it have been duly authorized by all necessary action, including, without limitation, that of its general partner(s), committee(s), trustee(s), beneficiaries, directors and/or shareholder(s), as the case may be, as required, (ii) the consummation of such transactions shall not result in a breach or violation of, or a default under, its partnership or operating agreement, trust agreement, articles, charter or bylaws, as the case may be, any material agreement by which such Partner or any of such Partner's properties or any of its partners, members, beneficiaries, trustees or shareholders, as the case may be, is or are bound, or any statute, regulation, order or other law to which such Partner or any of its partners, members, trustees, beneficiaries or shareholders, as the case may be, is or are subject, (iii) subject to the last sentence of this Section 3.4.B, such Partner is neither a "foreign person" within the meaning of Code Section 1445(f) nor a "foreign partner" within the meaning of Code Section 1446(e), (iv) such Partner does not own, directly or indirectly, (a) nine and nine tenths percent (9.9%) or more of the total combined voting power of all classes of stock entitled to vote, or nine and eight nine percent (9.9%) or more of the total number of shares of all classes of stock, of any corporation that is a tenant of either (I) the Parent REIT, the General Partner or any Qualified REIT Subsidiary, (II) the Partnership or (III) any partnership, venture or limited liability company of which the Parent REIT, the General Partner, any Qualified REIT Subsidiary or the Partnership is a member or (b) an interest of nine and nine tenths percent (9.9%) or more in the assets or net profits of any tenant of either (I) the Parent REIT, the General Partner or any Qualified REIT Subsidiary, (II) the Partnership or (III) any partnership, venture or limited liability company for which the Parent REIT, the General Partner, any Qualified REIT Subsidiary or the Partnership is a member and (v) this Agreement is binding upon, and enforceable against, such Partner in accordance with its terms. Notwithstanding anything contained herein to the contrary, in the event that the representation contained in the foregoing clause (iii) would be inaccurate if given by a Partner, such Partner (w) shall not be required to make and shall not be deemed to have made such representation, if it delivers to the General Partner in connection with or prior to its execution of this Agreement written notice that it may not truthfully make such representation, (x) hereby agrees that it is subject to, and hereby authorizes the General Partner to withhold, all withholdings to which such a "foreign person" or "foreign partner", as applicable, is subject under the Code and (y) hereby agrees to cooperate fully with the General Partner with respect to such withholdings, including by effecting the timely completion and delivery to the General Partner of all internal revenue forms required in connection therewith.

C. Each Partner (including, without limitation, each Substituted Limited Partner as a condition to becoming a Substituted Limited Partner) represents, warrants and agrees that it has acquired and continues to hold its interest in the Partnership for its own account for investment purposes only and not for the purpose of, or with a view toward, the resale or distribution of all or any part thereof, and not with a view toward selling or otherwise distributing such interest or any part thereof at any particular time or under any predetermined circumstances. Each Partner further represents and warrants that it is a sophisticated investor, able and accustomed to handling sophisticated financial matters for itself, particularly real estate investments, and that it has a sufficiently high net worth that it does not anticipate a need for the funds that it has invested in the Partnership in what it understands to be a highly speculative and illiquid investment.

D. The representations and warranties contained in Sections 3.4.A, 3.4.B and 3.4.C hereof shall survive the execution and delivery of this Agreement by each Partner (and, in the case of an Additional Limited Partner or a Substituted Limited Partner, the admission of such Additional Limited Partner or Substituted Limited Partner as a Limited Partner in the Partnership) and the dissolution, liquidation and termination of the Partnership.

E. Each Partner (including, without limitation, each Substituted Limited Partner as a condition to becoming a Substituted Limited Partner) hereby acknowledges that no representations as to potential profit, cash flows, funds from operations or yield, if any, in respect of the Partnership or the Parent REIT have been made by any Partner or any employee or representative or Affiliate of any Partner, and that projections and any other information, including, without limitation, financial and descriptive information and documentation, that may have been in any manner submitted to such Partner shall not constitute any representation or warranty of any kind or nature, express or implied.

ARTICLE IV
CAPITAL CONTRIBUTIONS

Section 4.1 Capital Contributions of the Partners. The Partners have made Capital Contributions to the Partnership and own Partnership Units in the amount set forth for such Partner on Exhibit A, as the same may be amended from time to time by the General Partner to the extent necessary to reflect accurately sales, exchanges or other Transfers, redemptions, Capital Contributions, the issuance of additional Partnership Units, or similar events having an effect on a Partner's ownership of Partnership Units. Except as provided by law or in Sections 4.2, 4.3, 4.10 or 10.4 hereof, the Partners shall have no obligation or right to make any additional Capital Contributions or loans to the Partnership.

Section 4.2 Issuances of Additional Partnership Interests.

A. General. The General Partner is hereby authorized to cause the Partnership to issue additional Partnership Interests, in the form of Partnership Units, for any Partnership purpose, at any time or from time to time, to the Partners (including the General Partner) or to other Persons, and to admit such Persons as Additional Limited Partners, for such consideration and on such terms and conditions as shall be established by the General Partner in its sole and absolute discretion, all without the approval of any Limited Partners. Without limiting the foregoing, the General Partner is expressly authorized to cause the Partnership to issue Partnership Units (i) upon the conversion, redemption or exchange of any Debt, Partnership Units or other securities issued by the Partnership, (ii) for less than fair market value, so long as the General Partner concludes in good faith that such issuance is in the best interests of the General Partner and the Partnership, and (iii) in connection with any merger of any other Person into the Partnership or any Subsidiary of the Partnership if the applicable merger agreement provides that Persons are to receive Partnership Units in exchange for their interests in the Person merging into the Partnership or any Subsidiary of the Partnership. Subject to Delaware law, any additional Partnership Interests may be issued in one or more classes, or one or more series of any of such classes, with such designations, preferences and relative, participating, optional or other special rights, powers and duties as shall be determined by the General Partner, in its sole and absolute discretion without the approval of any Limited Partner, and set forth in this Agreement or a written document thereafter attached to and made an exhibit to this Agreement (each, a "Partnership Unit Designation"). Without limiting the generality of the foregoing, the General Partner shall have authority to specify (a) the allocations of items of Partnership income, gain, loss, deduction and credit to each such class or series of Partnership Interests; (b) the right of each such class or series of Partnership Interests to share in Partnership distributions; (c) the rights of each such class or series of Partnership Interests upon dissolution and liquidation of the Partnership; (d) the voting rights, if any, of each such class or series of Partnership Interests; and (e) the conversion, redemption or exchange rights applicable to each such class or series of Partnership Interests. Upon the issuance of any additional Partnership Interest, the General Partner shall amend Exhibit A as appropriate to reflect such issuance.

B. Issuances to the General Partner. No additional Partnership Units shall be issued to the General Partner or the Initial Limited Partner unless (i) the additional Partnership Units are issued to all Partners in proportion to their respective Percentage Interests with respect to the class of Partnership Units so issued, (ii) (a) the additional Partnership Units are (x) Partnership Common Units issued in connection with an issuance of REIT Shares, or (y) Partnership Units (other than Partnership Common Units) issued in connection with an issuance, conversion or exercise of Preferred Shares, New Securities or other interests in the Parent REIT (other than REIT Shares), which Preferred Shares, New Securities or other interests have designations, preferences and other rights, terms and provisions that are substantially the same as the designations, preferences and other rights, terms and provisions of the additional Partnership Units issued to the General Partner or the Initial Limited Partner, and (b) the Parent REIT contributes or otherwise causes to be transferred to the Partnership the cash proceeds or other consideration received in connection with the issuance of such REIT Shares, Preferred Shares, New Securities or other interests in the Parent REIT, (iii) the additional Partnership Units are issued upon the conversion, redemption or exchange of Debt, Partnership Units or other securities issued by the Partnership, or (iv) the additional Partnership Units are issued pursuant to Sections 4.3B, 4.4, 4.6 or Section 4.7.

C. No Preemptive Rights. No Person, including, without limitation, any Partner or Assignee, shall have any preemptive, preferential, participation or similar right or rights to subscribe for or acquire any Partnership Interest.

Section 4.3 Additional Funds and Capital Contributions.

A. General. The General Partner may, at any time and from time to time, determine that the Partnership requires additional funds ("Additional Funds") for the acquisition or development of additional Properties, for the redemption of Partnership Units or for such other purposes as the General Partner may determine in its sole and absolute discretion. Additional Funds may be obtained by the Partnership, at the election of the General Partner, in any manner provided in, and in accordance with, the terms of this Section 4.3 without the approval of any Limited Partners.

B. Additional Capital Contributions. The General Partner, on behalf of the Partnership, may obtain any Additional Funds by accepting Capital Contributions from any Partners or other Persons. In connection with any such Capital Contribution (of cash or property), the General Partner is hereby authorized to cause the Partnership from time to time to issue additional Partnership Units (as set forth in Section 4.2 above) in consideration therefor and the Percentage Interests of the General Partner and the Limited Partners shall be adjusted to reflect the issuance of such additional Partnership Units. Simultaneously with the execution of this Agreement, the Initial Limited Partner will contribute 100% of the outstanding shares of common stock of Arbor Realty SR, Inc. to the Partnership in consideration of the Partnership's non pro rata distribution of $1,000 to the Initial Limited Partner for the purchase of such shares. Pursuant to this Section 4.1(B), the General Partner is authorized to accept such Capital Contribution by the Initial Limited Partner on behalf of the Partnership.

C. Loans by Third Parties. The General Partner, on behalf of the Partnership, may obtain any Additional Funds by causing the Partnership to incur Debt to any Person upon such terms as the General Partner determines appropriate, including making such Debt convertible, redeemable or exchangeable for Partnership Units; provided, however, that the Partnership shall not incur any such Debt if (i) a breach, violation or default of such Debt would be deemed to occur by virtue of the Transfer by any Limited Partner of any Partnership Interest, or (ii) such Debt is recourse to any Partner (unless the Partner otherwise agrees).

D. General Partner Loans. The General Partner, on behalf of the Partnership, may obtain any Additional Funds by causing the Partnership to incur Debt with the General Partner or the Parent REIT (each, a "General Partner Loan") if (i) such Debt is, to the extent permitted by law, on substantially the same terms and conditions (including interest rate, repayment schedule, and conversion, redemption, repurchase and exchange rights) as Funding Debt incurred by the General Partner or the Parent REIT, the net proceeds of which are lent to the Partnership to provide such Additional Funds, or (ii) such Debt is on terms and conditions no less favorable to the Partnership than would be available to the Partnership from any third party; provided, however, that the Partnership shall not incur any such Debt if (a) a breach, violation or default of such Debt would be deemed to occur by virtue of the Transfer by any Limited Partner of any Partnership Interest, or (b) such Debt is recourse to any Partner (unless the Partner otherwise agrees).

E. Issuance of Securities by the Parent REIT.

(1) The Parent REIT shall contribute the cash proceeds or other consideration received from any issuances, since the formation of the Partnership, of REIT Shares, Preferred Shares, Junior Shares or New Securities, as the case may be, and from the exercise of the rights contained in any such additional New Securities, to the General Partner or the Initial Limited Partner and the General Partner or the Initial Limited Partner, as the case may be, shall contribute such proceeds to the Partnership in exchange for (x) in the case of an issuance of REIT Shares, Partnership Common Units, or (y) in the case of an issuance of Preferred Shares, Junior Shares or New Securities, Partnership Units with designations, preferences and other rights, terms and provisions that are substantially the same as the designations, preferences and other rights, terms and provisions of such Preferred Shares, Junior Shares or New Securities.

(2) The General Partner and the Initial Limited Partner shall contribute any cash or other consideration that each have received from the Parent REIT, since the formation of the Partnership, to the Partnership in exchange for Partnership Common Units.

(3) The Parent REIT shall not issue any additional REIT Shares, Preferred Shares, Junior Shares or New Securities unless the Parent REIT contributes the cash proceeds or other consideration received from the issuance of such additional REIT Shares, Preferred Shares, Junior Shares or New Securities, as the case may be, and from the exercise of the rights contained in any such additional New Securities, to the General Partner or the Initial Limited Partner and the General Partner or the Initial Limited Partner, as the case may be, shall contribute such proceeds to the Partnership in exchange for (x) in the case of an issuance of REIT Shares, Partnership Common Units, or (y) in the case of an issuance of Preferred Shares, Junior Shares or New Securities, Partnership Units with designations, preferences and other rights, terms and provisions that are substantially the same as the designations, preferences and other rights, terms and provisions of such Preferred Shares, Junior Shares or New Securities; provided, however, that notwithstanding the foregoing, the General Partner may issue REIT Shares, Preferred Shares, Junior Shares or New Securities (a) pursuant to Section 4.4 or Section 8.6.B hereof, (b) pursuant to a dividend or distribution (including any stock split) of REIT Shares, Preferred Shares, Junior Shares or New Securities to all of the holders of REIT Shares, Preferred Shares, Junior Shares or New Securities, as the case may be, (c) upon a conversion, redemption or exchange of Preferred Shares, (d) upon a conversion of Junior Shares into REIT Shares, (e) upon a conversion, redemption, exchange or exercise of New Securities, or (f) in connection with an acquisition of a property or other asset to be owned, directly or indirectly, by the General Partner if the General Partner determines that such acquisition is in the best interests of the Partnership. In the event of any issuance of additional REIT Shares, Preferred Shares, Junior Shares or New Securities by the Parent REIT, and the contribution to the General Partner or the Initial Limited Partner of the cash proceeds or other consideration received from such issuance, and the contribution to the Partnership, by the General Partner or the Initial Limited Partner, as the case may be, of such proceeds, the Partnership shall pay the Parent REIT's expenses associated with such issuance, including any underwriting discounts or commissions (it being understood that payment of some or all of such expenses may be made by the Parent REIT on behalf of the Partnership out of the gross proceeds of such issuance prior to the contribution of such proceeds by the Parent REIT to the General Partner or the Initial Limited Partner, as the case may be).

Section 4.4 Stock Option Plan.

A. Options Granted to Company Employees and Independent Directors. If at any time or from time to time, in connection with a Stock Option Plan, a stock option granted to a Company Employee or an Independent Director is duly exercised:

(1) the General Partner shall, as soon as practicable after such exercise, make a Capital Contribution to the Partnership in an amount equal to the exercise price paid to the General Partner (or the Parent REIT) by such exercising party in connection with the exercise of such stock option.

(2) on the date that the General Partner makes a capital contribution pursuant to 4.4.A(1) hereof, the General Partner shall be deemed to have contributed to the Partnership as a Capital Contribution, in consideration of an additional Limited Partner Interest (expressed in and as additional Partnership Common Units), an amount equal to the Value of a REIT Share as of the date of exercise multiplied by the

number of REIT Shares then being issued in connection with the exercise of such stock option.

(3) An equitable Percentage Interest adjustment shall be made in which the General Partner shall be treated as having made a cash contribution equal to the amount described in Section 4.4.A(2) hereof.

B. Special Valuation Rule. For purposes of this Section 4.4, in determining the Value of a REIT Share, only the trading date immediately preceding the exercise of the relevant stock option under the Stock Option Plan shall be considered.

C. Future Stock Incentive Plans. Nothing in this Agreement shall be construed or applied to preclude or restrain the General Partner or the Parent REIT from adopting, modifying or terminating stock incentive plans, including any Stock Option Plan, for the benefit of employees, directors or other business associates of the General Partner, the Parent REIT, the Partnership or any of their Affiliates. The Limited Partners acknowledge and agree that, in the event that any such plan is adopted, modified or terminated by the General Partner or Parent REIT amendments to this Section 4.4 may become necessary or advisable and that any approval or consent of the Limited Partners required pursuant to the terms of this Agreement in order to effect any such amendments requested by the General Partner shall not be unreasonably withheld or delayed.

Section 4.5 No Interest; No Return. No Partner shall be entitled to interest on its Capital Contribution or on such Partner's Capital Account. Except as provided herein or by law, no Partner shall have any right to demand or receive the return of its Capital Contribution from the Partnership.

Section 4.6 Conversion or Redemption of Preferred Shares.

A. Conversion of Preferred Shares. If, at any time, any of the Preferred Shares are converted into REIT Shares, in whole or in part, then a number of Partnership Preferred Units equal to the number of Preferred Shares so converted shall automatically be converted into a number of Partnership Common Units equal to (i) the number of REIT Shares issued upon such conversion divided by (ii) the Adjustment Factor then in effect, and the Percentage Interests of the General Partner and the Limited Partners shall be adjusted to reflect such conversion.

B. Redemption of Preferred Shares. If, at any time, any Preferred Shares are redeemed (whether by exercise of a put or call, automatically or by means of another arrangement) by the General Partner for cash, the Partnership shall, immediately prior to such redemption of Preferred Shares, redeem an equal number of Partnership Preferred Units held by the General Partner, upon the same terms and for the same price per Partnership Preferred Unit, as such Preferred Shares are redeemed.

Section 4.7 Conversion or Redemption of Junior Shares.

A. Conversion of Junior Shares. If, at any time, any of the Junior Shares are converted into REIT Shares, in whole or in part, then a number of Partnership Common Units equal to (i) the number of REIT Shares issued upon such conversion divided by (ii) the Adjustment Factor then in effect shall be issued to the General Partner, and the Percentage Interests of the General Partner and the Limited Partners shall be adjusted to reflect such conversion.

B. Redemption of Junior Shares. If, at any time, any Junior Shares are redeemed (whether by exercise of a put or call, automatically or by means of another arrangement) by the General Partner for cash, the Partnership shall, immediately prior to such redemption of Junior Shares, redeem an equal number of Partnership Junior Units held by the General Partner, upon the same terms and for the same price per Partnership Junior Unit, as such Junior Shares are redeemed.

Section 4.8 Other Contribution Provisions. In the event that any Partner is admitted to the Partnership and is given a Capital Account in exchange for services rendered to the Partnership, unless otherwise determined by the General Partner in its sole and absolute discretion, such transaction shall be treated

by the Partnership and the affected Partner as if the Partnership had compensated such partner in cash and such Partner had contributed the cash to the capital of the Partnership. In addition, with the consent of the General Partner, one or more Limited Partners may enter into contribution agreements with the Partnership which have the effect of providing a guarantee of certain obligations of the Partnership.

Section 4.9 Not Publicly Traded. The General Partner, on behalf of the Partnership, shall use its best efforts not to take any action which would result in the Partnership being a "publicly traded partnership" under and as such term is defined in Section 7704(b) of the Code.

Section 4.10 Warrants. Warrants to purchase additional Partnership Common Units shall be issued in the amounts and pursuant to the terms of the Warrant Agreement. Partnership Common Units shall be issued upon the exercise of the Warrants in accordance with the Warrant Agreement.

Section 4.11 Class A Preferred Units.In accordance with Section 4.3E, the Parent REIT shall contribute the proceeds of the issuance of shares of Special Voting Preferred Stock to the Initial Limited Partner. The Initial Limited Partner shall contribute such proceeds to the Partnership in exchange for a number of Class A Preferred Units equal to the number of shares of Special Voting Preferred Stock issued by the Parent REIT. The holder of each Class A Preferred Unit shall receive a Capital Account, and be entitled to a preferential distribution in liquidation, of $.01 per Class A Preferred Unit. Ownership of a Class A Preferred Unit shall not entitle the holder thereof to any allocation of profits or losses of the Partnership. To the extent that shares of Special Voting Preferred Stock are redeemed by the Parent REIT, a like number of Class A Preferred Units shall have been first redeemed by the Partnership for the same price per Class A Preferred Unit and in accordance with the terms of the Pairing Agreement. Except as otherwise provided herein or required by law, the ownership of a Class A Preferred Unit shall not entitle the holder thereof to any voting rights hereunder. The Class A Preferred Units shall be owned and held solely by the Initial Limited Partner.

Section 4.12 Restricted Units.In accordance with Section 4.3E, to the extent the Parent REIT issues shares of restricted common stock pursuant to a stock incentive plan, the Partnership shall issue to the Initial Limited Partner an equal number of Partnership Common Units that are subject to a similar vesting schedule, forfeiture provisions and other terms and conditions that correspond to those of the restricted common stock ("Restricted Partnership Common Units").

ARTICLE V

DISTRIBUTIONS

Section 5.1 Requirement and Characterization of Distributions. Subject to the terms of any Partnership Unit Designation, the General Partner shall cause the Partnership to distribute quarterly all, or such portion as the General Partner may in its sole and absolute discretion determine, of Available Cash generated by the Partnership during such quarter to the Holders of Partnership Units on such Partnership Record Date with respect to such quarter: (i) first, with respect to any Partnership Interests that are entitled to any preference in distribution, in accordance with the rights of such class(es) of Partnership Interests (and, within such class(es), pro rata in proportion to the respective Percentage Interests on such Partnership Record Date), and (ii) second, with respect to any Partnership Interests that are not entitled to any preference in distribution, in accordance with the rights of such class of Partnership Interests (and, within such class, pro rata in proportion to the respective Percentage Interests on such Partnership Record Date). Notwithstanding the preceding sentence, in the event that items of Partnership income are specially allocated pursuant to Section 6.3E hereof (relating to the absence of an effective registration statement for the sale of shares of common stock of the Parent REIT), distributions with respect to Partnership Common Units shall first be made in accordance with such allocations, with any excess distributed pro rata in accordance with the preceding sentence. Distributions payable with respect to any Partnership Units that were not outstanding during the entire quarterly period in respect of which any distribution is made shall be prorated based on the portion of the period that such units were outstanding. The General Partner in its sole and absolute discretion may distribute to the Unitholders Available Cash on a more frequent basis and provide for an appropriate Partnership Record Date. Notwithstanding anything herein to the contrary, the General Partner shall make such reasonable efforts, as determined by it in its sole and absolute discretion and consistent with the Parent REIT's qualification as a REIT, to cause the Partnership to

distribute sufficient amounts to enable the Parent REIT to pay shareholder dividends that will (a) satisfy the REIT Requirements, and (b) except to the extent otherwise determined by the General Partner, avoid any federal income or excise tax liability of the Parent REIT.

Section 5.2 Distributions in Kind. No right is given to any Unitholder to demand and receive property other than cash as provided in this Agreement. The General Partner may determine, in its sole and absolute discretion, to make a distribution in kind of Partnership assets to the Unitholders, and such assets shall be distributed in such a fashion as to ensure that the fair market value is distributed and allocated in accordance with Articles 5, 6 and 10 hereof.

Section 5.3 Amounts Withheld. All amounts withheld pursuant to the Code or any provisions of any state or local tax law and Section 10.4 hereof with respect to any allocation, payment or distribution to any Unitholder shall be treated as amounts paid or distributed to such Unitholder pursuant to Section 5.1 hereof for all purposes under this Agreement.

Section 5.4 Distributions Upon Liquidation. Notwithstanding the other provisions of this Article 5, net proceeds from a Terminating Capital Transaction, and any other cash received or reductions in reserves made after commencement of the liquidation of the Partnership, shall be distributed to the Unitholders in accordance with Section 13.2 hereof.

Section 5.5 Distributions to Reflect Issuance of Additional Partnership Units. In the event that the Partnership issues additional Partnership Units pursuant to the provisions of Article 4 hereof, subject to Section 7.3.D, the General Partner is hereby authorized to make such revisions to this Article 5 as it determines are necessary or desirable to reflect the issuance of such additional Partnership Units, including, without limitation, making preferential distributions to certain classes of Partnership Units.

Section 5.6 Restricted Distributions. Notwithstanding any provision to the contrary contained in this Agreement, neither the Partnership nor the General Partner, on behalf of the Partnership, shall make a distribution to any Unitholder on account of its Partnership Interest or interest in Partnership Units if such distribution would violate Section 17-607 of the Act or other applicable law.

ARTICLE VI
ALLOCATIONS

Section 6.1 Timing and Amount of Allocations of Net Income and Net Loss. Net Income and Net Loss of the Partnership shall be determined and allocated with respect to each Partnership Year of the Partnership as of the end of each such year. Except as otherwise provided in this Article 6, and subject to Section 11.6.C hereof, an allocation to a Unitholder of a share of Net Income or Net Loss shall be treated as an allocation of the same share of each item of income, gain, loss or deduction that is taken into account in computing Net Income or Net Loss.

Section 6.2 General Allocations.

A. In General. Subject to the terms of any Partnership Unit Designation and Section 4.11, except as otherwise provided in this Article 6 and subject to Section 11.6.C hereof, Net Income and Net Loss shall be allocated to each of the Holders of Partnership Common Units in accordance with their respective Percentage Interests at the end of each Partnership Year.

B. Allocations to Reflect Issuance of Additional Partnership Units. In the event that the Partnership issues additional Partnership Units pursuant to the provisions of Article 4 hereof, the General Partner is hereby authorized to make such revisions to this Section 6.2 as it determines are necessary or desirable to reflect the terms of the issuance of such additional Partnership Units, including, without limitation, making preferential allocations to certain classes of Partnership Units.

Section 6.3 Additional Allocation Provisions. Notwithstanding the foregoing provisions of this Article 6:

A. Special Allocations Regarding Partnership Preferred Units. If any Partnership Preferred Units are redeemed pursuant to Section 4.6.B hereof (treating a full liquidation of the General Partner Interest for purposes of this Section 6.3.A as including a redemption of any then outstanding Partnership Preferred Units pursuant to Section 4.6.B hereof), for the Partnership Year that includes such redemption (and, if necessary, for subsequent Partnership Years) (a) gross income and gain shall be allocated to the General Partner to the extent that the amounts paid or payable with respect to the Partnership Preferred Units so redeemed (or treated as redeemed) exceed the aggregate Capital Contributions (net of liabilities assumed or taken subject to by the Partnership) per Partnership Preferred Unit allocable to the Partnership Preferred Units so redeemed (or treated as redeemed) and (b) deductions and losses shall be allocated to the General Partner to the extent that the aggregate Capital Contributions (net of liabilities assumed or taken subject to by the Partnership) per Partnership Preferred Unit allocable to the Partnership Preferred Units so redeemed (or treated as redeemed) exceed the amount paid or payable with respect to the Partnership Preferred Units so redeemed (or treated as redeemed).

B. Regulatory Allocations.

(i) Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding the provisions of Section 6.2 hereof, or any other provision of this Article 6, if there is a net decrease in Partnership Minimum Gain during any Partnership Year, each Holder of Partnership Units shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Holder's share of the net decrease in Partnership Minimum Gain, as determined under Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Holder pursuant thereto. The items to be allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 6.3.B(i) is intended to qualify as a "minimum gain chargeback" within the meaning of Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) Partner Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(i)(4) or in Section 6.3.B(i) hereof, if there is a net decrease in Partner Minimum Gain attributable to a Partner Nonrecourse Debt during any Partnership Year, each Holder of Partnership Units who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Holder's share of the net decrease in Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each General Partner, Limited Partner and other Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 6.3.B(ii) is intended to qualify as a "chargeback of partner nonrecourse debt minimum gain" within the meaning of Regulations Section 1.704-2(i) and shall be interpreted consistently therewith.

(iii) Nonrecourse Deductions and Partner Nonrecourse Deductions. Any Nonrecourse Deductions for any Partnership Year shall be specially allocated to the Holders of Partnership Units in accordance with their Partnership Units. Any Partner Nonrecourse Deductions for any Partnership Year shall be specially allocated to the Holder(s) who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable, in accordance with Regulations Section 1.704-2(i).

(iv) Qualified Income Offset. If any Holder of Partnership Units unexpectedly receives an adjustment, allocation or distribution described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Partnership income and gain shall be allocated, in accordance with Regulations Section 1.704-1(b)(2)(ii)(d), to such Holder in an amount and manner sufficient to eliminate, to the extent required by such Regulations, the Adjusted Capital Account Deficit of such Holder as quickly as possible, provided that an allocation pursuant to this Section 6.3.B(iv) shall be made if and only to the extent that such Holder would have an Adjusted Capital Account Deficit after all other allocations provided in this Article 6 have been tentatively made as if this Section 6.3.B(iv) were not in the Agreement. It is intended that this Section 6.3.B(iv) qualify and be construed as a "qualified income offset" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(v) Gross Income Allocation. In the event that any Holder of Partnership Units has a deficit Capital Account at the end of any Partnership Year that is in excess of the sum of (1) the amount (if any) that such Holder is obligated to restore to the Partnership upon complete liquidation of such Holder's Partnership Interest (including, the Holder's interest in outstanding Partnership Preferred Units and other Partnership Units) and (2) the amount that such Holder is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Holder shall be specially allocated items of Partnership income and gain in the amount of such excess to eliminate such deficit as quickly as possible, provided that an allocation pursuant to this Section 6.3.B(v) shall be made if and only to the extent that such Holder would have a deficit Capital Account in excess of such sum after all other allocations provided in this Article 6 have been tentatively made as if this Section 6.3.B(v) and Section 6.3.B(iv) hereof were not in the Agreement.

(vi) Limitation on Allocation of Net Loss. To the extent that any allocation of Net Loss would cause or increase an Adjusted Capital Account Deficit as to any Holder of Partnership Units, such allocation of Net Loss shall be reallocated among the other Holders of Partnership Units in accordance with their respective Partnership Units, subject to the limitations of this Section 6.3.B(vi).

(vii) Section 754 Adjustment. To the extent that an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Holder of Partnership Units in complete liquidation of its interest in the Partnership, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Holders in accordance with their Partnership Common Units in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Holders to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(viii) Curative Allocations. The allocations set forth in Sections 6.3.B(i), (ii), (iii), (iv), (v), (vi) and (vii) hereof (the "Regulatory Allocations") are intended to comply with certain regulatory requirements, including the requirements of Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding the provisions of Section 6.1 hereof, the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Holders of Partnership Units so that to the extent possible without violating the requirements giving rise to the Regulatory Allocations, the net amount of such allocations of other items and the Regulatory Allocations to each Holder of a Partnership Unit shall be equal to the net amount that would have been allocated to each such Holder if the Regulatory Allocations had not occurred.

C. Special Allocations Upon Liquidation. Notwithstanding any provision in this Article VI to the contrary, in the event that the Partnership disposes of all or substantially all of its assets in a transaction that will lead to a liquidation of the Partnership pursuant to Article 13 hereof, then any Net Income or Net Loss realized in connection with such transaction and thereafter (and, if necessary, constituent items of income, gain, loss and deduction) shall be specially allocated among the Partners as required so as to cause liquidating distributions pursuant to Section 13.2.A(4) hereof to be made in the same amounts and proportions as would have resulted had such distributions instead been made pursuant to Article 5 hereof (other than Section 5.4 hereof).

D. Allocation of Excess Nonrecourse Liabilities. The Partnership shall allocate "nonrecourse liabilities" (within the meaning of Regulations Section 1.752-1(a)(2)) of the Partnership that are secured by multiple Properties under any reasonable method chosen by the General Partner in accordance with Regulations Section 1.752-3(a)(3)(b). The Partnership shall allocate "excess nonrecourse liabilities" of the Partnership under any method approved under Regulations Section 1.752-3(a)(3) as chosen by the General Partner. For purposes of determining a Holder's proportional share of the "excess nonrecourse liabilities" of the Partnership within the meaning of Regulations Section 1.752-3(a)(3), each Holder's interest in Partnership profits shall be equal to such Holder's share of Partnership Units.

E. Reserved.

F. Exercise of Warrants. To the extent that a Partnership Unit is issued upon exercise of a Warrant described in Section 4.10, and the value of such Partnership Unit differs from the amount paid therefor (including the amount, if any, paid in connection with the issuance of such Warrant), such difference shall be allocated among the Partners in the manner prescribed by Proposed Treasury Regulation Section 1.704-1(b)(2)(iv)(s), or any successor provision thereto.

Section 6.4 Tax Allocations.

A. In General. Except as otherwise provided in this Section 6.4, for income tax purposes under the Code and the Regulations each Partnership item of income, gain, loss and deduction (collectively, "Tax Items") shall be allocated among the Holders of Partnership Common Units in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Sections 6.2 and 6.3 hereof.

B. Allocations Respecting Section 704(c) Revaluations. Notwithstanding Section 6.4.A hereof, Tax Items with respect to Property that is contributed to the Partnership with a Gross Asset Value that varies from its basis in the hands of the contributing Partner immediately preceding the date of contribution shall be allocated among the Holders of Partnership Common Units for income tax purposes pursuant to Regulations promulgated under Code Section 704(c) so as to take into account such variation. The Partnership shall account for such variation under any method approved under Code Section 704(c) and the applicable Regulations as chosen by the General Partner, including, without limitation, the "remedial allocation method" as described in Regulations Section 1.704-3(d). In the event that the Gross Asset Value of any partnership asset is adjusted pursuant to subsection (b) of the definition of "Gross Asset Value" (provided in Article 1 hereof), subsequent allocations of Tax Items with respect to such asset shall take account of the variation, if any, between the adjusted basis of such asset and its Gross Asset Value in the same manner as under Code Section 704(c) and the applicable Regulations.

ARTICLE VII
MANAGEMENT AND OPERATIONS OF BUSINESS

Section 7.1 Management.

A. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership are and shall be exclusively vested in the General Partner, and no Limited Partner shall have any right to participate in or exercise control or management power over the

business and affairs of the Partnership. The General Partner may not be removed by the Partners with or without cause, except with the consent of the General Partner. In addition to the powers now or hereafter granted to a general partner of a limited partnership under applicable law or that are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to the other provisions hereof including Section 7.3, shall have full power and authority to do all things deemed necessary or desirable by it to conduct the business of the Partnership, to exercise all powers set forth in Section 3.2 hereof and to effectuate the purposes set forth in Section 3.1 hereof, including, without limitation:

(1) the making of any expenditures, the lending or borrowing of money (including, without limitation, making prepayments on loans and borrowing money or selling assets to permit the Partnership to make distributions to its Partners in such amounts as will permit the Parent REIT (so long as the Parent REIT desires to maintain or restore its status as a REIT) to avoid the payment of any federal income tax (including, for this purpose, any excise tax pursuant to Code Section 4981) and to make distributions sufficient to permit the Parent REIT to maintain or restore REIT status or otherwise to satisfy the REIT Requirements), the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness (including the securing of same by deed to secure debt, mortgage, deed of trust or other lien or encumbrance on the Partnership's assets) and the incurring of any obligations that it deems necessary for the conduct of the activities of the Partnership;

(2) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Partnership;

(3) the acquisition, sale, lease, transfer, exchange or other disposition of any, all or substantially all of the assets of the Partnership (including, but not limited to, the exercise or grant of any conversion, option, privilege or subscription right or any other right available in connection with any assets at any time held by the Partnership) or the merger, consolidation, reorganization or other combination of the Partnership with or into another entity;

(4) the mortgage, pledge, encumbrance or hypothecation of any assets of the Partnership, the use of the assets of the Partnership (including, without limitation, cash on hand) for any purpose consistent with the terms of this Agreement and on any terms that it sees fit, including, without limitation, the financing of the operations and activities of the Parent REIT, the General Partner, the Partnership or any of the Partnership's Subsidiaries, the lending of funds to other Persons (including, without limitation, the Partnership's Subsidiaries) and the repayment of obligations of the Partnership, its Subsidiaries and any other Person in which the Partnership has an equity investment, and the making of capital contributions to and equity investments in the Partnership's Subsidiaries;

(5) the management, operation, leasing, landscaping, repair, alteration, demolition, replacement or improvement of any Property, including, without limitation, any Contributed Property, or other asset of the Partnership or any Subsidiary, whether pursuant to a Services Agreement or otherwise;

(6) the negotiation, execution and performance of any contracts, leases, conveyances or other instruments that the General Partner considers useful or necessary to the conduct of the Partnership's operations or the implementation of the General Partner's powers under this Agreement, including contracting with contractors, developers, consultants, accountants, legal counsel, other professional advisors and other agents and the payment of their expenses and compensation out of the Partnership's assets;

(7) the distribution of Partnership cash or other Partnership assets in accordance with this Agreement, the holding, management, investment

and reinvestment of cash and other assets of the Partnership, and the collection and receipt of revenues, rents and income of the Partnership;

(8) the maintenance of such insurance for the benefit of the Partnership and the Partners as it deems necessary or appropriate, including, without limitation, (i) casualty, liability and other insurance on the Properties and (ii) liability insurance for the Indemnitees hereunder;

(9) the formation of, or acquisition of an interest in, and the contribution of property to, any further limited or general partnerships, limited liability companies, joint ventures or other relationships that it deems desirable (including, without limitation, the acquisition of interests in, and the contributions of property to, any Subsidiary and any other Person in which it has an equity investment from time to time); provided, however, that, as long as the Parent REIT has determined to continue to qualify as a REIT, the General Partner may not engage in any such formation, acquisition or contribution that would cause the Parent REIT to fail to qualify as a REIT within the meaning of Code Section 856(a);

(10) the control of any matters affecting the rights and obligations of the Partnership, including the settlement, compromise, submission to arbitration or any other form of dispute resolution, or abandonment, of any claim, cause of action, liability, debt or damages, due or owing to or from the Partnership, the commencement or defense of suits, legal proceedings, administrative proceedings, arbitrations or other forms of dispute resolution, and the representation of the Partnership in all suits or legal proceedings, administrative proceedings, arbitrations or other forms of dispute resolution, the incurring of legal expense, and the indemnification of any Person against liabilities and contingencies to the extent permitted by law;

(11) the undertaking of any action in connection with the Partnership's direct or indirect investment in any Subsidiary or any other Person (including, without limitation, the contribution of Property or contribution or loan of funds by the Partnership to such Persons);

(12) except as otherwise specifically set forth in this Agreement, the determination of the fair market value of any Partnership property distributed in kind using such reasonable method of valuation as it may adopt; provided that such methods are otherwise consistent with the requirements of this Agreement;

(13) the enforcement of any rights against any Partner pursuant to representations, warranties, covenants and indemnities relating to such Partner's contribution of property or assets to the Partnership;

(14) the exercise, directly or indirectly, through any attorney-in-fact acting under a general or limited power of attorney, of any right, including the right to vote, appurtenant to any asset or investment held by the Partnership;

(15) the exercise of any of the powers of the General Partner enumerated in this Agreement on behalf of or in connection with any Subsidiary of the Partnership or any other Person in which the Partnership has a direct or indirect interest, or jointly with any such Subsidiary or other Person;

(16) the exercise of any of the powers of the General Partner enumerated in this Agreement on behalf of any Person in which the Partnership does not have an interest, pursuant to contractual or other arrangements with such Person;

(17) the making, execution and delivery of any and all deeds, leases, notes, deeds to secure debt, mortgages, deeds of trust, security agreements, conveyances, contracts, guarantees, warranties, indemnities, waivers, releases or legal instruments or agreements in writing necessary or appropriate in the judgment of the General Partner for the accomplishment of any of the powers of the General Partner enumerated in this Agreement;

(18) the issuance of additional Partnership Units, as appropriate and in the General Partner's sole and absolute discretion, in connection with Capital Contributions by Additional Limited Partners and additional Capital Contributions by Partners pursuant to Article 4 hereof;

(19) the selection and dismissal of Company Employees (including, without limitation, employees having titles or offices such as president, vice president, secretary and treasurer), and agents, outside attorneys, accountants, consultants and contractors of the Partnership or the General Partner, the determination of their compensation and other terms of employment or hiring and the delegation to any such Company Employee the authority to conduct the business of the Partnership in accordance with the terms of this Agreement; and

(20) an election to dissolve the Partnership pursuant to Section 13.1.C hereof.

B. Each of the Limited Partners agrees that, except as provided in Section 7.3 hereof, the General Partner is authorized to execute, deliver and perform the above-mentioned agreements and transactions on behalf of the Partnership without any further act, approval or vote of the Partners, notwithstanding any other provision of this Agreement, the Act or any applicable law, rule or regulation. The execution, delivery or performance by the General Partner or the Partnership of any agreement authorized or permitted under this Agreement shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Limited Partners or any other Persons under this Agreement or of any duty stated or implied by law or equity.

C. At all times from and after the date hereof, the General Partner may cause the Partnership to establish and maintain working capital and other reserves in such amounts as the General Partner, in its sole and absolute discretion, deems appropriate and reasonable from time to time.

D. In exercising its authority under this Agreement, the General Partner may, but shall be under no obligation to, take into account the tax consequences to any Partner (including the General Partner) of any action taken by it. The General Partner and the Partnership shall not have liability to a Limited Partner under any circumstances as a result of an income tax liability incurred by such Limited Partner as a result of an action (or inaction) by the General Partner pursuant to its authority under this Agreement.

Section 7.2 Certificate of Limited Partnership. To the extent that such action is determined by the General Partner to be reasonable and necessary or appropriate, the General Partner shall file amendments to and restatements of the Certificate and do all the things to maintain the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability) under the laws of the State of Delaware and each other state, the District of Columbia or any other jurisdiction, in which the Partnership may elect to do business or own property. Except as otherwise required under the Act, the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate or any amendment thereto to any Limited Partner. The General Partner shall use all reasonable efforts to cause to be filed such other certificates or documents as may be reasonable and necessary or appropriate for the formation, continuation, qualification and operation of a limited partnership (or a partnership in which the limited partners have limited liability to the extent provided by applicable law) in the State of Delaware and any other state, or the District of Columbia or other jurisdiction, in which the Partnership may elect to do business or own property.

Section 7.3 Restrictions on General Partner's Authority.

A. The General Partner may not take any action in contravention of this Agreement, including, without limitation:

(1) taking any action that would make it impossible to carry on the ordinary business of the Partnership, except as otherwise provided in this Agreement;

(2) possessing Property, or assigning any rights in specific Property, for other than a Partnership purpose except as otherwise provided in this Agreement, including, without limitation, Section 7.10;

(3) admitting a Person as a Partner, except as otherwise provided in this Agreement;

(4) performing any act that would subject a Limited Partner to liability as a general partner in any jurisdiction or any other liability except as provided Section 10.4 hereof or under the Act; or

(5) entering into any contract, mortgage, loan or other agreement that prohibits or restricts the ability of (a) the General Partner, the Parent REIT or the Partnership from satisfying its obligations under Section 8.6 hereof in full or (b) a Limited Partner from exercising its rights under Section 8.6 hereof to effect a Redemption in full, except, in either case, with the written consent of such Limited Partner affected by the prohibition or restriction.

B. The General Partner shall not, without the prior Consent of the Limited Partners, except as provided in Sections 4.2.A, 5.5, 6.2.B and 7.3.C hereof, amend, modify or terminate this Agreement.

C. Notwithstanding Section 7.3.B hereof, the General Partner shall have the power, without the Consent of the Limited Partners, to amend this Agreement as may be required to facilitate or implement any of the following purposes:

(1) to add to the obligations of the General Partner or surrender any right or power granted to the General Partner or any Affiliate of the General Partner for the benefit of the Limited Partners;

(2) to reflect the admission, substitution or withdrawal of Partners or the termination of the Partnership in accordance with this Agreement, and to amend Exhibit A in connection with such admission, substitution or withdrawal;

(3) to reflect a change that is of an inconsequential nature and does not adversely affect the Limited Partners in any material respect, or to cure any ambiguity, correct or supplement any provision in this Agreement not inconsistent with law or with other provisions, or make other changes with respect to matters arising under this Agreement that will not be inconsistent with law or with the provisions of this Agreement;

(4) to satisfy any requirements, conditions or guidelines contained in any order, directive, opinion, ruling or regulation of a federal or state agency or contained in federal or state law;

(5) (a) to reflect such changes as are reasonably necessary for the Parent REIT to maintain or restore its status as a REIT or to satisfy the

REIT Requirements; or (b) to reflect the Transfer of all or any part of a Partnership Interest between the General Partner or Initial Limited Partner and any Qualified REIT Subsidiary;

(6) to modify the manner in which Capital Accounts are computed (but only to the extent set forth in the definition of "Capital Account" or contemplated by the Code or the Regulations); and

(7) to issue additional Partnership Interests in accordance with Section 4.2.

D. Notwithstanding Sections 7.3.B and 7.3.C hereof, this Agreement shall not be amended, and no action may be taken by the General Partner, without the Consent of each Partner adversely affected thereby, if such amendment or action would (i) convert a Limited Partner Interest in the Partnership into a General Partner Interest (except as a result of the General Partner acquiring such Partnership Interest), (ii) modify the limited liability of a Limited Partner, (iii) alter the rights of any Partner to receive the distributions to which such Partner is entitled, pursuant to Article 5 or Section 13.2.A hereof, or alter the allocations specified in Article 6 hereof (except, in any case, as permitted pursuant to Sections 4.2, 5.5, 6.2.B and 7.3.C hereof), (iv) alter or modify the Redemption rights, Cash Amount, REIT Consideration, or REIT Shares Amount as set forth in Sections 8.6 and 11.2 hereof, or amend or modify any related definitions, or (v) amend this Section 7.3.D; provided, however, that the Consent of each Partner adversely affected shall not be required for any amendment or action that affects all Partners holding the same class or series of Partnership Units on a uniform or pro rata basis. Further, no amendment may alter the restrictions on the General Partner's authority set forth elsewhere in this Section 7.3 without the Consent specified therein. Any such amendment or action consented to by any Partner shall be effective as to that Partner, notwithstanding the absence of such consent by any other Partner.

Section 7.4 Reimbursement of the General Partner.

A. The General Partner shall not be compensated for its services as general partner of the Partnership except as provided in this Agreement (including the provisions of Articles 5 and 6 hereof regarding distributions, payments and allocations to which it may be entitled in its capacity as the General Partner).

B. Subject to Sections 7.4.C and 15.11 hereof, the Partnership shall be liable for, and shall reimburse the General Partner and the Parent REIT on a monthly basis, or such other basis as the General Partner may determine in its sole and absolute discretion, for all sums expended in connection with the Partnership's business, including, without limitation, (i) expenses relating to the ownership of interests in and management and operation of, or for the benefit of, the Partnership, (ii) compensation of officers and employees, including, without limitation, payments under future compensation plans of the Parent REIT that may provide for stock units, or phantom stock, pursuant to which employees of the Parent REIT will receive payments based upon dividends on or the value of REIT Shares, (iii) director fees and expenses and (iv) if the Parent REIT becomes a public company, all costs and expenses of the Parent REIT being a public company, including costs of filings with the SEC, reports and other distributions to its shareholders; provided, however, that the amount of any reimbursement shall be reduced by any interest earned by the Parent REIT with respect to bank accounts or other instruments or accounts held by it on behalf of the Partnership as permitted pursuant to Section 7.5 hereof. Such reimbursements shall be in addition to any reimbursement of the General Partner as a result of indemnification pursuant to Section 7.7 hereof.

C. To the extent practicable, Partnership expenses shall be billed directly to and paid by the Partnership and, subject to Section 15.11 hereof, reimbursements to the General Partner or any of its Affiliates by the Partnership pursuant to this Section 7.4 shall be treated as non-income reimbursements, and not as "guaranteed payments" within the meaning of Code Section 707(c) or other form of gross income.

Section 7.5 Outside Activities of the General Partner. The General Partner and the Parent REIT shall not directly or indirectly enter into or conduct any business, other than in connection with (a) the ownership, acquisition and disposition of Partnership Interests as General Partner, (b) the management of the business of the Partnership, (c) if the Parent REIT becomes a reporting company with a class (or classes) of

securities registered under the Exchange Act, the operation of the Parent REIT as such, (d) the Parent REIT's operations as a REIT, (e) the offering, sale, syndication, private placement or public offering of stock, bonds, securities or other interests, (f) financing or refinancing of any type related to the Partnership or its assets or activities, (g) any of the foregoing activities as they relate to a Subsidiary of the Partnership or of the General Partner and (h) such activities as are incidental thereto. Nothing contained herein shall be deemed to prohibit the General Partner from executing guarantees of Partnership debt for which it would otherwise be liable in its capacity as General Partner. Subject to Section 7.3.B hereof, the Parent REIT shall not own any assets or take title to assets (other than temporarily in connection with an acquisition prior to contributing such assets to the Partnership) other than interests in the General Partner, The Initial Limited Partner, Subsidiaries of the Partnership and other than such cash and cash equivalents, bank accounts or similar instruments or accounts as the Parent REIT deems reasonably necessary, taking into account Section 7.1.D hereof and the requirements necessary for the Parent REIT to carry out its responsibilities contemplated under this Agreement and the Charter and to qualify as a REIT. Notwithstanding the foregoing, if the Parent REIT acquires assets in its own name and owns Property other than through the Partnership, the Partners agree to negotiate in good faith to amend this Agreement, including, without limitation, the definition of "Adjustment Factor," to reflect such activities and the direct ownership of assets by the Parent REIT. The Parent REIT and any Affiliates of the Parent REIT may acquire Limited Partner Interests and shall be entitled to exercise all rights of a Limited Partner relating to such Limited Partner Interests.

Section 7.6 Contracts with Affiliates.

A. The Partnership may lend or contribute funds or other assets to its Subsidiaries or other Persons in which it has an equity investment, and such Persons may borrow funds from the Partnership, on terms and conditions established in the sole and absolute discretion of the General Partner. The foregoing authority shall not create any right or benefit in favor of any Subsidiary or any other Person.

B. Except as provided in Section 7.5 hereof and subject to Section 3.1 hereof, the Partnership may transfer assets to joint ventures, limited liability companies, partnerships, corporations, business trusts or other business entities in which it is or thereby becomes a participant upon such terms and subject to such conditions consistent with this Agreement and applicable law as the General Partner, in its sole and absolute discretion, believes to be advisable.

C. Except as expressly permitted by this Agreement, neither the General Partner nor any of its Affiliates shall sell, transfer or convey any property to the Partnership, directly or indirectly, except pursuant to transactions that are determined by the General Partner in good faith to be fair and reasonable.

D. The General Partner, in its sole and absolute discretion and without the approval of the Limited Partners, may propose and adopt on behalf of the Partnership employee benefit plans funded by the Partnership for the benefit of employees of the Parent REIT, the Partnership, Subsidiaries of the Partnership or any Affiliate of any of them in respect of services performed, directly or indirectly, for the benefit of the Partnership or any of the Partnership's Subsidiaries.

E. The General Partner is expressly authorized to enter into, in the name and on behalf of the Partnership, any Services Agreement with Affiliates of any of the Partnership or the General Partner, on such terms as the General Partner, in its sole and absolute discretion, believes are advisable.

Section 7.7 Indemnification.

A. To the fullest extent permitted by applicable law, the Partnership shall indemnify each Indemnitee from and against any and all losses, claims, damages, liabilities (whether joint or several), expenses (including, without limitation, attorney's fees and other legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, that relate to the operations of the Partnership ("Actions") as set forth in this Agreement in which such Indemnitee may be involved, or is threatened to be involved, as a party or otherwise; provided, however, that the Partnership shall not indemnify an Indemnitee (i) for the act or omission of the Indemnitee material to the matter giving rise to the proceeding which was committed in bad faith or was

the result of active and deliberate dishonesty; (ii) for any transaction for which such Indemnitee received an improper personal benefit (in money, property or services) in violation or breach of any provision of this Agreement; or (iii) in the case of a criminal proceeding, for an unlawful act or omission by the Indemnitee for which the Indemnitee had reasonable cause to believe was unlawful. Without limitation, the foregoing indemnity shall extend to any liability of any Indemnitee, pursuant to a loan guaranty or otherwise, for any indebtedness of the Partnership or any Subsidiary of the Partnership (including, without limitation, any indebtedness which the Partnership or any Subsidiary of the Partnership has assumed or taken subject to), and the General Partner is hereby authorized and empowered, on behalf of the Partnership, to enter into one or more indemnity agreements consistent with the provisions of this Section 7.7 in favor of any Indemnitee having or potentially having liability for any such indebtedness. It is the intention of this Section 7.7.A that the Partnership indemnify each Indemnitee to the fullest extent permitted by law. The termination of any proceeding by judgment, order or settlement does not create a presumption that the Indemnitee did not meet the requisite standard of conduct set forth in this Section 7.7.A. The termination of any proceeding by conviction of an Indemnitee or upon a plea of nolo contendere or its equivalent by an Indemnitee, or an entry of an order of probation against an Indemnitee prior to judgment, does not create a presumption that such Indemnitee acted in a manner contrary to that specified in this Section 7.7.A with respect to the subject matter of such proceeding. Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Partnership, and neither the General Partner nor any Limited Partner shall have any obligation to contribute to the capital of the Partnership or otherwise provide funds to enable the Partnership to fund its obligations under this Section 7.7.

B. To the fullest extent permitted by law, expenses incurred by an Indemnitee who is a party to a proceeding or otherwise subject to or the focus of or is involved in any Action shall be paid or reimbursed by the Partnership as incurred by the Indemnitee in advance of the final disposition of the Action upon receipt by the Partnership of (i) a written affirmation by the Indemnitee of the Indemnitee's good faith belief that the standard of conduct necessary for indemnification by the Partnership as authorized in this Section 7.7.A has been met, and (ii) a written undertaking by or on behalf of the Indemnitee to repay the amount if it shall ultimately be determined that the standard of conduct has not been met.

C. The indemnification provided by this Section 7.7 shall be in addition to any other rights to which an Indemnitee or any other Person may be entitled under any agreement, pursuant to any vote of the Partners, as a matter of law or otherwise, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee unless otherwise provided in a written agreement with such Indemnitee or in the writing pursuant to which such Indemnitee is indemnified.

D. The Partnership may, but shall not be obligated to, purchase and maintain insurance, on behalf of any of the Indemnitees and such other Persons as the General Partner shall determine, against any liability that may be asserted against or expenses that may be incurred by such Person in connection with the Partnership's activities, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement.

E. Any liabilities which an Indemnitee incurs as a result of acting on behalf of the Partnership, the Parent REIT or the General Partner (whether as a fiduciary or otherwise) in connection with the operation, administration or maintenance of an employee benefit plan or any related trust or funding mechanism (whether such liabilities are in the form of excise taxes assessed by the IRS, penalties assessed by the Department of Labor, restitutions to such a plan or trust or other funding mechanism or to a participant or beneficiary of such plan, trust or other funding mechanism, or otherwise) shall be treated as liabilities or judgments or fines under this Section 7.7, unless such liabilities arise as a result of (i) the act or omission of the Indemnitee material to the matter giving rise to the proceeding which was committed in bad faith or was the result of active and deliberate dishonesty; (ii) any transaction for which such Indemnitee received an improper personal benefit (in money, property or services) in violation or breach of any provision of this Agreement; or (iii) in the case of a criminal proceeding, an unlawful act or omission by the Indemnitee for which the Indemnitee had reasonable cause to believe was unlawful.

F. In no event may an Indemnitee subject any of the Partners to personal liability by reason of the indemnification provisions set forth in this Agreement.

G. An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.7 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

H. The provisions of this Section 7.7 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons. Any amendment, modification or repeal of this Section 7.7 or any provision hereof shall be prospective only and shall not in any way affect the obligations of the Partnership or the limitations on the Partnership's liability to any Indemnitee under this Section 7.7 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

I. It is the intent of the Partners that any amounts paid by the Partnership to the General Partner pursuant to this Section 7.7 shall be treated as "guaranteed payments" within the meaning of Code Section 707(c).

Section 7.8 Liability of the General Partner.

A. Notwithstanding anything to the contrary set forth in this Agreement, neither the General Partner nor any of its directors or officers shall be liable or accountable in damages or otherwise to the Partnership, any Partners or any Assignees for losses sustained, liabilities incurred or benefits not derived as a result of errors in judgment or mistakes of fact or law or of any act or omission if the General Partner or such director or officer acted in good faith.

B. The Limited Partners expressly acknowledge that the General Partner is acting for the benefit of the Partnership, the Limited Partners and the General Partner's shareholders collectively and that the General Partner is under no obligation to give priority to the separate interests of the Limited Partners or the General Partner's shareholders (including, without limitation, the tax consequences to Limited Partners, Assignees or the General Partner's shareholders) in deciding whether to cause the Partnership to take (or decline to take) any actions.

C. Subject to its obligations and duties as General Partner set forth in Section 7.1.A hereof, the General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its employees or agents (subject to the supervision and control of the General Partner). The General Partner shall not be responsible for any misconduct or negligence on the part of any such agent appointed by it in good faith.

D. To the extent that, at law or in equity, the General Partner has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or the Limited Partners, the General Partner shall not be liable to the Partnership or to any other Partner for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of the General Partner otherwise existing at law or in equity, are agreed by the Partners to replace such other duties and liabilities of such General Partner.

E. Notwithstanding anything herein to the contrary, except for fraud, willful misconduct or gross negligence, or pursuant to any express indemnities given to the Partnership by any Partner pursuant to any other written instrument, no Partner shall have any personal liability whatsoever, to the Partnership or to the other Partner(s), for the debts or liabilities of the Partnership or the Partnership's obligations hereunder, and the full recourse of the other Partner(s) shall be limited to the interest of that Partner in the Partnership. To the fullest extent permitted by law, no officer, director or shareholder of the General Partner or Parent REIT shall be liable to the Partnership for money damages except for (i) active and deliberate dishonesty established by a non-appealable final judgment or (ii) actual receipt of an improper benefit or profit in money, property or services. Without limitation of the foregoing, and except for fraud, willful misconduct or gross negligence, or pursuant to any such express indemnity, no property or assets of any Partner, other than its interest in the

Partnership, shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) in favor of any other Partner(s) and arising out of, or in connection with, this Agreement. This Agreement is executed by the officers of the General Partner solely as officers of the same and not in their own individual capacities.

F. Any amendment, modification or repeal of this Section 7.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the General Partner's, and its officers' and directors', liability to the Partnership and the Limited Partners under this Section 7.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

Section 7.9 Other Matters Concerning the General Partner.

A. The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties.

B. The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, architects, engineers, environmental consultants and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the opinion of such Persons as to matters that the General Partner reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.

C. The General Partner shall have the right, in respect of any of its powers or obligations hereunder, to act through any of its duly authorized officers and a duly appointed attorney or attorneys-in-fact. Each such attorney shall, to the extent provided by the General Partner in the power of attorney, have full power and authority to do and perform all and every act and duty that is permitted or required to be done by the General Partner hereunder.

D. Notwithstanding any other provision of this Agreement or the Act, any action of the General Partner on behalf of the Partnership or any decision of the General Partner to refrain from acting on behalf of the Partnership, undertaken in the good faith belief that such action or omission is necessary or advisable in order (i) to protect the ability of the Parent REIT to continue to qualify as a REIT, (ii) for the Parent REIT otherwise to satisfy the REIT Requirements, (iii) to avoid the Parent REIT incurring any taxes under Code Section 857 or Code Section 4981, is expressly authorized under this Agreement and is deemed approved by all of the Limited Partners.

Section 7.10 Title to Partnership Assets. Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually or collectively with other Partners or Persons, shall have any ownership interest in such Partnership assets or any portion thereof. Title to any or all of the Partnership assets may be held in the name of the Partnership, the General Partner or one or more nominees, as the General Partner may determine, including Affiliates of the General Partner. The General Partner hereby declares and warrants that any Partnership assets for which legal title is held in the name of the General Partner or any nominee or Affiliate of the General Partner shall be held by the General Partner for the use and benefit of the Partnership in accordance with the provisions of this Agreement. All Partnership assets shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which legal title to such Partnership assets is held.

Section 7.11 Reliance by Third Parties. Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner has full power and authority, without the consent or approval of any other Partner or Person, to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any contracts on behalf of the

Partnership, and take any and all actions on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner as if it were the Partnership's sole party in interest, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the General Partner in connection with any such dealing. In no event shall any Person dealing with the General Partner or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expediency of any act or action of the General Partner or its representatives. Each and every certificate, document or other instrument executed on behalf of the Partnership by the General Partner or its representatives shall be conclusive evidence in favor of any and every Person relying in good faith thereon or claiming thereunder that (i) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (ii) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Partnership and (iii) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

ARTICLE VIII
RIGHTS AND OBLIGATIONS OF LIMITED PARTNERS

Section 8.1 Limitation of Liability. The Limited Partners shall have no liability under this Agreement (other than for breach thereof) except as expressly provided in Section 10.4 or under the Act.

Section 8.2 Management of Business. No Limited Partner or Assignee (other than the General Partner, any of its Affiliates or any officer, director, member, employee, partner, agent or trustee of the General Partner, the Partnership or any of their Affiliates, in their capacity as such) shall take part in the operations, management or control (within the meaning of the Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. The transaction of any such business by the General Partner, any of its Affiliates or any officer, director, member, employee, partner, agent, representative, or trustee of the General Partner, the Partnership or any of their Affiliates, in their capacity as such, shall not affect, impair or eliminate the limitations on the liability of the Limited Partners or Assignees under this Agreement.

Section 8.3 Outside Activities of Limited Partners. Subject to any agreements entered into pursuant to Section 7.6.E hereof and any other agreements entered into by a Limited Partner or its Affiliates with the General Partner, the Partnership or a Subsidiary (including, without limitation, any employment agreement), any Limited Partner and any Assignee, officer, director, employee, agent, trustee, Affiliate, member or shareholder of any Limited Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including business interests and activities that are in direct or indirect competition with the Partnership or that are enhanced by the activities of the Partnership. Neither the Partnership nor any Partner shall have any rights by virtue of this Agreement in any business ventures of any Limited Partner or Assignee. Subject to such agreements, none of the Limited Partners nor any other Person shall have any rights by virtue of this Agreement or the partnership relationship established hereby in any business ventures of any other Person (other than the General Partner, to the extent expressly provided herein), and such Person shall have no obligation pursuant to this Agreement, subject to Section 7.6.E hereof and any other agreements entered into by a Limited Partner or its Affiliates with the General Partner, the Partnership or a Subsidiary, to offer any interest in any such business ventures to the Partnership, any Limited Partner or any such other Person, even if such opportunity is of a character that, if presented to the Partnership, any Limited Partner or such other Person, could be taken by such Person.

Section 8.4 Return of Capital. Except pursuant to the rights of Redemption set forth in Section 8.6 hereof, no Limited Partner shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent of distributions made pursuant to this Agreement or upon termination of the Partnership as provided herein. Except to the extent provided in Article 6 hereof or otherwise expressly provided in this Agreement, no Limited Partner or Assignee shall have priority over any other Limited Partner or Assignee either as to the return of Capital Contributions or as to profits, losses or distributions.

Section 8.5 Adjustment Factor. The Partnership shall notify any Limited Partner that is a Qualifying Party, on request, of the then current Adjustment Factor or any change made to the Adjustment Factor.

Section 8.6 Redemption Rights of Qualifying Parties.

A. Subject to Section 11.6.D, a Qualifying Party, but no other Limited Partner or Assignee, shall have the right (subject to the terms and conditions set forth herein) to require the Partnership to redeem (a "Redemption") all or a portion of the Partnership Common Units held by such Qualifying Party (such Partnership Common Units being hereafter "Tendered Units") in exchange for the Cash Amount payable on the Specified Redemption Date. Any Redemption shall be exercised pursuant to a Notice of Redemption delivered to the General Partner by such Qualifying Party (the "Tendering Party") when exercising the Redemption right. The Partnership's obligation to effect a Redemption, however, shall not arise or be binding against the Partnership (i) until and unless there has been a Declination and (ii) before the Business Day following the Cut-Off Date. Regardless of the binding or non-binding nature of a pending Redemption, a Tendering Party shall have no right to receive distributions with respect to any Tendered Units (other than the Cash Amount) paid after delivery of the Notice of Redemption, whether or not the Partnership Record Date for such distribution precedes or coincides with such delivery of the Notice of Redemption; provided, however, that in the event that the General Partner on behalf of the Partnership elects to fund the Cash Amount with the proceeds of an Offering Funding pursuant to Section 8.6.D hereof, the Tendering Party's right to receive distributions shall not be suspended as hereinbefore provided and such Tendering Party shall have the right to receive distributions actually made hereunder prior to the date of the closing of the Offering Funding the proceeds of which are used to pay the Cash Amount. In the event of a Redemption, the Cash Amount shall be delivered as a certified check payable to the Tendering Party or, in the General Partner's sole and absolute discretion, in immediately available funds.

B. Notwithstanding the provisions of Section 8.6.A hereof, on or before the close of business on the Cut-Off Date, a REIT Party may, in its sole and absolute discretion but subject to the Ownership Limit and the transfer restrictions and other limitations of the Charter, elect to acquire, some or all of the Tendered Units from the Tendering Party (such percentage being referred to as the "Applicable Percentage") in exchange for the REIT Consideration. In making such election, the REIT Party shall act in a fair, equitable and reasonable manner that neither prefers one group or class of Qualifying Parties over another nor discriminates against a group or class of Qualifying Parties. If the REIT Party so elects, on the Specified Redemption Date the Tendering Party shall sell the Applicable Percentage of the Tendered Units to the REIT Party in exchange for the REIT Consideration. The Tendering Party shall submit (i) such information, certification or affidavit as the Parent REIT may reasonably require in connection with the application of the Ownership Limit and other restrictions and limitations of the Charter to any such acquisition and (ii) such written representations, investment letters, legal opinions or other instruments necessary, in the view of the REIT Party to effect compliance with the Securities Act. In the event of a purchase of any Tendered Units by the REIT Party pursuant to this Section 8.6.B, the Tendering Party shall no longer have the right to cause the Partnership to effect a Redemption of such Tendered Units, and, upon notice to the Tendering Party by the REIT Party given on or before the close of business on the Cut-Off Date, that the REIT Party has elected to acquire some or all of the Tendered Units pursuant to this Section 8.6.B, the obligation of the Partnership to effect a Redemption of the Tendered Units as to which the notice by the REIT Party relates shall not accrue or arise. The REIT Consideration shall be delivered by the REIT Party as duly authorized, validly issued, fully paid and non-assessable REIT Shares and, if applicable, Rights, free of any pledge, lien, encumbrance or restriction, other than the Ownership Limit and other restrictions provided in the Charter, the Bylaws of the Parent REIT, the Securities Act and relevant state securities or "blue sky" laws. Neither any Tendering Party whose Tendered Units are acquired by the REIT Party pursuant to this Section 8.6.B, any Partner, any Assignee nor any other interested Person shall have any right to require or cause the Parent REIT to register, qualify or list any REIT Shares owned or held by such Person, whether or not such REIT Shares are issued pursuant to this Section 8.6.B, with the SEC, with any state securities commissioner, department or agency, under the Securities Act or the Exchange Act or with any stock exchange; provided, however, that this limitation shall not be in derogation of any registration or similar rights granted pursuant to any other written agreement between the Parent REIT and any such Person. Notwithstanding any delay in such delivery, the Tendering Party shall be deemed the owner of such REIT Shares and Rights for all purposes, including, without limitation, rights to vote or consent,

receive dividends, and exercise rights, as of the Specified Redemption Date. REIT Shares issued upon an acquisition of the Tendered Units by the Parent REIT pursuant to this Section 8.6.B may contain such legends regarding restrictions under the Securities Act and applicable state securities laws as the Parent REIT in good faith determines to be necessary or advisable in order to ensure compliance with such laws.

C. Notwithstanding the provisions of Section 8.6.A and 8.6.B hereof, no Tendering Party shall have any rights (including any right to a Redemption pursuant to Section 8.6A) under this Agreement that would otherwise be prohibited under the Charter with respect to the Ownership Limit. To the extent that any attempted Redemption or acquisition of the Tendered Units by the REIT Party pursuant to Section 8.6.B hereof would be in violation of this Section 8.6.C, it shall be null and void ab initio, and the Tendering Party shall not acquire any rights or economic interests in REIT Shares otherwise issuable by the Parent REIT under Section 8.6.B hereof.

D. To the extent that the REIT Party declines or fails to exercise its purchase rights for all Tendered Units pursuant to Section 8.6.B hereof following receipt of a Notice of Redemption (a "Declination"):

(1) The General Partner shall give notice of such Declination to the Tendering Party on or before the close of business on the Cut-Off Date. The failure of the General Partner to give notice of such Declination by the close of business on the Cut-Off Date shall itself constitute a Declination.

(2) Subject to Section 11.6.D, the Parent REIT on behalf of the Partnership may elect to raise funds for the payment of all or any percentage of the Cash Amount either (a) by contribution by a REIT Party of funds from the proceeds of a private placement or registered public offering (each, an "Offering Funding") by the Parent REIT of a number of REIT Shares or other securities of the Parent REIT ("Offering Funding Shares") or (b) from any other sources (including, but not limited to, the sale of any Property and the incurrence of additional Debt) available to the Partnership.

(3) If an Offering Funding has been elected by the General Partner, promptly upon the General Partner's receipt of the Notice of Redemption and the General Partner giving notice of its Declination, the General Partner shall give notice (a "Single Funding Notice") to all Qualifying Parties then holding a Partnership Interest (or an interest therein) and having Redemption rights pursuant to this Section 8.6 and require that all such Qualifying Parties elect whether or not to effect a Redemption of their Partnership Common Units to be funded through an Offering Funding. In the event that any such Qualifying Party elects to effect such a Redemption, it shall give notice thereof and of the number of Partnership Common Units to be made subject thereto in writing to the General Partner within ten (10) Business Days after receipt of the Single Funding Notice, and such Qualifying Party shall be treated as a Tendering Party for all purposes of this Section 8.6. In the event that a Qualifying Party does not so elect, it shall be deemed to have waived its right to effect a Redemption; provided, however, that the General Partner shall not be required to acquire Partnership Common Units pursuant to this Section 8.6.D more than twice within a calendar year from a particular Qualifying Party.

Any proceeds from an Offering Funding that are in excess of the aggregate Cash Amount paid to all Tendering Parties pursuant to this Section 8.6.D shall be for the sole benefit of the Parent REIT. The Parent REIT shall make a Capital Contribution of such amounts to the Partnership for an additional General Partner Interest. Any such contribution shall entitle the General Partner to an equitable Percentage Interest adjustment.

E. Notwithstanding the provisions of Section 8.6.B hereof, the REIT Party shall not, under any circumstances, elect to acquire Tendered Units in exchange for the REIT Consideration if such exchange would be prohibited under the Charter.

F. Notwithstanding anything herein to the contrary (but subject to Section 8.6.C hereof), with respect to any Redemption (or any tender of Partnership Common Units for Redemption if the Tendered Units are acquired by a REIT Party pursuant to Section 8.6.B hereof) pursuant to this Section 8.6:

(1) All Partnership Common Units acquired by a REIT Party pursuant to Section 8.6.B hereof may, at the election of the REIT Party, be converted into and deemed to be a General Partner Interest comprised of the same number of Partnership Common Units.

(2) Subject to the Ownership Limit, no Tendering Party may effect a Redemption for less than five hundred (500) Partnership Common Units or, if such Tendering Party holds (as a Limited Partner or, economically, as an Assignee) less than five hundred (500) Partnership Common Units, all of the Partnership Common Units held by such Tendering Party.

(3) Each Tendering Party (a) may effect a Redemption only once in each fiscal quarter of a twelve-month period, unless otherwise permitted by the General Partner, in its sole and absolute discretion and (b) may not effect a Redemption during the period after the Partnership Record Date with respect to a distribution and before the record date established by the Parent REIT for a distribution to its shareholders of some or all of its portion of such Partnership distribution.

(4) Notwithstanding anything herein to the contrary, with respect to any Redemption or acquisition of Tendered Units by a REIT Party pursuant to Section 8.6.B hereof, in the event that the General Partner gives notice to all Limited Partners (but excluding any Assignees) then owning Partnership Interests (a "Primary Offering Notice") that the Parent REIT desires to effect a primary offering of its equity securities, then, unless the General Partner otherwise consents, commencement of the actions denoted in Section 8.6.D hereof as to an Offering Funding, if any, with respect to any Notice of Redemption thereafter received, whether or not the Tendering Party is a Limited Partner, may be delayed until the earlier of (a) the completion of the primary offering or (b) ninety (90) days following the giving of the Primary Offering Notice.

(5) Without the consent of the General Partner, no Tendering Party may effect a Redemption within ninety (90) days following the closing of any prior Offering Funding.

(6) The consummation of such Redemption (or an acquisition of Tendered Units by a REIT Party pursuant to Section 8.6.B hereof, as the case may be) shall be subject to the expiration or termination of the applicable waiting period, if any, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(7) Subject to Section 8.6.A, the Tendering Party shall continue to own (subject, in the case of an Assignee, to the provision of Section 11.5 hereof) all Partnership Common Units subject to any Redemption, and be treated as a Limited Partner or an Assignee, as applicable, with respect to such Partnership Common Units for all purposes of this Agreement, until such Partnership Common Units are either paid for by the Partnership pursuant to Section 8.6.A hereof or transferred to a REIT Party and paid for, by the issuance of the REIT Shares, pursuant to Section 8.6.B hereof on the Specified Redemption Date. Until a Specified Redemption Date and an acquisition of the Tendered Units by a REIT Party pursuant to Section 8.6.B hereof, the Tendering Party shall have no rights as a shareholder of the Parent REIT with respect to the REIT Shares issuable in connection with such acquisition.

(8) Each Limited Partner covenants and agrees with the REIT Party that all Tendered Units shall be delivered to the appropriate REIT Party free

and clear of all liens, claims and encumbrances whatsoever and should any such liens, claims and/or encumbrances exist or arise with respect to such Tendered Units, the REIT Party shall be under no obligation to acquire the same. Each Limited Partner further agrees that, in the event any state or local property transfer tax is payable as a result of the transfer of its Tendered Units to a REIT Party (or its designee), such Limited Partner shall assume and pay such transfer tax.

(9) No Limited Partner may require a Redemption hereunder to the extent that the issuance of REIT Consideration pursuant to Section 8.6.B hereof would violate ownership limitations contained in the Charter or would violate any REIT Requirement (notwithstanding that any such Tendered Units could otherwise be acquired for cash pursuant to Section 8.6.A hereof).

(10) No Tendering Party may require a Redemption hereunder if the issuance of REIT Consideration would be likely to cause the acquisition of such REIT Consideration by such Tendering Party to be "integrated" with any other distribution of common stock of the Parent REIT or of Limited Partnership Interests for purposes of complying with the Securities Act.

For purposes of determining compliance with the restrictions set forth in this Section 8.6.F, all Partnership Common Units beneficially owned by a Related Party of a Tendering Party shall be considered to be owned or held by such Tendering Party.

G. In connection with an exercise of Redemption rights pursuant to this Section 8.6, the Tendering Party shall submit the following to the General Partner, in addition to the Notice of Redemption:

(1) A written affidavit, dated the same date as the Notice of Redemption, (a) disclosing the actual and constructive ownership, as determined for purposes of Code Sections 856(a)(6) and 856(h), of REIT Shares by (i) such Tendering Party and (ii) any Related Party and (b) representing that, after giving effect to the Redemption or an acquisition of the Tendered Units by the General Partner pursuant to Section 8.6.B hereof, neither the Tendering Party nor any Related Party will own REIT Shares in excess of the Ownership Limit;

(2) A written representation that neither the Tendering Party nor any Related Party has any intention to acquire any additional REIT Shares prior to the closing of the Redemption or an acquisition of the Tendered Units by a REIT Party pursuant to Section 8.6.B hereof on the Specified Redemption Date; and

(3) An undertaking to certify, at and as a condition to the closing of (i) the Redemption or (ii) the acquisition of the Tendered Units by a REIT Party pursuant to Section 8.6.B hereof on the Specified Redemption Date, that either (a) the actual and constructive ownership of REIT Shares by the Tendering Party and any Related Party remain unchanged from that disclosed in the affidavit required by Section 8.6.G(1) or (b) after giving effect to the Redemption or an acquisition of the Tendered Units by a REIT Party pursuant to Section 8.6.B hereof, neither the Tendering Party nor any Related Party shall own REIT Shares in violation of the Ownership Limit.

Section 8.7 Partnership Right to Call Limited Partner Interests.Notwithstanding any other provision of this Agreement, on and after the date on which the aggregate Percentage Interests of the Limited Partners are less than one percent (1%), the Partnership shall have the right, but not the obligation, from time to time and at any time to redeem any and all outstanding Limited Partner Interests by treating any Limited Partner as a Tendering Party who has delivered a Notice of Redemption pursuant to Section 8.6 hereof for the amount of Partnership Common Units to be specified by the General Partner, in its sole and absolute discretion, by notice to such Limited Partner that the Partnership has elected to exercise its rights under this Section 8.7. Such notice given by the General Partner to a Limited Partner pursuant to this Section 8.7 shall be treated as if it

were a Notice of Redemption delivered to the General Partner by such Limited Partner. For purposes of this Section 8.7, (a) any Limited Partner (whether or not otherwise a Qualifying Party) may, in the General Partner's sole and absolute discretion, be treated as a Qualifying Party that is a Tendering Party and (b) the provisions of Sections 8.6.F(2), 8.6.F(3) and 8.6.F(5) hereof shall not apply, but the remainder of Section 8.6 hereof shall apply, mutatis mutandis.

Section 8.8 Mergers.

The General Partner shall not permit the Partnership to be a party to any consolidation, merger, combination or other transaction pursuant to which the Partnership Common Units are converted or changed into or exchanged for partnership interests and/or other securities of another operating partnership in an UPREIT or similar structure, in each case without the affirmative vote of the holders of at least a majority of the outstanding Paired Common Units, voting separately as a class, unless upon consummation of any such consolidation, merger, combination or other transaction, the holders of Paired Common Units shall receive shares of stock or beneficial interest or other equity securities with preferences, rights and privileges not materially inferior to the preferences, rights and privileges of the Special Voting Preferred Stock (which shares of stock or beneficial interest or other equity securities shall be issued by the parent REIT of such operating partnership). This Section 8.8 shall not be amended or modified without the prior consent of the holders of at least a majority of the Paired Common Units.

ARTICLE IX
BOOKS, RECORDS, ACCOUNTING AND REPORTS

Section 9.1 Records and Accounting.

A. The General Partner shall keep or cause to be kept at the principal office of the Partnership those records and documents required to be maintained by the Act and other books and records deemed by the General Partner to be appropriate with respect to the Partnership's business, including, without limitation, all books and records necessary to provide to the Limited Partners any information, lists and copies of documents required to be provided pursuant to Section 8.5.A or Section 9.3 hereof. Any records maintained by or on behalf of the Partnership in the regular course of its business may be kept on, or be in the form for, magnetic tape, photographs, micrographics or any other information storage device, provided that the records so maintained are convertible into clearly legible written form within a reasonable period of time.

B. The books of the Partnership shall be maintained, for financial and tax reporting purposes, on an accrual basis in accordance with generally accepted accounting principles, or on such other basis as the General Partner determines to be necessary or appropriate. To the extent permitted by sound accounting practices and principles, the Partnership and the General Partner may operate with integrated or consolidated accounting records, operations and principles.

Section 9.2 Partnership Year. The Partnership Year of the Partnership shall be the calendar year.

Section 9.3 Reports.

A. As soon as practicable, but in no event later than one hundred five (105) days after the close of each Partnership Year, the General Partner shall cause to be mailed to each Limited Partner of record as of the close of the Partnership Year an annual report containing financial statements of the Partnership, or of the General Partner if such statements are prepared solely on a consolidated basis with the General Partner, for such Partnership Year, presented in accordance with generally accepted accounting principles, such statements to be audited by a nationally recognized firm of independent public accountants selected by the General Partner.

B. As soon as practicable, but in no event later than one hundred five (105) days after the close of each calendar quarter (except the last calendar quarter of each year), the General Partner shall cause to be mailed to each Limited Partner of record as of the last day of the calendar quarter a report containing

unaudited financial statements of the Partnership, or of the General Partner if such statements are prepared solely on a consolidated basis with the General Partner, and such other information as may be required by applicable law or regulation or as the General Partner determines to be appropriate.

C. At the request of any Limited Partner, the General Partner shall provide access to the books, records and workpapers upon which the reports required by this Section 9.3 are based, to the extent required by the Act.

ARTICLE X
TAX MATTERS

Section 10.1 Preparation of Tax Returns. The General Partner shall arrange for the preparation and timely filing of all returns with respect to Partnership income, gains, deductions, losses and other items required of the Partnership for federal and state income tax purposes and shall use all reasonable effort to furnish, within ninety (90) days of the close of each taxable year, the tax information reasonably required by Limited Partners for federal and state income tax reporting purposes. The Limited Partners shall promptly provide the General Partner with such information relating to the Contributed Properties, including tax basis and other relevant information, as may be reasonably requested by the General Partner from time to time.

Section 10.2 Tax Elections. Except as otherwise provided herein, the General Partner shall, in its sole and absolute discretion, determine whether to make or revoke any available election pursuant to the Code, including, but not limited to, the election under Code Section 754.

Section 10.3 Tax Matters Partner.

A. The General Partner shall be the "tax matters partner" of the Partnership for federal income tax purposes. The tax matters partner shall receive no compensation for its services. All third-party costs and expenses incurred by the tax matters partner in performing its duties as such (including legal and accounting fees and expenses) shall be borne by the Partnership in addition to any reimbursement pursuant to Section 7.4 hereof. Nothing herein shall be construed to restrict the Partnership from engaging an accounting firm to assist the tax matters partner in discharging its duties hereunder, so long as the compensation paid by the Partnership for such services is reasonable. At the request of any Limited Partner, the General Partner agrees to consult with such Limited Partner with respect to the preparation and filing of any returns and with respect to any subsequent audit or litigation relating to such returns; provided, however, that the filing of such returns shall be in the sole and absolute discretion of the General Partner.

B. The tax matters partner is authorized, but not required:

(1) to enter into any settlement with the IRS with respect to any administrative or judicial proceedings for the adjustment of Partnership items required to be taken into account by a Partner for income tax purposes (such administrative proceedings being referred to as a "tax audit" and such judicial proceedings being referred to as "judicial review"), and in the settlement agreement the tax matters partner may expressly state that such agreement shall bind all Partners, except that such settlement agreement shall not bind any Partner (i) who (within the time prescribed pursuant to the Code and Regulations) files a statement with the IRS providing that the tax matters partner shall not have the authority to enter into a settlement agreement on behalf of such Partner or (ii) who is a "notice partner" (as defined in Code Section 6231) or a member of a "notice group" (as defined in Code Section 6223(b)(2));

(2) in the event that a notice of a final administrative adjustment at the Partnership level of any item required to be taken into account by a Partner for tax purposes (a "final adjustment") is mailed to the tax matters partner, to seek judicial review of such final adjustment, including the filing of a petition for readjustment with the United States Tax Court or the United States Claims Court, or the filing of a complaint for

refund with the District Court of the United States for the district in which the Partnership's principal place of business is located;

(3) to intervene in any action brought by any other Partner for judicial review of a final adjustment;

(4) to file a request for an administrative adjustment with the IRS at any time and, if any part of such request is not allowed by the IRS, to file an appropriate pleading (petition or complaint) for judicial review with respect to such request;

(5) to enter into an agreement with the IRS to extend the period for assessing any tax that is attributable to any item required to be taken into account by a Partner for tax purposes, or an item affected by such item; and

(6) to take any other action on behalf of the Partners in connection with any tax audit or judicial review proceeding to the extent permitted by applicable law or regulations.

The taking of any action and the incurring of any expense by the tax matters partner in connection with any such proceeding, except to the extent required by law, is a matter in the sole and absolute discretion of the tax matters partner and the provisions relating to indemnification of the General Partner set forth in Section 7.7 hereof shall be fully applicable to the tax matters partner in its capacity as such.

Section 10.4 Withholding. Each Limited Partner hereby authorizes the Partnership to withhold from or pay on behalf of or with respect to such Limited Partner any amount of federal, state, local or foreign taxes that the General Partner determines that the Partnership is required to withhold or pay with respect to any amount distributable or allocable to such Limited Partner pursuant to this Agreement, including, without limitation, any taxes required to be withheld or paid by the Partnership pursuant to Code Section 1441, Code Section 1442, Code Section 1445 or Code Section 1446. Any amount paid on behalf of or with respect to a Limited Partner shall constitute a loan by the Partnership to such Limited Partner, which loan shall be repaid by such Limited Partner within fifteen (15) days after notice from the General Partner that such payment must be made unless (i) the Partnership withholds such payment from a distribution that would otherwise be made to the Limited Partner or (ii) the General Partner determines, in its sole and absolute discretion, that such payment may be satisfied out of the Available Funds of the Partnership that would, but for such payment, be distributed to the Limited Partner. Each Limited Partner hereby unconditionally and irrevocably grants to the Partnership a security interest in such Limited Partner's Partnership Interest to secure such Limited Partner's obligation to pay to the Partnership any amounts required to be paid pursuant to this Section 10.4. In the event that a Limited Partner fails to pay any amounts owed to the Partnership pursuant to this Section 10.4 when due, the General Partner may, in its sole and absolute discretion, elect to make the payment to the Partnership on behalf of such defaulting Limited Partner, and in such event shall be deemed to have lent such amount to such defaulting Limited Partner and shall succeed to all rights and remedies of the Partnership as against such defaulting Limited Partner (including, without limitation, the right to receive distributions). Any amounts payable by a Limited Partner hereunder shall bear interest at the base rate on corporate loans at large United States money center commercial banks, as published from time to time in The Wall Street Journal, plus four (4) percentage points (but not higher than the maximum lawful rate) from the date such amount is due (i.e., fifteen (15) days after demand) until such amount is paid in full. Each Limited Partner shall take such actions as the Partnership or the General Partner shall request in order to perfect or enforce the security interest created hereunder.

Section 10.5 Organizational Expenses. The Partnership shall elect to deduct expenses, if any, incurred by it in organizing the Partnership ratably over a 60 month period as provided in Section 709 of the Code.

ARTICLE XI
TRANSFERS AND WITHDRAWALS

Section 11.1 Transfer.

A. No part of the interest of a Partner shall be subject to the claims of any creditor, to any spouse for alimony or support, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered except as may be specifically provided for in this Agreement.

B. No Partnership Interest shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article 11. Any Transfer or purported Transfer of a Partnership Interest not made in accordance with this Article 11 shall be null and void ab initio.

C. Notwithstanding the other provisions of this Article 11 (other than Section 11.6.D hereof), the Partnership Interests of the General Partner may be Transferred, in whole or in part, at any time or from time to time, to any Person that is, at the time of such Transfer, a Qualified REIT Subsidiary. Any transferee of the entire General Partner Interest pursuant to this Section 11.1.C shall automatically become, without further action or Consent of any Limited Partners, the sole general partner of the Partnership, subject to all the rights, privileges, duties and obligations under this Agreement and the Act relating to a general partner. Upon any Transfer permitted by this Section 11.1.C, the transferor Partner shall be relieved of all its obligations under this Agreement. The provisions of Section 11.2.B (other than the last sentence thereof), 11.3, 11.4.A and 11.5 hereof shall not apply to any Transfer permitted by this Section 11.1.C.

D. No Transfer of any Partnership Interest may be made to a lender to the Partnership or any Person who is related (within the meaning of Section 1.752-4(b) of the Regulations) to any lender to the Partnership whose loan constitutes a Nonrecourse Liability, without the consent of the General Partner in its sole and absolute discretion; provided that as a condition to such consent, the lender will be required to enter into an arrangement with the Partnership and the General Partner to redeem or exchange for the REIT Consideration any Partnership Units in which a security interest is held by such lender concurrently with such time as such lender would be deemed to be a partner in the Partnership for purposes of allocating liabilities to such lender under Section 752 of the Code.

Section 11.2 Transfer of General Partner's Partnership Interest.

A. The General Partner may not Transfer any of its General Partner Interest or withdraw from the Partnership except as provided in Sections 11.1.C, 11.2.B and 11.2.C hereof. In every instance where the General Partner's ability to merge, transfer its General Partner Interest, or withdraw from the Partnership is limited pursuant to this Section 11.2, the Parent REIT's ability to merge or transfer its stock of the General Partner shall be similarly limited.

B. Except as set forth in Section 11.1.C above and Section 11.2.C below, the General Partner shall not withdraw from the Partnership and shall not Transfer all or any portion of its interest in the Partnership (whether by sale, disposition, statutory merger or consolidation, liquidation or otherwise) without the Consent of the Limited Partners, which Consent may be given or withheld in the sole and absolute discretion of the Limited Partners. Upon any Transfer of such a Partnership Interest pursuant to the Consent of the Limited Partners and otherwise in accordance with the provisions of this Section 11.2.B, the transferee shall become a successor General Partner for all purposes herein, and shall be vested with the powers and rights of the transferor General Partner, and shall be liable for all obligations and responsible for all duties of the General Partner, once such transferee has executed such instruments as may be necessary to effectuate such admission and to confirm the agreement of such transferee to be bound by all the terms and provisions of this Agreement with respect to the Partnership Interest so acquired. It is a condition to any Transfer otherwise permitted hereunder that the transferee assumes, by operation of law or express agreement, all of the obligations of the transferor General Partner under this Agreement with respect to such Transferred Partnership Interest, and such Transfer shall relieve the transferor General Partner of its obligations under this Agreement without the Consent of the Limited Partners. In the event that the General Partner withdraws from the Partnership, in violation of this Agreement or otherwise, or otherwise dissolves or terminates, or upon the bankruptcy of the General Partner, a Majority in Interest of the Limited Partners may elect to continue the Partnership business by selecting a successor General Partner in accordance with the Act.

C. Notwithstanding Section 11.2.B, the General Partner may merge with another entity if immediately after such merger substantially all of the assets of the surviving entity, other than the General Partner Interest held by the General Partner, are contributed to the Partnership as a Capital Contribution in exchange for Partnership Units.

Section 11.3 Transfer of Limited Partners' Partnership Interests.

A. General. No Limited Partner shall Transfer all or any portion of its Partnership Interest to any transferee without the consent of the General Partner, which consent may be withheld in its sole and absolute discretion, provided, however, that subject to Section 11.3E hereof, ACM may distribute some or all of its Partnership Interests to its owners, and any Limited Partner that is an individual may transfer all or any portion of his Partnership Interest to his immediate family or a trust for his immediate family without the consent of the General Partner, provided, further, that the General Partner has the right not to admit such transferee as a Limited Partner in the Partnership.

B. Conditions to Transfer Consent. Without limiting the generality of Section 11.3.A hereof, it is expressly understood and agreed that the General Partner will not consent to any Transfer of all or any portion of any Partnership Interest pursuant to Section 11.3.A above unless such Transfer meets each of the following conditions:

(1) Qualified Transferee. Such Transfer is made only to a single Qualified Transferee; provided, however, that, for such purposes, all Qualified Transferees that are Affiliates, or that comprise investment accounts or funds managed by a single Qualified Transferee and its Affiliates, shall be considered together to be a single Qualified Transferee.

(2) Assumption of Obligations. The transferee in such Transfer assumes by operation of law or express agreement all of the obligations of the transferor Limited Partner under this Agreement with respect to such Transferred Partnership Interest; provided, that no such Transfer (unless made pursuant to a statutory merger or consolidation wherein all obligations and liabilities of the transferor Partner are assumed by a successor corporation by operation of law) shall relieve the transferor Partner of its obligations under this Agreement without the approval of the General Partner, in its sole and absolute discretion. Notwithstanding the foregoing, any transferee of any Transferred Partnership Interest shall be subject to any and all ownership limitations contained in the Charter that may limit or restrict such transferee's ability to exercise its Redemption rights, including, without limitation, the Ownership Limit. Any transferee, whether or not admitted as a Substituted Limited Partner, shall take subject to the obligations of the transferor hereunder. Unless admitted as a Substituted Limited Partner, no transferee, whether by a voluntary Transfer, by operation of law or otherwise, shall have any rights hereunder, other than the rights of an Assignee as provided in Section 11.5 hereof.

(3) Effective Date. Such Transfer is effective as of the first day of a fiscal quarter of the Partnership.

C. Incapacity. If a Limited Partner is subject to Incapacity, the executor, administrator, trustee, committee, guardian, conservator or receiver of such Limited Partner's estate shall have all the rights of a Limited Partner, but not more rights than those enjoyed by other Limited Partners, for the purpose of settling or managing the estate, and such power as the Incapacitated Limited Partner possessed to Transfer all or any part of its interest in the Partnership. The Incapacity of a Limited Partner, in and of itself, shall not dissolve or terminate the Partnership.

D. Opinion of Counsel. In connection with any proposed Transfer of a Limited Partner Interest, the General Partner shall have the right to receive an opinion of counsel reasonably satisfactory to it to the effect that the proposed Transfer may be effected without registration under the Securities Act and will not otherwise violate any federal or state securities laws or regulations applicable to the Partnership or the Partnership Interests Transferred.

E. Adverse Tax Consequences. No Transfer by a Limited Partner of its Partnership Interests (including any Redemption, any other acquisition of Partnership Units by the Partnership or a REIT Party) may be made to or by any person if (i) in the opinion of legal counsel for the Partnership, it would result in the Partnership being treated as an association taxable as a corporation or would result in a termination of the Partnership under Code Section 708, or (ii) such Transfer would be effectuated through an "established securities market" or a "secondary market (or the substantial equivalent thereof)" within the meaning of Code Section 7704.

Section 11.4 Substituted Limited Partners.

A. A transferee of the interest of a Limited Partner pursuant to a Transfer consented to by the General Partner pursuant to Section 11.3.A may be admitted as a Substituted Limited Partner only with the consent of the General Partner, which consent may be given or withheld by the General Partner in its sole and absolute discretion. The failure or refusal by the General Partner to permit a transferee of any such interests to become a Substituted Limited Partner shall not give rise to any cause of action against the Partnership or the General Partner. Subject to the foregoing, an Assignee shall not be admitted as a Substituted Limited Partner until and unless it furnishes to the General Partner (i) evidence of acceptance, in form and substance satisfactory to the General Partner, of all the terms, conditions and applicable obligations of this Agreement, (ii) a counterpart signature page to this Agreement executed by such Assignee and (iii) such other documents and instruments as may be required or advisable, in the sole and absolute discretion of the General Partner, to effect such Assignee's admission as a Substituted Limited Partner.

B. A transferee who has been admitted as a Substituted Limited Partner in accordance with this Article 11 shall have all the rights and powers and be subject to all the restrictions and liabilities of a Limited Partner under this Agreement.

C. Upon the admission of a Substituted Limited Partner, the General Partner shall amend Exhibit A to reflect the name, address and number of Partnership Units of such Substituted Limited Partner and to eliminate or adjust, if necessary, the name, address and number of Partnership Units of the predecessor of such Substituted Limited Partner.

Section 11.5 Assignees. If the General Partner, in its sole and absolute discretion, does not consent to the admission of any transferee of any Partnership Interest as a Substituted Limited Partner in connection with a transfer permitted by the General Partner pursuant to Section 11.3.A, such transferee shall be considered an Assignee for purposes of this Agreement. An Assignee shall be entitled to all the rights of an assignee of a limited partnership interest under the Act, including the right to receive distributions from the Partnership and the share of Net Income, Net Losses and other items of income, gain, loss, deduction and credit of the Partnership attributable to the Partnership Units assigned to such transferee and the rights to Transfer the Partnership Units only in accordance with the provisions of this Article 11, but shall not be deemed to be a holder of Partnership Units for any other purpose under this Agreement, and shall not be entitled to effect a Consent or vote or effect a Redemption with respect to such Partnership Units on any matter presented to the Limited Partners for approval (such right to Consent or vote or effect a Redemption, to the extent provided in this Agreement or under the Act, fully remaining with the transferor Limited Partner). In the event that any such transferee desires to make a further assignment of any such Partnership Units, such transferee shall be subject to all the provisions of this Article 11 to the same extent and in the same manner as any Limited Partner desiring to make an assignment of Partnership Units.

Section 11.6 General Provisions.

A. No Limited Partner may withdraw from the Partnership other than as a result of a permitted Transfer of all of such Limited Partner's Partnership Units in accordance with this Article 11, with respect to which the transferee becomes a Substituted Limited Partner, or pursuant to a redemption (or acquisition by the General Partner) of all of its Partnership Units pursuant to a Redemption under Section 8.6 hereof and/or pursuant to any Partnership Unit Designation.

B. Any Limited Partner who shall Transfer all of its Partnership Units in a Transfer (i) consented to by the General Partner pursuant to this Article 11 where such transferee was admitted as a Substituted Limited Partner, (ii) pursuant to the exercise of its rights to effect a redemption of all of its Partnership Units pursuant to a Redemption under Section 8.6 hereof and/or pursuant to any Partnership Unit Designation or (iii) to the General Partner, whether or not pursuant to Section 8.6.B hereof, shall cease to be a Limited Partner.

C. If any Partnership Unit is Transferred in compliance with the provisions of this Article 11, or is redeemed by the Partnership, or acquired by the General Partner pursuant to Section 8.6 hereof, on any day other than the first day of a Partnership Year, then Net Income, Net Losses, each item thereof and all other items of income, gain, loss, deduction and credit attributable to such Partnership Unit for such Partnership Year shall be allocated to the transferor Partner or the Tendering Party, as the case may be, and, in the case of a Transfer or assignment other than a Redemption, to the transferee Partner, by taking into account their varying interests during the Partnership Year in accordance with Code Section 706(d), using the "interim closing of the books" method or another permissible method selected by the General Partner. Solely for purposes of making such allocations, each of such items for the calendar month in which a Transfer occurs shall be allocated to the transferee Partner and none of such items for the calendar month in which a Transfer or a Redemption occurs shall be allocated to the transferor Partner or the Tendering Party, as the case may be, if such Transfer occurs on or before the fifteenth (15th) day of the month, otherwise such items shall be allocated to the transferor. All distributions of Available Cash attributable to such Partnership Unit with respect to which the Partnership Record Date is before the date of such Transfer, assignment or Redemption shall be made to the transferor Partner or the Tendering Party, as the case may be, and, in the case of a Transfer other than a Redemption, all distributions of Available Cash thereafter attributable to such Partnership Unit shall be made to the transferee Partner.

D. In no event may any Transfer or assignment of a Partnership Interest by any Partner (including any Redemption, any acquisition of Partnership Units by the General Partner or any other acquisition of Partnership Units by the Partnership) be made (i) to any person or entity who lacks the legal right, power or capacity to own a Partnership Interest; (ii) in violation of applicable law; (iii) of any component portion of a Partnership Interest, such as the Capital Account, or rights to distributions, separate and apart from all other components of a Partnership Interest; (iv) in the event that such Transfer would cause the Parent REIT to cease to comply with the REIT Requirements; (v) if such Transfer would, in the opinion of counsel to the Partnership, Parent REIT or the General Partner, cause a termination of the Partnership for federal or state income tax purposes (except as a result of the Redemption (or acquisition by a REIT Party) of all Partnership Common Units held by all Limited Partners); (vi) if such Transfer would, in the opinion of legal counsel to the Partnership, cause the Partnership to cease to be classified as a partnership for federal income tax purposes (except as a result of the Redemption (or acquisition by a REIT Party) of all Partnership Common Units held by all Limited Partners); (vii) if such Transfer would cause the Partnership to become, with respect to any employee benefit plan subject to Title I of ERISA, a "party-in-interest" (as defined in ERISA Section 3(14)) or a "disqualified person" (as defined in Code Section 4975(c)); (viii) if such Transfer would, in the opinion of legal counsel to the Partnership, cause any portion of the assets of the Partnership to constitute assets of any employee benefit plan pursuant to Department of Labor Regulations Section 2510.2-101; (ix) if such Transfer requires the registration of such Partnership Interest pursuant to any applicable federal or state securities laws; (x) if such Transfer causes the Partnership to become a "publicly traded partnership," as such term is defined in Code Section 469(k)(2) or Code 7704(b); (xi) if such Transfer causes the Partnership (as opposed to the General Partner) to become a reporting company under the Exchange Act; or (xii) if such Transfer subjects the Partnership to regulation under the Investment Company Act of 1940, the Investment Advisors Act of 1940 or ERISA, each as amended.

ARTICLE XII
ADMISSION OF PARTNERS

Section 12.1 Admission of Successor General Partner. A successor to all of the General Partner's General Partner Interest pursuant to Section 11.2 hereof who is proposed to be admitted as a successor General Partner shall be admitted to the Partnership as the General Partner, effective immediately

prior to such Transfer. Any such successor shall carry on the business of the Partnership without dissolution. In each case, the admission shall be subject to the successor General Partner executing and delivering to the Partnership an acceptance of all of the terms and conditions of this Agreement and such other documents or instruments as may be required to effect the admission.

Section 12.2 Admission of Additional Limited Partners.

A. After the date hereof, a Person (other than an existing Partner) who makes a Capital Contribution to the Partnership in accordance with this Agreement shall be admitted to the Partnership as an Additional Limited Partner only upon furnishing to the General Partner (i) evidence of acceptance, in form and substance satisfactory to the General Partner, of all of the terms and conditions of this Agreement, including, without limitation, the power of attorney granted in Section 2.4 hereof, (ii) a counterpart signature page to this Agreement executed by such Person and (iii) such other documents or instruments as may be required in the sole and absolute discretion of the General Partner in order to effect such Person's admission as an Additional Limited Partner.

B. Notwithstanding anything to the contrary in this Section 12.2, no Person shall be admitted as an Additional Limited Partner without the consent of the General Partner, which consent may be given or withheld in the General Partner's sole and absolute discretion. The admission of any Person as an Additional Limited Partner shall become effective on the date upon which the name of such Person is recorded on the books and records of the Partnership, following the consent of the General Partner to such admission.

C. If any Additional Limited Partner is admitted to the Partnership on any day other than the first day of a Partnership Year, then Net Income, Net Losses, each item thereof and all other items of income, gain, loss, deduction and credit allocable among Partners and Assignees for such Partnership Year shall be allocated pro rata among such Additional Limited Partner and all other Partners and Assignees by taking into account their varying interests during the Partnership Year in accordance with Code Section 706(d), using the "interim closing of the books" method or another permissible method selected by the General Partner. Solely for purposes of making such allocations, each of such items for the calendar month in which an admission of any Additional Limited Partner occurs shall be allocated among all the Partners and Assignees including such Additional Limited Partner, in accordance with the principles described in Section 11.6.C hereof. All distributions of Available Cash with respect to which the Partnership Record Date is before the date of such admission shall be made solely to Partners and Assignees other than the Additional Limited Partner, and all distributions of Available Cash thereafter shall be made to all the Partners and Assignees including such Additional Limited Partner.

Section 12.3 Amendment of Agreement and Certificate of Limited Partnership. For the admission to the Partnership of any Partner, the General Partner shall take all steps necessary and appropriate under the Act to amend the records of the Partnership and, if necessary, to prepare as soon as practical an amendment of this Agreement (including an amendment of Exhibit A) and, if required by law, shall prepare and file an amendment to the Certificate and may for this purpose exercise the power of attorney granted pursuant to Section 2.4 hereof.

Section 12.4 Limit on Number of Partners. Unless otherwise permitted by the General Partner, no Person shall be admitted to the Partnership as an Additional Limited Partner if the effect of such admission would be to cause the Partnership to have a number of Partners (including as Partners for this purpose those Persons indirectly owning an interest in the Partnership through another partnership, a limited liability company, a subchapter S corporation or a grantor trust) that would cause the Partnership to become a reporting company under the Exchange Act.

ARTICLE XIII
DISSOLUTION, LIQUIDATION AND TERMINATION

Section 13.1 Dissolution. The Partnership shall not be dissolved by the admission of Additional Limited Partners or by the admission of a successor General Partner in accordance with the terms of

this Agreement. Upon the withdrawal of the General Partner, any successor General Partner shall continue the business of the Partnership without dissolution. However, the Partnership shall dissolve, and its affairs shall be wound up, upon the first to occur of any of the following (each a "Liquidating Event"):

A. an event of withdrawal, as defined in the Act (including, without limitation, bankruptcy), of the sole General Partner unless, within ninety (90) days after the withdrawal, a Majority in Interest of the remaining Limited Partners agree in writing, in their sole and absolute discretion, to continue the business of the Partnership and to the appointment, effective as of the date of withdrawal, of a successor General Partner;

B. an election to dissolve the Partnership made by the General Partner in its sole and absolute discretion, with or without the Consent of the Limited Partners;

C. entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Act;

D. the occurrence of a Terminating Capital Transaction; or

E. the Redemption (or acquisition by the General Partner) of all Partnership Units other than Partnership Units held by the General Partner.

Section 13.2 Winding Up.

A. Upon the occurrence of a Liquidating Event, the Partnership shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors and Partners. After the occurrence of a Liquidating Event, no Partner shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Partnership's business and affairs. The General Partner (or, in the event that there is no remaining General Partner or the General Partner has dissolved, become bankrupt within the meaning of the Act or ceased to operate, any Person elected by a Majority in Interest of the Limited Partners (the General Partner or such other Person being referred to herein as the "Liquidator")) shall be responsible for overseeing the winding up and dissolution of the Partnership and shall take full account of the Partnership's liabilities and property, and the Partnership property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom (which may, to the extent determined by the General Partner, include shares of stock in the General Partner) shall be applied and distributed in the following order:

(1) First, to the satisfaction of all of the Partnership's debts and liabilities to creditors other than the Partners and their Assignees (whether by payment or the making of reasonable provision for payment thereof);

(2) Second, to the satisfaction of all of the Partnership's debts and liabilities to the General Partner (whether by payment or the making of reasonable provision for payment thereof), including, but not limited to, amounts due as reimbursements under Section 7.4 hereof;

(3) Third, to the satisfaction of all of the Partnership's debts and liabilities to the other Partners and any Assignees (whether by payment or the making of reasonable provision for payment thereof); and

(4) Subject to the terms of any Partnership Unit Designation, the balance, if any, to the General Partner, the Limited Partners and any Assignees in accordance with and in proportion to their positive Capital Account balances, after giving effect to all contributions, distributions and allocations for all periods.

The General Partner shall not receive any additional compensation for any services performed pursuant to this Article 13.

B. Notwithstanding the provisions of Section 13.2.A hereof that require liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if prior to or upon dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners, the Liquidator may, in its sole and absolute discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (including to those Partners as creditors) and/or distribute to the Partners, in lieu of cash, as tenants in common and in accordance with the provisions of Section 13.2.A hereof, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be made only if, in the good faith judgment of the Liquidator, such distributions in kind are in the best interest of the Partners, and shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

C. In the event that the Partnership is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Article 13 to the Partners and Assignees that have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2) to the extent of, and in proportion to, positive Capital Account balances. If the General Partner has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs) (a "Capital Account Deficit"), the General Partner shall make a contribution to the capital of the Partnership equal to the amount of such deficit. No Partner other than the General Partner shall be required to make any contribution to the capital of the Partnership with respect to a Capital Account Deficit, if any, of such Partner, and such Capital Account Deficit shall not be considered a debt owed to the Partnership or any other person for any purpose whatsoever. In the sole and absolute discretion of the General Partner or the Liquidator, a pro rata portion of the distributions that would otherwise be made to the Partners pursuant to this Article 13 may be:

1. distributed to a trust established for the benefit of the General Partner and the Limited Partners for the purpose of liquidating Partnership assets, collecting amounts owed to the Partnership, and paying any contingent or unforeseen liabilities or obligations of the Partnership or of the General Partner arising out of or in connection with the Partnership and/or Partnership activities. The assets of any such trust shall be distributed to the General Partner and the Limited Partners, from time to time, in the reasonable discretion of the General Partner, in the same proportions and amounts as would otherwise have been distributed to the General Partner and the Limited Partners pursuant to this Agreement; or

2. withheld or escrowed to provide a reasonable reserve for Partnership liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Partnership, provided that such withheld or escrowed amounts shall be distributed to the General Partner and Limited Partners in the manner and order of priority set forth in Section 13.2.A hereof as soon as practicable.

Section 13.3 Deemed Distribution and Recontribution. Notwithstanding any other provision of this Article 13, in the event that the Partnership is liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), but no Liquidating Event has occurred, the Partnership's Property shall not be liquidated, the Partnership's liabilities shall not be paid or discharged and the Partnership's affairs shall not be wound up. Instead, for federal income tax purposes the Partnership shall be deemed to have contributed all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership; and, immediately thereafter, distributed interests in the new partnership to the Partners in accordance with their respective Capital Accounts in liquidation of the Partnership, and the new partnership is deemed to continue the business of the Partnership. Nothing in this Section 13.3 shall be deemed to have constituted any Assignee as a Substituted Limited Partner without compliance with the provisions of Section 11.4 hereof.

Section 13.4 Rights of Limited Partners. Except as otherwise provided in this Agreement, (a) each Limited Partner shall look solely to the assets of the Partnership for the return of its Capital Contribution, (b) no Limited Partner shall have the right or power to demand or receive property other than cash

from the Partnership and (c) no Limited Partner (other than any Limited Partner who holds Partnership Preferred Units, to the extent specifically set forth herein and in the applicable Partnership Unit Designation) shall have priority over any other Limited Partner as to the return of its Capital Contributions, distributions or allocations.

Section 13.5 Notice of Dissolution. In the event that a Liquidating Event occurs or an event occurs that would, but for an election or objection by one or more Partners pursuant to Section 13.1 hereof, result in a dissolution of the Partnership, the General Partner shall, within thirty (30) days thereafter, provide written notice thereof to each of the Partners and, in the General Partner's sole and absolute discretion or as required by the Act, to all other parties with whom the Partnership regularly conducts business (as determined in the sole and absolute discretion of the General Partner), and the General Partner may, or, if required by the Act, shall, publish notice thereof in a newspaper of general circulation in each place in which the Partnership regularly conducts business (as determined in the sole and absolute discretion of the General Partner).

Section 13.6 Cancellation of Certificate of Limited Partnership. Upon the completion of the liquidation of the Partnership cash and property as provided in Section 13.2 hereof, the Partnership shall be terminated, a certificate of cancellation shall be filed with the State of Delaware, all qualifications of the Partnership as a foreign limited partnership or association in jurisdictions other than the State of Delaware shall be cancelled, and such other actions as may be necessary to terminate the Partnership shall be taken.

Section 13.7 Reasonable Time for Winding-Up. A reasonable time shall be allowed for the orderly winding-up of the business and affairs of the Partnership and the liquidation of its assets pursuant to Section 13.2 hereof, in order to minimize any losses otherwise attendant upon such winding-up, and the provisions of this Agreement shall remain in effect between the Partners during the period of liquidation.

ARTICLE XIV
PROCEDURES FOR ACTIONS AND CONSENTS OF PARTNERS; AMENDMENTS; MEETINGS

Section 14.1 Procedures for Actions and Consents of Partners. The actions requiring consent or approval of Limited Partners pursuant to this Agreement, including Section 7.3 hereof, or otherwise pursuant to applicable law, are subject to the procedures set forth in this Article 14.

Section 14.2 Amendments. Amendments to this Agreement may be proposed by the General Partner or by a Majority in Interest of the Limited Partners. Following such proposal, the General Partner shall submit any proposed amendment to the Limited Partners. The General Partner shall seek the written consent of the Limited Partners on the proposed amendment or shall call a meeting to vote thereon and to transact any other business that the General Partner may deem appropriate. For purposes of obtaining a written consent, the General Partner may require a response within a reasonable specified time, but not less than fifteen (15) days, and failure to respond in such time period shall constitute a consent that is consistent with the General Partner's recommendation with respect to the proposal; provided, however, that an action shall become effective at such time as requisite consents are received even if prior to such specified time.

Section 14.3 Meetings of the Partners.

A. Meetings of the Partners may be called by the General Partner and shall be called upon the receipt by the General Partner of a written request by a Majority in Interest of the Limited Partners. The call shall state the nature of the business to be transacted. Notice of any such meeting shall be given to all Partners not less than seven (7) days nor more than thirty (30) days prior to the date of such meeting. Partners may vote in person or by proxy at such meeting. Whenever the vote or Consent of Partners is permitted or required under this Agreement, such vote or Consent may be given at a meeting of Partners or may be given in accordance with the procedure prescribed in Section 14.3.B hereof.

B. Any action required or permitted to be taken at a meeting of the Partners may be taken without a meeting if a written consent setting forth the action so taken is signed by a majority of the Percentage Interests of the Partners (or such other percentage as is expressly required by this Agreement for the action in question). Such consent may be in one instrument or in several instruments, and shall have the same force and effect as a vote of a majority of the Percentage Interests of the Partners (or such other percentage as is expressly required by this Agreement). Such consent shall be filed with the General Partner. An action so taken shall be deemed to have been taken at a meeting held on the effective date so certified.

C. Each Limited Partner may authorize any Person or Persons to act for it by proxy on all matters in which a Limited Partner is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Limited Partner or its attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy (or there is receipt of a proxy authorizing a later date). Every proxy shall be revocable at the pleasure of the Limited Partner executing it, such revocation to be effective upon the Partnership's receipt of written notice of such revocation from the Limited Partner executing such proxy. The use of proxies will be governed in the same manner as in the case of corporations organized under the General Corporation Law of Delaware (including Section 212 thereof).

D. Each meeting of Partners shall be conducted by the General Partner or such other Person as the General Partner may appoint pursuant to such rules for the conduct of the meeting as the General Partner or such other Person deems appropriate in its sole and absolute discretion. Without limitation, meetings of Partners may be conducted in the same manner as meetings of the General Partner's shareholders and may be held at the same time as, and as part of, the meetings of the General Partner's shareholders.

ARTICLE XV
GENERAL PROVISIONS

Section 15.1 Addresses and Notice. Any notice, demand, request or report required or permitted to be given or made to a Partner or Assignee under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication (including by telecopy, facsimile, or commercial courier service) to the Partner or Assignee at the address set forth in Exhibit A or such other address of which the Partner shall notify the General Partner in writing.

Section 15.2 Titles and Captions. All article or section titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles" or "Sections" are to Articles and Sections of this Agreement.

Section 15.3 Pronouns and Plurals. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 15.4 Further Action. The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 15.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 15.6 Waiver.

A. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.

B. The restrictions, conditions and other limitations on the rights and benefits of the Limited Partners contained in this Agreement, and the duties, covenants and other requirements of performance or notice by the Limited Partners, are for the benefit of the Partnership and, except for an obligation to pay money to the Partnership, may be waived or relinquished by the General Partner, in its sole and absolute discretion, on behalf of the Partnership in one or more instances from time to time and at any time; provided, however, that any such waiver or relinquishment may not be made if it would have the effect of (i) creating liability for any other Limited Partner, (ii) causing the Partnership to cease to qualify as a limited partnership, (iii) reducing the amount of cash otherwise distributable to the Limited Partners, (iv) resulting in the classification of the Partnership as an association or publicly traded partnership taxable as a corporation or (v) violating the Securities Act, the Exchange Act or any state "blue sky" or other securities laws; provided, further, that any waiver relating to compliance with the Ownership Limit or other restrictions in the Charter shall be made and shall be effective only as provided in the Charter.

Section 15.7 Counterparts. This Agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto.

Section 15.8 Applicable Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law. In the event of a conflict between any provision of this Agreement and any non-mandatory provision of the Act, the provisions of this Agreement shall control and take precedence.

Section 15.9 Entire Agreement. This Agreement contains all of the understandings and agreements between and among the Partners with respect to the subject matter of this Agreement and the rights, interests and obligations of the Partners with respect to the Partnership.

Section 15.10 Invalidity of Provisions. If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

Section 15.11 Limitation to Preserve REIT Status. Notwithstanding anything else in this Agreement, to the extent that the amount paid, credited, distributed or reimbursed by the Partnership to any REIT Partner or its officers, directors, employees or agents, whether as a reimbursement, fee, expense or indemnity (a "REIT Payment"), would constitute gross income to the REIT Partner for purposes of Code Section 856(c)(2) or Code Section 856(c)(3), then, notwithstanding any other provision of this Agreement, the amount of such REIT Payments, as selected by the General Partner in its discretion from among items of potential distribution, reimbursement, fees, expenses and indemnities, shall be reduced for any Partnership Year so that the REIT Payments, as so reduced, for or with respect to such REIT Partner shall not exceed the lesser of:

(i) an amount equal to the excess, if any, of (a) four and nine-tenths percent (4.9%) of the REIT Partner's total gross income (but excluding the amount of any REIT Payments) for the Partnership Year that is described in subsections (A) through (H) of Code Section 856(c)(2) over (b) the amount of gross income (within the meaning of Code Section 856(c)(2)) derived by the REIT Partner from sources other than those described in subsections (A) through (H) of Code Section 856(c)(2) (but not including the amount of any REIT Payments); or

(ii) an amount equal to the excess, if any, of (a) twenty-four percent (24%) of the REIT Partner's total gross income (but excluding the amount of any REIT Payments) for the Partnership Year that is described in subsections (A) through (I) of

Code Section 856(c)(3) over (b) the amount of gross income (within the meaning of Code Section 856(c)(3)) derived by the REIT Partner from sources other than those described in subsections (A) through (I) of Code Section 856(c)(3) (but not including the amount of any REIT Payments);

provided, however, that REIT Payments in excess of the amounts set forth in clauses (i) and (ii) above may be made if the General Partner, as a condition precedent, obtains an opinion of tax counsel that the receipt of such excess amounts shall not adversely affect the REIT Partner's ability to qualify as a REIT. To the extent that REIT Payments may not be made in a Partnership Year as a consequence of the limitations set forth in this Section 15.11, such REIT Payments shall carry over and shall be treated as arising in the following Partnership Year. The purpose of the limitations contained in this Section 15.11 is to prevent any REIT Partner from failing to qualify as a REIT under the Code by reason of such REIT Partner's share of items, including distributions, reimbursements, fees, expenses or indemnities, receivable directly or indirectly from the Partnership, and this Section 15.11 shall be interpreted and applied to effectuate such purpose.

Section 15.12 No Partition. No Partner nor any successor-in-interest to a Partner shall have the right while this Agreement remains in effect to have any property of the Partnership partitioned, or to file a complaint or institute any proceeding at law or in equity to have such property of the Partnership partitioned, and each Partner, on behalf of itself and its successors and assigns hereby waives any such right. It is the intention of the Partners that the rights of the parties hereto and their successors-in-interest to Partnership property, as among themselves, shall be governed by the terms of this Agreement, and that the rights of the Partners and their successors-in-interest shall be subject to the limitations and restrictions as set forth in this Agreement.

Section 15.13 No Third-Party Rights Created Hereby. The provisions of this Agreement are solely for the purpose of defining the interests of the Partners, inter se; and no other person, firm or entity (i.e., a party who is not a signatory hereto or a permitted successor to such signatory hereto) shall have any right, power, title or interest by way of subrogation or otherwise, in and to the rights, powers, title and provisions of this Agreement. No creditor or other third party having dealings with the Partnership (other than as expressly set forth herein with respect to Indemnitees) shall have the right to enforce the right or obligation of any Partner to make Capital Contributions or loans to the Partnership or to pursue any other right or remedy hereunder or at law or in equity. None of the rights or obligations of the Partners herein set forth to make Capital Contributions or loans to the Partnership shall be deemed an asset of the Partnership for any purpose by any creditor or other third party, nor may any such rights or obligations be sold, transferred or assigned by the Partnership or pledged or encumbered by the Partnership to secure any debt or other obligation of the Partnership or any of the Partners.

Section 15.14 No Rights as Stockholders. Nothing contained in this Agreement shall be construed as conferring upon the Holders of Partnership Units any rights whatsoever as stockholders of the General Partner, including without limitation any right to receive dividends or other distributions made to stockholders of the General Partner or to vote or to consent or receive notice as stockholders in respect of any meeting of stockholders for the election of directors of the General Partner or any other matter.

Section 15.15 Parent REIT. Parent REIT is the corporate parent of the General Partner and the Initial Limited Partner, and derives certain benefits from the structure established by this Agreement and is a party hereto. Parent REIT shall not, however, have any Capital Account or other direct right to any allocations or distributions by the Partnership hereunder.

Section 15.16 References to First Amended Partnership Agreement. Any reference to the First Amended Partnership Agreement in any document execution in connection therewith or with this Agreement shall be deemed to refer to this Agreement.

[The next page is the signature page.]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

GENERAL PARTNER:

ARBOR REALTY GPOP, INC.

By: /s/ Walter K. Horn
Name: Walter K. Horn
Title: Secretary

INITIAL LIMITED PARTNER:

ARBOR REALTY LPOP, INC.

By: /s/ Walter K. Horn
Name: Walter K. Horn
Title: Secretary

LIMITED PARTNER:

ARBOR COMMERCIAL MORTGAGE, LLC

By: /s/ Walter K. Horn
Name: Walter K. Horn
Title: Secretary

PARENT REIT:

ARBOR REALTY TRUST, INC.

By: /s/ Walter K. Horn
Name: Walter K. Horn
Title: Secretary

As of January ___, 2005

Exhibit A
PARTNERS AND PARTNERSHIP UNITS

Name and Address of Partners	**Partnership Units (Type and Amount)**	**Percentage Interests**
General Partner:		
ARBOR REALTY GPOP, INC.	_____ Common Units	.1%
Limited Partners:		
ARBOR REALTY LPOP, INC.	_____ Common Units [32,942] Restricted Common Units 3,776,069 Class A Preferred Units	[___]% [___]% N/A
ARBOR COMMERCIAL MORTGAGE LLC	3,776,069 Common Units	[___]%

Exhibit B
EXAMPLES REGARDING ADJUSTMENT FACTOR

For purposes of the following examples, it is assumed that (a) the Adjustment Factor in effect on December 30, 2002 is 1.0 and (b) on January 1, 2003 (the "Partnership Record Date" for purposes of these examples), prior to the events described in the examples, there are 100 REIT Shares issued and outstanding.

Example 1

On the Partnership Record Date, the Parent REIT declares a dividend on its outstanding REIT Shares in REIT Shares. The amount of the dividend is one REIT Share paid in respect of each REIT Share owned. Pursuant to Paragraph (i) of the definition of "Adjustment Factor," the Adjustment Factor shall be adjusted on the Partnership Record Date, effective immediately after the stock dividend is declared, as follows:

$$1.0 * \frac{200}{100} = 2.0$$

Accordingly, the Adjustment Factor after the stock dividend is declared is 2.0.

Example 2

On the Partnership Record Date, the Parent REIT distributes options to purchase REIT Shares to all holders of its REIT Shares. The amount of the distribution is one option to acquire one REIT Share in respect of each REIT Share owned. The strike price is $4.00 a share. The Value of a REIT Share on the Partnership Record Date is $5.00 per share. Pursuant to Paragraph (ii) of the definition of "Adjustment Factor," the Adjustment Factor shall be adjusted on the Partnership Record Date, effective immediately after the options are distributed, as follows:

$$1.0 * \frac{\{(100+100)\}}{100+\frac{\{(100+\{100*\$4.00\}}{\{\$5.00\})\}}} = 1.1111$$

Accordingly, the Adjustment Factor after the options are distributed is 1.1111. If the options expire or become no longer exercisable, then the retroactive adjustment specified in Paragraph (ii) of the definition of "Adjustment Factor" shall apply.

Example 3

On the Partnership Record Date, the Parent REIT distributes assets to all holders of its REIT Shares. The amount of the distribution is one asset with a fair market value (as determined by the Parent REIT) of $1.00 in respect of each REIT Share owned. It is also assumed that the assets do not relate to assets received by the General Partner pursuant to a pro rata distribution by the Partnership. The Value of a REIT Share on the Partnership Record Date is $5.00 a share. Pursuant to Paragraph (iii) of the definition of "Adjustment Factor," the Adjustment Factor shall be adjusted on the Partnership Record Date, effective immediately after the assets are distributed, as follows:

$$1.0*\frac{\{\$5.00\}}{\{\$5.00 — \$1.00\}} = 1.25$$

Accordingly, the Adjustment Factor after the assets are distributed is 1.25.

Exhibit C
NOTICE OF REDEMPTION

To: Arbor Realty GPOP, Inc.
333 Earle Ovington Boulevard
Suite 900
Uniondale, New York 11553

The undersigned Limited Partner or Assignee hereby irrevocably tenders for Redemption _____ Partnership Common Units in Arbor Realty Limited Partnership in accordance with the terms of the Second Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated as of _____ ___, 200[4] (the "Agreement"), and the Redemption rights referred to therein. The undersigned Limited Partner or Assignee:

(a) undertakes (i) to surrender such Partnership Common Units and any certificate therefor at the closing of the Redemption and (ii) to furnish to the General Partner, prior to the Specified Redemption Date, the documentation, instruments and information required under Section 8.6.G of the Agreement;

(b) directs that the certified check representing the Cash Amount, or the REIT Shares Amount, as applicable, deliverable upon the closing of such Redemption be delivered to the address specified below;

(c) represents, warrants, certifies and agrees that:

(i) the undersigned Limited Partner or Assignee is a Qualifying Party,

(ii) the undersigned Limited Partner or Assignee has, and at the closing of the Redemption will have, good, marketable and unencumbered title to such Partnership Common Units, free and clear of the rights or interests of any other person or entity,

(iii) the undersigned Limited Partner or Assignee has, and at the closing of the Redemption will have, the full right, power and authority to tender and surrender such Partnership Common Units as provided herein, and

(iv) the undersigned Limited Partner or Assignee has obtained the consent or approval of all persons and entities, if any, having the right to consent to or approve such tender and surrender; and

(d) acknowledges that he will continue to own such Partnership Common Units until and unless either (1) such Partnership Common Units are acquired by a REIT Party pursuant to Section 8.6.B of the Agreement or (2) such redemption transaction closes.

All capitalized terms used herein and not otherwise defined shall have the same meaning ascribed to them respectively in the Agreement.

Dated: _____

Name of Limited Partner or Assignee:

_____

_____

(Signature of Limited Partner or Assignee)

_____

(Street Address)

_____

(City) (State) (Zip Code)

Signature Guaranteed by:

_____

Issue Check Payable to:

_____

Please insert social security
or identifying number:

_____

Exhibit D
FORM OF UNIT CERTIFICATE

THE SECURITY EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS THE TRANSFEROR DELIVERS TO THE PARTNERSHIP AN OPINION OF COUNSEL SATISFACTORY TO THE PARTNERSHIP, IN FORM AND SUBSTANCE SATISFACTORY TO THE PARTNERSHIP, TO THE EFFECT THAT THE PROPOSED SALE, TRANSFER OR OTHER DISPOSITION MAY BE EFFECTED WITHOUT REGISTRATION UNDER THE ACT AND UNDER APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS. IN ADDITION, THE LIMITED PARTNERSHIP INTEREST EVIDENCED BY THIS CERTIFICATE MAY BE SOLD OR OTHERWISE TRANSFERRED ONLY IN COMPLIANCE WITH THE RESTRICTIONS ON TRANSFER SET FORTH IN THE SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF ARBOR REALTY LIMITED PARTNERSHIP, DATED AS OF _____ __, 200[4] A COPY OF WHICH MAY BE OBTAINED FROM ARBOR REALTY TRUST, INC. AT ITS PRINCIPAL EXECUTIVE OFFICE.

Certificate Number _____

ARBOR REALTY LIMITED PARTNERSHIP
FORMED UNDER THE LAWS OF THE STATE OF DELAWARE

This certifies that _____

is the owner of _____

FULLY PAID PARTNERSHIP COMMON UNITS OF
ARBOR REALTY LIMITED PARTNERSHIP

transferable on the books of the Partnership in person or by duly authorized attorney on the surrender of this Certificate properly endorsed. This Certificate and the Partnership Common Units represented hereby are issued and shall be held subject to all of the provisions of the Second Amended and Restated Agreement of Limited Partnership, as the same may be amended and/or supplemented from time to time.

IN WITNESS WHEREOF, the undersigned has signed this Certificate.

Dated:

By: _____

EXHIBIT 10.17

==========

REVOLVING CREDIT AGREEMENT

dated as of December 7, 2004

among

ARBOR REALTY LIMITED PARTNERSHIP, as Borrower,

ARBOR REALTY TRUST, INC., as Guarantor,

THE LENDERS LISTED HEREIN, and

WATERSHED ADMINISTRATIVE LLC,
as Administrative Agent

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REVOLVING CREDIT AGREEMENT

THIS REVOLVING CREDIT AGREEMENT (this "Agreement"), dated as of December 7, 2004, is among ARBOR REALTY LIMITED PARTNERSHIP (the "Borrower"), ARBOR REALTY TRUST, INC. ("ABR" or "Guarantor"), the LENDERS listed on the

signature pages hereof, and WATERSHED ADMINISTRATIVE LLC, as Administrative Agent.

W I T N E S S E T H

WHEREAS, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. The following terms, as used herein, have the following meanings:

"Administrative Agent" shall mean Watershed Administrative LLC, in its capacity as Administrative Agent hereunder, and its permitted successors in such capacity in accordance with the terms of this Agreement.

"Administrative Questionnaire" means, with respect to each Lender, an administrative questionnaire in the form prepared by the Administrative Agent and submitted to the Administrative Agent duly completed by such Lender.

"Affiliate", as applied to any Person, means any other Person that directly or indirectly controls, is controlled by, or is under common control with, that Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to vote ten percent (10.0%) or more of the equity Securities having voting power for the election of directors of such Person or otherwise to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting equity Securities or by contract or otherwise.

"Agreement" shall mean this Revolving Credit Agreement as the same may from time to time hereafter be modified, supplemented or amended.

"Applicable Margin" means, with respect to each Euro-Dollar Rate Loan, (x) from the Closing Date through the day immediately prior to the Initial Maturity Date, seven hundred basis points (7.00%), (y) from and after the Initial Maturity Date through the day immediately prior to the First Extended Maturity Date, seven hundred and fifty basis points (7.50%) and (z) from the First Extended Maturity Date through the Second Extended Maturity Date eight hundred basis points (8.00%)

"ABR" means Arbor Realty Trust, Inc., a Maryland real estate investment trust, the sole general partner of the Borrower.

"ABR Guaranty" means the Guaranty of Payment, dated as of the date hereof, executed by ABR in favor of Administrative Agent and the Lenders.

"ABR 2003 Form 10-K" means ABR's annual report on Form 10-K for 2003, as filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended.

"Assignee" has the meaning set forth in Section 9.6(c).

"Bankruptcy Code" shall mean Title 11 of the United States Code, entitled "Bankruptcy", as amended from time to time, and any successor statute or statutes.

"Base Rate" means, a rate per annum, determined as of and adjusted on the first day of each month during the term of this Agreement, equal to the higher of (i) the Prime Rate as of the date of such calculation and (ii) the sum of 0.5% plus the Federal Funds Rate as of the date of such calculation.

"Benefit Arrangement" means at any time an employee benefit plan within the meaning of Section 3(3) of ERISA which is not a Plan or a Multiemployer Plan and which is maintained or otherwise contributed to by any member of the ERISA Group.

"Base Rate Borrowing" is a Borrowing comprised of Base Rate Loans.

"Base Rate Loan" means a Loan to be made by a Lender which bears interest based on the Base Rate.

"Borrower" means Arbor Realty Limited Partnership, a Delaware limited partnership.

"Borrower Loan" means, collectively, those loans and investments owned directly or indirectly by Borrower, ABR or any of their Consolidated Subsidiaries which were either originated, or purchased from third parties or Affiliates, by Borrower, ABR or any of their Consolidated Subsidiaries including, without limitation, bridge mortgage loans, note acquisition loans, mezzanine investments, mortgage-related securities, mortgage-backed securities and preferred equity investments.

"Borrowing" has the meaning set forth in Section 1.3.

"Borrowing Base" means the amount equal to Total Assets minus Total Liabilities.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial lenders in New York, New York, San Francisco, California, or London are authorized by law to close.

"Capital Leases" as applied to any Person, means any lease of any property (whether real, personal or mixed) by that Person as lessee which, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"Cash or Cash Equivalents" means (i) cash, (ii) direct obligations of the United States Government, including, without limitation, treasury bills, notes and bonds, (iii) interest bearing or discounted obligations of Federal agencies and Government sponsored entities or pools of such instruments offered by banks rated AA or better by S&P or Aa2 by Moody's and dealers, including, without limitation, Federal Home Loan Mortgage Corporation participation sale certificates, Government National Mortgage Association modified pass-through certificates, Federal National Mortgage Association bonds and notes, Federal Farm Credit System securities, (iv) time deposits, domestic and Eurodollar certificates of deposit, bankers acceptances, commercial paper rated at least A-1 by S&P and P-1 by Moody's, and/or guaranteed by an Aa rating by Moody's, an AA rating by S&P, or better rated credit, floating rate notes, other money market instruments and letters of credit each issued by banks which have a long-term debt rating of at least AA by S&P or Aa2 by Moody's, (v) obligations of domestic corporations, including, without limitation, commercial paper, bonds, debentures, and loan participations, each of which is rated at least AA by S&P, and/or Aa2 by Moody's, and/or unconditionally guaranteed by an AA rating by S&P, an Aa2 rating by Moody's, or better rated credit, (vi) obligations issued by states and local governments or their agencies, rated at least MIG-1 by Moody's and/or SP-1 by S&P and/or guaranteed by an irrevocable letter of credit of a bank with a long-term debt rating of at least AA by S&P or Aa2 by Moody's, (vii) repurchase agreements with major banks and primary government securities dealers fully secured by U.S. Government or agency collateral equal to or exceeding the principal amount on a daily basis and held in safekeeping, (viii) real estate loan pool participations, guaranteed by an entity with an AA rating given by S&P or an Aa2 rating given by Moody's, or better rated credit, and (ix) shares of any mutual fund that has its assets primarily invested in the types of investments referred to in clauses (i) through (v).

"Closing Date" means the date on or after the Effective Date on which the conditions set forth in Section 3.1 shall have been satisfied to the reasonable satisfaction of the Administrative Agent.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"Commitment" means, with respect to each Lender, the amount set forth opposite the name of such Lender on the signature pages hereof (and, for each Lender which is an Assignee, the amount set forth in the Transfer Supplement entered into pursuant to Section 9.6(c) as the Assignee's Commitment), as such amount may be reduced from time to time pursuant to

Sections 2.10(e) and 2.11(e) or reduced or increased in connection with an assignment to an Assignee or from another Lender.

"Commitment Fee" shall have the meaning set forth in Section 2.8.

"Consolidated Subsidiary" means at any date any Subsidiary or other entity which is consolidated with Borrower or ABR in accordance with GAAP.

"Contingent Obligation" as to any Person means, without duplication, (i) any contingent obligation of such Person required to be shown on such Person's balance sheet in accordance with GAAP, and (ii) any obligation required to be disclosed in the footnotes to such Person's financial statements, guaranteeing partially or in whole any Secured Debt, lease, dividend or other obligation, exclusive of contractual indemnities (including, without limitation, any indemnity or price-adjustment provision relating to the purchase or sale of securities or other assets) and guarantees of non-monetary obligations (other than guarantees of completion) which have not yet been called on or quantified, of such Person or of any other Person. The amount of any Contingent Obligation described in clause (ii) shall be deemed to be (a) with respect to a guaranty of interest or interest and principal, or operating income guaranty, the Net Present Value of the sum of all payments required to be made thereunder (which in the case of an operating income guaranty shall be deemed to be equal to the debt service for the note secured thereby), through (I) in the case of an interest or interest and principal guaranty, the stated date of maturity of the obligation (and commencing on the date interest could first be payable thereunder), or (II) in the case of an operating income guaranty, the date through which such guaranty will remain in effect, and (b) with respect to all guarantees not covered by the preceding clause (a), an amount equal to the stated or determinable amount of the primary obligation in respect of which such guaranty is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as recorded on the balance sheet and on the footnotes to the most recent financial statements of Borrower required to be delivered pursuant to Section 4.4 hereof. Notwithstanding anything contained herein to the contrary, guarantees of completion shall not be deemed to be Contingent Obligations unless and until a claim for payment or performance has been made thereunder, at which time any such guaranty of completion shall be deemed to be a Contingent Obligation in an amount equal to any such claim. Subject to the preceding sentence, (i) in the case of a joint and several guaranty given by such Person and another Person (but only to the extent such guaranty is recourse, directly or indirectly to Borrower), the amount of the guaranty shall be deemed to be 100% thereof unless and only to the extent that such other Person has delivered Cash or Cash Equivalents to secure all or any part of such Person's guaranteed obligations and (ii) in the case of a guaranty (whether or not joint and several) of an obligation otherwise constituting Indebtedness of such Person, the amount of such guaranty shall be deemed to be only that amount in excess of the amount of the obligation constituting Indebtedness of such Person. Notwithstanding anything contained herein to the contrary, (xx) "Contingent Obligations" shall be deemed not to include guarantees of Unused Commitments or of construction loans to the extent the same have not been drawn, and (yy) the aggregate amount of all Contingent Obligations of any Consolidated Subsidiary (except to the extent that any such Contingent Obligation is recourse to the Borrower or ABR) which would otherwise exceed the total capital contributions of the Borrower and ABR to such entity, together with the amount of any unfunded obligations of the Borrower or ABR to make such additional equity contributions to such entity that

could be legally enforced by a creditor of such entity shall be deemed to be equal to the amount of such capital contributions and equity or loan commitments. All matters constituting "Contingent Obligations" shall be calculated without duplication.

"Convertible Securities" means evidences of shares of stock, limited or general partnership interests or other ownership interests, warrants, options, or other rights or securities (other than debt) which are convertible into or exchangeable for, with or without payment of additional consideration, shares of common stock of ABR or partnership interests of Borrower, as the case may be, either immediately or upon the arrival of a specified date or the happening of a specified event.

"Customary Non-Recourse Carve-Outs" means fraud, misrepresentation, misapplication of cash, waste, environmental claims and liabilities and other circumstances customarily excluded by institutional lenders from exculpation provisions and/or included in separate indemnification agreements.

"Default" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"Default Rate" has the meaning set forth in Section 2.7(d).

"Depreciation and Amortization" means, for any period, the depreciation and amortization of ABR and its Consolidated Subsidiaries, on a consolidated basis, all as determined in accordance with GAAP.

"EBITDA" means, for any period, Net Income, plus each of the following (without duplication as an addition) if and only if such item was deducted in determining Net Income: (1) Interest Expense, (2) Total Taxes, and (3) Depreciation and Amortization, all for such period.

"Effective Date" means the date this Agreement becomes effective in accordance with Section 9.9.

"Environmental Affiliate" means any partnership, joint venture, trust or corporation in which an equity interest is owned by the Borrower and/or ABR, either directly or indirectly, and, as a result of the ownership of such equity interest, the Borrower and/or ABR may have recourse liability for Environmental Claims against such partnership, joint venture, trust or corporation (or the property thereof).

"Environmental Approvals" means any permit, license, approval, ruling, variance, exemption or other authorization required under applicable Environmental Laws.

"Environmental Claim" means, with respect to any Person, any notice, claim, demand or similar communication (written or oral) by any other Person alleging potential liability of such Person for investigatory costs, cleanup costs, governmental response costs, natural resources damage, property damages, personal injuries, fines or penalties arising out of, based on or resulting from (i) the presence, or release into the

environment, of any Materials of Environmental Concern at any location, whether or not owned by such Person or (ii) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law, in each case (with respect to both (i) and (ii) above) as to which there is a reasonable possibility of an adverse determination with respect thereto and which, if adversely determined, would have a Material Adverse Effect on the Borrower.

"Environmental Laws" means any and all federal, state, and local statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, licenses, agreements and other governmental restrictions relating to the environment, the effect of the environment on human health or to emissions, discharges or releases of Materials of Environmental Concern into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern or the clean up or other remediation thereof.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute.

"ERISA Group" means the Borrower, any Subsidiary and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Borrower or any Subsidiary, are treated as a single employer under Section 414 of the Code.

"Extension Fee" shall mean a fee in an amount equal to one hundred basis points (1.00%) due and payable on the aggregate amount of the continuing Commitments on the Initial Maturity Date and the First Extended Maturity Date, as applicable, pursuant to the terms of Subsection 2.9(b) hereof.

"Euro-Dollar Borrowing" is a Borrowing comprised of Euro-Dollar Loans.

"Euro-Dollar Loan" means a Loan which bears interest based on the Euro-Dollar Rate.

"Euro-Dollar Rate" means a simple rate per annum, determined as of and adjusted on the first day of each month during the term of this Agreement, equal to the quotient obtained (rounded upward if necessary, to the next higher 1/100 of 1%) by dividing (i) London Interbank Offered Rate at approximately 11:00 a.m. (London time) as of the date of such calculation by (ii) 1.00 minus the Euro-Dollar Reserve Percentage. In no event, however, shall the Euro-Dollar Rate be less than two hundred basis points (2.00%) per annum.

"Euro-Dollar Reserve Percentage" means, for any day that percentage (expressed as a decimal) which is in effect on such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including basic, supplemental, emergency, special and marginal reserves) generally applicable to financial institutions regulated by the Federal

Reserve Board comparable in size and type to the Administrative Agent under Regulation D, in respect of "Eurocurrency liabilities", or under any similar or successor regulation with respect to Eurocurrency liabilities or Eurocurrency funding (or in respect of any other category of liabilities which include deposits by reference to which the interest rate on Euro-Dollar Loans is determined), whether or not the Administrative Agent has any Euro-Currency liabilities or such requirement otherwise in fact applies to the Administrative Agent. The Euro-Dollar Rate shall be adjusted automatically as of the effective date of each change in the Euro-Dollar Reserve Percentage.

"Event of Default" has the meaning set forth in Section 6.1.

"Federal Funds Rate" means, for any day, the rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to the Administrative Agent from three (3) Federal funds brokers of recognized standing selected by it on such day on such transactions.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System as constituted from time to time.

"First Extended Maturity Date " has the meaning set forth in Section 2.9(b) hereof.

"First Extension Notice" has the meaning set forth in Section 2.9(b) hereof.

"First Extension Option" has the meaning set forth in Section 2.9(b) hereof.

"Fiscal Quarter" means a fiscal quarter of a Fiscal Year.

"Fiscal Year" means the fiscal year of Borrower and ABR which shall be the twelve (12) month period ending on the last day of December in each year.

"Fixed Charges" means, for any period, the sum of (i) Total Debt Service for such period, plus (ii) dividends on preferred units payable by Borrower, ABR and their Consolidated Subsidiaries for such period.

"Funds from Operation" means, for any period, (1) Net Income for such period (before extraordinary and non-recurring items), minus (or plus) (2) gains (or losses) from debt restructuring and sales of property during such period, plus (3) depreciation and amortization of real and personal property

assets for such period (but only to the extent such item was previously deducted in determining Net Income) plus (4) without

duplication, income from unconsolidated partnerships and joint ventures, determined in each case in accordance with GAAP.

"GAAP" means generally accepted accounting principles recognized as such in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

"Indebtedness" as applied to any Person (and without duplication), means (a) all indebtedness, obligations or other liabilities of such Person for borrowed money, (b) all indebtedness, obligations or other liabilities of such Person evidenced by Securities or other similar instruments, (c) all Contingent Obligations of such Person, (d) all reimbursement obligations and other liabilities of such Person with respect to letters of credit or Banker's acceptances issued for such Person's account, or other similar instruments for which a contingent liability exists, (e) all obligations of such Person to pay the deferred purchase price of Property or services, other than trade payables incurred in the ordinary course of business, (f) all obligations in respect of Capital Leases (including ground leases) of such Person, (g) all indebtedness obligations or other liabilities of such Person or others secured by a Lien on any asset of such Person, whether or not such indebtedness, obligations or liabilities are assumed by, or are a personal liability of such Person, (h) all indebtedness, obligations or other liabilities (other than interest expense liability) in respect of Interest Rate Contracts and foreign currency exchange agreements (other than Interest Rate Contracts purchased to hedge Indebtedness), (i) ERISA obligations currently due and payable and (j) all other items which, in accordance with GAAP, would be included as liabilities on the liability side of the balance sheet of such Person, exclusive, however, of all accounts payable, accrued interest and expenses, prepaid rents, security deposits and dividends and distributions declared but not yet paid, except to the extent such indebtedness (other than Customary Non-Recourse Carve-Outs) is recourse to the Borrower or ABR.

"Indemnitee" has the meaning set forth in Section 9.3(b).

"Initial Maturity Date" shall mean the first anniversary of the Closing Date.

"Interest Expenses" means, for any period, interest expenses of ABR and its Consolidated Subsidiaries, on a consolidated basis, all as determined in accordance with GAAP.

"Interest Rate Contracts" means, collectively, interest rate swap, collar, cap or similar agreements providing interest rate protection.

"Investment Mortgages" means mortgages securing indebtedness directly or indirectly owed to Borrower, ABR or Subsidiaries of either or both, including certificates of interest in real estate mortgage investment conduits.

"Lender" means each lender listed on the signature pages hereof, each Assignee which becomes a Lender pursuant to Section 9.6(c), and their respective successors.

"Lending Office" means, as to each Lender, its office located at its address in the United States set forth in its Administrative Questionnaire (or identified in its Administrative Questionnaire as its Lending Office) or such other office as such Lender may hereafter designate as its Lending Office by notice to the Borrower and the Administrative Agent.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, or any other type of preferential arrangement, in each case that has the effect of creating a security interest, in respect of such asset. For the purposes of this Agreement, the Borrower, ABR or any Subsidiary of either or both shall be deemed to own

subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"Liquid Assets" means the following assets owned by a Person as of any date of determination: (i) unrestricted and unencumbered cash, funds on deposit in any bank located in the United States, investment grade commercial paper, money market funds, or marketable securities; (ii) the excess, if any, of Mortgage Loans and Mortgage-backed Securities held for sale (valued in accordance with GAAP) over the outstanding aggregate principal amount of any Debt against which those Mortgage Loans or Mortgage-backed Securities are pledged as collateral; and (iii) the amount available to be borrowed under committed working capital or other similar facilities (not including any Commitments available hereunder) with respect to which all conditions to borrowing have been satisfied.

"Loan" means a Base Rate Loan or a Euro-Dollar Loan and "Loans" means Base Rate Loans or Euro-Dollar Loans or any combination of the foregoing.

"Loan Documents" means this Agreement, the Notes, and the ABR Guaranty.

"London Interbank Offered Rate" means the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Telerate Page 3750 (or any successor page) as the London interbank offered rate for deposits in U.S. Dollars for a one (1) month term. If for any reason such rate is not available, the term "London Interbank Offered Rate" shall mean the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Reuters Screen LIBO Page as the London interbank offered rate for deposits in U.S. Dollars; provided, however, if more than one rate is specified on Reuters Screen LIBO Page, the applicable rate shall be the arithmetic mean of all such rates.

"Management Agreement" means that certain Management and Advisory Agreement, dated as of July 1, 2003, by and among ABR, Borrower and Arbor

Commercial Mortgage, LLC, a New York limited liability company, as the same may be modified from time to time in accordance with this Agreement.

"Manager" shall have the meaning set forth in Section 5.16.

"Margin Stock" shall have the meaning provided such term in Regulation U of the Federal Reserve Board.

"Material Adverse Effect" means an effect resulting from any circumstance or event or series of circumstances or events, of whatever nature (but excluding general economic conditions), which does or could reasonably be expected to, materially and adversely (i) affect the business, operations, properties, assets or financial condition of the Borrower and/or ABR and their Consolidated Subsidiaries taken as a whole, (ii) impair the ability of the Borrower and/or ABR, taken as a whole, to perform their respective obligations under the Loan Documents, or (iii) cause a Default under Sections 5.8, 5.9 or 5.13.

"Material Litigation" has the meaning set forth in Section 4.5.

"Material Plan" means at any time a Plan or Plans having aggregate Unfunded Liabilities in excess of $5,000,000.

"Materials of Environmental Concern" means and includes pollutants, contaminants, hazardous wastes, toxic and hazardous substances, asbestos, lead, petroleum and petroleum by-products.

"Maturity Date" shall mean the Initial Maturity Date, provided that (a) in the event of the exercise by Borrower of the First Extension Option pursuant to Section 2.9(b) hereof, the Maturity Date shall be the First Extended Maturity Date, and (b) in the event of the exercise by Borrower of the Second Extension Option pursuant to Section 2.9(b) hereof, the Maturity Date shall be the Second Extended Maturity Date, or such earlier date on which the all of the Obligations hereunder become due and payable, whether at such stated maturity date, by declaration of acceleration, or otherwise.

"Mortgage Loan" means any loan evidenced by a mortgage note and secured by a mortgage and, if applicable, a security agreement.

"Mortgage-backed Securities" means securities that are secured or otherwise backed by Mortgage Loans.

"Multiemployer Plan" means at any time an employee pension benefit plan within the meaning of Section 4001(a)(3) of ERISA to which any member of the ERISA Group is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions, including for these purposes any Person which ceased to be a member of the ERISA Group during such five year period.

"Net Bond Proceeds" means all cash received by ABR or the Borrower as a result of the issuance or offering of any unsecured note, bond or debt instrument the

proceeds of which are not used to refinance existing Indebtedness, less customary costs and discounts of issuance paid by ABR or the Borrower, as the case may be.

"Net Income" means, for any period, net income of ABR, Borrower and their Consolidated Subsidiaries, on a consolidated basis, all as determined in accordance with GAAP plus the line item identified as "Income allocated to minority interest" on ABR's consolidated financial statements if and only if such item was deducted in determining Net Income.

"Net Offering Proceeds" means all cash or other assets received by ABR or Borrower as a result of the sale of common shares of beneficial interest, preferred shares of beneficial interest, partnership interests, limited liability company interests, Convertible Securities or other ownership or equity interests in ABR or Borrower, less customary costs of issuance. "Net Offering Proceeds" shall not include proceeds received in connection with the exercise of any warrant.

"Net Present Value" shall mean, as to a specified or ascertainable dollar amount, the present value, as of the date of calculation of any such amount using a discount rate equal to the Base Rate in effect as of the date of such calculation.

"Net Sale Proceeds" means all cash or other assets received by ABR or Borrower as a result of the sale of material assets of ABR or Borrower or any of their Consolidated Subsidiaries in a period of six (6) months or less and not made in the ordinary course of business, less all amounts required to be paid on any and all Indebtedness secured by such assets. For purposes hereof, (i) "material assets" shall be deemed to mean assets comprising more than fifteen percent (15%) in the aggregate of Total Assets (excluding Cash and Cash Equivalents), and (ii) sales shall not be deemed to include receipt of prepayment amounts or amounts due at the maturity of any Borrower Loan or other loan asset. Any and all cash and/or other assets received by ABR or Borrower in connection with the New Arbor REIT Securitization Transaction shall be specifically excluded from the calculation of Net Sale Proceeds.

"New Arbor REIT Securitization Transaction" means the securitization transaction described on Schedule 1.1.

"New Arbor REIT Subsidiary" means the entity to be formed in connection with the New Arbor REIT Securitization Transaction, which entity shall be a ninety-nine percent (99%) owned subsidiary of the Borrower and shall qualify as a real estate investment trust, and into which the Borrower will contribute all or substantially all of its assets (including any loans the Borrower directly holds and the Borrower's entire interest as the sole member of Arbor Realty Funding LLC).

"Non-Performing Loans" means those Borrower Loans delinquent for more than ninety (90) days.

"Notes" means promissory notes of the Borrower, substantially in the form of Exhibit A hereto, evidencing the obligation of the Borrower to repay the Loans, and "Note" means any one of such promissory notes issued hereunder.

"Notice of Borrowing" means a Notice of Borrowing (as defined in Section 2.4) substantially in the form of Exhibit C attached hereto and made a part hereof.

"Obligations" means all obligations, liabilities, indemnity obligations and Indebtedness of every nature of the Borrower, from time to time owing to Administrative Agent or any Lender under or in connection with this Agreement or any other Loan Document.

"Parent" means, with respect to any Lender, any Person controlling such Lender.

"Participant" has the meaning set forth in Section 9.6(b).

"PBGC" means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Permitted Liens" means:

(a) Liens for Taxes, assessments or other governmental charges not yet due and payable or which are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted in accordance with the terms hereof;

(b) statutory liens of carriers, warehousemen, mechanics, materialmen and other similar liens imposed by law, which are incurred in the ordinary course of business for sums not more than sixty (60) days delinquent or which are being contested in good faith in accordance with the terms hereof;

(c) deposits made in the ordinary course of business in connection with worker's compensation, unemployment insurance and other social security legislation or to secure liabilities to insurance carriers;

(d) utility deposits and other deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, purchase contracts, construction contracts, governmental contracts, statutory obligations, surety bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(e) Liens for purchase money obligations for equipment (or Liens to secure Indebtedness incurred within 90 days after the purchase of any equipment to pay all or a portion of the purchase price thereof or to secure Indebtedness incurred solely for the purpose of financing the acquisition of any such equipment, or extensions, renewals, or replacements of any of the foregoing for the same or lesser amount); provided that (i) the Indebtedness secured by any such Lien does not exceed the purchase price of such equipment, (ii) any such Lien encumbers only the asset so purchased and the proceeds upon sale,

disposition, loss or destruction thereof, and (iii) such Lien, after giving effect to the Indebtedness secured thereby, does not give rise to an Event of Default;

(f) easements, rights-of-way, zoning restrictions, other similar charges or encumbrances and all other items listed on Schedule B to the owner's title insurance policies, except in connection with any Indebtedness, for any of the Real Property Assets, so long as the foregoing do not interfere in any material respect with the use or ordinary conduct of the business of the owner and do not diminish in any material respect the value of the Property to which it is attached or for which it is listed;

(g) Liens and judgments (i) which have been or will be bonded (and the Lien thereby removed other than on any cash or securities serving as security for such bond) or released of record within thirty (30) days after the date such Lien or judgment is entered or filed against ABR, Borrower, or any Subsidiary, or (ii) which are being contested in good faith by appropriate proceedings for review and in respect of which there shall have been secured a subsisting stay of execution pending such appeal or proceedings;

(h) Liens on Property of the Borrower, ABR or the Subsidiaries of either or both securing Indebtedness which may be incurred or remain outstanding without resulting in an Event of Default hereunder; and

(i) Liens in favor of the Borrower against any asset of any wholly-owned Subsidiary of the Borrower and/or ABR.

"Person" means an individual, a corporation, a partnership, an association, a trust, a limited liability company or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Plan" means at any time an employee pension benefit plan (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained, or contributed to, by any member of the ERISA Group for employees of any member of the ERISA Group or (ii) has at any time within the preceding five years been maintained, or contributed to, by any Person which was at such time a member of the ERISA Group for employees of any Person which was at such time a member of the ERISA Group.

"Portfolio Performance Ratio" means, at any date of determination for all assets owned by Borrower, ABR or any of their Consolidated Subsidiaries during any month, the ratio of (i) the aggregate amount of all interest income and preferred equity return actually received in such month, to (ii) the aggregate amount of all interest expense and fees (in the case of financing agreements), equivalent monthly amounts (in the case

of repurchase agreements) and preferred dividends payable in such month pursuant to any financing or repurchase agreements.

"Prime Rate" means the rate per annum specified in the New York City edition of The Wall Street Journal as the "prime rate".

"Property" means, with respect to any Person, any real or personal property, building, facility, structure, equipment or unit, or other asset owned or leased by such Person.

"Real Property Assets" means as of any time, the real property assets (including interests in participating mortgages in which the Borrower's interest therein is characterized as equity according to GAAP) owned directly or indirectly by the Borrower, ABR and the Consolidated Subsidiaries of either or both at such time.

"Recourse Debt" shall mean Indebtedness that is not Secured Debt.

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Required Lenders" means at any time Lenders having at least 51% of the aggregate amount of the Commitments or, if the Commitments shall have been terminated, holding Notes evidencing at least 51% of the aggregate unpaid principal amount of the Loans.

"Second Extended Maturity Date " has the meaning set forth in Section 2.9(b) hereof.

"Second Extension Notice" has the meaning set forth in Section 2.9(b) hereof.

"Second Extension Option" has the meaning set forth in Section 2.9(b) hereof.

"Secured Debt" means Indebtedness of ABR or the Borrower, on a consolidated basis, the payment of which is secured by a Lien on any Property owned or leased by ABR, Borrower, or any Consolidated Subsidiary.

"Securities" means any stock, partnership interests, shares, shares of beneficial interest, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities," or

any certificates of interest, shares, or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire any of the foregoing, but shall not include any evidence of the obligations, all of which shall be passive investments.

"Solvent" means, with respect to any Person, that the fair saleable value of such Person's assets exceeds the Indebtedness of such Person.

"Subsidiary" means any corporation or other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by the Borrower and/or ABR.

"Tangible Net Worth" means, at any time, the difference between Total Tangible Assets and Total Liabilities.

"Taxes" means all federal, state, local and foreign income and gross receipts taxes.

"Term" has the meaning set forth in Section 2.9.

"Termination Event" shall mean (i) a "reportable event", as such term is described in Section 4043 of ERISA (other than a "reportable event" not subject to the provision for 30-day notice to the PBGC), or an event described in Section 4062(e) of ERISA, (ii) the withdrawal by any member of the ERISA Group from a Multiemployer Plan during a plan year in which it is a "substantial employer" (as defined in Section 4001(a)(2) of ERISA), or the incurrence of liability by any member of the ERISA Group under Section 4064 of ERISA upon the termination of a Multiemployer Plan, (iii) the filing of a notice of intent to terminate any Plan under Section 4041 of ERISA, other than in a standard termination within the meaning of Section 4041 of ERISA, or the treatment of a Plan amendment as a distress termination under Section 4041 of ERISA, (iv) the institution by the PBGC of proceedings to terminate, impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or cause a trustee to be appointed to administer, any Plan or (v) any other event or condition that might reasonably constitute grounds for the termination of, or the appointment of a trustee to administer, any Plan or the imposition of any liability or encumbrance or Lien on the Real Property Assets or any member of the ERISA Group under ERISA.

"Total Assets" means, as of the date of determination, the total assets of ABR and its Consolidated Subsidiaries, on a consolidated basis, each as determined in accordance with GAAP.

"Total Debt Service" means, for any period, an amount equal to the sum of (i) interest (whether accrued, paid or capitalized) payable on Indebtedness of Borrower, ABR and their Consolidated Subsidiaries for such period plus (ii) scheduled payments of principal on such Indebtedness, whether or not paid by Borrower (excluding balloon payments) for such period.

"Total Liabilities" means, as of the date of determination, total liabilities of ABR and its Consolidated Subsidiaries, on a consolidated basis, all as determined in accordance with GAAP.

"Total Tangible Assets" means, as of the date of determination, Total Assets minus all intangible assets (goodwill, intellectual property and so forth) of ABR

and its Consolidated Subsidiaries, on a consolidated basis, all as determined in accordance with GAAP.

"Total Taxes" means, for any period, the taxes of ABR and its Consolidated Subsidiaries, on a consolidated basis, all as determined in accordance with GAAP.

"Underwriting Guidelines" means Borrower's policies and procedures for underwriting its investments, as in effect on the Closing Date, as the same may be modified from time to time in accordance with this Agreement.

"United States" means the United States of America, including the fifty states and the District of Columbia.

"Unused Commitments" shall mean an amount equal to all unadvanced funds which any third party is obligated to advance to Borrower or another Person or otherwise pursuant to any loan document, written instrument or otherwise.

"Unused Fee" shall have the meaning set forth in Section 2.8.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP applied on a basis consistent (except for changes concurred in by the Borrower's independent public accountants) with the most recent audited consolidated financial statements of the Borrower and its Consolidated Subsidiaries delivered to the Administrative Agent.

Section 1.3 Types of Borrowings. The term "Borrowing" denotes the aggregation of Loans of one or more Lenders to be made to the Borrower pursuant to Article 2 on the same date.

ARTICLE II

THE CREDITS

Section 2.1 Commitments to Lend. Each Lender severally agrees, on the terms and conditions set forth in this Agreement, to make Loans to the Borrower from time to time during the term hereof in amounts such that the aggregate principal amount of Loans by such Lender at any one time outstanding shall not exceed the amount of its Commitment, and in no event shall the aggregate outstanding Loans exceed twenty-five percent (25%) of the Borrowing Base. Each Borrowing outstanding under this Section 2.1 shall be in an aggregate principal amount of $1,000,000, or an integral multiple of $500,000 in excess thereof (except that any such Borrowing may be in the aggregate amount available in accordance with Section 3.2(b)) and shall be made from the several Lenders ratably in proportion to their respective Commitments. In no event shall the aggregate Loans outstanding at any time, exceed $50,000,000, as the same may be

reduced from time to time as a result of cancellation of Commitments by Borrower. Borrower agrees that, subject to the terms and conditions of Article VIII hereof, all Borrowings by Borrower hereunder shall be Euro-Dollar Borrowings.

Section 2.2 Notice of Borrowing. The Borrower shall give Administrative Agent notice not later than 10:00 a.m. (San Francisco time) one Business Day before each Borrowing, which notice shall include:

(i) the date of such Borrowing, which shall be a Business Day,

(ii) the aggregate amount of such Borrowing, and

(iii) a representation by the Borrower that the Borrowing Base as of the date of such Borrowing is not less than $200,000,000.

Section 2.3 Intentionally Omitted.

Section 2.4 Notice to Lenders; Funding of Loans.

(a) Upon receipt of a notice from Borrower in accordance with Section 2.2 hereof (each such notice being a "Notice of Borrowing"), the Administrative Agent shall, on the date such Notice of Borrowing is received by the Administrative Agent, promptly notify each Lender of the contents thereof and of such Lender's share of such Borrowing, and such Notice of Borrowing shall not thereafter be revocable by the Borrower, unless Borrower shall pay any applicable expenses pursuant to Section 2.13.

(b) Not later than 1:00 p.m. (New York time) on the date of each Borrowing as indicated in the Notice of Borrowing, each Lender shall make available its share of such Borrowing in Federal funds immediately available in

New York, to the Administrative Agent at its address referred to in Section 9.1. Upon any change in any of the Commitments in accordance herewith, there shall be an automatic adjustment to such participations to reflect such changed shares.

Section 2.5 Notes.

(a) The Loans of each Lender shall be evidenced by a single Note payable to the order of such Lender for the account of its Lending Office.

(b) Each such Note shall be in substantially the form of Exhibit A hereto.

(c) Upon receipt of each Lender's Note pursuant to Section 3.1(a), the Administrative Agent shall forward such Note to such Lender. Each Lender shall record the date, amount, type and the date and amount of each payment of principal made by the Borrower with respect thereto, and may, if such Lender so elects in connection with any transfer or enforcement of its Note, endorse on the appropriate schedule appropriate

notations to evidence the foregoing information with respect to each such Loan then outstanding; provided that the failure of any Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower hereunder or under the Notes. Each Lender is hereby irrevocably authorized by the Borrower so to endorse its Note and to attach to and make a part of its Note a continuation of any such schedule as and when required.

(d) The Loans shall mature, and the principal amount thereof shall be due and payable, on the Maturity Date.

Section 2.6 Intentionally Omitted.

Section 2.7 Interest Rate.

(a) The outstanding principal amount of the Base Rate Loans shall bear interest, for each day from the date such Loan is made until the date it is repaid, at a rate per annum equal to the Base Rate for the applicable month. Such interest shall be payable in arrears on the fifth (5th) Business Day of each month for interest that accrued during the prior month.

(b) The outstanding principal amount of the Euro-Dollar Loans shall bear interest, for each day from the date such Loan is made until the date it is repaid, at a rate per annum equal to the sum of the Applicable Margin for Euro-Dollar Loans for such day plus the Euro-Dollar Rate for the applicable month. Such interest shall be payable in arrears on the fifth (5th) Business Day of each month for each month for interest that accrued during the prior month.

(c) Intentionally Omitted.

(d) In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal amount of the Loans, and, to the extent permitted by applicable law, overdue interest in respect of all Loans, shall bear interest at the annual rate equal to the sum of the Base Rate and ten percent (10%) (the "Default Rate").

(e) The Administrative Agent shall determine each interest rate applicable to the Loans hereunder. The Administrative Agent shall give prompt notice to the Borrower and the Lenders of each rate of interest so determined, and its determination thereof shall be conclusive in the absence of demonstrable error.

Section 2.8 Fees.

(a) Unused Fee. The Borrower shall pay to the Administrative Agent, for the account of the Lenders ratably in proportion to their respective unborrowed Commitments, an unused fee (the "Unused Fee") equal to the product of 0.08% and the daily average aggregate unborrowed Commitments for the immediately preceding month. Such fee shall be payable on the fifth (5th) Business Day of each month and on the Maturity Date.

(b) Administrative Fee. The Borrower shall pay to the Administrative Agent, in advance, an administrative fee equal to the product of 0.025% and the aggregate Commitments. Such fee shall be payable on the fifth (5th) Business Day of each month.

(c) Extension Fee. An Extension Fee shall be payable in accordance with Section 2.9 hereof.

(d) Commitment Fee. The Borrower shall pay to the Lenders, on the Closing Date, a commitment fee (the "Commitment Fee") equal to the product of 1% and the aggregate Commitments.

(e) Fees Non-Refundable. All fees set forth in this Section 2.8 shall be deemed to have been earned on the date payment is due in accordance with the provisions hereof and shall be non-refundable. The obligation of the Borrower to pay such fees in accordance with the provisions hereof shall be binding upon the Borrower and shall inure to the benefit of the Administrative Agent and the Lenders regardless of whether any Loans are actually made.

Section 2.9 Maturity Date.

(a) The term (the "Term") of the Commitments (and each Lender's obligations to make Loans hereunder) shall terminate and expire on the Maturity Date. Upon the date of the termination of the Term, any Loans then outstanding (together with accrued interest thereon and all other Obligations) shall be due and payable on such date.

(b) Subject to the provisions of this Section 2.9, Borrower shall have the option (the "First Extension Option"), by irrevocable written notice (the "First Extension Notice") delivered to Administrative Agent no later than thirty (30) days prior to the Maturity Date (which First Extension Notice, the Administrative Agent shall promptly deliver to the Lenders), to extend the Maturity Date to the first anniversary of the Initial Maturity Date (the "First Extended Maturity Date"). In the event Borrower shall have exercised the First Extension Option, Borrower shall have the option (the "Second Extension Option"), by irrevocable written notice (the "Second Extension Notice") delivered to Administrative Agent no later than thirty (30) days prior to the First Extended Maturity Date (which Second Extension Notice, the Administrative Agent shall promptly deliver to the Lenders), to extend the First Extended Maturity Date to the first anniversary of the First Extended Maturity Date (the "Second Extended Maturity Date"). Borrower's right to so extend the Maturity Date shall be subject to the satisfaction of the following conditions precedent prior to each extension hereunder: (i) no Event of Default shall have occurred and be continuing both on (A) the date Borrower delivers the First Extension Notice or the Second Extension Notice as applicable, and (B) on the Initial Maturity Date or the First Extended Maturity Date, as applicable; (ii) each of the representations and warranties of Borrower contained in this Agreement shall be true and correct in all material respects on and as the Initial Maturity Date and the First Extended Maturity Date, as applicable; and (iii) Borrower shall pay to the Administrative Agent,

for the account of the Lenders, on the Initial Maturity Date and the First Extended Maturity Date, as applicable, the Extension Fee.

Section 2.10 Mandatory Prepayments.

(a) Intentionally Deleted.

(b) Intentionally Deleted.

(c) Intentionally Deleted.

(d) In the event that the outstanding Loans shall at any time exceed twenty-five percent (25%) of the Borrowing Base, within three (3) days after it shall be determined (or should have been determined) by either the Borrower or the Administrative Agent that such excess shall exist, the Borrower shall prepay the Loans in such an amount so that the Loans outstanding after such prepayment do not exceed twenty-five percent (25%) of the Borrowing Base.

(e) In the event of a change of control in violation of Sections 6.1(i) or (j), simultaneously with such change of control, the Borrower shall prepay the Loans in their entirety, and the Commitments shall terminate.

Borrower shall make all such prepayments, together with interest accrued to the date of the prepayment on the principal amount prepaid. Each such prepayment shall be applied to prepay ratably the Loans of the Lenders.

(f) Intentionally Deleted.

Section 2.11 Optional Prepayments.

(a) The Borrower may, upon at least one (1) Business Days' notice to the Administrative Agent, prepay any Loan in whole at any time, or from time to time in part, in amounts aggregating Five Hundred Thousand Dollars ($500,000) or more, by paying the principal amount to be prepaid together with accrued interest thereon to the date of prepayment. Each such optional prepayment shall be applied to prepay ratably the Loans of the several Lenders.

(b) The Borrower may at any time and from time to time cancel all or any part of the Commitments by the delivery to the Administrative Agent of a notice of cancellation (and the Administrative Agent promptly shall notify the Lenders of such cancellation), if there are Loans then outstanding or, if there are no Loans outstanding at such time as to which the Commitments with respect thereto are being cancelled, upon at least one (1) Business Day's notice to the Administrative Agent, whereupon, in either event, all or such portion of the Commitments, as applicable, shall terminate as to the Lenders, pro rata on the date set forth in such notice of cancellation, and, if there are any Loans then outstanding, Borrower shall prepay that portion of the outstanding Loans exceeding the Commitments (after taking into consideration Borrower's cancellation of the Commitments) on such date in accordance with the requirements of Section 2.11(a).

Borrower shall be permitted to designate in its notice of cancellation which Loans, if any, are to be prepaid.

Section 2.12 General Provisions as to Payments.

(a) The Borrower shall make each payment of interest on the Loans and of fees hereunder, not later than 12:00 Noon (New York time) on the date when due, in Federal or other funds immediately available in New York, to the Administrative Agent at its address referred to in Section 9.1. The Administrative Agent will promptly (and if received prior to 12:00 noon, on the same Business Day, if received after 12:00 noon on the immediately following Business Day) distribute to each Lender its ratable share of each such payment received by the Administrative Agent for the account of the Lenders. If and to the extent that the Administrative Agent shall receive any such payment for the account of the Lenders on or before 12:00 Noon (New York time) on any Business Day, and Administrative Agent shall not have distributed to any Lender its applicable share of such payment on such Business Day, Administrative Agent shall distribute such amount to such Lender together with interest thereon, for each day from the date such amount should have been distributed to such Lender until the date Administrative Agent distributes such amount to such Lender, at the Federal Funds Rate. Whenever any payment of principal of, or interest on the Base Rate Loans or of fees shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day. Whenever any payment of principal of, or interest on, the Euro-Dollar Loans shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case the date for payment thereof shall be the next preceding Business Day. If the date for any payment of principal is extended by operation of law or otherwise, interest thereon shall be payable for such extended time.

(b) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Lenders hereunder that the Borrower will not make such payment in full, the Administrative Agent may assume that the Borrower has made such payment in full to the Administrative Agent on such date and the Administrative Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent that the Borrower shall not have so made such payment, each Lender shall repay to the Administrative Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Administrative Agent, at the Federal Funds Rate.

Section 2.13 Intentionally Deleted.

Section 2.14 Computation of Interest and Fees. All interest and fees shall be computed on the basis of a year of 360 days and paid for the actual number of days elapsed (including the first day but excluding the last day).

Section 2.15 Use of Proceeds. The Borrower shall use the proceeds of the Loans only to fund equity contributions required to support loan originations.

ARTICLE III

CONDITIONS

Section 3.1 Closing. The closing hereunder shall occur on the date when each of the following conditions is satisfied (or waived by the Administrative Agent and the Lenders), each document to be dated the Closing Date unless otherwise indicated:

(a) the Borrower shall have executed and delivered to the Administrative Agent a Note for the account of each Lender dated on or before the Closing Date complying with the provisions of Section 2.5;

(b) the Borrower, the Administrative Agent and each Lender shall have executed and delivered to the Borrower and the Administrative Agent a duly executed original of this Agreement;

(c) ABR shall have executed and delivered to the Administrative Agent a duly executed original of the ABR Guaranty;

(d) the Administrative Agent shall have received an opinion of Cullen and Dyckman Bleakley Platt LLP, counsel for the Borrower, acceptable to the Administrative Agent, the Lenders and their counsel;

(e) intentionally deleted;

(f) the Administrative Agent shall have received all documents the Administrative Agent may reasonably request relating to the existence of the Borrower and ABR, the authority for and the validity of this Agreement and the other Loan Documents, and any other matters relevant hereto, all in form and substance satisfactory to the Administrative Agent. Such documentation shall include, without limitation, the agreement of limited partnership of the Borrower, as well as the certificate of limited partnership of the Borrower, both as amended, modified or supplemented to the Closing Date, certified to be true, correct and complete by a senior officer of the Borrower as of a date not more than ten (10) days prior to the Closing Date, together with a certificate of existence as to the Borrower from the Secretary of State of Delaware, to be dated not more than thirty (30) days prior to the Closing Date, as well as the declaration of trust of ABR, as amended, modified or supplemented to the Closing Date, certified to be true, correct and complete by a senior officer of ABR as of a date not more than ten (10) days prior to the Closing Date, together with a good standing certificate as to ABR from the Secretary of State (or the equivalent thereof) of Maryland, to be dated not more than thirty (30) days prior to the Closing Date;

(g) the Administrative Agent shall have received all certificates, agreements and other documents and papers referred to in this Section 3.1 and the Notice

of Borrowing referred to in Section 3.2, if applicable, unless otherwise specified, in sufficient counterparts, satisfactory in form and substance to the Administrative Agent in its sole discretion;

(h) the Borrower shall have taken all actions required to authorize the execution and delivery of this Agreement and the other Loan Documents and the performance thereof by the Borrower;

(i) the Administrative Agent shall be satisfied that neither the

Borrower, ABR nor any Consolidated Subsidiary is subject to any present or contingent environmental liability which could have a Material Adverse Effect;

(j) the Administrative Agent shall have received, for its and any other Lender's account, all fees due and payable pursuant to Section 2.8, and the fees and expenses accrued through the Closing Date of Skadden, Arps, Slate, Meagher & Flom LLP shall have been paid directly to such firm, subject, however, to the terms and conditions of Section 9.3 hereof;

(k) the Administrative Agent shall have received copies of all consents, licenses and approvals, if any, required in connection with the execution, delivery and performance by the Borrower, ABR and the applicable Consolidated Subsidiaries, and the validity and enforceability, of the Loan Documents, or in connection with any of the transactions contemplated thereby, and such consents, licenses and approvals shall be in full force and effect; and

(l) no Default or Event of Default shall have occurred.

Section 3.2 Borrowings. The obligation of any Lender to make a Loan on the occasion of any Borrowing is subject to the satisfaction of the following conditions:

(a) receipt by the Administrative Agent of a Notice of Borrowing as required by Section 2.2;

(b) immediately after such Borrowing, the aggregate outstanding principal amount of the Loans will not exceed the aggregate amount of the Commitments;

(c) immediately before and after such Borrowing, no Default or Event of Default shall have occurred and be continuing both before and after giving effect to the making of such Loans;

(d) the representations and warranties of the Borrower contained in this Agreement shall be true and correct in all material respects on and as of the date of such Borrowing both before and after giving effect to the making of such Loans;

(e) no law or regulation shall have been adopted, no order, judgment or decree of any governmental authority shall have been issued, and no litigation shall be

pending, which does or seeks to enjoin, prohibit or restrain, the making or repayment of the Loans or the consummation of the transactions contemplated by this Agreement; and

(f) no event, act or condition shall have occurred after the Closing Date which, in the reasonable judgment of the Administrative Agent, or the Required Lenders, as the case may be, has had or is likely to have a Material Adverse Effect.

Each Borrowing hereunder shall be deemed to be a representation and warranty by the Borrower on the date of such Borrowing as to the facts specified in clauses (b), (c), (d), (e), and (f) of this Section, except as otherwise disclosed in writing by Borrower to the Lenders. Notwithstanding anything to the contrary, no Borrowing shall be permitted if such Borrowing would cause Borrower to fail to be in compliance with any of the covenants contained in this Agreement or in any of the other Loan Documents.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

In order to induce the Administrative Agent and each of the other Lenders which is or may become a party to this Agreement to make the Loans, the Borrower makes the following representations and warranties as of the Closing Date. Such representations and warranties shall survive the effectiveness of this Agreement, the execution and delivery of the other Loan Documents and the making of the Loans.

Section 4.1 Existence and Power. The Borrower is a limited partnership, duly formed and validly existing as a limited partnership under the

laws of the State of Delaware and has all powers and all material governmental licenses, authorizations, consents and approvals required to own its property and assets and carry on its business as now conducted or as it presently proposes to conduct and has been duly qualified and is in good standing in every jurisdiction in which the failure to be so qualified and/or in good standing is likely to have a Material Adverse Effect. ABR is a real estate investment trust, duly formed, validly existing and in good standing as a real estate investment trust under the laws of the State of Maryland and has all powers and all material governmental licenses, authorizations, consents and approvals required to own its property and assets and carry on its business as now conducted or as it presently proposes to conduct and has been duly qualified and is in good standing in every jurisdiction in which the failure to be so qualified and/or in good standing is likely to have a Material Adverse Effect.

Section 4.2 Power and Authority. The Borrower has the partnership power and authority to execute, deliver and carry out the terms and provisions of each of the Loan Documents to which it is a party and has taken all necessary partnership action, if any, to authorize the execution and delivery on behalf of the Borrower and the performance by the Borrower of such Loan Documents. The Borrower has duly executed and delivered each Loan Document to which it is a party in accordance with the terms of this Agreement, and each such Loan Document constitutes the legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, except as

enforceability may be limited by applicable insolvency, bankruptcy or other laws affecting creditors rights generally, or general principles of equity, whether such enforceability is considered in a proceeding in equity or at law. ABR has the power and authority to execute, deliver and carry out the terms and provisions of each of the Loan Documents on behalf of the Borrower to which the Borrower is a party and has taken all necessary action to authorize the execution and delivery on behalf of the Borrower and the performance by the Borrower of such Loan Documents.

Section 4.3 No Violation. Neither the execution, delivery or performance by or on behalf of the Borrower of the Loan Documents to which it is a party, nor compliance by the Borrower with the terms and provisions thereof nor the consummation of the transactions contemplated by the Loan Documents, (i) will materially contravene any applicable provision of any law, statute, rule, regulation, order, writ, injunction or decree of any court or governmental instrumentality, (ii) will materially conflict with or result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien upon any of the property or assets of the Borrower or any of its Consolidated Subsidiaries pursuant to the terms of any indenture, mortgage, deed of trust, or other agreement or other instrument to which the Borrower (or of any partnership of which the Borrower is a partner) or any of its Consolidated Subsidiaries is a party or by which it or any of its property or assets is bound or to which it is subject, or (iii) will cause a material default by the Borrower under any organizational document of any Person in which the Borrower has an interest, or cause a material default under the Borrower's agreement or certificate of limited partnership, the consequences of which conflict, breach or default would have a Material Adverse Effect, or result in or require the creation or imposition of any Lien whatsoever upon any Property.

Section 4.4 Financial Information.

(a) The consolidated balance sheet of ABR, the Borrower and their respective Consolidated Subsidiaries, dated as of December 31, 2003, and the related consolidated statements of operations and cash flows of ABR, Borrower and their respective Consolidated Subsidiaries for the fiscal year then ended, reported on by Ernst & Young, a copy of which has been delivered to each of the Lenders, fairly present, in conformity with GAAP, the consolidated financial position of ABR, the Borrower and their respective Consolidated Subsidiaries as of such date and their consolidated results of operations and cash flows for such fiscal year.

(b) Since September 30, 2004, (i) except as set forth on Schedule 4.4 hereto, nothing has occurred having a Material Adverse Effect, and (ii) except as previously disclosed to the Lenders, neither the Borrower nor ABR has incurred any material indebtedness or guaranty on or before the Closing Date.

Section 4.5 Litigation. Except as set forth on Schedule 4.5 hereto,

there is no action, suit or proceeding pending against, or to the best knowledge of the Borrower threatened against or affecting, nor, to the best knowledge of the Borrower, any

investigation of, (i) the Borrower, ABR or any of their Consolidated Subsidiaries, (ii) the Loan Documents or any of the transactions contemplated by the Loan Documents or (iii) any of their assets, before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision which could, individually, or in the aggregate have a Material Adverse Effect or which in any manner draws into question the validity of this Agreement or the other Loan Documents (each, a "Material Litigation").

Section 4.6 Compliance with ERISA.

(a) Except as set forth on Schedule 4.6 attached hereto, neither Borrower nor ABR is a member of any material Plan or Multiemployer Plan or any other Benefit Arrangement. In the event that at any time after the Closing Date, either the Borrower or ABR shall become a member of any other Material Plan or Multiemployer Plan, Borrower promptly shall notify the Administrative Agent thereof and from and after such notice, Schedule 4.6 shall be deemed modified thereby.

(b) The transactions contemplated by the Loan Documents will not constitute a nonexempt prohibited transaction (as such term is defined in Section 4975 of the Code or Section 406 of ERISA) that could subject the Administrative Agent or the Lenders to any tax or penalty or prohibited transactions imposed under Section 4975 of the Code or Section 502(i) of ERISA.

Section 4.7 Environmental Matters. The Borrower and ABR each conducts reviews of the effect of Environmental Laws on the business, operations and properties of the Borrower, ABR and Consolidated Subsidiaries of either or both when necessary in the course of which it identifies and evaluates associated liabilities and costs (including, without limitation, any capital or operating expenditures required for clean-up or closure of properties presently owned, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of this review, the Borrower and ABR each has concluded that such associated liabilities and costs, including the costs of compliance with Environmental Laws, are unlikely to have a Material Adverse Effect on the Borrower, ABR and their Consolidated Subsidiaries.

Section 4.8 Taxes. United States Federal income tax returns of the Borrower, ABR and their Consolidated Subsidiaries have been prepared and filed through the fiscal year ended December 31, 2003. The Borrower, ABR and their Consolidated Subsidiaries have filed all United States Federal income tax returns and all other material tax returns which are required to be filed by them and have paid all taxes due pursuant to such returns or pursuant to any assessment received by the Borrower, ABR or any Consolidated Subsidiary, except such taxes, if any, as are reserved against in accordance with GAAP, such taxes as are being contested in good faith by appropriate proceedings or such taxes, the failure to make payment of which when due and payable will not have, in the aggregate, a Material Adverse Effect. The charges, accruals and reserves on the

books of the Borrower, ABR and their Consolidated Subsidiaries in respect of taxes or other governmental charges are, in the opinion of the Borrower, adequate.

Section 4.9 Full Disclosure. All written information heretofore furnished by the Borrower to the Administrative Agent or any Lender for purposes of or in connection with this Agreement or any transaction contemplated hereby or thereby is true and accurate in all material respects on the date as of which such information is stated or certified. The Borrower has disclosed to the Administrative Agent, in writing any and all facts which have or may have (to the extent the Borrower can now reasonably foresee) a Material Adverse Effect.

Section 4.10 Solvency. On the Closing Date and after giving effect to the transactions contemplated by the Loan Documents occurring on the Closing Date, the Borrower will be Solvent.

Section 4.11 Use of Proceeds; Margin Regulations. All proceeds of the Loans will be used by the Borrower only in accordance with the provisions hereof. No part of the proceeds of any Loan will be used by the Borrower to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock in any manner that might violate the provisions of Regulations T, U or X of the Federal Reserve Board. Neither the making of any Loan nor the use of the proceeds thereof will violate or be inconsistent with the provisions of Regulations T, U or X of the Federal Reserve Board.

Section 4.12 Governmental Approvals. No order, consent, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with the execution, delivery and performance of any Loan Document or the consummation of any of the transactions contemplated thereby other than those that have already been duly made or obtained and remain in full force and effect or those which, if not made or obtained, would not have a Material Adverse Effect.

Section 4.13 Investment Company Act; Public Utility Holding Company Act. Neither the Borrower, ABR nor any Consolidated Subsidiary is (x) an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended, (y) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended, or (z) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

Section 4.14 Principal Offices. As of the Closing Date, the principal office, chief executive office and principal place of business of the Borrower is 333 Earle Ovington Blvd., Suite 900, Uniondale, New York 11553.

Section 4.15 REIT Status. For the fiscal year ended December 31, 2003, ABR qualified and ABR intends to continue to qualify as a real estate investment trust under the Code.

Section 4.16 Patents, Trademarks, etc. The Borrower has obtained and holds in full force and effect all patents, trademarks, servicemarks, trade names, copyrights and other such rights, free from burdensome restrictions, which are necessary for the operation of its business as presently conducted, the impairment of which is likely to have a Material Adverse Effect.

Section 4.17 Intentionally Omitted.

Section 4.18 No Default. No Event of Default or, to the best of the Borrower's knowledge, Default exists under or with respect to any Loan Document and the Borrower is not in default in any material respect beyond any applicable grace period under or with respect to any other material agreement, instrument or undertaking to which it is a party or by which it or any of its property is bound in any respect, the existence of which default is likely to result in a Material Adverse Effect.

Section 4.19 Licenses, etc. The Borrower has obtained and does hold in full force and effect, all franchises, licenses, permits, certificates, authorizations, qualifications, accreditation, easements, rights of way and other consents and approvals which are necessary for the operation of its businesses as presently conducted, the absence of which is likely to have a Material Adverse Effect.

Section 4.20 Compliance With Law. To the best of Borrower's knowledge, the Borrower and each of the Real Property Assets are in compliance with all laws, rules, regulations, orders, judgments, writs and decrees, including, without limitation, all building and zoning ordinances and codes, the failure to comply with which is likely to have a Material Adverse Effect.

Section 4.21 No Burdensome Restrictions. Except as may have been disclosed by the Borrower in writing to the Lenders, Borrower is not a party to

any agreement or instrument or subject to any other obligation or any charter or corporate or partnership restriction, as the case may be, which, individually or in the aggregate, is likely to have a Material Adverse Effect.

Section 4.22 Brokers' Fees. The Borrower has not dealt with any broker or finder with respect to the transactions contemplated by this Agreement or otherwise in connection with this Agreement, and the Borrower has not done any act, had any negotiations or conversation, or made any agreements or promises which will in any way create or give rise to any obligation or liability for the payment by the Borrower of any brokerage fee, charge, commission or other compensation to any party with respect to the transactions contemplated by the Loan Documents, other than the fees payable to the Administrative Agent and the Lenders.

Section 4.23 Labor Matters. Except as set forth on Schedule 4.6 attached hereto, as of the Closing Date, there are no material collective bargaining

agreements or Multiemployer Plans covering the employees of the Borrower and the Borrower has not suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years.

Section 4.24 Insurance. The Borrower and/or ABR maintains blanket bond coverage and error and omissions insurance, all risk property insurance (including builder's risk, where and when applicable, but excluding terrorist insurance and mold insurance), workers compensation insurance and commercial general liability insurance with financially sound and reputable insurance companies or associations, which are not Consolidated Subsidiaries of the Borrower or ABR, in such amounts (and with such deductibles), and covering such risks as are usually carried by companies engaging in similar businesses owning, or lending to owners of, similar properties in the same general areas in which the Borrower and ABR operate. In connection with the foregoing, the Borrower represents that as of the Closing Date, the Borrower's and ABR's insurance policies and programs, are currently in full force and effect, and, together with payment by the insured of the scheduled deductible payments, are in amounts sufficient to cover the 100% replacement cost of each of the Real Property Assets, except where the failure to maintain such coverage will not have a Material Adverse Effect.

Section 4.25 Organizational Documents. The documents delivered pursuant to Section 3.1(f) constitute, as of the Closing Date, all of the organizational documents (together with all amendments and modifications thereof) of the Borrower and ABR. The Borrower represents that it has delivered to the Administrative Agent true, correct and complete copies of each of the documents set forth in this Section 4.25.

Section 4.26 Other Indebtedness. Schedule 4.26 attached hereto sets forth all Indebtedness of the Borrower and ABR at Closing.

ARTICLE V

AFFIRMATIVE AND NEGATIVE COVENANTS

The Borrower covenants and agrees that, so long as any Lender has any Commitment hereunder or any Obligations remain unpaid:

Section 5.1 Information. The Borrower will deliver to each of the Lenders:

(a) as soon as available and in any event within five (5) Business Days after the same is required to be filed with the Securities and Exchange Commission (but in no event later than 90 days after the end of each fiscal year of the Borrower) a consolidated balance sheet of the Borrower, ABR and their Consolidated Subsidiaries as of the end of such fiscal year and the related consolidated statements of Borrower's and ABR's operations and consolidated statements of Borrower's and ABR's cash flow for such fiscal year, setting forth in each case in comparative form the figures as of the end of the previous fiscal year, all reported on in a manner acceptable to the Securities and

Exchange Commission on Borrower's and ABR's Form 10K and reported on by Ernst & Young or other independent public accountants of nationally recognized standing;

(b) as soon as available and in any event within five (5) Business Days after the same is required to be filed with the Securities and Exchange Commission (but in no event later than 45 days after the end of each of the first three quarters of each fiscal year of the Borrower and ABR), (i) a consolidated balance sheet of the Borrower, ABR and their Consolidated Subsidiaries as of the end of such quarter and the related consolidated statements of Borrower's and ABR's operations and consolidated statements of Borrower's and ABR's cash flow for such quarter and for the portion of the Borrower's or ABR's fiscal year ended at the end of such quarter, all reported on in the form provided to the Securities and Exchange Commission on Borrower's and ABR's Form 10Q, and (ii) and such other information reasonably requested by the Administrative Agent or any Lender;

(c) simultaneously with the delivery of each set of financial statements referred to in clauses (a) and (b) above, a certificate of the chief financial officer or the chief accounting officer of the Borrower (i) setting forth in reasonable detail the calculations required to establish whether the Borrower was in compliance with the requirements of Section 5.8 on the date of such financial statements, as well as a calculation of the Borrowing Base; (ii) certifying (x) that such financial statements fairly present the financial condition and the results of operations of the Borrower, ABR and their Consolidated Subsidiaries on the dates and for the periods indicated, on the basis of GAAP, with respect to the Borrower, ABR and their Consolidated Subsidiaries subject, in the case of interim financial statements, to normally recurring year-end adjustments, and (y) that such officer has reviewed the terms of the Loan Documents and has made, or caused to be made under his or her supervision, a review in reasonable detail of the business and condition of the Borrower during the period beginning on the date through which the last such review was made pursuant to this Section 5.1(c) (or, in the case of the first certification pursuant to this Section 5.1(c), the Closing Date) and ending on a date not more than ten (10) Business Days prior to the date of such delivery and that (1) on the basis of such financial statements and such review of the Loan Documents, no Event of Default existed under Section 6.1(b) with respect to Sections 5.8 and 5.9 at or as of the date of said financial statements, and (2) on the basis of such review of the Loan Documents and the business and condition of the Borrower, to the best knowledge of such officer, as of the last day of the period covered by such certificate no Default or Event of Default under any other provision of Section 6.1 occurred and is continuing or, if any such Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof and, the action the Borrower proposes to take in respect thereof and (3) no event has occurred and is continuing which would give rise to a mandatory prepayment pursuant to Section 2.10 hereof. Such certificate shall set forth the calculations required to establish the matters described in clauses (1) and (3) above;

(d) (i) within five (5) Business Days after any officer of the Borrower obtains knowledge of any Default, if such Default is then continuing, a certificate of the chief financial officer, the chief accounting officer, controller, or other executive officer of the Borrower setting forth the details thereof and the action which the Borrower is

taking or proposes to take with respect thereto; and (ii) promptly and in any event within five (5) Business Days after the Borrower obtains knowledge thereof, notice of (x) any litigation or governmental proceeding pending or threatened against the Borrower or the Real Property Assets as to which there is a reasonable possibility of an adverse determination and which, if adversely determined, is likely to individually or in the aggregate, result in a Material Adverse Effect, (y) any other event, act or condition which is likely to result in a Material Adverse Effect, and (z) any event giving rise to a mandatory prepayment pursuant to Section 2.10;

(e) promptly upon the mailing thereof to the shareholders of ABR generally, copies of all financial statements, reports and proxy statements so mailed;

(f) promptly upon the filing thereof, copies of all registration statements (other than the exhibits thereto and any registration statements on Form S-8 or its equivalent) and reports on Forms 10-K, 10-Q and 8-K (or their equivalents) (other than the exhibits thereto, which exhibits will be provided

upon request therefor by any Lender) which ABR shall have filed with the Securities and Exchange Commission;

(g) promptly and in any event within thirty (30) days, if and when any member of the ERISA Group (i) gives or is required to give notice to the PBGC of any "reportable event" (as defined in Section 4043 of ERISA) with respect to any Plan which might constitute grounds for a termination of such Plan under Title IV of ERISA, or knows that the plan administrator of any Plan has given or is required to give notice of any such reportable event, a copy of the notice of such reportable event given or required to be given to the PBGC; (ii) receives notice of complete or partial withdrawal liability under Title IV of ERISA or notice that any Multiemployer Plan is in reorganization, is insolvent or has been terminated, a copy of such notice; (iii) receives notice from the PBGC under Title IV of ERISA of an intent to terminate, impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or appoint a trustee to administer any Plan, a copy of such notice; (iv) applies for a waiver of the minimum funding standard under Section 412 of the Code, a copy of such application; (v) gives notice of intent to terminate any Plan under Section 4041(c) of ERISA, a copy of such notice and other information filed with the PBGC; (vi) gives notice of withdrawal from any Plan pursuant to Section 4063 of ERISA, a copy of such notice; or (vii) fails to make any payment or contribution to any Plan or Multiemployer Plan or in respect of any Benefit Arrangement or makes any amendment to any Plan or Benefit Arrangement which has resulted or could result in the imposition of a Lien or the posting of a bond or other security, and in the case of clauses (i) through (vii) above, which event could result in a Material Adverse Effect, a certificate of the chief financial officer or the chief accounting officer of the Borrower setting forth details as to such occurrence and action, if any, which the Borrower or applicable member of the ERISA Group is required or proposes to take;

(h) promptly and in any event within ten (10) days after the Borrower obtains knowledge of any of the following events, a certificate of the Borrower, executed by an officer of the Borrower, specifying the nature of such condition, and the Borrower's or, if the Borrower has knowledge thereof, the Environmental Affiliate's proposed initial

response thereto: (i) the receipt by the Borrower, or, if the Borrower has actual knowledge thereof, any of the Environmental Affiliates of any communication (written or oral), whether from a governmental authority, citizens group, employee or otherwise, that alleges that the Borrower, or, if the Borrower has knowledge thereof, any of the Environmental Affiliates, is not in compliance with applicable Environmental Laws, and such noncompliance is likely to have a Material Adverse Effect, (ii) the Borrower shall obtain knowledge that there exists any Environmental Claim pending against the Borrower or any Environmental Affiliate and such Environmental Claim is likely to have a Material Adverse Effect or (iii) the Borrower obtains knowledge of any release, emission, discharge or disposal of any Material of Environmental Concern that is likely to form the basis of any Environmental Claim against the Borrower or any Environmental Affiliate which in any such event is likely to have a Material Adverse Effect;

(i) promptly and in any event within five (5) Business Days after receipt of any material notices or correspondence from any company or agent for any company providing insurance coverage to the Borrower relating to any loss which is likely to result in a Material Adverse Effect, copies of such notices and correspondence;

(j) promptly and in any event within five (5) Business Days after receipt of any material notices or correspondence from any Person to the Borrower relating to any Material Litigation;

(k) from time to time such additional information regarding the financial position or business of the Borrower, ABR and their Subsidiaries as the Administrative Agent, at the request of any Lender, may reasonably request in writing.

Section 5.2 Payment of Obligations. The Borrower, ABR and their Consolidated Subsidiaries will pay and discharge, at or before maturity, all of its respective material obligations and liabilities including, without limitation, any obligation pursuant to any agreement by which it or any of its properties is bound, in each case where the failure to so pay or discharge such obligations or liabilities is likely to result in a Material Adverse Effect, and

will maintain in accordance with GAAP, appropriate reserves for the accrual of any of the same.

Section 5.3 Maintenance of Property; Insurance; Leases.

(a) The Borrower and/or ABR will keep, and will cause each Consolidated Subsidiary to keep, all property useful and necessary in its business, other than obsolete property or property replaced with other property, including without limitation the Real Property Assets (for so long as it constitutes Real Property Assets), in good repair, working order and condition, ordinary wear and tear excepted, in each case where the failure to so maintain and repair will have a Material Adverse Effect.

(b) The Borrower and/or ABR shall maintain, or cause to be maintained, insurance comparable to that required by Section 4.24 hereof with insurers meeting the qualifications described therein, or such other insurance and insurers as shall otherwise be reasonably acceptable to the Administrative Agent. The Borrower and/or

ABR will deliver to the Administrative Agent upon the reasonable request of the Administrative Agent from time to time (i) full information as to the insurance carried, (ii) within five (5) days of receipt of notice from any insurer a copy of any notice of cancellation or material change in coverage required by Section 4.24 from that existing on the date of this Agreement and (iii) forthwith, notice of any cancellation or nonrenewal (without replacement) of such coverage by the Borrower and/or ABR.

Section 5.4 Conduct of Business and Maintenance of Existence. The Borrower and ABR will continue to engage in business of the same general type as now conducted by the Borrower and ABR, and each will preserve, renew and keep in full force and effect, its partnership and trust existence and its respective rights, privileges and franchises necessary for the normal conduct of business unless the failure to maintain such rights and franchises does not have a Material Adverse Effect.

Section 5.5 Compliance with Laws. The Borrower and ABR will and will cause their Subsidiaries to comply in all material respects with all applicable laws, ordinances, rules, regulations, and requirements of governmental authorities (including, without limitation, Environmental Laws, and all zoning and building codes with respect to the Real Property Assets and ERISA and the rules and regulations thereunder and all federal securities laws) except where the necessity of compliance therewith is contested in good faith by appropriate proceedings or where the failure to do so will not have a Material Adverse Effect or expose Administrative Agent or the Lenders to any material liability therefor.

Section 5.6 Inspection of Property, Books and Records. The Borrower and ABR each will keep proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities in conformity with GAAP, modified as required by this Agreement and applicable law; and will permit representatives of any Lender at such Lender's expense to visit and inspect any of its properties, including without limitation the Real Property Assets, to examine and make abstracts from any of its books and records and to discuss its affairs, finances and accounts with its officers and independent public accountants, all at such reasonable times during normal business hours, upon reasonable prior notice and as often as may reasonably be desired. Administrative Agent shall coordinate any such visit or inspection to arrange for review by any Lender requesting any such visit or inspection.

Section 5.7 Existence. The Borrower shall do or cause to be done, all things necessary to preserve and keep in full force and effect its, ABR's and their Consolidated Subsidiaries' existence and its patents, trademarks, servicemarks, tradenames, copyrights, franchises, licenses, permits, certificates, authorizations, qualifications, accreditation, easements, rights of way and other rights, consents and approvals the nonexistence of which is likely to have a Material Adverse Effect.

Section 5.8 Financial Covenants.

(a) Minimum Tangible Net Worth. ABR and its Consolidated Subsidiaries will have at all times a Tangible Net Worth of not less than the sum of (1) Two Hundred Million Dollars ($200,000,000.00) plus eighty percent (80%) of the Net Offering Proceeds received after the date of this Agreement.

(b) Ratio of Total Liabilities to Tangible Net Worth. ABR and its Consolidated Subsidiaries will have as of the last day of each Fiscal Quarter, a ratio of Total Liabilities to Tangible Net Worth of not greater than 3.50 to 1.00; provided, however, such ratio may exceed 3.50 to 1.00 for a period of ninety (90) days or less but in no event shall the Borrower permit the ratio of Total Liabilities to Tangible Net Worth to exceed 4.00 to 1.00 at any time.

(c) Ratio of EBITDA to Fixed Charges. ABR and its Consolidated Subsidiaries will have as of the last day of each Fiscal Quarter, a ratio of EBITDA to Fixed Charges, both for such quarter, of not less than 1.75 to 1.00.

(d) Portfolio Performance Ratio. Borrower will have, as of the last day of each month, a Portfolio Performance Ratio for the month ended on such date of not less than 1.50 to 1.00.

(e) Intentionally Deleted.

(f) Minimum Liquid Assets. ABR and its Consolidated Subsidiaries will have at all times Liquid Assets of not less than Five Million Dollars ($5,000,000.00) and Cash and Cash Equivalents of not less than One Million Dollars ($1,000,000.00).

(g) Ratio of Total Liabilities to Total Assets. ABR and its Consolidated Subsidiaries will have at all times a ratio of Total Liabilities to Total Assets of not greater than .85 to 1.00.

(h) Ratio of EBITDA to Interest Expense. ABR and its Consolidated Subsidiaries will have as of the last day of each calendar quarter, a ratio of EBITDA to Interest Expense, both for such quarter, of not less than 2.00 to 1.00.

(i) Distributions. For so long as no Event of Default shall have occurred and be outstanding, Borrower will not, as determined on an aggregate annual basis, pay any partnership distributions in excess of (i) 100% of Funds from Operations for such year, and (ii) such amounts as are necessary to enable ABR to make those dividends necessary to maintain ABR's status as a real estate investment trust.

Section 5.9 Restriction on Fundamental Changes.

(a) Neither the Borrower nor ABR shall enter into any merger or consolidation without the prior written consent thereto in writing of the Required Lenders unless the following criteria are met: (i) the Borrower or ABR is the surviving entity, (ii) the entity which is merged into Borrower or ABR is predominantly in the commercial real estate lending business, (iii) the creditworthiness of the surviving entity's long term unsecured debt or implied senior debt, as applicable, is not lower than Borrower's or

ABR's creditworthiness, as applicable, two months immediately preceding such merger, and (iv) no Event of Default shall be outstanding as of the effective date of any such merger or consolidation. Neither the Borrower nor ABR shall liquidate, wind-up or dissolve (or suffer any liquidation or dissolution), discontinue its business or convey, lease, sell, transfer or otherwise dispose of, in one transaction or series of transactions, all or substantially all of its business or property, whether now or hereafter acquired.

(b) The Borrower shall not amend its agreement of limited partnership or other organizational documents in any manner that would have a Material Adverse Effect without the Administrative Agent's consent, which shall not be unreasonably withheld. ABR shall not amend its declaration of trust, by-laws, or other organizational documents in any manner that would have a Material Adverse Effect without the Administrative Agent's consent, which shall not be unreasonably withheld.

(c) The Borrower shall deliver to Administrative Agent copies of all amendments to its agreement of limited partnership or to ABR's declaration

of trust, by-laws, or other organizational documents no less than ten (10) days after the effective date of any such amendment.

(d) The Borrower shall not make any change in the Management Agreement without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld.

Section 5.10 Changes in Business. Neither the Borrower nor ABR shall enter into any business which is substantially different from that conducted by the Borrower or ABR on the Closing Date after giving effect to the transactions contemplated by the Loan Documents. The Borrower shall carry on its business operations through the Borrower and its Subsidiaries.

Section 5.11 Margin Stock. None of the proceeds of the Loan will be used, directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of buying or carrying any Margin Stock in any manner that might violate the provisions of Regulations T, U or X of the Federal Reserve Board.

Section 5.12 Intentionally Deleted.

Section 5.13 ABR Status.

(a) Status. ABR shall at all times (i) remain a publicly traded company listed on the New York Stock Exchange, and (ii) maintain its status as a real estate investment trust under the Code.

(b) Indebtedness. ABR shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(1) the Obligations; and

(2) Indebtedness which, after giving effect thereto, may be incurred or may remain outstanding without giving rise to an Event of Default or Default under any provision of this Article V.

(c) Intentionally Deleted.

(d) Environmental Liabilities. Neither ABR nor any of its Subsidiaries shall become subject to any Environmental Claim which has a Material Adverse Effect, including any arising out of or related to (i) the release or threatened release of any Material of Environmental Concern into the environment, or any remedial action in response thereto, or (ii) any violation of any Environmental Laws. Notwithstanding the foregoing provision, ABR shall have the right to contest in good faith any claim of violation of an Environmental Law by appropriate legal proceedings and shall be entitled to postpone compliance with the obligation being contested as long as (i) no Event of Default shall have occurred and be continuing, (ii) ABR shall have given Administrative Agent prior written notice of the commencement of such contest, (iii) noncompliance with such Environmental Law shall not subject ABR or such Subsidiary to any criminal penalty or subject Administrative Agent or any Lender to pay any civil penalty or to prosecution for a crime, and (iv) no portion of any Property material to Borrower or its condition or prospects shall be in substantial danger of being sold, forfeited or lost, by reason of such contest or the continued existence of the matter being contested.

(e) Disposal of Partnership Interests. ABR will not directly or indirectly convey, sell, transfer, assign, pledge or otherwise encumber or dispose of any of its partnership interests in Borrower, except for the reduction of ABR's interest in the Borrower arising from Borrower's issuance of partnership interests in the Borrower or the retirement of preference units by Borrower.

Section 5.14 Intentionally Deleted.

Section 5.15 Affiliated Transactions. Neither Borrower, ABR, nor any of their respective Subsidiaries shall, directly or indirectly, (a) make any loan, advance, extension of credit or capital contribution to any of Borrower or ABR or any of their Affiliates, (b) sell, transfer, pledge or assign any of its assets to or on behalf of Borrower or ABR or any of their Affiliates, or (c) pay management fees in excess of those provided for in the Management Agreement in

effect as of the Closing Date; provided, however, that (i) Borrower and ABR may engage in any transaction described in (a) and/or (b) above so long as the same is between Borrower and ABR only, (ii) Borrower, ABR and/or their respective Subsidiaries may engage in any transaction described in (a) above so long as the total amount of any such transactions outstanding at any time, in the aggregate, does not exceed Five Million Dollars ($5,000,000) and (iii) Borrower, ABR and/or their respective Subsidiaries may engage in any transaction described in (b) above if such transaction is in the ordinary course of business pursuant to the reasonable requirements of such party's business and, upon fair and reasonable terms no less favorable to such party than such party would obtain in a comparable arms-length transaction.

Section 5.16 Additional Rights of Administrative Agent.

(a) Administrative Agent shall have the right, exercisable in its sole discretion, to require the Borrower to replace the manager under the Management Agreement (the "Manager") with a Person chosen by Borrower and reasonably approved by Administrative Agent if at any time the Manager has engaged in gross negligence, fraud or willful misconduct or if any officer or director of the Manager is convicted of a felony.

(b) Administrative Agent shall have the right, exercisable in its sole discretion, to appoint an officer for the purposes of reviewing the performance of the Manager's duties under the Management Agreement (provided the Administrative Agent acknowledges that such officer shall have no right to control the actions of the Manager), upon the occurrence of any one or more of the following events: (i) at any time following the occurrence and during the continuance of an Event of Default, (ii) if the Manager shall be in default under the Management Agreement beyond any applicable notice and cure period, (iii) if the Manager shall become insolvent or a debtor in any bankruptcy or insolvency proceeding, and (iv) if twenty-five percent (25%) or more of the Borrower Loans at any given time become Non-Performing Loans. Upon the occurrence of any such event, each of ABR and the Borrower agree (and agree to cause the Manager) (x) to provide access to all of the books, records, financial statements and filings that are available to the Administrative Agent and/or the Lenders under this Agreement or otherwise may be relevant in connection such officer's review of the Manager's performance, (y) to allow any such officer appointed by the Administrative Agent to attend meetings of the Manager relating to the operations of ABR and the Borrower and (z) to otherwise reasonably cooperate with such officer in connection with the performance of such officer's duties as set forth herein.

Section 5.17 New Arbor REIT Securitization Transaction. Simultaneously with the consummation of the transactions contemplated by the New Arbor REIT Securitization Transaction, the New Arbor REIT Subsidiary, the Administrative Agent and the Lenders shall execute an amendment to this Agreement, in form reasonably acceptable to such parties, pursuant to which the New Arbor REIT Subsidiary shall become a co-borrower under this Agreement.

Section 5.18 Recalculation of the Borrowing Base. The Borrower shall recalculate the amount of the Borrowing Base and deliver such calculation to the Administrative Agent (i) prior to the consummation of any transaction (but after taking into consideration the result of such transaction) pursuant to which ABR, the Borrower and/or any of their respective Consolidated Subsidiaries will sell or otherwise dispose of assets comprising twenty-five percent (25%) or more of the Total Assets (prior to the consummation of such transaction) and (ii) within three (3) days after it shall be determined by the Borrower that more than twenty-five (25%) of the Borrower Loans have become Non-Performing Loans.

ARTICLE VI

DEFAULTS

Section 6.1 Events of Default. If one or more of the following events ("Events of Default") shall have occurred and be continuing:

(a) the Borrower shall fail to pay when due any principal of any Loan, or the Borrower shall fail to pay when due interest on any Loan or any fees or any other amount payable hereunder and the same shall continue for a

period of five (5) days after the same becomes due;

(b) the Borrower shall fail to observe or perform any covenant contained in Section 5.8, Section 5.9(a) or (b), or Sections 5.10 to 5.13, inclusive;

(c) the Borrower shall fail to observe or perform any covenant or agreement contained in this Agreement (other than those covered by clause (a), (b), (d), (e), (f), (g), (h), (j), (n) or (o) of this Section 6.1) for 30 days after written notice thereof has been given to the Borrower by the Administrative Agent, or if such default is of such a nature that it cannot with reasonable effort be completely remedied within said period of thirty (30) days such additional period of time as may be reasonably necessary to cure same, provided Borrower commences such cure within said thirty (30) day period and diligently prosecutes same, until completion, but in no event shall such extended period exceed ninety (90) days;

(d) any representation, warranty, certification or statement made by the Borrower in this Agreement or in any certificate, financial statement or other document delivered pursuant to this Agreement shall prove to have been incorrect in any material respect when made (or deemed made) and the defect causing such representation or warranty to be incorrect when made (or deemed made) is not removed within thirty (30) days after written notice thereof from Administrative Agent to Borrower;

(e) the Borrower, ABR, or any Subsidiary shall default in the payment when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) of any amount owing in respect of any (x) Recourse Debt (other than the Obligations), or (y) any Secured Debt, for which the aggregate outstanding principal amount in either case exceeds $5,000,000, and in either case such default shall continue beyond the giving of any required notice and the expiration of any applicable grace period and such default has not been waived, in writing, by the holder of any such Debt; or the Borrower, ABR or any Subsidiary shall default in the performance or observance of any obligation or condition with respect to any such Recourse Debt or any such Secured Debt, for which the aggregate outstanding principal amount exceeds $5,000,000 in either case, or any other event shall occur or condition exist beyond the giving of any required notice and the expiration of any applicable grace period, if the effect of such default, event or condition is to accelerate the maturity of any such indebtedness or to permit (without any further requirement of notice or lapse of time) the holder or holders

thereof, or any trustee or agent for such holders, to accelerate the maturity of any such indebtedness;

(f) the Borrower or ABR shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or admit in writing its inability, to pay its debts as such debts become due, or shall take any action to authorize any of the foregoing;

(g) an involuntary case or other proceeding shall be commenced against the Borrower or ABR seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 days; or an order for relief shall be entered against the Borrower or ABR under the federal bankruptcy laws as now or hereafter in effect;

(h) one or more final, non-appealable judgments or decrees (or one or more judgments which is/are not stayed pending appeal) in an aggregate amount of Five Million Dollars ($5,000,000) or more shall be entered by a court or courts of competent jurisdiction against the Borrower, ABR or its Consolidated Subsidiaries (other than any judgment as to which, and only to the extent, a

reputable insurance company has acknowledged coverage of such claim in writing) and (i) any such judgments or decrees shall not be stayed, discharged, paid, bonded or vacated within thirty (30) days or (ii) enforcement proceedings shall be commenced by any creditor on any such judgments or decrees;

(i) there shall be a change in the majority of the Board of Trustees of ABR during any twelve (12) month period, excluding any change in directors resulting from (x) the death or disability of any director, or (y) satisfaction of any requirement for the majority of the members of the board of directors or trustees of ABR to qualify under applicable law as independent trustees or (z) the replacement of any trustee who is an officer or employee of ABR or an affiliate of ABR with any other officer or employee of ABR or an affiliate of ABR;

(j) any Person (including affiliates of such Person, but excluding the Manager or any Affiliate of the Manager) or "group" (as such term is defined in applicable federal securities laws and regulations) shall acquire more than twenty-five percent (25%) of the common shares of ABR;

(k) ABR shall cease at any time to qualify as a real estate investment trust under the Code;

(l) if any Termination Event with respect to a Plan shall occur as a result of which Termination Event or Events any member of the ERISA Group has incurred or may incur any liability to the PBGC or any other Person and the sum (determined as of the date of occurrence of such Termination Event) of the insufficiency of such Plan and the insufficiency of any and all other Plans with respect to which such a Termination Event shall occur and be continuing (or, in the case of a Multiple Employer Plan with respect to which a Termination Event described in clause (ii) of the definition of Termination Event shall occur and be continuing, the liability of the Borrower) is equal to or greater than $2,000,000 and which the Administrative Agent reasonably determines will have a Material Adverse Effect;

(m) if, any member of the ERISA Group shall commit a failure described in Section 402(f)(1) of ERISA or Section 412(n)(1) of the Code and the amount of the lien determined under Section 402(f)(3) of ERISA or Section 412(n)(3) of the Code that could reasonably be expected to be imposed on any member of the ERISA Group or their assets in respect of such failure shall be equal to or greater than $2,000,000 and which the Administrative Agent reasonably determines will have a Material Adverse Effect;

(n) at any time, for any reason the Borrower or ABR seeks to repudiate its obligations under any Loan Document; or

(o) a default beyond any applicable notice or grace period under any of the other Loan Documents.

Section 6.2 Rights and Remedies.

(a) Upon the occurrence of any Event of Default described in Sections 6.1(f) or (g), the Commitments shall immediately terminate and the unpaid principal amount of, and any and all accrued interest on, the Loans and any and all accrued fees and other Obligations hereunder shall automatically become immediately due and payable, with all additional interest from time to time accrued thereon and without presentation, demand, or protest or other requirements of any kind (including, without limitation, valuation and appraisement, diligence, presentment, notice of intent to demand or accelerate and notice of acceleration), all of which are hereby expressly waived by the Borrower; and upon the occurrence and during the continuance of any other Event of Default, subject to the provisions of Section 6.2(b), the Administrative Agent may (and upon the demand of the Required Lenders shall), by written notice to the Borrower, in addition to the exercise of all of the rights and remedies permitted the Administrative Agent and the Lenders at law or equity or under any of the other Loan Documents, declare the Commitments terminated and the unpaid principal amount of and any and all accrued and unpaid interest on the Loans and any and all accrued fees and other Obligations hereunder to be, and the same shall thereupon be, immediately due and payable with all additional interest from time to time accrued thereon and (except as

otherwise as provided in the Loan Documents) without presentation, demand, or protest or other requirements of any kind (including, without limitation, valuation and appraisement, diligence, presentment, notice of intent to demand or accelerate and notice of acceleration), all of which are hereby expressly waived by the Borrower.

(b) Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, the Administrative Agent and the Lenders each agree that any exercise or enforcement of the rights and remedies granted to the Administrative Agent or the Lenders under this Agreement or at law or in equity with respect to this Agreement or any other Loan Documents shall be commenced and maintained by the Administrative Agent on behalf of the Administrative Agent and/or the Lenders. The Administrative Agent shall act at the direction of the Required Lenders in connection with the exercise of any and all remedies at law, in equity or under any of the Loan Documents or, if the Required Lenders are unable to reach agreement within thirty (30) days of commencement of discussions, then, from and after an Event of Default and the end of such thirty (30) day period, the Administrative Agent may pursue such rights and remedies as it may determine if it shall reasonably determine that the same shall be in the best interests of the Lenders, taken as a whole.

(c) If at any time during the existence of an Event of Default, the Borrower, ABR or any Consolidated Subsidiary or either or both receives any Net Sale Proceeds, Net Bond Proceeds and/or Net Offering Proceeds, the Borrower shall pay to the Administrative Agent, for the account of the Lenders, promptly after receipt thereof, an amount equal to one hundred percent (100%) of any such amounts.

Section 6.3 Notice of Default. The Administrative Agent shall give notice to the Borrower under Section 6.1(c) promptly upon being requested to do so by the Required Lenders and shall thereupon notify all the Lenders thereof. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default (other than nonpayment of principal of or interest on the Loans) unless Administrative Agent has received notice in writing from a Lender or Borrower or any court or governmental agency referring to this Agreement or the other Loan Documents, describing such event or condition. Should Administrative Agent receive notice of the occurrence of a Default or Event of Default expressly stating that such notice is a notice of a Default or Event of Default, or should Administrative Agent send Borrower a notice of Default or Event of Default, Administrative Agent shall promptly give notice thereof to each Lender.

Section 6.4 Distribution of Proceeds after Default. Notwithstanding anything contained herein to the contrary, from and after an Event of Default, to the extent proceeds are received by Administrative Agent, such proceeds will be distributed to the Lenders pro rata in accordance with the unpaid principal amount of the Loans.

ARTICLE VII

THE AGENTS

Section 7.1 Appointment and Authorization. Each Lender irrevocably appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent by the terms hereof or thereof, together with all such powers and discretion as are reasonably incidental thereto. Except as set forth in Sections 7.8 and 7.9 hereof, the provisions of this Article VII are solely for the benefit of Administrative Agent and the Lenders, and Borrower shall not have any rights to rely on or enforce any of the provisions hereof. In performing its functions and duties under this Agreement, Administrative Agent shall act solely as an agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for the Borrower.

Section 7.2 Agency and Affiliates. Watershed Administrative LLC shall have the same rights and powers under this Agreement as any other Lender and may exercise or refrain from exercising the same as though it were not the Administrative Agent, and Watershed Administrative LLC and its affiliates may accept deposits from, lend money to, and generally engage in any kind of business with the Borrower, ABR or any Subsidiary or affiliate of the Borrower

as if it was not the Administrative Agent hereunder, and the term "Lender" and "Lenders" shall include Watershed Administrative LLC in its individual capacity.

Section 7.3 Action by Administrative Agent. The obligations of the Administrative Agent hereunder are only those expressly set forth herein. Without limiting the generality of the foregoing, the Administrative Agent shall not be required to take any action with respect to any Default or Event of Default, except as expressly provided in Article VI. The duties of Administrative Agent shall be administrative in nature. Subject to the provisions of Sections 7.1, 7.5 and 7.6, Administrative Agent shall administer the Loans in the same manner as it administers its own loans.

Section 7.4 Consultation with Experts. As between Administrative Agent and the Lenders, the Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 7.5 Liability of Administrative Agent. As between Administrative Agent and the Lenders, none of the Administrative Agent nor any of its affiliates nor any of its directors, officers, agents or employees shall be liable for any action taken or not taken by any of them in connection herewith (i) with the consent or at the request of the Required Lenders or (ii) in the absence of its own gross negligence or willful misconduct. As between Administrative Agent and the Lenders, neither the Administrative Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into or verify (i) any statement,

warranty or representation made in connection with this Agreement or any borrowing hereunder; (ii) the performance or observance of any of the covenants or agreements of the Borrower, except with respect to payment of principal and interest; (iii) the satisfaction of any condition specified in Article III, except receipt of items required to be delivered to the Administrative Agent; or (iv) the validity, effectiveness or genuineness of this Agreement, the other Loan Documents or any other instrument or writing furnished in connection herewith. As between Administrative Agent and the Lenders, the Administrative Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, or similar writing) believed by it to be genuine or to be signed by the proper party or parties.

Section 7.6 Indemnification. Each Lender shall, ratably in accordance with its Commitment, indemnify the Administrative Agent and its affiliates and directors, officers, agents and employees (to the extent not reimbursed by the Borrower) against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from such indemnitee's gross negligence or willful misconduct) that such indemnitee may suffer or incur in connection with its duties as Administrative Agent under this Agreement, the other Loan Documents or any action taken or omitted by such indemnitee hereunder as Administrative. In the event that the Administrative Agent shall, subsequent to its receipt of indemnification payment(s) from Lenders in accordance with this section, recoup any amount from the Borrower, or any other party liable therefor in connection with such indemnification, the Administrative Agent shall reimburse the Lender which previously made the payment(s) pro rata, based upon the actual amounts which were theretofore paid by each Lender. The Administrative Agent shall reimburse such Lenders so entitled to reimbursement within two (2) Business Days of its receipt of such funds from the Borrower or such other party liable therefor.

Section 7.7 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lenders, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under this Agreement.

Section 7.8 Successor Administrative Agent. The Administrative Agent may resign at any time by giving notice thereof to the Lenders, the Borrower and

each other. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent, which successor Administrative Agent shall, provided no Event of Default has occurred and is then continuing, be subject to Borrower's approval, which approval shall not be unreasonably withheld or delayed. If no successor Administrative Agent shall have been so appointed by the Required Lenders and approved by the Borrower, or, if so appointed, shall not have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders,

appoint a successor Administrative Agent, which shall be the Administrative Agent, who shall act until the Required Lenders shall appoint an Administrative Agent reasonably approved by Borrower. In any event, the retiring Administrative Agent shall continue to act as Administrative Agent until such time as a successor Administrative Agent shall have been so appointed by the Required Lenders, approved by Borrower, and shall have assumed its duties hereunder. Upon the acceptance of its appointment as the Administrative Agent hereunder by a successor Administrative Agent such successor Administrative Agent shall thereupon succeed to and become vested with all the rights and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation hereunder, the provisions of this Article shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent. For gross negligence or willful misconduct, as determined by the Required Lenders (excluding for such determination Administrative Agent in its capacity as a Lender, as applicable), the Administrative Agent may be removed at any time by giving at least thirty (30) Business Days prior written notice to the Administrative Agent and Borrower. Such resignation or removal shall take effect upon the acceptance of appointment by a successor Administrative Agent in accordance with the provisions of this Section 7.8.

Section 7.9 Consents and Approvals. All communications from Administrative Agent to the Lenders requesting the Lenders' determination, consent, approval or disapproval (i) shall be given in the form of a written notice to each Lender, (ii) shall be accompanied by a description of the matter or item as to which such determination, approval, consent or disapproval is requested, or shall advise each Lender where such matter or item may be inspected, or shall otherwise describe the matter or issue to be resolved, (iii) shall include, if reasonably requested by a Lender and to the extent not previously provided to such Lender, written materials and a summary of all oral information provided to Administrative Agent by Borrower in respect of the matter or issue to be resolved, and (iv) shall include Administrative Agent's recommended course of action or determination in respect thereof. Each Lender shall reply promptly, but in any event within ten (10) Business Days after receipt of the request therefor from Administrative Agent (the "Lender Reply Period"). Unless a Lender shall give written notice to Administrative Agent that it objects to the recommendation or determination of Administrative Agent (together with a written explanation of the reasons behind such objection) within the Lender Reply Period, such Lender shall be deemed to have approved of or consented to such recommendation or determination. With respect to decisions requiring the approval of the Required Lenders or all the Lenders, Administrative Agent shall submit its recommendation or determination for approval of or consent to such recommendation or determination to all Lenders and upon receiving the required approval or consent shall follow the course of action or determination of the Required Lenders (and each non-responding Lender shall be deemed to have concurred with such recommended course of action) or all the Lenders, as the case may be.

ARTICLE VIII

CHANGE IN CIRCUMSTANCES

Section 8.1 Basis for Determining Interest Rate Inadequate or Unfair. If on or prior to the first day of any Euro-Dollar Borrowing:

(a) the Administrative Agent determines in good faith that deposits in dollars are not being offered in the relevant market, or

(b) Lenders having 50% or more of the aggregate amount of the Commitments advise the Administrative Agent that the Euro-Dollar Rate, as determined by the Administrative Agent will not adequately and fairly reflect the cost to such Lenders of funding its Euro-Dollar Loans, the Administrative Agent shall forthwith give notice thereof to the Borrower and the Lenders, whereupon until the Administrative Agent notifies the Borrower that the circumstances giving rise to such suspension no longer exist, the obligations of the Lenders to make Euro-Dollar Loans shall be suspended. Unless the Borrower notifies the Administrative Agent at least two Business Days before the date of any Euro-Dollar Borrowing for which a Notice of Borrowing has previously been given that it elects not to borrow on such date, such Borrowing shall instead be made as a Base Rate Borrowing. For purposes of this Section 8.1(b), in determining whether the Euro-Dollar Rate, as determined by Administrative Agent, will not adequately and fairly reflect the cost to any Lender of funding its Euro-Dollar Loans, such determination will be based solely on the ability of such Lender to obtain matching funds in the London interbank market at a reasonably equivalent rate.

Section 8.2 Illegality. If, on or after the date of this Agreement, the adoption of any applicable law, rule or regulation, or any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender with any request or directive (whether or not having the force of law) made after the Closing Date of any such authority, central bank or comparable agency shall make it unlawful for any Lender to make, maintain or fund its Euro-Dollar Loans, the Administrative Agent shall forthwith give notice thereof to the other Lenders and the Borrower, whereupon until such Lender notifies the Borrower and the Administrative Agent that the circumstances giving rise to such suspension no longer exist, the obligation of such Lender in case of the event described in clause above to make Euro-Dollar Loans shall be suspended. With respect to Euro-Dollar Loans, before giving any notice to the Administrative Agent pursuant to this Section, such Lender shall designate a different Lending Office if such designation will avoid the need for giving such notice and will not, in the judgment of such Lender, be otherwise materially disadvantageous to such Lender. If such Lender shall determine that it may not lawfully continue to maintain and fund any of its outstanding Euro-Dollar Loans to maturity and shall so specify in such notice, such Euro-Dollar Loan shall be converted as of such date to a Loan bearing interest at the Base Rate (without payment of any amounts that Borrower would otherwise be obligated to pay pursuant to Section 2.13 hereof with respect to Loans converted pursuant to this Section

8.2) in an equal principal amount from such Lender (on which interest and principal shall be payable contemporaneously with the related Euro-Dollar Loans of the other Lenders), and such Lender shall make such a Base Rate Loan.

If at any time, it shall be unlawful for any Lender to make, maintain or fund its Euro-Dollar Loans, the Borrower shall have the right, upon five (5) Business Day's notice to the Administrative Agent, to either (x) cause a Lender, reasonably acceptable to the Administrative Agent, to offer to purchase the Commitments of such Lender for an amount equal to such Lender's outstanding Loans, and to become a Lender hereunder, or obtain the agreement of one or more existing Lenders to offer to purchase the Commitments of such Lender for such amount, which offer such Lender is hereby required to accept, or (y) to repay in full all Loans then outstanding of such Lender, together with interest and all other amounts due thereon, upon which event, such Lender's Commitments shall be deemed to be cancelled pursuant to Section 2.11(c).

Section 8.3 Increased Cost and Reduced Return.

(a) If, on or after the date hereof, the adoption of any applicable law, rule or regulation, or any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof by any governmental authority, central banks or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its Lending Office) with any request or directive (whether or not having the force of law) made at the Closing Date of any such authority, central bank or comparable agency shall impose, modify or deem applicable any reserve (including, without limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System (but excluding with respect to any Euro-Dollar Loan any such requirement reflected in an applicable Euro-Dollar

Reserve Percentage)), special deposit, insurance assessment or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (or its Lending Office) or shall impose on any Lender (or its Lending Office) or on the London interbank market any other condition materially more burdensome in nature, extent or consequence than those in existence as of the Closing Date affecting such Lender's Euro-Dollar Loans, its Note, or its obligation to make Euro-Dollar Loans, and the result of any of the foregoing is to increase the cost to such Lender (or its Lending Office) of making or maintaining any Euro-Dollar Loan, or to reduce the amount of any sum received or receivable by such Lender (or its Lending Office) under this Agreement or under its Note with respect to such Euro-Dollar Loans, by an amount deemed by such Lender to be material, then, within 15 days after demand by such Lender (with a copy to the Administrative Agent), the Borrower shall pay to such Lender such additional amount or amounts (based upon a reasonable allocation thereof by such Lender to the Euro-Dollar Loans made by such Lender hereunder) as will compensate such Lender for such increased cost or reduction to the extent such Lender generally imposes such additional amounts on other borrowers of such Lender in similar circumstances.

(b) If any Lender shall have reasonably determined that, after the date hereof, the adoption of any applicable law, rule or regulation regarding capital adequacy, or any change in any such law, rule or regulation, or any change in the interpretation or

administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) made after the Closing Date of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on capital of such Lender (or its Parent) as a consequence of such Lender's obligations hereunder to a level below that which such Lender (or its Parent) could have achieved but for such adoption, change, request or directive (taking into consideration its policies with respect to capital adequacy) by an amount reasonably deemed by such Lender to be material, then from time to time, within 15 days after demand by such Lender (with a copy to the Administrative Agent), the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender (or its Parent) for such reduction to the extent such Lender generally imposes such additional amounts on other borrowers of such Lender in similar circumstances.

(c) Each Lender will promptly notify the Borrower and the Administrative Agent of any event of which it has knowledge, occurring after the date hereof, which will entitle such Lender to compensation pursuant to this Section and will designate a different Lending Office if such designation will avoid the need for, or reduce the amount of, such compensation and will not, in the reasonable judgment of such Lender, be otherwise materially disadvantageous to such Lender. If such Lender shall fail to notify Borrower of any such event within 90 days following the end of the month during which such event occurred, then Borrower's liability for any amounts described in this Section incurred by such Lender as a result of such event shall be limited to those attributable to the period occurring subsequent to the ninetieth (90th) day prior to the date upon which such Lender actually notified Borrower of the occurrence of such event. A certificate of any Lender claiming compensation under this Section and setting forth a reasonably detailed calculation of the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of demonstrable error. In determining such amount, such Lender may use any reasonable averaging and attribution methods.

(d) If at any time, any Lender shall be owed amounts pursuant to this Section 8.3, the Borrower shall have the right, upon five (5) Business Day's notice to the Administrative Agent to either (x) cause a Lender, reasonably acceptable to the Administrative Agent, to offer to purchase the Commitments of such Lender for an amount equal to such Lender's outstanding Loans, and to become a Lender hereunder, or to obtain the agreement of one or more existing Lenders to offer to purchase the Commitments of such Lender for such amount, which offer such Lender is hereby required to accept, or (y) to repay in full all Loans then outstanding of such Lender, together with interest and all other amounts due thereon, upon which event, such Lender's Commitment shall be deemed to be cancelled pursuant to Section 2.11(c).

Section 8.4 Taxes.

(a) Any and all payments by the Borrower to or for the account of any Lender or the Administrative Agent hereunder or under any other Loan Document shall be made free and clear of and without deduction for any and all present or future taxes,

duties, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Lender, the Administrative Agent, taxes imposed on its income, and franchise taxes imposed on it, by the jurisdiction under the laws of which such Lender or the Administrative Agent (as the case may be) is organized or any political subdivision thereof and, in the case of each Lender, taxes imposed on its income, and franchise or similar taxes imposed on it, by the jurisdiction of such Lender's Lending Office or any political subdivision thereof or by any other jurisdiction (or any political subdivision thereof) as a result of a present or former connection between such Lender or Administrative Agent and such other jurisdiction or by the United States (all such non-excluded taxes, duties, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Non-Excluded Taxes"). If the Borrower shall be required by law to deduct any Non-Excluded Taxes from or in respect of any sum payable hereunder or under any Note, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 8.4) such Lender or the Administrative Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions, (iii) the Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law and (iv) the Borrower shall furnish to the Administrative Agent, at its address referred to in Section 9.1, the original or a certified copy of a receipt evidencing payment thereof.

(b) In addition, the Borrower agrees to pay any present or future stamp or documentary taxes and any other excise or property taxes, or charges or similar levies which arise from any payment made hereunder or under any Note or from the execution or delivery of, or otherwise with respect to, this Agreement or any Note (hereinafter referred to as "Other Taxes").

(c) The Borrower agrees to indemnify each Lender and the Administrative Agent for the full amount of Non-Excluded Taxes or Other Taxes (including, without limitation, any Non-Excluded Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 8.4) paid by such Lender or the Administrative Agent (as the case may be) and, so long as such Lender or Administrative Agent has promptly paid any such Non-Excluded Taxes or Other Taxes, any liability for penalties and interest arising therefrom or with respect thereto. This indemnification shall be made within 15 days from the date such Lender or the Administrative Agent (as the case may be) makes demand therefor.

(d) Each Lender organized under the laws of a jurisdiction outside the United States, on or prior to the date of its execution and delivery of this Agreement in the case of each Lender listed on the signature pages hereof and on or prior to the date on which it becomes a Lender in the case of each other Lender, shall provide the Borrower with (A) two duly completed copies of Internal Revenue Service form 1001, or any successor form prescribed by the Internal Revenue Service, and (B) an Internal Revenue Service Form W-8BEN or W-8ECI, as appropriate, or any successor form prescribed by the Internal Revenue Service, and shall provide Borrower with two further copies of any such form or certification on or before the date that any such form or certification expires

or becomes obsolete and after the occurrence of any event requiring a change in the most recent form previously delivered by it to Borrower, certifying (i) in the case of a Form 1001, that such Lender is entitled to benefits under an income tax treaty to which the United States is a party which reduces the rate of withholding tax on payments of interest or certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States, and (ii) in the case of being under Sections 1442(c)(1) and 1442(a) of the Internal Revenue Code, that it is entitled to an exemption from United States backup withholding tax. If the form provided by a Lender at the time such Lender first becomes a party to this Agreement indicates a United States interest withholding tax rate in excess of

zero, withholding tax at such rate shall be considered excluded from "Non-Excluded Taxes" as defined in Section 8.4(a).

(e) For any period with respect to which a Lender has failed to provide the Borrower with the appropriate form pursuant to Section 8.4(d) (unless such failure is due to a change in treaty, law or regulation occurring subsequent to the date on which a form originally was required to be provided), such Lender shall not be entitled to indemnification under Section 8.4(c) with respect to Non-Excluded Taxes imposed by the United States; provided, however, that should a Lender, which is otherwise exempt from or subject to a reduced rate of withholding tax, become subject to Non-Excluded Taxes because of its failure to deliver a form required hereunder, the Borrower shall take such steps as such Lender shall reasonably request to assist such Lender to recover such Taxes so long as Borrower shall incur no cost or liability as a result thereof.

(f) If the Borrower is required to pay additional amounts to or for the account of any Lender pursuant to this Section 8.4, then such Lender will change the jurisdiction of its Lending Office so as to eliminate or reduce any such additional payment which may thereafter accrue if such change, in the judgment of such Lender, is not otherwise disadvantageous to such Lender.

(g) If at any time, any Lender shall be owed amounts pursuant to this Section 8.4, the Borrower shall have the right, upon five (5) Business Day's notice to the Administrative Agent to either (x) cause a Lender, reasonably acceptable to the Administrative Agent, to offer to purchase the Commitments of such Lender for an amount equal to such Lender's outstanding Loans, and to become a Lender hereunder, or to obtain the agreement of one or more existing Lenders to offer to purchase the Commitments of such Lender for such amount, which offer such Lender is hereby required to accept, or (y) to repay in full all Loans then outstanding of such Lender, together with interest and all other amounts due thereon, upon which event, such Lender's Commitment shall be deemed to be cancelled pursuant to Section 2.11(c).

Section 8.5 Base Rate Loans Substituted for Affected Euro-Dollar Loans. If (i) the obligation of any Lender to make Euro-Dollar Loans has been suspended pursuant to Section 8.2 or (ii) any Lender has demanded compensation under Section 8.3 or 8.4 with respect to its Euro-Dollar Loans and the Borrower shall, by at least five Business Days' prior notice to such Lender through the Administrative Agent, have elected that the provisions of this Section shall apply to such Lender, then, unless

and until such Lender notifies the Borrower that the circumstances giving rise to such suspension or demand for compensation no longer exist:

(a) Thereafter all Loans which would otherwise be made by such Lender as Euro-Dollar Loans shall be made instead as Loans at the Base Rate (on which interest and principal shall be payable contemporaneously with the related Euro-Dollar Loans of the other Lenders), and

(b) after each of its Euro-Dollar Loans has been repaid, all payments of principal which would otherwise be applied to repay such Euro-Dollar Loans shall be applied to repay its Base Rate Loans instead, and

(c) Borrower will not be required to make any payment which would otherwise be required by Section 2.13 with respect to such Euro-Dollar Loans converted to Base Rate Loans pursuant to clause (a) above.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission followed by telephonic confirmation or similar writing) and shall be given to such party: (x) in the case of the Borrower or the Administrative Agent, at its address, or facsimile number set forth on the signature pages hereof with a duplicate copy thereof, in the case of the Borrower, to the Borrower, at 333 Earle Ovington Boulevard, Uniondale, New York, New York 11553, Attn: General Counsel, and to Cullen and Dykman Bleakley Platt LLP, 100 Quentin Roosevelt Boulevard, Garden City, New York 11530, Attn: Rodger Tighe, (y) in the case of any Lender, at its address, or facsimile number set forth in its Administrative Questionnaire or (z) in the case of any party, such other address, or facsimile

number as such party may hereafter specify for the purpose by notice to the Administrative Agent and the Borrower. Each such notice, request or other communication shall be effective (i) if given by facsimile transmission, when such facsimile is transmitted to the facsimile number specified in this Section and the appropriate answerback or facsimile confirmation is received, (ii) if given by certified registered mail, return receipt requested, with first class postage prepaid, addressed as aforesaid, upon receipt or refusal to accept delivery, (iii) if given by a nationally recognized overnight carrier, 24 hours after such communication is deposited with such carrier with postage prepaid for next day delivery, or (iv) if given by any other means, when delivered at the address specified in this Section; provided that notices to the Administrative Agent under Article II or Article VIII shall not be effective until received. The Administrative Agent shall promptly notify the Lender of any change in the address of the Borrower or the Administrative Agent.

Section 9.2 No Waivers. No failure or delay by the Administrative Agent or any Lender in exercising any right, power or privilege hereunder or under any Note shall operate as a waiver thereof nor shall any single or partial exercise thereof

preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 9.3 Expenses; Indemnification.

(a) The Borrower shall pay within thirty (30) days after written notice from the Administrative Agent, (i) all reasonable out-of-pocket costs and expenses of the Administrative Agent (including reasonable fees and disbursements of special counsel Skadden, Arps, Slate, Meagher & Flom LLP), in connection with the preparation of this Agreement, the Loan Documents and the documents and instruments referred to therein, and any waiver or consent hereunder or any amendment hereof or any Default or alleged Default hereunder, (ii) all reasonable fees and disbursements of special counsel Skadden, Arps, Slate, Meagher & Flom LLP in connection with the syndication of the Loans and (iii) if an Event of Default occurs, all reasonable out-of-pocket expenses incurred by the Administrative Agent and each Lender (the Administrative Agent shall promptly submit any expenses of any of the Lenders to Borrower for reimbursement), including fees and disbursements of counsel for the Administrative Agent and each of the Lenders, in connection with the enforcement of the Loan Documents and the instruments referred to therein and such Event of Default and collection, bankruptcy, insolvency and other enforcement proceedings resulting therefrom; provided, however, that the attorneys' fees and disbursements for which Borrower is obligated under this subsection (a)(iii) shall be limited to the reasonable non-duplicative fees and disbursements of (A) counsel for Administrative Agent, and (B) counsel for all of the Lenders as a group; and provided, further, that all other costs and expenses for which Borrower is obligated under this subsection (a)(iii) shall be limited to the reasonable non-duplicative costs and expenses of Administrative Agent. For purposes of this Section 9.3(a)(iii), (1) counsel for Administrative Agent shall mean a single outside law firm representing Administrative Agent, and (2) counsel for all of the Lenders as a group shall mean a single outside law firm representing such Lenders as a group (which law firm may or may not be the same law firm representing Administrative Agent). Notwithstanding anything to the contrary contained herein, the Borrower shall have no obligation to reimburse Administrative Agent's out-of-pocket legal and due diligence expenses exceeding Seventy-Five Thousand Dollars ($75,000.00).

(b) The Borrower agrees to indemnify the Administrative Agent and each Lender, their respective affiliates and the respective directors, officers, agents and employees of the foregoing (each an "Indemnitee") and hold each Indemnitee harmless from and against any and all liabilities, losses, damages, costs and expenses of any kind, including, without limitation, the reasonable fees and disbursements of counsel, which may be incurred by such Indemnitee in connection with any investigative, administrative or judicial proceeding that may at any time (including, without limitation, at any time following the payment of the Obligations) be asserted against any Indemnitee, as a result of, or arising out of, or in any way related to or by reason of, (i) any of the transactions contemplated by the Loan Documents or the execution, delivery or performance of any Loan Document, (ii) any violation by the Borrower, ABR or the Environmental Affiliates of any applicable Environmental Law, (iii) any Environmental Claim arising out of the

management, use, control, ownership or operation of property or assets by the Borrower, ABR or any of the Environmental Affiliates, including, without limitation, all on-site and off-site activities of Borrower or any Environmental Affiliate involving Materials of Environmental Concern, (iv) the breach of any environmental representation or warranty set forth herein, but excluding those liabilities, losses, damages, costs and expenses (a) for which such Indemnitee has been compensated pursuant to the terms of this Agreement, (b) incurred solely by reason of the gross negligence, willful misconduct, bad faith or fraud of any Indemnitee as finally determined by a court of competent jurisdiction, (c) violations of Environmental Laws relating to a Property which are caused by the act or omission of such Indemnitee after such Indemnitee takes possession of such Property or (d) any liability of such Indemnitee to any third party based upon contractual obligations of such Indemnitee owing to such third party which are not expressly set forth in the Loan Documents. In addition, the indemnification set forth in this Section 9.3(b) in favor of any director, officer, agent or employee of Administrative Agent or any Lender shall be solely in his or her respective capacity as such director, officer, agent or employee. The Borrower's obligations under this Section shall survive the termination of this Agreement and the payment of the Obligations.

Section 9.4 Sharing of Set-Offs. In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, each Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to the Borrower or to any other Person, any such notice being hereby expressly waived, but subject to the prior consent of the Administrative Agent, to set off and to appropriate and apply any and all deposits (general or special, time or demand, provisional or final) and any other indebtedness at any time held or owing by such Lender (including, without limitation, by branches and agencies of such Lender wherever located) to or for the credit or the account of the Borrower against and on account of the Obligations of the Borrower then due and payable to such Lender under this Agreement or under any of the other Loan Documents, including, without limitation, all interests in Obligations purchased by such Lender. Each Lender agrees that if it shall by exercising any right of set-off or counterclaim or otherwise, receive payment of a proportion of the aggregate amount of principal and interest due with respect to any Note held by it, which is greater than the proportion received by any other Lender, the Lender receiving such proportionately greater payment shall purchase such participations in the Notes held by the other Lenders, and such other adjustments shall be made, as may be required so that all such payments of principal and interest with respect to the Notes held by the Lenders shall be shared by the Lenders pro rata; provided that nothing in this Section shall impair the right of any Lender to exercise any right of set-off or counterclaim it may have to any deposits not received in connection with the Loans and to apply the amount subject to such exercise to the payment of indebtedness of the Borrower other than its indebtedness under the Notes. The Borrower agrees, to the fullest extent it may effectively do so under applicable law, that any holder of a participation in a Note, whether or not acquired pursuant to the foregoing arrangements, may exercise rights of set-off or counterclaim and other rights with respect to such participation as fully as if such holder of a participation were a direct creditor of the Borrower in the amount of such participation. Notwithstanding anything to

the contrary contained herein, any Lender may, by separate agreement with the Borrower, waive its right to set off contained herein or granted by law and any such written waiver shall be effective against such Lender under this Section 9.4.

Section 9.5 Amendments and Waivers. Any provision of this Agreement or the Notes or other Loan Documents may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the Borrower and the Required Lenders (and, if the rights or duties of the Administrative Agent are affected thereby, by the Administrative Agent); provided that no such amendment or waiver with respect to this Agreement, the Notes or any other Loan Documents shall, unless signed by all the Lenders, (i) increase or decrease the Commitment of any Lender (except for a ratable decrease in the Commitments of all Lenders) or subject any Lender to any additional obligation, (ii) reduce the principal of

or rate of interest on any Loan or any fees hereunder, (iii) postpone the date fixed for any payment of principal of or interest on any Loan or any fees hereunder or for any reduction or termination of any Commitment, (iv) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Notes, or the number of Lenders, which shall be required for the Lenders or any of them to take any action under this Section or any other provision of this Agreement, (v) release the ABR Guaranty, (vi) modify the definition of "Required Lenders", or (vii) modify the provisions of this Section 9.5.

Section 9.6 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Borrower may not assign or otherwise transfer any of its rights under this Agreement or the other Loan Documents without the prior written consent of all Lenders and the Administrative Agent and any Lender may not assign or otherwise transfer any of its interest under this Agreement except as permitted in subsection (b) and (c) of this Section 9.6.

(b) Any Lender may at any time grant (i) prior to the occurrence of an Event of Default, to an existing Lender, one or more Lenders, finance companies, insurance companies or other financial institutions in minimum amounts of not less than $1,000,000 (or any lesser amount in the case of participations to an existing Lender) (it being understood that no Lender may hold Commitments of which less than $1,000,000 in the aggregate is for its own account, unless its Commitments shall have been reduced to zero) and (ii) after the occurrence and during the continuance of an Event of Default, to any Person in any amount (in each case, a "Participant"), participating interests in its Commitment or any or all of its Loans, with (and subject to) the consent of, provided that no Event of Default shall have occurred and be continuing, the Borrower, which consent shall not be unreasonably withheld or delayed. The Administrative Agent shall be notified by any such Lender of any such participation prior to the same becoming effective. Any participation made during the continuation of an Event of Default shall not be affected by the subsequent cure of such Event of Default. In the event of any such grant by a Lender of a participating interest to a Participant, whether or not upon notice to the Borrower and the Administrative Agent, such Lender shall remain responsible for the

performance of its obligations hereunder, and the Borrower and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which any Lender may grant such a participating interest shall provide that such Lender shall retain the sole right and responsibility to enforce the obligations of the Borrower hereunder including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement; provided that such participation agreement may provide that such Lender will not agree to any modification, amendment or waiver of this Agreement described in clause (i), (ii), (iii), (iv) or (v) of Section 9.5 without the consent of the Participant. The Borrower agrees that each Participant shall, to the extent provided in its participation agreement, be entitled to the benefits of Article VIII with respect to its participating interest. An assignment or other transfer which is not permitted by subsection (c) below shall be given effect for purposes of this Agreement only to the extent of, and subject to the restrictions with respect to, a participating interest granted in accordance with this subsection (b).

(c) Any Lender may at any time assign to (i) prior to the occurrence of an Event of Default, (A) an existing Lender, or (B) with the prior consent and approval of the Administrative Agent and Borrower, a wholly-owned affiliate of such transferor Lender, in each case in minimum amounts of not less than One Million Dollars ($1,000,000) and integral multiples of One Hundred Thousand Dollars ($100,000) thereafter (or any lesser amount in the case of assignments to an existing Lender) (it being understood that no Lender may hold Commitments of less than $1,000,000 in the aggregate, unless its Commitments shall have been reduced to zero) and (ii) after the occurrence and during the continuance of an Event of Default, to any Person in any amount (in each case, an "Assignee"), all or a proportionate part of all, of its rights and obligations under this Agreement, the Notes and the other Loan Documents, and, in either case, such Assignee shall assume such rights and obligations, pursuant to a Transfer Supplement in substantially the form of Exhibit "E" hereto executed by such Assignee and such transferor Lender, with (and subject to) the

consent of the Administrative Agent, which consent shall not be unreasonably withheld or delayed; provided that if an Assignee is an affiliate of such transferor Lender which meets the requirements of clause (i)(B) above or was a Lender immediately prior to such assignment, no such consent shall be required. Upon execution and delivery of such instrument and payment by such Assignee to such transferor Lender of an amount equal to the purchase price agreed between such transferor Lender and such Assignee, such Assignee shall be a Lender party to this Agreement and shall have all the rights and obligations of a Lender with a Commitment as set forth in such instrument of assumption, and no further consent or action by any party shall be required and the transferor Lender shall be released from its obligations hereunder to a corresponding extent. Upon the consummation of any assignment pursuant to this subsection (c), the transferor Lender, the Administrative Agent and the Borrower shall make appropriate arrangements so that, if required, a new Note is issued to the Assignee. In connection with any such assignment, the transferor Lender shall pay to the Administrative Agent an administrative fee for processing such assignment in the amount of $2,500. If the Assignee is not incorporated under the laws of the United States of America or a state thereof, it shall deliver to the Borrower and the Administrative Agent certification as to exemption from deduction or withholding of any

United States federal income taxes in accordance with Section 8.4. Any assignment made during the continuation of an Event of Default shall not be affected by any subsequent cure of such Event of Default.

(d) Intentionally Omitted.

(e) Any Lender may at any time assign all or any portion of its rights under this Agreement and its Note to a Federal Reserve Bank. No such assignment shall release the transferor Lender from its obligations hereunder.

(f) No Assignee, Participant or other transferee of any Lender's rights shall be entitled to receive any greater payment under Section 8.3 or 8.4 than such Lender would have been entitled to receive with respect to the rights transferred, unless such transfer is made with the Borrower's prior written consent or by reason of the provisions of Section 8.2, 8.3 or 8.4 requiring such Lender to designate a different Lending Office under certain circumstances or at a time when the circumstances giving rise to such greater payment did not exist.

Section 9.7 Collateral. Each of the Lenders represents to the Administrative Agent and each of the other Lenders that it in good faith is not relying upon any "margin stock" (as defined in Regulation U) as collateral in the extension or maintenance of the credit provided for in this Agreement.

Section 9.8 Governing Law; Submission to Jurisdiction.

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

(b) Any legal action or proceeding with respect to this Agreement or any other Loan Document and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of New York or of the United States of America for the Southern District of New York, and, by execution and delivery of this Agreement, the Borrower hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any thereof. The Borrower irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the hand delivery, or mailing of copies thereof by registered or certified mail, postage prepaid, to the Borrower at its address set forth below. The Borrower hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement or any other Loan Document brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of the Administrative Agent to serve process in any

other manner permitted by law or to commence legal proceedings or otherwise proceed against the Borrower in any other jurisdiction.

Section 9.9 Counterparts; Integration; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective upon receipt by the Administrative Agent and the Borrower of counterparts hereof signed by each of the parties hereto (or, in the case of any party as to which an executed counterpart shall not have been received, receipt by the Administrative Agent in form satisfactory to it of telegraphic or other written confirmation from such party of execution of a counterpart hereof by such party).

Section 9.10 WAIVER OF JURY TRIAL. EACH OF THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 9.11 Survival. All indemnities set forth herein shall survive the execution and delivery of this Agreement and the other Loan Documents and the making and repayment of the Loans hereunder.

Section 9.12 Domicile of Loans. Each Lender may transfer and carry its Loans at, to or for the account of any domestic or foreign branch office, subsidiary or affiliate of such Lender.

Section 9.13 Limitation of Liability. No claim may be made by the Borrower or any other Person acting by or through Borrower against the Administrative Agent or any Lender or the affiliates, directors, officers, employees, attorneys or agent of any of them for any consequential or punitive damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or by the other Loan Documents, or any act, omission or event occurring in connection therewith; and the Borrower hereby waives, releases and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Section 9.14 Recourse Obligation. This Agreement and the Obligations hereunder are fully recourse to the Borrower and ABR pursuant to the ABR Guaranty.

(a) Confidentiality. The Administrative Agent and each Lender shall use reasonable efforts to assure that information about Borrower, ABR and its Subsidiaries and Investments Affiliates, and the Properties thereof and their operations, affairs and financial condition, not generally disclosed to the public, which is furnished to

Administrative Agent or any Lender pursuant to the provisions hereof or any other Loan Document is used only for the purposes of this Agreement and shall not be divulged to any Person other than the Administrative Agent, the Lenders, and their affiliates and respective officers, directors, employees and agents who are actively and directly participating in the evaluation, administration or enforcement of the Loan, except: (a) to their attorneys and accountants, (b) in connection with the enforcement of the rights and exercise of any remedies of the Administrative Agent and the Lenders hereunder and under the other Loan Documents, (c) in connection with assignments and participations and the solicitation of prospective assignees and participants referred to in Section 9.6 hereof, who have agreed in writing to be bound by a confidentiality agreement substantially equivalent to the terms of this Section 9.15, and (d) as may otherwise be required or requested by any regulatory authority having jurisdiction over the Administrative Agent or any Lender or by any applicable law, rule, regulation or judicial process.

Section 9.15 USA Patriot Act. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information

that will allow such Lender to identify the Borrower in accordance with the Act.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

ARBOR REALTY LIMITED PARTNERSHIP

By: Arbor Realty GPOP, Inc.

By: /s/ Frederick C. Herbst

Name: Frederick C. Herbst
Title: Chief Financial Officer

Facsimile number: 516-832-8045
Address: 333 Earle Ovington Boulevard
Uniondale, New York 11553
Attn: John Natalone

ARBOR REALTY TRUST, INC.

By: /s/ Frederick C. Herbst

Name: Frederick C. Herbst
Title: Chief Financial Officer

Facsimile number: 516-832-8045
Address: 333 Earle Ovington Boulevard
Uniondale, New York 11553
Attn: John Natalone

WATERSHED ADMINISTRATIVE, LLC

By: Watershed Asset Management, L.L.C., its general partner

By: /s/ Meridee A. Moore

Name: Meridee A. Moore
Title: Senior Managing Member

c/o Watershed Asset Management, L.L.C.
One Maritime Plaza, Suite 2535
San Francisco, CA 94111
Attention: Operating Department
Telecopy: 415-391-3919

Commitments

$12,000,000

Watershed Capital Partners, L.P.

By: WS Partners, L.L.C., its general partner

By: /s/ Meridee A. Moore

Name: Meridee A. Moore
Title: Senior Managing Member

c/o Watershed Asset Management, L.L.C.
One Maritime Plaza, Suite 2535
San Francisco, CA 94111
Attention: Operating Department
Telecopy: 415-391-3919

$38,000,000	Watershed Capital Institutional Partners, L.P. By: WS Partners, L.L.C., its general partner By: /s/ Meridee A. Moore ---------- Name: Meridee A. Moore Title: Senior Managing Member c/o Watershed Asset Management, L.L.C. One Maritime Plaza, Suite 2535 San Francisco, CA 94111 Attention: Operating Department Telecopy: 415-391-3919

Total Commitments

$50,000,000

SCHEDULE 1.1

Description of New Arbor REIT Securitization Transaction

SCHEDULE 4.4

Financial Documents

SCHEDULE 4.5

Litigation

SCHEDULE 4.6

Borrower and ABR ERISA Plans

SCHEDULE 4.26

Other Indebtedness

EXHIBIT A

NOTE

New York, New York

December ___, 2004

For value received, Arbor Realty Limited Partnership, a [_____] limited partnership (the "Borrower"), promises to pay to the order of _____ (the "Lender"), for the account of its Lending Office, the unpaid principal amount of each Loan made by the Lender to the Borrower pursuant to the Agreement referred to below on the Maturity Date (as such term is defined in the Agreement). The Borrower promises to pay interest on the unpaid principal amount of each such Loan on the dates and at the rate or rates provided for in the Agreement. All such payments of principal and interest shall be made in lawful

money of the United States in Federal or other immediately available funds at the office of Watershed Administrative LLC, _____, _____, _____ _____.

All Loans made by the Lender, the respective types and maturities thereof and all repayments of the principal thereof shall be recorded by the Lender and, if the Lender so elects in connection with any transfer or enforcement hereof, appropriate notations to evidence the foregoing information with respect to each such Loan then outstanding may be endorsed by the Lender on the schedule attached hereto, or on a continuation of such schedule attached to and made a part hereof; provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower hereunder or under the Agreement.

This note is one of the Notes referred to in, and is delivered pursuant to and subject to all of the terms of, the Revolving Credit Agreement, dated as of the date hereof, among the Borrower, the Lenders party thereto, WATERSHED ADMINISTRATIVE LLC, as Administrative Agent (as the same may be amended from time to time, the "Agreement"). Terms defined in the Agreement are used herein with the same meanings. Reference is made to the Agreement for provisions for the prepayment hereof and the acceleration of the maturity hereof.

ARBOR REALTY LIMITED PARTNERSHIP

By: Arbor Realty GPOP, Inc.

By: _____
Name:
Title:

Exhibit A-1

Note (cont'd)

LOANS AND PAYMENTS OF PRINCIPAL

Date	Amount of Loan	Type of Loan	Amount of Principal Repaid	Maturity Date	Notation Made By
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EXHIBIT C

FORM OF NOTICE OF BORROWING

Watershed Administrative LLC, as Administrative Agent for the Lenders party to the Credit Agreement referred to below

_____

_____

Attention:

Ladies and Gentlemen:

Reference is hereby made to that certain Revolving Credit Agreement dated as of the date hereof (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement", the terms defined therein being used herein as therein defined), among ARBOR REALTY LIMITED PARTNERSHIP (the "Borrower"), the LENDERS listed on the signature pages thereof, and WATERSHED ADMINISTRATIVE LLC, as Administrative Agent.

The Borrower hereby gives you notice, irrevocably, pursuant to Section 2.1(b) of the Credit Agreement that the Borrower hereby requests a Borrowing under the Credit Agreement and, in that connection, sets forth below the information relating to such Borrowing (the "Proposed Borrowing") as required pursuant to the terms of the Credit Agreement:

1. Amount of Loans: $ _____

2. Date of Borrowing: _____

3. Aggregate outstanding Loans before Borrowing: $_____, and after giving effect to Borrowing: $_____

Proceeds of such Loans are to be credited to _____ Account # (or wired to such other banks and account as instructed).

The Borrower hereby represents and warrants that the Borrowing Base as of the date of the Borrowing is not less than $200,000,000.

The Borrower hereby certifies that the conditions precedent contained in Section [3.1] [3.2] are satisfied on the date hereof and will be satisfied on the funding date of the proposed Borrowing.

ARBOR REALTY LIMITED PARTNERSHIP

By: Arbor Realty GPOP, Inc.

By: _____
Name:
Title:

EXHIBIT E

TRANSFER SUPPLEMENT

TRANSFER SUPPLEMENT (this "Transfer Supplement") dated as of _____ , 200_ between _____ (the "Assignor") and _____ having an address at _____ (the "Purchasing

Lender").

W I T N E S S E T H:

WHEREAS, the Assignor has made loans to Arbor Realty Limited Partnership, a [_____] limited partnership (the "Borrower"), pursuant to the Revolving Credit Agreement, dated as of the date hereof (as the same may be amended, supplemented or otherwise modified through the date hereof, the "Agreement"), among the Borrower, the Lenders party thereto, and WATERSHED ADMINISTRATIVE LLC, as Administrative Agent. All capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Agreement; and

WHEREAS, the Purchasing Lender desires to purchase and assume from the Assignor, and the Assignor desires to sell and assign to the Purchasing Lender, certain rights, title, interest and obligations under the Agreement.

NOW, THEREFORE, IT IS AGREED:

1. In consideration of the amount set forth in the receipt (the "Receipt") given by Assignor to Purchasing Lender of even date herewith, and transferred by wire to Assignor, the Assignor hereby assigns and sells, without recourse, representation or warranty except as specifically set forth herein, to the Purchasing Lender, and the Purchasing Lender hereby purchases and assumes from the Assignor, a __% interest (the "Purchased Interest") of the Loans constituting a portion of the Assignor's rights and obligations under the Agreement as of the Effective Date (as defined below) including, without limitation, such percentage interest of the Assignor in any Loans owing to the Assignor, any Note held by the Assignor, any Loan Commitment of the Assignor and any other interest of the Assignor under any of the Loan Documents.

2. The Assignor (i) represents and warrants that as of the date hereof the aggregate outstanding principal amount of its share of the Loans owing to it (without giving effect to assignments thereof which have not yet become effective) is $_____; (ii) represents and warrants that it is the legal and beneficial owner of the interests being assigned by it hereunder and that such interests are free and clear of any adverse claim; (iii) represents and warrants that it has not received any notice of Default or Event of Default from the Borrower; (iv) represents and warrants that it has full power and authority to execute and deliver, and perform under, this Transfer Supplement, and all

necessary corporate and/or partnership action has been taken to authorize, and all approvals and consents have been obtained for, the execution, delivery and performance thereof; (v) represents and warrants that this Transfer Supplement constitutes its legal, valid and binding obligation enforceable in accordance with its terms; (vi) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations (or the truthfulness or accuracy thereof) made in or in connection with the Agreement, or the other Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Agreement, or the other Loan Documents or any other instrument or document furnished pursuant thereto; and (vii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or the performance or observance by the Borrower of any of its obligations under the Agreement or the other Loan Documents or any other instrument or document furnished pursuant thereto. Except as a result of a material misrepresentation of those representations specifically set forth in this Paragraph 2, this assignment shall be without recourse to Assignor.

3. The Purchasing Lender (i) confirms that it has received a copy of the Agreement, and the other Loan Documents, together with such financial statements and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Transfer Supplement and to become a party to the Agreement, and has not relied on any statements made by Assignor or Skadden, Arps, Slate, Meagher & Flom LLP; (ii) agrees that it will, independently and without reliance upon any of the Administrative Agent, the Assignor or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own appraisal of and investigation into the business, operations, property, prospects, financial and other conditions and creditworthiness of the Borrower and will make its own credit analysis, appraisals and decisions in taking or not taking action under the Agreement, and the other Loan Documents; (iii) appoints and authorizes the Administrative Agent to take such action as

agent on its behalf and to exercise such powers under the Agreement, and the other Loan Documents as are delegated to the Administrative Agent by the terms thereof, together with such powers as are incidental thereto; (iv) agrees that it will be bound by and perform in accordance with their terms all of the obligations which by the terms of the Agreement are required to be performed by it as a Lender; (v) specifies as its address for notices and lending office, the office set forth beneath its name on the signature page hereof; (vi) confirms that it has full power and authority to execute and deliver, and perform under, this Transfer Supplement, and that all necessary corporate and/or partnership action has been taken to authorize, and all approvals and consents have been obtained for, the execution, delivery and performance thereof; (vii) certifies that this Transfer Supplement constitutes its legal, valid and binding obligation enforceable in accordance with its terms; and (viii) confirms that the interest being assigned hereunder is being acquired by it for its own account, for investment purposes only and not with a view to the public distribution thereof and without any present intention of its resale in either case that would be in violation of applicable securities laws.

4. This Transfer Supplement shall be effective on the date (the "Effective Date") on which all of the following have occurred (i) it shall have been executed and

delivered by the parties hereto, (ii) copies hereof shall have been delivered to the Administrative Agent and the Borrower, (iii) Purchasing Lender shall have received an original Note and (iv) the Purchasing Lender shall have paid to the Assignor the agreed purchase price as set forth in the Receipt.

5. On and after the Effective Date, (i) the Purchasing Lender shall be a party to the Agreement and, to the extent provided in this Transfer Supplement, have the rights and obligations of a Lender thereunder and be entitled to the benefits and rights of the Lender thereunder and (ii) the Assignor shall, to the extent provided in this Transfer Supplement as to the Purchased Interest, relinquish its rights and be released from its obligations under the Agreement.

6. From and after the Effective Date, the Assignor shall cause the Administrative Agent to make all payments under the Agreement, and the Notes in respect of the Purchased Interest assigned hereby (including, without limitation, all payments of principal, fees and interest with respect thereto and any amounts accrued but not paid prior to such date) to the Purchasing Lender.

7. This Transfer Supplement may be executed in any number of counterparts which, when taken together, shall be deemed to constitute one and the same instrument.

8. Assignor hereby represents and warrants to Purchasing Lender that it has made all payments demanded to date by Watershed Administrative LLC ("Watershed") as Administrative Agent in connection with the Assignor's pro rata share of the obligation to reimburse the Agent for its expenses and made all Loans required. In the event Watershed, as Administrative Agent, shall demand reimbursement for fees and expenses from Purchasing Lender for any period prior to the Effective Date, Assignor hereby agrees to promptly pay Watershed, as Administrative Agent, such sums directly, subject, however, to Paragraph 12 hereof.

9. Assignor will, at the cost of Assignor, and without expense to Purchasing Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, assignments, notices of assignments, transfers and assurances as Purchasing Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring and confirming unto Purchasing Lender the property and rights hereby given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, assigned and/or intended now or hereafter so to be, on which Assignor may be or may hereafter become bound to convey or assign to Purchasing Lender, or for carrying out the intention or facilitating the performance of the terms of this Agreement or for filing, registering or recording this Agreement.

10. The parties agree that no broker or finder was instrumental in bringing about this transaction. Each party shall indemnify, defend the other and hold the other free and harmless from and against any damages, costs or expenses (including, but not limited to, reasonable attorneys' fees and

disbursements) suffered by such party arising

Exhibit E-3

from claims by any broker or finder that such broker or finder has dealt with said party in connection with this transaction.

11. Subject to the provisions of Paragraph 12 hereof, if, with respect to the Purchased Interest only, Assignor shall on or after the Effective Date receive (a) any cash, note, securities, property, obligations or other consideration in respect of or relating to the Loan or the Loan Documents or issued in substitution or replacement of the Loan or the Loan Documents, (b) any cash or non-cash consideration in any form whatsoever distributed, paid or issued in any bankruptcy proceeding in connection with the Loan or the Loan Documents or (c) any other distribution (whether by means of repayment, redemption, realization of security or otherwise), Assignor shall accept the same as Purchasing Lender's agent and hold the same in trust on behalf of and for the benefit of Purchasing Lender, and shall deliver the same forthwith to Purchasing Lender in the same form received, with the endorsement (without recourse) of Assignor when necessary or appropriate. If the Assignor shall fail to deliver any funds received by it within the same Business Day of receipt, unless such funds are received by Assignor after 4:00 p.m., Eastern Standard Time, then the following Business Day after receipt, said funds shall accrue interest at the federal funds interest rate and in addition to promptly remitting said amount, Assignor shall remit such interest from the date received to the date such amount is remitted to the Purchasing Lender.

12. Assignor and Purchasing Lender each hereby agree to indemnify and hold harmless the other, each of its directors and each of its officers in connection with any claim or cause of action based on any matter or claim based on the acts of either while acting as a Lender under the Agreement. Promptly after receipt by the indemnified party under this Section of notice of the commencement of any action, such indemnified party shall notify the indemnifying party in writing of the commencement thereof. If any such action is brought against any indemnified party and that party notifies the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein, and to the extent that it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof, with counsel satisfactory to such indemnified party, and after receipt of notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof. In no event shall the indemnified party settle or consent to a settlement of such cause of action or claim without the consent of the indemnifying party.

Exhibit E-4

13. THIS TRANSFER SUPPLEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS.

Wire Transfer Instructions:

_____

By: _____
Name:
Title:

By: _____
Name:
Title:

Receipt and Consent acknowledged this
____ day of _____, 200_:

WATERSHED ADMINISTRATIVE LLC,
as Administrative Agent

By: _____
Name:
Title:

[IF REQUIRED ADD THE FOLLOWING:]

ARBOR REALTY LIMITED PARTNERSHIP

By: Arbor Realty GPOP, Inc.

By: _____
Name:
Title:

Exhibit E-5

EXHIBIT 10.18

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ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1, LTD.
Issuer,

ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1 LLC
Co-Issuer,

ARBOR REALTY SR, INC.
Advancing Agent

AND

LASALLE BANK NATIONAL ASSOCIATION
Trustee, Paying Agent, Calculation Agent, Transfer Agent,
Custodial Securities Intermediary and Notes Registrar

INDENTURE

Dated as of January 19, 2005

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EXHIBIT 10.18

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INDENTURE, dated as of January 19, 2005, by and between ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1, LTD., an exempted company incorporated with limited liability under the laws of the Cayman Islands (the "Issuer"), ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1 LLC, a limited liability company formed

under the laws of Delaware (the "Co-Issuer"), LASALLE BANK NATIONAL ASSOCIATION, a national banking association, as trustee, paying agent, calculation agent, transfer agent, custodial securities intermediary and notes registrar (herein, together with its permitted successors and assigns in the trusts hereunder, called the "Trustee") and ARBOR REALTY SR, INC. (the "Arbor Parent"), a Maryland corporation, as advancing agent (herein, together with its permitted successors and assigns in the trusts hereunder, called the "Advancing Agent").

PRELIMINARY STATEMENT

The Issuer is duly authorized to execute and deliver this Indenture to provide for the Notes issuable as provided in this Indenture. The Co-Issuer is duly authorized to execute and deliver this Indenture to provide for the Notes issuable as provided in this Indenture. All covenants and agreements made by the Issuer and Co-Issuer herein are for the benefit and security of the Noteholders, each Hedge Counterparty and the Trustee, as applicable. The Issuer, the Co-Issuer, LaSalle Bank National Association in its capacity other than as Trustee and the Advancing Agent are entering into this Indenture, and the Trustee is accepting the trusts created hereby, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Issuer and Co-Issuer in accordance with this Indenture's terms have been done.

GRANTING CLAUSES

The Issuer hereby Grants to the Trustee, for the benefit and security of the Noteholders and each Hedge Counterparty, all of its right, title and interest in, to and under, in each case, whether now owned or existing, or hereafter acquired or arising (other than Excepted Assets, the Preferred Shares Distribution Account and amounts in the Preferred Shares Distribution Account), (a) the Collateral Debt Securities listed in the Schedule of Closing Date Collateral Debt Securities which the Issuer purchases on the Closing Date and causes to be delivered to the Trustee (directly or through an agent or bailee) herewith, all payments thereon or with respect thereto and all Collateral Debt Securities which are delivered to the Trustee (directly or through an agent or bailee) after the Closing Date pursuant to the terms hereof (including the Collateral Debt Securities listed, as of the Effective Date, on the Schedule of Closing Date Collateral Debt Securities delivered by the Issuer pursuant to Section 7.17) and all payments thereon or with respect thereto, (b) the rights of the Issuer under each Hedge Agreement, (c) the Payment Account, the Interest Collection Account, the Principal Collection Account, the Expense Account, the Unused Proceeds Account, the Delayed Funding Obligations Account, each Hedge Collateral Account, each Hedge Termination Account and Eligible Investments purchased with funds on deposit therein, the Custodial Account and all related security entitlements and all income from the investment of funds in any of the foregoing, (d) the rights of the Issuer under each Collateral Debt Securities Purchase Agreement (including any Collateral

Debt Securities Purchase Agreement entered into after the Closing Date) and the Collateral Management Agreement (e) all Cash or Money delivered to the Trustee (or its bailee) in respect of the Notes or the Assets, (f) all other investment property, accounts, instruments and general intangibles in which the Issuer has an interest, other than the Excepted Assets and the amounts in the Preferred Shares Distribution Account, and (g) all proceeds with respect to the foregoing clauses (a)-(f). The collateral described in the foregoing clauses (a)-(g) is referred to as the "Assets." Such Grants are made, however, in trust, to secure the Notes and each Hedge Agreement, subject to the Priority of Payments, equally and ratably without prejudice, priority or distinction between any Note and any other Note by reason of difference in time of issuance or otherwise, except as expressly provided in this Indenture, and to secure (i) the payment of all amounts due on and in respect of the Notes and each Hedge Agreement in accordance with their terms, (ii) the payment of all other sums payable under this Indenture and (iii) compliance with the provisions of this Indenture, all as provided in this Indenture. For the avoidance of doubt, the Assets shall not include the Excepted Assets and any amounts in the Preferred Shares Distribution Account. The foregoing Grant shall, for the purpose of determining the property subject to the lien of this Indenture (but not for the purpose of determining compliance with any of the Coverage Tests or compliance by the Issuer with any of the other provisions hereof), be deemed to include any securities and any investments granted by or on behalf of the Issuer to the Trustee for the benefit of the Noteholders and each Hedge Counterparty, whether or not such securities or such investments satisfy the criteria set forth in the definitions of

"Collateral Debt Security" or "Eligible Investment," as the case may be.

Except to the extent otherwise provided in this Indenture, this Indenture shall constitute a security agreement under the laws of the State of New York applicable to agreements made and to be performed therein, for the benefit of the Noteholders and each Hedge Counterparty. Upon the occurrence and during the continuation of any Event of Default hereunder, and in addition to any other rights available under this Indenture or any other Assets held for the benefit and security of the Noteholders and each Hedge Counterparty or otherwise available at law or in equity but subject to the terms hereof, the Trustee shall have all rights and remedies of a secured party on default under the laws of the State of New York and other applicable law to enforce the assignments and security interests contained herein and, in addition, shall have the right, subject to compliance with any mandatory requirements of applicable law and the terms of this Indenture, to sell or apply any rights and other interests assigned or pledged hereby in accordance with the terms hereof at public and private sale.

The Trustee acknowledges such Grants, accepts the trusts hereunder in accordance with the provisions hereof, and agrees to perform the duties herein in accordance with, and subject to, the terms hereof, in order that the interests of the Noteholders and each Hedge Counterparty, as applicable, may be adequately and effectively protected in accordance with this Indenture.

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions.

Except as otherwise specified herein or as the context may otherwise require, the following terms have the respective meanings set forth below for all purposes of this Indenture, and the definitions of such terms are equally applicable both to the singular and plural forms of such terms and to the masculine, feminine and neuter genders of such terms. The word "including" and its variations shall mean "including without limitation." Whenever any reference is made to an amount the determination of which is governed by Section 1.2, the provisions of Section 1.2 shall be applicable to such determination or calculation, whether or not reference is specifically made to Section 1.2, unless some other method of calculation or determination is expressly specified in the particular provision. All references in this instrument to designated "Articles," "Sections," "Subsections" and other subdivisions are to the designated Articles, Sections, Subsections and other subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section, Subsection or other subdivision.

"10% Limit": The meaning specified in Section 12.1(b) hereof.

"25 Broad Asset": The Collateral Debt Security relating to the $18,000,000 principal amount Loan in respect of a property located on 25 Broad Street in New York, New York.

"Above Cap Security": Any Collateral Debt Security, which initially bore interest based upon a floating rate index subject to a cap (which, if exceeded, would cause such Collateral Debt Security to bear interest at a fixed rate) and which currently bears interest at a fixed rate as a result of such cap being exceeded, but only for so long as such cap is exceeded.

"A Note": A promissory note secured by a mortgaged property that is not subordinatein right of payment to any separate promissory note secured by the same mortgaged property.

"Accountants' Report": A report of a firm of Independent certified public accountants of recognized national reputation appointed by the Issuer pursuant to Section 10.11(a), which may be the firm of independent accountants that reviews or performs procedures with respect to the financial reports prepared by the Issuer or the Collateral Manager.

"Account": Any of the Interest Collection Account, the Principal Collection Account,the Unused Proceeds Account, the Delayed Funding Obligations

Account, the Payment Account, the Expense Account, the Custodial Account, each Hedge Termination Account, the Preferred Shares Distribution Account and each Hedge Collateral Account, and any subaccount thereof that the Trustee deems necessary or appropriate.

"Accounts Receivable": The meaning specified in Section 3.3(a)(vi).

"Act" or "Act of Securityholders": The meaning specified in Section 14.2 hereof.

"Advancing Agent": Arbor Realty SR, Inc., unless a successor Person shall have become the Advancing Agent pursuant to the applicable provisions of this Indenture, and thereafter "Advancing Agent" shall mean such successor Person.

"Advancing Agent Fee": The fee payable quarterly in arrears on each Payment Date to the Advancing Agent in accordance with the Priority of Payments, equal to 0.07% per annum on the Aggregate Outstanding Amount of the Class A Notes and the Class B Notes on such Payment Date prior to giving effect to distributions with respect to such Payment Date.

"Advisers Act": The Investment Advisers Act of 1940, as amended.

"Advisory Committee": The meaning specified in the Collateral Management Agreement.

"Affiliate" or "Affiliated": With respect to a Person, (i) any other Person who, directly or indirectly, is in control of, or controlled by, or is under common control with, such Person or (ii) any other Person who is a director, Officer or employee (a) of such Person, (b) of any subsidiary or parent company of such Person or (c) of any Person described in clause (i) above. For the purposes of this definition, control of a Person shall mean the power, direct or indirect, (i) to vote more than 50% of the securities having ordinary voting power for the election of directors of such Persons, or (ii) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise; provided, that neither the Company Administrator nor any other company, corporation or person to which the Company Administrator provides direction and/or acts as share trustee shall be an Affiliate of the Issuer or Co-Issuer and provided, further, that neither the Collateral Manager, the Arbor Parent nor any of the Arbor Parent's subsidiaries shall be deemed to be Affiliates of the Issuer.

"Agent Members": Members of, or participants in, the Depository, Clearstream, Luxembourg or Euroclear.

"Aggregate Collateral Balance": The aggregate Principal Balance of (i) Collateral Debt Securities, (ii) Eligible Investments purchased with Principal Proceeds and (iii) Eligible Investments purchased with monies on deposit in the Unused Proceeds Account that have not been designated as Interest Proceeds by the Collateral Manager pursuant to Section 10.4(c).

"Aggregate Outstanding Amount": With respect to any Class or Classes of the Notes,the aggregate principal balance (excluding any Class C Capitalized Interest and any Class D Capitalized Interest, as the case may be) of such Class or Classes Outstanding at the date of determination.

"Aggregate Principal Balance": When used with respect to any Pledged Collateral Debt Securities as of any date of determination, the sum of the Principal Balances on such date of determination of all such Pledged Collateral Debt Securities.

"Applicable Recovery Rate": Shall mean the lowest of the Moody's Recovery Rate, the Fitch Applicable Recovery Rate and the S&P Recovery Rate, as applicable.

"Arbor Parent": The meaning specified in the first paragraph of this Agreement.

"ARD Loan": A Loan with an anticipated repayment date, after which (if not repaid in full by such anticipated repayment date) the loan provides for changes in payments and accrual of interest.

"ARMS Equity": ARMS 2004-1 Equity Holdings LLC, a Delaware limited liability company and a wholly-owned subsidiary of the Arbor Parent which is disregarded as an entity separate from the Arbor Parent for U.S. federal income tax purposes.

"Article 15 Agreement": The meaning specified in Section 15.1(a) hereof.

"Asset Specific Hedge": Any agreement, in the form of an interest rate exchange agreement, between the Issuer and a Hedge Counterparty that is entered into by the Issuer in connection with the purchase or holding of (i) a Fixed Rate Security or (ii) a Floating Rate Security that bears interest upon a floating rate index other than LIBOR, and which, in each case, entitles the Issuer to receive from the related Hedge Counterparty payments based on LIBOR at prevailing market rates, as determined by the Collateral Manager at the date of execution of such agreement. In addition to the foregoing, each Asset Specific Hedge will be subject to the following conditions:

(a) the notional balance of each Asset Specific Hedge shall be equal to the scheduled principal amount of the Collateral Debt Security to which it is related;

(b) each Asset Specific Hedge (A) will amortize according to the same schedule as, and terminate on the maturity date (or, in the case of an ARD Loan, on the anticipated repayment date) of, the Collateral Debt Security to which it is related and (B) any such amounts so payable shall be paid in accordance with the Priority of Payments ;

(c) the payment dates of the Asset Specific Hedgemust match the payment dates of either the Collateral Debt Security to which it is related or the Payment Dates for the Notes;

(d) if the Collateral Debt Security related to anAsset Specific Hedge (i) is a Defaulted Security, or (ii) is sold by the Issuer, such Asset Specific Hedge shall be terminated; provided that if any unscheduled amount is payable by the Issuer under the related Hedge Agreement solely as a result of the early termination of such Asset Specific Hedge and is not offset by any amount payable by the relevant Hedge Counterparty, (A) such Asset Specific Hedge may only be terminated if the Rating Agency Condition shall have been satisfied in connection with such termination; and (B) such Hedge Payment Amount shall be paid in accordance with the Priority of Payments;

(e) if the Collateral Debt Security related to such Asset Specific Hedge is not aDefaulted Obligation and such Collateral Debt Security is called or prepaid, such Asset Specific Hedge shall be terminated; provided that if any unscheduled Hedge Payment Amount is payable by the Issuer solely as a result of the early termination of such Asset Specific Hedge and is not offset by any amount payable by the relevant Hedge Counterparty, (A) such Asset Specific Hedge may only be terminated if the Rating Agency Condition with respect to Moody's and

S&P shall have been satisfied in connection with such termination and if Fitch shall have been given notice of such termination, (B) any such Hedge Payment Amount shall first be paid from any call, redemption and prepayment premiums received from such Collateral Debt Security, and (C) any remaining amount so payable shall be paid in accordance with the Priority of Payments;

(f) except upon satisfaction of the Rating Agency Condition with respect to Moody's and S&P, each Asset Specific Hedge entered into in respect of an ARD Loan will be for a term that terminates at least 3 years after the anticipated repayment date of such ARD Loan; and

(g) each Asset Specific Hedge will contain appropriate limited recourse and non-petition provisions equivalent (mutatis mutandis) to those contained in this Indenture.

"Assets": All property, rights, interests and assets described in clauses (a) through (g) inclusive of the first paragraph of the Granting Clause of this Indenture (other than Excepted Assets).

"Assumed Portfolio": The portfolio with characteristics developed in accordance with the Eligibility Criteria and Collateral Quality Tests for purposes of determining the Class A Break Even Loss Rate, the Class B Break-Even Loss Rate, the Class C Break-Even Loss Rate and the Class D Break-Even Loss Rate.

"Auction": Any auction conducted in connection with an Auction Call Redemption.

"Auction Bid Date": The meaning specified in Section 12.4(b)(ii) hereof.

"Auction Call Period": The meaning specified in Section 9.2(a) hereof.

"Auction Call Redemption": The meaning specified in Section 9.2(a) hereof.

"Auction Call Redemption Date": The meaning specified in Section 9.2(a) hereof.

"Auction Date": The meaning specified in Section 12.4(a)(i) hereof.

"Auction Procedures": The required procedures with respect to an Auction set forth in Section 12.4(b).

"Auction Purchase Agreement": The meaning specified in Section 12.4(a)(iii) hereof.

"Auction Purchase Closing Date": The meaning specified in Section 12.4(b)(v) hereof.

"Authenticating Agent": With respect to the Notes or a Class of the Notes, the Person designated by the Trustee to authenticate such Notes on behalf of the Trustee pursuant to Section 2.12 hereof.

"Authorized Officer": With respect to the Issuer or Co-Issuer, any Officer (or attorney-in-fact appointed by the Issuer or the Co-Issuer) who is authorized to act for the Issuer or Co-Issuer in matters relating to, and binding upon, the Issuer or Co-Issuer. With respect to the Collateral Manager, the persons listed on Schedule G hereto. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any person to act, and such certification may be considered as in full force and effect until receipt by such other party of written notice to the contrary.

"Average Life": On any Measurement Date with respect to any Collateral Debt Security (other than Defaulted Securities), the quotient obtained by dividing (i) the summing of the products of (a) the number of years (rounded to the nearest one tenth thereof) from such Measurement Date to the respective dates of each successive expected distribution of principal of such Collateral Debt Security and (b) the respective amounts of such expected distributions of principal by (ii) the sum of all successive expected distributions of principal on such Collateral Debt Security, calculated by the Collateral Manager.

"Back-Up Advancing Fee": The fee payable quarterly in arrears on each Payment Date to the Trustee in respect of its back-up advancing obligations under this Indenture in accordance with the Priority of Payments, equal to 0.00125% per annum on the Aggregate Outstanding Amount of the Class A Notes and the Class B Notes on such Payment Date prior to giving effect to distributions with respect to such Payment Date.

"Bailee Letter": The meaning specified in Section 12.4(b)(v) hereof.

"Bank": LaSalle Bank National Association, a national banking

association, in its individual capacity and not as Trustee and, if any Person is appointed as a successor Trustee, such Person in its individual capacity and not as Trustee.

"Bankruptcy Code": The federal Bankruptcy Code, Title 11 of the United States Code, as amended.

"Bearer Securities": The meaning specified in Section 3.3(iv).

"Benefit Plan": The meaning specified in Section 2.5(g)(vi) hereof.

"B Note": A promissory note secured by a mortgaged property that is subordinate in right of payment to one or more separate promissory notes (or other securities) secured by the same mortgaged property.

"Board of Directors": With respect to the Issuer, the directors of the Issuer duly appointed and, with respect to the Co-Issuer, the LLC Managers duly appointed by the sole member of the Co-Issuer or otherwise.

"Board Resolution": With respect to the Issuer, a resolution of the Board of Directors of the Issuer and, with respect to the Co-Issuer, a resolution or unanimous written consent of the LLC Managers or the sole member of the Co-Issuer.

"Business Day": Any day other than (i) a Saturday or Sunday and (ii) a day on which commercial banks are authorized or required by applicable law, regulation or executive order to close in New York, New York or the location of the Corporate Trust Office.

"Calculated Net Cash Flow": For any mortgaged property or group of related properties and any stated period of time, an estimate of the excess of (a) the excess of (i) annual revenues (including base rents, percentage rents, recoveries and other recurring income generated by such property or properties, net of vacancy and credit losses) for the stated period over (ii) expenses for the related property or properties for the stated period, over (b) the sum of estimated (i) replacement reserves, (ii) tenant improvements and leasing commission reserves and (iii) furniture, fixtures and equipment reserves, if applicable, calculated by the Collateral Manager.

"Calculation Agent": The meaning specified in Section 7.14(a) hereof.

"Calculation Amount": With respect to any Collateral Debt Security, at any time, the lesser of (a) the Market Value of such Collateral Debt Security and (b) the Applicable Recovery Rate multiplied by the Principal Balance of such Collateral Debt Security.

"Cash": Such coin or currency of the United States of America as at the time shall belegal tender for payment of all public and private debts.

"Cash Flow Swap Agreement": Any Hedge Agreement entered into by the Issuer with a Hedge Counterparty to manage potential mismatches between the timing of receipts of interest on the Collateral Debt Securities and Eligible Investments and the timing of interest payments due on the Notes, including an agreement to convert the periodicity of payments on Collateral Debt Securities, pursuant to which the Issuer shall be entitled to receive payments from the related Hedge Counterparty on a certain date in exchange for the Issuer's obligation to make payments to such Hedge Counterparty on one or more Payment Dates to the extent that funds are available therefor pursuant to Section 11.1(a).

"Cash Flow Swap Counterparty": Any Hedge Counterparty with whom the Issuer enters into a Cash Flow Swap Agreement.

"Certificate of Authentication": The meaning specified in Section 2.1 hereof.

"Certificated Security": A "certificated security" as defined in Section 8-102(a)(4) of the UCC.

"Class": The Class A Notes, the Class B Notes, the Class C Notes or

the Class D Notes, as applicable.

"Class A Break-Even Loss Rate": At any time, the maximum percentage of defaults that the Assumed Portfolio should be able to sustain, which after giving effect to S&P's assumptions on recoveries and timing and to the Priority of Payments, will result in sufficient funds remaining for the timely payment of interest and the ultimate payment of principal of the Class A Notes.

"Class A Defaulted Interest Amount": As of each Payment Date, the accrued and unpaid amount due to holders of the Class A Notes on account of any shortfalls in the payment of the Class A Interest Distribution Amount with respect to any preceding Payment Date or Payment Dates, together with interest accrued thereon (to the extent lawful).

"Class A Interest Distribution Amount": On each Payment Date, the amount due to Holders of the Class A Notes on account of interest equal to the product of (i) the Aggregate Outstanding Amount of the Class A Notes with respect to the related Interest Accrual Period, (ii) the actual number of days in such Interest Accrual Period divided by 360 and (iii) the Class A Rate.

"Class A Loss Differential": At any time, the rate calculated by subtracting the Class A Scenario Loss Rate from the Class A Break-Even Loss Rate at such time.

"Class A Notes": The Class A Senior Secured Floating Rate Term Notes Due 2040, issued by the Issuer and the Co-Issuer pursuant to this Indenture.

"Class A Rate": With respect to any Class A Note, the per annum rate at which interest accrues on such Note for any Interest Accrual Period, which shall be equal to LIBOR for the related Interest Accrual Period plus 0.45% per annum.

"Class A Redemption Price": The Redemption Price for the Class A Notes as specified under the definition of "Redemption Price."

"Class A Scenario Loss Rate": At any time, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with a rating of "AAA" of the Class A Notes by S&P, determined by application of the S&P CDO Monitor at such time.

"Class A/B Coverage Tests": The Class A/B Par Value Test and the Class A/B Interest Coverage Test.

"Class A/B Interest Coverage Ratio": The meaning specified under the definition of "Interest Coverage Ratio."

"Class A/B Interest Coverage Test": The test that is met as of any Measurement Date on which any Class A Notes or Class B Notes remain outstanding if the Class A/B Interest Coverage Ratio as of such Measurement Date is equal to or greater than 250%.

"Class A/B Par Value Ratio": As of any Measurement Date, the number (expressed as a percentage) calculated by dividing (a) the Net Outstanding Portfolio Balance on such Measurement Date by (b) the sum of the Aggregate Outstanding Amount of the Class A Notes and the Class B Notes and the amount of any unreimbursed Interest Advances.

"Class A/B Par Value Test": The test that will be met as of any Measurement Date on which any Class A Notes or Class B Notes remain outstanding if the Class A/B Par Value Ratio on such Measurement Date is equal to or greater than 184%.

"Class B Break-Even Loss Rate": At any time, the maximum percentage of defaults that the Assumed Portfolio should be able to sustain, which after giving effect to S&P's assumptions on recoveries and timing and to the Priority of Payments, will result in sufficient funds remaining for the timely payment of interest and the ultimate payment of principal of the Class B Notes.

"Class B Defaulted Interest Amount": As of each Payment Date, the accrued and unpaid amount due to holders of the Class B Notes on account of any shortfalls in the payment of the Class B Interest Distribution Amount with respect to any preceding Payment Date or Payment Dates, together with interest accrued thereon (to the extent lawful).

"Class B Interest Distribution Amount": On each Payment Date, the amount due to Holders of the Class B Notes on account of interest equal to the product of (i) the Aggregate Outstanding Amount of the Class B Notes with respect to the related Interest Accrual Period, (ii) the actual number of days in such Interest Accrual Period divided by 360 and (iii) the Class B Rate.

"Class B Loss Differential": At any time, the rate calculated by subtracting the Class B Scenario Loss Rate from the Class B Break-Even Loss Rate at such time.

"Class B Notes": The Class B Second Priority Floating Rate Term Notes Due 2040, issued by the Issuer and the Co-Issuer pursuant to this Indenture.

"Class B Rate": With respect to any Class B Note, the per annum rate at which interest accrues on such Note for any Interest Accrual Period, which shall be equal to LIBOR for the related Interest Accrual Period plus 0.63% per annum.

"Class B Redemption Price": The Redemption Price for the Class B Notes as specified under the definition of "Redemption Price."

"Class B Scenario Loss Rate": At any time, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with a rating of "AA" of the Class B Notes by S&P, determined by application of the S&P CDO Monitor at such time.

"Class B Subordinate Interests": The meaning specified in Section 13.1(a).

"Class C Break-Even Loss Rate": At any time, the maximum percentage of defaults that the Assumed Portfolio should be able to sustain, which after giving effect to S&P's assumptions on recoveries and timing and to the Priority of Payments, will result in sufficient funds remaining for the ultimate payment of interest and principal of the Class C Notes.

"Class C Capitalized Interest": The meaning specified in Section 2.7(c) hereof.

"Class C Coverage Tests": The Class C Par Value Test and the Class C Interest Coverage Test.

"Class C Defaulted Interest Amount": On or after any Payment Date on which no Class A Notes or Class B Notes are Outstanding, any interest on the Class C Notes (other than Class C Capitalized Interest) that is due and payable but is not punctually paid or duly provided for on or prior to the due date therefor and which remains unpaid, together with interest accrued thereon (to the extent lawful).

"Class C Interest Coverage Ratio": The meaning specified in the definition of "Interest Coverage Ratio."

"Class C Interest Coverage Test": The test that is met as of any Measurement Date on which any Class C Notes remain outstanding if the Class C Interest Coverage Ratio as of such Measurement Date is equal to or greater than 230%.

"Class C Interest Distribution Amount": On each Payment Date, the amount due to Holders of the Class C Notes on account of interest equal to the product of (i) the Aggregate Outstanding Amount (including any Class C Capitalized Interest) of the Class C Notes with respect to the related Interest Accrual Period, (ii) the actual number of days in such Interest Accrual Period divided by 360 and (iii) the Class C Rate.

"Class C Loss Differential": At any time, the rate calculated by subtracting the Class C Scenario Loss Rate from the Class C Break-Even Loss Rate at such time.

"Class C Notes": The Class C Third Priority Floating Rate Term Notes Due 2040, issued by the Issuer and the Co-Issuer pursuant to this Indenture.

"Class C Par Value Ratio": As of any Measurement Date, as of any Measurement Date, the number (expressed as a percentage) calculated by dividing (a) the Net Outstanding Portfolio Balance on such Measurement Date by (b) the sum of the Aggregate Outstanding Amount (including any Class C Capitalized Interest) of the Class A Notes, the Class B Notes and the Class C Notes and the amount of any unreimbursed Interest Advances.

"Class C Par Value Test": The test that is met as of any Measurement Date on which any Class C Notes remain outstanding if the Class C Par Value Ratio on such Measurement Date is equal to or greater than 154%.

"Class C Rate": With respect to any Class C Note, the per annum rate at which interest accrues on such Note for any Interest Accrual Period, which shall be equal to LIBOR for the related Interest Accrual Period plus 1.25% per annum.

"Class C Redemption Price": The Redemption Price for the Class C Notes as specified under the definition of "Redemption Price."

"Class C Scenario Loss Rate": At any time, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with a rating of "A-" of the Class C Notes by S&P, determined by application of the S&P CDO Monitor at such time.

"Class C Scheduled Amortization Amount": With respect to each Payment Date occurring during the period from (and including) April 2005 to (and including) January 2009, an amount up to $1,423,827 in respect of each such Payment Date, to be applied toward amortizing the principal amount of the Class C Notes on such Payment Date on a noncumulative basis and only to the extent that funds are available for such purpose in accordance with Section 11.1(a).

"Class C Subordinate Interests": The meaning specified in Section 13.1(b).

"Class D Break-Even Loss Rate": At any time, the maximum percentage of defaults that the Assumed Portfolio should be able to sustain, which after giving effect to S&P's assumptions on recoveries and timing and to the Priority of Payments, will result in sufficient funds remaining for the ultimate payment of interest and principal of the Class D Notes.

"Class D Capitalized Interest": The meaning specified in Section 2.7(d) hereof.

"Class D Coverage Tests": The Class D Par Value Test and the Class D Interest Coverage Test.

"Class D Defaulted Interest Amount": On or after any Payment Date on which no Class A Notes, Class B Notes or Class C Notes are Outstanding, any interest on the Class D Notes (other than Class D Capitalized Interest) that is due and payable but is not punctually paid or duly provided for on or prior to the due date therefor and which remains unpaid, together with interest accrued thereon (to the extent lawful).

"Class D Interest Coverage Ratio": The meaning specified in the definition of "Interest Coverage Ratio."

"Class D Interest Coverage Test": The test that is met as of any Measurement Date on which any Class D Notes remain outstanding if the Class D Interest Coverage Ratio as of such Measurement Date is equal to or greater than 200%.

"Class D Interest Distribution Amount": On each Payment Date, the amount due to Holders of the Class D Notes on account of interest equal to the product of (i) the Aggregate Outstanding Amount (including any Class D

Capitalized Interest) of the Class D Notes with respect to the related Interest Accrual Period, (ii) the actual number of days in such Interest Accrual Period divided by 360 and (iii) the Class D Rate.

"Class D Loss Differential": At any time, the rate calculated by subtracting the Class D Scenario Loss Rate from the Class D Break-Even Loss Rate at such time.

"Class D Notes": The Class D Fourth Priority Floating Rate Term Notes Due 2040, issued by the Issuer and the Co-Issuer pursuant to this Indenture.

"Class D Par Value Ratio": As of any Measurement Date, the number (expressed as a percentage) calculated by dividing (a) the Net Outstanding Portfolio Balance on such Measurement Date by (b) the Aggregate Outstanding Amount (including any Class C Capitalized Interest or Class D Capitalized Interest) of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes and the amount of any unreimbursed Interest Advances.

"Class D Par Value Test": The test that is met as of any Measurement Date on which any Class D Notes remain outstanding if the Class D Par Value Ratio on such Measurement Date is equal to or greater than 145%.

"Class D Rate": With respect to any Class D Note, the per annum rate at which interest accrues on such Note for any Interest Accrual Period, which shall be equal to LIBOR for the related Interest Accrual Period plus 2.85% per annum.

"Class D Redemption Price": The Redemption Price for the Class D Notes, as specified under the definition of "Redemption Price."

"Class D Scenario Loss Rate": At any time, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with a rating of "BBB" of the Class D Notes by S&P, determined by application of the S&P CDO Monitor at such time.

"Class D Scheduled Amortization Amount": With respect to each Payment Date occurring during the period from (and including) April 2005 to (and including) January 2009, an amount up to $576,173 in respect of each such Payment Date, to be applied toward amortizing the principal amount of the Class D Notes on such Payment Date on a noncumulative basis and only to the extent that funds are available for such purpose in accordance with Section 11.1(a).

"Class D Subordinate Interests": The meaning specified in Section 13.1(c).

"Clean-up Call": The meaning specified in Section 9.1 hereof.

"Clearing Agency": An organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

"Clearing Corporation": The meaning specified in Section 8-102(a)(5) of the UCC.

"Clearing Corporation Security": A security subject to book-entry transfers and pledges deposited with the Clearing Agency.

"Clearstream, Luxembourg": Clearstream Banking, societe anonyme, a limited liability company organized under the laws of the Grand Duchy of Luxembourg.

"Closing": The transfer of any Note to the initial registered Holder of such Note.

"Closing Date": January 19, 2005.

"CMBS Conduit Securities": Collateral Debt Securities (A) issued by a single-seller or multi-seller conduit under which the holders of such Collateral Debt Securities have recourse to a specified pool of assets (but not other assets held by the conduit that support payments on other series of securities) and (B) that entitle the holders thereof to receive payments that

depend (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) on the cash flow from a pool

of commercial mortgage loans generally having the following characteristics: (1) the commercial mortgage loans have varying contractual maturities; (2) the commercial mortgage loans are secured by real property purchased or improved with the proceeds thereof (or to refinance an outstanding loan the proceeds of which were so used); (3) the commercial mortgage loans are obligations of a relatively limited number of obligors (with the creditworthiness of individual obligors being less material than for CMBS Large Loan Securities) and accordingly represent a relatively undiversified pool of obligor credit risk; (4) upon original issuance of such Collateral Debt Securities no five commercial mortgage loans account for more than 20% of the aggregate principal balance of the entire pool of commercial mortgage loans supporting payments on such securities; and (5) repayment thereof can vary substantially from the contractual payment schedule (if any), with early prepayment of individual loans depending on numerous factors specific to the particular obligors and upon whether, in the case of loans bearing interest at a fixed rate, such loans or securities include an effective prepayment premium.

"CMBS Large Loan Securities": Collateral Debt Securities (other than CMBS Conduit Securities) that entitle the holders thereof to receive payments that depend (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) on the cash flow from a pool of commercial mortgage loans made to finance the acquisition, construction and improvement of properties. They generally have the following characteristics: (1) the commercial mortgage loans have varying contractual maturities; (2) the commercial mortgage loans are secured by real property purchased or improved with the proceeds thereof (or to refinance one or more outstanding loans the proceeds of which were so used); (3) the commercial mortgage loans are obligations of a relatively limited number of obligors and accordingly represent a relatively undiversified pool of obligor credit risk; (4) repayment thereof can vary substantially from the contractual payment schedule (if any), with early prepayment of individual loans depending on numerous factors specific to the particular obligors and upon whether, in the case of loans bearing interest at a fixed rate, such loans or securities include an effective prepayment premium; and (5) the valuation of individual properties securing the commercial mortgage loans is the primary factor in any decision to invest in those securities.

"CMBS Security": A CMBS Conduit Security or a CMBS Large Loan Security, as the case may be, but excluding any Single Asset Mortgage Security, Single Borrower Mortgage Security or Rake Bond.

"Co-Issuer": Arbor Realty Mortgage Securities Series 2004-1 LLC, a limited liability company formed under the laws of Delaware, until a successor Person shall have become the Co-Issuer pursuant to the applicable provisions of this Indenture, and thereafter "Co-Issuer" shall mean such successor Person.

"Co-Issuers": The Issuer and the Co-Issuer.

"Code": The United States Internal Revenue Code of 1986, as amended.

"Collateral Debt Securities Purchase Agreements": Any collateral debt securitiespurchase agreements entered into on or about the Closing Date and any other collateral debt securities purchase agreements entered into after the Closing Date if a purchase agreement is

necessary to comply with this Indenture, which agreement is assigned to the Trustee pursuant to this Indenture.

"Collateral Debt Security" and "Collateral Debt Securities": Any Specified Type of asset owned by the Issuer (including those acquired after the Closing Date) that complies with the Eligibility Criteria (other than Eligible Investments).

"Collateral Manager": Arbor Realty Collateral Management, LLC, each of Arbor Realty Collateral Management, LLC's permitted successors and assigns or any successor Person that shall have become the Collateral Manager pursuant to the provisions of the Collateral Management Agreement and thereafter "Collateral Manager" shall mean such successor Person.

"Collateral Management Agreement": The Collateral Management Agreement, dated as of the Closing Date, by and between the Issuer and the Collateral Manager, as amended, supplemented or otherwise modified from time to time in accordance with its terms.

"Collateral Management Fee": The Senior Collateral Management Fee and the Subordinate Collateral Management Fee.

"Collateral Manager Servicing Standard": With respect to the Collateral Manager, to manage the Collateral Debt Securities that such Person is obligated to service and administer pursuant to this Indenture and the Collateral Management Agreement (i) in accordance with (A) the higher of the following standards of care: (1) customary and usual standards of practice of prudent institutional commercial mortgage lenders servicing their own mortgage loans and (2) the same manner in which, and with the same care, skill, prudence and diligence with which, the Arbor Parent manages securities comparable to the Collateral Debt Securities for its own account, (B) applicable law and (C) the terms of this Indenture, the Collateral Management Agreement and the terms of the Collateral Debt Security and the related Underlying Instruments and (ii) without regard to (A) any relationship, including as lender on any other debt, that the Collateral Manager or any Affiliate of the Collateral Manager, may have with the underlying borrower, or any Affiliate of the borrower, or any other party to this Indenture (or any agreements relating to the Indenture); (B) the obligation of the Collateral Manager to make Cure Advances; (C) the right of the Collateral Manager or any Affiliate thereof, to receive compensation or reimbursement of costs hereunder generally or with respect to any particular transaction (including, without limitation, any transaction related to the Collateral Management Agreement); and (D) the ownership, servicing or management for others of any security not subject to this Indenture by the Collateral Manager or any Affiliate thereof or the obligation of any Affiliate of the Collateral Manager to repurchase the Collateral Debt Security.

"Collateral Quality Test": The test satisfied if, as of any Measurement Date, in the aggregate, the Collateral Debt Securities purchased or irrevocably committed to be purchased (and not sold) comply with all of the requirements set forth below:

(i) not more than 10% of the Aggregate Collateral Balance of Collateral Debt Securities with payments less frequently than quarterly are not

covered by a Cash Flow Swap Agreement obtained by the Collateral Manager for the Issuer;

(ii) not more than 25% of the Aggregate Collateral Balance consists of Collateral Debt Securities (other than CMBS Securities and REIT Debt Securities) backed or otherwise invested in properties located in any single U.S. state, except that (A) up to 60% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CMBS Securities and REIT Debt Securities) backed or otherwise invested in properties located in the State of New York, (B) up to 35% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CMBS Securities and REIT Debt Securities) backed or otherwise invested in properties located in the State of California, (C) up to 30% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CMBS Securities and REIT Debt Securities) backed or otherwise invested in properties located in the District of Columbia and (D) up to 30% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CMBS Securities and REIT Debt Securities) backed or otherwise invested in properties located in the State of Florida;

(iii) not more than 15% of the Aggregate Collateral Balance consists of CMBS Securities and REIT Debt Securities;

(iv) the Aggregate Principal Balance of all Collateral Debt Securities issued by any single issuer does not exceed either (A) $45,000,000 or (B) 15% of the Aggregate Collateral Balance (provided that, for avoidance of doubt, with respect to any Loan, the issuer of such Loan shall be deemed to be the borrower of such Loan);

(v) no more than 75% of the Aggregate Collateral Balance consists of CMBS Securities issued in any single calendar year;

(vi) not more than 10% of the Aggregate Collateral Balance consists of Collateral Debt Securities (other than CMBS Securities and REIT Debt Securities) that are collateralized or backed by interests on any single Property Type; provided that (A) not more than 60% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CMBS Securities and REIT Debt Securities) that are collateralized or backed by interests on any Urban Office Property or Suburban Office Property; (B) not more than 50% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CMBS Securities and REIT Debt Securities) that are collateralized or backed by interests on any Multi-Family Properties; (C) not more than 45% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CMBS Securities and REIT Debt Securities) that are collateralized or backed by interests on Retail Properties; (D) not more than 30% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CMBS Securities and REIT Debt Securities) that are collateralized or backed by interests on Industrial

Properties; and (E) not more than 20% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CMBS Securities and REIT Debt Securities) that are collateralized or backed by interests on Hospitality Properties.

(vii) not more than 10% of the Aggregate Collateral Balance consists of Floating Rate Securities that bear interest based upon a floating rate index other than LIBOR and that are not subject to Asset Specific Hedges;

(viii) not more than 25% of the Aggregate Collateral Balance consists of Fixed Rate Securities that are not subject to Asset Specific Hedges;

(ix) not more than 10% of the Aggregate Collateral Balance consists of unfunded portions of Delayed Draw Term Loans;

(x) the Moody's Weighted Average Rating Factor/Weighted Average Recovery Rate Test is satisfied;

(xi) the Moody's Weighted Average Initial Maturity Test is satisfied;

(xii) the Moody's Weighted Average Extended Maturity Test is satisfied;

(xiii) the Herfindahl Diversity Test is satisfied;

(xiv) the Minimum Weighted Average Coupon Test is satisfied;

(xv) the Minimum Weighted Average Spread Test is satisfied;

(xvi) the Weighted Average Life Test is satisfied;

(xvii) the S&P CDO Monitor Test is satisfied;

(xviii) the S&P Recovery Test is satisfied; and

(xix) the Fitch Maximum Rating Factor Test is satisfied.

"Collection Accounts": The trust accounts so designated and

established pursuant to Section 10.2(a) hereto.

"Company Administration Agreement": The administration agreement dated on or about the Closing Date by and among the Issuer and the Company Administrator, as modified and supplemented and in effect from time to time.

"Company Administrative Expenses": All fees, expenses and other amounts due or accrued with respect to any Payment Date and payable by the Issuer or the Co-Issuer to (i) the Trustee pursuant to this Indenture or the Trustee Fee Proposal or any co-trustee appointed pursuant to this Indenture (including amounts payable by the Issuer as indemnification pursuant to this Indenture), (ii) the Company Administrator under the Company Administration Agreement (including amounts payable by the Issuer as indemnification pursuant to the

Company Administration Agreement) and to provide for the costs of liquidating the Issuer following redemption of the Notes, (iii) the LLC Managers (including indemnification), (iv) the Independent accountants, agents and counsel of the Issuer for reasonable fees and expenses (including amounts payable in connection with the preparation of tax forms on behalf of the Issuer and the Co-Issuer) and any registered office and government filing fees, (v) the Rating Agencies for fees and expenses in connection with any rating (including the annual fee payable with respect to the monitoring of any rating) of the Notes, including fees and expenses due or accrued in connection with any credit estimate or rating of the Collateral Debt Securities, (vi) the Collateral Manager under this Indenture and the Collateral Management Agreement, (vii) the Collateral Manager or other Persons as indemnification pursuant to the Collateral Management Agreement, (viii) the Advancing Agent or other Persons as indemnification pursuant to Section 18.3(x), (ix) each member of the Advisory Committee (including amounts payable as indemnification) under each agreement between such Advisory Committee member and the Issuer (and the amounts payable by the Issuer to each member of the Advisory Committee as indemnification pursuant to each such agreement); (x) the Preferred Shares Paying Agent under the Preferred Shares Paying Agency Agreement, (xi) any other Person in respect of any governmental fee, charge or tax in relation to the Issuer or the Co-Issuer (in each case as certified by an Authorized Officer of the Issuer or the Co-Issuer to the Trustee), and (xii) any other Person in respect of any other fees or expenses (including indemnifications) permitted under this Indenture and the documents delivered pursuant to or in connection with this Indenture and the Notes; provided that Company Administrative Expenses shall not include (a) amounts payable in respect of the Notes, (b) amounts payable under any Hedge Agreement and (c) any Collateral Management Fee payable pursuant to the Collateral Management Agreement.

"Company Administrator": Maples Finance Limited, as administrator pursuant to the Company Administration Agreement, unless a successor Person shall have become administrator pursuant to the Company Administration Agreement, and thereafter, Company Administrator shall mean such successor Person.

"Controlling Class": The Class A Notes, so long as any Class A Notes are Outstanding, then the Class B Notes, so long as Class B Notes are Outstanding, then the Class C Notes, so long as any Class C Notes are Outstanding, then the Class D Notes, so long as any Class D Notes are Outstanding and after the Notes are no longer Outstanding, the Preferred Shares.

"Corporate Trust Office": The principal corporate trust office of the Trustee, currently located at 135 South LaSalle Street, Suite 1625, Chicago, IL 60603, Attention: CDO Trust Services Group, Arbor Realty Mortgage Securities Series 2004-1, Ltd., or such other address as the Trustee may designate from time to time by notice to the Noteholders, the holders of the Preferred Shares, the Collateral Manager, the Rating Agencies, the Issuer and each Hedge Counterparty or the principal corporate trust office of any successor Trustee.

"Coverage Tests": The Class A/B Coverage Tests, the Class C Coverage Tests and the Class D Coverage Tests.

"Covered Fixed Rate Security": Any Fixed Rate Security (including any Above Cap Security) (i) for which the Issuer has entered into one or more interest rate swap agreements

(either individually or together with other Collateral Debt Securities), which (A) is a market rate swap that does not require the related Hedge Counterparty to make any upfront payments, (B) has a term which is at least as long as the expected maturity of such Fixed Rate Security, (C) requires the related Hedge Counterparty to make floating rate payments to the Issuer based on the related notional amount equal to the London interbank offered rate for U.S. Dollar deposits in Europe and (D) requires the Issuer to make fixed rate payments to the related Hedge Counterparty or (ii) that is subject to an Asset-Specific Hedge.

"Credit Risk/Defaulted Security Cash Purchase": The meaning specified in Section 12.1(b) hereof.

"Credit Risk Security": Any Collateral Debt Security that, in the Collateral Manager's reasonable business judgment, has a significant risk of declining in credit quality or, with a lapse of time, becoming a Defaulted Security.

"Cure Advance": An advance by the Collateral Manager, in connection with the exercise of a cure right by the Issuer, as controlling holder or directing holder or other similar function, with respect to a Collateral Debt Security.

"Current Portfolio": The portfolio of Collateral Debt Securities and Eligible Investments prior to giving effect to a proposed reinvestment in a Substitute Collateral Debt Security.

"Custodial Account": An account at the Custodial Securities Intermediary in the name of the Trustee pursuant to Section 10.1(b).

"Custodial Securities Intermediary": The meaning specified in Section 3.3(a) hereof.

"Default": Any Event of Default or any occurrence that is, or with notice or the lapse of time or both would become, an Event of Default.

"Defaulted Security": Any Collateral Debt Security or any other security included in the Assets:

(1) other than a Loan, CMBS Security or REIT Debt Security (i) with respect to which there has occurred and is continuing a payment default (after giving effect to any applicable grace period but without giving effect to any waiver); provided, however, that notwithstanding the foregoing, a Preferred Equity Security shall not be deemed to be a Defaulted Security as a result of (A) the related issuer's failure to pay dividends or distributions on the initial due date therefor, if the Collateral Manager or the Issuer consents to extend the due date when such dividend or distribution is due and payable, and such dividend or distribution is paid on or before such extended due date (provided that such dividend or distribution is paid not more than 60 days (or if the due date for such dividend or distribution was previously so extended, not more than 30 days) after the initial date that it was due), or (B) the failure of the issuer or affiliate of the issuer of the Preferred Equity Security to redeem or purchase such Preferred

Equity Security on the date when such redemption or purchase is required pursuant to the terms of the agreement setting forth the rights of the holder of that Preferred Equity Security (after giving effect to all extensions of such redemption or purchase date that the issuer or affiliate of the issuer of the Preferred Equity Security had the right to elect and did elect under the terms of the agreement setting forth the rights of the holder of that Preferred Equity Security), if the Collateral Manager or the Issuer consents to extend such redemption or purchase date provided that such consent does not extend the redemption or purchase date by more than two years after the redemption or purchase date required under such

agreement (that is, the original redemption or purchase date under such agreement as extended by all extensions of such date that the issuer or affiliate of the issuer of the Preferred Equity Security had the right to elect and did elect under the terms of such agreement) and the amount required to be paid in connection with such redemption or purchase is paid on or before such extended redemption or purchase date, or (ii) with respect to which there is known to the Issuer or the Collateral Manager a default (other than any payment default) which default entitles the holders thereof to accelerate the maturity of all or a portion of the principal amount of such obligation; provided, however, in each case, if such default is cured or waived then such asset shall no longer be a Defaulted Security or (iii) with respect to which there is known to the Collateral Manager (A) any bankruptcy, insolvency or receivership proceeding has been initiated in connection with the issuer of such Collateral Debt Security, or (B) there has been proposed or effected any distressed exchange or other debt restructuring where the issuer of such Collateral Debt Security has offered the debt holders a new security or package of securities that either (x) amounts to a diminished financial obligation or (y) has the purpose of helping the issuer to avoid default, or (iv) that has been rated "CC", "D" or "SD" or below by S&P or "CC" or below by Fitch, or with respect to REIT Debt Securities, the issuer of which has a credit rating of "D" or "SD" or to which S&P has withdrawn its rating or (v) there is known to the Collateral Manager that the issuer thereof is in default (without giving effect to any applicable grace period or waiver) as to payment of principal and/or interest on another obligation (and such default has not been cured or waived) which is senior or pari passu in right of payment to such Collateral Debt Security, except that a Collateral Debt Security will not constitute a "Defaulted Security" under this clause (v) if each of the Rating Agencies has confirmed in writing that such event shall not result in the reduction, qualification or withdrawal of any rating of the Notes;

(2) with respect to a Loan, if a foreclosure or default (whether or not declared) with respect to the related commercial mortgage loan has occurred; provided, however, that notwithstanding the foregoing, a Loan shall not be deemed to be a Defaulted Security as a result of (i) the related borrower's failure to pay interest on such Loan or on the related commercial mortgage loan on the initial due date therefor, if the related lender or holder of such Loan or the related commercial mortgage loan consents to extend the due date when such interest is due and payable, and such interest is paid on or before such extended due date (provided that such interest is paid not more than 60 days (or if the due

date for such interest was previously so extended, not more than 30 days) after the initial date that it was due), or (ii) the related borrower's failure to pay principal on such Loan or the related commercial mortgage loan on the original maturity date thereof (as defined below), if the related lender or holder of such Loan or the related commercial mortgage loan consents to extend such maturity date (so long as the Maturity Extension Requirements are met) and such principal is paid on or before such extended maturity date, or (iii) the occurrence of any default other than a payment default with respect to such Loan or the related commercial mortgage loan, unless and until the earlier of (A) declaration of default and acceleration of the maturity of the Loan by the lender or holder thereof and (B) the continuance of such default uncured for 60 days after such default became known to the Issuer or the Collateral Manager or, subject to the satisfaction of the Rating Agency Condition, such longer period as the Collateral Manager determines. As used herein, the term "original maturity date" means the maturity date of a Loan or the related commercial mortgage loan as extended by all extensions thereof which the related borrower had the right to elect and did elect under the terms of the instruments and agreements relating to such Loan or the related commercial mortgage loan, but before taking into account any additional extensions thereof that are consented to by the lender or holder of such Loan or the related commercial mortgage loan; and

(3) with respect to a CMBS Security or REIT Debt Security (i) as to which there has occurred and is continuing a principal payment default (without giving effect to any applicable grace period or waiver) or (ii) as to which there is known to the Issuer or the Collateral Manager a default (other than any payment default) which default entitles the holders thereof to accelerate the maturity of all or a portion of the principal amount of such obligation; provided, however, in each case, if such default is cured or waived then such asset shall no longer be a Defaulted Security or (iii) as to which there is known to the Collateral Manager (A) any bankruptcy, insolvency or receivership proceeding has been initiated in connection with the issuer of such CMBS Security or REIT Debt Security, or (B) there has been proposed or effected any distressed exchange or other debt re-structuring where the issuer of such CMBS Security or REIT Debt Security has offered the debt holders a new security or package of securities that either (x) amounts to a diminished financial obligation or (y) has the purpose of helping the issuer to avoid default, or (iv) that has been rated "CC", "D" or "SD" or below by S&P, "CC" or below by Fitch, or "Ca" or "C" by Moody's, or with respect to REIT Debt Securities, the issuer of which has a credit rating of "D" or "SD" or as to which S&P has withdrawn its rating or (v) as to which there is known to the Collateral Manager that the issuer thereof is in default (without giving effect to any applicable grace period or waiver) as to payment of principal and/or interest on another obligation (and such default has not been cured or waived) which is senior or pari passu in right of payment to such CMBS Security or REIT Debt Security, except that a CMBS Security or REIT Debt Security will not constitute a "Defaulted Security" under this clause (v) if each of the Rating Agencies has confirmed in writing that such event shall not result in the reduction, qualification or withdrawal of any rating of the Notes; or (vi) (A) as to which

there has been a failure to pay interest in whole or in part for the lesser of (x) six months or (y) three payment periods (if such CMBS Security or REIT Debt Security is rated (or privately rated for purposes of the issuance of the Securities) below "Baa3" by Moody's or "BBB-" by S&P or Fitch); provided, however, if the Rating Agency Condition for such CMBS Security or REIT Debt Security is satisfied with respect to S&P and Moody's, the Collateral Manager may choose not to treat such a CMBS Security or REIT Debt Security as a Defaulted Security or (B) as to which there has been a failure to pay interest in whole or in part for the lesser of (x) one year or (y) six consecutive payment periods (if such CMBS Security or REIT Debt Security is rated (or privately rated for purposes of the issuance of the Securities) "BBB-" or higher by S&P or Fitch, or "Baa3" or higher by Moody's) even if by its terms it provides for the deferral and capitalization of interest thereon.

provided, that any Collateral Debt Security which has sustained a write-down of principal balance in accordance with its terms will not necessarily be considered a Defaulted Security solely due to such writedown; provided, further, that for purposes of the Par Value Ratios, any Collateral Debt Security that has sustained an implied reduction of principal balance due to an appraisal reduction will not necessarily be considered a Defaulted Security solely due to such implied reduction.

For purposes of the definition of "Defaulted Security," the "Maturity Extension Requirements" will be satisfied with respect to any extension if the maturity date is extended (i) in the case of Loans other than ARD Loans, to a new maturity date that is (A) not more than two years after the original maturity date and (B) not later than 10 years prior to the Stated Maturity and (ii) in the case of ARD Loans, such that (A) the anticipated repayment date will not be less than 20 years prior to the Stated Maturity and (B) the new maturity date is not less than 3 years prior to the Stated Maturity; provided, however, that notwithstanding the requirements in the foregoing clauses (i) and (ii), "Maturity Extension Requirements" will be deemed satisfied with respect to any extensions as to which the Rating Agency Condition has been satisfied.

For the avoidance of doubt, the parties hereto understand and agree that any initial permissible 60 day extension period described in paragraphs (1) and (2) of this definition shall in no event be combined with any subsequent permissible 30 day extension period described in paragraphs (1) and (2) of this definition.

"Definitive Security": The meaning specified in Section 2.2(d) hereof.

"Delayed Draw Term Loan": Any Loan that is fully committed on the initial funding date of such Loan and is required to be fully funded in one or more installments but which, once all such installments have been made, has the characteristics of a term loan; provided, however, for purposes of the Coverage Tests and the Collateral Quality Tests, the principal balance of a Delayed Draw Term Loan, as of any date of determination, refers to the sum of (a) the outstanding principal balance of such Delayed Draw Term Loan and (b) the amounts on deposit in the Delayed Funding Obligations Account in respect of the unfunded portion of such Delayed Draw Term Loan.

"Delayed Funding Obligations Account": The account established pursuant to Section 10.5(a) hereof.

"Deposit": Any cash or money deposited with the Trustee by the Issuer on the Closing Date for inclusion as Assets and deposited by the Trustee in the Unused Proceeds Account on the Closing Date, which shall be equal to $18,000,000.

"Deposit Accounts": The meaning specified in Section 3.3(e)(xii) hereof.

"Depository" or "DTC": The Depository Trust Company, its nominees, and their respective successors.

"Determination Date": With respect to the initial Payment Date, April 15, 2005, and thereafter quarterly on each July 15, October 15, January 15, and April 15 (or if such date is not a Business Day, then the next succeeding Business Day).

"Disqualified Transferee": The meaning specified in Section 2.5(l) hereof.

"Dollar," "U.S. $" or "$": A U.S. dollar or other equivalent unit in Cash.

"Due Date": Each date on which a Scheduled Distribution is due on a Pledged Obligation.

"Due Period": With respect to any Payment Date, the period commencing on the day immediately succeeding the second preceding Determination Date (or on the Closing Date, in the case of the Due Period relating to the first Payment Date) and ending on and including the Determination Date immediately preceding such Payment Date.

"Effective Date": The date which is the earlier of (i) the 180th day after the Closing Date and (ii) the date on which the Issuer (A) acquires the 25 Broad Asset or (B) utilizes the $18,000,000 deposited into the Unused Proceeds Account on the Closing Date to acquire additional Collateral Debt Securities.

"Eligibility Criteria": The criteria set forth below, which if satisfied by a Collateral Debt Security at the time it is purchased, as evidenced by an Officer's Certificate of the Collateral Manager delivered to the Trustee as of the date of such acquisition, will make such Collateral Debt Security eligible for purchase by the Issuer:

(i) it is a Loan or security related to commercial real estate;

(ii) it is issued by an issuer incorporated or organized under the laws of the United States or a commonwealth, territory or possession of the United States;

(iii) with respect to each CMBS Security, substantially all the loans backing such Collateral Debt Security are secured by collateral substantially all of which is located in the United States or a commonwealth, territory or possession of the United States and with respect to each REIT Debt Security, the issuer of

such Collateral Debt Security is incorporated or organized under the laws of the United States or a commonwealth, territory or possession of the United States;

(iv) it provides for periodic payments of interest (or, in the case of Preferred Equity Securities, dividends or other distributions) no less frequently than semi-annually;

(v) it has a Moody's Rating, a Fitch Rating and an S&P Rating and, unless otherwise agreed by S&P, such S&P Rating does not include the subscript "t";

(vi) its acquisition would not cause the Issuer, the Co-Issuer or the pool of Pledged Obligations to be required to register as an investment company under the Investment Company Act; and if the issuer of such Collateral Debt Security is excepted from the definition of an "investment company" solely by reason of Section 3(c)(1) of the Investment Company Act, then either (x) such Collateral Debt Security does not constitute a "voting security" for purposes of the Investment Company Act or (y) the aggregate amount of such Collateral Debt Security held by the Issuer is less than 10% of the entire issue of such Collateral Debt Security;

(vii) (A) if it is a Loan (including a Mezzanine Loan but excluding an ARD Loan), no commercial mortgage loan underlying, securing or constituting such Collateral Debt Security has a maturity date (including any extension option) that is later than ten (10) years prior to the Stated Maturity, (B) if it is a CMBS Security or a REIT Debt Security, such CMBS Security or REIT Debt Security (without regard to the maturities of any collateral underlying such CMBS Security or REIT Debt Security) does not have a stated final maturity later than the Stated Maturity, (C) if it is an ARD Loan, (i) the anticipated repayment date of such ARD Loan is not later than twenty (20) years prior to the Stated Maturity and (ii) the new maturity date is not less than three (3) years prior to the Stated Maturity and (D) if it is a Preferred Equity Security, the date (after giving effect to all permissible extensions thereof) by which all distributions on such Preferred Equity Security attributable to the return of capital by its governing documents are required to be made is not later than two (2) years after the Stated Maturity (after giving effect to all anticipated settlement concerns in connection with such return of capital);

(viii) it is not prohibited under its Underlying Instruments from being purchased by the Issuer and pledged to the Trustee;

(ix) it is not, and does not provide for conversion or exchange into, "margin stock" (as defined under Regulations T, U or X by the Board of Governors of the Federal Reserve System) at any time over its life;

(x) it is not the subject of (a) any Offer by the issuer of such security or by any other person made to all of the holders of such security to purchase or

otherwise acquire such security (other than pursuant to any redemption in accordance with the terms of the related Underlying Instruments) or to convert or exchange such security into or for cash, securities or any other type of consideration or (b) any solicitation by an issuer of such security or any other person to amend, modify or waive any provision of such security or any related

Underlying Instruments, and has not been called for redemption;

(xi) it is not an Ineligible Equity Security, Principal Only Security; Interest-Only Security, Step-Up Security, Step-Down Bond, Market Value Collateralized Debt Obligation security or any security the repayment of which is subject to substantial non-credit related risk, as determined by the Collateral Manager in its reasonable business judgment;

(xii) except with respect to Preferred Equity Securities, it is not a security that by the terms of its Underlying Instruments provides for conversion or exchange (whether mandatory or at the option of the issuer or the holder thereof) into equity capital at any time prior to its maturity;

(xiii) it is not a financing by a debtor-in-possession in any insolvency proceeding;

(xiv) except with respect to Delayed Draw Term Loans, it will not require the Issuer to make any future payments after the initial purchase thereof;

(xv) its acquisition will be in compliance with Section 206 of the Advisers Act;

(xvi) except with respect to Partially Deferred Loans, it does not have any outstanding deferred or capitalized interest;

(xvii) it is not a security that, in the Collateral Manager's reasonable business judgment, has a significant risk of declining in credit quality or, with lapse of time or notice, becoming a Defaulted Security;

(xviii) it is not a Defaulted Security (as determined by the Collateral Manager after reasonable inquiry);

(xix) if it is a Participation, it is (a) a real estate related Participation, (b) either (i) the Underlying Term Loan, A Note or B Note has been included in a transaction that would be classified as a CMBS Conduit Security or a CMBS Large Loan Security or (ii) the Underlying Term Loan is serviced pursuant to a commercial mortgage servicing arrangement, which includes the standard servicing provisions found in CMBS Securities transactions, (c) the requirements regarding the representations and warranties with respect to the Underlying Term Loan, the Underlying Mortgage Property (as applicable) and the Participation set forth in Section 17.4 have been met and (d) the terms of the Underlying Instruments are consistent with the terms of similar Underlying Instruments in the CMBS industry;

(xx) if it is a B Note, it is (a) a real estate related B Note, (b) either (i) the related A Note has been included in a transaction that would be classified as a CMBS Conduit Security or a CMBS Large Loan Security or (ii) the B Note is serviced pursuant to a commercial mortgage servicing arrangement, which includes the standard servicing provisions found in CMBS Securities transactions, (c) the requirements regarding the representations and warranties with respect to the Underlying Term Loan, the Underlying Mortgage Property (as applicable) and the B Note set forth in Section 17.4 have been met and (d) the terms of the Underlying Instruments are consistent with the terms of similar Underlying Instruments in the CMBS Securities industry;

(xxi) if it is a Mezzanine Loan, (a) the Mezzanine Loan is serviced pursuant to a commercial mortgage servicing arrangement, which includes the standard servicing provisions found in CMBS Securities transactions, (b) the requirements regarding the representations and warranties with respect to the Underlying Term Loan, the Underlying Mortgage Property (as applicable) and the Mezzanine Loan set forth in Section 17.4 have been met and (c) the terms of the Underlying Instruments are consistent with the terms of

similar Underlying Instruments in the CMBS Securities industry with respect to Mezzanine Loans;

(xxii) if it is a Loan (that is not a Participation, a B Note or a Mezzanine Loan), (a) it is a real estate related Loan that is serviced pursuant to a commercial mortgage servicing arrangement, which includes the standard servicing provisions found in CMBS Securities transactions and (b) the requirements regarding the representations and warranties with respect to the Loan and the Underlying Mortgage Property (as applicable) set forth in Section 17.4 have been met;

(xxiii) it is U.S. Dollar denominated and may not be converted into a security payable in any other currencies;

(xxiv) it is one of the Specified Types;

(xxv) if it is a Loan or CMBS Security, the principal balance of the Loan or CMBS Security has not been reduced by a realized loss, expected loss, appraisal event, appraisal reduction or similar item since initial issuance, other than a Loan as to which a workout or other restructuring has occurred but as to which no such reduction has occurred since the completion of such workout or restructuring;

(xxvi) any requirements regarding opinions with respect to certain purchases of Collateral Debt Securities as provided in this Indenture have been met;

(xxvii) if it is a CMBS Security, at the time of its acquisition by the Issuer, it was rated investment grade by at least one Rating Agency;

(xxviii) except with respect to CMBS Securities and REIT Debt Securities, it may not be collateralized or backed by interests on Healthcare Properties;

(xxix) its acquisition will not result in materially adverse tax consequences to the Issuer; and (xxx) if it is a Partially Deferred Loan, the component thereof which is payable currently on each due date may not be deferred or capitalized under the terms of such Partially Deferred Loan.

Notwithstanding the foregoing provisions of this definition, with respect to any Collateral Debt Security acquired by the Issuer on or prior to the Closing Date, if the Eligibility Criteria above pertains to the subject matter of a representation and warranty under the related Collateral Debt Securities Purchase Agreement as to which an exception has been disclosed in the related exception schedule, such Collateral Debt Security shall be deemed to satisfy such criterion notwithstanding such exception.

"Eligible Investments": Any Dollar-denominated investment that, at the time it is Granted to the Trustee (directly or through a Securities Intermediary or bailee), is Registered and is one or more of the following obligations or securities:

(i) direct obligations of, and obligations the timely payment of principal of and interest on which is fully and expressly guaranteed by, the United States of America, or any agency or instrumentality of the United States of America, the obligations of which are expressly backed by the full faith and credit of the United States of America;

(ii) demand and time deposits in, certificates of deposit of, bankers' acceptances issued by, or federal funds sold by, any depository institution or trust company incorporated under the laws of the United States of America or any state thereof or the District of Columbia (including the Trustee or the commercial department of any successor Trustee, as the case may be; provided, that such successor otherwise meets the criteria specified herein) and subject

to supervision and examination by federal and/or state banking authorities so long as the commercial paper and/or the debt obligations of such depositary institution or trust company (or, in the case of the principal depositary institution in a holding company system, the commercial paper or debt obligations of such holding company) at the time of such investment or contractual commitment providing for such investment have a credit rating not less than "A1" by Moody's, "A+" by Fitch and "A+" by S&P, in the case of long-term debt obligations, and "P-1" by Moody's, "F1" by Fitch and "A-1" by S&P for Eligible Investments which have a maturity of 30 days or less;

(iii) unleveraged repurchase or forward purchase obligations with respect to (a) any security described in clause (i) above or (b) any other security

issued or guaranteed by an agency or instrumentality of the United States of America, in either case entered into with a depository institution or trust company (acting as principal) described in clause (ii) above (including LaSalle Bank National Association or the commercial department of any successor Trustee, as the case may be; provided, that such person otherwise meets the criteria specified herein) or entered into with a corporation (acting as principal) whose long-term rating is not less than "Aa2" by Moody's, "AA" by Fitch and "AAA" by S&P (for so long as any Notes rated by S&P are Outstanding) or whose short-term credit rating is not less than "P-1" by Moody's, "F1+" by Fitch and "A-1+" by S&P for Eligible Investments which have a maturity of 30 days or less (for so long as any Notes rated by S&P are Outstanding); provided, that the issuer thereof must also have at the time of such investment a long-term credit rating of not less than "Aa2" by Moody's, "A+" by Fitch and "AAA" by S&P (for so long as any Notes rated by S&P are Outstanding);

(iv) registered securities bearing interest or sold at a discount issued by any corporation incorporated under the laws of the United States of America or any state thereof or the District of Columbia that has a credit rating of not less than "Aa2" by Moody's, "AA" by Fitch and "AAA" by S&P (for so long as any Notes rated by S&P are Outstanding) at the time of such investment or contractual commitment providing for such investment;

(v) commercial paper or other similar short-term obligations (including that of the Trustee or the commercial department of any successor Trustee, as the case may be, or any affiliate thereof; provided, that such person otherwise meets the criteria specified herein) having at the time of such investment a credit rating of "P-1" by Moody's, "F1+" by Fitch and "A-1+" by S&P or "A-1" by S&P for Eligible Investments which have a maturity of 30 days or less (for so long as any Notes rated by S&P are Outstanding); provided, that the issuer thereof must also have at the time of such investment a senior long-term debt rating of not less than "Aa3" by Moody's, "AA" by Fitch and "AA" by S&P (for so long as any Notes rated by S&P are Outstanding);

(vi) a reinvestment agreement issued by any bank (if treated as a deposit by such bank), or a Registered guaranteed investment or reinvestment agreement issued by an insurance company or other corporation or entity, in each case that has a credit rating of not less than "P-1" by Moody's, "F1+" by Fitch and "A-1+" by S&P or "A-1" by S&P for Eligible Investments which have a maturity of 30 days or less (for so long as any Notes rated by S&P are Outstanding); provided, that the issuer thereof must also have at the time of such investment a long-term credit rating of not less than "Aa2" by Moody's, "AA" by Fitch and "AAA" by S&P (for so long as any Notes rated by S&P are Outstanding); and

(vii) any other investment similar to those described in clauses (i) through (vi) above that (1) each of Moody's and S&P has confirmed may be included in the portfolio of Pledged Obligations as an Eligible Investment without

adversely affecting its then-current ratings on the Notes and (2) has a long-term credit rating of not less than "Aa2" by Moody's, "AA" by Fitch and "AAA" by S&P (for so long as any Notes rated by S&P are Outstanding) or a credit rating of not less than "P-1" by Moody's, "F1+" by Fitch and "A-1+" by S&P or "A-1" by S&P for Eligible Investments which have a maturity of 30 days or less (for so long as any Notes rated by S&P are Outstanding);

provided, that mortgage-backed securities and Interest Only Securities shall not constitute Eligible Investments; and provided, further, that (a) Eligible Investments acquired with funds in the Collection Accounts shall include only such obligations or securities as mature no later than the Business Day prior to the next Payment Date succeeding the acquisition of such obligations or securities, (b) Eligible Investments shall not include obligations bearing interest at inverse floating rates, (c) Eligible Investments shall not include obligations the purchase of which would cause the Issuer to be engaged in a trade or business within the United States, shall not have payments subject to foreign or United States withholding tax, shall not be purchased for a price in excess of par, shall not have an S&P rating which contains a subscript "r", "t", "p", "pi" or "q" and (iv) Eligible Investments shall not include Margin Stock.

For the avoidance of doubt, all credit ratings by Fitch required under this definition shall be deemed to be Fitch Ratings for all purposes under this Indenture.

"Entitlement Holder": The meaning specified in Section 8-102(a)(7) of the UCC.

"Entitlement Order": The meaning specified in Section 8-102(a)(8) of the UCC.

"ERISA": The United States Employee Retirement Income Security Act of 1974, as amended.

"Euroclear": Euroclear Bank S.A./N.V., as operator of the Euroclear system.

"Event of Default": The meaning specified in Section 5.1 hereof.

"Excepted Assets": The U.S. $250 of capital contributed by the holder of the ordinary shares of the Issuer and any interest earned thereon and the bank account in which such monies are held and the U.S. $250 transaction fee paid to the Issuer.

"Exchange Act": The Securities Exchange Act of 1934, as amended.

"Exchange Security": The meaning specified in Section 12.1(b) hereof.

"Expense Account": The account established pursuant to Section 10.6(a) hereof.

"Extended Maturity Date": With respect to any Collateral Debt Security, the maturity date of such Collateral Debt Security, assuming the exercise of all extension options that are exercisable at the option of the related borrower under the terms of such Collateral Debt Security.

"Extended Weighted Average Maturity": As of any Measurement Date with respect to the Collateral Debt Securities (other than Defaulted Securities), the number obtained by (i) summing the products obtained by multiplying (a) the remaining term to maturity (in years, rounded to the nearest one tenth thereof, and based on the Extended Maturity Date) of each Collateral Debt Security (other than Defaulted Securities) by (b) the outstanding Principal Balance at such time of such Collateral Debt Security and (ii) dividing the sum by the aggregate Principal Balance at such time of all Collateral Debt Securities (other than Defaulted Securities).

"Financial Asset": The meaning specified in Section 8-102(a)(9) of the UCC.

"Financing Statements": Financing statements relating to the Assets naming the Issuer as debtor and the Trustee on behalf of the Noteholders and each Hedge Counterparty as secured party.

"Fitch": Fitch Ratings and any successor or successors thereto.

"Fitch Applicable Recovery Rate": With respect to any Collateral Debt Security or Fitch Hypertranched Collateral Debt Security on any Measurement Date, an amount equal to the percentage corresponding to the domicile and seniority of such Collateral Debt Security or tranche of a Fitch Hypertranched Collateral Debt Security, as applicable, as set forth in Schedule N (the Fitch Recovery Matrix); provided that, the applicable percentage shall be the percentage corresponding to the rating (or, in the case of a Fitch Hypertranched Collateral Debt Security, the credit assessment) of the most senior outstanding Class of Notes then rated by Fitch.

"Fitch Hypertranched Collateral Debt Security": With respect to any Collateral Debt Security classified as a Loan or a Preferred Equity Security, Fitch may evaluate these securities as a series of small securities of varying seniority for purposes of assigning credit assessments and recovery rates. Each such small security referred to as a tranche by Fitch.

"Fitch Maximum Rating Factor Test": A test that will be satisfied if on any Measurement Date the Fitch Weighted Average Rating Factor for the Collateral Debt Securities does not exceed 50.

"Fitch Rating": With respect to any Collateral Debt Security,

(a) if such Collateral Debt Security is rated by Fitch, the Fitch Rating shall be such rating;

(b) if such Collateral Debt Security is not rated by Fitch and a rating is published by both S&P and Moody's, the Fitch Rating shall be the lower of such ratings; and if a rating is published by only one of S&P and Moody's, the Fitch Rating shall be that published rating by S&P or Moody's, as the case may be;

(c) if such Collateral Debt Security is a Loan that is not rated by Fitch, but is rated by Moody's or S&P, then the Fitch Rating of such Loan will be deemed to be "CCC"; provided that Loans (which in the aggregate) represent up to 5% of the Aggregate Collateral Balance may be deemed to have a Fitch Rating pursuant to this paragraph (c); and

(d) in all other circumstances, the Fitch Rating shall be the private rating assigned by Fitch upon request of the Collateral Manager;

provided, that (x) if such Collateral Debt Security has been put on rating watch negative for possible downgrade by any Rating Agency, then the rating used to determine the Fitch Rating under either of clauses (a) or (b) above shall be one rating subcategory below such rating by that Rating Agency, and (y) if such Collateral Debt Security has been put on rating watch positive for possible upgrade by any Rating Agency, then the rating used to determine the Fitch Rating under either of clauses (a) or (b) above shall be one rating subcategory above such rating by that Rating Agency, and (z) not withstanding the rating definition described above, Fitch reserves the right to issue a rating estimate for any Collateral Debt Security at any time.

With respect to any Collateral Debt Security classified as a Fitch Hypertranched Collateral Debt Security, Fitch will provide an estimate of a series of smaller securities of varying principal balances and seniority, each of which will be provided with a credit assessment.

"Fitch Rating Factor": With respect to any Collateral Debt Security on any Measurement Date, the number set forth in the table below opposite the Fitch Rating of such Collateral Debt Security:

FITCH RATING	FITCH RATING FACTOR	FITCH RATING	FITCH RATING FACTOR
AAA	0.19	BB	13.53
AA+	0.57	BB-	18.46
AA	0.89	B+	22.84
AA-	1.15	B	27.67
A+	1.65	B-	34.98
A	1.85	CCC+	43.36
A-	2.44	CCC	48.52
BBB+	3.13	CC	77.00
BBB	3.74	C	95.00
BBB-	7.26	DDD-D	100.00
BB+	10.18		

With respect to any Collateral Debt Security on any Measurement Date classified as a Fitch Hypertranched Collateral Debt Security, the number set forth in the table below opposite the Fitch credit assessment applied to the principal balance of the series of tranches provided by Fitch for such Fitch Hypertranched Collateral Debt Security:

FITCH CREDIT ASSESSMENT	FITCH RATING FACTOR	FITCH RATING	FITCH RATING FACTOR
AAA	0.19	BB	13.53
AA+	0.57	BB-	18.46
AA	0.89	B+	22.84
AA-	1.15	B	27.67
A+	1.65	B-	34.98
A	1.85	CCC+	43.36
A-	2.44	CCC	48.52
BBB+	3.13	CC	77.00
BBB	3.74	C	95.00
BBB-	7.26	DDD-D	100.00
BB+	10.18		

"Fitch Weighted Average Rating Factor": The number on any Measurement Date calculated by dividing (i) the sum of the series of products obtained for any Collateral Debt Security or Fitch Hypertranched Collateral Debt Security that is not a Defaulted Security, by multiplying (1) the Principal Balance on such Measurement Date of each such Collateral Debt Security or in the case of a Fitch Hypertranched Collateral Debt Security, the principal balance of each tranche of such security by (2) its respective Fitch Rating Factor on such Measurement Date by (ii) the sum of (a) the aggregate Principal Balance on such Measurement Date of all Collateral Debt Securities and Fitch Hypertranched Collateral Debt Securities that are not Defaulted Securities.

"Fixed Rate Excess": As of any Measurement Date, a fraction (expressed as a percentage) the numerator of which is equal to the product of (a) the greater of zero and the excess, if any, of the Weighted Average Coupon for such Measurement Date over 8.25% and (b) the Aggregate Principal Balance of all Collateral Debt Securities that are Fixed Rate Securities (excluding all Defaulted Securities and Written Down Securities) and the denominator of which is the Aggregate Principal Balance of all Collateral Debt Securities that are Floating Rate Securities (excluding all Defaulted Securities and Written Down Securities), multiplying the resulting figure by 360 and then dividing by 365.

"Fixed Rate Security": Any Collateral Debt Security (including, without limitation, an Above Cap Security) other than a Floating Rate Security.

"Floating Rate Security": Any Collateral Debt Security which bears interest based upon a floating rate index (including a floating rate index subject to a cap but other than an Above Cap Security); provided, that any

Covered Fixed Rate Security will be deemed to be a Floating Rate Security for purposes of calculating the Fixed Rate Excess, Spread Excess, Weighted Average Coupon and Weighted Average Spread and for purposes of calculating the Spread Excess and Weighted Average Spread, such Covered Fixed Rate Security shall be assumed to have a spread above LIBOR equal to the spread over the London interbank offered rate for U.S. Dollar deposits in Europe for the related swap agreement.

"Form-Approved Asset Specific Hedge": An Asset Specific Hedge entered into with respect to a Covered Fixed Rate Security (a) the documentation of which conforms (but for the amount and timing of periodic payments, the notional amount, the effective date, the termination date and other similarly necessary changes) to a form for which satisfaction of the Rating Agency Condition was previously received (as certified to the Trustee by the Collateral Manager), provided, that any Ratings Agency may withdraw its approval of a form at any time, (b) for which the Issuer has provided each Rating Agency with written notice of the purchase of the related Collateral Debt Security within five Business Days after such purchase.

"General Intangible": The meaning specified in Section 9-102(a)(42) of the UCC.

"Global Securities": The Rule 144A Global Securities and the Regulation S Global Securities.

"Governing Documents": With respect to (i) the Issuer, the memorandum and articles of association, as amended and restated, and certain resolutions of the Board of Directors and (ii) all other Persons, the articles of incorporation, certificate of incorporation, by-laws, certificate of limited partnership, limited partnership agreement, limited liability company agreement, certificate of formation, articles of association and similar charter documents, as applicable to any such Person.

"Government Items": A security (other than a security issued by the Government National Mortgage Association) issued or guaranteed by the United States of America or an agency or instrumentality thereof representing a full faith and credit obligation of the United States of America and, with respect to each of the foregoing, that is maintained in book-entry on the records of a Federal Reserve Bank.

"Grant": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create and grant a security interest in and right of set-off against, deposit, set over and confirm. A Grant of the Pledged Obligations or of any other security or instrument shall include all rights, powers and options (but none of the obligations) of the granting party thereunder, including without limitation the immediate continuing right to claim, collect, receive and take receipt for principal and interest payments in respect of the Pledged Obligations (or any other security or instrument), and all other Monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"Hedge Agreement": One or more interest rate cap agreements, interest rate floor agreements, interest basis swap agreements, Interest Rate Swap Agreements, Cash Flow Swap Agreements or similar agreements (including Asset Specific Hedges), including any related ISDA Master Agreement and hedge confirmations, entered into between the Issuer and one or more Hedge Counterparties from time to time and any additional or replacement interest rate cap or swap agreements or other agreements that address interest rate exposure, basis risk or payment frequency exposure entered into from time to time between the Issuer and each Hedge

Counterparty in accordance with the terms hereof, as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

"Hedge Collateral Account": Each trust account established pursuant to Section 16.1(e) hereof.

"Hedge Counterparty": Any institution or institutions with whom the Issuer enters into interest rate cap agreements, interest basis swap agreements, interest rate floor agreements, interest rate swap agreements (including Asset Specific Hedges), Cash Flow Swap Agreements or other similar agreements that address interest rate exposure, basis risk or payment frequency exposure or any permitted assignees or successors of such institutions under any Hedge Agreements.

"Hedge Counterparty Credit Support": With respect to each Hedge Agreement, the agreement to provide collateral, if necessary, substantially in the form of the ISDA Credit Support Annex attached to such Hedge Agreement.

"Hedge Counterparty Credit Support Provider": The meaning specified in Section 16.1(a) hereof.

"Hedge Counterparty Required Rating": (i) with respect to a Person as an issuer or with respect to long-term senior unsecured debt of such Person, (a) "A1" by Moody's to the extent such Person has a long-term rating only (for so long as any Notes are outstanding under the Indenture and are rated by Moody's); or (b) "A2" by Moody's to the extent such Person has both a long-term and short-term rating and the short-term rating is "P-1" (for so long as any Notes are outstanding under the Indenture and are rated by Moody's); and (ii) with respect to a Person as an issuer or with respect to long-term senior unsecured debt of such Person, "BBB-", by Fitch (for so long as any Notes are outstanding under the Indenture and are rated by Fitch); and (iii) with respect to a Person as an issuer or with respect to short term rating of such Person, "A-1" by S&P (for so long as any Notes are outstanding under the Indenture and are rated by S&P); provided that should a Rating Agency effect an overall downward adjustment of its short-term or long-term ratings, then the applicable Hedge Counterparty Required Rating shall be downwardly adjusted accordingly; provided further, that any adjustment to a rating shall be subject to the prior written consent of the applicable Rating Agency.

"Hedge Counterparty Collateral Threshold Rating": With respect to a person as an issuer or with respect to the debt of such person, as the case may be, (i) (a) if any Class of Notes are rated "A" or higher by Fitch, with respect to a Person as an issuer or with respect to the long-term senior unsecured debt of such Person, "A" (and the short-term debt of such Person is rated at least "F-1") or "A+" (if such Person does not have a short-term debt rating by Fitch), in each case by Fitch (for so long as any Notes are outstanding under the Indenture and are rated by Fitch), (b) if any Class of Notes are rated "A-" or "BBB+" by Fitch, with respect to a Person as an issuer or with respect to the long-term senior unsecured debt of such Person, "BBB+" (and the short-term debt of such Person is rated at least "F-2"), in each case by Fitch (for so long as any Notes are outstanding under the Indenture and are rated by Fitch), or (c) if any Class of Notes are rated "BBB" or lower by Fitch, with respect to a Person as an issuer or with respect to the long-term senior unsecured debt of such Person, a rating equal to the rating on the highest rated

Notes, in each case by Fitch (for so long as any Notes are outstanding under the Indenture and are rated by Fitch) and (ii) such rating as shall be satisfactory to S&P (for so long as any Class of Notes is outstanding under the Indenture and is rated by S&P) and Moody's (for so long as any Class of Notes is outstanding under the Indenture and is rated by Moody's) at the time of entering into the applicable Hedge Agreement and as specifically set forth in the related Hedge Agreement; provided that, should a Rating Agency effect an overall downward adjustment of its short-term or long-term ratings, then the applicable Hedge Counterparty Collateral Threshold Rating shall be downwardly adjusted accordingly; provided, further, that any adjustment to a rating shall be subject to the prior written consent of the applicable Rating Agency.

"Hedge Payment Amount": With respect to each Asset Specific Hedge, the amount of any payment then due and payable thereunder by the Issuer to each Hedge Counterparty, including without limitation any payments due and payable upon a termination of such Hedge Agreement.

"Hedge Termination Account": Each trust account established pursuant

to Section 16.1(g) hereof.

"Herfindahl Diversity Test": A test that will be satisfied if on any Measurement Date the Herfindahl Score for the Collateral Debt Securities is greater than 17. In the event that cash has been received in respect of Principal Proceeds of the Collateral Debt Securities since the immediately preceding Measurement Date but has not been reinvested in additional Collateral Debt Securities as of the current Measurement Date, the Herfindahl Diversity Test also will be deemed satisfied on the current Measurement Date notwithstanding a Herfindahl Score of 17 or less if (i) the Herfindahl Test was satisfied or deemed satisfied on the immediately preceding Measurement Date and (ii) the reason for the failure on the current Measurement Date is the existence of such cash. Similarly, if the Herfindahl Diversity Test was not satisfied or deemed satisfied on the immediately preceding Measurement Date and the Herfindahl Score has worsened as of the current Measurement Date, the Herfindahl Score as of the immediately preceding Measurement Date will be deemed to have been maintained on the current Measurement Date to the extent that the reason for such worsened Herfindahl Score is the existence of such cash.

"Herfindahl Score": The amount determined by the Collateral Manager on any Measurement Date, by dividing (i) one by (ii) the sum of the series of products obtained for each Collateral Debt Security, by squaring the quotient of (x) the Principal Balance on such Measurement Date of each such Collateral Debt Security and (y) Aggregate Principal Balance of all Collateral Debt Securities on such Measurement Date.

"Highest Auction Price": The meaning specified in Section 12.4(b)(iv) hereof.

"Holder" or "Securityholder": With respect to any Note, the Person in whose name such Note is registered in the Notes Register. With respect to any Preferred Share, the Person in whose name such Preferred Share is registered in the register maintained by the Share Registrar.

"Illinois Collateral": The meaning specified in Section 3.3(v).

"Indenture": This instrument as originally executed and, if from time to time supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, as so supplemented or amended.

"Independent": As to any Person, any other Person (including, in the case of an accountant, or lawyer, a firm of accountants or lawyers and any member thereof or an investment bank and any member thereof) who (i) does not have and is not committed to acquire any material direct or any material indirect financial interest in such Person or in any Affiliate of such Person, and (ii) is not connected with such Person as an Officer, employee, promoter, underwriter, voting trustee, partner, director or Person performing similar functions. "Independent" when used with respect to any accountant may include an accountant who audits the books of such Person if in addition to satisfying the criteria set forth above the accountant is independent with respect to such Person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants.

Whenever any Independent Person's opinion or certificate is to be furnished to the Trustee such opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning hereof.

"Ineligible Equity Security": Any equity security or any other security which is not eligible for purchase by the Issuer as a Collateral Debt Security; provided that the term "Ineligible Equity Security" will not include any Preferred Equity Security or any asset backed security structured as a certificate or other form of beneficial interest.

"Initial Maturity Date": With respect to any Collateral Debt Security, the maturity date of such Collateral Debt Security without giving effect to any extension options available under the terms of such Collateral Debt Security.

"Initial Purchaser": Wachovia Capital Markets, LLC, as initial

purchaser of the Notes.

"Initial Weighted Average Maturity": As of any Measurement Date with respect to the Collateral Debt Securities (other than Defaulted Securities), the number obtained by (i) summing the products obtained by multiplying (a) the remaining term to maturity (in years, rounded to the nearest one tenth thereof, and based on the Initial Maturity Date) of each Collateral Debt Security (other than Defaulted Securities) by (b) the Outstanding Principal Balance of such Collateral Debt Security and (ii) dividing the sum by the aggregate Principal Balance at such time of all Collateral Debt Securities (other than Defaulted Securities).

"Instrument": The meaning specified in Section 9-102(a)(47) of the UCC.

"Interest Accrual Period": With respect to the first Payment Date, the period from and including the Closing Date to but excluding the initial Payment Date and with respect to each successive Payment Date, the period from and including the immediately preceding Payment Date to but excluding such Payment Date.

"Interest Advance": The meaning specified in Section 10.7(a).

"Interest Collection Account": The trust account established pursuant to Section 10.2(a) hereof.

"Interest Coverage Ratio": With respect to the Class A Notes and the Class B Notes (the "Class A/B Interest Coverage Ratio"), the Class C Notes (the "Class C Interest Coverage Ratio") or the Class D Notes (the "Class D Interest Coverage Ratio") as of any Measurement Date, the ratio calculated by dividing:

(1) (i) the sum of (A) Cash standing to the credit of the Expense Account, plus (B) the Scheduled Distributions of interest due (or, in the case of the Preferred Equity Securities, the scheduled payments of dividends or other distributions not attributable to the return of capital by their governing documents) due (in each case regardless of whether the due date for any such interest (or dividend or other distribution) payment has yet occurred) in the Due Period in which such Measurement Date occurs on (x) the Collateral Debt Securities (excluding accrued and unpaid interest on Defaulted Securities); provided that no interest (or dividends or other distributions) will be included with respect to any Collateral Debt Security (including, without limitation, the deferred or capitalized interest component of a Partially Deferred Loan) to the extent that such Collateral Debt Security does not provide for the scheduled payment of interest (or dividends or other distributions) in Cash; and (y) the Eligible Investments held in the Payment Account, the Collection Accounts, the Delayed Funding Obligations Account and the Expense Account (whether purchased with Interest Proceeds or Principal Proceeds), plus (C) any net amount (other than any termination payments) scheduled to be received by the Issuer from any Hedge Counterparty under any related Hedge Agreement on or before the following Payment Date, plus (D) Interest Advances, if any, advanced by the Advancing Agent or the Trustee with respect to the related Payment Date, minus (ii) the sum of (X) any net amount (other than any termination payments) scheduled to be paid by the Issuer to any Hedge Counterparty under any related Hedge Agreement on or before the following Payment Date, plus (Y) any amounts scheduled to be paid pursuant to Section 11.1(a)(i)(1) through (5); by

(2) (i) in the case of the Class A/B Interest Coverage Ratio, the sum of the scheduled interest on the Class A Notes, if any, and the Class B Notes payable on the Payment Date immediately following such Measurement Date plus, any Class A Defaulted Interest Amount and any Class B Defaulted Interest Amount payable on the Payment Date immediately following such Measurement Date, (ii) in the case of the Class C Interest Coverage Ratio, the amount determined by the foregoing clause

(i) plus the scheduled interest on the Class C Notes payable on the Payment Date immediately following such Measurement Date (including interest on the Class C Capitalized Interest) plus, without duplication, any Class C Defaulted Interest Amount payable on the Payment Date immediately following such Measurement Date or (iii) in the case of the Class D

Interest Coverage Ratio, the amount determined by the foregoing clause (ii) plus the scheduled interest on the Class D Notes payable on the Payment Date immediately following such Measurement Date (including interest on the Class D Capitalized Interest) plus, without duplication, any Class D Defaulted Interest Amount payable on the Payment Date immediately following such Measurement Date.

"Interest Distribution Amount": Each of the Class A Interest Distribution Amount, Class B Interest Distribution Amount, Class C Interest Distribution Amount and Class D Interest Distribution Amount.

"Interest Only Security": Any security that by its terms provides for periodic payments of interest on a notional amount and does not provide for the repayment of a principal.

"Interest Proceeds": With respect to any Payment Date, (A) the sum (without duplication) of (1) all Cash payments of interest (including any amount representing the accreted portion of a discount from the face amount of an Eligible Investment) or dividends and other distributions (but excluding distributions on Preferred Equity Securities attributable to the return of capital by their governing documents) received during the related Due Period on the Collateral Debt Securities (excluding Defaulted Securities) and Eligible Investments, including, in the Collateral Manager's commercially reasonable discretion (exercised as of the trade date), the accrued interest received in connection with a sale of such Collateral Debt Securities or Eligible Investments (to the extent such accrued interest was not applied to the purchase of Substitute Collateral Debt Securities), in each case, excluding any accrued interest included in Principal Proceeds pursuant to clause (3), (4) or (6) of the definition of Principal Proceeds, (2) all make whole premiums or any interest amount paid in excess of the stated interest amount of a Collateral Debt Security received during the related Due Period, (3) all amendment and waiver fees, all late payment fees, all commitment fees, all exit fees, all extension fees and all other fees and commissions received during such Due Period in connection with such Collateral Debt Securities and Eligible Investments (other than, in each such case, fees and commissions received in connection with the restructuring of a Defaulted Security or default of Collateral Debt Securities and Eligible Investments), (4) all payments pursuant to any Hedge Agreement for the Payment Date immediately following such Due Period (excluding any amounts payable upon a termination under any Hedge Agreement during such Due Period), (5) funds in the Unused Proceeds Account designated as Interest Proceeds by the Collateral Manager pursuant to Section 10.4(c), (6) funds in the Expense Account designated as Interest Proceeds by the Collateral Manager pursuant to Section 10.6(a), (7) funds remaining on deposit in the Expense Account upon redemption of the Notes in whole, pursuant to Section 10.6(a), (8) except for distributions on Preferred Equity Securities attributable to the return of capital by their governing documents and other than as specified in item (1) above, all proceeds received in respect of equity features, if any, of the Collateral Debt Securities and (9) all payments of principal on Eligible Investments purchased with proceeds of items (1), (2) and (3) of this definition; provided, that Interest Proceeds will in no event include any payment or proceeds specifically defined as "Principal Proceeds" in the definition thereof minus (B) (x) the aggregate amount of any Nonrecoverable Advances that were previously reimbursed to the Advancing Agent or the Trustee and the aggregate amount of any Cure Advances reimbursed to the Collateral Manager during the related Due Period from Interest Proceeds and (y) the aggregate amount of any Hedge

Payment Amounts that were previously paid to the applicable Hedge Counterparty from Interest Proceeds during the related Due Period as a result of the early

termination of the related Asset Specific Hedge from any call, redemption and prepayment premiums in accordance with clause (e) of the definition of Asset Specific Hedge.

"Interest Rate Swap Agreement" means an interest rate swap agreement, including any related ISDA Master Agreement and hedge confirmations, for purposes of managing the Issuer's interest rate exposure related to the variable rate of interest applicable to the Notes.

"Interest Shortfall": The meaning set forth in Section 10.7(a).

"Investment Company Act": The Investment Company Act of 1940, as amended.

"Irish Exchange Fees": The fees that will be payable to The Irish Stock Exchange Limited if the listing of the Notes on the Irish Stock Exchange is obtained.

"Irish Paying Agency Agreement": The agreement between the Issuer and J&E Davy that will be entered into in the event that the listing of the Notes on the Irish Stock Exchange is obtained.

"Irish Paying Agent": J&E Davy, or any successor Irish Paying Agent under the Irish Paying Agency Agreement.

"Issuer": Arbor Realty Mortgage Securities Series 2004-1, Ltd., an exempted company incorporated with limited liability under the laws of the Cayman Islands, until a successor Person shall have become the Issuer pursuant to the applicable provisions of this Indenture, and thereafter "Issuer" shall mean such successor Person.

"Issuer Order" and "Issuer Request": A written order or request (which may be in the form of a standing order or request) dated and signed in the name of the Issuer and the Co-Issuer by an Authorized Officer of each of the Issuer and the Co-Issuer, or by an Authorized Officer of the Collateral Manager.

"LIBOR": The meaning set forth in Schedule F attached hereto.

"LIBOR Determination Date": The meaning set forth in Schedule F attached hereto.

"List": The meaning specified in Section 12.4(a)(ii) hereof.

"Listed Bidders": The meaning specified in Section 12.4(a)(ii) hereof.

"LLC Managers": The managers of the Co-Issuer duly appointed by the sole member of the Co-Issuer (or, if there is only one manager of the Co-Issuer so duly appointed, such sole manager).

"Loan": Any U.S. Dollar denominated interest in a senior secured or senior unsecured or senior or junior subordinated term loan (including, without limitation, a mortgage loan, an ARD Loan, a Delayed Draw Term Loan, or a B Note (or other interest in a split loan structure)) or any Participation interest therein, or any Mezzanine Loan, Single Asset Mortgage Security, Single Borrower Mortgage Security or Rake Bond; provided that (other than in the case of a Delayed Draw Term Loan) no such loan requires any future advances to be made by the Issuer.

"London Banking Day": The meaning set forth in Schedule F attached hereto.

"Majority": As follows:

(i) with respect to any Class of Notes, the Holders of more than 50% of the Aggregate Outstanding Amount of the Notes of such Class; and

(ii) when used with respect to the Preferred Shareholders and the Preferred Shares, the Preferred Shareholders representing more than 50% of the aggregate outstanding Notional Amount of the Preferred Shares.

"Mandatory Redemption": The meaning specified in Section 9.6.

"Margin Stock": As defined under Regulation U issued by the Board of Governors of the Federal Reserve System.

"Market Value": With respect to any date of determination and any Collateral Debt Security or Eligible Investment, (i) an amount equal to (x) the median of the bona fide bids for such Collateral Debt Security obtained by the Collateral Manager at such time from any three nationally recognized dealers, which dealers are Independent from one another and from the Collateral Manager, (y) if the Collateral Manager is in good faith unable to obtain bids from three such dealers, the lesser of the bona fide bids for such Collateral Debt Security obtained by the Collateral Manager at such time from any two nationally recognized dealers chosen by the Collateral Manager, which dealers are Independent from each other and the Collateral Manager, or (z) if the Collateral Manager is in good faith unable to obtain bids from two such dealers, the bona fide bid for such Collateral Debt Security obtained by the Collateral Manager at such time from any nationally recognized dealer chosen by the Collateral Manager, which dealer is Independent from the Collateral Manager.

"Market Value Collateralized Debt Obligation": Any collateralized debt obligation that is valued on the basis of the market value of the underlying debt obligations rather than the cash flow related to the underlying debt obligations.

"Maturity": With respect to any Note, the date on which the unpaid principal of such Note becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration or otherwise.

"Measurement Date": Any of the following: (i) the Closing Date, (ii) the date of acquisition or disposition of any Collateral Debt Security, (iii) any date on which any Collateral Debt Security becomes a Defaulted Security, (iv) each Determination Date, (v) the last Business

Day of each calendar month (other than any calendar month in which a Determination Date occurs) and (vi) with reasonable notice to the Issuer and the Trustee, any other Business Day that any Rating Agency or the holders of at least 66-2/3% of the Aggregate Outstanding Amount of any Class of Notes requests be a "Measurement Date"; provided, that if any such date would otherwise fall on a day that is not a Business Day, the relevant Measurement Date will be the immediately preceding Business Day.

"Mezzanine Loan": A Loan secured by one or more direct or indirect ownership interests in a company, partnership or other entity owning, operating or controlling, directly or through subsidiaries or affiliates, one or more commercial properties.

"Minimum Ramp-Up Amount": An amount equal to $469,026,380.

"Minimum Weighted Average Coupon Test": A test that will be satisfied on any Measurement Date if the Weighted Average Coupon for Collateral Debt Securities is greater than or equal to 8.25%.

"Minimum Weighted Average Spread Test": A test that will be satisfied as of any Measurement Date if the Weighted Average Spread as of such Measurement Date for Collateral Debt Securities is greater than or equal to 5.30%.

"Money": The meaning specified in Section 1-201(24) of the UCC.

"Monthly Report": The meaning specified in Section 10.9(c) hereof.

"Moody's": Moody's Investors Service, Inc., and its successors in interest.

"Moody's Rating": Of any Collateral Debt Security will be determined as follows:

(i) (x) if such Collateral Debt Security is publicly rated by Moody's, the Moody's Rating will be such rating, or, (y) if such Collateral Debt Security is not publicly rated by Moody's, but the

Issuer has requested that Moody's assign a rating to such Collateral Debt Security, the Moody's Rating will be the rating so assigned by Moody's;

(ii) with respect to a CMBS Security or REIT Debt Security, if such CMBS Security or REIT Debt Security is not rated by Moody's, then the Moody's Rating of such REIT Debt Security may be determined using any one of the methods below:

(A) with respect to any REIT Debt Security not publicly rated by Moody's that is a REIT Debt Securities -- Diversified; REIT Debt Securities -- Health Care; REIT Debt Securities -- Hotel; REIT Debt Securities -- Industrial; REIT Debt Securities -- Multi-Family; REIT Debt Securities -- Office; REIT Debt Securities -- Residential; REIT Debt Securities -- Retail; or REIT Debt Securities -- Storage, if such REIT Debt Security is publicly rated by S&P, then the Moody's Rating thereof will be

(1) one subcategory below the Moody's equivalent rating assigned by S&P if the rating assigned by S&P is "BBB" or greater and (2) two rating subcategories below the Moody's equivalent rating assigned by S&P if the rating assigned by S&P is below "BBB-;"

(B) with respect to any CMBS Conduit Security not publicly rated by Moody's, (x) if Moody's has rated a tranche or class of CMBS Conduit Security senior to the relevant issue, then the Moody's Rating thereof will be one and one-half rating subcategories below the Moody's equivalent of the lower of the rating assigned by S&P and Fitch for purposes of determining the Moody's Rating Factor and one rating subcategory below the Moody's equivalent of the lower rating assigned by S&P and Fitch for all other purposes and (y) if Moody's has not rated any such tranche or class and S&P and Fitch have rated the subject CMBS Conduit Security, then the Moody's Rating thereof will be two rating subcategories below the Moody's equivalent of the lower of the rating assigned by S&P and Fitch;

(C) with respect to any CMBS Large Loan Security not rated by Moody's, the Issuer or the Collateral Manager on behalf of the Issuer will request Moody's to assign a rating to such CMBS Large Loan Security on a case-by-case basis; and

(D) with respect to any other type of CMBS Security or REIT Debt Securities of a Specified Type not referred to in clauses (A) through (C) above will be determined pursuant to subclause (y) of clause (i) above;

(iii) with respect to corporate guarantees on REIT Debt Securities, if such corporate guarantees are not publicly rated by Moody's but another security or obligation of the guarantor or obligor (an "other security") is publicly rated by Moody's, and no rating has been assigned in accordance with clause (i) above, the Moody's Rating of such Collateral Debt Security will be determined as follows:

(A) if the corporate guarantee is a senior secured obligation of the guarantor or obligor and the other security is also a senior secured obligation, the Moody's Rating of such Collateral Debt Security will be the rating of the other security;

(B) if the corporate guarantee is a senior unsecured obligation of the guarantor or obligor and the other security is a senior secured obligation, the Moody's Rating of such Collateral Debt Security will be one rating subcategory below the rating of the other security;

(C) if the corporate guarantee is a subordinated

obligation of the guarantor or obligor and the other security is a senior secured obligation that is: (1) rated "Ba3" or higher by Moody's, the Moody's Rating of such corporate guarantee will be three rating subcategories

below the rating of the other security; or (2) rated "B1" or lower by Moody's, the Moody's Rating of such corporate guarantee will be two rating subcategories below the rating of the other security;

(D) if the corporate guarantee is a senior secured obligation of the guarantor or obligor and the other security is a senior unsecured obligation that is: (1) rated "Baa3" or higher by Moody's, the Moody's Rating of such corporate guarantee will be the rating of the other security; or (2) rated "Ba1" or lower by Moody's, the Moody's Rating of such corporate guarantee will be one rating subcategory above the rating of the other security;

(E) if the corporate guarantee is a senior unsecured obligation of the guarantor or obligor and the other security is also a senior unsecured obligation, the Moody's Rating of such corporate guarantee will be the rating of the other security;

(F) if the corporate guarantee is a subordinated obligation of the guarantor or obligor and the other security is a senior unsecured obligation that is: (1) rated "B1" or higher by Moody's, the Moody's Rating of such corporate guarantee will be two rating subcategories below the rating of the other security; or (2) rated "B2" or lower by Moody's, the Moody's Rating of such corporate guarantee will be one rating subcategory below the rating of the other security;

(G) if the corporate guarantee is a senior secured obligation of the guarantor or obligor and the other security is a subordinated obligation that is: (1) rated "Baa3" or higher by Moody's, the Moody's Rating of such corporate guarantee will be one rating subcategory above the rating of the other security; (2) rated below "Baa3" but not rated "B3" by Moody's, the Moody's Rating of such corporate guarantee will be two rating subcategories above the rating of the other security; or (3) rated "B3" by Moody's, the Moody's Rating of such corporate guarantee will be "B2;"

(H) if the corporate guarantee is a senior unsecured obligation of the guarantor or obligor and the other security is a subordinated obligation that is: (1) rated "Baa3" or higher by Moody's, the Moody's Rating of such corporate guarantee will be one rating subcategory above the rating of the other security; or (2) rated "Ba1" or lower by Moody's, the Moody's Rating of such corporate guarantee will also be one rating subcategory above the rating of the other security; and

(I) if the REIT Debt Security is a subordinated obligation of the guarantor or obligor and the other security is also a subordinated obligation, the Moody's Rating of such corporate guarantee will be the rating of the other security; or

(iv) if such Collateral Debt Security is a Mezzanine Loan, no notching is permitted and the Moody's Rating will be the rating so assigned by Moody's;

provided, that (x) the rating of either S&P or Fitch used to determine the Moody's Rating pursuant to any of clauses (i), (ii) or (iii) above will be (a) a

public rating that addresses the obligation of the obligor (or guarantor, where applicable) to pay principal of and interest on the relevant Collateral Debt Security in full and is monitored on an ongoing basis by the relevant Rating Agency or (b) if no such public rating is available, a rating determined pursuant to a method determined by Moody's on a case-by-case basis and (y) the Aggregate Principal Balance of Collateral Debt Securities the Moody's Rating of which is based on an S&P rating or a Fitch rating may not exceed 20% of the Aggregate Principal Balance of all Collateral Debt Securities; provided, further, that the Moody's Rating of any Collateral Debt Security will be reduced one subcategory to the extent it is on credit watch with negative implications and increased one subcategory to the extent it is on credit watch with positive implications.

"Moody's Rating Factor": Relating to any Collateral Debt Security is the number set forth in the table below opposite the Moody's Rating of such Collateral Debt Security:

MOODY'S RATING	MOODY'S RATING FACTOR	MOODY'S RATING	MOODY'S RATING FACTOR
Aaa	1	Ba1	940
Aa1	10	Ba2	1,350
Aa2	20	Ba3	1,766
Aa3	40	B1	2,220
A1	70	B2	2,720
A2	120	B3	3,490
A3	180	Caa1	4,770
Baa1	260	Caa2	6,500
Baa2	360	Caa3	8,070
Baa3	610	Ca or lower	10,000

"Moody's Recovery Rate": With respect to any Collateral Debt Security on any Measurement Date, an amount equal to (A) if the Specified Type of Collateral Debt Security is included in the Moody's Loss Scenario Matrix (i) 100% minus (ii) the percentage for such Collateral Debt Security set forth in Schedule A (the Moody's Loss Scenario Matrix) hereto in (x) the table corresponding to the relevant Specified Type of Collateral Debt Security, (y) the column in such table setting forth the Moody's Rating of such Collateral Debt Security on such Measurement Date and (z) the row in such table opposite the percentage of the issue of which such Collateral Debt Security is a part relative to the total capitalization of (including both debt and equity securities issued by) the relevant issuer of or obligor on such Collateral Debt Security determined on the date on which such Collateral Debt Security was originally issued or (B) if the Specified Type of Collateral Debt Security is not included in the table set forth in Schedule A (the Moody's Loss Scenario Matrix) hereto, the Recovery Rate set forth following such table with respect to the applicable Specified Type.

"Moody's Weighted Average Extended Maturity Test": A test that will be satisfied on any Measurement Date if the Extended Weighted Average Maturity of the Collateral Debt Securities as of such Measurement Date is five (5) years or less.

"Moody's Weighted Average Initial Maturity Test": A test that will be satisfied on any Measurement Date if the Initial Weighted Average Maturity of the Collateral Debt Securities as of such Measurement Date is four (4) years or less.

"Moody's Weighted Average Rating Factor/Weighted Average Recovery Rate Matrix": A matrix that will be satisfied as of any Measurement Date if the Moody's Weighted Average Rating Factor (as of such Measurement Date) and the Moody's Weighted Average Recovery Rate (as of such Measurement Date) both fall within the same scenario (of the seven possible scenarios) set forth on the matrix below:

SCENARIO NO.	MAXIMUM MOODY'S WEIGHTED AVERAGE RATING FACTOR:	MINIMUM MOODY'S WEIGHTED AVERAGE RECOVERY RATES:
1	9200	15%
2	8800	11%
3	8720	9%
4	8500	8.5%
5	8000	6%
6	7000	3%
7	6500	0%

"Moody's Weighted Average Rating Factor/Weighted Average Recovery Rate Test": A test that will be satisfied as of any Measurement Date if the Moody's Weighted Average Rating Factor (as of such Measurement Date) and the Moody's Weighted Average Recovery Rate (as of such Measurement Date) both fall within the same scenario (out of seven possible scenarios) set forth in the Moody's Weighted Average Rating Factor/Weighted Average Recovery Rate Matrix. The highest value for Moody's Weighted Average Rating Factor permitted under any scenario set forth in the Moody's Weighted Average Rating Factor/Weighted Average Recovery Rate Matrix is 9200. The lowest value for Moody's Weighted Average Rating Factor contemplated under any scenario set forth in the Moody's Weighted Average Rating Factor/Weighted Average Recovery Rate Matrix is 6500. The lowest value for Moody's Weighted Average Recovery Rate permitted under any scenario set forth in the Moody's Weighted Average Rating Factor/Weighted Average Recovery Rate Matrix is 0%. The highest value for Moody's Weighted Average Recovery Rate contemplated under any scenario set forth in the Moody's Weighted Average Rating Factor/Weighted Average Recovery Rate Matrix is 15%.

"Moody's Weighted Average Recovery Rate": The number obtained by summing the products obtained by multiplying the Principal Balance of each Collateral Debt Security

(other than a Defaulted Security) by its Moody's Recovery Rate, dividing such sum by the Aggregate Principal Balance of all such Collateral Debt Securities.

"Net Outstanding Portfolio Balance": On any Measurement Date, the sum of:

(i) the Aggregate Principal Balance on such Measurement Date of the Collateral Debt Securities (other than Defaulted Securities);

(ii) the aggregate Principal Balance of all Principal Proceeds held as Cash and Eligible Investments, all Cash and Eligible Investments held in the Unused Proceeds Account that have not been designated as Interest Proceeds by the Collateral Manager with respect to the Effective Date and all Cash and Eligible Investments held in the Delayed Funding Obligations Account; and

(iii) with respect to each Defaulted Security, the Calculation Amount of such Defaulted Security;

provided, however, for purposes of any Par Value Test, any deferred or capitalized interest component of a Partially Deferred Loan shall be excluded from such calculation.

"Non-Advancing Collateral Debt Security": Any Collateral Debt Security, other than a REIT Debt Security, with respect to which no servicer or other party is required under the terms of the Underlying Instruments governing such Collateral Debt Security to make any liquidity advances to ensure the timely receipt of interest by and for the benefit of the holder of such Collateral Debt Security.

"Non-Permitted Holder": The meaning specified in Section 2.13(b) hereof.

"Nonrecoverable Advance": Any Interest Advance previously made or proposed to be made pursuant to Section 10.7 hereof which in the judgment of the Advancing Agent or the Trustee, as applicable, will not be ultimately

recoverable from collections on the Pledged Obligations.

"Nonrecoverable Cure Advance": Any advance previously made or proposed to be made pursuant to Section 17.2 hereof with respect to any Collateral Debt Security, which in the judgment of the Collateral Manager subject to the Collateral Manager Servicing Standard will not be ultimately recoverable from collections from such Collateral Debt Security.

"Note Liquidation Event": The meaning specified in Section 12.1(e).

"Noteholder": The Person in whose name such Note is registered in the Notes Register.

"Note Interest Rate": With respect to the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, the Class A Rate, Class B Rate, Class C Rate and Class D Rate.

"Notes": The Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, collectively, authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

"Notes Register" and "Notes Registrar": The respective meanings specified in Section 2.5(a) hereof.

"Notes Valuation Report": The meaning specified in Section 10.9(e) hereof.

"Notional Amount": In respect of the Preferred Shares, the per share notional amount of $1.00. The aggregate Notional Amount of the Preferred Shares on the Closing Date will be $163,707,380.

"Offer": With respect to any security, (i) any offer by the issuer of such security or by any other person or entity made to all of the holders of such security to purchase or otherwise acquire such security (other than pursuant to any redemption in accordance with the terms of the related Underlying Instruments) or to convert or exchange such security into or for cash, securities or any other type of consideration or (ii) any solicitation by the issuer of such security or any other person or entity to amend, modify or waive any provision of such security or any related Underlying Instrument.

"Officer": With respect to any corporation or limited liability company, including the Issuer, the Co-Issuer and the Collateral Manager, any Director, the Chairman of the Board of Directors, the President, any Senior Vice President any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, General Partner of such entity; and with respect to the Trustee, any Trust Officer.

"Officer's Certificate": With respect to the Issuer, the Co-Issuer and the Collateral Manager any certificate executed by an Officer thereof.

"Opinion of Counsel": A written opinion addressed to the Trustee and each Rating Agency in form and substance reasonably satisfactory to the Trustee, each Rating Agency (and each Hedge Counterparty, if applicable, pursuant to the provisions below) of an attorney at law admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands, in the case of an opinion relating to the laws of the Cayman Islands), which attorney may, except as otherwise expressly provided in this Indenture, be counsel for the Issuer, and which attorney shall be reasonably satisfactory to the Trustee. Whenever an Opinion of Counsel is required hereunder, such Opinion of Counsel may rely on opinions of other counsel who are so admitted and so satisfactory which opinions of other counsel shall accompany such Opinion of Counsel and shall either be addressed to the Trustee and each Rating Agency or shall state that the Trustee and each Rating Agency shall be entitled to rely thereon; provided, however, that such Opinion of Counsel shall be addressed to each Hedge Counterparty (or each Hedge Counterparty may rely on such Opinion of Counsel) to the extent that such Opinion of Counsel relates to or affects the interests of each Hedge Counterparty.

"Optional Redemption": The meaning specified in Section 9.1(c).

"Outstanding": With respect to the Notes, as of any date of determination, all of the Notes or any Class of Notes, as the case may be, theretofore authenticated and delivered under this Indenture except:

(1) Notes theretofore canceled by the Notes Registrar or delivered to the Notes Registrar for cancellation;

(2) Notes or portions thereof for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or the Paying Agent in trust for the Holders of such Notes pursuant to Section 4.1(a)(ii); provided, that, if such Notes or portions thereof are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

(3) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, unless proof satisfactory to the Trustee is presented that any such Notes are held by a holder in due course; and

(4) Notes alleged to have been mutilated, destroyed, lost or stolen for which replacement Notes have been issued as provided in Section 2.6;

provided, that in determining whether the Noteholders of the requisite Aggregate Outstanding Amount have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (i) Notes owned by the Issuer, the Co-Issuer or any Affiliate thereof shall be disregarded and deemed not to be Outstanding and (ii) in relation to any amendment or other modification of, or assignment or termination of, any of the express rights or obligations of the Collateral Manager under the Collateral Management Agreement or this Indenture (including the exercise of any rights to remove the Collateral Manager or terminate the Collateral Management Agreement or approve or object to a replacement for the Collateral Manager except as specifically provided in the Collateral Management Agreement with respect to the termination of the Collateral Manager without cause and with respect to the replacement of the Collateral Manager in instances where the Collateral Manager has not been terminated for cause or where such replacement is not an Affiliate of the Collateral Manager), Notes owned by the Collateral Manager or any of its Affiliates, or by any accounts managed by them, shall be disregarded and deemed not to be Outstanding. In determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes that the Trustee knows to be so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not the Issuer, the Collateral Manager or any other obligor upon the Notes or any Affiliate of the Issuer, the Collateral Manager or such other obligor.

"Par Value Ratio": Each of the Class A/B Par Value Ratio, the Class C Par Value Ratio and the Class D Par Value Ratio.

"Par Value Test": Each of the Class A/B Par Value Test, the Class C Par Value Test and the Class D Par Value Test.

"Partially Deferred Loan": A Loan which by its terms provides for the payment of interest in two components, one of which is payable currently on each due date under the Loan and the other of which is either deferred or capitalized until maturity.

"Participating Institution": An entity that creates a Participation.

"Participation": An interest in all or part of a Loan acquired by a participant from a Participating Institution, which participation may be subordinate to other interests in such Loan and may be further participated into sub-participations.

"Paying Agent": Any Person authorized by the Issuer and the

Co-Issuer to pay the principal of or interest on any Notes on behalf of the Issuer and the Co-Issuer as specified in Section 7.2 hereof.

"Payment Account": The payment account of the Trustee in respect of the Notes established pursuant to Section 10.3 hereof.

"Payment Date": With respect to each Class of Notes, April 21, 2005, and thereafter quarterly on each July 21, October 21, January 21 and April 21 (or if such day is not a Business Day, the next succeeding Business Day) to and including the Stated Maturity related to such Class unless redeemed or repaid prior thereto.

"Person": An individual, corporation (including a business trust), partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

"Plan Assets": The meaning specified in Section 2.5(g)(vi).

"Pledged Collateral Debt Security": On any date of determination, any Collateral Debt Security that has been Granted to the Trustee and not been released from the lien of this Indenture pursuant to Section 10.10 hereof. Pledged Collateral Debt Securities are also referred to in this Indenture as Collateral Debt Securities.

"Pledged Obligations": On any date of determination, any Pledged Collateral Debt Securities and the Eligible Investments that have been Granted to the Trustee for the benefit of the Noteholders and each Hedge Counterparty and which form part of the Assets.

"Preferred Equity Security": A security, providing for regular payments of dividends or other distributions, representing an equity interest in an entity (including, without limitation, a partnership or a limited liability company) that is a borrower under a mortgage loan secured by commercial properties (or in an entity operating or controlling, directly or through affiliates, such commercial properties), which is generally senior with respect to the payments of dividends and other distributions, redemption rights and rights upon liquidation to such entity's common equity.

"Preferred Shareholder": A registered owner of Preferred Shares.

"Preferred Shares": The preferred shares issued by the Issuer concurrently with the issuance of the Notes.

"Preferred Shares Distribution Account": A segregated account established and designated as such by the Preferred Shares Paying Agent pursuant to the Preferred Shares Paying Agency Agreement.

"Preferred Shares Paying Agency Agreement": The Preferred Shares Paying Agency Agreement, dated as of the Closing Date, between the Issuer and the Preferred Shares Paying Agent relating to the Preferred Shares, as amended from time to time in accordance with the terms thereof.

"Preferred Shares Paying Agent": The Bank, solely in its capacity as Preferred Shares Paying Agent under the Preferred Shares Paying Agency Agreement and not individually, unless a successor Person shall have become the Preferred Shares Paying Agent pursuant to the applicable provisions of the Preferred Shares Paying Agency Agreement, and thereafter Preferred Shares Paying Agent shall mean such successor Person.

"Prime Interest Rate": The annual rate of interest published in The Wall Street Journal from time to time as the "Prime Rate". If more than one "Prime Rate" is published in The Wall Street Journal for a day, the average of such "Prime Rates" shall be used, and such average shall be rounded up to the nearest one-eighth of one percent (0.125%). If the "Prime Rate" contained in The Wall Street Journal is not readily ascertainable, the Collateral Manager shall select an equivalent publication that publishes such "Prime Rate", and if such "Prime Rates" are no longer generally published or are limited, regulated or administered by a governmental authority or quasigovernmental body, then the Collateral Manager shall select, in its reasonable discretion, a comparable interest rate index.

"Principal Balance" or "par": With respect to any Collateral Debt Security or Eligible Investment, as of any date of determination, the outstanding principal amount of such Collateral Debt Security or Eligible Investment; provided that:

(1) the Principal Balance of a Collateral Debt Security received upon acceptance of an Offer for another Collateral Debt Security, which Offer expressly states that failure to accept such Offer may result in a default under the Underlying Instruments, will be deemed to be the Calculation Amount of such other Collateral Debt Security until such time as Interest Proceeds and Principal Proceeds, as applicable, are received when due with respect to such other Collateral Debt Security;

(2) the Principal Balance of any Eligible Investment that does not pay Cash interest on a current basis will be the accreted value thereof;

(3) the Principal Balance of any Preferred Equity Security will be equal to the component of the liquidation price thereof that is attributable to the return of capital by its governing documents; and

(4) the Principal Balance of any Written Down Security will exclude any portion of the principal balance of such security that (i) has been written down as a result of a "realized loss," "collateral support deficit," "additional trust fund expense" or other event that under the terms of such security results in a write-down of principal balance or (ii) would be affected by an appraisal reduction.

"Principal Collection Account": The trust account established pursuant to Section 10.2(a) hereof.

"Principal Only Security": Any Collateral Debt Security (other than a Step-Up Security) that does not provide for payment of interest or provides that all payments of interest will be deferred until the final maturity thereof.

"Principal Proceeds": With respect to any Payment Date, (A) the sum (without duplication) of (1) all principal payments (including prepayments and Unscheduled Principal Payments) received during the related Due Period (excluding those previously reinvested or designated by the Collateral Manager for reinvestment in Collateral Debt Securities) on (a) Eligible Investments (other than Eligible Investments purchased with Interest Proceeds, Eligible Investments in the Delayed Funding Obligations Account and Eligible Investments in the Expense Account and any amount representing the accreted portion of a discount from the face amount of an Eligible Investment) and (b) Collateral Debt Securities as a result of (i) a maturity, scheduled amortization, mandatory prepayment or mandatory sinking fund payment on a Collateral Debt Security, (ii) optional redemptions, prepayments, exchange offers or tender offers made at the option of the issuer thereof, (iii) recoveries on Defaulted Securities or (iv) any other principal payments with respect to Collateral Debt Securities (not included in Sale Proceeds), (2) distributions on Preferred Equity Securities attributable to the return of capital by their governing documents, (3) all fees and commissions received during such Due Period in connection with Defaulted Securities and Eligible Investments and the restructuring or default of such Defaulted Securities and Eligible Investments, (4) any interest received during such Due Period on such Collateral Debt Securities or Eligible Investments to the extent such interest constitutes proceeds from accrued interest purchased with Principal Proceeds other than accrued interest purchased by the Issuer on or prior to the Closing Date and interest included in clause (A)(1) of the definition of Interest Proceeds, (5) Sale Proceeds received during such Due Period in respect of sales (excluding those previously reinvested or currently being reinvested in Collateral Debt Securities in accordance with the Transaction Documents and excluding accrued interest included in Sale Proceeds (unless such accrued interest was purchased with Principal Proceeds) that are designated by the Collateral Manager as Interest Proceeds in accordance with clause (A)(1) of the definition of Interest Proceeds), (6) all Cash payments of interest or dividends received during such Due Period on Defaulted Securities, (7) any interest received during such Due Period on a Written Down Security to

the extent such interest constitutes accrued interest on the excess of the principal amount of such Written Down Security over the Principal Balance of such Written Down Security, (8) any proceeds resulting from (a) the termination (in whole or in part) of any Hedge Agreement during such Due Period to the extent such proceeds are received from the Hedge Counterparty to such Hedge Agreement and, to the extent such proceeds exceed the cost of entering into a replacement Hedge Agreement in accordance with the requirements set forth in Section 16.1(a) hereof, (b) payments received from

a replacement Hedge Counterparty to the extent such proceeds exceed the amount owed to a previous Hedge Counterparty in connection with the termination of the related Hedge Agreement and (c) all amounts transferred from each Hedge Termination Account pursuant to Section 16.1(g) hereof; (9) during the Reinvestment Period, the Special Amortization Amount, if any; (10) on the first Payment Date following the end of the Reinvestment Period, funds in the Unused Proceeds Account to the extent the Collateral Manager has not designated such amounts as Interest Proceeds pursuant to Section 10.4(c) hereof; (11) funds transferred to the Principal Collection Account from the Delayed Funding Obligations Account in respect of amounts previously held on deposit in respect of unfunded commitments for Delayed Draw Term Loans that have been sold or otherwise disposed before such commitments thereunder have been drawn or as to which excess funds remain; and (12) all other payments received in connection with the Collateral Debt Securities and Eligible Investments that are not included in Interest Proceeds; provided, that in no event will Principal Proceeds include any proceeds from the Excepted Assets minus (B) (x) the aggregate amount of any Nonrecoverable Advances that were previously reimbursed to the Advancing Agent or the Trustee and the aggregate amount of any Cure Advances reimbursed to the Collateral Manager during the related Due Period from Principal Proceeds and (y) the aggregate amount of any Hedge Payment Amounts that were previously paid to the applicable Hedge Counterparty from Principal Proceeds during the related Due Period as a result of the early termination of the related Asset Specific Hedge from any call, redemption and prepayment premiums in accordance with clause (e) of the definition of Asset Specific Hedge.

"Priority of Payments": The meaning specified in Section 11.1(a) hereof.

"Proceeding": Any suit in equity, action at law or other judicial or administrative proceeding.

"Property Type": Each of the following types of property:

(i) "Diversified Properties" means properties used by businesses for diverse purposes and other similar property interests;

(ii) "Healthcare Properties" means hospitals, clinics, sports clubs, spas and other health care facilities and other similar real property interests used in one or more similar businesses (but excluding medical offices);

(iii) "Hospitality Properties" means hotels, motels, youth hostels, bed and breakfasts and other similar real property interests used in one or more similar businesses;

(iv) "Industrial Properties" means factories, refinery plants, breweries and other similar real property interests used in one or more similar businesses;

(v) "Mixed Use Properties" means real estate property used by businesses for diverse business purposes and any similar property interests;

(vi) "Mortgage Property" means mortgages and real estate property interests;

(vii) "Multi-Family Properties" means multi-family dwellings such as apartment blocks, condominiums and cooperative owned buildings;

(viii) "Retail Properties" means retail stores, restaurants, bookstores, clothing stores and other similar real property interests used in one or more similar businesses;

(ix) "Self-Storage Properties" means self-storage facilities and other similar real property interests used in one or more similar businesses;

(x) "Suburban Office Properties" means office buildings (including medical offices), conference facilities and other similar real property interests used in the commercial real estate business in suburban areas;

(xi) "Urban Office Properties" means office buildings (including medical offices), conference facilities and other similar real property interests used in the commercial real estate business in urban areas;

(xii) "Warehouse Properties" means warehouse facilities and other similar real property interests; and

(xiii) "Other Properties" means any other property other than Diversified Properties, Hospitality Properties, Industrial Properties, Multi-Family Properties, Urban Office Properties, Suburban Office Properties, Retail Properties, Self-Storage Properties, Healthcare Properties, Mixed Use Properties, Mortgage Properties and Warehouse Properties.

"Proposed Portfolio": The portfolio of Collateral Debt Securities and Eligible Investments resulting from the disposition of a Collateral Debt Security or a proposed reinvestment of Principal Proceeds in a Substitute Collateral Debt Security, as the case may be.

"PTCE": The meaning specified in Section 2.5(g)(vi).

"Purchase Agreement": The purchase agreement relating to the Notes dated on or about the Closing Date by and among the Issuer, the Co-Issuer and the Initial Purchaser.

"Purchase Price": The purchase price identified for each Collateral Debt Security against its name in Schedule E.

"Purchase Option Purchase Price": The meaning specified in Section 17.3.

"QIB": A qualified institutional buyer within the meaning of Rule 144A.

"Qualified Hedge Party": A party that:

(a) (i) at the time it becomes a Hedge Counterparty, will have with respect to itself as an issuer or with respect to its debt obligations ratings by Moody's,

Fitch and S&P of at least equal to the requirements set forth in the definition of "Hedge Counterparty Threshold Rating";

(ii) legally and effectively accepts the rights and obligations of a Hedge Counterparty in respect of the Hedge Agreement pursuant to a written agreement reasonably acceptable to the Issuer and the Trustee; and

(iii) is a recognized dealer in over-the-counter derivatives organized under the laws of the United States of America or a jurisdiction located in the United States of America (or another jurisdiction reasonably acceptable to the Issuer and the Trustee); or

(b) (i) has, with respect to becoming a Hedge Counterparty, satisfied the Rating Agency Condition with respect to Moody's and S&P; and

(ii) for so long as any Class of Notes are Outstanding under this Indenture and are rated by Fitch, (A) has posted collateral in an amount and manner that satisfies the Rating Agency Condition with respect to Fitch or (B) has caused an entity that satisfies the ratings criteria set forth in clause (a) of this definition to guarantee its obligations under the applicable Hedge Agreement.

"Qualified Purchaser": A "qualified purchaser" within the meaning of Section (a)(51) of the Investment Company Act.

"Rake Bond": A loan-specific commercial mortgage pass-through certificate or similar security backed by only one of the mortgage loans included in a pooled securitization transaction, typically representing a non-pooled component of the related mortgage loan that is subordinate to the pooled component with respect to the right to receive distributions of collections on such mortgage loan.

"Ramp-Up Period": The period commencing on the Closing Date and ending on the Effective Date.

"Rating Agency": Each of Moody's, Fitch and S&P and any successor thereto, or, with respect to Pledged Obligations generally, if at any time Moody's, Fitch or S&P or any such successor ceases to provide rating services with respect to the Notes or certificates similar to the Notes, any other nationally recognized investment rating agency selected by the Issuer and reasonably satisfactory to each Hedge Counterparty and a Majority of the Notes voting as a single Class.

"Rating Agency Condition": With respect to any proposed action or matter, the receipt by the Trustee of confirmation in writing from the applicable Rating Agencies that the then current ratings on the Notes, as applicable, shall not be reduced, qualified or withdrawn as a result of such action or matter.

"Rating Confirmation Failure": The meaning specified in Section 7.18(b) hereof.

"Record Date": The date on which the Holders of Notes entitled to receive a payment in respect of principal or interest on the succeeding Payment Date is determined, such date as to any Payment Date being the 15th day (whether or not a Business Day) prior to the applicable Payment Date.

"Redemption Date": Any Payment Date specified for a redemption of the Securities pursuant to Sections 9.1 or 9.2 hereof.

"Redemption Date Statement": The meaning specified in Section 10.9(i) hereof.

"Redemption Price": The Redemption Price of the Notes and Preferred Shares will be calculated as follows:

Class A Notes. The redemption price of the Class A Notes will be calculated on the related Determination Date and will be equal to the Aggregate Outstanding Amount of the Class A Notes to be redeemed, together with the Class A Interest Distribution Amount (plus, any Class A Defaulted Interest Amount) due on that day of redemption;

Class B Notes. The redemption price of the Class B Notes will be calculated on the related Determination Date and will be equal to the Aggregate Outstanding Amount of the Class B Notes to be redeemed, together with the Class B Interest Distribution Amount (plus, any Class B Defaulted Interest Amount) due on that day of redemption;

Class C Notes. The redemption price of the Class C Notes will be calculated on the related Determination Date and will be equal to the Aggregate Outstanding Amount of the Class C Notes to be redeemed, together with the Class C Interest Distribution Amount (including, any Class C Capitalized Interest and

Class C Defaulted Interest Amount) due on that day of redemption;

Class D Notes. The redemption price of the Class D Notes will be calculated on the related Determination Date and will be equal to the Aggregate Outstanding Amount of the Class D Notes to be redeemed, together with the Class D Interest Distribution Amount (including, any Class D Capitalized Interest and Class D Defaulted Interest Amount) due on that day of redemption; and

Preferred Shares. The redemption price for the Preferred Shares will be calculated on the related Determination Date and will be equal to the sum of all net proceeds and Cash, if any, remaining after redemption of the Notes and payments of all amounts and expenses described under subclauses (1) through (5), (16), (17), and (18) of Section 11.1(a)(i); provided that if there are no such net proceeds or Cash remaining, the redemption price for the Preferred Shares shall be equal to $0.

"Reference Banks": The meaning set forth in Schedule F attached hereto.

"Registered": With respect to any debt obligation, a debt obligation that is issued after July 18, 1984, and that is in registered form for purposes of the Code.

"Registered Security": The meaning specified in Section 3.3(a)(iii).

"Regulation S": Regulation S under the Securities Act.

"Regulation S Global Security": The meaning specified in Section 2.2(b)(ii) hereof.

"Reimbursement Interest": Interest accrued on the amount of any Interest Advance made by the Advancing Agent or the Trustee, for so long as it is outstanding, at the Reimbursement Rate.

"Reinvestment Criteria": The meaning specified in Section 12.2(a) hereof.

"Reimbursement Rate": A rate per annum equal to the "prime rate" as published in the "Money Rates" section of the Wall Street Journal, as such "prime rate" may change from time to time.

"Reinvestment Income": Any interest or other earnings on the Deposit or funds in the Unused Proceeds Account that have not been designated as Interest Proceeds by the Collateral Manager with respect to the Effective Date.

"Reinvestment Period": The period beginning on the Closing Date and ending on and including the first of the following events or dates to occur: (i) the end of the Due Period related to the Payment Date in April, 2009; (ii) the end of the Due Period related to the Payment Date immediately following the date on which the Collateral Manager (with the written consent of Holders of the Majority of the Preferred Shares) notifies the Trustee that, in light of the composition of Collateral Debt Securities, general market conditions and other factors, investments in additional Collateral Debt Securities within the foreseeable future would be either impractical or not beneficial to the holders of the Preferred Shares; (iii) the end of the Due Period related to the date on which all of the Securities are redeemed as described herein under Section 9.1 and (iv) the occurrence of an Event of Default which is neither cured nor waived.

"REIT Debt Securities": REIT Debt Securities -- Diversified, REIT Debt Securities -- Health Care, REIT Debt Securities -- Hotel, REIT Debt Securities -- Industrial, REIT Debt Securities -- Mortgage, REIT Debt Securities -- Multi Family, REIT Debt Securities -- Office, REIT Debt Securities -- Retail and REIT Debt Securities -- Storage.

"REIT Debt Securities -- Diversified": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of mortgages on a portfolio of diverse real property interests, provided that (a) any Collateral Debt Security

falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security and (b) any Collateral Debt Security falling within any other REIT Debt Security description set forth herein will be excluded from this definition.

"REIT Debt Securities -- Health Care": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of mortgages on hospitals,

clinics, sport clubs, spas and other health care facilities and other similar real property interests used in one or more similar businesses, provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"REIT Debt Securities -- Hotel": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of mortgages on hotels, motels, youth hostels, bed and breakfasts and other similar real property interests used in one or more similar businesses, provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"REIT Debt Securities -- Industrial": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of mortgages on factories, refinery plants, breweries and other similar real property interests used in one or more similar businesses, provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"REIT Debt Securities -- Mortgage": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of mortgages, commercial mortgage backed securities, collateralized mortgage obligations and other similar mortgage related securities (including Collateral Debt Securities issued by a hybrid form of such trust that invests in both commercial real estate and commercial mortgages), provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"REIT Debt Securities -- Multi Family": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of residential mortgages on multi family dwellings such as apartment blocks, condominiums and co operative owned buildings, provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"REIT Debt Securities -- Office": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of mortgages on office buildings, conference facilities and other similar real property interests used in the commercial real estate business, provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"REIT Debt Securities -- Retail": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of mortgages on retail stores, restaurants, bookstores, clothing stores and other similar real property interests used in one or more similar businesses, provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"REIT Debt Securities -- Storage": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of storage facilities and other similar real property interests used in one or more similar businesses, provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"Repurchase Price": The meaning specified in Section 17.4(c).

"Rule 144A": Rule 144A under the Securities Act.

"Rule 144A Global Security": The meaning specified in Section 2.2(b)(i) hereof.

"Rule 144A Information": The meaning specified in Section 7.13 hereof.

"S&P": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors in interest.

"S&P CDO Monitor": A dynamic, analytical computer model provided prior to the initial Payment Date by S&P to the Collateral Manager and the Trustee, with written instructions and assumptions to be applied when running such computer model, for the purpose of estimating the default risk of a pool of Collateral Debt Securities.

"S&P CDO Monitor Test": A test that will be satisfied on any Measurement Date if, after giving effect to any purchase or sale of a Collateral Debt Security (or both), as the case may be, (i) the Class A Loss Differential, the Class B Loss Differential, the Class C Loss Differential or the Class D Loss Differential, as the case may be, of the Standard & Poor's Proposed Portfolio is positive or (ii) the Class A Loss Differential, the Class B Loss Differential, the Class C Loss Differential or the Class D Loss Differential, as the case may be, of the Proposed Portfolio is greater than or equal to the Class A Loss Differential, the Class B Loss Differential, the Class C Loss Differential or the Class D Loss Differential, as the case may be, of the Current Portfolio.

In addition, the results of the CDO Monitor Test, on any Measurement Date, will be utilized to determine which of the five permissible scenarios may be selected by the Collateral Manager pursuant to the S&P Recovery Test; provided, that the Collateral Manager may not change the scenario that it previously selected under the S&P Recovery Test if such change would cause the S&P Recovery Test not to be satisfied (or, if the S&P Recovery Test was previously not satisfied, not to be maintained or improved).

"S&P Rating": Of any Collateral Debt Security will be determined as follows:

(i) if S&P has assigned a rating to such Collateral Debt Security either publicly or privately (in the case of a private rating, with the appropriate consents for the use of such private rating), the S&P Rating shall be the rating assigned thereto by S&P (or, in the case of a REIT Debt Security, the issuer credit rating assigned by S&P), provided, that, notwithstanding the foregoing, if any Collateral Debt Security shall, at the time of its purchase by the Issuer, be listed for a possible upgrade or downgrade on S&P's then current credit rating watch list, then the S&P Rating of such Collateral Debt Security shall be one subcategory above or below,

respectively, the rating then assigned to such item by S&P, as applicable; provided, that if such Collateral Debt Security is removed from such list at any time, it shall be deemed to have its actual rating by S&P;

(ii) if such Collateral Debt Security is not rated by S&P but the Issuer or the Collateral Manager on behalf of the Issuer has requested that S&P assign a rating to such Collateral Debt Security, the S&P Rating shall be the rating so assigned by S&P; provided, that pending receipt from S&P of such rating, if such Collateral Debt Security is of a type listed on Schedule C hereto or is not eligible for notching in accordance with Schedule D hereto, such Collateral Debt Security shall have an S&P Rating of "CCC", otherwise such S&P Rating shall be the rating assigned according to Schedule D hereto until such time as S&P shall have assigned a rating thereto; or

(iii) if any Collateral Debt Security is a Collateral Debt Security that has not been assigned a rating by S&P and is not a Collateral Debt Security listed in Schedule C hereto, as identified by the Collateral Manager, the S&P Rating shall be the rating assigned according to Schedule D hereto; provided, that if any Collateral Debt Security shall, at the time of its purchase by the Issuer, be listed for a possible upgrade or downgrade on either Moody's or Fitch's then current credit rating watch list, then the S&P Rating of such Collateral Debt Security shall be one subcategory above or below, respectively, the rating then assigned to such item in accordance with Schedule D hereto; provided, further, that the Aggregate Principal Balance that may be given a rating based on this paragraph (c) may not exceed 20%, of the Aggregate Principal Balance of all Collateral Debt Securities.

"S&P Recovery Rate": With respect to any Collateral Debt Security on any Measurement Date, an amount equal to the percentage for such Collateral Debt Security set forth in Schedule B (the Standard & Poor's Recovery Matrix) hereto (or, in the case of a Defaulted Security under Clause A of Schedule B (the Standard & Poor's Recovery Matrix) hereto, corresponding to the S&P Rating at the time of issuance of such Collateral Debt Security).

"S&P Recovery Test": A test that will be satisfied on any Measurement Date if the S&P Weighted Average Recovery Rate (based upon the Principal Balance of the Collateral Debt Securities) for each Class of Notes falls within one of the five permissible scenarios for

each such Class. The Collateral Manager shall select which of the five scenarios shall apply initially by notice to the Trustee and S&P on or prior to the Closing Date. For any Measurement Date thereafter, the Collateral Manager may select a different scenario prior to each such Measurement Date on which the CDO Monitor Test is to be performed (and shall notify the Trustee in writing of such selection on such Measurement Date, or if no such notice is given, the scenario used for the preceding Measurement Date shall apply to such Measurement Date). With respect to each Class of Notes, the five permissible S&P Weighted Average Recovery Rate options are as set forth on the table below:

SCENARIO NUMBER	S&P WEIGHTED AVERAGE RECOVERY RATE IS EQUAL TO OR GREATER THAN:
1	40.00%
2	37.00%
3	33.40%
4	30.00%
5	25.00%

For the avoidance of doubt, it is understood that (i) the Collateral Manager may select the applicable scenario from the five permissible scenarios for any Measurement Date at any time on or prior to such Measurement Date, and (ii) if no scenario is selected by the Collateral Manager for any particular Measurement Date, the scenario most recently selected by the Collateral Manager will be used; provided, that the Collateral Manager may not change the scenario that it previously selected under the S&P Recovery Test if such change would cause the S&P Recovery Test not to be satisfied (or, if the S&P Recovery Test was previously not satisfied, not to be maintained or improved).

"S&P Weighted Average Recovery Rate": With respect to the Collateral Debt Securities, as of any Measurement Date, the number obtained by summing the products obtained by multiplying the Principal Balance of each Collateral Debt Security, other than a Defaulted Security, by its S&P Recovery Rate, dividing such sum by the aggregate Principal Balance of all such Collateral Debt Securities and rounding up to the first decimal place.

"Sale": The meaning specified in Section 5.17(a) hereof.

"Sale Proceeds": All proceeds (including accrued interest) received as a result of sales of Pledged Obligations net of any reasonable out-of-pocket expenses of the Collateral Manager or the Trustee in connection with any such sale.

"Schedule of Closing Date Collateral Debt Securities": The Collateral Debt Securities listed on Schedule E hereto, which Schedule shall include the Principal Balance, interest rate (if the security bears interest at a fixed rate) or the spread and the relevant floating reference rate (if the security bears interest at a floating rate), the maturity date, the Moody's Rating, S&P Rating and Fitch Rating, if any, of each Collateral Debt Security.

"Scheduled Amortization Amounts": With respect to each Payment Date, the Class C Scheduled Amortization Amount and the Class D Scheduled Amortization Amount.

"Scheduled Distribution": With respect to any Pledged Obligation, for each Due Date, the scheduled payment of principal, interest or fee or any dividend or premium payment due on such Due Date or any other distribution with respect to such Pledged Obligation, determined in accordance with the assumptions specified in Section 1.2.

"Securities": Collectively, the Notes and the Preferred Shares.

"Securities Account": The meaning specified in Section 8-501(a) of the UCC.

"Securities Account Control Agreement": The meaning specified in Section 3.3(a).

"Securities Act": The Securities Act of 1933, as amended.

"Securities Intermediary": The meaning specified in Section 8-102(a)(14) of the UCC.

"Security Entitlement": The meaning specified in Section 8-102(a)(17) of the UCC.

"Seller": The meaning specified in the applicable Collateral Debt Securities Purchase Agreement.

"Senior Collateral Management Fee": The fee payable quarterly in arrears on each Payment Date to the Collateral Manager pursuant to this Indenture and the Collateral Management Agreement, equal to 0.10% per annum of the Net Outstanding Portfolio Balance

for such Payment Date, to the extent funds are available for such purpose in accordance with the Priority of Payments.

"Senior Securitization": The securitization transaction, if any, in which the Senior Tranche related to Collateral Debt Securities that are Loans have been included.

"Senior Tranche": (i) With respect to a Participation or B Note, any senior interest in the same Underlying Term Loan as a Participation or any senior debt secured by the same Underlying Mortgage Property as a B Note or Participation and (ii) with respect to a Mezzanine Loan, any commercial mortgage loan related to the same Underlying Mortgage Property or Properties as the Mezzanine Loan.

"Share Registrar": LaSalle Bank National Association, a national banking association organized and existing under the laws of the United States of America, unless a successor Person shall have become the Share Registrar pursuant to the applicable provisions of the Preferred Shares Paying Agency Agreement, and thereafter "Share Registrar" shall mean such successor Person.

"Similar Law": The meaning specified in Section 2.5(g)(vi).

"Single Asset Mortgage Security": A commercial mortgage pass-through certificate or similar security backed primarily by a single mortgage loan on one or more commercial properties included in a property-specific securitization transaction.

"Single Borrower Mortgage Security": A commercial mortgage pass-through certificate or similar security backed primarily by one or more mortgage loans to the same borrower (or affiliated borrowers) on one or more commercial properties included in a securitization.

"Special Amortization": The meaning specified in Section 9.7.

"Special Amortization Amount": The meaning specified in Section 9.7.

"Specified Person": The meaning specified in Section 2.6(a) hereof.

"Specified Type": A CMBS Security, REIT Debt Security, Mezzanine Loan, Loan or Preferred Equity Security.

"Spread Excess": As of any Measurement Date, a fraction (expressed as a percentage), the numerator of which is equal to the product of (a) the greater of zero and the excess, if any, of the Weighted Average Spread for such Measurement Date over 5.30% and (b) the Aggregate Principal Balance of all Collateral Debt Securities that are Floating Rate Securities (excluding all Defaulted Securities and Written Down Securities) and the denominator of which is the Aggregate Principal Balance of all Collateral Debt Securities that are Fixed Rate Securities (excluding all Defaulted Securities and Written Down Securities), multiplying the resulting figure by 365 and then dividing by 360.

"Stated Maturity": February 20, 2040.

"Step-Down Bond": A security which by the terms of the related Underlying Instruments provides for a decrease, in the case of a Fixed Rate Security, in the per annum interest rate on such security or, in the case of a Floating Rate Security, in the spread over the applicable index or benchmark rate, solely as a function of the passage of time; provided, that a Step-Down Bond shall not include any such security providing for payment of a constant rate of interest at all times after the date of acquisition by the Issuer.

"Step-Up Security": A security with a current interest rate of zero percent per annum at the time of purchase but which increases to predetermined levels on specific dates.

"Subordinate Collateral Management Fee": The fee payable quarterly in arrears on each Payment Date to the Collateral Manager pursuant to this Indenture and the Collateral Management Agreement, in an amount equal to 0.15% per annum of the Net Outstanding Portfolio Balance, to the extent funds are available for such purpose in accordance with the Priority of Payments.

"Subordinate Interests": The Class B Subordinate Interest, the Class C Subordinate Interest and/or the Class D Subordinate Interest, as the context

may require.

"Subsequent Collateral Debt Security": Any Collateral Debt Security that is acquired after the Closing Date.

"Substitute Collateral Debt Security": A Collateral Debt Security that is acquired in substitution for securities previously pledged to the Trustee in accordance herewith.

"Successful Auction": (i) An Auction which is conducted in accordance with Section 9.2(b) or (ii) the purchase of Collateral Debt Securities by the Collateral Manager or its Affiliates for a price equal to the Total Redemption Price pursuant to Section 12.4(c).

"Tax Event": Means (i) any obligor is, or on the next scheduled payment date under any Collateral Debt Security, will be, required to deduct or withhold from any payment under any Collateral Debt Security to the Issuer for or on account of any tax for whatever reason and such obligor is not required to pay to the Issuer such additional amount as is necessary to ensure that the net amount actually received by the Issuer (free and clear of taxes, whether assessed against such obligor or the Issuer) will equal the full amount that the Issuer would have received had no such deduction or withholding been required, (ii) any jurisdiction imposes net income, profits, or similar tax on the Issuer, (iii) the Issuer is required to deduct or withhold from any payment under a Hedge Agreement for or on account of any tax and the Issuer is obligated to make a gross up payment (or otherwise pay additional amounts) to the Hedge Counterparty, or (iv) a Hedge Counterparty is required to deduct or withhold from any payment under a Hedge Agreement for or on account of any tax for whatever reason and such Hedge Counterparty is not required to pay to the Issuer such additional amount as is necessary to ensure that the net amount actually received by the Issuer (free and clear of taxes, whether assessed against such obligor or the Issuer) will equal the full amount that the Issuer would have received had no such deduction or withholding been required or (v) the Issuer fails to maintain its status as a qualified REIT subsidiary (within the meaning of Section 856(i)(2) of the Code).

"Tax Materiality Condition": The condition that will be satisfied if either (i) (A) as a result of the occurrence of a Tax Event, a tax or taxes are imposed on the Issuer or withheld from payments to the Issuer and with respect to which the Issuer receives less than the full amount that the Issuer would have received had no such deduction occurred, and (B) "gross up payments" required to be made by the Issuer exceed the amounts that the Issuer would have been required to pay had no deduction or withholding been required exceeds, in the aggregate, U.S. $1 million during any 12-month period or (ii) the Issuer fails to maintain its status as a qualified REIT subsidiary (within the meaning of Section 856(i)(2) of the Code).

"Tax Redemption": The meaning specified in Section 9.1(b) hereof.

"Total Redemption Price": The amount equal to funds sufficient to pay all amounts and expenses described under clauses (1) through (5), (16), (17) and (18) of Section 11.1(a)(i) and to redeem all Notes at their applicable Redemption Prices.

"Transaction Documents": This Indenture, the Collateral Management Agreement, the Collateral Debt Securities Purchase Agreements, the Company Administration Agreement, the Preferred Shares Paying Agency Agreement and each Hedge Agreement.

"Transfer Agent": The Person or Persons, which may be the Issuer, authorized by the Issuer to exchange or register the transfer of Notes.

"Treasury Regulations": Temporary or final regulations promulgated under the Code by the United States Treasury Department.

"Treasury Security": A U.S. Treasury security, which may or may not bear interest.

"Trust Officer": When used with respect to the Trustee, any officer within the CDO Trust Services Group of the Corporate Trust Office (or any successor group of the Trustee) including any vice president, assistant vice

president or officer of the Trustee customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the CDO Trust Services Group of the Corporate Trust Office because of his knowledge of and familiarity with the particular subject.

"Trustee": LaSalle Bank National Association, a national banking association organized and existing under the laws of the United States of America, unless a successor Person shall have become the Trustee pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean such successor Person.

"Trustee Fee Proposal": The letter dated as of October 20, 2004, to Arbor Parent, as revised to date.

"UCC": The applicable Uniform Commercial Code.

"UCC Account": "Account," as such term is defined in Section 9-102(a)(2) of the UCC.

"Uncertificated Security": The meaning specified in Section 3.3(a)(ii).

"Underlying Instruments": The indenture, loan agreement, note, mortgage, intercreditor agreement, participation agreement or other agreement pursuant to which a Collateral Debt Security or Eligible Investment has been issued or created and each other agreement that governs the terms of or secures the obligations represented by such Collateral Debt Security or Eligible Investment or of which holders of such Collateral Debt Security or Eligible Investment are the beneficiaries.

"Underlying Mortgage Property": With respect to (i) a Loan (other than a Participation or Mezzanine Loan), the commercial mortgage property or properties securing the Loan, (ii) a Participation, the commercial mortgage property or properties securing the Underlying Term Loan, or (iii) a Mezzanine Loan, the commercial mortgage property or properties related to the Mezzanine Loan.

"Underlying Term Loan": With respect to (i) a Loan (other than Participation or Mezzanine Loan), such Loan or (ii) a Participation, the underlying commercial mortgage loan.

"United States": The United States of America, including any state and any territory or possession administered thereby.

"Unregistered Securities": The meaning specified in Section 5.17(c) hereof.

"Unscheduled Principal Payments": Any proceeds received by the Issuer from an unscheduled prepayment or redemption (in whole but not in part) by the obligor of a Collateral Debt Security prior to the stated maturity date of such Collateral Debt Security.

"Unused Proceeds Account": The trust account established pursuant to Section 10.4(a) hereof.

"U.S. Person": The meaning specified in Regulation S.

"WCM": Wachovia Capital Markets, LLC or its successors and assigns.

"Weighted Average Coupon": As of any Measurement Date, (a) the number obtained (rounded up to the next 0.001%) by (i) summing the products obtained by multiplying (x) the current interest rate on each Collateral Debt Security that is a Fixed Rate Security (excluding all Defaulted Securities and Written Down Securities) by (y) the Principal Balance of each such Collateral Debt Security and (ii) dividing such sum by the Aggregate Principal Balance of all Collateral Debt Securities that are Fixed Rate Securities (excluding all Defaulted Securities and Written Down Securities) plus (b) if the amount obtained pursuant to clause (a) is less than 8.25%, the Spread Excess, if any, as of such Measurement Date.

"Weighted Average Life": As of any Measurement Date with respect to the Collateral Debt Securities (other than Defaulted Securities), the number obtained by (i) summing the products obtained by multiplying (a) the Average Life at such time of each Collateral Debt Security (other than Defaulted Securities) by (b) the outstanding Principal Balance of such

Collateral Debt Security and (ii) dividing such sum by the Aggregate Principal Balance at such time of all Collateral Debt Securities (other than Defaulted Securities).

"Weighted Average Life Test": With respect to any Collateral Debt Securities, a test that will be satisfied as of any Measurement Date if the Weighted Average Life of such Collateral Debt Securities as of such Measurement Date is less than or equal to 7.0 years.

"Weighted Average Moody's Rating Factor": The amount determined by summing the products obtained by multiplying the Principal Balance of each Collateral Debt Security (excluding Defaulted Securities) by its Moody's Rating Factor, dividing such sum by the Aggregate Principal Balance of all such obligations and rounding the result up to the nearest whole number.

"Weighted Average Spread": As of any Measurement Date, (a) the number obtained (rounded up to the next 0.001%), by (i) summing the products obtained by multiplying (x) the stated spread above LIBOR at which interest accrues on each Collateral Debt Security that is a Floating Rate Security (other than a Defaulted Security or Written Down Security) as of such date by (y) the Principal Balance of such Collateral Debt Security as of such date, and (ii) dividing such sum by the Aggregate Principal Balance of all Collateral Debt Securities that are Floating Rate Securities (excluding all Defaulted Securities and Written Down Securities) plus (b) if the amount obtained pursuant to clause (a) is less than 5.30%, the Fixed Rate Excess, if any, as of such Measurement Date. For purposes of this definition, a Fixed Rate Security that is subject to an Asset Specific Hedge will be deemed to be a Floating Rate Security and the floating rate applicable thereto shall be the rate payable taking into account the related Asset Specific Hedge.

"Written Down Security": As of any date of determination, any Collateral Debt Security as to which the aggregate par amount of the entire issue of such Collateral Debt Security and all other securities secured by the same pool of collateral and that rank senior in priority of payment to such issue exceeds the aggregate par amount of all collateral (giving effect to any appraisal reductions) securing such issue (excluding defaulted collateral).

Section 1.2 Assumptions as to Pledged Obligations.

(a) In connection with all calculations required to be made pursuant to this Indenture with respect to Scheduled Distributions on any Pledged Obligation, or any payments on any other assets included in the Assets, and with respect to the income that can be earned on Scheduled Distributions on such Pledged Obligations and on any other amounts that may be received for deposit in the applicable Collection Account, the provisions set forth in this Section 1.2 shall be applied.

(b) All calculations with respect to Scheduled Distributions on the Pledged Obligations securing the Notes shall be made on the basis of information as to the terms of each such Pledged Obligation and upon report of payments, if any, received on such Pledged Obligation that are furnished by or on behalf of the issuer of such Pledged Obligation and, to the extent they are not manifestly in error, such information or report may be conclusively relied upon in making such calculations.

(c) For each Due Period, the Scheduled Distribution on any Pledged Obligation (other than a Defaulted Security, which, except as otherwise provided herein, shall be assumed to have a Scheduled Distribution of zero) shall be the sum of (i) the total amount of payments and collections in respect of such Pledged Obligation (including all Sales Proceeds received during the Due Period and not reinvested in Substitute Collateral Debt Securities or retained in the

Principal Collection Account for subsequent reinvestment) that, if paid as scheduled, will be available in the Collection Accounts at the end of such Due Period for payment on the Notes and of expenses of the Issuer and the Co-Issuer pursuant to the Priority of Payments and (ii) any such amounts received in prior Due Periods that were not disbursed on a previous Payment Date and do not constitute amounts which have been used as reimbursement with respect to a prior Interest Advance pursuant to the terms of this Indenture.

(d) With respect to any Collateral Debt Security as to which any interest or other payment thereon is subject to withholding tax of any relevant jurisdiction, each Scheduled Distribution thereon shall, for purposes of the Coverage Tests and the Collateral Quality Tests, be deemed to be payable net of such withholding tax unless the issuer thereof or obligor thereon is required to make additional payments to fully compensate the Issuer for such withholding taxes (including in respect of any such additional payments). On any date of determination, the amount of any Scheduled Distribution due on any future date shall be assumed to be made net of any such uncompensated withholding tax based upon withholding tax rates in effect on such date of determination.

(e) For purposes of calculating any Interest Coverage Ratio, the expected interest income on floating rate Collateral Debt Securities and Eligible Investments and under each Hedge Agreement and the expected interest payable on the Notes shall be calculated using the (i) interest rates applicable thereto on the applicable Measurement Date and (ii) accrued original issue discount on Eligible Investments shall be deemed to be Scheduled Distributions of interest due on the date such original issue discount is scheduled to be paid. Notwithstanding the foregoing, for the purposes of calculating any Interest Coverage Ratio, there shall be excluded all scheduled or deferred payments of interest on or principal of Collateral Debt Securities and any payment, including any amount payable to the Issuer by each Hedge Counterparty, which the Collateral Manager has determined in its reasonable judgment shall not be made in cash or received when due.

(f) Each Scheduled Distribution receivable with respect to a Pledged Obligation shall be assumed to be received on the applicable Due Date, and each such Scheduled Distribution shall be assumed to be immediately deposited in the applicable Collection Account except to the extent the Collateral Manager has a reasonable expectation that such Scheduled Distribution will not be received on the applicable Due Date. All such funds shall be assumed to continue to earn interest until the date on which they are required to be available in the applicable Collection Account for transfer to the Payment Account for application, in accordance with the terms hereof, to payments of principal of or interest on the Notes or other amounts payable pursuant to this Indenture.

(g) All calculations required to be made and all reports which are to be prepared pursuant to this Indenture with respect to the Pledged Obligations, shall be made on the

basis of the date on which the Issuer makes a commitment to purchase or sell an asset (the "trade date"), not the settlement date.

(h) For purposes of calculating the Par Value Ratio, an appraisal reduction of a Collateral Debt Security will be assumed to result in an implied reduction of principal balance for such Collateral Debt Security only if such appraisal reduction is intended to reduce the interest payable on such Collateral Debt Security and only in proportion to such interest reduction. For purposes of the Par Value Ratio, any Collateral Debt Security that has sustained an implied reduction of principal balance due to an appraisal reduction will not be considered a Defaulted Security solely due to such implied reduction. The Collateral Manager will notify the Trustee of any appraisal reductions of Collateral Debt Securities if the Collateral Manager has actual knowledge thereof.

Section 1.3 Interest Calculation Convention.

All calculations of interest hereunder that are made with respect to the Notes shall be made on the basis of the actual number of days during the related Interest Accrual Period divided by 360.

Section 1.4 Rounding Convention.

Unless otherwise specified herein, test calculations that evaluate

to a percentage will be rounded to the nearest ten thousandth of a percentage point and test calculations that evaluate to a number or decimal will be rounded to the nearest one hundredth of a percentage point.

ARTICLE 2

THE NOTES

Section 2.1 Forms Generally.

The Notes and the Trustee's or Authenticating Agent's certificate of authentication thereon (the "Certificate of Authentication") shall be in substantially the forms required by this Article, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be consistent herewith, determined by the Authorized Officers of the Issuer and the Co-Issuer, executing such Notes as evidenced by their execution of such Notes. Any portion of the text of any Note may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

Section 2.2 Forms of Notes and Certificate of Authentication.

(a) Form. The form of each of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes including the Certificate of Authentication, shall be substantially as set forth in Exhibits A, B, C and D hereto.

(b) Global Securities.

(i) The Class A Notes, Class B Notes, Class C Notes and Class D Notes offered and sold to U.S. Persons in reliance on the exemption from registration under Rule 144A under the Securities Act (except for any sale directly from the Issuer) shall be issued initially in the form of one or more permanent global notes in definitive, fully registered form without interest coupons with the applicable legends set forth in Exhibits A, B, C and D hereto, as applicable, added to the form of such Notes (each, a "Rule 144A Global Security"), which shall be registered in the name of the nominee of the Depository and deposited with the Trustee, at its Corporate Trust Office, as custodian for the Depository, duly executed by the Issuer and the Co-Issuer and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(ii) The Class A Notes, Class B Notes, Class C Notes and Class D Notes sold in offshore transactions in reliance on Regulation S under the Securities Act shall be issued initially in the form of one or more permanent global notes in definitive, fully registered form without interest coupons with the applicable legends set forth in Exhibits A, B, C and D hereto, as applicable, added to the form of such Notes (each, a "Regulation S Global Security"), which shall be deposited on behalf of the subscribers for such Notes represented thereby with the Trustee as custodian for the Depository and registered in the name of a nominee of the Depository for the respective accounts of Euroclear and Clearstream, Luxembourg or their respective depositories, duly executed by the Issuer and the Co-Issuer and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(c) Book-Entry Provisions. This Section 2.2(c) shall apply only to Global Securities deposited with or on behalf of the Depository.

Each of the Issuer and Co-Issuer shall execute and the Trustee shall, in accordance with this Section 2.2(c), authenticate and deliver initially one or more Global Securities that (i) shall be registered in the name of the nominee of the Depository for such Global Security or Global Securities and (ii) shall be delivered by the Trustee to such Depository or pursuant to such Depository's instructions or held by the Trustee's agent as custodian for

the Depository.

Agent Members shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Trustee, as custodian for the Depository or under the Global Security, and the Depository may be treated by the Issuer, the Co-Issuer, the Trustee, and any agent of the Issuer, the Co-Issuer or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Co-Issuer, the Trustee, or any agent of the Issuer, the Co-Issuer or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any Global Security.

(d) Delivery of Notes in Definitive Form in Lieu of Global Securities. Except as provided in Section 2.10 hereof, owners of beneficial interests in a Class of Global Securities shall not be entitled to receive physical delivery of a Class A Note, Class B Note, Class C Note or Class D Note in definitive form representing such Class of Global Securities ("Definitive Securities").

Section 2.3 Authorized Amount; Stated Maturity; and Denominations.

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to $305,319,000, except for Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Notes pursuant to Sections 2.5, 2.6 or 8.5 hereof.

Such Notes shall be divided into 4 Classes having designations and original principal amounts as follows:

DESIGNATION	ORIGINAL PRINCIPAL AMOUNT
Class A Senior Secured Floating Rate Term Notes Due 2040.....	$182,910,000
Class B Second Priority Floating Rate Term Notes Due 2040.....	$ 51,590,000
Class C Third Priority Floating Rate Term Notes Due 2040.....	$ 50,417,000
Class D Fourth Priority Floating Rate Term Notes Due 2040.....	$ 20,402,000

(b) The Notes shall be issuable in minimum denominations of $500,000 and integral multiples of $1,000 in excess thereof (plus any residual amount).

Section 2.4 Execution, Authentication, Delivery and Dating.

The Notes shall be executed on behalf of the Issuer and the Co-Issuer by an Authorized Officer of the Issuer and the Co-Issuer, respectively. The signature of such Authorized Officers on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at any time the Authorized Officers of the Issuer or the Co-Issuer shall bind the Issuer or the Co-Issuer, as the case may be, notwithstanding the fact that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of issuance of such Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Issuer and the Co-Issuer may deliver Notes executed by the Issuer and the Co-Issuer to the Trustee or the Authenticating Agent for

authentication and the Trustee or the Authenticating Agent, upon Issuer Order, shall authenticate and deliver such Notes as provided in this Indenture and not otherwise.

Each Note authenticated and delivered by the Trustee or the Authenticating Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Notes that are authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

Notes issued upon transfer, exchange or replacement of other Notes shall be issued in authorized denominations reflecting the original aggregate principal amount of the Notes so transferred, exchanged or replaced, but shall represent only the current outstanding principal amount of the Notes so transferred, exchanged or replaced. In the event that any Note is divided into more than one Note in accordance with this Article 2, the original principal amount of such Note shall be proportionately divided among the Notes delivered in exchange therefor and shall be deemed to be the original aggregate principal amount of such subsequently issued Notes.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Note a Certificate of Authentication, substantially in the form provided for herein, executed by the Trustee or by the Authenticating Agent by the manual signature of one of their Authorized Officers, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

Section 2.5 Registration, Registration of Transfer and Exchange.

(a) The Issuer and the Co-Issuer shall cause to be kept a register (the "Notes Register") in which, subject to such reasonable regulations as it may prescribe, the Issuer and the Co-Issuer shall provide for the registration of Notes and the registration of transfers of Notes. The Trustee is hereby initially appointed "Notes Registrar" for the purpose of registering Notes and transfers of such Notes with respect to any duplicate copy of the Notes Register kept in the United States as herein provided. Upon any resignation or removal of the Notes Registrar, the

Issuer and the Co-Issuer shall promptly appoint a successor or, in the absence of such appointment, assume the duties of Notes Registrar.

If a Person other than the Trustee is appointed by the Issuer and the Co-Issuer as Notes Registrar, the Issuer and the Co-Issuer shall give the Trustee prompt written notice of the appointment of a Notes Registrar and of the location, and any change in the location, of the Notes Registrar, and the Trustee shall have the right to inspect the Notes Register at all reasonable times and to obtain copies thereof and the Trustee shall have the right to rely upon a certificate executed on behalf of the Notes Registrar by an Officer thereof as to the names and addresses of the Holders of the Notes and the principal amounts and numbers of such Notes.

Subject to this Section 2.5, upon surrender for registration of transfer of any Notes at the office or agency of the Issuer to be maintained as provided in Section 7.2, the Issuer and the Co-Issuer shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denomination and of a like aggregate principal amount.

At the option of the Holder, Notes may be exchanged for Notes of like terms, in any authorized denominations and of like aggregate principal amount, upon surrender of the Notes to be exchanged at such office or agency. Whenever any Note is surrendered for exchange, the Issuer and the Co-Issuer shall execute, and the Trustee shall authenticate and deliver, the Notes that the Noteholder making the exchange is entitled to receive.

All Notes issued and authenticated upon any registration of transfer or exchange of Notes shall be the valid obligations of the Issuer and the Co-Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Notes Registrar duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made to a Holder for any registration of transfer or exchange of Notes, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

None of the Notes Registrar, the Issuer or the Co-Issuer shall be required (i) to issue, register the transfer of or exchange any Note during a period beginning at the opening of business 15 days before any selection of Notes to be redeemed and ending at the close of business on the day of the mailing of the relevant notice of redemption, or (ii) to register the transfer of or exchange any Note so selected for redemption.

(b) No Note may be sold or transferred (including, without limitation, by pledge or hypothecation) unless such sale or transfer is exempt from the registration requirements of the Securities Act and is exempt from the registration requirements under applicable state securities laws.

(c) No Class A Note, Class B Note, Class C Note or Class D Note may be offered, sold, resold or delivered, within the United States or to, or for the benefit of, U.S. Persons except in accordance with Section 2.5(e) below and in accordance with Rule 144A to QIBs who are Qualified Purchasers purchasing for their own account or for the accounts of one or more QIBs who are Qualified Purchasers, for which the purchaser is acting as fiduciary or agent. The Class A Notes, Class B Notes, Class C Notes and Class D Notes may be offered, sold, resold or delivered, as the case may be, in offshore transactions to non-U.S. Persons in reliance on Regulation S under the Securities Act. None of the Issuer, the Co-Issuer, the Trustee or any other Person may register the Class A Notes, Class B Notes, Class C Notes or Class D Notes under the Securities Act or any state securities laws.

(d) Upon final payment due on the Stated Maturity of a Note, the Holder thereof shall present and surrender such Note at the Corporate Trust Office of the Trustee or at the office of the Paying Agent (outside the United States if then required by applicable law in the case of a Note in definitive form issued in exchange for a beneficial interest in a Regulation S Global Security pursuant to Section 2.10).

(e) Transfers of Global Securities. Notwithstanding any provision to the contrary herein, so long as a Global Security remains outstanding and is held by or on behalf of the Depository, transfers of a Global Security, in whole or in part, shall only be made in accordance with Section 2.2(c) and this Section 2.5(e).

(i) Subject to clauses (ii) through (iv) of this Section 2.5(e), transfers of a Global Security shall be limited to transfers of such Global Security in whole, but not in part, to nominees of the Depository or to a successor of the Depository or such successor's nominee.

(ii) Regulation S Global Security to Rule 144A Global Security. If a holder of a beneficial interest in a Regulation S Global Security wishes to transfer all or a part of its interest in such Regulation S Global Security to a Person who wishes to take delivery thereof in the form of a Rule 144A Global Security, such holder may, subject to the terms hereof and the rules and procedures of Euroclear, Clearstream, Luxembourg or the Depository, as the case may be, exchange or cause the exchange of such interest for an equivalent beneficial interest in a Rule 144A Global Security of the same Class. Upon receipt by the Trustee, as Notes Registrar, of (A) instructions from Euroclear, Clearstream, Luxembourg or the Depository, as the case may be, directing the Trustee, as Notes Registrar, to cause such Rule 144A Global Security to be increased by an amount equal to such beneficial interest in such Regulation S Global Security but not less than the minimum denomination applicable to the related Class of Notes, and (B) a certificate substantially in the form of Exhibit F hereto given by the prospective transferee of such beneficial interest and stating, among other things, that such transferee acquiring such interest in a Rule 144A Global Security is a QIB and a Qualified Purchaser, is obtaining such beneficial interest in a transaction pursuant

to Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other applicable jurisdiction, then Euroclear, Clearstream, Luxembourg or the Trustee, as Notes Registrar, as the case may be, shall approve the instruction at the Depository to reduce such Regulation S Global Security by the aggregate principal amount of the interest in such

Regulation S Global Security to be transferred and increase the Rule 144A Global Security specified in such instructions by an Aggregate Outstanding Amount equal to such reduction in such principal amount of the Regulation S Global Security.

(iii) Rule 144A Global Security to Regulation S Global Security. If a holder of a beneficial interest in a Rule 144A Global Security wishes to transfer all or a part of its interest in such Rule 144A Global Security to a Person who wishes to take delivery thereof in the form of a Regulation S Global Security, such holder may, subject to the terms hereof and the rules and procedures of Euroclear, Clearstream, Luxembourg or the Depository, as the case may be, exchange or cause the exchange of such interest for an equivalent beneficial interest in a Regulation S Global Security of the same Class. Upon receipt by the Trustee, as Notes Registrar, of (A) instructions from Euroclear, Clearstream, Luxembourg or the Depository, as the case may be, directing the Trustee, as Notes Registrar, to cause such Regulation S Global Security to be increased by an amount equal to the beneficial interest in such Rule 144A Global Security but not less than the minimum denomination applicable to the related Class of Notes to be exchanged, and (B) a certificate substantially in the form of Exhibit E hereto given by the prospective transferee of such beneficial interest and stating, among other things, that such transferee acquiring such interest in a Regulation S Global Security is a not a U.S. Person and that such transfer is being made pursuant to Rule 903 or 904 under Regulation S of the Securities Act, then Euroclear, Clearstream, Luxembourg or the Trustee, as Notes Registrar, as the case may be, shall approve the instruction at the Depository to reduce such Rule 144A Global Security by the aggregate principal amount of the interest in such Rule 144A Global Security to be transferred and increase the Regulation S Global Security specified in such instructions by an Aggregate Outstanding Amount equal to such reduction in the principal amount of the Rule 144A Global Security.

(iv) Other Exchanges. In the event that, pursuant to Section 2.10 hereof, a Global Security is exchanged for Class A Notes, Class B Notes, Class C Notes or Class D Notes in definitive form, such Notes may be exchanged for one another only in accordance with such procedures as are substantially consistent with the provisions above (including certification requirements intended to ensure that such transfers are to a QIB who is also a Qualified Purchaser or are to a non-U.S. Person, or otherwise comply with Rule 144A or Regulation S or Regulation D under the Securities Act, as the case may be) and as may be from time to time adopted by the Issuer, the Co-Issuer and the Trustee.

(f) Removal of Legend. If Notes are issued upon the transfer, exchange or replacement of Notes bearing the applicable legends set forth in Exhibits A, B, C, and D hereto, and if a request is made to remove such applicable legend on such Notes, the Notes so issued shall bear such applicable legend, or such applicable legend shall not be removed, as the case may be, unless there is delivered to the Issuer and the Co-Issuer such satisfactory evidence, which may include an Opinion of Counsel of an attorney at law licensed to practice law in the State of New York (and addressed to the Issuer and the Trustee), as may be reasonably required by the Issuer and the Co-Issuer, if applicable, to the effect that neither such applicable legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A or Regulation S under the Securities Act, as applicable, the Investment Company Act or ERISA. So long as the Issuer or the Co-Issuer is relying on an

exemption under or promulgated pursuant to the Investment Company Act, the Issuer or the Co-Issuer shall not remove that portion of the legend required to maintain an exemption under or promulgated pursuant to the Investment Company

Act. Upon provision of such satisfactory evidence, as confirmed in writing by the Issuer and the Co-Issuer, if applicable, to the Trustee, the Trustee, at the direction of the Issuer and the Co-Issuer, if applicable, shall authenticate and deliver Notes that do not bear such applicable legend.

(g) Each beneficial owner of Rule 144A Global Securities shall be deemed to represent and agree as follows (terms used in this paragraph that are defined in Rule 144A under the Securities Act are used herein as defined therein):

(i) In the case of a Rule 144A Global Security, the owner is (1) a QIB and a Qualified Purchaser, (2) is aware that the sale of the Notes to it (other than the initial sale by the Issuer and the Co-Issuer, as applicable,) is being made in reliance on the exemption from registration provided by Rule 144A under the Securities Act, and (3) is acquiring the Notes for its own account or for one or more accounts, each of which is a QIB and a Qualified Purchaser, and as to each of which the owner exercises sole investment discretion, (4) in a principal amount of not less than $100,000, for each such account.

(ii) The owner understands that the Notes are being offered only in a transaction not involving any public offering in the United States within the meaning of the Securities Act, the Notes have not been and shall not be registered under the Securities Act, and, if in the future the owner decides to offer, resell, pledge or otherwise transfer the Notes, such Notes may only be offered, resold, pledged or otherwise transferred in accordance with this Indenture and the applicable legend on such Notes set forth in Exhibits A, B, C and D, as applicable. The owner acknowledges that no representation is made by the Issuer, the Co-Issuer, or the Initial Purchaser, as the case may be, as to the availability of any exemption under the Securities Act or any state securities laws for resale of the Notes.

(iii) The owner is not purchasing the Notes with a view to the resale, distribution or other disposition thereof in violation of the Securities Act. The owner understands that an investment in the Notes involves certain risks, including the risk of loss of all or a substantial part of its investment under certain circumstances. The owner has had access to such financial and other information concerning the Issuer, the Co-Issuer and the Notes as it deemed necessary or appropriate in order to make an informed investment decision with respect to its purchase of the Notes, including an opportunity to ask questions of and request information from the Collateral Manager, the Issuer and the Co-Issuer.

(iv) In connection with the purchase of the Notes (A) none of the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee is acting as a fiduciary or financial or investment adviser for the owner; (B) the owner is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee other than in a current offering

memorandum for such Notes and any representations expressly set forth in a written agreement with such party; (C) none of the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee has given to the owner (directly or indirectly through any other person) any assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (including legal, regulatory, tax, financial, accounting, or otherwise) of its purchase, (D) the owner has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisers to the extent it has deemed necessary, and it has made its own investment decisions (including decisions regarding the suitability of any transaction pursuant to this Indenture) based upon its own judgment and upon any advice from such advisers as it has deemed necessary and not upon any view expressed by the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee; and (E) the owner is purchasing the Notes with a full understanding of all of the terms, conditions and risks thereof (economic and otherwise), and is capable of assuming and willing to assume (financially and otherwise) these risks.

(v) The owner understands that the Notes shall bear the applicable legend set forth in Exhibits A, B, C and D, as applicable. The Rule 144A Global Securities may not at any time be held by or on behalf of any U.S. Person that is not a QIB who is a Qualified Purchaser. The owner must inform a prospective transferee of the transfer restrictions.

(vi) Unless a prospective Holder of a Class A Note, Class B Note, Class C Note or Class D Note otherwise provides another representation acceptable to the Trustee, the Collateral Manager, the Issuer and the Co-Issuer, each Holder of a Global Security, by its acquisition thereof, shall be deemed to have represented to the Issuer, the Co-Issuer, the Collateral Manager and the Trustee that either (a) no part of the funds being used to pay the purchase price for such Notes constitutes an asset of any "employee benefit plan" (as defined in Section 3(3) of ERISA) or "plan" (as defined in Section 4975(e)(1) of the Code) that is subject to ERISA or Section 4975 of the Code or any other plan which is subject to any federal, state or local law ("Similar Law") that is substantially similar to Section 406 of ERISA or Section 4975 of the Code (each a "Benefit Plan" and funds of such a Benefit Plan, "Plan Assets"), or an entity whose underlying assets include Plan Assets of any such Benefit Plan, or (b) if the funds being used to pay the purchase price for such Global Securities include Plan Assets of any Benefit Plan, its purchase and holding are eligible for the exemptive relief from the prohibited transaction rules granted by Prohibited Transaction Class Exemption ("PTCE") 84-14, PTCE 90-1, PTCE 91-38, PTCE 95-60, PTCE 96-23, or a similar exemption, or in the case of any Benefit Plan subject to Similar Law, do not result in a non-exempt violation of Similar Law.

(vii) The owner shall not, at any time, offer to buy or offer to sell the Notes by any form of general solicitation or advertising, including, but not limited to, any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio or at a seminar or meeting whose attendees have been invited by general solicitations or advertising.

(viii) The owner shall not, at any time, make an offer or invitation to subscribe to the public in the Cayman Islands, within the meaning of Section 194 of the Cayman Islands Companies Law (2004 Revision), unless the Notes being purchased have been listed on the Cayman Islands Stock Exchange.

(ix) The owner understands that the Issuer, Co-Issuer, Trustee or Paying Agent shall require certification acceptable to it (i) as a condition to the payment of principal of and interest on any Notes without, or at a reduced rate of, U.S. withholding or backup withholding tax, and (ii) to enable the Issuer, Co-Issuer, Trustee and Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to pay, deduct or withhold from payments in respect of such Notes or the Holder of such Notes under any present or future law or regulation of the Cayman Islands or the United States or any present or future law or regulation of any political subdivision thereof or taxing authority therein or to comply with any reporting or other requirements under any such law or regulation. Such certification may include U.S. federal income tax forms (such as IRS Form W-8BEN (Certification of Foreign Status of Beneficial Owner), Form W-8IMY (Certification of Foreign Intermediary Status), IRS Form W-9 (Request for Taxpayer Identification Number and Certification), or IRS Form W-8ECI (Certification of Foreign Person's Claim for Exemption from Withholding on Income Effectively Connected with Conduct of a U.S. Trade or Business) or any successors to such IRS forms). In addition, the Issuer, Co-Issuer, Trustee or Paying Agent may require certification acceptable to it to enable the Issuer to qualify for a reduced rate of withholding in any jurisdiction from or through which the Issuer receives payments on its assets. Each owner agrees to provide any certification requested pursuant to this paragraph and to update or replace such form or certification in accordance with its terms or its subsequent amendments.

(x) The owner hereby agrees that, for purposes of U.S. federal, state and local income and franchise tax and any other income taxes, (i) the Notes will be treated as indebtedness, and (ii) the Preferred Shares will be treated as equity; the owner agrees to such treatment and agrees to take no action inconsistent with such treatment, unless required by

law.

(xi) The owner, if not a "United States person" (as defined in Section 7701(a)(30) of the Code), either: (A) is not a bank (within the meaning of Section 881(c)(3)(A) of the Code); (B) if such owner is a bank (within the meaning of Section 881(c)(3)(A) of the Code), after giving effect to its purchase of the Notes, the owner (x) will not own more than 50% of the Preferred Shares (by number) or 50% by value of the aggregate of the preferred and all classes of notes that are treated as equity for US federal income tax purposes either directly or indirectly, and will not otherwise be related to the Issuer (within the meaning of section 267(b) of the Code) and (y) has not purchased the Notes in whole or in part to avoid any U.S. federal tax liability (including, without limitation, any U.S. withholding tax that would be imposed on the Notes with respect to the Collateral Debt Securities if held directly by the owner); (C) has provided an IRS Form W-8ECI representing that all payments received or to be received by it from the Issuer are effectively connected with the conduct of a trade or business in the United States, or (D) is eligible for benefits under an income tax treaty with the United States

that eliminates U.S. federal income taxation of U.S. source interest not attributable to a permanent establishment in the United States and the Issuer is treated as a fiscally transparent entity (as defined in Treasury regulations section 1.894-1(d)(3)(ii)) under the laws of owner's jurisdiction with respect to payments made on the Collateral Debt Securities held by the owner.

(h) Each beneficial owner of Regulation S Global Securities shall be deemed to have made the representations set forth in clauses (ii), (iii), (iv), (vi), (vii), (viii), (ix), (x) and (xi) of Section 2.5(g) and shall be deemed to have further represented and agreed as follows:

(i) The owner is aware that the sale of such Class A Notes, Class B Notes, Class C Notes or Class D Notes to it is being made in reliance on the exemption from registration provided by Regulation S and understands that the Class A Notes, Class B Notes, Class C Notes and Class D Notes offered in reliance on Regulation S under the Securities Act will bear the appropriate legend set forth in Exhibit A, B, C or D, as applicable, and be represented by one or more Regulation S Global Securities. The Class A Notes, Class B Notes, Class C Notes and Class D Notes so represented may not at any time be held by or on behalf of U.S. Persons. Each of the owner and the related Holder is not, and shall not be, a U.S. Person. Before any interest in a Regulation S Global Security may be offered, resold, pledged or otherwise transferred to a person who takes delivery in the form of a Rule 144A Global Security, the transferee shall be required to provide the Trustee with a written certification substantially in the form of Exhibits E and F (as applicable) hereto as to compliance with the transfer restrictions. The owner must inform a prospective transferee of the transfer restrictions.

(j) Any purported transfer of a Note not in accordance with this Section 2.5 shall be null and void and shall not be given effect for any purpose hereunder.

(k) Notwithstanding anything contained in this Indenture to the contrary, neither the Trustee nor the Notes Registrar (nor any other Transfer Agent) shall be responsible or liable for compliance with applicable federal or state securities laws (including, without limitation, the Securities Act or Rule 144A or Regulation S promulgated thereunder), the Investment Company Act, ERISA or the Code (or any applicable regulations thereunder); provided, however, that if a specified transfer certificate or Opinion of Counsel is required by the express terms of this Section 2.5 to be delivered to the Trustee or Notes Registrar prior to registration of transfer of a Note, the Trustee and/or Notes Registrar, as applicable, is required to request, as a condition for registering the transfer of the Note, such certificate or Opinion of Counsel and to examine the same to determine whether it conforms on its face to the requirements hereof (and the Trustee or Notes Registrar, as the case may be, shall promptly notify the party delivering the same if it determines that such certificate or Opinion of Counsel does not so conform).

(l) If the Trustee determines or is notified by the Issuer, Co-Issuer or the Collateral Manager that (i) a transfer or attempted or purported transfer of any interest in any Note was consummated in compliance

with the provisions of this Section 2.5 on the basis of a materially incorrect certification from the transferee or purported transferee, (ii) a transferee failed to deliver to the Trustee any certification required to be delivered hereunder or (iii) the holder of any interest in a Note is in breach of any representation or agreement set forth in any

certification or any deemed representation or agreement of such holder, the Trustee shall not register such attempted or purported transfer and if a transfer has been registered, such transfer shall be absolutely null and void ab initio and shall vest no rights in the purported transferee (such purported transferee, a "Disqualified Transferee") and the last preceding holder of such interest in such Note that was not a Disqualified Transferee shall be restored to all rights as a Holder thereof retroactively to the date of transfer of such Note by such Holder.

In addition, the Trustee may require that the interest in the Note referred to in (i), (ii) or (iii) in the preceding paragraph be transferred to any person designated by the Issuer or the Collateral Manager at a price determined by the Issuer or the Collateral Manager, as applicable, based upon its estimation of the prevailing price of such interest and each Holder, by acceptance of an interest in a Note, authorizes the Trustee to take such action. In any case, the Trustee shall not be held responsible for any losses that may be incurred as a result of any required transfer under this Section 2.5(l).

(m) Each Holder of Notes approves and consents to (i) the initial purchase of the Collateral Debt Securities by the Issuer from Affiliates of the Collateral Manager on or prior to the Closing Date and (ii) any other transaction between the Issuer and the Collateral Manager or its Affiliates that are permitted under the terms of this Indenture or the Collateral Management Agreement.

Section 2.6 Mutilated, Defaced, Destroyed, Lost or Stolen Note.

If (a) any mutilated or defaced Note is surrendered to a Transfer Agent, or if there shall be delivered to the Issuer, the Co-Issuer, the Trustee and the relevant Transfer Agent (each a "Specified Person") evidence to their reasonable satisfaction of the destruction, loss or theft of any Note, and (b) there is delivered to the Specified Person such security or indemnity as may be required by each Specified Person to save each of them and any agent of any of them harmless (an unsecured indemnity agreement delivered to the Trustee by an institutional investor with a net worth of at least $200,000,000 being deemed sufficient to satisfy such security or indemnity requirement), then, in the absence of notice to the Specified Persons that such Note has been acquired by a bona fide purchaser, the Issuer and the Co-Issuer shall execute and, upon Issuer Request, the Trustee shall authenticate and deliver, in lieu of any such mutilated, defaced, destroyed, lost or stolen Note, a new Note, of like tenor (including the same date of issuance) and equal principal amount, registered in the same manner, dated the date of its authentication, bearing interest from the date to which interest has been paid on the mutilated, defaced, destroyed, lost or stolen Note and bearing a number not contemporaneously outstanding.

If, after delivery of such new Note, a bona fide purchaser of the predecessor Note presents for payment, transfer or exchange such predecessor Note, any Specified Person shall be entitled to recover such new Note from the Person to whom it was delivered or any Person taking therefrom, and each Specified Person shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by such Specified Person in connection therewith.

In case any such mutilated, defaced, destroyed, lost or stolen Note has become due and payable, the Issuer and the Co-Issuer, if applicable, in their discretion may, instead of

issuing a new Note, pay such Note without requiring surrender thereof except that any mutilated or defaced Note shall be surrendered.

Upon the issuance of any new Note under this Section 2.6, the Issuer and the Co-Issuer, if applicable, may require the payment by the registered Holder thereof of a sum sufficient to cover any tax or other governmental charge

that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Note issued pursuant to this Section 2.6 in lieu of any mutilated, defaced, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Issuer and the Co-Issuer, if applicable, and such new Note shall be entitled, subject to the second paragraph of this Section 2.6, to all the benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 2.6 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, defaced, destroyed, lost or stolen Notes.

Section 2.7 Payment of Principal and Interest and Other Amounts; Principal and Interest Rights Preserved.

(a) The Class A Notes shall accrue interest during each Interest Accrual Period at the applicable Class A Rate. Interest on each Class A Note shall be due and payable on each Payment Date immediately following the related Interest Accrual Period in the proportion that the outstanding principal amount of such Class A Note bears to the Aggregate Outstanding Amount of all Class A Notes.

(b) The Class B Notes shall accrue interest during each Interest Accrual Period at the applicable Class B Rate. Interest on each Class B Note shall be due and payable on each Payment Date immediately following the related Interest Accrual Period in the proportion that the outstanding principal amount of such Class B Note bears to the Aggregate Outstanding Amount of all Class B Notes; provided, however, that payment of interest on the Class B Notes is subordinated to the payment on each Payment Date of the interest due and payable on the Class A Notes (including any Class A Defaulted Interest Amount) and other amounts in accordance with the Priority of Payments.

(c) The Class C Notes shall accrue interest during each Interest Accrual Period at the applicable Class C Rate. Interest on each Class C Note shall be due and payable on each Payment Date immediately following the related Interest Accrual Period in the proportion that the outstanding principal amount of such Class C Note bears to the Aggregate Outstanding Amount of all Class C Notes; provided, however, that payment of interest on the Class C Notes is subordinated to the payment on each Payment Date of the interest due and payable on the Class A Notes and the Class B Notes (including any Class A Defaulted Interest Amount and Class B Defaulted Interest Amount) and other amounts in accordance with the Priority of Payments.

For so long as any Class B Notes are Outstanding, any payment of interest due on the Class C Notes which is not available to be paid (the "Class C Capitalized Interest") in

accordance with the Priority of Payments on any Payment Date shall not be considered "due and payable" for the purpose of Section 5.1(a) hereof (and the failure to pay such Class C Capitalized Interest shall not be an Event of Default) until the Payment Date on which funds are available to pay all or any portion of such Class C Capitalized Interest in accordance with the Priority of Payments. On or after such Payment Date, only such portion of any payment of Class C Capitalized Interest for which funds are available in accordance with the Priority of Payments shall be considered "due and payable" and the failure to pay such portion of Class C Capitalized Interest shall be an Event of Default. Class C Capitalized Interest shall be added to the principal amount of the Class C Notes, shall bear interest thereafter at the Class C Rate (to the extent lawful) and shall be payable on the first Payment Date on which funds are permitted to be used for such purpose in accordance with the Priority of Payments. On or after the Payment Date on which the Class B Notes are no longer Outstanding, to the extent interest is due (excluding any previously deferred Class C Capitalized Interest) but not paid on the Class C Notes, the failure to pay such interest shall constitute an Event of Default hereunder.

(d) The Class D Notes shall accrue interest during each Interest Accrual Period at the applicable Class D Rate. Interest on each Class D Note shall be due and payable on each Payment Date immediately following the related Interest Accrual Period in the proportion that the outstanding principal amount of such Class D Note bears to the Aggregate Outstanding Amount of all Class D

Notes; provided, however, that payment of interest on the Class D Notes is subordinated to the payment on each Payment Date of the interest due and payable on the Class A Notes, the Class B Notes and the Class C Notes (including any Class A Defaulted Interest Amount, Class B Defaulted Interest Amount, Class C Defaulted Interest Amount and Class C Capitalized Interest) and other amounts in accordance with the Priority of Payments.

For so long as any Class C Notes are Outstanding, any payment of interest due on the Class D Notes which is not available to be paid ("Class D Capitalized Interest") in accordance with the Priority of Payments on any Payment Date shall not be considered "due and payable" for the purpose of Section 5.1(a) hereof (and the failure to pay such Class D Capitalized Interest shall not be an Event of Default) until the Payment Date on which funds are available to pay all or any portion of such Class D Capitalized Interest in accordance with the Priority of Payments. On or after such Payment Date, only such portion of any payment of Class D Capitalized Interest for which funds are available in accordance with the Priority of Payments shall be considered "due and payable" and the failure to pay such portion of Class D Capitalized Interest shall be an Event of Default. Class D Capitalized Interest shall be added to the principal amount of the Class D Notes, shall bear interest thereafter at the Class D Rate (to the extent lawful) and shall be payable on the first Payment Date on which funds are permitted to be used for such purpose in accordance with the Priority of Payments. On or after the Payment Date on which the Class C Notes are no longer Outstanding, to the extent interest is due (excluding any previously deferred Class D Capitalized Interest) but not paid on the Class D Notes, the failure to pay such interest shall constitute an Event of Default hereunder.

(e) Upon any Optional Redemption, Tax Redemption, Auction Call Redemption or Clean-up Call, all net proceeds from such liquidation and all available Cash (other than the Issuer's right, title and interest in the Excepted Assets), after the payment of the amounts referred to in subclauses (1) through (19) of Section 11.1(a)(i) and subclauses (1) through (12) of Section 11.1(a)(ii) will be distributed by Trustee to the holders of the Preferred

Shares, whereupon the Preferred Shares will be cancelled and deemed paid in full for all purposes.

(f) Interest shall cease to accrue on each Class of Notes, or in the case of a partial repayment, on such part, from the date of repayment or Stated Maturity unless payment of principal is improperly withheld or unless a Default has occurred with respect to such payments of principal.

(g) The principal of each Class of Notes matures at par and is due and payable on the Stated Maturity, unless the unpaid principal of such Class of Notes becomes due and payable at an earlier date by declaration of acceleration, call for redemption or otherwise; provided, however, that the payment of principal of the Class B Notes (other than payment of principal pursuant to Section 9.6 or Section 9.7) may only occur after the principal of the Class A Notes has been paid in full and is subordinated to the payment on each Payment Date of the principal and interest due and payable on the Class A Notes and other amounts in accordance with the Priority of Payments and any payment of principal of the Class B Notes which is not paid, in accordance with the Priority of Payments, on any Payment Date, shall not be considered "due and payable" solely for purposes of Section 5.1(b) until the Payment Date on which such principal may be paid in accordance with the Priority of Payments or all of the Class A Notes have been paid in full; provided, further, that the payment of principal of the Class C Notes (other than payment of the amounts constituting Class C Capitalized Interest, notwithstanding that such Class C Capitalized Interest may be deemed to constitute additions to principal, and other than the payment of principal pursuant to Section 9.6 or Section 9.7) may only occur after the principal of the Class A Notes and the Class B Notes has been paid in full and is subordinated to the payment on each Payment Date of the principal and interest due and payable on the Class A Notes, the Class B Notes and other amounts in accordance with the Priority of Payments and any payment of principal of the Class C Notes which is not paid, in accordance with the Priority of Payments, on any Payment Date, shall not be considered "due and payable" solely for purposes of Section 5.1(b) until the Payment Date on which such principal may be paid in accordance with the Priority of Payments or all of the Class A Notes and the Class B Notes have been paid in full; provided, further, that the payment of principal of the Class D Notes (other than payment of the amounts constituting Class D Capitalized Interest, notwithstanding that such Class D

Capitalized Interest may be deemed to constitute additions to principal, and other than the payment of principal pursuant to Section 9.6 or Section 9.7) may only occur after the principal of the Class A Notes, the Class B Notes and the Class C Notes has been paid in full and is subordinated to the payment on each Payment Date of the principal and interest due and payable on the Class A Notes, the Class B Notes, the Class C Notes and other amounts in accordance with the Priority of Payments and any payment of principal of the Class D Notes which is not paid, in accordance with the Priority of Payments, on any Payment Date, shall not be considered "due and payable" solely for purposes of Section 5.1(b) until the Payment Date on which such principal may be paid in accordance with the Priority of Payments or all of the Class A Notes, the Class B Notes and the Class C Notes have been paid in full.

(h) As a condition to the payment of principal of and interest on any Note without the imposition of U.S. withholding tax, the Issuer shall require certification acceptable to it to enable the Issuer, the Co-Issuer, the Trustee, the Preferred Shares Paying Agent and the Paying Agent to determine their duties and liabilities with respect to any taxes or other charges

that they may be required to deduct or withhold from payments in respect of such Security under any present or future law or regulation of the United States or any present or future law or regulation of any political subdivision thereof or taxing authority therein or to comply with any reporting or other requirements under any such law or regulation.

(i) Payments in respect of interest on and principal of the Notes shall be payable by wire transfer in immediately available funds to a Dollar account maintained by the Holder or its nominee; provided, that the Holder has provided wiring instructions to the Trustee on or before the related Record Date or, if wire transfer cannot be effected, by a Dollar check drawn on a bank in the United States of America, or by a Dollar check mailed to the Holder at its address in the Notes Register. The Issuer expects that the Depository or its nominee, upon receipt of any payment of principal or interest in respect of a Global Security held by the Depository or its nominee, shall immediately credit the applicable Agent Members' accounts with payments in amounts proportionate to the respective beneficial interests in such Global Security as shown on the records of the Depository or its nominee. The Issuer also expects that payments by Agent Members to owners of beneficial interests in such Global Security held through Agent Members will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers registered in the names of nominees for such customers. Such payments will be the responsibility of the Agent Members. Upon final payment due on the Maturity of a Note, the Holder thereof shall present and surrender such Note at the Corporate Trust Office of the Trustee or at the office of the Paying Agent (outside of the United States if then required by applicable law in the case of a Definitive Security issued in exchange for a beneficial interest in the Regulation S Global Security) on or prior to such Maturity. None of the Issuer, the Co-Issuer, the Trustee or the Paying Agent will have any responsibility or liability with respect to any records maintained by the Holder of any Note with respect to the beneficial holders thereof or payments made thereby on account of beneficial interests held therein. In the case where any final payment of principal and interest is to be made on any Note (other than on the Stated Maturity thereof) the Issuer or, upon Issuer Request, the Trustee, in the name and at the expense of the Issuer shall, not more than 30 nor fewer than five (5) Business Days prior to the date on which such payment is to be made, mail to the Persons entitled thereto at their addresses appearing on the Notes Register, a notice which shall state the date on which such payment will be made and the amount of such payment per $500,000 initial principal amount of Notes and shall specify the place where such Notes may be presented and surrendered for such payment.

(j) Subject to the provisions of Sections 2.7(a) through (h) hereof, Holders of Notes as of the Record Date in respect of a Payment Date shall be entitled to the interest accrued and payable in accordance with the Priority of Payments and principal payable in accordance with the Priority of Payments on such Payment Date. All such payments that are mailed or wired and returned to the Paying Agent shall be held for payment as herein provided at the office or agency of the Issuer and the Co-Issuer to be maintained as provided in Section 7.2 (or returned to the Trustee).

(k) Interest on any Note which is payable, and is punctually paid or duly provided for, on any Payment Date shall be paid to the Person in whose name

that Note (or one or more predecessor Notes) is registered at the close of business on the Record Date for such interest.

(l) Payments of principal to Holders of the Notes of each Class shall be made in the proportion that the Aggregate Outstanding Amount of the Notes of such Class registered in the name of each such Holder on such Record Date bears to the Aggregate Outstanding Amount of all Notes of such Class on such Record Date.

(m) Interest accrued with respect to the Notes shall be calculated as described in the applicable form of Note attached hereto.

(n) All reductions in the principal amount of a Note (or one or more predecessor Notes) effected by payments of installments of principal made on any Payment Date, Redemption Date or upon Maturity shall be binding upon all future Holders of such Note and of any Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, whether or not such payment is noted on such Note.

(o) Notwithstanding anything contained in this Indenture to the contrary, the obligations of the Issuer and the Co-Issuer under the Notes and this Indenture are non-recourse obligations of the Issuer and the Co-Issuer payable solely from the Assets and following realization of the Assets, any claims of the Noteholders or the Trustee shall be extinguished. No recourse shall be had for the payment of any amount owing in respect of the Notes against any Officer, director, employee, shareholder, limited partner or incorporator of the Issuer, the Co-Issuer or any of their respective successors or assigns for any amounts payable under the Notes or this Indenture. It is understood that the foregoing provisions of this paragraph shall not (i) prevent recourse to the Assets for the sums due or to become due under any security, instrument or agreement which is part of the Assets or (ii) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by the Notes or secured by this Indenture (to the extent it relates to the obligation to make payments on the Notes) until such Assets have been realized, whereupon any outstanding indebtedness or obligation in respect of the Notes shall be extinguished. It is further understood that the foregoing provisions of this paragraph shall not limit the right of any Person to name the Issuer or the Co-Issuer as a party defendant in any Proceeding or in the exercise of any other remedy under the Notes or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability shall be asked for or (if obtained) enforced against any such Person or entity.

(p) Subject to the foregoing provisions of this Section 2.7, each Note delivered under this Indenture and upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights of unpaid interest and principal that were carried by such other Note.

(q) Notwithstanding any of the foregoing provisions with respect to payments of principal of and interest on the Notes (but subject to Section 2.7(h)), if the Notes have become or been declared due and payable following an Event of Default and such acceleration of Maturity and its consequences have not been rescinded and annulled and the provisions of Section 5.5 are not applicable, then payments of principal of and interest on such Notes shall be made in accordance with Section 5.7 hereof.

(r) Payments in respect of the Preferred Shares as contemplated by Sections 11.1(a)(i)(22) and 11.1(a)(ii)(15) shall be made by the Trustee to the Preferred Shares Paying Agent.

Section 2.8 Persons Deemed Owners.

The Issuer, the Co-Issuer, the Trustee, and any agent of the Issuer, the Co-Issuer or the Trustee may treat as the owner of a Note the Person in whose name such Note is registered on the Notes Register on the applicable Record Date for the purpose of receiving payments of principal of and interest and other amounts on such Note and on any other date for all other purposes whatsoever (whether or not such Note is overdue), and none of the Issuer, the Co-Issuer or the Trustee nor any agent of the Issuer, the Co-Issuer or the Trustee shall be affected by notice to the contrary; provided, however, that the

Depository, or its nominee, shall be deemed the owner of the Global Securities, and owners of beneficial interests in Global Securities will not be considered the owners of any Notes for the purpose of receiving notices. With respect to the Preferred Shares, on any Payment Date, the Trustee shall deliver to the Preferred Shares Paying Agent the distributions thereon for distribution to the Preferred Shareholders.

Section 2.9 Cancellation.

All Notes surrendered for payment, registration of transfer, exchange or redemption, or deemed lost or stolen, shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and shall be promptly canceled by the Trustee and may not be reissued or resold. No Notes shall be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 2.9, except as expressly permitted by this Indenture. All canceled Notes held by the Trustee shall be destroyed or held by the Trustee in accordance with its standard retention policy unless the Issuer and the Co-Issuer shall direct by an Issuer Order that they be returned to them.

Section 2.10 Global Securities; Temporary Notes.

(a) In the event that the Depository notifies the Issuer and the Co-Issuer that it is unwilling or unable to continue as Depository for a Global Security or if at any time such Depository ceases to be a "Clearing Agency" registered under the Exchange Act and a successor depository is not appointed by the Issuer within 90 days of such notice, the Global Securities deposited with the Depository pursuant to Section 2.2 hereof shall be transferred to the beneficial owners thereof subject to the procedures and conditions set forth in this Section 2.10.

(b) Any Global Security that is transferable to the beneficial owners thereof pursuant to Section 2.10(a) above shall be surrendered by the Depository to the Trustee's Corporate Trust Office together with necessary instruction for the registration and delivery of Class A Notes, Class B Notes, Class C Notes and Class D Notes in definitive registered form without interest coupons to the beneficial owners (or such owner's nominee) holding the ownership interests in such Global Security. Any such transfer shall be made, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Security, an equal aggregate principal amount of Definitive Securities of the same Class and authorized denominations. Any Definitive Securities delivered in exchange for an interest in a

Global Security shall, except as otherwise provided by Section 2.5(f), bear the applicable legend set forth in Exhibit A, B, C or D, as applicable, and shall be subject to the transfer restrictions referred to in such applicable legends. The holder of such a registered individual Global Security may transfer such Global Security by surrendering it at the Corporate Trust Office of the Trustee, or at the office of the Paying Agent or Irish Paying Agent.

(c) Subject to the provisions of Section 2.10(b) above, the registered Holder of a Global Security may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Notes.

(d) In the event of the occurrence of either of the events specified in Section 2.10(a) above, the Issuer and the Co-Issuer shall promptly make available to the Trustee a reasonable supply of Definitive Securities.

Pending the preparation of Definitive Securities pursuant to this Section 2.10, the Issuer and the Co-Issuer may execute and, upon Issuer Order, the Trustee shall authenticate and deliver, temporary Class A Notes, Class B Notes, Class C Notes or Class D Notes that are printed, lithographed, typewritten, mimeographed or otherwise reproduced, in any authorized denomination, substantially of the tenor of the Definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Officers executing such Definitive Securities may determine, as conclusively evidenced by their execution of such Definitive Securities.

If temporary Definitive Securities are issued, the Issuer and the Co-Issuer shall cause permanent Definitive Securities to be prepared without

unreasonable delay. The Definitive Securities shall be printed, lithographed, typewritten or otherwise reproduced, or provided by any combination thereof, or in any other manner permitted by the rules and regulations of any applicable notes exchange, all as determined by the Officers executing such Definitive Securities. After the preparation of Definitive Securities, the temporary Notes shall be exchangeable for Definitive Securities upon surrender of the applicable temporary Class A Notes, Class B Notes, Class C Notes or Class D Notes at the office or agency maintained by the Issuer and the Co-Issuer for such purpose, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Class A Notes, Class B Notes, Class C Notes or Class D Notes, the Issuer and the Co-Issuer shall execute, and the Trustee shall authenticate and deliver, in exchange therefor the same aggregate principal amount of Definitive Securities of authorized denominations. Until so exchanged, the temporary Class A Notes, Class B Notes, Class C Notes or Class D Notes shall in all respects be entitled to the same benefits under this Indenture as Definitive Securities.

Section 2.11 US Tax Treatment of Notes.

(a) Each of the Issuer and the Co-Issuer intends that, for U.S. federal income tax purposes, the Notes be treated as debt. Each prospective purchaser and any subsequent transferee of a Note or any interest therein shall, by virtue of its purchase or other acquisition of such Note or interest therein, be deemed to have agreed to treat such Note as debt for U.S. federal income tax purposes.

(b) In the case of the Preferred Shares and any Class of Notes that is deemed equity for U.S. federal income tax purposes by the Internal Revenue Service (the "IRS"), if the Holder of such Security so requests, the Issuer agrees to timely provide each Holder of such a Security with a PFIC Annual Information Statement, signed by the Issuer or its authorized representative, on an annual basis that contains the following information as required under Treasury Regulation section 1.1295-1(g)(i):

(i) the first and last days of the taxable year of the Issuer to which the PFIC Annual Information Statement applies;

(ii) sufficient information to enable each Holder of such Securities to calculate its pro rata share of the Issuer's ordinary earnings and net capital gain for that taxable year;

(iii) the amount of cash and the fair market value of other property distributed or deemed distributed to such Holder of such Securities during the taxable year of the Issuer to which the PFIC Annual Information Statement pertains; and

(iv) a statement that the Issuer shall permit the Holder of any such Securities to inspect and copy the Issuer's permanent books of account, records and such other documents as may be maintained by the Issuer to establish that the Issuer's ordinary earnings and net capital gain are computed in accordance with U.S. federal income tax principles and to verify these amounts and the Holder's pro rata interest thereof.

Notwithstanding the foregoing, if the Holder of such Security so requests and such Holder informs the Issuer or its authorized representative of the par value of each Class of Securities held by such Holder during such taxable year (including, if any Securities were acquired or sold during such taxable year, the date such Securities were acquired or sold, and par value of such Securities), the Issuer or its authorized representative will inform such Holder of its pro rata share of the Issuer's ordinary earnings and net capital gain in a timely manner.

(c) The Issuer and the Co-Issuer shall account for the aforementioned Securities and prepare any reports to Noteholders and tax authorities, including without limitation the report specified in paragraph (b) above, consistent with the intentions expressed in Sections 2.11(a) above.

(d) Each Holder of Notes shall timely furnish to the Issuer, the Co-Issuer or its agents any U.S. federal income tax form or certification (such as IRS Form W-8BEN (Certification of Foreign Status of Beneficial Owner) (with Part III marked), Form W-8IMY (Certification of Foreign Intermediary Status), IRS Form W-9 (Request for Taxpayer Identification Number and Certification), or IRS Form W-8ECI (Certification of Foreign Person's Claim for Exemption from

Withholding on Income Effectively Connected with Conduct of a U.S. Trade or Business) or any successors to such IRS forms that the Issuer, the Co-Issuer or its agents may reasonable request and shall update or replace such forms or certification in accordance with its terms or its subsequent amendments.

Section 2.12 Authenticating Agents.

Upon the request of the Issuer and the Co-Issuer, the Trustee shall, and if the Trustee so chooses the Trustee may pursuant to this Indenture, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of Notes in connection with issuance, transfers and exchanges under Sections 2.4, 2.5, 2.6 and 8.5 hereof, as fully to all intents and purposes as though each such Authenticating Agent had been expressly authorized by such Sections to authenticate such Notes. For all purposes of this Indenture, the authentication of Notes by an Authenticating Agent pursuant to this Section 2.12 shall be deemed to be the authentication of Notes by the Trustee.

Any corporation or banking association into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation or banking association resulting from any merger, consolidation or conversion to which any Authenticating Agent shall be a party, or any corporation succeeding to the corporate trust business of any Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, without the execution or filing of any further act on the part of the parties hereto or such Authenticating Agent or such successor corporation. Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee, the Issuer and the Co-Issuer. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent, the Issuer and the Co-Issuer. Upon receiving such notice of resignation or upon such a termination, the Trustee shall promptly appoint a successor Authenticating Agent and shall give written notice of such appointment to the Issuer.

The Trustee agrees to pay to each Authenticating Agent appointed by it from time to time reasonable compensation for its services, and reimbursement for its reasonable expenses relating thereto and the Trustee shall be entitled to be reimbursed for such payments, subject to Section 6.7 hereof. The provisions of Sections 2.9, 6.4 and 6.5 hereof shall be applicable to any Authenticating Agent.

Section 2.13 Forced Sale on Failure to Comply with Restrictions.

(a) Notwithstanding anything to the contrary elsewhere in this Indenture, any transfer of a Note or interest therein to a U.S. Person who is determined not to have been both a QIB and a Qualified Purchaser at the time of acquisition of the Note or interest therein shall be null and void and any such proposed transfer of which the Issuer, the Co-Issuer or the Trustee shall have notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(b) If the Issuer determines that any Holder of a Note has not satisfied the applicable requirement described in Section 2.13(a) above (any such person a "Non-Permitted Holder"), then the Issuer shall promptly after discovery that such Person is a Non-Permitted Holder by the Issuer, the Co-Issuer or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery), send notice to such Non-Permitted Holder demanding that such Non-Permitted Holder transfer its interest to a Person that is not a Non-Permitted Holder within 30 days of the date of such notice. If such Non-Permitted Holder fails to so transfer its Note or interest therein, the Issuer shall have the right, without further notice to

the Non-Permitted Holder, to sell such Note or interest therein to a purchaser selected by the Issuer that is not a Non-Permitted Holder on such terms as the Issuer may choose. The Issuer, or the Trustee acting on behalf of the Issuer, may select the purchaser by soliciting one or more bids from one or more brokers or other market professionals that regularly deal in securities similar to the Note, and selling such Note to the highest such bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its

sole discretion. The Holder of such Note, the Non-Permitted Holder and each other Person in the chain of title from the Holder to the Non-Permitted Holder, by its acceptance of an interest in the Note, agrees to cooperate with the Issuer and the Trustee to effect such transfers. The proceeds of such sale, net of any commissions, expenses and taxes due in connection with such sale shall be remitted to the Non-Permitted Holder. The terms and conditions of any sale under this Section 2.13(b) shall be determined in the sole discretion of the Issuer, and the Issuer shall not be liable to any Person having an interest in the Note sold as a result of any such sale of exercise of such discretion.

ARTICLE 3

CONDITIONS PRECEDENT; PLEDGED OBLIGATIONS

Section 3.1 General Provisions.

The Notes to be issued on the Closing Date shall be executed by the Issuer and the Co-Issuer upon compliance with Section 3.2 and shall be delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon Issuer Request and upon receipt by the Trustee of the items described below:

(a) an Officer's Certificate of the Issuer (A) evidencing the authorization by Board Resolution of the execution and delivery of this Indenture, the Collateral Management Agreement, each Hedge Agreement and related documents, the execution, authentication and delivery of the Notes and specifying the Stated Maturity of each Class of Notes, the principal amount of each Class of Notes and the applicable Note Interest Rate of each Class of Notes to be authenticated and delivered, and (B) certifying that (1) the attached copy of the Board Resolution is a true and complete copy thereof, (2) such resolutions have not been rescinded and are in full force and effect on and as of the Closing Date, (3) the Directors authorized to execute and deliver such documents hold the offices and have the signatures indicated thereon and (4) at least $163,707,380 of proceeds on account of the sale on the Closing Date of the Preferred Shares shall have been received;

(b) an Officer's Certificate of the Co-Issuer (A) evidencing the authorization by Board Resolution of the execution and delivery of this Indenture and related documents, the execution, authentication and delivery of the Notes and specifying the Stated Maturity of each Class of Notes, the principal amount of each Class of Notes and the applicable Note Interest Rate of each Class of Notes to be authenticated and delivered, and (B) certifying that (1) the attached copy of the Board Resolution is a true and complete copy thereof, (2) such resolutions have not

been rescinded and are in full force and effect on and as of the Closing Date and (3) the Officers authorized to execute and deliver such documents hold the offices and have the signatures indicated thereon;

(c) (i) either (1) certificates of the Issuer or other official document evidencing the due authorization, approval or consent of any governmental body or bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Issuer that no other authorization, approval or consent of any governmental body is required for the valid issuance of such Notes, or (2) an Opinion of Counsel of the Issuer reasonably satisfactory in form and substance to the Trustee that no such authorization, approval or consent of any governmental body is required for the valid issuance of such Notes except as may have been given;

(ii) either (1) certificates of the Co-Issuer or other official document evidencing the due authorization, approval or consent of any governmental body or bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Co-Issuer that no other authorization, approval or consent of any governmental body is required for the valid issuance of such Notes, or (2) an Opinion of Counsel of the Co-Issuer reasonably satisfactory in form and substance to the Trustee that no such authorization, approval or consent of any governmental body is required for the valid issuance of such Notes except as may have been given;

(d) opinions of Cadwalader, Wickersham & Taft LLP, special U.S. counsel to the Issuer and the Co-Issuer (which opinions may be limited to the

laws of the State of New York and the federal law of the United States and may assume, among other things, the correctness of the representations and warranties made or deemed made by the owners of Notes pursuant to Sections 2.5(g) and (i)) dated the Closing Date, substantially in the form of Exhibit G attached hereto;

(e) an opinion of Maples and Calder, Cayman Islands counsel to the Issuer (which opinion shall be limited to the laws of the Cayman Islands), dated the Closing Date, substantially in the form of Exhibit H attached hereto;

(f) an opinion of Skadden, Arps, Slate, Meagher & Flom LLP, special tax counsel to the Arbor Parent regarding its qualification and taxation as a REIT in the form of Exhibit I attached hereto;

(g) an Officer's Certificate, given on behalf of the Issuer and without personal liability, stating that the Issuer is not in Default under this Indenture and that the issuance of the Notes will not result in a breach of any of the terms, conditions or provisions of, or constitute a Default under, the Governing Documents of the Issuer, any indenture or other agreement or instrument to which the Issuer is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which the Issuer is a party or by which it may be bound or to which it may be subject; that all conditions precedent provided in this Indenture relating to the authentication and delivery of the Notes applied for and all conditions precedent provided in the Preferred Shares Paying Agency Agreement relating to the execution and delivery by the Issuer of the Preferred Shares have been complied with;

(h) an Officer's Certificate stating that the Co-Issuer is not in Default under this Indenture and that the issuance of the Securities will not result in a breach of any of the terms, conditions or provisions of, or constitute a Default under, the Governing Documents of the Co-Issuer, any indenture or other agreement or instrument to which the Co-Issuer is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which the Co-Issuer is a party or by which it may be bound or to which it may be subject; that all conditions precedent provided in this Indenture relating to the authentication and delivery of the Notes applied for have been complied with; and that all expenses due or accrued with respect to the offering or relating to actions taken on or in connection with the Closing Date have been paid;

(i) an executed counterpart of each Collateral Debt Securities Purchase Agreement and the Collateral Management Agreement;

(j) an executed copy of each Hedge Agreement;

(k) an executed counterpart of the Preferred Shares Paying Agency Agreement;

(l) an opinion of counsel to each Hedge Counterparty dated the Closing Date, substantially in the form of Exhibit J attached hereto;

(m) (A) an opinion of Kronish Lieb Weiner & Hellman LLP, special counsel to the Collateral Manager, the Arbor Parent and the Advancing Agent dated the Closing Date, substantially in the form of Exhibit K-1 attached hereto and (B) an opinion of Shearman & Sterling LLP, special counsel (regarding certain Investment Company Act issues) to the Arbor Parent and Arbor Realty Limited Partnership, dated the Closing Date, substantially in the form of Exhibit K-2 attached hereto;

(n) an opinion of counsel to the Trustee dated the Closing Date, substantially in the form of Exhibit L attached hereto;

(o) an opinion of counsel to each Seller dated the Closing Date, substantially in the form of Exhibit M attached hereto;

(p) an Accountants' Report confirming the following information as of the Closing Date: (i) the information (other than the Principal Balance and the Purchase Price) with respect to each Collateral Debt Security set forth on the Schedule of Closing Date Collateral Debt Securities attached hereto as Schedule E by reference to such sources as shall be specified therein, (ii) compliance as of the Closing Date with each of the Moody's Weighted Average

Rating Factor/Weighted Average Recovery Rate Test, the Minimum Weighted Average Coupon Test, the Minimum Weighted Average Spread Test and the Weighted Average Life Test and (iii) specifying the procedures undertaken by the accountants to review data and computations relating to the foregoing;

(q) an Officer's Certificate from the Collateral Manager (i) confirming that each Collateral Debt Security set forth on the Schedule E attached hereto meets the Eligibility Criteria and that Schedule E correctly lists the Collateral Debt Securities to be Granted to the

Trustee on the Closing Date, and (ii) stating the Aggregate Principal Amount of the Collateral Debt Securities;

(r) evidence of preparation for filing at the appropriate filing office in the District of Columbia of a financing statement executed on behalf of the Issuer relating to the perfection of the lien of this Indenture;

(s) an Issuer Order executed by the Issuer and the Co-Issuer directing the Trustee to (i) authenticate the Notes specified therein, in the amounts set forth therein and registered in the name(s) set forth therein and (ii) deliver the authenticated Notes as directed by the Issuer and the Co-Issuer; and

(t) such other documents as the Trustee may reasonably require.

Section 3.2 Security for Notes.

Prior to the issuance of the Notes on the Closing Date, the Issuer shall cause the following conditions to be satisfied:

(a) Grant of Security Interest; Delivery of Collateral Debt Securities. The Grant pursuant to the Granting clauses of this Indenture of all of the Issuer's right, title and interest in and to the Assets and the transfer of all Collateral Debt Securities acquired in connection therewith purchased by the Issuer on the Closing Date (as set forth in the Schedule of Closing Date Collateral Debt Securities) to the Trustee, without recourse (except as expressly provided in each applicable Collateral Debt Security Purchase Agreement), in the manner provided in Section 3.3(a) and the crediting to the Custodial Account by the Custodial Securities Intermediary of such Collateral Debt Securities shall have occurred;

(b) Certificate of the Issuer. A certificate of an Authorized Officer of the Issuer given on behalf of the Issuer and without personal liability, dated as of the Closing Date, delivered to the Trustee, to the effect that, in the case of each Collateral Debt Security pledged to the Trustee for inclusion in the Assets on the Closing Date and immediately prior to the delivery thereof on the Closing Date:

(i) the Issuer is the owner of such Collateral Debt Security free and clear of any liens, claims or encumbrances of any nature whatsoever except for those which are being released on the Closing Date;

(ii) the Issuer has acquired its ownership in such Collateral Debt Security in good faith without notice of any adverse claim, except as described in paragraph (i) above;

(iii) the Issuer has not assigned, pledged or otherwise encumbered any interest in such Collateral Debt Security (or, if any such interest has been assigned, pledged or otherwise encumbered, it has been released) other than interests Granted pursuant to this Indenture;

(iv) the Underlying Instrument with respect to such Collateral Debt Security does not prohibit the Issuer from Granting a security interest in and assigning and pledging such Collateral Debt Security to the Trustee;

(v) the information set forth with respect to such Collateral Debt Security in the Schedule of Closing Date Collateral Debt Securities is correct;

(vi) the Collateral Debt Securities included in the Assets satisfy the requirements of the definition of Eligibility Criteria and the requirements of Section 3.2(a); and

(vii) the Grant pursuant to the Granting Clauses of this Indenture shall result in a first priority security interest in favor of the Trustee for the benefit of the Holders of the Notes and each Hedge Counterparty in all of the Issuer's right, title and interest in and to the Collateral Debt Securities pledged to the Trustee for inclusion in the Assets on the Closing Date.

(c) Rating Letters. The Trustee's receipt of a letter signed by each Rating Agency and confirming that (i) the Class A Notes have been rated "Aaa" by Moody's and "AAA" by S&P and Fitch, (ii) the Class B Notes have been rated at least "Aa2" by Moody's and "AA" by S&P and Fitch, (iii) the Class C Notes have been rated at least "A3" by Moody's and "A-" by S&P and Fitch and (iv) the Class D Notes have been rated at least "Baa2" by Moody's and "BBB" by S&P and Fitch and that such ratings are in full force and effect on the Closing Date.

(d) Accounts. Evidence of the establishment of the Payment Account, the Collection Account, the Interest Collection Account, the Principal Collection Account, the Unused Proceeds Account, the Delayed Funding Obligations Account, the Expense Account, each Hedge Collateral Account, each Hedge Termination Account, the Preferred Shares Distribution Account and the Custodial Account.

(e) Deposit to Expense Account. On the Closing Date, the Issuer shall deposit into the Expense Account from the gross proceeds of the offering of the Securities, approximately $2,750,000.

(f) Deposit to Delayed Funding Obligations Account. On the Closing Date, the Issuer or the applicable Sellers shall deposit into the Delayed Funding Obligations Account an amount, which, in the aggregate is sufficient to fulfill the maximum funding obligations under all Delayed Funding Obligations Loans.

(g) Deposit to Unused Proceeds Account. On the Closing Date, the Issuer shall deposit into the Unused Proceeds Account, $18,000,000.

(h) Issuance of Preferred Shares. The Issuer shall have delivered to the Trustee evidence that the Preferred Shares have been, or contemporaneously with the issuance of the Notes will be, (1) issued by the Issuer and (2) acquired in their entirety by ARMS Equity.

Section 3.3 Transfer of Pledged Obligations.

(a) LaSalle Bank National Association is hereby appointed as Securities Intermediary (in such capacity, the "Custodial Securities Intermediary") to hold all Pledged Obligations delivered to it in physical form at its office in Chicago, Illinois. Any successor to such Securities Intermediary shall be a U.S. state or national bank or trust company that is not an Affiliate of the Issuer or the Co-Issuer and has capital and surplus of at least $100,000,000. Subject to the limited right to relocate Pledged Obligations set forth in Section 7.5(b), the Custodial Securities Intermediary, as a Securities Intermediary, shall hold all Collateral Debt Securities in the Custodial Account and Eligible Investments and other investments purchased in accordance with this Indenture in the respective Accounts in which the funds used to purchase such investments are held in accordance with Article 10, and, in respect of each Account (other than the Payment Account), the Trustee shall have entered into an agreement with the Securities Intermediary (the "Securities Account Control Agreement") providing, inter alia, that the establishment and maintenance of such Account will be governed by a law satisfactory to the Issuer, the Trustee and the Custodial Securities Intermediary. To the maximum extent feasible, Pledged Obligations shall be transferred to the Trustee as Security Entitlements in the manner set forth in clause (i) below. In the event that the measures set forth in clause (i) below cannot be taken as to any Pledged Obligations, such Pledged Obligation may be transferred to the Trustee in the manner set forth in clauses (ii) through (vii) below, as appropriate. The security interest of the Trustee in Pledged Obligations shall be perfected and otherwise evidenced as follows:

(i) in the case of such Pledged Obligations consisting of Security

Entitlements by (A) the Issuer causing the Custodial Securities Intermediary, in accordance with the Securities Account Control Agreement, to indicate by book entry that a Financial Asset has been credited to the Custodial Account and (B) the Issuer causing the Custodial Securities Intermediary to agree pursuant to the Securities Account Control Agreement that it will comply with Entitlement Orders originated by the Trustee with respect to each such Security Entitlement without further consent by the Issuer;

(ii) in the case of Pledged Obligations that are "uncertificated securities" (as such term is defined in the UCC) to the extent that any such uncertificated securities do not constitute Financial Assets forming the basis of Security Entitlements by the Trustee pursuant to clause (i) (the "Uncertificated Securities"), by the Issuer (A) causing the issuer(s) of such Uncertificated Securities to register on their respective books the Trustee as the registered owner thereof upon original issue or transfer thereof or (B) causing another Person, other than a Securities Intermediary, either to become the registered owner of such Uncertificated Securities on behalf of the Trustee, or such Person having previously become the registered owner, to acknowledge that it holds such Uncertificated Securities for the Trustee;

(iii) in the case of Pledged Obligations consisting of Certificated Securities in registered form to the extent that any such Certificated Securities do not constitute Financial Assets forming the basis of Security Entitlements acquired by the Trustee pursuant to clause (i) (the "Registered Securities"), by the Issuer (A) causing (1) the Trustee to obtain possession of such Registered Securities in the State of Illinois or (2) another Person, other than a Securities Intermediary, either to acquire possession of such

Registered Securities on behalf of the Trustee, or having previously acquired such Registered Securities, in either case, in the State of Illinois to acknowledge that it holds such Registered Securities for the Trustee and (B) causing (1) the endorsement of such Registered Securities to the Trustee by an effective endorsement; or (2) the registration of such Registered Securities in the name of the Trustee by the issuer thereof upon its original issue or registration of transfer;

(iv) in the case of Pledged Obligations consisting of Certificated Securities in bearer form to the extent that any such Certificated Securities do not constitute Financial Assets forming the basis of Security Entitlements acquired by the Trustee pursuant to clause (i) (the "Bearer Securities"), by the Issuer causing (A) the Trustee to obtain possession of such Bearer Securities in the State of Illinois or (B) another Person, other than a Securities Intermediary, either to acquire possession of such Bearer Securities on behalf of the Trustee or, having previously acquired possession of such Bearer Securities, in either case, in the State of Illinois to acknowledge that it holds such Bearer Securities for the Trustee;

(v) in the case of Pledged Obligations that consist of Money or Instruments (the "Illinois Collateral"), to the extent that any such Illinois Collateral does not constitute a Financial Asset forming the basis of a Security Entitlement acquired by the Trustee pursuant to clause (i), by the Issuer causing (A) the Trustee to acquire possession of such Illinois Collateral in the State of Illinois or (B) another Person (other than the Issuer or a Person controlling, controlled by, or under common control with, the Issuer) (1) to (x) take possession of such Illinois Collateral in the State of Illinois and (y) authenticate a record acknowledging that it holds such possession for the benefit of the Trustee or (2) to (x) authenticate a record acknowledging that it will hold possession of such Illinois Collateral for the benefit of the Trustee and (y) take possession of such Illinois Collateral in the State of Illinois;

(vi) in the case of Pledged Obligations that consist of UCC Accounts or General Intangibles ("Accounts Receivable"), by the Issuer (A) notifying, or causing the notification of, the account debtors (as such term is defined in Section 9-102(a) of the UCC) for such Accounts Receivable of the security interest of the Trustee in such Accounts Receivable and causing the Securities Intermediary to credit such Accounts Receivable to the Custodial Account and to treat such Accounts Receivable

as Financial Assets within the meaning of Article 8 of the UCC and (B) to the extent that doing so would be effective to perfect a security interest in such Accounts Receivable under the UCC as in effect at the time of transfer of such Accounts Receivable to the Trustee hereunder, filing or causing the filing of a UCC financing statement that encompasses such Accounts Receivable with the Recorder of Deeds of the District of Columbia and such other offices as applicable; and

(vii) to the maximum extent reasonably possible, in the case of any Loans, Preferred Equity Securities or Participations that are not evidenced by Instruments, Certificated Securities or Uncertificated Securities, by the Issuer (A) taking all steps necessary (including obtaining any necessary consents to the transfer of the Loan, Participation or Preferred Equity Security, as applicable) to make the Custodial Securities

Intermediary the registered owner thereof, (B) causing the Custodial Securities Intermediary to credit such Loans, Participations or Preferred Equity Securities, as applicable, to the Custodial Account and to treat such Loans, Participations or Preferred Equity Securities, as applicable, as Financial Assets within the meaning of Article 8 of the UCC and (C) to the extent that doing so would be effective to perfect a security interest in such Loans, Participations or Preferred Equity Securities, as applicable, under the UCC as in effect at the time of transfer of such Loans, Participations or Preferred Equity Securities to the Trustee hereunder, filing or causing the filing of a UCC financing statement that encompasses such Loans, Participations or Preferred Equity Securities, as applicable, with the Recorder of Deeds of the District of Columbia and such other offices as applicable.

(b) The Issuer hereby authorizes the filing of UCC financing statements describing as the collateral covered thereby "all of the debtor's personal property and assets," or words to that effect, notwithstanding that such wording may be broader in scope than the Assets described in this Indenture.

(c) Without limiting the foregoing, the Issuer and the Trustee on behalf of the Bank agree, and the Bank shall cause the Custodial Securities Intermediary, to take such different or additional action as the Trustee may reasonably request in order to maintain the perfection and priority of the security interest of the Trustee in the event of any change in applicable law or regulation, including Articles 8 and 9 of the UCC and regulations of the U.S. Department of the Treasury governing transfers of interests in Government Items (it being understood that the Trustee shall be entitled to rely upon an Opinion of Counsel, including an Opinion of Counsel delivered in accordance with Section 3.1(d), as to the need to file any financing statements or continuation statements, the dates by which such filings are required to be made and the jurisdictions in which such filings are required to be made).

(d) Without limiting any of the foregoing,

(i) in connection with each Grant of a Collateral Debt Security hereunder, the Issuer shall deliver (or cause to be delivered by the applicable Seller) to the Custodial Securities Intermediary (A) the original of any note, certificate or other instrument constituting or evidencing such Collateral Debt Security and any other Underlying Instrument related to such Collateral Debt Security the delivery of which is necessary in order to perfect the security interest of the Trustee in such Collateral Debt Security granted pursuant to this Indenture and (B) copies of the other Underlying Instruments then in possession of the Issuer;

(ii) from time to time upon the request of the Trustee or Collateral Manager, the Issuer shall deliver (or cause to be delivered) to the Custodial Securities Intermediary any Underlying Instrument in the possession of the Issuer and not previously delivered hereunder (including originals of Underlying Instruments not previously required to be delivered as originals) and as to which the Trustee or Collateral Manager, as applicable, shall have reasonably determined to be necessary or appropriate for the administration of such Collateral Debt Security hereunder or under the Collateral Management Agreement or for the protection of the security interest of the Trustee under this Indenture;

(iii) in connection with any delivery of documents to the Custodial Securities Intermediary pursuant to clauses (i) and (ii) above, the Trustee shall deliver to the Collateral Manager, on behalf of the Issuer, a Trust Receipt in the form of Exhibit N acknowledging the receipt of such documents by the Custodial Securities Intermediary and that it is holding such documents subject to the terms of this Indenture;

(iv) from time to time upon request of the Collateral Manager, the Custodial Securities Intermediary shall, upon delivery by the Collateral Manager of a duly completed Request for Release in the form of Exhibit O hereto, release to the Collateral Manager such of the Underlying Instruments then in its custody as the Collateral Manager reasonably so requests. By submission of any such Request for Release, the Collateral Manager shall be deemed to have represented and warranted that it has determined, in accordance with the Collateral Manager Servicing Standard, that the requested release is necessary for one or more of the purposes described in clause (ii) above. The Collateral Manager shall return to the Custodial Securities Intermediary each Underlying Instrument released from custody pursuant to this clause (iv) within 20 Business Days of receipt thereof (except such Underlying Instruments as are released in connection with a sale, exchange or other disposition, in each case only as permitted under this Indenture, of the related Collateral Debt Security that is consummated within such 20-day period). Notwithstanding the foregoing provisions of this clause (iv), (A) any note, certificate or other instrument evidencing a Pledged Collateral Debt Security shall be released only for the purpose of (1) a sale, exchange or other disposition of such Pledged Collateral Debt Security that is permitted in accordance with the terms of this Indenture or (2) presentation, collection, renewal or registration of transfer of such Collateral Debt Security and (B) the Custodial Securities Intermediary may refuse to honor any Request for Release following the occurrence of an Event of Default under this Indenture.

(e) As of the Closing Date (with respect to the Assets) and each date on which an Asset is acquired (only with respect to the Asset so acquired) the Issuer represents and warrants as follows:

(i) this Indenture creates a valid and continuing security interest (as defined in the UCC) in the Assets in favor of the Trustee for the benefit of the Noteholders and each Hedge Counterparty, which security interest is prior to all other liens, and is enforceable as such against creditors of and purchasers from the Issuer;

(ii) the Issuer owns and has good and marketable title to such Assets free and clear of any lien, claim or encumbrance of any Person;

(iii) in the case of each Asset, the Issuer has acquired its ownership in such Asset in good faith without notice of any adverse claim as defined in Section 8-102(a)(1) of the UCC as in effect on the date hereof;

(iv) other than the security interest granted to the Trustee for the benefit of the Noteholders and each Hedge Counterparty pursuant to this Indenture, the Issuer has not, pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Assets;

(v) the Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Assets other than any financing statement relating to the security interest granted to the Trustee for the benefit of the Noteholders and each Hedge Counterparty hereunder or that has been terminated; the Issuer is not aware of any judgment or Pension Benefit Guarantee Corporation lien and tax lien filings against the Issuer;

(vi) the Issuer has received all consents and approvals required by the terms of each Asset and the Underlying Instruments to grant to the Trustee its interest and rights in such Asset hereunder;

(vii) the Issuer has caused or will have caused, within

10 days, the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under applicable law in order to perfect the security interest in the Assets granted to the Trustee for the benefit of the Noteholders and each Hedge Counterparty hereunder;

(viii) each Asset is an Instrument, a General Intangible or a Certificated Security or Uncertificated Security or has been and will have been credited to a Securities Account;

(ix) the Custodial Securities Intermediary has agreed to treat all assets credited to the Securities Account as Financial Assets;

(x) the Issuer has delivered a fully executed Securities Account Control Agreement pursuant to which the Custodial Securities Intermediary has agreed to comply with all instructions originated by the Trustee relating to the Custodial Account without further consent of the Issuer; the Custodial Account is not in the name of any person other than the Issuer or the Trustee; the Issuer has not consented to the Securities Intermediary of the Custodial Account to comply with Entitlement Orders of any person other than the Trustee;

(xi) (A) all original executed copies of each promissory note or other writings that constitute or evidence any pledged obligation that constitutes Instruments have been delivered to the Custodial Securities Intermediary for the benefit of the Trustee, (B) the Issuer has received a written acknowledgement from the Custodial Securities Intermediary that the Custodial Securities Intermediary is acting solely as agent of the Trustee and (C) none of the promissory notes or other writings that constitute or evidence such collateral has any marks or notations indicating that they have been pledged, assigned or otherwise conveyed by the Issuer to any Person other than the Trustee;

(xii) (A) the Collection Accounts, the Unused Proceeds Account, the Delayed Funding Obligations Account, each Hedge Termination Account, each Hedge Collateral Account, the Expense Account and the Payment Account (collectively, the "Deposit Accounts") constitute "deposit accounts" within the meaning of the UCC, (B) the Issuer has taken all steps necessary to cause the Trustee to become the customer and account holder of the Deposit Accounts, (C) other than the security interest granted to the Trustee pursuant to this Indenture, the Issuer has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Deposit Accounts, and (D) the Deposit Accounts are not in the name of any person

other than the Issuer or the Trustee. The Issuer has not consented to the bank maintaining the Deposit Accounts to comply with the instructions of any person other than the Trustee; and

(xiii) The Issuer has established procedures such that any Eligible Investments purchased with funds withdrawn from the Deposit Accounts will be either (i) credited to a Securities Account over which the Trustee will have a first priority perfected security interest, (ii) purchased in the name of the Trustee, or (iii) held in another manner sufficient to establish the Trustee's first priority perfected security interest over such Eligible Investments.

(f) The Trustee shall only invest in Eligible Investments which the applicable Custodial Securities Intermediary agrees to credit to the applicable account. To the extent any Eligible Investment shall not be delivered to the Trustee by causing the Custodial Securities Intermediary to create a Security Entitlement in the Securities Account in favor of the Trustee, the Issuer shall deliver an Opinion of Counsel to the Trustee to the effect that any other delivery will effect a first priority security interest in favor of the Trustee in such Eligible Instrument.

ARTICLE 4

SATISFACTION AND DISCHARGE

Section 4.1 Satisfaction and Discharge of Indenture.

This Indenture shall be discharged and shall cease to be of further effect with respect to the Assets securing the Notes and the Issuer's obligations under each Hedge Agreement except as to (i) rights of registration of transfer and exchange, (ii) substitution of mutilated, defaced, destroyed,

lost or stolen Notes, (iii) rights of Noteholders to receive payments of principal thereof and interest thereon as provided herein, (iv) the rights, obligations and immunities of the Trustee on their behalf hereunder, (v) the rights of Noteholders as beneficiaries hereof with respect to the property deposited with the Trustee on their behalf and payable to all or any of them; and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when:

(a) either:

(i) all Notes theretofore authenticated and delivered (other than (A) Notes which have been mutilated, defaced, destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.6 and (B) Notes for whose payment Money has theretofore irrevocably been deposited in trust and thereafter repaid to the Issuer or discharged from such trust, as provided in Section 7.3) have been delivered to the Trustee for cancellation; or

(ii) all Notes not theretofore delivered to the Trustee for cancellation (A) have become due and payable, or (B) will become due and payable at their Stated Maturity within one year, or (C) are to be called for redemption pursuant to Section 9.1 or Section 9.2 under an arrangement satisfactory to the Trustee for the giving of notice of redemption by the Issuer and the Co-Issuer pursuant to Section 9.4 and the Issuer or the

Co-Issuer, in the case of clauses (A), (B) or (C) of this subsection (ii), has irrevocably deposited or caused to be deposited with the Trustee, in trust for such purpose, Cash or non-callable direct obligations of the United States of America; provided, that the obligations are entitled to the full faith and credit of the United States of America or are debt obligations which are rated "Aaa" by Moody's, "AAA" by Fitch and "AAA" by S&P in an amount sufficient, as verified by a firm of certified public accountants which are nationally recognized, to pay and discharge the entire indebtedness (including, in the case of a redemption pursuant to Section 9.1 or Section 9.2, the Redemption Price) on such Notes not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of such deposit (in the case of Notes which have become due and payable), or to the Stated Maturity or the Redemption Date, as the case may be (and in each case in respect of the Notes, subject to the Priority of Payments); provided, further, that any such deposit of funds with the Trustee in satisfaction of this Indenture shall be subject to the Rating Agency Condition; provided, however, this subsection (ii) shall not apply if an election to act in accordance with the provisions of Section 5.5(a) shall have been made and not rescinded;

(b) (i) the Issuer has paid or caused to be paid or provided for (to the satisfaction of the Person entitled thereto) all other sums payable hereunder and under the Collateral Management Agreement and the Company Administration Agreement, and (ii) all Hedge Agreements then in effect have been terminated and Issuer has paid all amounts, including payments due and payable in connection with such termination and has paid all other outstanding amounts, including any outstanding payments due and payable for any previously terminated Hedge Agreement.

(c) Each of the Issuer and the Co-Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Issuer, the Co-Issuer, the Trustee, and, if applicable, the Noteholders, as the case may be, under Sections 2.7, 4.2, 5.4(d), 5.9, 5.18, 6.7 and 7.3 hereof shall survive.

Section 4.2 Application of Trust Money.

All Monies deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by it in accordance with the provisions of the Notes and this Indenture to the payment of the principal and interest, either directly or through the Paying Agent, as the Trustee may determine, to the Person entitled thereto of the principal and interest for whose payment such

Money has been deposited with the Trustee; but such Money need not be segregated from other funds except to the extent required herein or when commingling of funds is prohibited by law.

Section 4.3 Repayment of Monies Held by Paying Agent.

In connection with the satisfaction and discharge of this Indenture with respect to the Notes, all Monies then held by the Paying Agent other than the Trustee under the provisions

of this Indenture shall, upon demand of the Issuer and the Co-Issuer, be paid to the Trustee to be held and applied pursuant to Section 7.3 hereof and, in the case of Monies payable on the Notes, in accordance with the Priority of Payments and thereupon such Paying Agent shall be released from all further liability with respect to such Monies.

ARTICLE 5

REMEDIES

Section 5.1 Events of Default.

"Event of Default", wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) a default in the payment of any interest on any Note when the same becomes due and payable (provided that, (a) if any Class A Notes are Outstanding, solely for the purposes of this Section 5.1(a), no interest shall be "due and payable" on any Class C Notes or Class D Notes, (b) if any Class B Notes are Outstanding, solely for the purposes of this Section 5.1(a), no interest shall be "due and payable" on any Class C Notes or Class D Notes, (c) if any Class C Notes are Outstanding, solely for the purposes of this Section 5.1(a), no interest shall be "due and payable" on any Class D Notes and (d) if any Class D Notes are Outstanding, solely for the purposes of this Section 5.1(a), no dividends or other distributions shall be payable on the Preferred Shares, in each case unless such amount is available pursuant to the Priority of Payments), which default continues for a period of three (3) Business Days or, in the case of a default in payment due to an administrative error or omission by the Trustee or Paying Agent, which default continues for five (5) Business Days;

(b) a default in the payment of principal (or the related Redemption Price, if applicable) of any Class A Note when the same becomes due and payable, at its Stated Maturity or any Redemption Date, or if there are no Class A Notes Outstanding, a default in the payment of principal (or the related Redemption Price, if applicable) of any Class B Note when the same becomes due and payable at its Stated Maturity or any Redemption Date, or if there are no Class B Notes Outstanding, a default in the payment of principal (or the related Redemption Price, if applicable) of any Class C Note (plus any Class C Capitalized Interest) when the same becomes due and payable at its Stated Maturity or any Redemption Date, or if there are no Class C Notes Outstanding, a default in the payment of principal (or the related Redemption Price, if applicable) of any Class D Note (plus any Class D Capitalized Interest) when the same becomes due and payable at its Stated Maturity or any Redemption Date;

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments set forth under Section 11.1(a) (other than a default in payment described in clause (a) or (b) above), which failure continues for a period of three (3) Business Days or, in the case of a failure to disburse such amounts due to an administrative error or omission by the Trustee or Paying Agent, which failure continues for five Business Days;

(d) either the Issuer, the Co-Issuer or the pool of Assets becomes an investment company required to be registered under the Investment Company Act;

(e) a default in the performance, or breach, of any other covenant or other agreement (other than the covenant to meet or improve the Collateral Quality Tests or the Coverage Tests) of the Issuer or the Co-Issuer hereunder or any representation or warranty of the Issuer or the Co-Issuer hereunder or in any certificate or other writing delivered pursuant hereto or in connection therewith proves to be incorrect in any material respect when made, and the continuation of such default or breach continues for a period of 30 days (or, if such default, breach or failure has an adverse effect on the validity, perfection or priority of the security interest granted hereunder, 15 days) after either the Issuer, the Co-Issuer or the Collateral Manager has actual knowledge thereof or after notice thereof to the Issuer, the Co-Issuer and the Collateral Manager by the Trustee or to the Issuer, the Co-Issuer, the Collateral Manager and the Trustee by Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class; provided that a default in the performance by the Issuer of the obligations imposed on it by this Indenture in connection with the entry into a replacement Hedge Agreement upon the early termination of a Hedge Agreement shall not be an Event of Default if the Rating Agency Condition has been satisfied;

(f) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Issuer or the Co-Issuer under the Bankruptcy Code or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, respectively, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days;

(g) the institution by the Issuer or the Co-Issuer of proceedings to be adjudicated as bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Code or any other similar applicable law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, respectively, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer in furtherance of any such action; or

(h) one or more final judgments being rendered against the Issuer or the Co-Issuer which exceed, in the aggregate, U.S. $1,000,000 (or such lesser amount as any Rating Agency may specify) and which remain unstayed, undischarged and unsatisfied for 30 days after such judgment(s) becomes nonappealable, unless adequate funds have been reserved or set aside for the payment thereof, and unless (except as otherwise specified in writing by each Rating Agency) the Rating Agency Condition shall have been satisfied; or \

(i) the Issuer loses its status as a qualified REIT subsidiary (within the meaning of Section 856(i)(2) of the Code), unless (A) within 90 days, the Issuer either (1)

delivers an opinion of tax counsel of nationally recognized standing in the United States experienced in such matters to the effect that, notwithstanding the Issuer's loss of qualified REIT subsidiary status, the Issuer is not, and has not been, an association (or publicly traded partnership) taxable as a corporation, or is not, and has not been, otherwise subject to U.S. federal income tax on a net basis and the Noteholders are not otherwise materially adversely affected by the loss of qualified REIT subsidiary status or (2) receives an amount from the Preferred Shareholders sufficient to discharge in full the amounts then due and unpaid on the Notes and amounts and expenses described in clauses (1) through (5), (16), (17) and (18) under Section 11.1(a)(i) in accordance with the Priority of Payments or (B) all Classes of the Notes are subject to a Tax Redemption announced by the Issuer in compliance with this Indenture, and such redemption has not been rescinded.

Upon becoming aware of the occurrence of an Event of Default, the Issuer, shall promptly notify the Trustee, the Collateral Manager, the Noteholders, the Preferred Shares Paying Agent, the Preferred Shareholders, each

Rating Agency, each Hedge Counterparty and, for so long as any Notes are listed on the Irish Stock Exchange, the Irish Paying Agent in writing. If the Collateral Manager has actual knowledge of the occurrence of an Event of Default, the Collateral Manager shall promptly notify, in writing, the Trustee, the Noteholders, each Rating Agency and each Hedge Counterparty of the occurrence of such Event of Default.

Section 5.2 Acceleration of Maturity;Rescission and Annulment.

(a) If an Event of Default shall occur and be continuing (other than the Events of Default specified in Section 5.1(f), 5.1(g) or 5.1(i)), the Trustee may (and shall at the direction of each Class of Notes voting as a separate Class) declare the principal of and accrued and unpaid interest on all the Notes to be immediately due and payable and terminate the Reinvestment Period. If an Event of Default described in Section 5.1(f), 5.1(g) or 5.1(i) above occurs, such an acceleration shall occur automatically and without any further action. If the Notes are accelerated, payments shall be made in the order and priority set forth in Section 11.1(a)(i) and Section 11.1(a)(ii) hereof.

(b) At any time after such a declaration of acceleration of Maturity of the Notes has been made and before a judgment or decree for payment of the Money due has been obtained by the Trustee as hereinafter provided in this Article 5, a Majority of each and every Class of Notes (voting as a separate Class), by written notice to the Issuer and the Co-Issuer, the Trustee and each Hedge Counterparty, may rescind and annul such declaration and its consequences if:

(i) the Issuer or the Co-Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(A) all unpaid installments of interest on and principal of the Notes that would be due and payable hereunder if the Event of Default giving rise to such acceleration had not occurred;

(B) to the extent that payment of such interest is lawful, interest on the Class C Capitalized Interest at the Class C Rate and interest on the Class D Capitalized Interest at the Class D Rate;

(C) all unpaid taxes of the Issuer and the Co-Issuer, Company Administrative Expenses and other sums paid or advanced by or otherwise due and payable to the Trustee hereunder;

(D) with respect to each Hedge Agreement, any amount then due and payable thereunder; and

(E) with respect to the Collateral Management Agreement, any Senior Collateral Administration Fee then due and any Company Administrative Expense due and payable to the Collateral Manager thereunder.

(ii) if any Hedge Agreement has been reduced or terminated, the Rating Agency Condition has been satisfied with respect to such reduction or termination; and

(iii) the Trustee has determined that all Events of Default of which it has actual knowledge, other than the non-payment of the interest and principal on the Notes that have become due solely by such acceleration, have been cured and a Majority of the Controlling Class, by written notice to the Trustee and each Hedge Counterparty has agreed with such determination (which agreement shall not be unreasonably withheld or delayed) or waived as provided in Section 5.14.

At any such time that the Trustee shall rescind and annul such declaration and its consequences as permitted hereinabove, the Trustee shall preserve the Assets in accordance with the provisions of Section 5.5 with respect to the Event of Default that gave rise to such declaration; provided, however, that if such preservation of the Assets is rescinded pursuant to Section 5.5, the Notes may be accelerated pursuant to the first paragraph of

this Section 5.2, notwithstanding any previous rescission and annulment of a declaration of acceleration pursuant to this paragraph.

No such rescission shall affect any subsequent Default or impair any right consequent thereon. In addition, no such rescission shall affect any Hedge Agreement if it has been terminated in accordance with its terms.

(c) Subject to Sections 5.4 and 5.5, a Majority of the Controlling Class shall have the right to direct the Trustee in the conduct of any proceedings for any remedy available to the Trustee; provided, that (i) such direction will not conflict with any rule of law or this Indenture; (ii) the Trustee may take any other action not inconsistent with such direction; (iii) the Trustee has been provided with an indemnity or reasonable security satisfactory to it (and the Trustee need not take any action that it determines might involve it in liability unless it has received such indemnity or security against such liability); and (iv) any direction to undertake a sale of the Assets may be made only as described in Section 5.17. The Trustee shall provide written notice of the receipt of such direction to each Hedge Counterparty promptly after receipt thereof.

(d) As security for the payment by the Issuer of the compensation and expenses of the Trustee and any sums the Trustee may be entitled to receive as indemnification by the Issuer, the Issuer hereby grants the Trustee a lien on the Assets, which lien is senior to the lien of the Noteholders. The Trustee's lien shall be subject to the Priority of Payments and exercisable by the Trustee only if the Notes have been declared due and payable following an Event of Default and such acceleration has not been rescinded or annulled.

(e) A Majority of the Controlling Class, may, prior to the time a judgment or decree for the payment of money due has been obtained by the Trustee, waive any past Default on behalf of the holders of all the Notes and its consequences in accordance with Section 5.14.

(f) In determining whether the holders of the requisite percentage of Notes have given any direction, notice or consent hereunder, (i) Notes owned by the Issuer, the Co-Issuer or any Affiliate thereof shall be disregarded and deemed not to be outstanding and (ii) in relation to any amendment or other modification of, or assignment or termination of, any of the express rights or obligations of the Collateral Manager under the Collateral Management Agreement or this Indenture (including the exercise of any rights to remove the Collateral Manager or terminate the Collateral Management Agreement or approve or object to a replacement for the Collateral Manager except as specifically provided in the Collateral Management Agreement with respect to the termination of the Collateral Manager without cause and with respect to the replacement of the Collateral Manager in instances where the Collateral Manager has not been terminated for cause or where such replacement is not an Affiliate of the Collateral Manager), Notes owned by the Collateral Manager or any of its Affiliates, or by any accounts managed by them, shall be disregarded and deemed not to be outstanding. The Collateral Manager and its Affiliates shall be entitled to vote Notes held by them, and by accounts managed by them, with respect to all other matters other than those described in clause (ii).

Section 5.3 Collection of Indebtedness and Suits for Enforcement by Trustee.

The Issuer covenants that if a Default shall occur in respect of the payment of any interest on any Class A Note, the payment of principal on any Class A Note (but only after interest with respect to the Class A Notes and any amounts payable pursuant to Section 11.1(a) having a higher priority have been paid in full), the payment of interest on any Class B Note (but only after interest with respect to the Class A Notes and any amounts payable pursuant to Section 11.1(a) having a higher priority have been paid in full), the payment of principal on any Class B Note (but only after interest and principal with respect to the Class A Notes and interest with respect to the Class B Notes and any amounts payable pursuant to Section 11.1(a) having a higher priority have been paid in full), the payment of interest on any Class C Note (but only after interest with respect to the Class A Notes and the Class B Notes and any amounts payable pursuant to Section 11.1(a) hereof having a higher priority have been paid in full), the payment of principal on any Class C Note (but only after interest and principal with respect to the Class A Notes and the Class B Notes and interest with respect to the Class C Notes and any amounts payable pursuant to Section 11.1(a) having a higher priority have been paid in full), the payment

of interest on any Class D Note (but only after interest with respect to the Class A Notes, the Class B Notes and the Class C Notes and any amounts payable pursuant to Section 11.1(a) hereof having a higher priority have been paid in full) or the payment of principal on any Class D

Note (but only after interest and principal with respect to the Class A Notes, the Class B Notes and the Class C Notes and interest with respect to the Class D Notes and any amounts payable pursuant to Section 11.1(a) having a higher priority have been paid in full) the Issuer and Co-Issuer shall, upon demand of the Trustee or any affected Noteholder, pay to the Trustee, for the benefit of the Holder of such Note, the whole amount, if any, then due and payable on such Note for principal and interest or other payment with interest on the overdue principal and, to the extent that payments of such interest shall be legally enforceable, upon overdue installments of interest, at the applicable interest rate and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee and such Noteholder and their respective agents and counsel.

If the Issuer or the Co-Issuer fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as Trustee of an express trust, may institute a Proceeding for the collection of the sums so due and unpaid, and may prosecute such Proceeding to judgment or final decree, and may enforce the same against the Issuer and the Co-Issuer or any other obligor upon the Notes and collect the Monies adjudged or decreed to be payable in the manner provided by law out of the Assets.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Noteholders by such appropriate Proceedings as the Trustee shall deem most effectual (if no direction by a Majority of the Controlling Class is received by the Trustee), or the Trustee shall proceed to protect and enforce its rights and the rights of the Noteholders by such Proceedings as the Trustee may be directed by Majority of the Controlling Class, to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law.

In case there shall be pending Proceedings relative to the Issuer or the Co-Issuer under the Bankruptcy Code or any other applicable bankruptcy, insolvency or other similar law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Issuer or the Co-Issuer, or their respective property, or in case of any other comparable Proceedings relative to the Issuer or the Co-Issuer, or the creditors or property of the Issuer or the Co-Issuer, the Trustee, regardless of whether the principal of any Notes shall then be due and payable as therein expressed or by declaration or otherwise and regardless of whether the Trustee shall have made any demand pursuant to the provisions of this Section 5.3, shall be entitled and empowered, by intervention in such Proceedings or otherwise:

(a) to file and prove a claim or claims for the whole amount of principal and interest owing and unpaid in respect of the Notes and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence or bad faith) and of the Noteholders allowed in any Proceedings relative to the Issuer, the Co-

Issuer or other obligor upon the Notes or to the creditors or property of the Issuer, the Co-Issuer or such other obligor;

(b) unless prohibited by applicable law and regulations, to vote on behalf of the Holders of the Notes in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency proceedings or Person performing similar functions in comparable

Proceedings; and

(c) to collect and receive any Monies or other property payable to or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the Noteholders and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian or other similar official is hereby authorized by each of the Noteholders to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the Noteholders, to pay to the Trustee such amounts as shall be sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee and their respective agents, attorneys and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of its own negligence or bad faith.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Noteholder, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Noteholder in any such Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar Person.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes or the production thereof in any trial or other Proceedings relative thereto, and any action or Proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment, shall be applied as set forth in Section 5.7.

In any Proceedings brought by the Trustee on behalf of the Holders, the Trustee shall be held to represent all the Holders of the Notes.

Notwithstanding anything in this Section 5.3 to the contrary, the Trustee may not sell or liquidate the Assets or institute Proceedings in furtherance thereof pursuant to this Section 5.3 unless the conditions specified in Section 5.5(a) are met.

Section 5.4 Remedies.

(a) If anEvent of Default shall have occurred and be continuing, and the Notes have been declared due and payable and such declaration and its consequences have not been rescinded and annulled, the Issuer and the Co-Issuer agree that the Trustee may, after notice to the Noteholders and each Hedge Counterparty, and shall, upon direction by a Majority of the Controlling Class, to the extent permitted by applicable law, exercise one or more of the following rights, privileges and remedies:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or otherwise payable under this Indenture, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Assets any Monies adjudged due;

(ii) sell all or a portion of the Assets or rights of interest therein, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17 hereof;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Assets; (iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights and remedies of the Trustee and the Holders of the Notes hereunder; and

(v) exercise any other rights and remedies that may be available at law or in equity;

provided, however, that the Trustee may not sell or liquidate the Assets or institute Proceedings in furtherance thereof pursuant to this Section 5.4 unless either of the conditions specified in Section 5.5(a) is met.

The Trustee may, but need not, obtain and rely upon an opinion of an Independent investment banking firm of national reputation with demonstrated

capabilities in structuring and distributing notes or certificates similar to the Notes as to the feasibility of any action proposed to be taken in accordance with this Section 5.4 and as to the sufficiency of the proceeds and other amounts receivable with respect to the Assets to make the required payments of principal of and interest on the Notes and other amounts payable hereunder, which opinion shall be conclusive evidence as to such feasibility or sufficiency.

(b) If an Event of Default as described in Section 5.1(e) hereof shall have occurred and be continuing, the Trustee may, and at the request of the Holders of not less than 25% of the Aggregate Outstanding Amount of the Controlling Class shall, institute a Proceeding solely to compel performance of the covenant or agreement or to cure the representation or warranty, the breach of which gave rise to the Event of Default under such Section, and enforce any equitable decree or order arising from such Proceeding.

(c) Upon any Sale, whether made under the power of sale hereby given or by virtue of judicial proceedings, any Noteholder or Noteholders or Preferred Shareholder or Preferred Shareholders or the Collateral Manager or any of its Affiliates may bid for and purchase the Assets or any part thereof and, upon compliance with the terms of Sale, may hold, retain, possess or dispose of such property in its or their own absolute right without accountability; and any purchaser at any such Sale may, in paying the purchase Money, turn in any of the Notes in lieu of Cash equal to the amount which shall, upon distribution of the net proceeds of such sale, be payable on the Notes so turned in by such Holder (taking into account the Class of such Notes). Such Notes, in case the amounts so payable thereon shall be less than the amount due thereon, shall be returned to the Holders thereof after proper notation has been made thereon to show partial payment.

Upon any Sale, whether made under the power of sale hereby given or by virtue of judicial proceedings, the receipt of the Trustee or of the Officer making a sale under judicial proceedings shall be a sufficient discharge to the purchaser or purchasers at any sale for its or their purchase Money and such purchaser or purchasers shall not be obliged to see to the application thereof.

Any such Sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall bind the Issuer, the Co-Issuer, the Trustee, the Noteholders and the Preferred Shareholders, shall operate to divest all right, title and interest whatsoever, either at law or in equity, of each of them in and to the property sold, and shall be a perpetual bar, both at law and in equity, against each of them and their successors and assigns, and against any and all Persons claiming through or under them.

(d) Notwithstanding any other provision of this Indenture, the Trustee may not, prior to the date which is one year and one day, or, if longer, the applicable preference period then in effect after the payment in full of all Notes, institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings, or other proceedings under federal or State bankruptcy or similar laws. Nothing in this Section 5.4 shall preclude, or be deemed to stop, the Trustee (i) from taking any action prior to the expiration of the aforementioned one year and one day (or, if longer, the applicable preference period then in effect) period in (A) any case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer or (B) any involuntary insolvency proceeding filed or commenced by a Person other than the Trustee, or (ii) from commencing against the Issuer or the Co-Issuer or any of their respective properties any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceeding. Section

5.5 Preservation of Assets.

(a) Notwithstanding anything to the contrary herein, if an Event of Default shall have occurred and be continuing when any of the Notes are Outstanding, the Trustee shall retain the Assets securing the Notes, collect and cause the collection of the proceeds thereof and make and apply all payments and deposits and maintain all accounts in respect of the Assets and the Notes in accordance with the Priority of Payments and the provisions of Articles 10, 12 and 13 unless either:

(i) the Trustee, pursuant to Section 5.5(c), determines that the

anticipated proceeds of a sale or liquidation of the Assets (after deducting the reasonable expenses of such sale or liquidation) would be sufficient to discharge in full the amounts then due and unpaid on the Notes, Company Administrative Expenses due and payable pursuant to sub-clauses (3) and (16) of Section 11.1(a)(i) and sub-clauses (1) and (9) of Section 11.1(a)(ii), the Senior Collateral Management Fees due and payable pursuant to subclause (4) of Section 11.1(a)(i), the Subordinate Collateral Management Fees due and payable pursuant to subclause (17) of Section 11.1(a)(i), any amounts due and unpaid to each Hedge Counterparty, including without limitation, any payments (however described) due and payable by the Issuer under each Hedge Agreement upon a termination of such Hedge Agreement (including any interest that may accrue thereon)

and amounts due and payable to the Advancing Agent and the Trustee in respect of unreimbursed Interest Advances and Reimbursement Interest, and a Majority of the Controlling Class agrees with such determination; or

(ii) the Holders of 66 2/3% of the Aggregate Outstanding Amount of each Class of Notes (each voting as a separate Class) (and each Hedge Counterparty, unless each shall be paid in full the amounts due and unpaid, including, without limitation, any payments (however described) due and payable by the Issuer under each Hedge Agreement upon a termination of such Hedge Agreement (including any interest that may accrue thereon)), direct, subject to the provisions of this Indenture, the sale and liquidation of the Assets.

The Trustee shall give written notice of the retention of the Assets to the Issuer, the Co-Issuer, the Collateral Manager, each Hedge Counterparty and the Rating Agencies. So long as such Event of Default is continuing, any such retention pursuant to this Section 5.5(a) may be rescinded at any time when the conditions specified in clause (i) or (ii) above exist.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to sell the Assets securing the Notes if the conditions set forth in Section 5.5(a) are not satisfied. Nothing contained in Section 5.5(a) shall be construed to require the Trustee to preserve the Assets securing the Notes if prohibited by applicable law.

(c) In determining whether the condition specified in Section 5.5(a)(i) exists, the Collateral Manager shall obtain bid prices with respect to each Pledged Collateral Debt Security from two dealers (Independent of the Collateral Manager and any of its Affiliates) at the time making a market in such Pledged Collateral Debt Securities (or, if there is only one market maker, then the Collateral Manager shall obtain a bid price from that market maker or, if no market maker, from a pricing service). The Collateral Manager shall compute the anticipated proceeds of sale or liquidation on the basis of the lowest of such bid prices for each such Pledged Collateral Debt Security. For the purposes of determining issues relating to the Market Value of the Pledged Collateral Debt Security and the execution of a sale or other liquidation thereof, the Trustee may, but need not, retain at the expense of the Issuer and rely on an opinion of an Independent investment banking firm of national reputation in connection with a determination (notwithstanding that such opinion will not be the basis for such determination) as to whether the condition specified in Section 5.5(a)(i) exists.

The Trustee shall promptly deliver to the Noteholders and each Hedge Counterparty a report stating the results of any determination required to be made pursuant to Section 5.5(a)(i). The Trustee shall make the determinations required by Section 5.5(a)(i) within 30 days after an Event of Default if requested by a Majority of the Controlling Class.

Section 5.6 Trustee May Enforce Claims Without Possession of Notes.

All rights of action and claims under this Indenture or under any of the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any trial or other Proceeding relating thereto, and any such action or Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express

trust. Any recovery of judgment in respect of the Notes shall be applied as set forth in Section 5.7 hereof.

In any Proceedings brought by the Trustee (and any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party), in respect of the Notes, the Trustee shall be held to represent all the Holders of the Notes.

Section 5.7 Application of MoneyCollected.

Any Money collected by the Trustee with respect to the Notes pursuant to this Article 5 and any Money that may then be held or thereafter received by the Trustee with respect to the Notes hereunder shall be applied subject to Section 13.1 hereof and in accordance with the Priority of Payments set forth in Section 11.1 hereof, at the date or dates fixed by the Trustee. Section

5.8 Limitation on Suits.

No Holder of any Notes shall have any right to institute any Proceedings, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(a) such Holder has previously given to the Trustee written notice of an Event of Default;

(b) except as otherwise provided in Section 5.9 hereof, the Holders of at least 25% of the then Aggregate Outstanding Amount of the Controlling Class shall have made written request to the Trustee to institute Proceedings in respect of such Event of Default in its own name as Trustee hereunder and such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(c) the Trustee for 30 days after its receipt of such notice, request and offer of indemnity has failed to institute any such Proceeding; and

(d) no direction inconsistent with such written request has been given to the Trustee during such 30 day period by a Majority of the Controlling Class; it being understood and intended that no one or more Holders of Notes shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Notes of the same Class or to obtain or to seek to obtain priority or preference over any other Holders of the Notes of the same Class or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders of Notes of the same Class subject to and in accordance with Section 13.1 hereof and the Priority of Payments.

In the event the Trustee shall receive conflicting or inconsistent requests and indemnity from two or more groups of Holders of the Controlling Class, each representing less than a Majority of the Controlling Class, the Trustee in its sole discretion may determine what action, if any, shall be taken, notwithstanding any other provisions of this Indenture.

Section 5.9 Unconditional Rights of Noteholders to Receive Principal and Interest.

Notwithstanding any other provision in this Indenture (except for Section 2.7(n)), the Holder of any Class of Note shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on such Class of Note as such principal, interest and other amounts become due and payable in accordance with the Priority of Payments and Section 13.1, and, subject to the provisions of Section 5.8 to institute Proceedings for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder; provided, however, that the right of such Holder to institute proceedings for the enforcement of any such payment shall not be subject to the 25% threshold requirement set forth in Section 5.8(b).

Section 5.10 Restoration of Rights and Remedies.

If the Trustee or any Noteholder has instituted any Proceeding to enforce any right or remedy under this Indenture and such Proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee, or to such Noteholder, then and in every such case the Issuer, the Co-Issuer, the Trustee, and the Noteholder shall, subject to any determination in such Proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee, and the Noteholders shall continue as though no such Proceeding had been instituted. Section

5.11 Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the Trustee, or to the Noteholders, is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.12 Delay or Omission Not Waiver.

No delay or omission of the Trustee, or of any Noteholder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein or a waiver of a subsequent Event of Default. Every right and remedy given by this Article 5 or by law to the Trustee, or to the Noteholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee, or by the Noteholders, as the case may be.

Section 5.13 Control by the Controlling Class.

Notwithstanding any other provision of this Indenture, if an Event of Default shall have occurred and be continuing when any of the Notes are Outstanding, a Majority of the Controlling Class shall have the right to cause the institution of and direct the time, method and place of conducting any Proceeding for any remedy available to the Trustee for exercising any trust, right, remedy or power conferred on the Trustee in respect of the Notes; provided, that:

(a) such direction shall not conflict with any rule of law or with this Indenture;

(b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction; provided, however, that, subject to Section 6.1, the Trustee need not take any action that it determines might involve it in liability (unless the Trustee has received satisfactory indemnity against such liability as set forth below);

(c) the Trustee shall have been provided with indemnity satisfactory to it; and

(d) any direction to the Trustee to undertake a Sale of the Assets shall be by the Holders Notes secured thereby representing 662/3% of the Aggregate Outstanding Amount of each Class of Notes.

Section 5.14 Waiver of Past Defaults.

Prior to the time a judgment or decree for payment of the Money due has been obtained by the Trustee, as provided in this Article 5, a Majority of each and every Class of Notes voting as a separate Class may on behalf of the Holders of all the Notes waive any past Default in respect of the Notes and its consequences, except a Default:

(a) in the payment of principal of any Note;

(b) in the payment of interest in respect of the Controlling Class;

(c) in respect of a covenant or provision hereof that under Section 8.2 cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note adversely affected thereby; or

(d) in respect of any covenant or provision hereof for the individual protection or benefit of the Trustee (without the Trustee's express written consent thereto).

In the case of any such waiver, the Issuer, the Co-Issuer, the Trustee, and the Holders of the Notes shall be restored to their former positions and rights hereunder, respectively, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. The Trustee shall promptly give written notice of any such waiver to the Collateral Manager, each Noteholder and each Hedge Counterparty.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto.

Section 5.15 Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee

for any action taken, or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.15 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than 10% of the Aggregate Outstanding Amount of the Controlling Class, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or interest on any Note or any other amount payable hereunder on or after the Stated Maturity (or, in the case of redemption, on or after the applicable Redemption Date).

Section 5.16 Waiver of Stay or Extension Laws.

Each of the Issuer and the Co-Issuer covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants, the performance of or any remedies under this Indenture; and each of the Issuer and the Co-Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 5.17 Sale of Assets.

(a) The power to effect any sale (a "Sale") of any portion of the Assets pursuant to Sections 5.4 and 5.5 hereof shall not be exhausted by any one or more Sales as to any portion of such Assets remaining unsold, but shall continue unimpaired until all amounts secured by the Assets shall have been paid or if there are insufficient proceeds to pay such amount until the entire Assets shall have been sold. The Trustee may upon notice to the Securityholders and each Hedge Counterparty, and shall, upon direction of a Majority of the Controlling Class, from time to time postpone any Sale by public announcement made at the time and place of such Sale; provided, however, that if the Sale is rescheduled for a date more than three Business Days after the date of the determination by the Trustee pursuant to Section 5.5 hereof, such Sale shall not occur unless and until the Trustee has again made the determination required by Section 5.5 hereof. The Trustee hereby expressly waives its rights to any amount fixed by law as compensation for any Sale; provided, that the Trustee shall be authorized to deduct the reasonable costs, charges and expenses incurred by it in connection with such Sale from the proceeds thereof notwithstanding the provisions of Section 6.7 hereof.

(b) The Trustee may bid for and acquire any portion of the Assets in connection with a public Sale thereof, and may pay all or part of the

purchase price by crediting against amounts owing on the Notes or other amounts secured by the Assets, all or part of the net proceeds of such Sale after deducting the reasonable costs, charges and expenses incurred by the Trustee in connection with such Sale notwithstanding the provisions of Section 6.7 hereof. The Notes need not be produced in order to complete any such Sale, or in order for the net proceeds of such Sale to be credited against amounts owing on the Notes. The Trustee may hold, lease,

operate, manage or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Assets consists of securities issued without registration under the Securities Act ("Unregistered Securities"), the Trustee may seek an Opinion of Counsel, or, if no such Opinion of Counsel can be obtained and with the consent of a Majority of the Controlling Class, seek a no action position from the Securities and Exchange Commission or any other relevant federal or State regulatory authorities, regarding the legality of a public or private Sale of such Unregistered Securities. In no event shall the Trustee be required to register Unregistered Securities under the Securities Act.

(d) The Trustee shall execute and deliver an appropriate instrument of conveyance transferring its interest in any portion of the Assets in connection with a Sale thereof. In addition, the Trustee is hereby irrevocably appointed the agent and attorney in fact of the Issuer to transfer and convey its interest in any portion of the Assets in connection with a Sale thereof, and to take all action necessary to effect such Sale. No purchaser or transferee at such a Sale shall be bound to ascertain the Trustee's authority, to inquire into the satisfaction of any conditions precedent or see to the application of any Monies.

(e) In the event of any Sale of the Assets pursuant to Section 5.4 or Section 5.5, payments shall be made in the order and priority set forth in Section 11.1(a)(i) and Section 11.1(a)(ii) in the same manner as if the Notes had been accelerated.

Section 5.18 Action on the Notes.

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the seeking or obtaining of or application for any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee, or the Noteholders shall be impaired by the recovery of any judgment by the Trustee against the Issuer or the Co-Issuer or by the levy of any execution under such judgment upon any portion of the Assets or upon any of the assets of the Issuer or the Co-Issuer.

ARTICLE 6

THE TRUSTEE

Section 6.1 Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of manifest error, or bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming

to the requirements of this Indenture; provided, however, that in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they substantially conform to the requirements of this Indenture and shall

promptly, but in any event within three Business Days in the case of an Officer's Certificate furnished by the Collateral Manager, notify the party delivering the same if such certificate or opinion does not conform. If a corrected form shall not have been delivered to the Trustee within 15 days after such notice from the Trustee, the Trustee shall so notify the Noteholders.

(b) In case an Event of Default known to the Trustee has occurred and is continuing, the Trustee shall, prior to the receipt of directions, if any, from a Majority of the Controlling Class (or other Noteholders to the extent provided in Article 5 hereof), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) If, in performing its duties under this Agreement, the Trustee is required to decide between alternative courses of action, the Trustee may request written instructions from the Collateral Manager as to courses of action desired by it. If the Trustee does not receive such instructions within two Business Days after it has requested them, it may, but shall be under no duty to, take or refrain from taking such action. The Trustee shall act in accordance with instructions received after such two-Business Day period except to the extent it has already taken, or committed itself to take, action inconsistent with such instructions. The Trustee shall be entitled to rely on the advice of legal counsel and Independent accountants in performing its duties hereunder and be deemed to have acted in good faith if it acts in accordance with such advice.

(d) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.1;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer, unless it shall be proven that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer in accordance with this Indenture and/or the Controlling Class relating to the time, method and place of conducting any Proceeding for any remedy available to the Trustee in respect of any Note or exercising any trust or power conferred upon the Trustee under this Indenture;

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its

duties hereunder, or in the exercise of any of its rights or powers contemplated hereunder, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it (if the amount of such funds or risk or liability does not exceed the amount payable to the Trustee pursuant to Section 11.1(a)(i)(3) and Section 11.1(a)(ii)(1) net of the amounts specified in Section 6.7(a)(i), the Trustee shall be deemed to be reasonably assured of such repayment) unless such risk or liability relates to its ordinary services under this Indenture, except where this Indenture provides otherwise; and

(v) the Trustee shall not be liable to the Noteholders for any action taken or omitted by it at the direction of the Issuer, the Co-Issuer, the Collateral Manager, the Controlling Class and/or a Noteholder under circumstances in which such direction is required or permitted by the terms of this Indenture.

(e) For all purposes under this Indenture, the Trustee shall not be deemed to have notice or knowledge of any Event of Default described in Section 5.1(d), 5.1(f), 5.1(g), 5.1(h) or 5.1(i) or any Default described in Section 5.1(e) unless a Trust Officer assigned to and working in the Corporate

Trust Office has actual knowledge thereof or unless written notice of any event which is in fact such an Event of Default or Default is received by the Trustee at the Corporate Trust Office, and such notice references, as applicable, the Notes generally, the Issuer, the Assets or this Indenture. For purposes of determining the Trustee's responsibility and liability hereunder, whenever reference is made in this Indenture to such an Event of Default or a Default, such reference shall be construed to refer only to such an Event of Default or Default of which the Trustee is deemed to have notice as described in this Section 6.1.

(f) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of Section 6.1(a), (b), (c), (d) and (e).

(g) The Trustee shall, upon reasonable prior written notice to the Trustee, permit the Issuer, the Co-Issuer, the Collateral Manager or the Rating Agencies, during the Trustee's normal business hours, to examine all books of account, records, reports and other papers of the Trustee relating to the Notes, to make copies and extracts therefrom (the reasonable out-of-pocket expenses incurred in making any such copies or extracts to be reimbursed to the Trustee by such Person) and to discuss the Trustee's actions, as such actions relate to the Trustee's duties with respect to the Notes, with the Trustee's officers and employees responsible for carrying out the Trustee's duties with respect to the Notes.

Section 6.2 Notice of Default.

Promptly (and in no event later than three Business Days) after the occurrence of any Default known to the Trustee or after any declaration of acceleration has been made or delivered to the Trustee pursuant to Section 5.2, the Trustee shall transmit by mail to the Collateral Manager, the Irish Paying Agent (for so long as any Notes are listed on the Irish Stock Exchange), each Hedge Counterparty and each Rating Agency (for so long as any Class of Notes is Outstanding and rated by such Rating Agency), to all Holders of Notes as their names and

addresses appear on the Notes Register, notice of all Defaults hereunder known to the Trustee, unless such Default shall have been cured or waived.

Section 6.3 Certain Rights of Trustee.

Except as otherwise provided in Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Issuer or the Co-Issuer mentioned herein shall be sufficiently evidenced by an Issuer Request or Issuer Order, as the case may be;

(c) whenever in the administration of this Indenture the Trustee shall (i) deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate or (ii) be required to determine the value of any Assets or funds hereunder or the cash flows projected to be received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accountants, investment bankers or other persons qualified to provide the information required to make such determination, including nationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to the taking or omitting of any action by it hereunder, the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise or to honor any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture, unless such Noteholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might reasonably be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note or other paper documents, but the Trustee, in its discretion, may and, upon the written direction of a Majority of the Controlling Class or of a Rating Agency, shall make such further inquiry or investigation into such facts or matters as it may see fit or as it shall be directed and shall have received indemnification reasonably acceptable to the Trustee, and, the Trustee shall be entitled, on reasonable prior notice to the Issuer, the Co-Issuer and the Collateral Manager, to examine the books and records relating to the Notes and the Assets, as applicable, at the premises of the Issuer, the Co-Issuer and the Collateral Manager, personally or by agent or attorney during the Issuer's, the Co-Issuer's or the Collateral Manager's normal business hours upon not less than three Business Days' prior written notice; provided, that the Trustee shall, and shall cause its agents to, hold in confidence

all such information, except (i) to the extent disclosure may be required by law by any regulatory authority and (ii) except to the extent that the Trustee, in its sole judgment, may determine that such disclosure is consistent with its obligations hereunder;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder (except with respect to its duty to make any Interest Advance under the circumstances specified in Section 10.7) either directly or by or through agents or attorneys; provided, that, the Trustee shall not be responsible for any willful misconduct or negligence on the part of any agent appointed and supervised, or attorney appointed, with due care by it hereunder;

(h) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably and prudently believes to be authorized or within its rights or powers hereunder;

(i) the Trustee shall not be responsible for the accuracy of the books or records of, or for any acts or omissions of, the Depository, any Transfer Agent (other than the Trustee itself acting in that capacity), Clearstream, Luxembourg, Euroclear, any Calculation Agent (other than the Trustee itself acting in that capacity) or any Paying Agent (other than the Trustee itself acting in that capacity); and

(j) the Trustee shall not be liable for the actions or omissions of the Collateral Manager; and without limiting the foregoing, the Trustee shall not (except to the extent, if at all, otherwise expressly stated in this Indenture) be under any obligation to monitor, evaluate or verify compliance by the Collateral Manager with the terms hereof or the Collateral Management Agreement, or to verify or independently determine the accuracy of information received by it from the Collateral Manager (or from any selling institution, agent bank, trustee or similar source) with respect to the Collateral Debt Securities.

Section 6.4 Not Responsible for Recitals or Issuance of Notes.

The recitals contained herein and in the Notes, other than the Certificate of Authentication thereon, shall be taken as the statements of the Issuer and the Co-Issuer, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture (except as may be made with respect to the validity of the Trustee's obligations hereunder), the Assets or the Notes. The Trustee shall not be accountable for the use or application by the Issuer or the Co-Issuer of the Notes or the proceeds thereof or any Money paid to the Issuer or the Co-Issuer pursuant to the provisions hereof.

Section 6.5 May Hold Notes.

The Trustee, the Paying Agent, the Notes Registrar or any other agent of the Issuer or the Co-Issuer, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Issuer and the Co-Issuer with the same rights it would have if it were not Trustee, Paying Agent, Notes Registrar or such other agent.

Section 6.6 Money Held in Trust.

Money held by the Trustee hereunder shall be held in trust to the extent required herein. The Trustee shall be under no liability for interest on any Money received by it hereunder except as otherwise agreed upon with the Issuer and except to the extent of income or other gain on investments which are deposits in or certificates of deposit of the Trustee in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments.

Section 6.7 Compensation and Reimbursement.

(a) The Issuer agrees:

(i) to pay the Trustee on each Payment Date the fee specified in the Trustee Fee Proposal as compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided herein, to reimburse the Trustee (subject to any written agreement between the Issuer and the Trustee) in a timely manner upon its request for all reasonable expenses, disbursements and advances (except as otherwise provided herein with respect to Interest Advances) incurred or made by the Trustee in accordance with any provision of this Indenture (including securities transaction charges to the extent not waived due to the Trustee's receipt of payments from a financial institution with respect to certain Eligible Investments, as specified by the Collateral Manager and the reasonable compensation and expenses and disbursements of its agents and legal counsel and of any accounting firm or investment banking firm employed by the Trustee pursuant to Section 5.4, 5.5, 10.9 or 10.11 hereof, except any such expense, disbursement or advance as may be attributable to its negligence, willful misconduct or bad faith);

(iii) to indemnify the Trustee and its Officers, directors, employees and agents for, and to hold them harmless against, any loss, liability or expense incurred without negligence, willful misconduct or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties hereunder; and

(iv) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees) for any collection action taken pursuant to Section 6.13 hereof.

(b) The Issuer may remit payment for such fees and expenses to the Trustee or, in the absence thereof, the Trustee may from time to time deduct payment of its fees and expenses hereunder from Monies on deposit in the Payment Account in accordance with the Priority of Payments.

(c) The Trustee in its capacity as Trustee, Paying Agent, Calculation Agent, Transfer Agent, Custodial Securities Intermediary and Notes Registrar, hereby agrees not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer until at least one year and one day or, if longer, the applicable preference period then in effect after the payment in full of all Notes issued under this Indenture. This provision shall survive termination of this Agreement.

(d) The Trustee agrees that the payment of all amounts to which it is entitled pursuant to sub-sections 6.7(a)(i), (a)(ii), (a)(iii) and (a)(iv)

shall be subject to the Priority of Payments, shall be payable only to the extent funds are available in accordance with such Priority of Payments, shall be payable solely from the Assets and following realization of the Assets, any such claims of the Trustee against the Issuer shall be extinguished. The Trustee will have a lien upon the Assets to secure the payment of such payments to it in accordance with the Priority of Payments; provided, that the Trustee shall not institute any proceeding for enforcement of such lien except in connection with an action taken pursuant to Section 5.3 hereof for enforcement of the lien of this Indenture for the benefit of the Noteholders.

Fees shall be accrued on the actual number of days in the related Interest Accrual Period. The Trustee shall receive amounts pursuant to this Section 6.7 and Sections 11.1(a)(i) and (ii) only to the extent that such payment is made in accordance with the Priority of Payments and the failure to pay such amounts to the Trustee will not, by itself, constitute an Event of Default. Subject to Section 6.9, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee shall not have received amounts due it hereunder. No direction by a Majority of the Controlling Class shall affect the right of the Trustee to collect amounts owed to it under this Indenture.

If on any Payment Date when any amount shall be payable to the Trustee pursuant to this Indenture is not paid because there are insufficient funds available for the payment thereof, all or any portion of such amount not so paid shall be deferred and payable on any later Payment Date on which a fee shall be payable and sufficient funds are available therefor in accordance with the Priority of Payments.

Section 6.8 Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States of America or of any State thereof, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least $200,000,000, subject to supervision or examination by federal or State authority, having a rating of at least "A2" by Moody's, a rating of at least "BBB" by Fitch and a long-term senior unsecured debt rating of at least "A+" and a short-term debt rating of at least "A-1" by S&P and having an office within the United States. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 6.8, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.8, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 6.

Section 6.9 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.10.

(b) The Trustee may resign at any time by giving written notice thereof to the Issuer, the Co-Issuer, the Collateral Manager, each Hedge Counterparty (if any), the Noteholders and each Rating Agency. Upon receiving such notice of resignation, the Issuer and the Co-Issuer shall promptly appoint a successor trustee or trustees by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the Trustee so resigning and one copy to the successor Trustee or Trustees, together with a copy to each Noteholder, each Hedge Counterparty and the Collateral Manager; provided, that such successor Trustee shall be appointed only upon the written consent of a Majority of the Notes (or if there are no Notes Outstanding, a Majority of the Preferred Shares) or, at any time when an Event of Default shall have occurred and be continuing or when a successor Trustee has been appointed pursuant to Section 6.10, by Act of a Majority of the Controlling Class. If no successor Trustee shall have been appointed and an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee, the Controlling Class of Notes or any Holder of a Note, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of 66-2/3% of the Notes (or if there are no Notes Outstanding, a Majority of the Preferred Shares) or, at any time when an Event of Default shall have occurred and be continuing or when a successor Trustee has been appointed pursuant to Section 6.10, by Act of the Controlling Class, upon written notice delivered to the Trustee and to the Issuer and the Co-Issuer.

(d) If at any time:

(i) the Trustee shall cease to be eligible under Section 6.8 and shall fail to resign after written request therefor by the Issuer, the Co-Issuer, or by any Holder; or

(ii) the Trustee shall become incapable of acting or there shall be instituted any proceeding pursuant to which it could be adjudged as bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case (subject to Section 6.9(a)), (a) the Issuer or the Co-Issuer, by Issuer Order, subject to the written consent of each Hedge Counterparty, may remove the Trustee or (b) subject to Section 5.15, a Majority of the Controlling Class or any Holder may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Trustee for any reason, the Issuer and the Co-Issuer, by Issuer Order, subject to the written consent of each Hedge Counterparty and the Collateral Manager, shall promptly appoint a successor Trustee. If the Issuer and the Co-Issuer shall fail to appoint a successor Trustee within 60 days after such resignation, removal or incapability or the occurrence of such vacancy, a successor Trustee may be appointed by Act of a Majority of the Controlling Class delivered to the Issuer, the Co-Issuer, the Collateral Manager and the retiring Trustee. The successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede any successor Trustee proposed by the Issuer and the Co-Issuer. If no successor Trustee shall have been so appointed by the Issuer and the Co-Issuer or a Majority of the Controlling Class and shall have accepted appointment in the manner hereinafter provided, subject to Section 5.15, each Hedge Counterparty, the Controlling Class or any Holder may, on behalf of itself or himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Issuer and the Co-Issuer shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of such event by first class mail, postage prepaid, to each Rating Agency, each Hedge Counterparty, the Preferred Shares Paying Agent and to the Holders of the Notes as their names and addresses appear in the Notes Register. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Issuer or the Co-Issuer fail to mail such notice within ten days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be given at the expense of the Issuer or the Co-Issuer, as the case may be.

Section 6.10 Acceptance of Appointment by Successor.

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer, the Co-Issuer, each Hedge Counterparty, the Collateral Manager and the retiring Trustee an instrument accepting such appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of the retiring Trustee; but, on request of the Issuer and the Co-Issuer or a Majority of the Controlling Class or the Collateral Manager or the successor Trustee, such retiring Trustee shall, upon payment of its charges then unpaid, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and

trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and Money held by such retiring Trustee hereunder, subject nevertheless to its lien, if any, provided for in Section 6.7(d). Upon request of any such successor Trustee, the Issuer and the Co-Issuer shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor shall be qualified and eligible under this Article 6 and (a) such successor shall have long term debt rated within the four highest rating categories by each Rating Agency, and (b) each Rating Agency has confirmed in writing that the employment of such successor would not adversely affect the rating on the Notes.

Section 6.11 Merger, Conversion, Consolidation or Succession to Business of Trustee.

Any corporation or banking association into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or banking association resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article 6, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any of the Notes have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Notes.

Section 6.12 Co-Trustees and Separate Trustee.

At any time or times, including for the purpose of meeting the legal requirements of any jurisdiction in which any part of the Assets may at the time be located, the Issuer, the Co-Issuer and the Trustee shall have power to appoint, one or more Persons to act as co-trustee jointly with the Trustee of all or any part of the Assets, with the power to file such proofs of claim and take such other actions pursuant to Section 5.6 herein and to make such claims and enforce such rights of action on behalf of the Holders of the Notes as such Holders themselves may have the right to do, subject to the other provisions of this Section 6.12.

Each of the Issuer and the Co-Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint a co-trustee. If the Issuer and the Co-Issuer do not both join in such appointment within 15 days after the receipt by them of a request to do so, the Trustee shall have power to make such appointment.

Should any written instrument from the Issuer or the Co-Issuer be required by any co-trustee, so appointed, more fully confirming to such co-trustee such property, title, right or power, any and all such instruments shall, on request, be executed, acknowledged and delivered by the Issuer or the Co-Issuer, as the case may be. The Issuer agrees to pay (but only from and to the extent of the Assets) to the extent funds are available therefor under subclauses (3) and (16) of Section 11.1(a)(i), for any reasonable fees and expenses in connection with such appointment.

Every co-trustee, shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms:

(a) the Notes shall be authenticated and delivered and all rights, powers, duties and obligations hereunder in respect of the custody of securities, Cash and other personal property held by, or required to be deposited or pledged with, the Trustee hereunder, shall be exercised solely by the Trustee;

(b) the rights, powers, duties and obligations hereby conferred or imposed upon the Trustee in respect of any property covered by the appointment

of a co-trustee shall be conferred or imposed upon and exercised or performed by the Trustee or by the Trustee and such co-trustee jointly in the case of the appointment of a co-trustee as shall be provided in the instrument appointing such co-trustee, except to the extent that under any law of any jurisdiction in which any particular act is to be performed, the Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by a co-trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Issuer and the Co-Issuer evidenced by an Issuer Order, may accept the resignation of or remove any co-trustee appointed under this Section 6.12, and in case an Event of Default has occurred and is continuing, the Trustee shall have the power to accept the resignation of, or remove, any such co-trustee without the concurrence of the Issuer or the Co-Issuer. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.12;

(d) no co-trustee hereunder shall be personally liable by reason of any act or omission of the Trustee hereunder;

(e) the Trustee shall not be liable by reason of any act or omission of a co-trustee; and (f) any Act of Securityholders delivered to the Trustee shall be deemed to have been delivered to each co-trustee.

Section 6.13 Certain Duties of Trustee Related to Delayed Payment of Proceeds.

In the event that in any month the Trustee shall not have received a Scheduled Distribution, (a) the Trustee shall promptly notify the Issuer and the Collateral Manager in writing and (b) unless within three Business Days (or the end of the applicable grace period for such payment, if longer) after such notice such payment shall have been received by the Trustee, or the Issuer, in its absolute discretion (but only to the extent permitted by Section 10.2(a)), shall have made provision for such payment satisfactory to the Trustee in accordance with Section 10.2(a), the Trustee shall request the obligor of such Pledged Obligation, the trustee under the related Underlying Instrument or paying agent designated by either of them, as the case may be, to make such payment as soon as practicable after such request but in no event later than three Business Days after the date of such request. In the event that such payment is not made within such time period, the Trustee, subject to the provisions of clause (iv) of Section 6.1(d), shall take such action as the Collateral Manager reasonably shall direct in writing. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. In the event that the Issuer or the Collateral Manager requests a release of a Pledged Obligation in connection with any such action under the Collateral Management Agreement, such release shall be subject to Section 10.10 and Article 12 of this Indenture, as the case may be. Notwithstanding any other provision hereof, the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Obligation received after the Due Date thereof to the extent the

Issuer previously made provisions for such payment satisfactory to the Trustee in accordance with this Section 6.13 and such payment shall not be deemed part of the Assets.

Section 6.14 Representations and Warranties of the Trustee.

The Trustee represents and warrants that:

(a) the Trustee is a national banking association with trust powers, duly and validly existing under the laws of the United States of America, with corporate power and authority to execute, deliver and perform its obligations under this Indenture, and is duly eligible and qualified to act as trustee under this Indenture;

(b) this Indenture has been duly authorized, executed and delivered by the Trustee and constitutes the valid and binding obligation of the Trustee, enforceable against it in accordance with its terms except (i) as limited by bankruptcy, fraudulent conveyance, fraudulent transfer, insolvency, reorganization, liquidation, receivership, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and by general equitable principles, regardless of whether considered in a proceeding in equity

or at law, and (ii) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought;

(c) neither the execution or delivery by the Trustee of this Indenture nor the performance by the Trustee of its obligations under this Indenture requires the consent or approval of, the giving of notice to or the registration or filing with, any governmental authority or agency under any existing law of the United States of America governing the banking or trust powers of the Trustee;

(d) neither the execution, delivery and performance of this Indenture, nor the consummation of the transactions contemplated by this Indenture, (i) is prohibited by, or requires the Trustee to obtain any consent, authorization, approval or registration under, any law, statute, rule, regulation, or any judgment, order, writ, injunction or decree that is binding upon the Trustee or any of its properties or assets, (ii) will violate the provisions of the Governing Documents of the Trustee or (iii) will violate any provision of, result in any default or acceleration of any obligations under, result in the creation or imposition of any lien pursuant to, or require any consent under, any material agreement to which the Trustee is a party or by which it or any of its property is bound, the violation of which would have a material adverse effect on the Trustee or its property; and

(e) there are no proceedings pending or, to the best knowledge of the Trustee, threatened against the Trustee before any Federal, state or other governmental agency, authority, administrator or regulatory body, arbitrator, court or other tribunal, foreign or domestic, which could have a material adverse effect on the Pledged Obligations or the performance by the Trustee of its obligations under this Indenture.

Section 6.15 Requests for Consents.

In the event that the Trustee receives written notice of any proposed amendment, consent or waiver under the Underlying Instruments of any Collateral Debt Security (before or after any default) or in the event any action is required to be taken in respect to an Underlying Instrument, the Trustee shall promptly contact the Issuer and the Collateral Manager. The Collateral Manager may, on behalf of the Issuer, instruct the Trustee pursuant to an Issuer Order to, and the Trustee shall, with respect to which a Collateral Debt Security as to which a consent or wavier under the Underlying Instruments of such Collateral Debt Security (before or after any default) has been proposed or with respect to action required to be taken in respect of an Underlying Instrument, give consent, grant a waiver, vote or exercise any or all other rights or remedies with respect to any such Collateral Debt Security in accordance with such Issuer Order. In the absence of any instruction from the Collateral Manager, the Trustee shall not engage in any vote or take any action with respect to such a Collateral Debt Security.

ARTICLE 7

COVENANTS

Section 7.1 Payment of Principal and Interest.

The Issuer and the Co-Issuer shall duly and punctually pay the principal of and interest on each Class of Notes in accordance with the terms of such Notes and this Indenture. Amounts properly withheld under the Code or other applicable law by any Person from a payment to any Noteholder of interest and/or principal shall be considered as having been paid by the Issuer and the Co-Issuer, and, with respect to the Preferred Shares, by the Issuer, to such Preferred Shareholder for all purposes of this Indenture.

The Trustee shall, unless prevented from doing so for reasons beyond its reasonable control, give notice to each Securityholder of any such withholding requirement no later than ten days prior to the related Payment Date from which amounts are required (as directed by the Issuer or the Collateral Manager on behalf of the Issuer) to be withheld, provided, that despite the failure of the Trustee to give such notice amounts withheld pursuant to applicable tax laws shall be considered as having been paid by the Issuer and the Co-Issuer, as provided above.

Section 7.2 Maintenance of Office or Agency.

The Issuer and the Co-Issuer hereby appoint the Trustee as a Paying Agent for the payment of principal of and interest on the Notes and where Notes may be surrendered for registration of transfer or exchange and the Issuer and the Co-Issuer hereby appoint CT Corporation System, 111 Eighth Avenue, 13th Floor, New York, New York 10011, as their agent where notices and demands to or upon the Co-Issuer in respect of the Notes or this Indenture, or the Issuer in respect of the Notes or this Indenture, may be served.

The Issuer and the Co-Issuer hereby appoint the Irish Paying Agent as a Paying Agent for the payment of principal of and interest on the Notes and to act as their agent where

notices and demands to or upon the Issuer or the Co-Issuer in respect of the Notes or this Indenture may be served and where Notes may be surrendered for registration of transfer or exchange.

The Issuer or the Co-Issuer may at any time and from time to time vary or terminate the appointment of any such agent or appoint any additional agents for any or all of such purposes; provided, however, that the Issuer and the Co-Issuer, if applicable, will maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands to or upon the Issuer and the Co-Issuer in respect of the Notes and this Indenture may be served, and, subject to any laws or regulations applicable thereto, an office or agency outside of the United States where Notes may be presented and surrendered for payment; provided, further, that no paying agent shall be appointed in a jurisdiction which subjects payments on the Notes to withholding tax. The Issuer or the Co-Issuer, as the case may be, shall give prompt written notice to the Trustee, each Rating Agency and the Noteholders of the appointment or termination of any such agent and of the location and any change in the location of any such office or agency.

If at any time the Issuer and the Co-Issuer, if applicable, shall fail to maintain any such required office or agency in the Borough of Manhattan, The City of New York, or outside the United States, or shall fail to furnish the Trustee with the address thereof, presentations and surrenders may be made (subject to the limitations described in the preceding paragraph) at and notices and demands may be served on the Issuer and the Co-Issuer, and Notes may be presented and surrendered for payment to the appropriate Paying Agent at its main office and the Issuer and the Co-Issuer hereby appoint the same as their agent to receive such respective presentations, surrenders, notices and demands.

Section 7.3 Money for Note Payments to be Held in Trust.

All payments of amounts due and payable with respect to any Notes that are to be made from amounts withdrawn from the Payment Account shall be made on behalf of the Issuer and the Co-Issuer by the Trustee or a Paying Agent (in each case, from and to the extent of available funds in the Payment Account and subject to the Priority of Payments) with respect to payments on the Notes.

When the Paying Agent is not also the Notes Registrar, the Issuer and the Co-Issuer shall furnish, or cause the Notes Registrar to furnish, no later than the fifth calendar day after each Record Date a list, if necessary, in such form as such Paying Agent may reasonably request, of the names and addresses of the Holders of Notes and of the certificate numbers of individual Notes held by each such Holder.

Whenever the Paying Agent is not also the Trustee, the Issuer, the Co-Issuer, and such Paying Agent shall, on or before the Business Day next preceding each Payment Date or Redemption Date, as the case may be, direct the Trustee to deposit on such Payment Date with such Paying Agent, if necessary, an aggregate sum sufficient to pay the amounts then becoming due (to the extent funds are then available for such purpose in the Payment Account, and subject to the Priority of Payments), such sum to be held for the benefit of the Persons entitled thereto and (unless such Paying Agent is the Trustee) the Issuer and the Co-Issuer shall promptly notify

the Trustee of its action or failure so to act. Any Monies deposited with a

Paying Agent (other than the Trustee) in excess of an amount sufficient to pay the amounts then becoming due on the Notes with respect to which such deposit was made shall be paid over by such Paying Agent to the Trustee for application in accordance with Article 11. Any such Paying Agent shall be deemed to agree by assuming such role not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for the non-payment to the Paying Agent of any amounts payable thereto until at least one year and one day or, if longer, the applicable preference period then in effect after the payment in full of all Notes issued under this Indenture.

The initial Paying Agent shall be as set forth in Section 7.2. Any additional or successor Paying Agents shall be appointed by Issuer Order of the Issuer and Issuer Order of the Co-Issuer with written notice thereof to the Trustee; provided, however, that so long as any Class of the Notes are rated by a Rating Agency and with respect to any additional or successor Paying Agent for the Notes, either (i) such Paying Agent has a long-term debt rating of "Aa3" or higher by Moody's, "AA-"or higher by Fitch and "AA-" or higher by S&P or a short-term debt rating of "P-1" by Moody's, "F1+" by Fitch and "A1+" by S&P or (ii) each Rating Agency confirms that employing such Paying Agent shall not adversely affect the then-current ratings of the Notes. In the event that such successor Paying Agent ceases to have a long-term debt rating of "Aa3" or higher by Moody's, "AA-"or higher by Fitch or "AA-" or higher by S&P or a short-term debt rating of at least "P-1" by Moody's, "F1+" by Fitch and "A-1+" by S&P, the Issuer and the Co-Issuer shall promptly remove such Paying Agent and appoint a successor Paying Agent. The Issuer and the Co-Issuer shall not appoint any Paying Agent that is not, at the time of such appointment, a depository institution or trust company subject to supervision and examination by federal and/or state and/or national banking authorities. The Issuer and the Co-Issuer shall cause the Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee (and if the Trustee acts as Paying Agent, it hereby so agrees), subject to the provisions of this Section 7.3, that such Paying Agent will:

(a) allocate all sums received for payment to the Holders of Notes for which it acts as Paying Agent on each Payment Date and Redemption Date among such Holders in the proportion specified in the applicable report or Redemption Date Statement, as the case may be, in each case to the extent permitted by applicable law;

(b) hold all sums held by it for the payment of amounts due with respect to the Notes for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided and pay such sums to such Persons as herein provided;

(c) if such Paying Agent is not the Trustee, immediately resign as a Paying Agent and forthwith pay to the Trustee all sums held by it for the payment of Notes if at any time it ceases to meet the standards set forth above required to be met by a Paying Agent at the time of its appointment;

(d) if such Paying Agent is not the Trustee, immediately give the Trustee notice of any Default by the Issuer or the Co-Issuer (or any other obligor upon the Notes) in the making of any payment required to be made; and

(e) if such Paying Agent is not the Trustee at any time during the continuance of any such Default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held by such Paying Agent.

The Issuer or the Co-Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Issuer Order direct the Paying Agent to pay, to the Trustee all sums held by the Issuer or the Co-Issuer or held by the Paying Agent for payment of the Notes, such sums to be held by the Trustee in trust for the same Noteholders as those upon which such sums were held by the Issuer, the Co-Issuer or the Paying Agent; and, upon such payment by the Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to such Money.

Except as otherwise required by applicable law, any Money deposited with the Trustee in trust or deposited with the Paying Agent for the payment of the principal of or interest on any Note and remaining unclaimed for two years after such principal or interest has become due and payable shall be paid to the Issuer; and the Holder of such Note shall thereafter, as an unsecured general

creditor, look only to the Issuer for payment of such amounts and all liability of the Trustee or the Paying Agent with respect to such Money (but only to the extent of the amounts so paid to the Issuer or the Co-Issuer, as applicable) shall thereupon cease; provided, however, that the Irish Paying Agent, before being required to make any such payment, shall at the expense of the Issuer cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in Dublin, Ireland, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication, any unclaimed balance of such money then remaining shall be repaid to the Issuer. The Trustee or the Paying Agent, before being required to make any such release of payment, may, but shall not be required to, adopt and employ, at the expense of the Issuer or the Co-Issuer, as the case may be, any reasonable means of notification of such release of payment, including, but not limited to, mailing notice of such release to Holders whose Notes have been called but have not been surrendered for redemption or whose right to or interest in Monies due and payable but not claimed is determinable from the records of the Paying Agent, at the last address of record of each such Holder.

Section 7.4 Existence of the Issuer and Co-Issuer.

(a) So long as any Note is outstanding, the Issuer shall maintain in full force and effect its existence and rights as an exempted company incorporated with limited liability under the laws of the Cayman Islands and shall obtain and preserve its qualification to do business as a foreign limited liability company in each jurisdiction in which such qualifications are or shall be necessary to protect the validity and enforceability of this Indenture, the Notes or any of the Assets; provided, that the Issuer shall be entitled to change its jurisdiction of registration from the Cayman Islands to any other jurisdiction reasonably selected by the Issuer so long as (i) such change is not disadvantageous in any material respect to the Holders of the Notes or the Preferred Shares, (ii) written notice of such change shall have been given by the Trustee to the Holders of the Notes or Preferred Shares, the Preferred Shares Paying Agent and each Rating Agency fifteen Business Days prior to such change and (iii) on or prior to the 15th Business Day following such notice the Trustee shall not have received written notice from a Majority of the Controlling Class or a Majority of the Preferred Shares objecting to such change.

So long as any Note is outstanding, the Issuer will maintain at all times at least one director who is Independent of the Collateral Manager and its Affiliates.

(b) So long as any Note is outstanding, the Co-Issuer shall maintain in full force and effect its existence and rights as a limited liability company organized under the laws of Delaware and shall obtain and preserve its qualification to do business as a foreign limited liability company in each jurisdiction in which such qualifications are or shall be necessary to protect the validity and enforceability of this Indenture or the Notes; provided, however, that the Co-Issuer shall be entitled to change its jurisdiction of formation from Delaware to any other jurisdiction reasonably selected by the Co-Issuer so long as (i) such change is not disadvantageous in any material respect to the Holders of the Notes, (ii) written notice of such change shall have been given by the Trustee to the Holders of the Notes and each Rating Agency fifteen Business Days prior to such change and (iii) on or prior to the 15th Business Day following such notice the Trustee shall not have received written notice from a Majority of the Controlling Class objecting to such change. So long as any Note is outstanding, the Co-Issuer shall maintain at all times at least one manager who is Independent of the Collateral Manager and its Affiliates.

(c) So long as any Note is outstanding, the Issuer shall ensure that all corporate or other formalities regarding its existence are followed (including correcting any known misunderstanding regarding its separate existence). So long as any Note is outstanding, the Issuer shall not take any action or conduct its affairs in a manner that is likely to result in its separate existence being ignored or its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding. So long as any Note is outstanding, the Issuer shall maintain and implement administrative and operating procedures reasonably necessary in the performance of the Issuer's obligations hereunder, and the Issuer shall at all times keep and maintain, or cause to be kept and maintained,

separate books, records, accounts and other information customarily maintained for the performance of the Issuer's obligations hereunder. Without limiting the foregoing, so long as any Note is outstanding, (i) the Issuer shall (A) pay its own liabilities only out of its own funds and (B) use separate stationery, invoices and checks, (ii) the Issuer shall not have any subsidiaries, and (iii) the Issuer shall not have any employees, (B) engage in any transaction with any shareholder that is not permitted under the terms of the Collateral Management Agreement, (C) pay dividends other than in accordance with the terms of this Indenture or (D) conduct business under an assumed name (i.e. no DBAs).

(d) So long as any Note is outstanding, the Co-Issuer shall ensure that all limited liability company or other formalities regarding its existence) are followed, as well as correcting any known misunderstanding regarding its separate existence. The Co-Issuer shall not take any action or conduct its affairs in a manner, that is likely to result in its separate existence being ignored or its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding. The Co-Issuer shall maintain and implement administrative and operating procedures reasonably necessary in the performance of the Co-Issuer's obligations hereunder, and the Co-Issuer shall at all times keep and maintain, or cause to be kept and maintained, books, records, accounts and other information customarily maintained for the performance of the Co- Issuer's obligations hereunder. Without limiting the foregoing, (i) the Co-Issuer shall not have any subsidiaries, and (ii) the Co-Issuer shall not (A)

have any employees (other than its managers), (B) join in any transaction with any member that is not permitted under the terms of the Collateral Management Agreement or (C) pay dividends other than in accordance with the terms of this Indenture.

Section 7.5 Protection of Assets.

(a) The Trustee, on behalf of the Issuer, pursuant to any Opinion of Counsel received pursuant to Section 7.5(d) shall execute and deliver all such Financing Statements, continuation statements, instruments of further assurance and other instruments, and shall take such other action as may be necessary or advisable or desirable to secure the rights and remedies of the Holders and each Hedge Counterparty hereunder and to:

(i) Grant more effectively all or any portion of the Assets;

(ii) maintain or preserve the lien (and the priority thereof) of this Indenture or to carry out more effectively the purposes hereof;

(iii) perfect, publish notice of or protect the validity of any Grant made or to be made by this Indenture (including, without limitation, any and all actions necessary or desirable as a result of changes in law or regulations);

(iv) enforce any of the Pledged Obligations or other instruments or property included in the Assets;

(v) preserve and defend title to the Assets and the rights of the Trustee, the Holders of the Notes and each Hedge Counterparty in the Assets against the claims of all persons and parties; and

(vi) pursuant to Sections 11.1(a)(i)(1) and 11.1(a)(ii)(1), pay or cause to be paid any and all taxes levied or assessed upon all or any part of the Assets.

The Issuer hereby designates the Trustee, its agent and attorney-in-fact to execute any Financing Statement, continuation statement or other instrument required pursuant to this Section 7.5. The Trustee agrees that it will from time to time execute and cause to be filed Financing Statements and continuation statements (it being understood that the Trustee shall be entitled to rely upon an Opinion of Counsel described in Section 7.5(d), at the expense of the Issuer, as to the need to file such Financing Statements and continuation statements, the dates by which such filings are required to be made and the jurisdictions in which such filings are required to be made).

(b) The Trustee shall not (i) except in accordance with Section

10.10(a), (b) or (c) and except for payments, deliveries and distributions otherwise expressly permitted under this Indenture, remove any portion of the Assets that consists of Cash or is evidenced by an instrument, certificate or other writing (A) from the jurisdiction in which it was held at the date as described in the Opinion of Counsel delivered at the Closing Date pursuant to Section 3.1(d) or (B) from the possession of the Person who held it on such date or (ii) cause or permit the Custodial Account or the Custodial Securities Intermediary to be located in a different jurisdiction from the jurisdiction in which such securities accounts and Custodial Securities

Intermediary were located on the Closing Date, unless the Trustee shall have first received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to such property will continue to be maintained after giving effect to such action or actions.

(c) The Issuer shall pay or cause to be paid taxes, if any, levied on account of the beneficial ownership by the Issuer of any Pledged Obligations that secure the Notes.

(d) For so long as the Notes are Outstanding, (i) on January 31, 2010 and (ii) every 60 months after such date, the Issuer (or the Collateral Manager on behalf of the Issuer) shall deliver to the Trustee for the benefit of the Trustee, the Collateral Manager, each Hedge Counterparty and each Rating Agency, at the expense of the Issuer, an Opinion of Counsel stating what is required, in the opinion of such counsel, as of the date of such opinion, to maintain the lien and security interest created by this Indenture with respect to the Assets, and confirming the matters set forth in the Opinion of Counsel, furnished pursuant to Section 3.1(d), with regard to the perfection and priority of such security interest (and such Opinion may likewise be subject to qualifications and assumptions similar to those set forth in the Opinion delivered pursuant to Section 3.1(d)).

Section 7.6 Notice of Any Amendments.

Each of the Issuer and the Co-Issuer shall give notice to the Rating Agencies of, and satisfy the Rating Agency Condition with respect to, any amendments to its Governing Documents.

Section 7.7 Performance of Obligations.

(a) Each of the Issuer and the Co-Issuer shall not take any action, and will use its best effort not to permit any action to be taken by others, that would release any Person from any of such Person's covenants or obligations under any instrument included in the Assets, except in the case of enforcement action taken with respect to any Defaulted Security in accordance with the provisions hereof and as otherwise required hereby.

(b) The Issuer or the Co-Issuer may, with the prior written consent of the Majority of the Notes (or if there are no Notes Outstanding, a Majority of the Preferred Shares), contract with other Persons, including the Collateral Manager or the Trustee, for the performance of actions and obligations to be performed by the Issuer or the Co-Issuer, as the case may be, hereunder by such Persons and the performance of the actions and other obligations with respect to the Assets of the nature set forth in the Collateral Management Agreement by the Collateral Manager. Notwithstanding any such arrangement, the Issuer or the Co-Issuer, as the case may be, shall remain primarily liable with respect thereto. In the event of such contract, the performance of such actions and obligations by such Persons shall be deemed to be performance of such actions and obligations by the Issuer or the Co-Issuer; and the Issuer or the Co-Issuer shall punctually perform, and use its best efforts to cause the Collateral Manager or such other Person to perform, all of their obligations and agreements contained in the Collateral Management Agreement or such other agreement.

Section 7.8 Negative Covenants.

(a) The Issuer and the Co-Issuer shall not:

(i) sell, assign, participate, transfer, exchange or otherwise dispose of, or pledge, mortgage, hypothecate or otherwise encumber (or permit such to occur or suffer such to exist), any part of the Assets, except as expressly permitted by this Indenture or the Collateral Management Agreement;

(ii) claim any credit on, make any deduction from, or dispute the enforceability of, the payment of the principal or interest payable in respect of the Notes (other than amounts required to be paid, deducted or withheld in accordance with any applicable law or regulation of any governmental authority) or assert any claim against any present or future Noteholder by reason of the payment of any taxes levied or assessed upon any part of the Assets;

(iii) (A) incur or assume or guarantee any indebtedness, other than the Notes and this Indenture and the transactions contemplated hereby; (B) issue any additional class of securities, other than the Notes, the Preferred Shares, the ordinary shares of the Issuer and the limited liability company membership interests of the Co-Issuer; or (C) issue any additional shares of stock, other than the ordinary shares of the Issuer and the Preferred Shares;

(iv) (A) permit the validity or effectiveness of this Indenture or any Grant hereunder to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations with respect to this Indenture or the Notes, except as may be expressly permitted hereby, (B) permit any lien, charge, adverse claim, security interest, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise upon or burden the Assets or any part thereof, any interest therein or the proceeds thereof, except as may be expressly permitted hereby or (C) take any action that would permit the lien of this Indenture not to constitute a valid first priority security interest in the Assets, except as may be expressly permitted hereby;

(v) amend the Collateral Management Agreement except pursuant to the terms thereof;

(vi) amend the Preferred Shares Paying Agency Agreement, except pursuant to the terms thereof;

(vii) dissolve or liquidate in whole or in part, except as permitted hereunder;

(viii) make or incur any capital expenditures, except as reasonably required to perform its functions in accordance with the terms of this Indenture;

(ix) become liable in any way, whether directly or by assignment or as a guarantor or other surety, for the obligations of the lessee under any lease, hire any

employees or pay any dividends to its shareholders, except with respect to the Preferred Shares in accordance with the Priority of Payments;

(x) maintain any bank accounts other than the Accounts and the bank account in the Cayman Islands in which (inter alia) the proceeds of the Issuer's issued share capital and the transaction fees paid to the Issuer for agreeing to issue the Securities will be kept;

(xi) conduct business under an assumed name, or change its name without first delivering at least 30 days' prior written notice to the Trustee, the Noteholders and the Rating Agencies and an Opinion of Counsel to the effect that such name change will not adversely affect the security interest hereunder of the Trustee;

(xii) engage in any activity that would cause the Issuer to be subject to U.S. Federal, state or local income or franchises tax; or

(xiii) except for any agreements (other than a Hedge Agreement) involving the purchase and sale of Collateral Debt Securities having

customary purchase or sale terms and documented with customary loan trading documentation, enter into any agreements unless such agreements contain "non-petition" and "limited recourse" provisions.

(b) Neither the Issuer nor the Trustee shall sell, transfer, exchange or otherwise dispose of Assets, or enter into or engage in any business with respect to any part of the Assets, except as expressly permitted or required by this Indenture or the Collateral Management Agreement.

(c) The Co-Issuer shall not invest any of its assets in "securities" (as such term is defined in the Investment Company Act) and shall keep all of the Co-Issuer's assets in Cash.

(d) For so long as any of the Notes are Outstanding, the Co-Issuer shall not issue any limited liability company membership interests of the Co-Issuer to any Person other than the Arbor Parent or a wholly-owned subsidiary of the Arbor Parent.

(e) The Issuer shall not enter into any material new agreements (other than any Hedge Agreement, Hedge Counterparty Credit Support, Collateral Debt Security, Collateral Debt Security Purchase Agreement or other agreement (including, without limitation, in connection with the sale of Assets by the Issuer) contemplated by this Indenture) without the prior written consent of Holders of a Majority of the Notes (or if there are no Notes Outstanding, a Majority of the Preferred Shares) and shall provide notice of all new agreements (other than any Hedge Agreement, Collateral Debt Security or other agreement specifically contemplated by this Indenture) the Holders of the Notes. The foregoing notwithstanding, the Issuer may agree to any new agreements; provided that (i) the Issuer, or the Collateral Manager on behalf of the Issuer, determines that such new agreements would not, upon or after becoming effective, adversely affect the rights or interests of any Class or Classes of Noteholders and (ii) subject to satisfaction of the Rating Agency Condition.

(f) As long as any Note is outstanding, ARMS Equity may not transfer the Preferred Shares to any other Person.

Section 7.9 Statement as to Compliance.

(a) On or before January 31, in each calendar year, commencing in 2006 or immediately if there has been a Default in the fulfillment of an obligation under this Indenture, the Issuer shall deliver to the Trustee (which will deliver a copy to each Hedge Counterparty and each Rating Agency) an Officer's Certificate given on behalf of the Issuer and without personal liability stating, as to each signer thereof, that, since the date of the last certificate or, in the case of the first certificate, the Closing Date, to the best of the knowledge, information and belief of such Officer, the Issuer has fulfilled all of its obligations under this Indenture or, if there has been a Default in the fulfillment of any such obligation, specifying each such Default known to them and the nature and status thereof.

Section 7.10 Issuer and Co-Issuer May Consolidate or Merge Only on Certain Terms.

(a) The Issuer shall not consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any Person, unless permitted by the Governing Documents and Cayman Islands law and unless:

(i) the Issuer shall be the surviving entity, or the Person (if other than the Issuer) formed by such consolidation or into which the Issuer is merged or to which all or substantially all of the assets of the Issuer are transferred shall be an entity organized and existing under the laws of the Cayman Islands or such other jurisdiction approved by a Majority of each and every Class of the Notes (each voting as a separate Class) and a Majority of the Preferred Shares; provided, that no such approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of registration pursuant to Section 7.4 hereof; and provided, further, that the surviving entity shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee and each Noteholder, the due and punctual payment of the principal of and interest on all Notes and other

amounts payable hereunder and under each Hedge Agreement and the Collateral Management Agreement and the performance and observance of every covenant of this Indenture and under each Hedge Agreement and the Collateral Management Agreement on the part of the Issuer to be performed or observed, all as provided herein;

(ii) each Rating Agency shall have been notified in writing of each proposed consolidation or merger of the Issuer and the Trustee shall have received written confirmation from each Rating Agency that the ratings issued with respect to each Class of Notes shall not be reduced or withdrawn as a result of the consummation of such transaction;

(iii) if the Issuer is not the surviving entity, the Person formed by such consolidation or into which the Issuer is merged or to which all or substantially all of the assets of the Issuer are transferred shall have agreed with the Trustee (A) to observe the

same legal requirements for the recognition of such formed or surviving entity as a legal entity separate and apart from any of its Affiliates as are applicable to the Issuer with respect to its Affiliates and (B) not to consolidate or merge with or into any other Person or transfer or convey all or substantially all of the Assets or all or substantially all of its assets to any other Person except in accordance with the provisions of this Section 7.10, unless in connection with a sale of the Assets pursuant to Article 5, Article 9 or Article 12;

(iv) if the Issuer is not the surviving entity, the Person formed by such consolidation or into which the Issuer is merged or to which all or substantially all of the assets of the Issuer are transferred shall have delivered to the Trustee, each Hedge Counterparty, the Collateral Manager and each Rating Agency an Officer's Certificate and an Opinion of Counsel each stating that such Person is duly organized, validly existing and in good standing in the jurisdiction in which such Person is organized; that such Person has sufficient power and authority to assume the obligations set forth in subsection (i) above and to execute and deliver an indenture supplemental hereto for the purpose of assuming such obligations; that such Person has duly authorized the execution, delivery and performance of an indenture supplemental hereto for the purpose of assuming such obligations and that such supplemental indenture is a valid, legal and binding obligation of such Person, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium and other laws affecting the enforcement of creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); that, immediately following the event which causes such Person to become the successor to the Issuer, (A) such Person has good and marketable title, free and clear of any lien, security interest or charge, other than the lien and security interest of this Indenture, to the Assets securing, in the case of a consolidation or merger of the Issuer, all of the Notes or, in the case of any transfer or conveyance of the Assets securing any of the Notes, such Notes, (B) the Trustee continues to have a valid perfected first priority security interest in the Assets securing, in the case of a consolidation or merger of the Issuer, all of the Notes, or, in the case of any transfer or conveyance of the Assets securing any of the Notes, such Notes and (C) such other matters as the Trustee, each Hedge Counterparty, the Collateral Manager or any Noteholder may reasonably require;

(v) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;

(vi) the Issuer shall have delivered to the Trustee, the Preferred Shares Paying Agent, each Hedge Counterparty, the Collateral Manager and each Noteholder, an Officer's Certificate and an Opinion of Counsel each stating that such consolidation, merger, transfer or conveyance and such supplemental indenture comply with this Article 7 and that all conditions precedent in this Article 7 provided for relating to such transaction have been complied with and that no adverse tax consequences will result therefrom to the Holders of the Notes, the Preferred Shareholders and any Hedge Counterparty; and

(vii) after giving effect to such transaction, the Issuer shall not be required to register as an investment company under the Investment Company Act.

(b) The Co-Issuer shall not consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any Person, unless no Notes remain Outstanding or:

(i) the Co-Issuer shall be the surviving entity, or the Person (if other than the Co-Issuer) formed by such consolidation or into which the Co-Issuer is merged or to which all or substantially all of the assets of the Co-Issuer are transferred shall be a company organized and existing under the laws of Delaware or such other jurisdiction approved by a Majority of the Controlling Class; provided, that no such approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of formation pursuant to Section 7.4; and provided, further, that the surviving entity shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee and each Noteholder, the due and punctual payment of the principal of and interest on all Notes and the performance and observance of every covenant of this Indenture on the part of the Co-Issuer to be performed or observed, all as provided herein;

(ii) each Rating Agency shall have been notified in writing of each proposed consolidation or merger of the Co-Issuer and the Trustee shall have received written confirmation from each Rating Agency that the ratings issued with respect to each Class of Notes shall not be reduced or withdrawn as a result of the consummation of such transaction;

(iii) if the Co-Issuer is not the surviving entity, the Person formed by such consolidation or into which the Co-Issuer is merged or to which all or substantially all of the assets of the Co-Issuer are transferred shall have agreed with the Trustee (A) to observe the same legal requirements for the recognition of such formed or surviving entity as a legal entity separate and apart from any of its Affiliates as are applicable to the Co-Issuer with respect to its Affiliates and (B) not to consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any other Person except in accordance with the provisions of this Section 7.10;

(iv) if the Co-Issuer is not the surviving entity, the Person formed by such consolidation or into which the Co-Issuer is merged or to which all or substantially all of the assets of the Co-Issuer are transferred shall have delivered to the Trustee and each Rating Agency an Officer's Certificate and an Opinion of Counsel each stating that such Person is duly organized, validly existing and in good standing in the jurisdiction in which such Person is organized; that such Person has sufficient power and authority to assume the obligations set forth in subsection (i) above and to execute and deliver an indenture supplemental hereto for the purpose of assuming such obligations; that such Person has duly authorized the execution, delivery and performance of an indenture supplemental hereto for the purpose of assuming such obligations and that such supplemental indenture is a valid, legal and binding obligation of such Person, enforceable in accordance with its terms, subject only to bankruptcy, reorganization,

insolvency, moratorium and other laws affecting the enforcement of creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); such other matters as the Trustee or any Noteholder may reasonably require;

(v) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;

(vi) the Co-Issuer shall have delivered to the Trustee, the Preferred Shares Paying Agent and each Noteholder an Officer's Certificate and an Opinion of Counsel each stating that such consolidation, merger, transfer or conveyance and such supplemental indenture comply with this Article 7 and that all conditions precedent in this Article 7 provided for relating to such transaction have been complied with and that no adverse

tax consequences will result therefrom to the Holders of the Notes or the Preferred Shareholders; and

(vii) after giving effect to such transaction, the Co-Issuer shall not be required to register as an investment company under the Investment Company Act.

Section 7.11 Successor Substituted.

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer or the Co-Issuer, in accordance with Section 7.10 hereof, the Person formed by or surviving such consolidation or merger (if other than the Issuer or the Co-Issuer), or the Person to which such consolidation, merger, transfer or conveyance is made, shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer or the Co-Issuer, as the case may be, under this Indenture with the same effect as if such Person had been named as the Issuer or the Co-Issuer, as the case may be, herein. In the event of any such consolidation, merger, transfer or conveyance, the Person named as the "Issuer" or the "Co-Issuer" in the first paragraph of this Indenture or any successor which shall theretofore have become such in the manner prescribed in this Article 7 may be dissolved, wound-up and liquidated at any time thereafter, and such Person thereafter shall be released from its liabilities as obligor and maker on all the Notes or Notes, as applicable, and from its obligations under this Indenture.

Section 7.12 No Other Business.

The Issuer shall not engage in any business or activity other than issuing and selling the Notes pursuant to this Indenture and any supplements thereto, issuing and selling the Preferred Shares in accordance with its Governing Documents, entering into any Hedge Agreement, the Collateral Management Agreement, and acquiring, owning, holding and pledging the Assets in connection with the Notes and such other activities which are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith. The Co-Issuer shall not engage in any business or activity other than issuing and selling the Notes pursuant to this Indenture and any supplements thereto and such other activities which are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith.

Section 7.13 Reporting.

At any time when the Issuer and/or the Co-Issuer is not subject to Section 13 or 15(d) of the Exchange Act and is not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or beneficial owner of a Note, the Issuer and/or the Co-Issuer shall promptly furnish or cause to be furnished "Rule 144A Information" (as defined below) to such holder or beneficial owner, to a prospective purchaser of such Note designated by such holder or beneficial owner or to the Trustee for delivery to such holder or beneficial owner or a prospective purchaser designated by such holder or beneficial owner, as the case may be, in order to permit compliance by such holder or beneficial owner with Rule 144A under the Securities Act in connection with the resale of such Note by such holder or beneficial owner. "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto). The Trustee shall reasonably cooperate with the Issuer and/or the Co-Issuer in mailing or otherwise distributing (at the Issuer's expense) to such Noteholders or prospective purchasers, at and pursuant to the Issuer's and/or the Co-Issuer's written direction the foregoing materials prepared by or on behalf of the Issuer and/or the Co-Issuer; provided, however, that the Trustee shall be entitled to prepare and affix thereto or enclose therewith reasonable disclaimers to the effect that such Rule 144A Information was not assembled by the Trustee, that the Trustee has not reviewed or verified the accuracy thereof, and that it makes no representation as to such accuracy or as to the sufficiency of such information under the requirements of Rule 144A or for any other purpose.

Section 7.14 Calculation Agent.

(a) The Issuer and the Co-Issuer hereby agree that for so long as any Notes remain Outstanding there shall at all times be an agent appointed to calculate LIBOR in respect of each Interest Accrual Period in accordance with the terms of Schedule F hereto (the "Calculation Agent"). The Issuer and the

Co-Issuer have initially appointed the Trustee as Calculation Agent for purposes of determining LIBOR for each Interest Accrual Period. The Calculation Agent may be removed by the Issuer and the Co-Issuer at any time. The Calculation Agent may resign at any time by giving written notice thereof to the Issuer, the Co-Issuer, the Collateral Manager, each Hedge Counterparty, the Noteholders and each Rating Agency. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer and the Co-Issuer in respect of any Interest Accrual Period, the Issuer and the Co-Issuer shall, with the prior written consent of each Hedge Counterparty, promptly appoint as a replacement Calculation Agent a leading bank which is engaged in transactions in Eurodollar deposits in the international Eurodollar market and which does not control or is not controlled by or under common control with the Issuer or the Co-Issuer. The Calculation Agent may not resign its duties without a successor having been duly appointed, and shall promptly inform the Hedge Counterparty of any such appointment. If no successor Calculation Agent shall have been appointed within 30 days after giving of a notice of resignation, the resigning Calculation Agent, each Hedge Counterparty, a Majority of the Notes or any Holder of a Note, on behalf of himself and all others similarly situated, may petition a court of competent jurisdiction for the appointment of a successor Calculation Agent.

(b) The Calculation Agent shall be required to agree that, as soon as practicable after 11:00 a.m. (London time) on each LIBOR Determination Date (as defined in

Schedule F hereto), but in no event later than 11:00 a.m. (New York time) on the London Banking Day immediately following each LIBOR Determination Date, the Calculation Agent shall calculate (x) LIBOR for the next Interest Accrual Period and (y) the amount of interest for such Interest Accrual Period payable in respect of each U.S. $1,000 principal amount of each Class of Notes (rounded to the nearest cent, with half a cent being rounded upward) on the related Payment Date, and will communicate such rates and amounts to the Issuer, the Co-Issuer, the Trustee, the Collateral Manager, the Paying Agent, each Hedge Counterparty and, if any Floating Rate Note is in the form of a Regulation S Global Security, to Euroclear and Clearstream, Luxembourg. The Calculation Agent shall also specify to the Issuer and the Co-Issuer the quotations upon which LIBOR is based, and in any event the Calculation Agent shall notify the Issuer and the Co-Issuer before 5:00 p.m. (New York time) on each LIBOR Determination Date if it has not determined and is not in the process of determining LIBOR and the Interest Distribution Amounts for each Class of Notes, together with the reasons therefor. The determination of the Class A Rate, Class B Rate, Class C Rate and Class D Rate and the related Class A Interest Distribution Amount, Class B Interest Distribution Amount, Class C Interest Distribution Amount and Class D Interest Distribution Amount, respectively, by the Calculation Agent shall, absent manifest error, be final and binding on all parties.

Section 7.15 Certain Tax Matters.

The Issuer will provide, upon request of any Holder of any Class of Notes deemed equity for U.S. federal income tax purposes, any information that such Holder with regard to any filing requirements such Holder may have as a result of the Issuer being classified as a "passive foreign investment company," a "controlled foreign corporation" or a "foreign personal holding company" (as applicable) for U.S. federal income tax purposes.

Section 7.16 Maintenance of Listing.

(a) For so long as any of the Notes remain Outstanding, the Issuer and Co-Issuer shall use all reasonable efforts to arrange and maintain the listing of the Notes on the Irish Stock Exchange.

(b) If the Notes are listed on the Irish Stock Exchange, the Issuer shall:

(i) in each calendar year commencing in 2005, request from the Irish Stock Exchange a waiver of the Irish Stock Exchange's requirement to publish annual reports and accounts;

(ii) submit to the Irish Stock Exchange draft copies of any proposed amendments to the Governing Documents which would affect the rights of the Holders of the Notes listed on the Irish Stock Exchange;

(iii) pay the annual fee for listing the Notes on the Irish Stock

Exchange, if any; and

(iv) inform the Irish Stock Exchange if the rating assigned to any of the Notes is reduced or withdrawn.

(c) All notices, documents, reports and other announcements delivered to such Company Announcements Office shall be in the English language.

(d) Notwithstanding the foregoing, if the Collateral Manager on behalf of the Co-Issuers determines that the maintenance of the listing of any Class of Notes on the Irish Stock Exchange (or any alternative listing on another securities exchange) is unduly onerous or burdensome, the Co-Issuers will have the right to cause such Class of Notes to be delisted from the Irish Stock Exchange (or such other securities exchange). Without limiting the Collateral Manager's discretion with respect to any determination that maintaining or obtaining a listing is unduly onerous or burdensome, the Collateral Manager may take into account various factors, including any requirement, resulting from a listing, that either Co-Issuer prepare financial statements of any particular kind or provide additional disclosure of any particular kind, in each case including any such requirement arising out of disclosure or transparency directives of the European Union or any other law or governmental rule.

Section 7.17 Purchase of Assets.

The Issuer (or the Collateral Manager on behalf of the Issuer) shall use reasonable commercial efforts to invest Principal Proceeds and any remaining Deposit and any Reinvestment Income during the Ramp-Up Period in Collateral Debt Securities in accordance with the provisions hereof. Subject to the provisions of this Section 7.17, Principal Proceeds and all or any portion of any remaining Deposit and any Reinvestment Income thereon may be applied prior to the Effective Date to purchase Collateral Debt Securities (which shall be, and hereby are, Granted to the Trustee pursuant to the Granting Clause of this Agreement) for inclusion in the Assets upon receipt by the Trustee of an Issuer Order executed by the Issuer (or the Collateral Manager on behalf of the Issuer) with respect thereto directing the Trustee to pay out the amount specified therein against delivery of the Collateral Debt Security specified therein and a certificate of an Authorized Officer of the Issuer (or the Collateral Manager), dated as of the trade date, and delivered to the Trustee on or prior to the date of such purchase and Grant, to the effect that the criteria set forth below in this Section 7.17 will be satisfied (such criteria to be applied as of the trade date) after giving effect to such purchase and Grant of the Collateral Debt Securities:

(a) the Eligibility Criteria are met with respect to the Collateral Debt Securities purchased;

(b) the Reinvestment Criteria are satisfied after giving effect to such investment; and

(c) the procedures relating to the perfection of the Trustee's security interest in the Collateral Debt Securities described in this Agreement have been satisfied.

Section 7.18 Effective Date Actions.

(a) The Issuer (or the Collateral Manager on behalf of the Issuer) shall cause to be delivered to the Trustee and each Rating Agency on the Effective Date an amended Schedule of Closing Date Collateral Debt Securities listing all Collateral Debt Securities Granted

to the Trustee pursuant to Section 7.17 on or before the Effective Date, which schedule shall supersede any prior Schedule of Closing Date Collateral Debt Securities delivered to the Trustee.

(b) Within ten (10) Business Days after the Effective Date, the Issuer (or the Collateral Manager on behalf of the Issuer) shall request each Rating Agency rating a Class of Notes to confirm within twenty (20) Business Days after the Effective Date, and to so notify in writing the Trustee and any

Hedge Counterparty, that it has not reduced or withdrawn the ratings assigned by it on the Closing Date to such Class of Notes. In the event that the Issuer fails to obtain a rating confirmation from each Rating Agency in accordance with this Section 7.18 within twenty (20) days following the Effective Date (a "Rating Confirmation Failure"), on the first Payment Date thereafter, (i) as provided in Section 9.7, all amounts remaining on deposit in the Unused Proceeds Account, (ii) as provided in Sections 11.1(a)(i), all Interest Proceeds remaining after payment of the amounts referred to in subclauses (1) through (14) of Section 11.1(a)(i) and (iii) as provided in Sections 11.1(a)(ii), all Principal Proceeds remaining after payment of the amounts referred to in subclauses (1) through (6) of Section 11.1(a)(ii), in each case will be used to pay principal of each such Class of Notes, in each case sequentially, until each such rating is reinstated or such Class of Notes have been paid in full.

(c) The Collateral Manager on behalf of the Issuer shall cause to be delivered to the Trustee, each Hedge Counterparty and each Rating Agency, within six (6) Business Days after the Effective Date, an Accountants' Report, dated as of the Effective Date, confirming that the Collateral Quality Tests and the Coverage Tests have been satisfied and that the Collateral Debt Securities have an aggregate par amount equal to at least the Minimum Ramp-Up Amount and certifying the procedures applied and such accountants' associated findings with respect to the Eligibility Criteria and specifying the procedures undertaken by them to review data and computations relating to such information. The Collateral Manager may on any date, prior to the 180th day following the Closing Date or the purchase of Collateral Debt Securities having an aggregate par amount equal to the Minimum Ramp-Up Amount, upon written notice to the Trustee, the Issuer and the Co-Issuer and each Rating Agency (with a copy to each Hedge Counterparty), declare that the Effective Date shall occur on the date specified in such notice; provided that each of the Collateral Quality Tests and the Coverage Tests will be satisfied as of such Effective Date and the Rating Agency Condition has been satisfied. The Issuer (or the Collateral Manager on behalf of the Issuer) shall cause to be delivered to S&P on the Effective Date a Microsoft Excel file that provides all of the inputs required to determine whether the S&P CDO Monitor Test has been satisfied.

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 8.1 Supplemental Indentures Without Consent of Securityholders.

Without the consent of the Holders of any Notes or any Preferred Shareholders, the Issuer, the Co-Issuer, when authorized by Board Resolutions, and the Trustee, with the written consent of each Hedge Counterparty delivered to the Issuer, the Co-Issuer and the Trustee, and, at any time and from time to time subject to the requirement provided below in this

Section 8.1, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(a) to evidence the succession of another Person to the Issuer or the Co-Issuer and the assumption by any such successor Person of the covenants of the Issuer or the Co-Issuer herein and in the Notes;

(b) to add to the covenants of the Issuer, the Co-Issuer or the Trustee for the benefit of the Holders of the Notes, Preferred Shareholders, each Hedge Counterparty or to surrender any right or power herein conferred upon the Issuer or the Co-Issuer;

(c) to convey, transfer, assign, mortgage or pledge any property to or with the Trustee, or add to the conditions, limitations or restrictions on the authorized amount, terms and purposes of the issue, authentication and delivery of the Notes;

(d) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee and to add to or change any of the provisions of this Indenture as shall be necessary to facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Sections 6.9, 6.10 and 6.12 hereof;

(e) to correct or amplify the description of any property at any

time subject to the lien of this Indenture, or to better assure, convey and confirm unto the Trustee any property subject or required to be subjected to the lien of this Indenture (including, without limitation, any and all actions necessary or desirable as a result of changes in law or regulations) or to subject to the lien of this Indenture any additional property;

(f) to modify the restrictions on and procedures for resales and other transfers of Notes to reflect any changes in applicable law or regulation (or the interpretation thereof) or to enable the Issuer and the Co-Issuer to rely upon any exemption from registration under the Securities Act or the Investment Company Act or to remove restrictions on resale and transfer to the extent not required thereunder;

(g) to accommodate the issuance, if any, of Notes in global or book-entry form through the facilities of the Depository Trust Company or otherwise;

(h) to enable the Issuer and the Trustee to rely upon any exemption from registration under the Exchange Act or the Investment Company Act or to remove certain existing restrictions to the extent not required under such exemption;

(i) otherwise to correct any inconsistency or cure any ambiguity or mistake;

(j) to take any action commercially reasonably necessary or advisable to prevent the Issuer from failing to qualify as a qualified REIT subsidiary (within the meaning of Section 856(i)(2) of the Code) or to prevent the Issuer from being subject to U.S. federal, state or local income or franchise tax on a net income tax basis; and

(k) to conform this Indenture to the provisions described in the Offering Memorandum dated January 14, 2005 (or any supplement thereto).

The Trustee is hereby authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations which may be therein contained, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, except to the extent required by law.

If any Class of Notes is Outstanding and rated by a Rating Agency, the Trustee shall not enter into any such supplemental indenture if, as a result of such supplemental indenture, such Rating Agency would cause the rating of any such Notes to be reduced or withdrawn. At the cost of the Issuer, for so long as any Class of Notes shall remain Outstanding and is rated by a Rating Agency, the Trustee shall provide to such Rating Agency a copy of any proposed supplemental indenture at least 15 days prior to the execution thereof by the Trustee, and, for so long as such Notes are Outstanding and so rated, request written confirmation that such Rating Agency will not, as a result of such supplemental indenture, cause the rating of any such Class of Notes to be reduced or withdrawn, and, as soon as practicable after the execution by the Trustee, the Issuer and the Co-Issuer of any such supplemental indenture, provide to such Rating Agency a copy of the executed supplemental indenture.

The Trustee shall not enter into any such supplemental indenture if, as a result of such supplemental indenture, the interests of any Holder of Securities would be materially and adversely affected thereby, unless the Majority of each and every Class of Notes or the Preferred Shares so affected have approved such Supplemental Indenture. The Trustee shall be entitled to rely upon an Opinion of Counsel provided by and at the expense of the party requesting such supplemental indenture in determining whether or not the Holders of Securities would be adversely affected by such change (after giving notice of such change to the Holders of Securities). Such determination shall be conclusive and binding on all present and future Holders of Securities. The Trustee shall not be liable for any such determination made in good faith and in reliance upon an Opinion of Counsel delivered to the Trustee as described in Section 8.3 hereof.

Furthermore, the Trustee shall not enter into any such supplemental indenture unless the Trustee has received an Opinion of Counsel from Cadwalader, Wickersham & Taft LLP or an opinion of other nationally recognized U.S. tax

counsel experienced in such matters that (i) the modification will not cause the Noteholders to experience any material change to the timing, character or source of the income from the Notes and will not be considered a significant modification resulting in an exchange for purposes of section 1.1001 3 of the U.S. Treasury regulations, and (ii) the proposed supplemental indenture will not cause the Issuer to fail to be treated as a qualified REIT subsidiary (within the meaning of Section 856(i)(2) of the Code) or otherwise be subject to U.S. federal income tax on a net income tax basis.

Section 8.2 Supplemental Indentures with Consent of Securityholders.

With the written consent of each Hedge Counterparty, a Majority of each and every Class of Notes adversely affected thereby and a Majority of the Preferred Shares adversely affected thereby, by Act of said Securityholders delivered to the Trustee, the Issuer and the Co-Issuer, the Trustee, the Issuer and the Co-Issuer may enter into one or more indentures supplemental hereto to add any provisions to, or change in any manner or eliminate any of the

provisions of, this Indenture or modify in any manner the rights of the Holders of the Notes of such Class or Preferred Shareholders under this Indenture; provided, however, that notwithstanding anything in this Indenture to the contrary, no such supplemental indenture shall, without the consent of each Preferred Shareholder and Holder of each Outstanding Note of each Class adversely affected thereby to:

(a) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note, reduce the principal amount thereof or the Note Interest Rate thereon or the Redemption Price with respect to any Note, change the date of any scheduled distribution on the Preferred Shares, or the Redemption Price with respect thereto, or change the earliest date on which any Note may be redeemed at the option of the Issuer, change the provisions of this Indenture that apply the proceeds of any Assets to the payment of principal of or interest on Notes or of distributions to the Preferred Shares Paying Agent for the payment of distributions in respect of the Preferred Shares or change any place where, or the coin or currency in which, any Note or the principal thereof or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the applicable Redemption Date);

(b) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or the Notional Amount of Preferred Shares of Preferred Shareholders whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with certain provisions of this Indenture or certain Defaults hereunder or their consequences provided for in this Indenture;

(c) impair or adversely affect the Assets except as otherwise permitted in this Indenture;

(d) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Assets or terminate such lien on any property at any time subject hereto or deprive the Holder of any Note, or the Holder of any Preferred Share as an indirect beneficiary, of the security afforded to such Holder by the lien of this Indenture;

(e) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class whose consent is required to request the Trustee to preserve the Assets or rescind the Trustee's election to preserve the Assets pursuant to Section 5.5 or to sell or liquidate the Assets pursuant to Section 5.4 or 5.5 hereof;

(f) modify any of the provisions of this Section 8.2, except to increase any percentage of outstanding Notes whose holders' consent is required or to provide that other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each outstanding Note affected thereby;

(g) modify the definition of the term "Outstanding" or the provisions of Section 13.1 hereof;

(h) modify the Priority of Payments set forth in Section 11.1(a);

(i) modify or amend any of the non-petition and non-recourse provisions set forth herein or in any of the related Transaction Documents; or

(j) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount of any payment of interest or principal on any Note on any Payment Date or of distributions to the Preferred Shares Paying Agent for the payment of distributions in respect of the Preferred Shares on any Payment Date (or any other date) or to affect the rights of the Holders of Securities to the benefit of any provisions for the redemption of such Securities contained herein;

provided, however, that no supplemental indenture may reduce the permitted minimum denominations of the Notes or modify any provisions regarding limited recourse or non-petition covenants with respect to the Issuer and the Co-Issuer.

The Trustee shall not enter into any such supplemental indenture if, as a result of such supplemental indenture, the interests of any Holder of Securities would be materially and adversely affected thereby, unless the Majority of each and every Class of Notes or the Preferred Shares so affected have approved such Supplemental Indenture.

If any Class of Notes are Outstanding and rated by a Rating Agency, the Trustee shall not enter into any such supplemental indenture if, as a result of such supplemental indenture, such Rating Agency would cause the rating of any such Notes to be immediately reduced or withdrawn. At the cost of the Issuer, for so long as any Class of Notes shall remain Outstanding and is rated by a Rating Agency, the Trustee shall provide to such Rating Agency a copy of any proposed supplemental indenture at least 15 days prior to the execution thereof by the Trustee, and, for so long as such Notes are Outstanding and so rated, request written confirmation that such Rating Agency will not, as a result of such supplemental indenture, cause the rating of any such Class of Notes to be reduced or withdrawn.

The Trustee shall be entitled to rely upon an Opinion of Counsel provided by and at the expense of the party requesting such supplemental indenture in determining whether or not the Holders of Securities would be adversely affected by such change (after giving notice of such change to the Holders of Securities). Such determination shall be conclusive and binding on all present and future Holders of Securities. The Trustee shall not be liable for any such determination made in good faith and in reliance upon an Opinion of Counsel delivered to the Trustee as described in Section 8.3 hereof.

It shall not be necessary for any Act of Securityholders under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Promptly after the execution by the Issuer, the Co-Issuer and the Trustee of any supplemental indenture pursuant to this Section 8.2, the Trustee, at the expense of the Issuer, shall mail to the Securityholders, each Hedge Counterparty, the Preferred Shares Paying Agent, the Collateral Manager, and, so long as the Notes are Outstanding and so rated, each Rating Agency a copy thereof based on an outstanding rating. Any failure of the Trustee to publish or

mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

Section 8.3 Execution of Supplemental Indentures.

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article 8 or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture and that all conditions precedent thereto have been satisfied. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Collateral Manager will be

bound to follow any amendment or supplement to this Indenture of which it has received written notice at least ten Business Days prior to the execution and delivery of such amendment or supplement; provided, however, that with respect to any amendment or supplement to this Indenture which may, in the judgment of the Collateral Manager adversely affect the Collateral Manager, the Collateral Manager shall not be bound (and the Issuer agrees that it will not permit any such amendment to become effective) unless the Collateral Manager gives written consent to the Trustee and the Issuer to such amendment. The Issuer and the Trustee shall give written notice to the Collateral Manager of any amendment made to this Indenture pursuant to its terms. In addition, the Collateral Manager's written consent shall be required prior to any amendment to this Indenture by which it is affected.

Section 8.4 Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article 8, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Notes and Preferred Shares theretofore and thereafter authenticated and delivered hereunder shall be bound thereby.

Section 8.5 Reference in Notes to Supplemental Indentures.

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 8 may, and if required by the Trustee shall, bear a notice in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Issuer and the Co-Issuer shall so determine, new Notes, so modified as to conform in the opinion of the Trustee and the Issuer and the Co-Issuer to any such supplemental indenture, may be prepared and executed by the Issuer and the Co-Issuer and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

ARTICLE 9

REDEMPTION OF SECURITIES; REDEMPTION PROCEDURES

Section 9.1 Clean-up Call; Tax Redemption and Optional Redemption.

(a) The Notes may be redeemed at the option of and at the direction of the Collateral Manager, in whole but not in part, on any Payment Date (the "Clean-up Call Date"), on or after the Payment Date on which the Aggregate Outstanding Amount of the Notes has been reduced to 10% of the Aggregate Outstanding Amount of the Notes on the Closing Date, at a price equal to the applicable Redemption Price (such redemption, a "Clean-up Call"); provided, that any payments due and payable upon a termination of each Hedge Agreement will be made on the Clean-up Call Date in accordance with the terms thereof and this Indenture; and provided, further, the funds available to be used for such Clean-up Call will be sufficient to pay the Total Redemption Price.

(b) The Notes and the Preferred Shares shall be redeemable, in whole but not in part, by Act of a Majority of the Preferred Shares delivered to the Trustee, on the Payment Date (the "Tax Redemption Date") following the occurrence of a Tax Event and satisfaction of the Tax Materiality Condition at a price equal to the applicable Redemption Price (such redemption, a "Tax Redemption"); provided, that any payments due and payable upon a termination of each Hedge Agreement will be made in accordance with the terms thereof and this Indenture; and provided, further, the funds available to be used for such Tax Redemption will be sufficient to pay the Total Redemption Price. Upon the occurrence of a Tax Event, the Issuer and the Co-Issuer, at the direction of the Collateral Manager shall provide written notice thereof to the Trustee, the Irish Paying Agent (for so long as any Notes are listed on the Irish Stock Exchange), each Hedge Counterparty and each Rating Agency.

(c) The Notes and the Preferred Shares shall be redeemable, in whole but not in part, at a price equal to the applicable Redemption Price, on any Payment Date on or after the Payment Date occurring in January 2008 at the direction of the Issuer (such redemption, an "Optional Redemption") (i) by Act of a Majority of the Preferred Shares delivered to the Trustee, or (ii) at the direction of the Collateral Manager unless a Majority of the Preferred Shares object; provided, however, that any payments due and payable upon a termination of each Hedge Agreement will be made in accordance with the terms thereof and this Indenture; and provided, further, the funds available to be used for such

Optional Redemption will be sufficient to pay the Total Redemption Price.

(d) The election by the Collateral Manager to redeem the Notes pursuant to a Clean-up Call shall be evidenced by an Officer's Certificate from the Collateral Manager directing the Trustee to make the payment to the Paying Agent of the applicable Redemption Price of all of the Notes to be redeemed from funds in the Payment Account in accordance with the Priority of Payments. In connection with a Tax Redemption, the occurrence of a Tax Event and satisfaction of the Tax Materiality Condition shall be evidenced by an Issuer Order from the Issuer or from the Collateral Manager on behalf of the Issuer certifying that such conditions for a Tax Redemption have occurred. The election by the Collateral Manager to redeem the Notes pursuant to an Optional Redemption shall be evidenced by an Officer's Certificate from the Collateral Manager on behalf of the Issuer certifying that the conditions for an Optional Redemption have occurred.

(e) A redemption pursuant to Sections 9.1(a), 9.1(b) or 9.1(c) shall not occur unless (1) (i) at least six (6) Business Days before the scheduled Redemption Date, the Collateral Manager shall have certified to the Trustee that the Collateral Manager on behalf of the Issuer has entered into a binding agreement or agreements, with (A) one or more financial institutions whose long-term unsecured debt obligations (other than such obligations whose rating is based on the credit of a person other than such institution) have a credit rating from each Rating Agency of at least equal to the highest rating of any Notes then Outstanding or whose short-term unsecured debt obligations have a credit rating of "P-1" by Moody's as long as the term of such agreement is ninety (90) day or less and "A-1" by S&P or (B) one or more Affiliates of the Collateral Manager, to sell all or part of the Pledged Obligations, not later than the Business Day immediately preceding the scheduled Redemption Date or (ii) the Trustee shall have received written confirmation that the method of redemption satisfies the Rating Agency Condition and (2) the related Sale Proceeds (in immediately available funds), together with all other available funds (including proceeds from the sale of the Assets, Eligible Investments maturing on or prior to the scheduled Redemption Date, all amounts in the Collection Accounts and available Cash), shall be an aggregate amount sufficient to pay all amounts, payments, fees and expenses in accordance with the Priority of Payments due and owing on such Redemption Date.

Section 9.2 Auction Call Redemption.

(a) During the period from and including the Payment Date occurring in January 2015 and to but not including the first Payment Date on which the Clean-up Call may be exercised (the "Auction Call Period"), the Notes and the Preferred Shares will be redeemed in whole but not in part, if a Successful Auction is completed (such redemption, an "Auction Call Redemption"), at their applicable Redemption Prices; provided, that any payments due and payable upon a termination of each Hedge Agreement will be made on the Auction Call Redemption Date in accordance with the terms thereof and this Indenture; and provided, further, the funds available to be used for such Auction Call Redemption will be sufficient to pay the Total Redemption Price. An Auction Call Redemption may only occur on a Payment Date occurring in January or July during the Auction Call Period (such Payment Date, the "Auction Call Redemption Date").

(b) The Trustee shall sell and transfer the Collateral Debt Securities to the highest bidder for all of the Collateral Debt Securities (or to each highest bidder for one or more (but not all) of the Collateral Debt Securities), at the Auction, as long as:

(i) the Auction has been conducted in accordance with the Auction Procedures, as evidenced by a certification of the Collateral Manager;

(ii) at least one bidder delivers to the Collateral Manager a bid (which bid may be based upon a fixed spread above or below a generally recognized price index) for (x) the purchase of all of the Collateral Debt Securities or (y) the purchase of each Collateral Debt Security (which bid may be for one or more (but not all) of the Collateral Debt Securities);

(iii) based on the Collateral Manager's certification to the Trustee of the amount of the cash purchase price of each bid, the Trustee, in consultation with the

Collateral Manager, determines that the Highest Auction Price would result in a cash purchase price for the Collateral Debt Securities which, together with the balance of all Eligible Investments and Cash in the Collection Accounts, the Payment Account and the Expense Account, will be at least equal to the Total Redemption Price; and

(iv) each bidder who offered the Highest Auction Price for all of the Collateral Debt Securities or for one or more of the Collateral Debt Securities enters into a written agreement with the Issuer (which the Issuer shall execute if the conditions set forth in clauses (i) through (iii) above are satisfied) obligating the highest bidder for all of the Collateral Debt Securities (or the highest bidder for one or more (but not all) of the Collateral Debt Securities) to purchase all (either individually or together with other bidders, as applicable) of the Collateral Debt Securities with the closing of such purchase (and full payment in Cash to the Trustee) to occur on or before the tenth Business Day prior to the scheduled Redemption Date.

(c) If any of the foregoing conditions is not met with respect to any Auction, or if the highest bidder or the Collateral Manager, as the case may be, fails to pay the purchase price on or before the sixth Business Day following the relevant Auction Date, (A) the Auction Call Redemption shall not occur on the Payment Date following the relevant Auction Date, (B) the Trustee shall give notice of the withdrawal pursuant to Section 9.3, (C) subject to subclause (D) below, the Trustee shall decline to consummate such sale and shall not solicit any further bids or otherwise negotiate any further sale of Collateral Debt Securities in relation to such Auction and (D) unless the Notes and the Preferred Shares are redeemed in full prior to the next succeeding Auction Date, or the Collateral Manager notifies the Trustee that market conditions are such that such Auction is not likely to be successful, the Trustee shall conduct another Auction on the next succeeding Auction Date.

Section 9.3 Notice of Redemption.

(a) In connection with an Optional Redemption, a Clean-up Call or a Tax Redemption pursuant to Section 9.1 or an Auction Call Redemption pursuant to Section 9.2, the Trustee on behalf of the Issuer and the Co-Issuer shall (i) set the applicable Record Date and (ii) at least 45 days prior to the proposed Redemption Date, notify the Collateral Manager, each Hedge Counterparty, the Rating Agencies and each Preferred Shareholder at such Preferred Shareholder's address in the register maintained by the Share Registrar, of such proposed Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on such Redemption Date and the Redemption Price of such Notes in accordance with Section 9.1 or Section 9.2. The Redemption Price shall be determined no earlier than 60 days prior to the proposed Redemption Date.

(b) Any such notice of an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption may be withdrawn by the Issuer and the Co-Issuer at the direction of the Collateral Manager up to the fourth Business Day prior to the scheduled Redemption Date by written notice to the Trustee, the Irish Paying Agent (for so long as any Notes are listed on the Irish Stock Exchange), each Hedge Counterparty, to each Holder of Notes to be redeemed, and the Collateral Manager only if (i) in the case of an Optional Redemption, a Clean-up Call or a Tax Redemption the Collateral Manager is unable to deliver the sale

agreement or agreements or certifications referred to in Section 9.1(e), as the case may be or (ii) in the case of an Auction Call Redemption, the Auction is unable to be consummated pursuant to the Auction Procedures.

Section 9.4 Notice of Redemption or Maturity by the Issuer.

Notice of redemption pursuant to Section 9.1, Section 9.2 or the Maturity of any Notes shall be given by first class mail, postage prepaid, mailed not less than ten (10) Business Days (or four (4) Business Days where the notice of an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption is withdrawn pursuant to Section 9.3(b)) prior to the applicable Redemption Date or Maturity, to each Holder of Notes to be redeemed, at its address in the Notes Register.

All notices of redemption shall state:

(a) the applicable Redemption Date;

(b) the applicable Redemption Price;

(c) that all the Notes are being paid in full, and that interest on the Notes shall cease to accrue on the Redemption Date specified in the notice; and

(d) the place or places where such Notes to be redeemed in whole are to be surrendered for payment of the Redemption Price which shall be the office or agency of the Paying Agent as provided in Section 7.2.

Notice of redemption shall be given by the Issuer and Co-Issuer, or at their request, by the Trustee in their names and at the expense of the Issuer. Failure to give notice of redemption, or any defect therein, to any Holder of any Note shall not impair or affect the validity of the redemption of any other Notes.

Section 9.5 Notes Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Notes to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after the Redemption Date (unless the Issuer shall Default in the payment of the Redemption Price and accrued interest) the Notes shall cease to bear interest on the Redemption Date. Upon final payment on a Note to be redeemed, the Holder shall present and surrender such Note at the place specified in the notice of redemption on or prior to such Redemption Date; provided, however, that if there is delivered to the Issuer, the Co-Issuer and the Trustee such security or indemnity as may be required by them to save each of them harmless (an unsecured indemnity agreement delivered to the Issuer, the Co-Issuer and the Trustee by an institutional investor with a net worth of at least $200,000,000 being deemed to satisfy such security or indemnity requirement) and an undertaking thereafter to surrender such Note, then, in the absence of notice to the Issuer, the Co-Issuer and the Trustee that the applicable Note has been acquired by a bona fide purchaser, such final payment shall be made without presentation or surrender. Payments of interest on Notes of a Class so to be redeemed whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Notes, or one or

more predecessor Notes, registered as such at the close of business on the relevant Record Date according to the terms and provisions of Section 2.7(i).

If any Note called for redemption shall not be paid upon surrender thereof for redemption, the principal thereof shall, until paid, bear interest from the Redemption Date at the applicable Note Interest Rate for each successive Interest Accrual Period the Note remains Outstanding.

Section 9.6 Mandatory Redemption.

On any Payment Date on which any of the Coverage Tests applicable to any Class of Notes is not met on the most recent Measurement Date, the Notes shall be redeemed (a "Mandatory Redemption"), first from Interest Proceeds, net of amounts set forth in Section 11.1(a)(i)(1) through (5), and then from Principal Proceeds, net of amounts set forth in clause (1) of Section 11.1(a)(ii), in an amount necessary, and only to the extent necessary, to cause each of the Coverage Tests to be satisfied, but only in accordance with the Priority of Payments. Further, each Hedge Agreement will be terminated in part in accordance with the terms thereof and any payments due and payable on the Hedge Agreement in connection with the termination of the Hedge Agreement will be made on such Payment Date in accordance with the terms thereof and this Indenture, including satisfaction of the Rating Agency Condition. Such Principal Proceeds and Interest Proceeds shall be applied to each of the outstanding Classes of Notes in accordance with its relative seniority in accordance with the Priority of Payments. On or promptly after such Mandatory Redemption, the Issuer and the Co-Issuer shall certify or cause to be certified to each of the Rating Agencies and the Trustee whether the Coverage Tests have been met.

Section 9.7 Special Amortization.

The Notes may be amortized in part by the Issuer (at the elections and direction of the Collateral Manager) if, at any time during the Reinvestment

Period, the Collateral Manager has been unable, for a period of at least 30 consecutive days, to identify Substitute Collateral Debt Securities that it determines would be appropriate and would meet the Eligibility Criteria in sufficient amounts to permit the reinvestment of all or a portion of the Principal Proceeds then on deposit in the Principal Collection Account and the amounts on deposit in the Unused Proceeds Account in Substitute Collateral Debt Securities. The Collateral Manager shall notify the Trustee, the Issuer, the Co-Issuer and each Hedge Counterparty (if any) of such election (a "Special Amortization") and the amount to be amortized (such amount, the "Special Amortization Amount"). On the first Payment Date following the date on which such notice is given, the Special Amortization Amount will be applied as Principal Proceeds to the extent available in accordance with the Priority of Payments to redeem the Notes. Such amortization will occur in accordance with the Priority of Payments and (i) (A) if the Collateral Quality Tests (other than the Weighted Average Coupon Test and the Weighted Average Spread Test) are satisfied, on a pro rata basis (based on the Aggregate Outstanding Amount of each Class) among all Classes of Notes or (B) the Rating Agency Condition is satisfied with respect thereto, on a pro rata basis (based on the Aggregate Outstanding Amount of each Class) among all Classes of Notes; or (ii) otherwise, sequentially among all Classes of Notes; provided, however, that

amounts representing recoveries in respect of Defaulted Securities will be distributed sequentially in any event, in accordance with Section 11.1(a)(ii)(8).

ARTICLE 10

ACCOUNTS, ACCOUNTINGS AND RELEASES

Section 10.1 Collection of Money; Custodial Account.

(a) Except as otherwise expressly provided herein, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all Money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on the Pledged Obligations in accordance with the terms and conditions of such Pledged Obligations. The Trustee shall segregate and hold all such Money and property received by it in trust for the Holders of the Notes and each Hedge Counterparty, and shall apply it as provided in this Indenture.

(b) The Trustee shall credit all Collateral Debt Obligations to an account designated as the "Custodial Account".

Section 10.2 Collection Accounts.

(a) The Trustee shall, prior to the Closing Date, establish a segregated trust account which shall be designated as the "Collection Account" and will consist of two subaccounts, the "Interest Collection Account" and the "Principal Collection Account" (collectively, the "Collection Accounts"), which shall be held in trust in the name of the Trustee for the benefit of the Noteholders and each Hedge Counterparty, into which Collection Accounts, as applicable, the Trustee shall from time to time deposit (i) all amounts, if any, received by the Issuer pursuant to the Hedge Agreements (other than amounts received by the Issuer by reason of an event of default or termination event (each as defined in the related Hedge Agreement) or other comparable event that are required, pursuant to Section 16.1(g) to be used for the purchase by the Issuer of a replacement Hedge Agreement) and amounts held in each Hedge Collateral Account pursuant to Section 16.1(e), (ii) all Sale Proceeds (unless simultaneously reinvested in Substitute Collateral Debt Securities, subject to the Reinvestment Criteria and (iii) all Interest Proceeds and all Principal Proceeds. In addition, the Issuer may, but under no circumstances shall be required to, deposit from time to time such Monies in the Collection Accounts as it deems, in its sole discretion, to be advisable. All Monies deposited from time to time in the Collection Accounts pursuant to this Indenture shall be held by the Trustee as part of the Assets and shall be applied to the purposes herein provided. The Collection Accounts shall remain at all times with the Corporate Trust Office or a financial institution having a long-term debt rating at least equal to "BBB+" or "A2," as applicable, or a short-term debt rating at least equal to "A-1," "P-1" or "F1," as applicable.

(b) All distributions of principal or interest received in respect

of the Assets, and any Sale Proceeds from the sale or disposition of a Collateral Debt Security or other Assets received by the Trustee in Dollars shall be immediately deposited into the Interest Collection

Account or the Principal Collection Account, as Interest Proceeds or Principal Proceeds, respectively (unless, in the case of proceeds received from the sale or disposition of any Assets, such proceeds are simultaneously reinvested pursuant to Section 10.2(d) in Substitute Collateral Debt Securities, subject to the Reinvestment Criteria, or in Eligible Investments). Subject to Sections 10.2(d), 10.2(e) and 11.2, all such property, together with any securities in which funds included in such property are or will be invested or reinvested during the term of this Indenture, and any income or other gain realized from such investments, shall be held by the Trustee in the Collection Accounts as part of the Assets subject to disbursement and withdrawal as provided in this Section 10.2. Subject to Section 10.2(e) by Issuer Order (which may be in the form of standing instructions), the Issuer or the Collateral Manager, on behalf of the Issuer, shall at all times direct the Trustee to, and, upon receipt of such Issuer Order, the Trustee shall, invest all funds received into the Collection Accounts during a Due Period, and amounts received in prior Due Periods and retained in the Collection Accounts, as so directed in Eligible Investments having stated maturities no later than the Business Day immediately preceding the next Payment Date. The Trustee, within one Business Day after receipt of any Scheduled Distribution or other proceeds in respect of the Assets which is not Cash, shall so notify the Issuer and the Collateral Manager and the Issuer, or the Collateral Manager on behalf of the Issuer, shall, within five Business Days of receipt of such notice from the Trustee, sell such Scheduled Distribution or other non-Cash proceeds for Cash in an arm's length transaction to a Person which is not an Affiliate of the Issuer or the Collateral Manager and deposit the proceeds thereof in the applicable Collection Account for investment pursuant to this Section 10.2; provided, however, that the Issuer, or the Collateral Manager on behalf of the Issuer, need not sell such Scheduled Distributions or other non-Cash proceeds if it delivers an Officer's Certificate to the Trustee certifying that such Scheduled Distributions or other proceeds constitute Collateral Debt Securities or Eligible Investments.

(c) If prior to the occurrence of an Event of Default, the Issuer, or the Collateral Manager on behalf of the Issuer, shall not have given any investment directions pursuant to Section 10.2(b), the Trustee shall seek instructions from the Issuer, or the Collateral Manager on behalf of the Issuer, within three Business Days after transfer of such funds to the applicable Collection Account. If the Trustee does not thereupon receive written instructions from the Issuer, or the Collateral Manager on behalf of the Issuer, within five Business Days after transfer of such funds to the applicable Collection Account, it shall invest and reinvest the funds held in the applicable Collection Account in one or more Eligible Investments described in clause (ii) of the definition of Eligible Investments maturing no later than the Business Day immediately preceding the next Payment Date. If after the occurrence of an Event of Default, the Issuer, or the Collateral Manager on behalf of the Issuer, shall not have given investment directions to the Trustee pursuant to Section 10.2(b) for three consecutive days, the Trustee shall invest and reinvest such Monies as fully as practicable in Eligible Investments described in clause (ii) of the definition of Eligible Investments maturing not later than the earlier of (i) 30 days after the date of such investment or (ii) the Business Day immediately preceding the next Payment Date. All interest and other income from such investments shall be deposited in the applicable Collection Account, any gain realized from such investments shall be credited to the applicable Collection Account, and any loss resulting from such investments shall be charged to the applicable Collection Account. The Trustee shall not in any way be held liable (except as a result of negligence, willful misconduct or bad faith) by reason of any insufficiency of such

applicable Collection Account resulting from any loss relating to any such investment, except with respect to investments in obligations of the Trustee or any Affiliate thereof.

(d) During the Reinvestment Period (and thereafter to the extent necessary to acquire Collateral Debt Securities pursuant to contracts entered into during the Reinvestment Period), the Collateral Manager on behalf of the Issuer may by Issuer Order direct the Trustee to, and upon receipt of such

Issuer Order the Trustee shall, reinvest Principal Proceeds in Collateral Debt Securities selected by the Collateral Manager as permitted under and in accordance with the requirements of Article 12 and such Issuer Order.

(e) The Trustee shall transfer to the Payment Account for application pursuant to Section 11.1(a) and in accordance with the calculations and the instructions contained in the Notes Valuation Report prepared by the Trustee on behalf of the Issuer pursuant to Section 10.9(e), on or prior to the Business Day prior to each Payment Date, any amounts then held in the Collection Accounts other than (i) Interest Proceeds or Principal Proceeds received after the end of the Due Period with respect to such Payment Date and (ii) amounts that the Issuer is entitled to reinvest in accordance with Section 12.2 and which the Issuer so elects to reinvest in accordance with the terms of this Indenture.

Section 10.3 Payment Account.

The Trustee shall, prior to the Closing Date, establish a single, segregated trust account which shall be designated as the "Payment Account," which shall be held in trust for the benefit of the Noteholders and each Hedge Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal. Any and all funds at any time on deposit in, or otherwise to the credit of, the Payment Account shall be held in trust by the Trustee for the benefit of the Noteholders. Except as provided in Sections 11.1 and 11.2, the only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be (i) to pay the interest on and the principal of the Notes and make other payments in respect of the Notes in accordance with their terms and the provisions of this Indenture, (ii) to pay the Preferred Share Paying Agent for deposit into the Preferred Share Distribution Account for distributions to the Preferred Shareholders in accordance with the terms and the provisions of the Preferred Shares Paying Agency Agreement, (iii) upon Issuer Order, to pay other amounts specified therein, and (iv) otherwise to pay amounts payable pursuant to and in accordance with the terms of this Indenture, each in accordance with the Priority of Payments. The Trustee agrees to give the Issuer and the Co-Issuer immediate notice if it becomes aware that the Payment Account or any funds on deposit therein, or otherwise to the credit of the Payment Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. Neither the Issuer nor the Co-Issuer shall have any legal, equitable or beneficial interest in the Payment Account other than in accordance with the Priority of Payments. The Payment Account shall remain at all times with the Corporate Trust Office or a financial institution having a long-term debt rating by each Rating Agency at least equal to "BBB+" or "A2," as applicable, or a short-term debt rating by each Rating Agency at least equal to "A-1," "P-1" or "F1," as applicable. Amounts in the Payment Account shall not be invested.

Section 10.4 Unused Proceeds Account.

(a) The Trustee shall prior to the Closing Date establish a single, segregated trust account which shall be designated as the "Unused Proceeds Account" which shall be held in trust in the name of the Trustee for the benefit of the Noteholders, into which the amount specified in Section 3.2(g) shall be deposited. All Monies deposited from time to time in the Unused Proceeds Account pursuant to this Indenture shall be held by the Trustee as part of the Assets and shall be applied to the purposes herein provided.

(b) The Trustee agrees to give the Issuer immediate notice if it becomes aware that the Unused Proceeds Account or any funds on deposit therein, or otherwise to the credit of the Unused Proceeds Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. The Unused Proceeds Account shall remain at all times with the Corporate Trust Office of a financial institution having a long-term debt rating by each Rating Agency at least equal to "BBB+" or "A2," as applicable, or a short-term debt rating at least equal to "A-1," "P-1" or "F1," as applicable.

(c) During the Reinvestment Period, amounts on deposit in the Unused Proceeds Account may or shall be designated by the Collateral Manager as Special Amortization Amounts to be included as Principal Proceeds pursuant to Section 9.7. If the Aggregate Principal Balance of the Collateral Debt Securities exceeds the Minimum Ramp-Up Amount on the Effective Date, amounts remaining on deposit in the Unused Proceeds Account at the end of the Ramp-Up Period not to exceed an amount equal to 15% of the Deposit may, at the option of

the Collateral Manager, be designated as Interest Proceeds. Any such election will be made on a one-time basis and must be made by written notice to the Trustee not later than the twentieth (20th) Business Day after the Effective Date, which notice shall set forth any such amounts in the Unused Proceeds Account so designated (and any interest or earnings thereon). Upon receipt of such notice, the Trustee shall transfer such amount to the Interest Collection Account (for subsequent transfer to the Payment Account), which will be treated as Interest Proceeds and applied in accordance with the Priority of Payments. Any amounts remaining in the Unused Proceeds Account on the twentieth (20th) Business Day after the Effective Date, to the extent not designated as Interest Proceeds and provided that a Ratings Confirmation Failure has not occurred, shall be transferred by the Trustee to the Principal Collection Account (for subsequent transfer to the Payment Account) and treated as Principal Proceeds and applied in accordance with the Priority of Payments.

(d) If a Rating Confirmation Failure occurs, upon receipt of notice from the Collateral Manager pursuant to Section 7.18, the Trustee shall transfer amounts in the Unused Proceeds Account to the Payment Account for application on the immediately following Payment Date to pay principal of the Notes, first, to the payment of principal of the Class A Notes, second, the payment of principal of the Class B Notes, third, the payment of principal of the Class C Notes and fourth the payment of principal of the Class D Notes, in each case until the ratings assigned on the Closing Date to each Class of Notes have been reinstated or such Class has been paid in full. Any excess amount shall be treated as Principal Proceeds and applied in accordance with the Priority of Payments. If no Ratings Confirmation Failure occurs, to the extent the Collateral Manager has not identified such amounts as Interest Proceeds pursuant to Section 10.4(c), the Trustee shall transfer the amounts on deposit in the Unused Proceeds Account to the Principal Collection Account, and such amounts will be treated as Principal Proceeds and applied in accordance with the Priority of Payments.

(e) During the Ramp-Up Period, the Issuer (or the Collateral Manager on behalf of the Issuer) may by Issuer Order direct the Trustee to, and upon receipt of such Issuer Order the Trustee shall, apply amounts on deposit in the Unused Proceeds Account to acquire Collateral Debt Securities selected by the Collateral Manager as permitted under and in accordance with the requirements of Section 7.17 and such Issuer Order.

(f) To the extent not applied pursuant to Section 7.17, the Collateral Manager on behalf of the Issuer may direct the Trustee to, and upon such direction the Trustee shall, invest all funds in the Unused Proceeds Account in Eligible Investments designated by the Collateral Manager. All interest and other income from such investments shall be deposited in the Unused Proceeds Account, any gain realized from such investments shall be credited to the Unused Proceeds Account, and any loss resulting from such investments shall be charged to the Unused Proceeds Account. The Trustee shall not in any way be held liable (except as a result of negligence, willful misconduct or bad faith) by reason of any insufficiency of the Unused Proceeds Account resulting from any loss relating to any such investment, except with respect to investments in obligations of the Trustee or any Affiliate thereof. If the Trustee does not receive investment instructions from an Authorized Officer of the Collateral Manager, the Trustee may invest funds received in the Unused Proceeds Account in Eligible Investments of the type described in clause (ii) of the definition thereto.

Section 10.5 Delayed Funding Obligations Account.

(a) The Trustee shall prior to the Closing Date establish a single, segregated trust account which shall be designated as the "Delayed Funding Obligations Account" which shall be held in trust in the name of the Trustee for the benefit of the Noteholders and each Hedge Counterparty, into which Delayed Draw Funding Obligations Account the Trustee shall deposit funds for any additional funding commitments of the Issuer under any Delayed Draw Term Loans included in the Collateral Debt Securities. All amounts in the Delayed Funding Obligations Account shall be deposited in overnight funds in Eligible Investments and released to fulfill such commitments. If a Delayed Draw Term Loan is sold or otherwise disposed before the full commitment thereunder has been drawn, or if excess funds remain following the termination of the funding obligation giving rise to the deposit of such funds in the Delayed Funding Obligations Account, such Eligible Investments on deposit in the Delayed Funding Obligations Account for the purpose of fulfilling such commitment shall be

transferred to the Principal Collection Account as Principal Proceeds. The Delayed Funding Obligations Account shall remain at all times with the Corporate Trust Office or a financial institution having a long-term debt rating from each Rating Agency at least equal to "BBB+" or "A2," as applicable, or a short-term debt rating at least equal to "A-1," "P-1" or "F-1," as applicable.

(b) Funds in the Delayed Funding Obligations Account shall be available solely to fulfill any additional funding commitments of the Issuer under any Delayed Draw Term Loans included in the Collateral Debt Securities, and only funds in the Delayed Funding Obligations Account shall be used for such purpose. Upon the purchase of any Collateral Debt Security that is a Delayed Draw Term Loan, the Collateral Manager shall direct the Trustee to deposit Principal Proceeds into the Delayed Funding Obligation Account in an amount equal to the Issuer's maximum future funding obligation under the terms of such Delayed Draw Term Loan, and the Principal Proceeds so deposited shall be considered part of the purchase price of

such Delayed Draw Term Loan for purposes of Article 12. The Collateral Manager shall not permit all amounts then on deposit in the Delayed Funding Obligation Account to be less than the aggregate amount of all future funding obligations outstanding under the terms of all Delayed Draw Term Loans that constitute Collateral Debt Securities.

(c) The Collateral Manager shall direct the Trustee to withdraw funds from the Delayed Funding Obligation Account to fund amounts drawn under any Delayed Draw Term Loan. Pursuant to an Issuer Order, all or a portion of the funds, as specified in such Issuer Order, on deposit in the Delayed Funding Obligation Account at any time in excess of the aggregate principal amount of commitments which may be drawn upon under the Delayed Draw Term Loan shall be transferred by the Trustee to the Collection Account as Principal Proceeds.

Section 10.6 Expense Account.

(a) The Trustee shall prior to the Closing Date establish a single, segregated trust account which shall be designated as the "Expense Account" which shall be held in trust in the name of the Trustee for the benefit of the Noteholders and each Hedge Counterparty. The only permitted withdrawal from or application of funds on deposit in, or otherwise standing to the credit of, the Expense Account shall be to pay (on any day other than a Payment Date) accrued and unpaid Company Administrative Expenses of the Issuer and the Co-Issuer (other than accrued and unpaid expenses and indemnities payable to the Collateral Manager under the Collateral Management Agreement). On the Closing Date, the Trustee shall deposit into the Expense Account an amount equal to approximately U.S.$500,000 from the net proceeds received by the Issuer on such date from the initial issuance of the Notes. Funds in the Expense Account shall be replenished on each Payment Date, if necessary, in accordance with the Priority of Payments. On the date on which substantially all of the Issuer's assets have been sold or otherwise disposed of, the Issuer by Issuer Order executed by an Authorized Officer of the Collateral Manager shall direct the Trustee to, and, upon receipt of such Issuer Order, the Trustee shall, transfer all amounts on deposit in the Expense Account to the Interest Collection Account for application pursuant to Section 11.1(a)(i) as Interest Proceeds. Amounts credited to the Expense Account may be applied on or prior to the Determination Date preceding the first Payment Date to pay amounts due in connection with the offering of the Notes.

(b) The Trustee agrees to give the Issuer immediate notice if it becomes aware that the Expense Account or any funds on deposit therein, or otherwise to the credit of the Expense Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. The Issuer shall not have any legal, equitable or beneficial interest in the Expense Account. The Expense Account shall remain at all times with the Corporate Trust Office of a financial institution having a long-term debt rating by each Rating Agency at least equal to "BBB+" or its "A2," as applicable.

(c) The Collateral Manager on behalf of the Issuer may direct the Trustee to, and upon such direction the Trustee shall, invest all funds in the Expense Account in Eligible Investments designated by the Collateral Manager. All interest and other income from such investments shall be deposited in the Expense Account, any gain realized from such investments shall be credited to the Expense Account, and any loss resulting from such investments shall be charged to the Expense Account. The Trustee shall not in any way be held liable

(except as a

result of negligence, willful misconduct or bad faith) by reason of any insufficiency of such Expense Account resulting from any loss relating to any such investment, except with respect to investments in obligations of the Trustee or any Affiliate thereof. If the Trustee does not receive investment instructions from an Authorized Officer of the Collateral Manager, the Trustee may invest funds received in the Expense Account in Eligible Investments of the type described in clause (ii) of the definition thereto.

Section 10.7 Interest Advances.

(a) With respect to each Determination Date for which the sum of Interest Proceeds and, if applicable, Principal Proceeds, collected during the related Due Period that are available to pay interest on the Class A Notes and the Class B Notes in accordance with the Priority of Payments, are insufficient to remit the interest due and payable with respect to the Class A Notes and the Class B Notes on the following Payment Date (the amount of such insufficiency, an "Interest Shortfall"), the Trustee shall provide the Advancing Agent with written notice of such Interest Shortfall no later than the close of business on the Business Day following such Determination Date. The Trustee shall provide the Advancing Agent with notice, prior to any funding of an Interest Advance by the Advancing Agent, of any additional interest remittances received by the Trustee after delivery of such initial notice that reduce such Interest Shortfall. No later than 5:00 p.m. (New York time) on the Business Day immediately preceding the related Payment Date (but in any event no earlier than one Business Day following the Advancing Agent's receipt of notice of such Interest Shortfall), the Advancing Agent shall advance the difference between such amounts (each such advance, an "Interest Advance") by deposit of an amount equal to such Interest Advance in the Payment Account, subject to a determination of recoverability by the Advancing Agent as described in Section 10.7(b), and subject to a maximum limit in respect of any Payment Date equal to the lesser of (i) the aggregate of such interest shortfalls that would otherwise occur on the Class A Notes and Class B Notes and (ii) the aggregate of the interest payments not received in respect of Non-Advancing Collateral Debt Securities. Any Interest Advance made by the Advancing Agent with respect to a Payment Date that is in excess of the actual Interest Shortfall for such Payment Date shall be refunded to the Advancing Agent by the Trustee on the same Business Day that such Interest Advance was made (or, if such Interest Advance is made prior to final determination by the Trustee of such Interest Shortfall, on the Business Day of such final determination). The Advancing Agent shall provide the Trustee written notice of a determination by the Advancing Agent that a proposed Interest Advance would constitute a Nonrecoverable Advance no later than the close of business on the Business Day immediately preceding the related Payment Date (or, in the event that the Advancing Agent did not receive notice of the related Interest Shortfall on the related Determination Date, no later than the close of business on the Business Day immediately following the Advancing Agent's receipt of notice of such Interest Shortfall). If the Advancing Agent shall fail to make any required Interest Advance at or prior to the time at which distributions are to be made pursuant to Section 11.1(a), the Trustee shall be required to make such Interest Advance, subject to a determination of recoverability by the Trustee as described in Section 10.7(b). The Trustee shall be entitled to conclusively rely on any affirmative determination by the Advancing Agent that an Interest Advance, if made, would constitute a Nonrecoverable Advance. Based upon available information at the time, the Trustee, the Collateral Manager or the Advancing Agent will provide fifteen (15) days prior notice to each Rating Agency if recovery of a Nonrecoverable Advance would result in an Interest

Shortfall on the next succeeding Payment Date. No later than the close of business on the Determination Date related to a Payment Date on which the recovery of a Nonrecoverable Advance would result in an Interest Shortfall, the Collateral Manager will provide each Rating Agency notice of such recovery.

(b) Notwithstanding anything herein to the contrary, neither the Advancing Agent nor the Trustee shall be required to make any Interest Advance unless (a) such Person determines, in its sole discretion, exercised in good faith that such Interest Advance, plus interest expected to accrue thereon at the Reimbursement Rate, will be recoverable from subsequent payments or

collections with respect to all Collateral Debt Securities and has determined in its reasonable judgment that the recovery would not result in an Interest Shortfall and (b) as of the most recent Measurement Date, the Aggregate Collateral Balance exceeds the Aggregate Outstanding Amount of the Class A Notes and Class B Notes. In determining whether any proposed Interest Advance will be, or whether any Interest Advance previously made is, a Nonrecoverable Advance, the Advancing Agent or the Trustee, as applicable, will take into account:

(i) amounts that may be realized on each Underlying Mortgage Property in its "as is" or then current condition and occupancy;

(ii) that the related Senior Tranches of any Collateral Debt Security may be required to be fully paid and any advances (and interest thereon) made in respect of such Senior Tranches may be required to be fully reimbursed, prior to any amounts recovered in respect of the Underlying Mortgage Properties are allocated or otherwise made available to the Collateral Debt Securities;

(iii) the possibility and effects of future adverse change with respect to the Underlying Mortgage Properties, the potential length of time before such Interest Advance may be reimbursed and the resulting degree of uncertainty with respect to such reimbursement; and

(iv) the fact that Interest Advances are intended to provide liquidity only and not credit support to the Class A Noteholders and the Class B Noteholders.

For purposes of any such determination of whether an Interest Advance constitutes or would constitute a Nonrecoverable Advance, an Interest Advance will be deemed to be nonrecoverable if the Advancing Agent or the Trustee, as applicable, determines that future Interest Proceeds and Principal Proceeds may be insufficient to fully reimburse such Interest Advance, plus interest thereon at the Reimbursement Rate within a reasonable period of time. Absent bad faith, the determination by the Advancing Agent or the Trustee, as applicable, as to the nonrecoverability of any Interest Advance shall be conclusive and binding on the Holders of the Notes. All reimbursements of Nonrecoverable Advances hereunder will be made first, from Principal Proceeds and second (to the extent that there are insufficient Principal Proceeds for such reimbursement), from Interest Proceeds.

(c) The Advancing Agent and the Trustee will each be entitled to recover any previously unreimbursed Interest Advance made by it (including any Nonrecoverable Advance),

together with interest thereon, first, from Principal Proceeds and second (to the extent that there are insufficient Principal Proceeds for such reimbursement), from Interest Proceeds; provided, that if at any time an Interest Advance is determined to be a Nonrecoverable Advance, the Advancing Agent or the Trustee shall be entitled to recover all outstanding Interest Advances from the Collection Accounts on any Business Day during any Interest Accrual Period prior to the related Determination Date (or on a Payment Date prior to any payment of interest on or principal of the Notes in accordance with the Priority of Payments). The Advancing Agent shall be permitted (but not obligated) to defer or otherwise structure the timing of recoveries of Nonrecoverable Advances in such manner as the Advancing Agent determines is in the best interest of the Noteholders as a collective whole, which may include being reimbursed for Nonrecoverable Advances in installments.

(d) The Advancing Agent and the Trustee will each be entitled with respect to any Interest Advance made by it (including Nonrecoverable Advances) to interest accrued on the amount of such Interest Advance for so long as it is outstanding at the Reimbursement Rate.

(e) The Advancing Agent's and the Trustee's obligations to make Interest Advances in respect of the Collateral Debt Securities will continue through the Stated Maturity, unless the Class A Notes and the Class B Notes are previously redeemed or repaid in full.

(f) In no event will the Advancing Agent or the Trustee be required to advance any payments in respect of principal or with respect to any Class of Notes other than the Class A Notes and the Class B Notes.

(g) In consideration of the performance of its obligations hereunder, the Advancing Agent shall be entitled to receive, at the times set forth herein and subject to the Priority of Payments, to the extent funds are available therefor, the Advancing Agent Fee.

(h) The determination by the Advancing Agent or the Trustee, as applicable, (i) that it has made a Nonrecoverable Advance or (ii) that any proposed Interest Advance, if made, would constitute a Nonrecoverable Advance, shall be evidenced by an Officer's Certificate delivered promptly to the Trustee (or, if applicable, retained thereby), the Issuer, S&P, Fitch and Moody's, setting forth the basis for such determination; provided, that failure to give such notice, or any defect therein, shall not impair or affect the validity of, or the Advancing Agent or the Trustee's entitlement to reimbursement with respect to, any Interest Advance.

(i) If a Scheduled Distribution on any Collateral Debt Security is not paid to the Trustee on the Due Date therefor, the Trustee shall provide the Advancing Agent with notice of such default on the Business Day immediately following such default. In addition, upon request, the Trustee shall provide the Advancing Agent (either electronically or in hard-copy format), with copies of all reports received from any trustee, trust administrator, master servicer or similar administrative entity with respect to the Collateral Debt Securities and the Trustee shall promptly make available to the Advancing Agent any other information reasonably available to the Trustee by reason of its acting as Trustee hereunder to permit the Advancing Agent to make a determination of recoverability with respect to any Interest Advance and to otherwise perform its advancing functions under this Indenture.

Section 10.8 Reports by Parties.

(a) The Trustee shall supply, in a timely fashion, to the Issuer, the Co-Issuer, the Preferred Shares Paying Agent and the Collateral Manager any information regularly maintained by the Trustee that the Issuer, the Co-Issuer, the Preferred Shares Paying Agent or the Collateral Manager may from time to time request with respect to the Pledged Obligations or the Accounts and provide any other information reasonably available to the Trustee by reason of its acting as Trustee hereunder and required to be provided by Section 10.9 or to permit the Collateral Manager to perform its obligations under the Collateral Management Agreement. The Trustee shall forward to the Collateral Manager and each Hedge Counterparty copies of notices and other writings received by it from the issuer of any Collateral Debt Security or from any Clearing Agency with respect to any Collateral Debt Security advising the holders of such security of any rights that the holders might have with respect thereto (including, without limitation, notices of calls and redemptions of securities) as well as all periodic financial reports received from such issuer and Clearing Agencies with respect to such issuer. Each of the Issuer and Collateral Manager shall promptly forward to the Trustee any information in their possession or reasonably available to them concerning any of the Pledged Obligations that the Trustee reasonably may request or that reasonably may be necessary to enable the Trustee to prepare any report or perform any duty or function on its part to be performed under the terms of this Indenture.

Section 10.9 Reports; Accountings.

(a) The Trustee shall monitor the Assets on an ongoing basis and provide access to the information maintained by the Trustee to, and upon reasonable request of the Collateral Manager, shall assist the Collateral Manager in performing its duties under the Collateral Management Agreement, each in accordance with this Indenture.

(b) The Trustee shall perform the following functions during the term of this Agreement:

(i) Create and maintain a database with respect to the Collateral Debt Securities (the "Database");

(ii) Permit access to the information contained in the Database by the Collateral Manager and the Issuer;

(iii) On a monthly basis monitor and update the Database for ratings changes;

(iv) Update the Database for Collateral Debt Securities or Eligible Investments acquired or sold or otherwise disposed of;

(v) Prepare and arrange for the delivery to each Rating Agency, the Collateral Manager, each Hedge Counterparty, the Initial Purchaser, and upon request therefor, any Holder of a Note shown on the Note Registrar, any Preferred Shareholder shown on the register maintained by the Share Registrar, and, for so long as any Notes are listed on the Irish Stock Exchange, the Irish Paying Agent of the Monthly Reports;

(vi) prepare and arrange for the delivery to the Collateral Manager, each Hedge Counterparty, and upon request therefor, any Holder of a Note shown on the Notes Register, any Preferred Shareholder shown on the register maintained by the Share Registrar, the firm of Independent certified public accountants appointed pursuant to Section 10.11(a) hereof, each Rating Agency, the Depository (with instructions to forward it to each of its participants who are holders of any Notes) and, for so long as any Notes are listed on the Irish Stock Exchange, the Irish Paying Agent, of the Notes Valuation Report;

(vii) Assist in preparation and arrange for the delivery to the Collateral Manager and each Hedge Counterparty of the Redemption Date Statement;

(viii) Arrange for the delivery to each Rating Agency of all information or reports required under this Indenture, including, but not limited to, providing S&P, Moody's and Fitch with (A) written notice of (1) any breaches under any of the Transaction Documents and (2) the termination or change of any parties to the Transaction Documents, in each case, for which the Trustee has received prior written notice pursuant to the terms of the Transaction Document and (B) each Monthly Report in Excel spreadsheet format; and

(ix) Assist the Independent certified public accountants in the preparation of those reports required under Section 10.11 hereof by providing access to the information contained in the Database.

(c) The Trustee, on behalf of the Issuer, shall compile and provide or make available on its website initially located at www.cdotrustee.net to each Rating Agency, the Collateral Manager, each Hedge Counterparty, the Initial Purchaser, for so long as any Notes are listed on the Irish Stock Exchange, and upon request therefor, any Holder of a Note shown on the Notes Register, any Preferred Shareholder shown on the register maintained by the Share Registrar, not later than the fifth Business Day after the first day of each month commencing in March 2005 (or solely in the case of the first Monthly Report, the fifteenth Business Day), determined as of the last Business Day of the preceding month, a monthly report (the "Monthly Report"). The Monthly Report shall contain the following information and instructions with respect to the Pledged Obligations included in the Assets based in part on information provided by the Collateral Manager:

(i) (1) the Aggregate Principal Balance of all Collateral Debt Securities, together with a calculation, in reasonable detail, of the sum of (A) the Aggregate Principal Balance of all Collateral Debt Securities (other than Defaulted Securities and Written Down Securities) plus (B) the Principal Balance of each Pledged Obligation which is Written Down Security and (C) the Principal Balance of each Pledged Obligation which is a Defaulted Security;

(ii) the balance of all Eligible Investments and Cash in each of the Interest Collection Account, the Principal Collection Account, the Delayed Funding Obligations Account and the Expense Account;

(iii) the nature, source and amount of any proceeds in the Collection Accounts, including Interest Proceeds, Principal Proceeds, Unscheduled Principal Payments and Sale Proceeds, received since the date of determination of the last Monthly Report;

(iv) with respect to each Collateral Debt Security and each

Eligible Investment that is part of the Assets, its Principal Balance, annual interest rate, average life, issuer, Moody's Rating, S&P Rating and Fitch Rating;

(v) the identity of each Collateral Debt Security that was sold or disposed of pursuant to Section 12.1 (indicating whether such Collateral Debt Security is a Defaulted Security, Credit Risk Security or otherwise (in each case, as reported in writing to the Issuer by the Collateral Manager) and whether such Collateral Debt Security was sold pursuant to Section 12.1(a)(i) or (ii)) or Granted to the Trustee since the date of determination of the most recent Monthly Report;

(vi) the identity of each Collateral Debt Security which became a Defaulted Security, Credit Risk Security or a Written Down Security since the date of determination of the last Monthly Report;

(vii) the identity of each Collateral Debt Security that has been upgraded or downgraded by one or more Rating Agencies;

(viii) the Aggregate Principal Balance of all Fixed Rate Securities;

(ix) the Aggregate Principal Balance of all Floating Rate Securities;

(x) based on information provided by the Collateral Manager, the Aggregate Principal Balance of all Floating Rate Securities that constitute Covered Fixed Rate Securities;

(xi) the Aggregate Principal Balance of all Collateral Debt Securities that are guaranteed as to ultimate or timely payment of principal or interest;

(xii) with respect to each Specified Type of Collateral Debt Security, the Aggregate Principal Balance of all Collateral Debt Securities consisting of such Specified Type of Collateral Debt Securities;

(xiii) based on information provided by the Collateral Manager, the identity of, and the Aggregate Principal Balance of all Collateral Debt Securities whose Moody's Rating is determined as provided in each clause of the definition of "Moody's Rating" and the identity of, and the Aggregate Principal Balance of all Collateral Debt Securities whose S&P Rating is determined as provided in each of clauses of the definition of "S&P Rating," identifying in reasonable detail the basis for such calculation with respect to Collateral Debt Securities with an S&P Rating assigned pursuant to Annex 1, 2 or 3 of Schedule D, based on information provided by the Collateral Manager;

(xiv) with respect to each Collateral Debt Security, the Aggregate Principal Balance of all Collateral Debt Securities that are part of the same issuance;

(xv) the Aggregate Principal Balance of all Collateral Debt Securities that are securities that provide for periodic payments of interest less frequently than quarterly;

(xvi) based upon the information supplied by the Collateral Manager, the Aggregate Principal Balance of all Collateral Debt Securities issued by any single issuer (provided that, for avoidance of doubt, with respect to any Loan, the issuer of such Loan shall be deemed to be the borrower of such Loan);

(xvii) based upon the information supplied by the Collateral Manager, the Aggregate Collateral Balance of the Collateral Debt Securities consisting of CMBS Securities issued in any single calendar year;

(xviii) the Aggregate Principal Balance of all Collateral Debt Securities (other than CMBS Securities and REIT Debt Securities) backed by each single Property Type based on information provided by the Collateral Manager;

(xix) the Aggregate Principal Balance of all Collateral Debt Securities (other than CMBS Securities and REIT Debt Securities) that are backed or otherwise invested in properties located in any single U.S. State (for each such U.S. State) based on information provided by the Collateral Manager;

(xx) the Class A/B Par Value Ratio, the Class A/B Interest Coverage Ratio, the Class C Par Value Ratio, the Class C Interest Coverage Ratio, the Class D Par Value Ratio and the Class D Interest Coverage Ratio, and a statement as to whether the Interest Coverage Test and the Par Value Test are satisfied;

(xxi) the Moody's Rating Factor and the Moody's Recovery Rate and a statement as to whether the Moody's Weighted Average Rating Factor/Weighted Average Recovery Rate Test is satisfied;

(xxii) the Herfindahl Score, the amount of Cash that has been received in respect of Principal Proceeds of the Collateral Debt Securities since the immediately preceding Measurement Date but has not been reinvested in additional Collateral Debt Securities (and what the Herfindahl score would have been had such Cash in respect of such Principal Proceeds not existed), a statement as to whether the Herfindahl Test was satisfied or deemed satisfied on the immediately preceding Measurement Date and a statement as to whether the Herfindahl Diversity Test is satisfied;

(xxiii) the Weighted Average Coupon and a statement as to whether the Minimum Weighted Average Coupon Test is satisfied;

(xxiv) the Weighted Average Spread and a statement as to whether the Minimum Weighted Average Spread Test is satisfied;

(xxv) the Extended Weighted Average Maturity and a statement as to whether the Moody's Weighted Average Extended Maturity Test is satisfied;

(xxvi) the Initial Weighted Average Maturity and a statement as to whether the Moody's Weighted Average Initial Maturity Test is satisfied;

(xxvii) based upon information supplied by the Collateral Manager, the Average Life of each Collateral Debt Security, the Weighted Average Life and a statement as to whether the Weighted Average Life Test is satisfied;

(xxviii) the Class A Loss Differential, the Class B Loss Differential, the Class C Loss Differential and the Class D Loss Differentia of the Current Portfolio and a statement as to whether the S&P CDO Monitor Test is satisfied;

(xxix) the S&P Weighted Average Recovery Rate and a statement as to whether the S&P Recovery Test is satisfied;

(xxx) a calculation in reasonable detail necessary to determine compliance with each of the other Collateral Quality Tests;

(xxxi) the Principal Balance of each Collateral Debt Security that is on credit watch with negative implications;

(xxxii) the Principal Balance of each Collateral Debt Security that is on credit watch with positive implications;

(xxxiii) the amount of the current portion and the unpaid portion, if any, of the Senior Collateral Management Fee and the Subordinated Collateral Management Fee with respect to the related Payment Date;

(xxxiv) based upon information supplied by the Collateral Manager, the current ratings of any Hedge Counterparty and the credit support provider of any Hedge Counterparty; and

(xxxv) such other information as the Collateral Manager, the Trustee or any Hedge Counterparty may reasonably request.

(d) The Trustee, on behalf of the Issuer, shall perform the

following functions and report to the Issuer, the Co-Issuer and the Collateral Manager on each Measurement Date:

(i) Calculate the Class A/B Par Value Ratio and the Class A/B Interest Coverage Ratio and indicate whether the Class A/B Par Value Test and the Class A/B Interest Coverage Test are met;

(ii) Calculate the Class C Par Value Ratio and the Class C Interest Coverage Ratio and indicate whether the Class C Par Value Test and the Class C Interest Coverage Test are met; and

(iii) Calculate the Class D Par Value Ratio and the Class D Interest Coverage Ratio and indicate whether the Class D Par Value Test and the Class D Interest Coverage Test are met.

(e) The Trustee, on behalf of the Issuer, shall perform the following functions and prepare a report thereof relating to the most recently ended Due Period determined as of each Determination Date not later than the Business Day preceding the Payment Date (the "Notes Valuation Report"), which shall contain the following information, based in part on information provided by the Collateral Manager:

(i) Calculate the percentage (based on the outstanding Aggregate Principal Balances of the Pledged Collateral Debt Securities) of the Pledged Collateral Debt Securities which have a maturity date occurring on or prior to each Payment Date;

(ii) Identify the Principal Proceeds and Interest Proceeds;

(iii) Determine the Net Outstanding Portfolio Balance as of the close of business on the last Business Day of each Due Period after giving effect to the Principal Proceeds as of the last Business Day of such Due Period, principal collections received from Collateral Debt Securities in the related Due Period, the reinvestment of such proceeds in Eligible Investments during such Due Period and the Collateral Debt Securities that were released during such Due Period;

(iv) Determine the Aggregate Outstanding Amount of the Notes of each Class at the beginning of the Due Period and such Aggregate Outstanding Amount as a percentage of the original Aggregate Outstanding Amount of the Notes of such Class, the amount of principal payments to be made on the Notes of each Class on the next Payment Date, the amount of any Class C Capitalized Interest on the Class C Notes, the amount of any Class D Capitalized Interest on the Class D Notes, the Aggregate Outstanding Amount of the Notes of each Class after giving effect to the payment of principal (and with respect to the Class C Notes and the Class D Notes, Class C Capitalized Interest or Class D Capitalized Interest, as applicable), on the related Payment Date and such Aggregate Outstanding Amount as a percentage of the original Aggregate Outstanding Amount of the Notes of such Class;

(v) Calculate the Class A Interest Distribution Amount, the Class B Interest Distribution Amount, the Class C Interest Distribution and the Class D Interest Distribution Amount, for the related Payment Date and the aggregate amount paid for all prior Payment Dates in respect of such amounts;

(vi) With the assistance of the Collateral Manager, determine the Company Administrative Expenses on an itemized basis, the Senior Collateral Management Fee and the Subordinate Collateral Management Fee payable by the Issuer on the related Payment Date;

(vii) With the assistance of the Collateral Manager as set forth in Section 10.9(f), determine (A) the balance on deposit in the Interest Collection Account and the Principal Collection Account at the end of the related Due Period, (B) the amounts payable from the Collection Accounts to the Payment Account in order to make payments pursuant to Section 11.1(a)(i) and Section 11.1(a)(ii) on the related Payment Date (the amounts payable pursuant to each such clause to be set forth and identified

separately) and (C) the balance of Principal Proceeds and the balance of Interest Proceeds remaining in the Collection Accounts immediately after all payments and deposits to be made on the related Payment Date;

(viii) Calculate the amount to be paid to each Hedge Counterparty and the amount to be paid by each Hedge Counterparty in each case, specifying (a) the amount to be paid under each Hedge Agreement (other than any payments due and payable upon a termination of the related Hedge Agreement) and (b) the amount owing as a result of a termination with respect to each Hedge Agreement;

(ix) Calculate the amount to be paid to the Advancing Agent or the Trustee, as applicable, as reimbursement of Interest Advances and Reimbursement Interest and calculate the amount of the Nonrecoverable Advances to be paid to the Advancing Agent or the Trustee, as applicable;

(x) Calculate the amount on deposit in the Expense Account, the Unused Proceeds Account, the Delayed Funding Obligations Account, each Hedge Collateral Account and each Hedge Termination Account;

(xi) the nature, source and amount of any proceeds in the Collection Accounts, including Interest Proceeds, Principal Proceeds, Unscheduled Principal Payments and Sale Proceeds, received since the date of determination of the last Monthly Report;

(xii) with respect to each Collateral Debt Security and each Eligible Investment that is part of the Assets, its Principal Balance, annual interest rate, average life, issuer, Moody's Rating, S&P Rating and Fitch Rating;

(xiii) the identity of each Collateral Debt Security that was sold or disposed of pursuant to Section 12.1 (indicating whether such Collateral Debt Security is a Defaulted Security, Credit Risk Security or otherwise (in each case, as reported in writing to the Issuer by the Collateral Manager) and whether such Collateral Debt Security was sold pursuant to Section 12.1(a)(i) or (ii)) or Granted to the Trustee since the date of determination of the most recent Monthly Report;

(xiv) subject to the availability of such information to the Collateral Manager and the delivery of such information by the Collateral Manager to the Trustee, with respect to each Collateral Debt Security on a semi-annual basis, the net cash flow on each real property underlying or related to such Collateral Debt Security; and

(xv) the identity of each Collateral Debt Security which became a Defaulted Security, Credit Risk Security or a Written Down Security since the date of determination of the last Monthly Report;

(f) Upon receipt of each Monthly Report, each Notes Valuation Report and each Redemption Date Statement, the Collateral Manager shall compare the information contained in its records with respect to the Pledged Obligations and shall, within five Business Days after receipt of each such Monthly Report, such Notes Valuation Report or such Redemption Date Statement, notify the Issuer and the Trustee whether such information

contained in the Monthly Report, the Notes Valuation Report or the Redemption Date Statement, as the case may be, conforms to the information maintained by the Collateral Manager with respect to the Pledged Obligations, or detail any discrepancies. If any discrepancy exists, the Trustee, the Issuer and the Collateral Manager shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall cause the firm of Independent certified public accountants appointed by the Issuer pursuant to Section 10.11 hereof to review such Monthly Report, Notes Valuation Report or Redemption Date Statement, as the case may be, and the Collateral Manager's records and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report, Notes Valuation Report or Redemption Date Statement, as the case may be, or the Trustee's or the Collateral Manager's records, the Monthly Report, Notes Valuation Report or Redemption Date Statement, as the case may be, or the Trustee's or the Collateral Manager's records, shall be revised accordingly and, as so revised, shall be utilized in making all calculations pursuant to this Indenture. Each Rating Agency (in each

case only so long as any Class of Notes is rated), the Initial Purchaser and the Collateral Manager shall be notified in writing of any such revisions by the Trustee on behalf of the Issuer.

(g) The Trustee shall prepare the Notes Valuation Report and shall deliver or make available on its website initially located at www.cdotrustee.net such Notes Valuation Report to the Collateral Manager, each Hedge Counterparty, and upon request therefor, any Holder of a Note shown on the Notes Register, any Holder of a Preferred Share shown on the register maintained by the Share Registrar, the firm of Independent certified public accountants appointed pursuant to Section 10.11(a) hereof, each Rating Agency, the Depository (with instructions to forward it to each of its participants who are holders of any Notes) and, for so long as any Notes are listed on the Irish Stock Exchange, the Irish Paying Agent not later than the related Payment Date. The Notes Valuation Report shall have attached to it (with the exception of the first Notes Valuation Report) the most recent Monthly Report.

The Notes Valuation Report shall also contain the following statements:

"Instruction to Participant: Please send this to the beneficial owners of the Notes"

REMINDER TO OWNERS OF EACH CLASS OF NOTES:

Each owner or beneficial owner of Notes must be either a U.S. Person who is a qualified institutional buyer as defined in Rule 144A under the Securities Act of 1933 and a Qualified Purchaser as defined by the Investment Company Act of 1940 or not a U.S. Person, and if a U.S. Person, can represent as follows:

(i) it is not a broker-dealer which owns and invests on a discretionary basis less than $25 million in securities of unaffiliated issuers;

(ii) it is not a participant-directed employee plan such as a 401(k) plan;

(iii) it is acting for its own account or for the account of another who is a qualified institutional buyer and a qualified purchaser that is not included in (i) or (ii) above;

(iv) it is not formed for the purpose of investing in the Notes;

(v) it, and each account for which it holds the Notes, shall hold at least the minimum denomination therefor;

(vi) it will provide notice of these transfer restrictions to any transferee from it.

(h) Each Notes Valuation Report (after approval by the Collateral Manager after giving effect to any revisions thereto in accordance with Section 10.9(f)) shall constitute instructions from the Collateral Manager, on behalf of the Issuer, to the Trustee to transfer funds from the Collection Accounts to the Payment Account pursuant to Section 10.2(d) and to withdraw on the related Payment Date from the Payment Account and pay or transfer the amounts set forth in the Notes Valuation Report, as applicable, in the manner specified, and in accordance with the priorities established, in Section 11.1 hereof.

(i) Not more than five Business Days after receiving an Issuer Request requesting information regarding a redemption of the Notes of a Class as of a proposed Redemption Date set forth in such Issuer Request, the Trustee shall compute the following information and provide such information in a statement (the "Redemption Date Statement") delivered to the Collateral Manager (which shall review such statement in the manner provided for in Section 10.9(f)), the Preferred Shares Paying Agent and each Hedge Counterparty:

(i) the Aggregate Outstanding Amount of the Notes of the Class or Classes to be redeemed as of such Redemption Date;

(ii) the amount of accrued interest due on such Notes as of the last day of the Interest Accrual Period immediately preceding such

Redemption Date;

(iii) the Redemption Price;

(iv) the sum of all amounts due and unpaid under Section 11.1(a) (other than amounts payable on the Notes being redeemed or to the Noteholders thereof);

(v) the amount due and payable to each Hedge Counterparty pursuant to the applicable Hedge Agreement; and

(vi) the amount in the Accounts available for application to the redemption of such Notes.

(j) The Trustee shall make available on its website, initially located at www.cdotrustee.net, to S&P, together with each Monthly Report, any reports received by the Trustee with respect to the Loans no later than five Business Days prior to the delivery of such Monthly Report and not previously delivered to S&P.

(k) In the event of a sale by the Issuer of any Collateral Debt Security that is subject to an Asset Specific Hedge, the Issuer (at the direction Collateral Manager) shall provide written notice to each Hedge Counterparty under such Asset Specific Hedge at least [5] Business Days prior to such sale.

Section 10.10 Release of Pledged Collateral Debt Securities; Release of Assets.

(a) If no Event of Default has occurred and is continuing and subject to Article 12 hereof, the Issuer may, by Issuer Order delivered to the Trustee at least two Business Days prior to the settlement date for any sale of a Pledged Collateral Debt Security certifying that (i) it has sold such Pledged Collateral Debt Security pursuant to and in compliance with Article 12 or (ii) in the case of a redemption pursuant to Section 9.1 or Section 9.2 the proceeds from any such sale of Pledged Collateral Debt Securities are sufficient to redeem the Notes pursuant to Section 9.1 or Section 9.2, direct the Trustee to release such Pledged Collateral Debt Security and, upon receipt of such Issuer Order, the Trustee shall deliver any such Pledged Collateral Debt Security, if in physical form, duly endorsed to the broker or purchaser designated in such Issuer Order or, if such Pledged Collateral Debt Security is represented by a Security Entitlement, cause an appropriate transfer thereof to be made, in each case against receipt of the sales price therefor as set forth in such Issuer Order; provided, however, that the Trustee may deliver any such Pledged Collateral Debt Security in physical form for examination (prior to receipt of the sales proceeds) in accordance with street delivery custom. The Trustee shall (i) deliver any agreements and other documents in its possession relating to such Pledged Collateral Debt Security and (ii) if applicable, duly assign each such agreement and other document, in each case, to the broker or purchaser designated in such Issuer Order.

(b) The Issuer may, by Issuer Order, delivered to the Trustee at least three Business Days prior to the date set for redemption or payment in full of a Pledged Collateral Debt Security, certifying that such Pledged Collateral Debt Security is being redeemed or paid in full, direct the Trustee, or at the Trustee's instructions, the Custodial Securities Intermediary, to deliver such Pledged Collateral Debt Security, if in physical form, duly endorsed, or, if such Pledged Collateral Debt Security is a Clearing Corporation Security, to cause it to be presented, to the appropriate paying agent therefor on or before the date set for redemption or payment, in each case against receipt of the applicable redemption price or payment in full thereof.

(c) If no Event of Default has occurred and is continuing and subject to Article 12, the Issuer may, by Issuer Order delivered to the Trustee at least two Business Days prior to the date set for an exchange, tender or sale, certifying that a Collateral Debt Security is subject to an Offer and setting forth in reasonable detail the procedure for response to such Offer, direct the Trustee or at the Trustee's instructions, the Custodial Securities Intermediary, to deliver such security, if in physical form, duly endorsed, or, if such security is a Clearing Corporation Security, to cause it to be delivered, in accordance with such Issuer Order, in each case against receipt of payment therefor.

(d) The Trustee shall deposit any proceeds received by it from the disposition of a Pledged Collateral Debt Security in the Principal Collection Account unless simultaneously applied to the purchase of Substitute Collateral Debt Securities, subject to the Reinvestment Criteria, or Eligible Investments under and in accordance with the requirements of Article 12 and this Article 10. Neither the Trustee nor the Custodial Securities Intermediary shall be responsible for any loss resulting from delivery or transfer of any security prior to receipt of payment in accordance herewith.

(e) The Trustee shall, upon receipt of an Issuer Order at such time as there are no Notes Outstanding and all obligations of the Issuer hereunder have been satisfied, release the Assets from the lien of this Indenture.

Section 10.11 Reports by Independent Accountants.

(a) On or about the Closing Date, the Issuer shall appoint a firm of Independent certified public accountants of recognized national reputation for purposes of preparing and delivering the reports or certificates of such accountants required by this Indenture. The Collateral Manager, on behalf of the Issuer, shall have the right to remove such firm or any successor firm. Upon any resignation by or removal of such firm, the Collateral Manager, on behalf of the Issuer, shall promptly appoint, by Issuer Order delivered to the Trustee, each Hedge Counterparty and each Rating Agency, a successor thereto that shall also be a firm of Independent certified public accountants of recognized national reputation. If the Collateral Manager, on behalf of the Issuer, shall fail to appoint a successor to a firm of Independent certified public accountants which has resigned or been removed, within 30 days after such resignation or removal, the Issuer shall promptly notify the Trustee of such failure in writing. If the Collateral Manager, on behalf of the Issuer, shall not have appointed a successor within 10 days thereafter, the Trustee shall promptly appoint a successor firm of Independent certified public accountants of recognized national reputation. The fees of such Independent certified public accountants and its successor shall be payable by the Issuer or by the Trustee as provided in the Priority of Payments.

(b) Within 60 days after December 31 of each year (commencing with December 31, 2006), the Issuer shall cause to be delivered to the Trustee, the Collateral Manager and each Rating Agency an Accountants' Report specifying the procedures applied and the associated findings with respect to the Monthly Reports, the Notes Valuation Reports and any Redemption Date Statements prepared in the year ending on such date. At least 60 days prior to the Payment Date in April 2006 (and, if at any time a successor firm of Independent certified public accountants is appointed, to the Payment Date following the date of such appointment), the Issuer shall deliver to the Trustee an Accountant's Report specifying in advance the procedures that such firm will apply in making the aforementioned findings throughout the term of its service as accountants to the Issuer. The Trustee shall promptly forward a copy of such Accountant's Report to the Collateral Manager and each Holder of Notes of the Controlling Class, at the address shown on the Note Register. The Issuer shall not approve the institution of such procedures if a Majority of the Aggregate Outstanding Amount of Notes of the Controlling Class, by written notice to the Issuer and the Trustee within 30 days after the date of the related notice to the Trustee, object thereto.

(c) If any Hedge Counterparty is required to post collateral pursuant to the related Hedge Agreement during any Due Period, then on or prior to the Payment Date following such Due Period and on or prior to each anniversary of such Payment Date the Issuer shall cause a firm of Independent certified public accountants to review and verify that the value of collateral posted is in accordance with the applicable provisions of the related Hedge Agreement.

Section 10.12 Reports to Rating Agencies.

(a) In addition to the information and reports specifically required to be provided to each Rating Agency pursuant to the terms of this Indenture, the Trustee shall provide each Rating Agency and each Hedge Counterparty with all information or reports delivered by the Trustee hereunder,

and such additional information as each Rating Agency may from time to time reasonably request and the Trustee determines in its sole discretion may be obtained and provided without unreasonable burden or expense. The Issuer shall promptly notify the Trustee and the Preferred Shares Paying Agent if a Rating Agency's rating of any Class of Notes has been, or it is known by the Issuer that such rating will be, reduced, or qualified or withdrawn.

(b) All additional reports to be sent to the Rating Agencies pursuant to clause (a) above shall be reviewed prior to such transmission by the Collateral Manager.

(c) The Collateral Manager shall provide Fitch with the current portfolio of all Collateral Debt Securities in electronic, and modifiable form containing such fields as may be mutually agreed upon by Fitch and the Collateral Manager from time to time, no later than the 15th day of each month.

(d) For all Collateral Debt Securities which are not rated by Fitch, the Collateral Manager shall provide Fitch, upon request by Fitch, with the following:

(i) all offering memoranda and the most recent remittance reports for all Collateral Debt Securities in the possession of the Collateral Manager as of the Closing Date and for all Collateral Debt Securities acquired by the Issuer after the Closing Date (in each case, subject to availability thereof and as may be mutually agreed upon by Fitch and the Collateral Manager from time to time); and

(ii) within 10 days of receipt thereof by the Collateral Manager, ongoing remittance reports for all Collateral Debt Securities (subject to the availability thereof and as may be mutually agreed upon by Fitch and the Collateral Manager from time to time).

The information referenced in paragraphs (c) and (d) of this Section 10.12 should be sent to Fitch by e-mail to cdo.surveillance@fitchratings.com or hardcopy to FitchRatings, One State Street Plaza, New York, New York 10004, Attention: Credit Products Surveillance - Additional Reporting.

Section 10.13 United States Federal Income Tax Reporting.

(a) If the Class D Notes (or any other Notes) are deemed equity for U.S. federal income tax purposes, the Trustee shall provide information as it may possess necessary for a Holder of D Notes (or any other Notes deemed equity for U.S. federal income tax purposes) to make an election to treat the Issuer as a Qualified Electing Fund under Section 1295 of the Code, and for such Holder to file returns consistent with such election.

The Issuer shall provide the Trustee with such information as is required for the Trustee to perform its obligations under this Section 10.13.

Section 10.14 Certain Procedures.

(a) For so long as the Notes may be transferred only in accordance with Rule 144A or another exemption from registration under the Securities Act, the Issuer (or the Collateral Manager on behalf of the Issuer) will ensure that any Bloomberg screen containing information about the Rule 144A Global Notes includes the following (or similar) language:

(i) the "Note Box" on the bottom of the "Security Display" page describing the Rule 144A Global Notes will state: "Iss'd Under 144A/3c7";

(ii) the "Security Display" page will have the flashing red indicator "See Other Available Information,"; and

(iii) the indicator will link to the "Additional Security Information" page, which will state that the Notes "are being offered in reliance on the exemption from registration under Rule 144A of the Securities Act to persons who are both (i) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (ii) qualified purchasers (as defined under Section 3(c)(7) under the Investment Company Act of 1940).

(b) For so long as the Rule 144A Global Notes are registered in

the name of DTC or its nominee, the Issuer (or the Collateral Manager on behalf of the Issuer) will instruct DTC to take these or similar steps with respect to the Rule 144A Global Notes:

(i) the DTC 20-character security descriptor and 48-character additional descriptor will indicate with marker "3c7" that sales are limited to (i) QIBs and (ii) Qualified Purchasers;

(ii) where the DTC deliver order ticket sent to purchasers by DTC after settlement is physical, it will have the 20-character security descriptor printed on it. Where the DTC deliver order ticket is electronic, it will have a "3c7" indicator and a related user manual for participants, which will contain a description of the relevant restriction; and

(iii) DTC will send an "Important Notice" outlining the 3(c)(7) restrictions applicable to the Rule 144A Global Notes to all DTC participants in connection with the initial offering of Notes by the issuers.

ARTICLE 11

APPLICATION OF MONIES

Section 11.1 Disbursements of Monies from Payment Account.

(a) Notwithstanding any other provision in this Indenture, but subject to the other subsections of this Section 11.1 and Section 13.1 hereof, on each Payment Date, or Redemption Date the Trustee shall disburse amounts transferred to the Payment Account from

the Interest Collection Account and the Principal Collection Account pursuant to Section 10.2 hereof in accordance with the following priorities (the "Priority of Payments"): (i) Interest Proceeds. On each Payment Date or Redemption Date, (except as otherwise provided in Section 11.1(d)) Interest Proceeds with respect to the related Due Period shall be distributed in the following order of priority:

(1) to the payment of taxes and filing fees (including any registered office and government fees) owed by the Issuer and the Co-Issuer, if any;

(2) (a) first, to the extent not previously reimbursed, to the Advancing Agent or the Trustee, the aggregate amount of any Nonrecoverable Advances due and payable to such party, (b) second, to the Advancing Agent, the Advancing Agent Fee and any previously due but unpaid Advancing Agent Fee and (c) third, to the Advancing Agent and the Trustee (i) to the extent due and payable to such party, Reimbursement Interest and (ii) reimbursement of any outstanding Interest Advances not (in the case of this clause (ii)) to exceed the amount that would result in an Interest Shortfall with respect to such Payment Date;

(3) (a) first, to the payment to the Trustee (as back-up advancing agent) of the accrued and unpaid Back-Up Advancing Fee, (b) second, to the payment to the Trustee of the accrued and unpaid fees (other than the Back-Up Advancing Fee) in respect of its services specified in the Trustee Fee Proposal equal to the greater of (i) 0.01500% per annum of the Aggregate Collateral Balance and (ii) U.S. $25,000 per annum, (c) third, to the payment of other accrued and unpaid Company Administrative Expenses of the Trustee, the Paying Agent, the Preferred Shares Paying Agent and the Calculation Agent and (d) fourth, to the payment of any other accrued and unpaid Company Administrative Expenses, the aggregate of all such amounts in clauses (c) and (d) above (including such amounts paid since the previous Payment Date from the Expense Account) not to exceed 0.055% per annum of the Aggregate Collateral Balance;

(4) to the payment of the Senior Collateral Management Fee and any previously due but unpaid Senior Collateral Management Fees;

(5) pro rata on the basis of amounts payable under each

Hedge Agreement (if any), to the payment of any amounts (including, without limitation, any Hedge Payment Amounts) scheduled to be paid to each Hedge Counterparty, if any, pursuant to any Hedge Agreement, along with any payments (however described) due and payable by the Issuer under any Hedge Agreement in connection with a termination (in whole or in part) of any Hedge Agreement (including any interest that may accrue thereon), other than by reason of an Event of Default (as defined in the related Hedge Agreement) or Termination Event (other than Illegality or Tax Event) (each as defined in the related Hedge Agreement) in each case, with respect to which the Hedge Counterparty is the Defaulting Party or the sole Affected Party (as defined in the related Hedge Agreement);

(6) to the payment of the Class A Interest Distribution Amount, plus, any Class A Defaulted Interest Amount;

(7) to the payment of the Class B Interest Distribution Amount, plus, any Class B Defaulted Interest Amount;

(8) as long as any of the Class A Notes and the Class B Notes are Outstanding, to the payment of the following amounts:

(a) in the event that the Class A Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon the Stated Maturity of the Class A Notes;

(b) in the event that the Class B Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class B Notes, to the payment in full of principal of the Class B Notes; or

(c) in the event of a Mandatory Redemption of the Class A Notes and the Class B Notes, first, to the payment of principal of the Class A Notes and second, to the payment of principal of the Class B Notes, to the extent necessary to cause each of the Class A/B Coverage Tests to be satisfied (after giving effect to the payment of all amounts previously paid on such Payment Date pursuant to this Section 11.1(a)(i)).

(9) to the payment of the Class C Interest Distribution Amount, plus, any Class C Defaulted Interest Amount;

(10) to the payment of the Class C Capitalized Interest (if any);

(11) as long as any of the Class C Notes are Outstanding, to the payment of the following amounts:

(a) in the event that the Class C Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class C Notes, to the payment in full of principal of first, the Class A Notes, second, the Class B Notes and third, the Class C Notes; or

(b) in the event of a Mandatory Redemption of the Class C Notes, first, to the payment of principal of the Class A Notes, second, to the payment of principal of the Class B Notes, and third, to the payment of principal of the Class C Notes, to the extent necessary to cause each of the Class C Coverage Tests to be satisfied (after giving effect to the payment of all amounts previously paid on such Payment Date pursuant to this Section 11.1(a)(i));

(12) to the payment of the Class D Interest Distribution Amount, plus, any Class D Defaulted Interest Amount;

(13) to the payment of the Class D Capitalized Interest (if any);

(14) as long as any of the Class D Notes are Outstanding, to the payment of the following amounts:

(a) in the event that the Class D Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class D Notes, to the payment in full of principal of first, the Class A Notes, second, the Class B Notes, third, the Class C Notes and fourth, the Class D Notes; or

(b) in the event of a Mandatory Redemption of the Class D Notes, first, to the payment of principal of the Class A Notes, second, to the payment of principal of the Class B Notes, third, to the payment of principal of the Class C Notes and fourth, to the payment of principal of the Class D Notes, to the extent necessary to cause the Class D Coverage Tests to be satisfied (after giving effect to the payment of all amounts previously paid on such Payment Date pursuant to this Section 11.1(a)(i));

(15) on the first Payment Date following receipt of a Ratings Confirmation Failure, to the extent that application of any unused proceeds remaining on deposit on the Unused Proceeds Account is insufficient to cause the ratings assigned to each Class of Notes to be reinstated or any affected Class to be paid in full, to the payment of principal of each Class of Notes, (i) first, to the Class A Notes, (ii) second, to the Class B Notes, (iii) third, to the Class C Notes and (iv) fourth, to the Class D Notes, in each case until the ratings assigned on the Closing Date to each Class of Notes have been reinstated or such Class has been paid in full;

(16) to the payment of any Company Administrative Expenses not paid pursuant to paragraph (3) above;

(17) the payment of the Subordinate Collateral Management Fee and any accrued and unpaid Subordinate Collateral Management Fee;

(18) pro rata on the basis of amounts payable under each Hedge Agreement (if any), to the payment of any amounts (including, without limitation, any Hedge Payment Amounts) (including any interest accrued thereon), if any, payable by the Issuer to the Hedge Counterparty under the related Hedge Agreement following an Event of Default or Termination Event (other than Illegality or Tax Event) (each as defined in the related Hedge Agreement) with respect to which the Hedge Counterparty is the Defaulting Party or the sole Affected Party (as defined in the related Hedge Agreement);

(19) to the payment of the Scheduled Amortization Amounts, if any, on the Class C Notes and the Class D Notes (on a pari passu basis within each such Class); and

(20) any remaining Interest Proceeds to the Preferred Shares Paying Agent for deposit into the Preferred Shares Distribution Account for distribution to the holders of the Preferred Shares as payments of the Preferred Shares Distribution Amount.

(ii) Principal Proceeds. On each Payment Date or Redemption Date, Principal Proceeds with respect to the related Due Period shall be distributed in the following order of priority:

(1) to the payment of the amounts referred to in sub-clauses (1) through (7) of Section 11.1(a)(i) in the same order of priority specified therein, but only to the extent not paid in full thereunder;

(2) to the extent that the amounts paid pursuant to sub-clause (9) of Section 11.1(a)(i) hereof are insufficient to pay such

amounts in full thereunder and any Class B Notes are Outstanding, to the payment of the following amounts:

(a) in the event that the Class A Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon the Stated Maturity of the Class A Notes, to the payment in full of principal of the Class A Notes;

(b) in the event that the Class B Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon the Stated Maturity of the Class B Notes, to the payment in full of principal of the Class B Notes; or

(c) in the event of a Mandatory Redemption of the Class A Notes and the Class B Notes, first, to the payment of principal of the Class A Notes and second, to the payment of principal of the Class B Notes, to the extent necessary to cause each of the Class A/B Coverage Tests to be satisfied (after giving effect to the payment of all amounts previously paid on such Payment Date pursuant to Section 11.1(a)(i) and this Section 11.1(a)(ii));

(3) if the Class A Notes and the Class B Notes are no longer Outstanding, to the payment of first, the amounts referred to in sub-clause (9) of Section 11.1(a)(i) and second, the amounts referred to in sub-clause (10) of Section 11.1(a)(i), but only to the extent not paid in full thereunder;

(4) to the extent that the amounts paid pursuant to sub-clause (11) of Section 11.1(a)(i) above are insufficient to pay such amounts in full thereunder and any Class C Notes are Outstanding, to the payment of the following amounts:

(a) in the event that the Class C Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class C Notes, to the payment in full of principal of first, the Class A Notes, second, the Class B Notes and third, the Class C Notes; or

(b) in the event of a Mandatory Redemption of the Class C Notes, first, to the payment of principal of the Class A Notes, second, to the payment of principal of the Class B Notes and third, to the payment of principal of the Class C Notes, to the extent necessary to cause the Class C Coverage Tests to be satisfied (after giving effect to the payment of all amounts previously paid on such Payment Date pursuant to Section 11.1(a)(i) and this Section 11.1(a)(ii);

(5) if the Class A Notes, the Class B Notes and the Class C Notes are no longer Outstanding, to the payment of first, the amounts referred to in sub-clause (12) of Section 11.1(a)(i) and second, the amounts referred to in sub-clause (13) of Section 11.1(a)(i), but only to the extent not paid in full thereunder;

(6) to the extent that the amounts paid pursuant to sub-clause (14) of Section 11.1(a)(i) above are insufficient to pay such amounts in full thereunder and any Class D Notes are Outstanding, to the payment of the following amounts:

(a) in the event that the Class D Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class D Notes, to the payment in full of principal of first, the Class A Notes, second, the Class B Notes, third, the Class C Notes and fourth, the Class D Notes; or

(b) in the event of a Mandatory Redemption of the Class D Notes, first, to the payment of principal of the Class A Notes, second, to the payment of principal of the Class B Notes, third, to the payment of

principal of the Class C Notes and fourth, to the payment of principal of the Class D Notes, to the extent necessary to cause the Class D Coverage Tests to be satisfied (after giving effect to the payment of all amounts previously paid on such Payment Date pursuant to Section 11.1(a)(i) and this Section 11.1(a)(ii);

(7) to the extent that the amounts paid pursuant to sub-clause (15) of Section 11.1(a)(i) above are insufficient to pay such amounts in full thereunder and any Notes are Outstanding, on the first Payment Date following receipt of a Ratings Confirmation Failure, to the payment of principal of each Class of Notes, (i) first, to the Class A Notes, (ii) second, to the Class B Notes, (iii) third, to the Class C Notes and (iv) fourth, to the Class D Notes, in each case until the ratings assigned on the Closing Date to each Class of Notes have been reinstated or such Class has been paid in full

(8) prior to the last day of the Reinvestment Period, to the investment in Eligible Investments and reinvestment in Substitute Collateral Debt Securities subject to the Reinvestment Criteria or, if determined by the Collateral Manager, to pay any Special Amortization Amount, to amortize the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes as follows: (x) (1) if the Collateral Quality Tests (other than the Minimum Weighted Average Coupon Test and the Minimum Weighted Average Spread Test) are satisfied or (2) the Rating Agency Condition is satisfied with respect thereto, on a pro rata basis (based on the Aggregate Outstanding Amount of each Class) among all Classes of Notes; or (y) otherwise, sequentially among all Classes of Notes provided, however, that amounts representing recoveries in respect of Defaulted Securities will be distributed sequentially in any event;

(9) after the Reinvestment Period (X) on each Payment Date that is not also a Redemption Date or the Stated Maturity of the Notes and (Y) in the absence of an acceleration following an Event of Default, to the payment of principal of (i) first, the Class A Notes, until the Class A Notes have been paid in full, (ii) second, the Class B Notes, until the Class B Notes have been paid in full, (iii) third, the Class C Notes, until the Class C Notes have been paid in full and (iv) fourth, the Class D Notes, until the Class D Notes have been paid in full;

(10) to the payment of amounts referred to in sub-clause (16) of Section 11.1(a)(i) above to the extent not paid thereunder;

(11) to the payment of amounts referred to in sub-clause (17) of Section 11.1(a)(i) above to the extent not paid thereunder;

(12) to the payment of amounts referred to in sub-clause (18) of Section 11.1(a)(i) above to the extent not paid thereunder; and

(13) any remaining Principal Proceeds to the Preferred Shares Paying Agent for deposit into the Preferred Shares Distribution Account for distribution to the holders of the Preferred Shares as payments of the Preferred Shares Distribution Amount.

(b) On or before the Business Day prior to each Payment Date, the Issuer shall, pursuant to Section 10.2(e), remit or cause to be remitted to the Trustee for deposit in the Payment Account an amount of Cash sufficient to pay the amounts described in Section 11.1(a) required to be paid on such Payment Date.

(c) If on any Payment Date the amount available in the Payment Account from amounts received in the related Due Period is insufficient to make the full amount of the disbursements required by the statements furnished by the Trustee pursuant to Section 10.9(e) hereof, the Trustee shall make the disbursements called for in the order and according to the priority set forth under Section 11.1(a) above, subject to Section 13.1 hereof, to the extent funds are available therefor.

(d) Except as otherwise expressly provided in this Section 11.1, if on any Payment Date the amount available in the Payment Account from amounts received in the related Due Period are insufficient to make the full amount of the disbursements required by any lettered subclause of Section 11.1(a)(i) or Section 11.1(a)(ii), the Trustee shall make the disbursements called for by such subclause ratably in accordance with the respective amounts of such disbursements then due and payable to the extent funds are available therefor, unless such subclause provides otherwise.

(e) In connection with the application of funds to pay Company Administrative Expenses of the Issuer, in accordance with sub-clauses (3) and (4) of clause (i) of Section 11.1(a) and sub-clause (1) of clause (ii) of Section 11.1(a), the Trustee shall remit such funds, to the extent available, to the Issuer (or as the Issuer may otherwise direct), as directed by the Issuer to the Trustee or otherwise set forth in the written instructions delivered to the Trustee by the Issuer (net of amounts payable to the Trustee) no later than the Business Day prior to the applicable Payment Date. All such payments shall be made pursuant to the Priority of Payments.

(f) In connection with the payment to each Hedge Counterparty pursuant to each Hedge Agreement of any amount scheduled to be paid from time to time between Payment Dates from amounts received with respect to the Collateral Debt Securities, such amounts shall be distributed to each Hedge Counterparty pursuant to the related Hedge Agreement.

Section 11.2 Trust Accounts.

All Monies held by, or deposited with the Trustee in the Collection Accounts, the Payment Account, the Expense Account, the Unused Proceeds Account or the Delayed Funding Obligations Account pursuant to the provisions of this Indenture, and not invested in Eligible Investments as herein provided, shall be deposited in one or more trust accounts, maintained at the Corporate Trust Office or at a financial institution whose long-term rating is at least equal to, "A2" by Moody's and "BBB+" by S&P to be held in trust for the benefit of the Noteholders. To the extent Monies deposited in such trust account exceed amounts insured by the Bank Insurance Fund or Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation, or any agencies succeeding to the insurance functions thereof, and are not fully collateralized by direct obligations of the United States of America, such excess shall be invested in Eligible Investments as directed by Issuer Order.

ARTICLE 4

SALE OF COLLATERAL DEBT SECURITIES

Section 12.1 Sales of Collateral Debt Securities.

(a) Except as otherwise expressly permitted or required by this Indenture, the Issuer shall not sell or otherwise dispose of any Collateral Debt Security, provided that, subject to satisfaction of any applicable conditions in Section 10.10, so long as (A) no Event of Default has occurred and is continuing and (B) on or prior to the trade date for such sale the Collateral Manager has certified to the Trustee that each of the conditions applicable to such sale set forth below has been satisfied, the Collateral Manager on behalf of the Issuer acting pursuant to the

Collateral Management Agreement may direct the Trustee in writing to sell, and the Trustee shall sell in the manner directed by the Collateral Manager in writing (which writing shall specify whether such security is a Defaulted Security or Credit Risk Security, if applicable, or whether such security is otherwise permitted to be sold pursuant to this Section 12.1(a)):

(i) any Defaulted Security at any time;

(ii) a Credit Risk Security, (a) during the Reinvestment Period, if the Collateral Manager has certified to the Trustee that it shall use commercially reasonable efforts to purchase one or more Substitute Collateral Debt Securities having an Aggregate Principal Balance no less than the Sale Proceeds (excluding accrued interest) from such sale, and after giving effect to such sale and to the purchase of Substitute Collateral Debt Securities with the Sale Proceeds thereof, in the judgment of the Collateral Manager (which shall not be called into question solely

as a result of subsequent events), the Reinvestment Criteria shall be met and (b) after the Reinvestment Period, at any time;

(iii) if a Collateral Debt Security that is a Defaulted Security is not sold by the Issuer (at the direction of the Collateral Manager) within three (3) years of such Collateral Debt Security becoming a Defaulted Security, the Collateral Manager, on behalf of the Issuer, shall use its commercially reasonable efforts to sell such Collateral Debt Security as soon as commercially practicable thereafter; and

(iv) without limiting the foregoing, any Collateral Debt Security that is a CMBS Security or a REIT Debt Security and is not a Defaulted Security or a Credit Risk Security may be sold during the Reinvestment Period, if (a) the Aggregate Principal Balance of Collateral Debt Securities sold pursuant to this paragraph for a given calendar year does not exceed 10% of the Aggregate Collateral Balance at the beginning of that year and (b) the Collateral Manager believes in good faith that proceeds from the sale of such Collateral Debt Security can be reinvested, within five (5) Business Days after the trade date on which such Collateral Debt Security is sold in one or more Substitute Collateral Debt Securities having an Aggregate Principal Balance of not less than 100% of the Principal Balance of the Collateral Debt Security being sold.

(b) Notwithstanding the foregoing, the Collateral Manager (at its option and at any time) shall be permitted to effect a sale of a Credit Risk Security or a Defaulted Security hereunder by purchasing (or causing its Affiliate to purchase) such Defaulted Security or Credit Risk Security from the Issuer for a cash purchase price that shall be equal to the sum of (i) the Aggregate Principal Balance thereof plus (ii) all accrued and unpaid interest (or, in the case of a Preferred Equity Security, all accrued and unpaid dividends or other distributions not attributable to the return of capital by its governing documents) thereon. Notwithstanding anything to the contrary set forth herein, no Advisory Committee consent shall be required in connection with such cash purchase (the "Credit Risk/Defaulted Security Cash Purchase").

In addition and notwithstanding anything to the contrary set forth herein (and provided that no Event of Default has occurred and is continuing), the Collateral Manager (at its option but only upon disclosure to, and with the prior consent of, the Advisory Committee) shall be permitted to effect a sale of a Defaulted Security or a Credit Risk Security hereunder by

directing the Issuer to exchange such Defaulted Security or Credit Risk Security for (i) a Substitute Collateral Debt Security (that is not a Defaulted Security or a Credit Risk Security) owned by an Affiliate of the Collateral Manager (such Substitute Collateral Debt Security, the "Exchange Security") or (ii) a combination of an Exchange Security and cash, provided that:

(i) (A) the sum of (1) the Aggregate Principal Balance of such Exchange Security plus (2) all accrued and unpaid interest (or, in the case of a Preferred Equity Security, all accrued and unpaid dividends or other distributions not attributable to the return of capital by its governing documents) thereon plus (3) the cash amount (if any) to be paid to the Issuer in respect of such exchange by such Affiliate of the Collateral Manager, shall be equal to or greater than (B) the sum of (1) the Aggregate Principal Balance of such Defaulted Security or Credit Risk Security sought to be substituted plus (2) all accrued and unpaid interest (or, in the case of a Preferred Equity Security, all accrued and unpaid dividends or other distributions not attributable to the return of capital by its governing documents) thereon;

(ii) the Eligibility Criteria and the Reinvestment Criteria shall be satisfied immediately after such exchange; and

(iii) the Aggregate Principal Balance of the Defaulted Securities and Credit Risk Securities so exchanged shall not exceed 10% of the Aggregate Collateral Balance as of the Closing (such limitation, the "10% Limit").

(c) After the Issuer has notified the Trustee of an Optional Redemption, a Clean-Up Call or a Tax Redemption in accordance with Section 9.1 or an Auction Call Redemption in accordance with Section 9.2, the Collateral Manager on behalf of the Issuer acting pursuant to the Collateral Management

Agreement may at any time direct the Trustee in writing to sell, and the Trustee shall sell in the manner directed by the Collateral Manager in writing, any Collateral Debt Security without regard to the foregoing limitations in Section 12.1(a), provided that:

(i) the Sale Proceeds therefrom must be used to pay certain expenses and redeem all of the Notes in whole but not in part pursuant to Sections 9.1 and Section 9.2, and upon any such sale the Trustee shall release such Collateral Debt Security pursuant to Section 10.10;

(ii) the Issuer may not direct the Trustee to sell (and the Trustee shall not be required to release) a Collateral Debt Security pursuant to this Section 12.1(c) unless:

(1) the Collateral Manager certifies to the Trustee that (x) in the Collateral Manager's reasonable business judgment based on calculations included in the certification (which shall include the sales prices of the Collateral Debt Securities), the Sale Proceeds from the sale of one or more of the Collateral Debt Securities and all Cash and proceeds from Eligible Investments will be at least equal to the Total Redemption Price, and (y) an Independent bond pricing service (which shall be one or more broker-dealers selected by the Collateral Manager which are rated at least "P-1" by Moody's and at least "A-1+" by

Standard & Poor's and which make a market in the applicable Collateral Debt Securities) has confirmed (which confirmation may be in the form of a firm bid) the sales prices contained in the certification in clause (x) above (and attaching a copy of such confirmation); and

(2) the Independent accountants appointed by the Issuer pursuant to Section 10.11 shall confirm in writing the calculations made in clause (1)(x) above.

(iii) in connection with an Optional Redemption, an Auction Call Redemption, a Clean-up Call or a Tax Redemption, all the Collateral Debt Securities to be sold pursuant to this Section 12.1(c) must be sold in accordance with the requirements set forth in Section 9.1(e) and Section 9.2, as applicable.

(d) In the event that any Collateral Debt Security becomes the subject of a conversion, exchange, redemption or offer, whether voluntary or involuntary, the Issuer (or the Collateral Manager acting on behalf of the Issuer) shall take no action to acquire the asset or instrument into which such Collateral Debt Security is convertible or exchangeable unless such asset or instrument would qualify as a Substitute Collateral Debt Security. In the event of an involuntary exchange or conversion of an Collateral Debt Security, if the resulting asset or instrument would not qualify as a Substitute Collateral Debt Security, the Issuer (or the Collateral Manager acting on behalf of the Issuer) shall use its best efforts to sell such Collateral Debt Security prior to conversion or exchange and, in any event, shall refuse to accept, and shall not acquire or hold, the asset or instrument offered in exchange.

(e) In the event that any Notes remain Outstanding as of the Payment Date occurring six months prior to the Stated Maturity of the Notes, the Collateral Manager will be required to determine whether the expected proceeds of the Assets to be received prior to the Stated Maturity of the Notes will be sufficient to pay in full the principal amount of (and accrued interest on) the Notes on the Stated Maturity. If the Collateral Manager determines, in its sole discretion, that such proceeds will not be sufficient to pay the outstanding principal amount of and accrued interest on the Notes (a "Note Liquidation Event") on the Stated Maturity of the Notes, the Issuer will, at the direction of the Collateral Manager, be obligated to liquidate the portion of Collateral Debt Securities sufficient to pay the remaining principal amount of and interest on the Notes on or before the Stated Maturity. The Collateral Debt Securities to be liquidated by the Issuer will be selected by the Collateral Manager.

Section 12.2 Reinvestment Criteria and Trading Restrictions.

(a) Except as provided in Section 12.3(c), during the Reinvestment Period, Unscheduled Principal Payments, Sale Proceeds and other Principal

Proceeds will be reinvested in Substitute Collateral Debt Securities (which shall be, and hereby are, Granted to the Trustee pursuant to the Granting Clause of this Agreement) only if after giving effect to such reinvestment, the following criteria (which criteria shall also apply with respect to investments in Collateral Debt Securities during the Ramp-Up Period) (the "Reinvestment Criteria") are satisfied, as evidenced by an Officer's Certificate of the Issuer or the Collateral Manager

delivered to the Trustee, as of the date of the commitment to purchase such Substitute Collateral Debt Securities:

(i) the Collateral Quality Tests are satisfied, or, if any Collateral Quality Test was not satisfied immediately prior to such reinvestment, the extent of compliance with such Collateral Quality Test will be maintained or improved following such reinvestment, except as otherwise specified in the Reinvestment Criteria below;

(ii) the Coverage Tests are satisfied (or, if not satisfied, are maintained or improved);

(iii) if immediately prior to such investment the S&P CDO Monitor Test or the S&P Recovery Test was not satisfied, such test result is maintained or improved after giving effect to such reinvestment; provided, however, that, notwithstanding the foregoing, Sale Proceeds of Collateral Debt Securities may be reinvested as long as the Collateral Manager provides written notice of each such sale and reinvestment to S&P within three (3) Business Days after such reinvestment; and

(iv) no Event of Default has occurred and is continuing.

(b) Notwithstanding the foregoing provisions, (i) Cash on deposit in the Collection Accounts may be invested in Eligible Investments, pending investment in Substitute Collateral Debt Securities and (ii) if an Event of Default shall have occurred and be continuing, no Substitute Collateral Debt Security may be acquired unless it was the subject of a commitment entered into by the Issuer prior to the occurrence of such Event of Default.

Section 12.3 Conditions Applicable to all Transactions Involving Sale or Grant.

(a) Any transaction effected after the Closing Date under this Article 12 or Section 10.10 shall be conducted in accordance with the requirements of the Collateral Management Agreement, provided that, (1) the Collateral Manager shall not direct the Trustee to acquire any Substitute Collateral Debt Security for inclusion in the Assets from the Collateral Manager or any of its Affiliates as principal or to sell any Collateral Debt Security from the Assets to the Collateral Manager or any of its Affiliates as principal unless the transaction is effected in accordance with the Collateral Management Agreement and (2) the Collateral Manager shall not direct the Trustee to acquire any Substitute Collateral Debt Security for inclusion in the Assets from any account or portfolio for which the Collateral Manager serves as investment adviser or direct the Trustee to sell any Collateral Debt Security to any account or portfolio for which the Collateral Manager serves as investment adviser unless such transactions comply with the requirements of any applicable laws. The Trustee shall have no responsibility to oversee compliance with this clause by the other parties.

(b) Upon any Grant pursuant to this Article 12, all of the Issuer's right, title and interest to the Pledged Obligation or Securities shall be Granted to the Trustee pursuant to this Indenture, such Pledged Obligation or Securities shall be registered in the name of the Trustee, and, if applicable, the Trustee shall receive such Pledged Collateral Debt Security or Securities. The Trustee shall also receive, not later than the date of delivery of any Collateral Debt Security delivered after the Closing Date, an Officer's Certificate of the Collateral Manager

certifying that, as of the date of such Grant, such Grant complies with the applicable conditions of and is permitted by this Article 12 (and setting forth, to the extent appropriate, calculations in reasonable detail necessary to

determine such compliance).

(c) Notwithstanding anything contained in this Article 12 to the contrary, the Issuer shall, subject to this Section 12.3(c), have the right to effect any transaction which has been consented to (i) by the Holders of Notes evidencing 100% of the Aggregate Outstanding Amount of each and every Class of Notes (or if there are no Notes Outstanding, 100% of the Preferred Shares) and (ii) each Hedge Counterparty, and of which each Rating Agency has been notified.

Section 12.4 Sale of Collateral Debt Securities with respect to an Auction Call Redemption.

(a) Pre-Auction Process.

(i) Each Auction will occur on the Business Day that is at least 13 Business Days prior to the proposed Auction Call Redemption Date (such date, the "Auction Date").

(ii) The Collateral Manager will initiate the Auction Procedures at least 24 Business Days before the proposed Auction Call Redemption Date by: (a) preparing a list of Collateral Debt Securities (including CUSIP Number, if any, par amount and issuer name for each Collateral Debt Security); (b) deriving a list of not less than three qualified bidders (the "Listed Bidders") and requesting from each Listed Bidder bids by the applicable Auction Date; and (c) notifying the Trustee of the list of Listed Bidders (the "List").

(iii) The Collateral Manager will deliver a general solicitation package to the Listed Bidders consisting of: (a) a form of a purchase agreement ("Auction Purchase Agreement") provided to the Trustee by the Collateral Manager (which shall provide that (I) upon satisfaction of all conditions precedent therein, the purchaser is irrevocably obligated to purchase, and the Issuer is irrevocably obligated to sell, the Collateral Debt Securities on the date and on the terms stated therein, (II) each bidder may tender a separate bid for one or more Collateral Debt Securities in an Auction, (III) if the Collateral Debt Securities are to be sold to different bidders, that the consummation of the purchase of all Collateral Debt Securities must occur simultaneously and that the closing of each purchase is conditional on the closing of the other purchases, (IV) if for any reason whatsoever the Trustee has not received, by a specified Business Day (which shall be more than ten Business Days before the proposed Auction Call Redemption Date), payment in full in immediately available funds of the purchase price for all Collateral Debt Securities, the obligations of the parties shall terminate and the Issuer shall have no obligation or liability whatsoever and (V) any prospective purchasers will be subject to the "limited recourse" and "non-petition" provisions set forth in this Indenture), (b) the minimum aggregate Cash purchase price (which shall be determined by the Collateral Manager as the Total Redemption Price less the balance of all Eligible Investments and Cash in the Collection Accounts, the Payment Account, the Delayed

Funding Obligations Account, each Hedge Termination Account and the Expense Account; (c) the list of Collateral Debt Securities; (d) a formal bid sheet (which will permit a bidder to bid for all of the Collateral Debt Securities or separately for any one or more (but not all) Collateral Debt Securities and will include a representation from the bidder that it is eligible to purchase all of the Collateral Debt Securities or any any one or more (but not all) Collateral Debt Securities) to be provided to the Trustee by the Collateral Manager; (e) a detailed timetable; and (f) copies of all transfer documents provided to the Trustee by the Collateral Manager (including transfer certificates and subscription agreements which a bidder must execute pursuant to the underlying instruments and a list of the requirements which the bidder must satisfy under the underlying instruments (i.e., Qualified Institutional Buyer status, Qualified Purchaser status, etc.)).

(iv) The Collateral Manager will send solicitation packages to all Listed Bidders on the List at least 20 Business Days before the proposed Auction Call Redemption Date. The Listed Bidders will be required to submit any due diligence questions (or comments on the draft purchase agreement) in writing to the Collateral Manager by a date specified in the solicitation package. The Collateral Manager will be required to answer

all reasonable and relevant questions by the date specified in the solicitation package and the Collateral Manager will distribute the questions and answers and the revised final Auction Purchase Agreement to all Listed Bidders (with a copy to the Issuer and the Trustee).

(b) Auction Process.

(i) LaSalle Bank National Association or its Affiliates may, but shall not be required to, bid at the Auction. The Collateral Manager and its Affiliates may bid in the Auction if the Collateral Manager deems such bidding to be appropriate but is not required to do so.

(ii) On the Second Business Day prior to the Auction Date (the "Auction Bid Date"), all bids will be due by facsimile at the offices of the Trustee by 11:00 a.m. New York City time, with the winning bidder or bidders to be notified by 2:00 p.m. New York City time. All bids from Listed Bidders on the List will be due on the bid sheet contained in the solicitation package. Each bid shall be for the purchase and delivery to one purchaser (i) of all (but not less than all) of the Collateral Debt Securities or (ii) of one or more (but not all) of the Collateral Debt Securities.

(iii) Unless the Trustee receives (A) at least one bid from a Listed Bidder to purchase all of the Collateral Debt Securities or (B) receives bids from one or more Listed Bidders (to purchase one or more (but not all) Collateral Debt Securities) for all Collateral Debt Securities in the aggregate, the Trustee will decline to consummate the sale.

(iv) Subject to clause (iii) above, with the advice of the Collateral Manager, the Trustee shall select the bid or bids which result in the Highest Auction Price from one or more Listed Bidders (in excess of the specified minimum purchase price). "Highest

Auction Price" means the higher of (i) the highest price bid by any Listed Bidder for all of the Collateral Debt Securities or (ii) the sum of the highest prices bid by one or more Listed Bidders (for one or more (but not all) Collateral Debt Securities) for all Collateral Debt Securities in the aggregate. In each case, the price bid by a Listed Bidder will be the dollar amount which the Collateral Manager certifies to the Trustee based on the Collateral Manager's review of the bids, which certification shall be binding and conclusive.

(v) Upon notification to the winning bidder or bidders, the winning bidder (or, if the Highest Auction Price requires the sale of the Collateral Debt Securities to more than one bidder, each winning bidder) will be required to deliver to the Trustee a signed counterpart of the Auction Purchase Agreement no later than 4:00 p.m. New York City time on the Auction Date. The winning bidder (or, if the Highest Auction Price requires the sale of the Collateral Debt Securities to more than one bidder, each winning bidder) will make payment in full of the purchase price on the Business Day (the "Auction Purchase Closing Date") specified in the general solicitation package (which will be no later than ten Business Days prior to the proposed Auction Call Redemption Date). If a winning bidder so requests, the Trustee and the Issuer will enter into a bailee letter in the form agreed upon by the Trustee and the Collateral Manager to this Indenture (a "Bailee Letter") with each winning bidder and its designated bank (which bank will be subject to approval by the Issuer or the Collateral Manager on behalf of the Issuer), provided that such bank enters into an account control agreement with the Trustee and the Issuer and has a long term debt rating of at least "BBB+" by Standard & Poor's and (if rated by Fitch) at least "BBB+" by Fitch and (if rated by Moody's) at least "A2" by Moody's. If the above requirements are satisfied, the Trustee will deliver the Collateral Debt Securities (to be sold to such bidder) pursuant thereto to the bailee bank at least one Business Day prior to the closing on the sale of the Collateral Debt Securities and accept payment of the purchase price pursuant thereto. If payment in full of the purchase price is not made by the Auction Purchase Closing Date for any reason whatsoever (or, if the Collateral Debt Securities are to be sold to more than one bidder, if any bidder fails to make payment in full of the purchase price by the Auction Purchase Closing Date for any reason whatsoever), the Issuer will decline to consummate the sale of all Collateral Debt Securities, the Trustee and the Issuer will

direct the bailee bank to return the Collateral Debt Securities to the Trustee, and (if notice of redemption has been given by the Trustee) the Trustee will give notice (in accordance with the terms of this Indenture) that the Auction Call Redemption will not occur.

(vi) Notwithstanding the foregoing, but subject to the satisfaction of the conditions set forth in Section 9.2(b), the Collateral Manager or any of its Affiliates, although it may not have been the highest bidder, will have the option to purchase any one or more Collateral Debt Securities for a purchase price equal to the highest bid therefor.

(c) Notwithstanding anything to the contrary set forth in this Section 12.4, but subject to the satisfaction of the conditions set forth in Section 9.2(b) and the consummation of the Auction Call Redemption, at the election of the Collateral Manager, in lieu of initiating or conducting any Auction, the Collateral Manager or any of its Affiliates will have the option to

purchase all of the Collateral Debt Securities that would otherwise be subject to such Auction for a price equal to the Total Redemption Price. Such purchase of Collateral Debt Securities by the Collateral Manager or its Affiliates pursuant to this Section 12.4(c) will be deemed to be a Successful Auction pursuant to this Indenture.

ARTICLE 13

NOTEHOLDERS' RELATIONS

Section 13.1 Subordination.

(a) Anything in this Indenture or the Notes to the contrary notwithstanding, the Issuer and the Holders of the Class B Notes, the Class C Notes and the Class D Notes agree for the benefit of the Holders of the Class A Notes and each Hedge Counterparty that the Class B Notes, the Class C Notes, the Class D Notes and the Issuer's rights in and to the Assets (the "Class B Subordinate Interests") shall be subordinate and junior to the Class A Notes to the extent and in the manner set forth in this Indenture including as set forth in Section 11.1(a) and hereinafter provided. If any Event of Default has not been cured or waived and acceleration occurs in accordance with Article 5, including as a result of an Event of Default specified in Section 5.1(f) or (g), the Class A Notes shall be paid in full before any further payment or distribution is made on account of the Class B Subordinate Interests. The Holders of the Class B Notes, the Class C Notes and the Class D Notes agree, for the benefit of the Holders of the Class A Notes and each Hedge Counterparty, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay to them amounts due under the Class B Notes, the Class C Notes and the Class D Notes hereunder until the payment in full of the Class A Notes and not before one year and one day, or, if longer, the applicable preference period then in effect, has elapsed since such payment.

(b) Anything in this Indenture or the Notes to the contrary notwithstanding, the Issuer and the Holders of the Class C Notes and the Class D Notes agree for the benefit of the Holders of the Class A Notes, the Class B Notes and each Hedge Counterparty that the Class C Notes, the Class D Notes and the Issuer's rights in and to the Assets (the "Class C Subordinate Interests") shall be subordinate and junior to the Class A Notes and the Class B Notes to the extent and in the manner set forth in this Indenture including as set forth in Section 11.1(a) and hereinafter provided. If any Event of Default has not been cured or waived and acceleration occurs in accordance with Article 5, including as a result of an Event of Default specified in Section 5.1(f) or (g), the Class A Notes and the Class B Notes shall be paid in full before any further payment or distribution is made on account of the Class C Subordinate Interests. The Holders of the Class C Notes and the Class D Notes agree, for the benefit of the Holders of the Class A Notes and the Class B Notes and each Hedge Counterparty, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay to them amounts due under the Class C Notes and the Class D Notes hereunder until the payment in full of the Class A Notes and the Class B Notes and not before one year and one day, or, if longer, the applicable preference period then in effect, have elapsed since such payment.

(c) Anything in this Indenture or the Notes to the contrary notwithstanding, the Issuer and the Holders of the Class D Notes agree for the benefit of the Holders of the Class

A Notes, the Class B Notes, the Class C Notes and each Hedge Counterparty that the Class D Notes and the Issuer's rights in and to the Assets (the "Class D Subordinate Interests") shall be subordinate and junior to the Class A Notes, the Class B Notes and the Class C Notes to the extent and in the manner set forth in this Indenture including as set forth in Section 11.1(a) and hereinafter provided. If any Event of Default has not been cured or waived and acceleration occurs in accordance with Article 5, including as a result of an Event of Default specified in Section 5.1(f) or (g), the Class A Notes, the Class B Notes and the Class C Notes shall be paid in full before any further payment or distribution is made on account of the Class D Subordinate Interests. The Holders of the Class D Notes agree, for the benefit of the Holders of the Class A Notes, the Class B Notes, and the Class C Notes and each Hedge Counterparty, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay to them amounts due under the Class D Notes hereunder until the payment in full of the Class A Notes, the Class B Notes and the Class C Notes and not before one year and one day, or, if longer, the applicable preference period then in effect, have elapsed since such payment.

(d) In the event that notwithstanding the provisions of this Indenture, any holder of any Subordinate Interests shall have received any payment or distribution in respect of such Subordinate Interests contrary to the provisions of this Indenture, then, unless and until the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, as the case may be, shall have been paid in full in accordance with this Indenture, such payment or distribution shall be received and held in trust for the benefit of, and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, as the case may be, in accordance with this Indenture.

(e) Each Holder of Subordinate Interests agrees with all Holders of the Class A Notes, the Class B Notes, the Class C Notes or the Class D Notes, as the case may be, that such Holder of Subordinate Interests shall not demand, accept, or receive any payment or distribution in respect of such Subordinate Interests in violation of the provisions of this Indenture including this Section 13.1; provided, however, that after the Class A Notes, the Class B Notes, the Class C Notes or the Class D Notes, as the case may be, have been paid in full, the Holders of Subordinate Interests shall be fully subrogated to the rights of the Holders of the Class A Notes, the Class B Notes, the Class C Notes or the Class D Notes, as the case may be. Nothing in this Section 13.1 shall affect the obligation of the Issuer to pay Holders of Subordinate Interests.

Section 13.2 Standard of Conduct.

In exercising any of its or their voting rights, rights to direct and consent or any other rights as a Securityholder under this Indenture, subject to the terms and conditions of this Indenture, including, without limitation, Section 5.9, a Securityholder or Securityholders shall not have any obligation or duty to any Person or to consider or take into account the interests of any Person and shall not be liable to any Person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether such action or inaction benefits or adversely affects any Securityholder, the Issuer, or any other Person, except for any liability to which such Securityholder may be subject

to the extent the same results from such Securityholder's taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Indenture.

ARTICLE 14

MISCELLANEOUS

Section 14.1 Form of Documents Delivered to the Trustee.

In any case where several matters are required to be certified by,

or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an Authorized Officer of the Issuer or the Co-Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such Authorized Officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Authorized Officer of the Issuer or the Co-Issuer or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer, the Co-Issuer, the Collateral Manager or any other Person, stating that the information with respect to such factual matters is in the possession of the Issuer, the Co-Issuer, the Collateral Manager or such other Person, unless such Authorized Officer of the Issuer or the Co-Issuer or such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Authorized Officer of the Issuer or the Co-Issuer, stating that the information with respect to such matters is in the possession of the Issuer or the Co-Issuer, unless such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Whenever in this Indenture it is provided that the absence of the occurrence and continuation of a Default or Event of Default is a condition precedent to the taking of any action by the Trustee at the request or direction of the Issuer or the Co-Issuer, then notwithstanding that the satisfaction of such condition is a condition precedent to the Issuer's or the Co-Issuer's rights to make such request or direction, the Trustee shall be protected in acting in accordance with such request or direction if it does not have knowledge of the occurrence and continuation of such Default or Event of Default as provided in Section 6.1(k).

Section 14.2 Acts of Securityholders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Securityholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee, and, where it is hereby expressly required, to the Issuer and/or the Co-Issuer. Such instrument or instruments (and the action or actions embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Securityholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee, the Issuer and the Co-Issuer, if made in the manner provided in this Section 14.2.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any manner which the Trustee deems sufficient.

(c) The principal amount and registered numbers of Notes held by any Person, and the date of his holding the same, shall be proved by the Notes Register. The Notional Amount and registered numbers of the Preferred Shares held by any Person, and the date of his holding the same, shall be proved by the register maintained with respect to the Preferred Shares.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Securityholder shall bind such Securityholder (and

any transferee thereof) of such Security and of every Security issued upon the registration thereof or in exchange therefor or in lieu thereof, in respect of anything done, omitted or suffered to be done by the Trustee, the Preferred Shares Paying Agent, the Issuer or the Co-Issuer in reliance thereon, whether or not notation of such action is made upon such Security.

Section 14.3 Notices, etc., to the Trustee, the Issuer, the Co-Issuer, the Collateral Manager, the Initial Purchaser, each Hedge Counterparty and each Rating Agency.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Securityholders or other documents provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(a) the Trustee by any Securityholder or by the Issuer or the Co-Issuer shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery or by telecopy in legible form, to the Trustee addressed to it at 135 South LaSalle Street, Suite 1625, Chicago, Illinois 60603, Attention: CDO Trust Services Group - Arbor Realty Mortgage Securities Series 2004-1, Facsimile Number: (312) 904-0524, or at any other address previously furnished in writing to the Issuer, the Co-Issuer or Securityholders by the Trustee;

(b) the Issuer by the Trustee or by any Securityholder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed,

first class postage prepaid, hand delivered, sent by overnight courier service or by telecopy in legible form, to the Issuer addressed to it c/o Arbor Realty Mortgage Securities Series 2004-1, Ltd. at Maples Finance Limited, P.O. Box 1093 GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands, telecopy number: 345-945-7100, Attention: The Director, or at any other address previously furnished in writing to the Trustee by the Issuer, with a copy to the Collateral Manager at its address set forth below;

(c) the Co-Issuer by the Trustee or by any Securityholder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first class postage prepaid, hand delivered, sent by overnight courier service or by telecopy in legible form, to the Co-Issuer addressed to it in c/o Puglisi & Associates, 830 Library Avenue, Suite 204, Newark, Delaware 19711, Attention: Donald J. Puglisi, or at any other address previously furnished in writing to the Trustee by the Co-Issuer, with a copy to the Collateral Manager at its address set forth below;

(d) the Preferred Shares Paying Agent shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery or by telecopy in legible form, to the Preferred Shares Paying Agent addressed to it at its Corporate Trust Office at 135 South LaSalle Street, Suite 1625, Chicago, Illinois 60603, Attention: CDO Trust Services Group - Arbor Realty Mortgage Securities Series 2004-1, Facsimile Number: (312) 904-0524 or at any other address previously furnished in writing by the Trustee;

(e) the Collateral Manager by the Issuer, the Co-Issuer or the Trustee shall be sufficient for every purpose hereunder if in writing and mailed, first class postage prepaid, hand delivered, sent by overnight courier service or by telecopy in legible form, to the Collateral Manager addressed to it at Arbor Realty Collateral Management, LLC, 333 Earle Ovington Boulevard, 9th Floor, Uniondale, New York 11553, Attention: Executive Vice President - Structured Securitization, or at any other address previously furnished in writing to the Issuer, the Co-Issuer or the Trustee;

(f) each Rating Agency, as applicable, by the Issuer, the Co-Issuer, the Collateral Manager or the Trustee shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first class postage prepaid, hand delivered, sent by overnight courier service or by telecopy in legible form, to each Rating Agency addressed to it at Standard & Poor's, Structured Finance Ratings, 55 Water Street, 41st Floor, New York, New York 10041-0003, telecopy no. (212) 438-2664, Attention: CBO/CLO

Surveillance (and by electronic mail at cdosurveillance@standardandpoors.com; provided, that all reports required to be submitted to S&P pursuant to this Indenture only shall be provided in electronic form to such e-mail address); Moody's Investor Services, Inc., 99 Church Street, New York, New York 10007, telecopy no.: (212) 553-4170, Attention: CBO/CLO Monitoring (or by electronic mail at cdomonitoring@moodys.com) and Fitch Ratings, One State Street Plaza, New York, New York 10004, telecopy no.: (212) 558-2415, Attention: Credit Products Surveillance - Additional Reporting (or by electronic mail at cdo.surveillance@fitchratings.com) or such other address that a Rating Agency shall designate in the future;

(g) each Hedge Counterparty by the Issuer, the Co-Issuer, the Collateral Manager or the Trustee shall be sufficient for every purpose hereunder if in writing and mailed, first class postage prepaid, hand delivered, sent by overnight courier service or by telecopy in legible form, to each Hedge Counterparty addressed to it at the address specified in the related Hedge Agreement or at any other address previously furnished in writing to the Issuer, the Co-Issuer, the Collateral Manager and the Trustee by each Hedge Counterparty;

(h) the Initial Purchaser by the Issuer, the Co-Issuer, the Trustee or the Collateral Manager shall be sufficient for every purpose hereunder if in writing and mailed, first class postage prepaid, hand delivered, sent by overnight courier service or by telecopy in legible form to the Initial Purchaser c/o at Wachovia Capital Markets, LLC, 12 East 49th Street, 45th Floor, New York, NY 10017, Attention: Michelle Tan, facsimile no.: (212) 909-0047.

Section 14.4 Notices to Noteholders; Waiver.

Except as otherwise expressly provided herein, where this Indenture provides for notice to Holders of Notes of any event,

(a) such notice shall be sufficiently given to Holders of Notes if in writing and mailed, first class postage prepaid, to each Holder of a Note affected by such event, at the Address of such Holder as it appears in the Notes Register, not earlier than the earliest date and not later than the latest date, prescribed for the giving of such notice;

(b) such notice shall be in the English language;

(c) such notice shall also be provided to the Irish Paying Agent (for so long as any Notes are listed on the Irish Stock Exchange); and

(d) All reports or notices to Preferred Shareholders shall be sufficiently given if provided in writing and mailed, first class postage prepaid, to the Preferred Shares Paying Agent.

Notwithstanding clause (a) above, a Holder of Notes may give the Trustee a written notice that it is requesting that notices to it be given by facsimile transmissions and stating the telecopy number for such transmission. Thereafter, the Trustee shall give notices to such Holder by facsimile transmission; provided, that if such notice also requests that notices be given by mail, then such notice shall also be given by mail in accordance with clause (a) above.

The Trustee shall deliver to the Holders of the Notes any information or notice requested to be so delivered by at least 25% of the Holders of any Class of Notes.

Neither the failure to mail any notice, nor any defect in any notice so mailed, to any particular Holder of a Note shall affect the sufficiency of such notice with respect to other Holders of Notes. In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification to Holders of Notes as shall be made with the approval of the Trustee shall constitute a sufficient notification to such Holders of Notes for every purpose hereunder.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by any Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Noteholders shall be filed with the Trustee but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In the event that, by reason of the suspension of the regular mail service as a result of a strike, work stoppage or similar activity, it shall be impractical to mail notice of any event to Noteholders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

For so long as any Notes are listed on the Irish Stock Exchange and the rules of such exchange so require, all notices to Noteholders of such Notes will be published in the Daily Official List of the Irish Stock Exchange.

Section 14.5 Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 14.6 Successors and Assigns.

All covenants and agreements in this Indenture by the Issuer and the Co-Issuer shall bind their respective successors and assigns, whether so expressed or not.

Section 14.7 Severability.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 14.8 Benefits of Indenture.

Nothing in this Indenture or in the Securities, expressed or implied, shall give to any Person, other than (i) the parties hereto and their successors hereunder and (ii) the Collateral Manager, each Hedge Counterparty, the Preferred Shareholders, the Preferred Shares Paying Agent and the Noteholders (each of whom, in the case of this subclause (ii), shall be an express third party beneficiary hereunder), any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 14.9 Governing Law.

THIS INDENTURE AND EACH NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED THEREIN WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

Section 14.10 Submission to Jurisdiction.

Each of the Issuer and the Co-Issuer hereby irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes or this Indenture, and each of the Issuer and the Co-Issuer hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State or federal court. Each of the Issuer and the Co-Issuer hereby irrevocably waives, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. Each of the Issuer and the Co-Issuer irrevocably consents to the service of any and all process in any action or proceeding by the mailing or delivery of copies of such process to it at the office of the Issuer's and the Co-Issuer's agent set forth in Section 7.2. Each of the Issuer and the Co-Issuer agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 14.11 Counterparts.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 14.12 Liability of Co-Issuers.

Notwithstanding any other terms of this Indenture, the Notes or any other agreement entered into between, inter alios, the Issuer and the Co-Issuer or otherwise, neither the Issuer nor the Co-Issuer shall have any liability whatsoever to the Co-Issuer or the Issuer, respectively, under this Indenture, the Notes, any such agreement or otherwise and, without prejudice to the generality of the foregoing, neither the Issuer nor the Co-Issuer shall be entitled to take any steps to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, any such agreement or otherwise against the other Co-Issuer or the Issuer, respectively. In particular, neither the Issuer nor the Co-Issuer shall be entitled to petition or take any other steps for the winding up or bankruptcy of the Co-Issuer or the Issuer, respectively or shall have any claim in respect of any assets of the Co-Issuer or the Issuer, respectively.

ARTICLE 15

ASSIGNMENT OF COLLATERAL DEBT SECURITIES PURCHASE AGREEMENTS AND COLLATERAL MANAGEMENT AGREEMENT

Section 15.1 Assignment of Collateral Debt Securities Purchase Agreement and the Collateral Management Agreements.

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and amounts payable to the Noteholders hereunder and the performance and observance of the provisions hereof, hereby collaterally assigns, transfers, conveys and sets over to the Trustee, for the benefit of the Noteholders and each Hedge Counterparty, all of the

Issuer's estate, right, title and interest in, to and under each Collateral Debt Securities Purchase Agreement (now or hereafter entered into) and the Collateral Management Agreement (each, an "Article 15 Agreement"), including, without limitation, (i) the right to give all notices, consents and releases thereunder, (ii) the right to give all notices of termination and to take any legal action upon the breach of an obligation of a Seller or the Collateral Manager thereunder, including the commencement, conduct and consummation of proceedings at law or in equity, (iii) the right to receive all notices, accountings, consents, releases and statements thereunder and (iv) the right to do any and all other things whatsoever that the Issuer is or may be entitled to do thereunder; provided, however, the Trustee hereby grants the Issuer a license to exercise all of the Issuer's rights pursuant to the Article 15 Agreements without notice to or the consent of the Trustee (except as otherwise expressly required by this Indenture, including, without limitation, as set forth in subsection (f) of this Section 15.1) which license shall be and is hereby deemed to be automatically revoked upon the occurrence of an Event of Default hereunder until such time, if any, as such Event of Default is cured or waived.

(b) The assignment made hereby is executed as collateral security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the provisions of each of the Article 15 Agreements, nor shall any of the obligations contained in each of the Article 15 Agreements be imposed on the Trustee.

(c) Upon the retirement of the Notes, the payment by the Issuer of all amounts payable under each Hedge Agreement and the release of the Assets from the lien of this Indenture, this assignment and all rights herein assigned to the Trustee for the benefit of the Noteholders and each Hedge Counterparty shall cease and terminate and all the estate, right, title and interest of the Trustee in, to and under each of the Article 15 Agreements shall revert to the Issuer and no further instrument or act shall be necessary to evidence such termination and reversion.

(d) The Issuer represents that it has not executed any assignment of any of the Article 15 Agreements other than this collateral assignment.

(e) The Issuer agrees that this assignment is irrevocable, and that it shall not take any action which is inconsistent with this assignment or make any other assignment inconsistent herewith. The Issuer shall, from time to time upon the request of the Trustee, execute all instruments of further assurance and all such supplemental instruments with respect to this assignment as the Trustee may specify.

(f) The Issuer hereby agrees, and hereby undertakes to obtain the agreement and consent of the Sellers and the Collateral Manager, as applicable, in the Collateral Debt Securities Purchase Agreements and the Collateral Management Agreement, as applicable, to the following:

(i) each of the Sellers and the Collateral Manager consents to the provisions of this collateral assignment and agrees to perform any provisions of this Indenture made expressly applicable to each of the Sellers and the Collateral Manager pursuant to the applicable Article 15 Agreement.

(ii) each of the Sellers and the Collateral Manager, as applicable, acknowledges that the Issuer is collaterally assigning all of its right, title and interest in, to and under the Collateral Debt Securities Purchase Agreements and the Collateral Management Agreement, as applicable, to the Trustee for the benefit of the Noteholders, each Hedge Counterparty and each of the Sellers and the Collateral Manager, as applicable, agrees that all of the representations, covenants and agreements made by each of the Sellers and the Collateral Manager, as applicable, in the applicable Article 15 Agreement are also for the benefit of, and enforceable by, the Trustee, the Noteholders and each Hedge Counterparty.

(iii) each of the Sellers and the Collateral Manager, as applicable, shall deliver to the Trustee duplicate original copies of all notices, statements, communications and instruments delivered or required to be delivered to the Issuer pursuant to the applicable Article 15 Agreement.

(iv) none of the Issuer, the Sellers or the Collateral Manager shall enter into any agreement amending, modifying or terminating the applicable Article 15 Agreement, (other than in respect of an amendment or modification to cure any inconsistency, ambiguity or manifest error) or selecting or consenting to a successor collateral manager, without notifying each Rating Agency and without the prior written consent and written confirmation of each Rating Agency that such amendment, modification or termination will not cause the rating of the Notes to be reduced.

(v) except as otherwise set forth herein and therein (including, without limitation, pursuant to Sections 12 and 13 of the Collateral Management Agreement), the Collateral Manager shall continue to serve as Collateral Manager under the Collateral Management Agreement, notwithstanding that the Collateral Manager shall not have received amounts due it under the Collateral Management Agreement because sufficient funds were not then available hereunder to pay such amounts pursuant to the Priority of Payments. The Collateral Manager agrees not to cause the filing of a petition in bankruptcy against the Issuer for the nonpayment of the fees or other amounts payable to the Collateral Manager under the Collateral Management Agreement until the payment in full of all Notes issued under this Indenture and the expiration of a period equal to the applicable preference period under the Bankruptcy Code plus ten days following such payment.

(vi) the Collateral Manager irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes or this Indenture, and the Collateral Manager irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State or federal court. The Collateral Manager irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. The Collateral Manager irrevocably consents to the service of any and all process in any action or Proceeding by the mailing by certified mail, return receipt requested, or delivery requiring

signature and proof of delivery of copies of such initial process to it at Arbor Realty Trust, Inc., 333 Earle Ovington Boulevard, 9th Floor,

Uniondale, New York 11553, Attention: Executive Vice President--Structured Securitization. The Collateral Manager agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

ARTICLE 16

HEDGE AGREEMENT

Section 16.1 Issuer's Obligations under Hedge Agreement.

(a) On the Closing Date and thereafter, and on and after any date on which the Issuer enters into an additional or replacement Hedge Agreement (including any related Hedge Counterparty Credit Support), the Issuer as directed by the Collateral Manager shall (i) require that each Hedge Counterparty thereto (A) shall have absolutely and unconditionally guaranteed the obligations of the Hedge Counterparty under the related Hedge Agreement (with such form of guaranty as shall be satisfactory to each Rating Agency then rating any Notes hereunder), (B) shall have entered into credit intermediation arrangements in respect of the obligations of the Hedge Counterparty under the related Hedge Agreement satisfactory to each Rating Agency then rating any Notes hereunder, (C) shall be the issuing bank on one or more letters of credit supporting the obligations of the Hedge Counterparty under the related Hedge Agreement and that shall be reasonably acceptable to each Rating Agency then rating any Notes hereunder or (D) shall have provided any other additional credit support and such inclusion of additional credit support shall have satisfied the Rating Agency Condition (any such third party, a "Hedge Counterparty Credit Support Provider") and have obtained, and will maintain (at the Hedge Counterparty's or the Hedge Counterparty's Credit Support Provider's expense), with respect to itself as an issuer or with respect to its indebtedness, credit ratings at least equal to the Hedge Counterparty Required Ratings, if any, by each Rating Agency then rating any Notes hereunder, (ii) except with respect to a Form-Approved Assets Specific Hedge, obtain a written confirmation from each Rating Agency then rating any Notes hereunder that any additional or replacement Hedge Agreement and the related Hedge Counterparty would not cause such Rating Agency's then-current rating on any Class of Notes to be adversely qualified, reduced, suspended or withdrawn and (iii) assign and grant a security interest in such Hedge Agreement to the Trustee pursuant to this Indenture. Each Hedge Agreement will provide that, no amendment, modification, or waiver in respect of such will be effective unless (A) evidenced by a writing executed by each party thereto, and (B) the Trustee has acknowledged its consent thereto in writing and each Rating Agency confirms that the amendment, modification or waiver will not cause the reduction or withdrawal of its then current rating on any Class of Notes.

(b) The Trustee shall, on behalf of the Issuer, pay amounts due to each Hedge Counterparty under the related Hedge Agreements in accordance with the Priority of Payments and Section 16.1(g) hereof.

(c) The notional amount of each Hedge Agreement providing for floating rate payments to the Issuer will be calculated as a percentage of the principal amount of the Notes originally anticipated to be Outstanding on each Payment Date based on certain assumptions. In

accordance with the terms of each Hedge Agreement, such notional amount will be reduced by the Issuer (or the Collateral Manager on behalf of the Issuer) or each Hedge Counterparty on each Payment Date to the extent that (i) the outstanding principal amount of the Notes is less than the scheduled aggregate notional amount of the related Hedge Agreements for such Payment Date and/or (ii) the Net Outstanding Portfolio Balance is less than the scheduled aggregate notional amount of the related Hedge Agreements for such Payment Date; provided, that if any Notes are then Outstanding, the Trustee shall first have received

written evidence that the Rating Agency Condition with respect to Moody's and S&P has been satisfied with respect to such reduction other than as scheduled and Fitch shall have been notified of such reduction other than as scheduled. Additionally, subject to satisfaction of the Rating Agency Condition with respect to Moody's and S&P and the notification of Fitch in respect thereof, a termination in part of a Hedge Agreement and a corresponding reduction in the notional amount of the Hedge Agreement may occur, in the event of a Mandatory Redemption or Special Amortization of the Notes. The Issuer's remaining obligations in accordance with the Priority of Payments will not be affected by any such reduction. Notwithstanding any right of the Issuer to terminate each Hedge Agreement or related Hedge Counterparty Credit Support upon the occurrence of a Termination Event or an Event of Default (each as defined in each Hedge Agreement) or otherwise pursuant to a Hedge Agreement, the Issuer shall not terminate any Hedge Agreement or Hedge Counterparty Credit Support unless the Issuer notifies Fitch thereof and obtains a written confirmation from Moody's and S&P that such termination would not cause such Rating Agency's then-current rating on any Class of Notes, as applicable, to be adversely qualified, reduced, suspended or withdrawn.

(d) Each Hedge Agreement shall provide for termination, and (i) shall be capable of being terminated by or on behalf of the Issuer upon the failure of the related Hedge Counterparty to post collateral under a Hedge Counterparty Credit Support within the time period specified in the related Hedge Agreement, provide other alternate credit enhancement in accordance with the related Hedge Agreement, or upon the failure of the related Hedge Counterparty to transfer (at the Hedge Counterparty's sole cost and expense) all of its rights and obligations under the related Hedge Agreement to a Qualified Hedge Party within the time period specified in the related Hedge Agreement, after the failure of the related Hedge Counterparty (or any Hedge Counterparty Credit Support Provider) to have the Hedge Counterparty Threshold Ratings; (ii) shall be capable of being terminated by or on behalf of the Issuer upon the failure of the related Hedge Counterparty to transfer (at the related Hedge Counterparty's sole cost and expense) all of its rights and obligations under the related Hedge Agreement to a Qualified Hedge Party within the time period specified in the related Hedge Agreement after the failure of the related Hedge Counterparty (or any Hedge Counterparty Credit Support Provider) to have the Hedge Counterparty Required Ratings (provided, however, that the related Hedge Counterparty shall continue to post collateral and use its best efforts to find a replacement pursuant to the related Hedge Agreement until the earlier to occur of termination of the related Hedge Agreement by or on behalf of the Issuer or consummation of a Permitted Transfer (as defined in and in accordance with the terms of the related Hedge Agreement)) unless the Issuer has received written confirmation from each Rating Agency that such failure would not cause such Rating Agency's then-current rating on any Class of Notes to be adversely qualified, reduced, suspended or withdrawn, (iii) shall be capable of being terminated by the related Hedge Counterparty, upon the failure of the Issuer to make, when due, any scheduled periodic payments under the related Hedge Agreement, (iv) shall be capable of

being terminated, in whole or in part as provided in the related Hedge Agreement, upon the final sale of the Assets, an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption, (v) shall be capable of being terminated, in part as provided in the related Hedge Agreement, subject to satisfaction of the Rating Agency Condition with respect to Moody's and S&P, upon a Mandatory Redemption or a Special Amortization, (vi) shall be capable of being terminated by the related Hedge Counterparty upon any declaration by the Trustee that the Notes have become due and payable or (vii) as otherwise expressly provided for in the related Hedge Agreement. Each Hedge Agreement will further require a Hedge Counterparty, under the conditions described in clause (ii) of the preceding sentence, to provide Hedge Counterparty Credit Support, although the provision of Hedge Counterparty Credit Support will not satisfy or discharge each Hedge Counterparty's obligation to transfer all of its rights and obligations under the related Hedge Agreement to a Qualified Hedge Party. The Issuer shall satisfy the Rating Agency Condition with respect to Moody's and S&P with respect to any such termination of any provision of Hedge Counterparty Credit Support and of any transfer of all of the rights and obligations of any Hedge Counterparty under any Hedge Agreement.

(e) The Trustee shall, prior to the Closing Date, establish a single, segregated trust account with respect to each Hedge Counterparty in the name of the Trustee, each designated as the "Hedge Collateral Account," which

shall be held in trust for the benefit of the Noteholders, over which the Trustee shall have exclusive control and the sole right of withdrawal, and in which no Person other than the Trustee and the Noteholders and the applicable Hedge Counterparty shall have any legal or beneficial interest. The Trustee shall deposit all collateral received from the related Hedge Counterparty under the related Hedge Agreement in the related Hedge Collateral Account. Any and all funds at any time on deposit in, or otherwise to the credit of, each Hedge Collateral Account shall be held in trust by the Trustee for the benefit of the Noteholders. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, each Hedge Collateral Account shall be (i) for application to obligations of the applicable Hedge Counterparty to the Issuer under the related Hedge Agreement in accordance with the terms of such Hedge Agreement or (ii) to return collateral to the applicable Hedge Counterparty when and as required by the related Hedge Agreement, which the Trustee shall return to the applicable Hedge Counterparty in accordance with the related Hedge Agreement. Each Hedge Collateral Account shall remain at all times with the Corporate Trust Office or a financial institution having a long-term debt rating at least equal to "BBB+" or "A2," as applicable, or a short-term debt rating at least equal to "A-1," "P-1" or "F1," as applicable.

(f) Upon the default by a Hedge Counterparty in the payment when due of its obligations to the Issuer under the related Hedge Agreement (following the expiration of any applicable grace period), the Trustee or the Collateral Manager shall forthwith provide facsimile notice thereof to the Issuer, each of the Rating Agencies and, if applicable, any Hedge Counterparty Credit Support Provider. When the Trustee becomes aware of such default, the Trustee shall make a demand on the applicable Hedge Counterparty, or any Hedge Counterparty Credit Support Provider, if applicable, demanding payment forthwith. The Trustee shall give notice to the Noteholders and further notice to the Collateral Manager upon the continuing failure by such Hedge Counterparty or any Hedge Counterparty Credit Support Provider to

perform its obligations during the two Business Days following a demand made by the Trustee on such Hedge Counterparty or any such Hedge Counterparty Credit Support Provider.

(g) Upon the termination or partial termination of each Hedge Agreement, the Issuer at the direction of the Collateral Manager and the Trustee shall take such commercially reasonable actions (following the expiration of any applicable grace period and after the expiration of the applicable time period set forth in the related Hedge Agreement) to enforce the rights of the Issuer and the Trustee thereunder as may be permitted by the terms of the related Hedge Agreement and consistent with the terms hereof, and shall apply the proceeds of any such actions (including, without limitation, the proceeds of the liquidation of any collateral pledged by or on behalf of each Hedge Counterparty) to enter into an additional or replacement Hedge Agreements within 30 days of the expiration of any such grace period and such applicable time period as set forth in the related Hedge Agreement on substantially identical terms or on such other terms as required by the related Hedge Counterparty to any such additional or replacement Hedge Agreement as each Rating Agency may confirm in writing would not cause such Rating Agency's then-current rating of any Class of Notes, as applicable, to be reduced or withdrawn. The Trustee will, promptly after the Closing Date, in respect of each Hedge Counterparty, establish a single segregated trust account in the name of the Trustee, each designated the "Hedge Termination Account," which shall be held in trust for the benefit of the Noteholders and each Hedge Counterparty and over which the Trustee will have exclusive control and the sole right of withdrawal, and in each of which no person other than the Trustee, the Noteholders and the Hedge Counterparty will have any legal or beneficial interest. Each Hedge Collateral Account shall remain at all times with the Corporate Trust Office or a financial institution having a long-term debt rating at least equal to "BBB+" or "A2," as applicable, or a short-term debt rating at least equal to "A-1," "P-1" or "F1," as applicable. Notwithstanding anything contained in this Indenture to the contrary, any payments (other than payments relating to past-due scheduled payments on a Hedge Agreement) received by the Issuer or Trustee in connection with either (x) the termination (in whole or in part) of a related Hedge Agreement or (y) the execution of an additional or replacement Hedge Agreements shall be immediately transferred to the Trustee for deposit into the related Hedge Termination Account. Any costs attributable to entering into an additional or replacement Hedge Agreements (other than in connection with a Permitted Transfer as provided for and defined in the related Hedge Agreement) with

respect to the related Hedge Counterparty shall be paid from the related Hedge Termination Account, and any such amounts which are payable but exceed the balance in the related Hedge Termination Account shall be borne solely by the Issuer and shall constitute expenses payable under subclause (5) of Section 11.1(a)(i) hereof. Additionally, any amounts that are due and payable to a Hedge Counterparty upon a termination of a Hedge Agreement shall be paid from any amounts on deposit in the related Hedge Termination Account, and, to the extent the amounts on deposit in such Hedge Termination Account are insufficient to pay all such amounts, then such amounts will be payable in accordance with Sections 11.1(a)(i) and (ii) hereof. Any amounts remaining on deposit in a Hedge Termination Account related to a Hedge Agreement following payment to the Hedge Counterparty shall be transferred to the Principal Collection Account and shall constitute Principal Proceeds. If determining the amount payable under the terminated Hedge Agreement, the Issuer or the Collateral Manager on behalf of the Issuer shall seek quotations in accordance with the terms of the related Hedge Agreement from reference market-makers who satisfy the definition of Qualified Hedge Party herein. Each Hedge Agreement may provide that the applicable Hedge Counterparty is responsible for determining the amounts payable in certain

circumstances. In addition, the Issuer or the Collateral Manager on behalf of the Issuer shall use commercially reasonable efforts to cause the termination of the related Hedge Agreement to become effective simultaneously with the effectiveness of a replacement thereto, described as aforesaid.

(h) Notwithstanding anything to the contrary set forth herein, for so long as any Class of Notes are Outstanding under this Indenture and are rated by Fitch, if any Hedge Counterparty fails to maintain the Hedge Counterparty Collateral Threshold Rating with respect to Fitch, then such Hedge Counterparty shall, within 10 Business Days, at such Hedge Counterparty's election,

(i) obtain a guaranty of its obligations under each related Hedge Agreements from a Person that satisfies the Hedge Counterparty Collateral Threshold Rating with respect to Fitch;

(ii) assign its obligations under the related Hedge Agreement to a Person that satisfies the Hedge Counterparty Collateral Threshold Rating with respect to Fitch; or

(iii) post collateral in respect of its obligations under the related Hedge Agreement.

In addition, for so long as any Class of Notes are Outstanding under this Indenture and are rated by Fitch, if any Hedge Counterparty fails to maintain a rating by Fitch of at least "BBB-", then such Hedge Counterparty shall within 30 days, at such Hedge Counterparty's expense, transfer and assign its obligations under each related Hedge Agreement to a substitute Hedge Counterparty that has the same rating level of such Hedge Counterparty before the downgrade.

(i)Notwithstanding anything to the contrary set forth herein, for so long as any Class of Notes are Outstanding under this Indenture and are rated by Moody's, if any Hedge Counterparty drops to (A) a rating by Moody's of at least "Aa3" and such Hedge Counterparty is added to the Moody's "negative watch" list (if such Hedge Counterparty does not have a short-term debt rating from Moody's) or (B) a rating by Moody's of at least "A1" and such Hedge Counterparty is added to the Moody's "negative watch" list (or a short-term debt of at least "P-1" and such Hedge Counterparty is added to the Moody's "negative watch" list), then such Hedge Counterparty shall, within 10 Business Days, post collateral in respect of its obligations under the related Hedge Agreement.

Section 16.2 Collateral Debt Securities Purchase Agreements.

Following the Closing Date, unless a Collateral Debt Securities Purchase Agreement is necessary to comply with the provisions of this Indenture, the Issuer may acquire Collateral Debt Securities in accordance with customary settlement procedures in the relevant markets. In any event, the Issuer shall obtain from any seller of a Loan, all Underlying Instruments with respect to each Collateral Debt Security, and all Underlying Instruments related to any related Senior Tranche that govern, directly or indirectly, the rights and obligations of the owner of the Collateral Debt Security with respect to the

Underlying Term Loan, the Underlying

Mortgage Property and the Collateral Debt Security and any certificate evidencing the Collateral Debt Security.

Section 16.3 Cure Rights.

(a) If the Issuer, as holder of a Loan, has the right pursuant to the related Underlying Instruments to cure an event of default on the Underlying Term Loan, the Collateral Manager may, in accordance with the Collateral Manager Servicing Standard advance from its own funds with respect to the Loan as a reimbursable Cure Advance, all such amounts as are necessary to effect the timely cure of such event of default pursuant to the terms of the related Underlying Instruments; provided, that (i) such advances may only be made (A) to the extent that the Collateral Manager reasonably believes that such cash advances can be repaid from future payments on the related underlying commercial mortgage loan and in accordance with the Collateral Manager Servicing Standard and (B) if the Collateral Manager receives written instruction from holders of at least a Majority of the aggregate outstanding notional amount of the Preferred Shares with respect thereto, and (ii) the particular advance would not, if made, constitute a Nonrecoverable Cure Advance. The determination by the Collateral Manager that it has made a Nonrecoverable Cure Advance or that any proposed Cure Advance, if made, would constitute a Nonrecoverable Cure Advance shall be made by the Collateral Manager in its reasonable, good faith judgment in accordance with the Collateral Manager Servicing Standard and shall be evidenced by an Officer's Certificate delivered promptly to the Trustee, setting forth the basis for such determination, accompanied by an appraisal, if available, or an independent broker's opinion of the value of the Underlying Mortgage Property and any information that the Collateral Manager may have obtained and that supports such determination. All such advances shall be reimbursable only from subsequent collections from the specific Collateral Debt Security (the "Cure Collateral Debt Security") with respect to which the Cure Advance was made, in the manner specified in Section 17.2(b).

(b) No later than 11:00 a.m. on the Business Day preceding each Determination Date, the Collateral Manager may request by Officer's Certificate delivered to the Trustee, reimbursement for any Cure Advance made pursuant to Section 17.2(a), from any amounts received with respect to the related Collateral Debt Security. No later than the Payment Date related to the Determination Date for which the Collateral Manager has delivered an Officer's Certificate requesting reimbursement of a Cure Advance, the Trustee shall transfer to Collateral Manager, by wire transfer to an account identified to the Trustee in writing, the amount of such Cure Advance.

(c) Notwithstanding anything to the contrary set forth herein, the Collateral Manager shall not be required to make any Cure Advance that it determines in its reasonable, good faith judgment would constitute a Nonrecoverable Cure Advance as determined pursuant to Section 17.2(a).

Section 16.4 Purchase Right; Majority Preferred Shareholder.

If the Issuer, as holder of a Participation or B Note, has the right pursuant to the related Underlying Instruments to purchase any related Senior Tranche(s), the Issuer may, and shall if directed by the Majority Preferred Shareholder, exercise such right, if the Collateral

Manager determines based on the Collateral Manager Servicing Standard that the exercise of the option would be in the best interest of the Noteholders, but may not exercise such right if the Collateral Manager determines otherwise. The Collateral Manager shall deliver to the Trustee an Officer's Certificate certifying such determination, accompanied by an Act of the Majority Preferred Shareholder directing the Issuer to exercise such right. In connection with the purchase of any such Senior Tranche(s), the Issuer shall assign to the Majority Preferred Shareholder or its designee all of its right, title and interest in such Senior Tranche(s) in exchange for a purchase price (such price and any other associated expense of such exercise to be paid by the Majority Preferred Shareholder) of the Senior Tranche(s) (or, if the Underlying Instruments permit,

the Issuer may assign the purchase right to the Majority Preferred Shareholder or its designee; otherwise the Majority Preferred Shareholder or its designee shall fund the purchase by the Issuer, which shall then assign the Senior Tranche(s) to the Majority Preferred Shareholder or its designee) (the "Purchase Option Purchase Price"), which amount shall be delivered by the Majority Preferred Shareholder or its designee from its own funds to or upon the instruction of the Collateral Manager in accordance with terms of the Underlying Instruments related to the acquisition of such Senior Tranche(s). The Trustee or the Issuer shall execute and deliver at the Majority Preferred Shareholder's direction such instruments of transfer or assignment prepared by the Majority Preferred Shareholder, in each case without recourse, as shall be necessary to transfer title to the Majority Preferred Shareholder or its designee of the Senior Tranche(s) and the Trustee shall have no responsibility with regard to such Senior Tranche(s).

Section 16.5 Representations and Warranties Related to Subsequent Collateral Debt Securities.

(a) If the Collateral Debt Security is a Subsequent Collateral Debt Security, upon the acquisition of such Subsequent Collateral Debt Security by the Issuer, the Loan seller has made or assigned to the Issuer the following:

(i) (A) representations and warranties in form and substance substantially similar to the representations and warranties set forth as Schedule H with respect to the Underlying Term Loan and the Underlying Mortgage Property (except with respect to Mezzanine Loans) and (B) representations and warranties regarding good title, no liens, no modifications, no defaults and valid assignment with respect to the Loan itself; and

(ii) in the case of a B Note, the representations and warranties in form and substance substantially similar to the representations and warranties set forth as Schedule I with respect to such B Note;

(iii) in the case of a Participation, the representations and warranties in form and substance substantially similar to the representations and warranties set forth as Schedule J with respect to such Participation;

(iv) in the case of a Mezzanine Loan, the representations and warranties in form and substance substantially similar to the representations and warranties set forth as Schedule K with respect to such Mezzanine Loan;

(v) in the case of a Preferred Equity Security, the representations and warranties in form and substance substantially similar to the representations and warranties set forth as Schedule L with respect to such Preferred Equity Security; and

(vi) in the case of a CMBS Security, the representations and warranties in form and substance substantially similar to the representations and warranties set forth as Schedule M with respect to such CMBS Security.

(b) The representations and warranties in Section 17.4(a) with respect to the acquisition of a Subsequent Collateral Debt Security may be subject to any modification, limitation or qualification that the Collateral Manager determines to be acceptable in accordance with the Collateral Manager Servicing Standard; provided that the Collateral Manager will provide each Rating Agency with a report attached to each Monthly Report identifying each such modification, exception, limitation or qualification received with respect to the acquisition of any Subsequent Collateral Debt Security during the period covered by the Monthly Report, which report may contain explanations by the Collateral Manager as to its determinations.

(c) The Issuer shall obtain a covenant from the Person making any representation or warranty to the Issuer pursuant to Section 17.4(a) that such Person shall repurchase the related Collateral Debt Security if any such representation or warranty is breached (but only after the expiration of any permitted cure periods and failure to cure such breach). The purchase price for any Collateral Debt Security repurchased (the "Repurchase Price") shall be a

price equal to the sum of the following (in each case, without duplication) as of the date of such repurchase: (i) the outstanding principal amount thereof, plus (ii) accrued and unpaid interest on such Collateral Debt Security, plus (iii) any unreimbursed advances, plus (iv) accrued and unpaid interest on advances on the Collateral Debt Security, plus (v) any reasonable costs and expenses (including, but not limited to, the cost of any enforcement action, incurred by the Issuer or the Trustee in connection with any such purchase by a seller).

Section 16.6 Operating Advisor; Additional Debt.

If the Issuer, as holder of a B Note, a Participation, Preferred Equity Security or a Mezzanine Loan, has the right pursuant to the related Underlying Instruments to appoint the operating advisor, directing holder or Person serving a similar function under the Underlying Instruments, each of the Issuer, the Trustee and the Collateral Manager shall take such actions as are reasonably necessary to appoint the Collateral Manager to such position. If the Issuer, as holder of a B Note, a Participation or a Mezzanine Loan, has the right pursuant to the related Underlying Instruments to consent to the related borrower incurring any additional debt, such consent will be subject to satisfaction of the Rating Agency Condition.

ARTICLE 17

ADVANCING AGENT

Section 17.1 Liability of the Advancing Agent.

The Advancing Agent shall be liable in accordance herewith only to the extent of the obligations specifically imposed upon and undertaken by the Advancing Agent.

Section 17.2 Merger or Consolidation of the Advancing Agent.

(a) The Advancing Agent will keep in full effect its existence, rights and franchises as a corporation under the laws of the jurisdiction in which it was formed, and will obtain and preserve its qualification to do business as a foreign corporation in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Indenture to perform its duties under this Indenture.

(b) Any Person into which the Advancing Agent may be merged or consolidated, or any corporation resulting from any merger or consolidation to which the Advancing Agent shall be a party, or any Person succeeding to the business of the Advancing Agent shall be the successor of the Advancing Agent, hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding (it being understood and agreed by the parties hereto that the consummation of any such transaction by the Advancing Agent shall have no effect on the Trustee's obligations under Section 10.7, which obligations shall continue pursuant to the terms of Section 10.7) .

Section 17.3 Limitation on Liability of the Advancing Agent and Others.

None of the Advancing Agent or any of its affiliates, directors, officers, employees or agents shall be under any liability for any action taken or for refraining from the taking of any action in good faith pursuant to this Indenture, or for errors in judgment; provided, however, that this provision shall not protect the Advancing Agent against liability to the Issuer or Noteholders for any breach of warranties or representations made herein or any liability which would otherwise be imposed by reason of willful misfeasance, bad faith or gross negligence in the performance of duties or by reason of negligent disregard of obligations and duties hereunder. The Advancing Agent and any director, officer, employee or agent of the Advancing Agent may rely in good faith on any document of any kind prima facie properly executed and submitted by any Person respecting any matters arising hereunder. The Advancing Agent and any director, officer, employee or agent of the Advancing Agent shall be indemnified by the Issuer pursuant to the priorities set forth in Section 11.1(a) and held harmless against any loss, liability or expense incurred in connection with any legal action relating to this Indenture or the Notes, other than any loss,

liability or expense (i) specifically required to be borne by the Advancing Agent pursuant to the terms hereof or otherwise incidental to the performance of obligations and duties hereunder (except as any such loss, liability or expense shall be otherwise reimbursable pursuant to this Indenture); or (ii) incurred by reason of any breach of a representation, warranty or covenant made herein, any misfeasance, bad faith or negligence by the Advancing Agent in the performance of or negligent disregard of, obligations or duties hereunder or any violation of any state or federal securities law.

Section 17.4 Representations and Warranties of the Advancing Agent.

The Advancing Agent represents and warrants that:

(a) the Advancing Agent (i) has been duly organized, is validly existing and is in good standing under the laws of the State of Maryland, (ii) has full power and authority to own the Advancing Agent's assets and to transact the business in which it is currently engaged, and (iii) is duly qualified and in good standing under the laws of each jurisdiction where the Advancing Agent's ownership or lease of property or the conduct of the Advancing Agent's business requires, or the performance of this Indenture would require, such qualification, except for failures to be so qualified that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Advancing Agent or the ability of the Advancing Agent to perform its obligations under, or on the validity or enforceability of, the provisions of this Indenture applicable to the Advancing Agent;

(b) the Advancing Agent has full power and authority to execute, deliver and perform this Indenture; this Indenture has been duly authorized, executed and delivered by the Advancing Agent and constitutes a legal, valid and binding agreement of the Advancing Agent, enforceable against it in accordance with the terms hereof, except that the enforceability hereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law);

(c) neither the execution and delivery of this Indenture nor the performance by the Advancing Agent of its duties hereunder conflicts with or will violate or result in a breach or violation of any of the terms or provisions of, or constitutes a default under: (i) the Articles of Incorporation and bylaws of the Advancing Agent, (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement or other evidence of indebtedness or other agreement, obligation, condition, covenant or instrument to which the Advancing Agent is a party or is bound, (iii) any law, decree, order, rule or regulation applicable to the Advancing Agent of any court or regulatory, administrative or governmental agency, body or authority or arbitrator having jurisdiction over the Advancing Agent or its properties, and which would have, in the case of any of (i), (ii) or (iii) of this subsection (c), either individually or in the aggregate, a material adverse effect on the business, operations, assets or financial condition of the Advancing Agent or the ability of the Advancing Agent to perform its obligations under this Indenture; and

(d) no litigation is pending or, to the best of the Advancing Agent's knowledge, threatened, against the Advancing Agent that would materially and adversely affect the execution, delivery or enforceability of this Indenture or the ability of the Advancing Agent to perform any of its obligations under this Indenture in accordance with the terms hereof.

(e) no consent, approval, authorization or order of or declaration or filing with any government, governmental instrumentality or court or other person is required for the performance by the Advancing Agent of its duties hereunder, except such as have been duly made or obtained.

Section 17.5 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Advancing Agent and no appointment of a successor Advancing Agent pursuant to this Article 18 shall

become effective until the acceptance of appointment by the successor Advancing Agent under Section 18.6.

(b) The Advancing Agent may resign at any time by giving written notice thereof to the Issuer, the Co-Issuer, the Trustee, the Collateral Manager, each Hedge Counterparty, the Noteholders and each Rating Agency.

(c) The Advancing Agent may be removed at any time by Act of 66-2/3% of the Preferred Shares upon written notice delivered to the Trustee and to the Issuer and the Co-Issuer.

(d) If the Advancing Agent shall resign or be removed, upon receiving such notice of resignation or removal, the Issuer and the Co-Issuer shall promptly appoint a successor advancing agent by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the Advancing Agent so resigning and one copy to the successor Advancing Agent, together with a copy to each Noteholder, the Trustee, each Hedge Counterparty and the Collateral Manager; provided, that such successor Advancing Agent shall be appointed only subject to satisfaction of the Rating Agency Condition and upon the written consent of a Majority of the Preferred Shares. If no successor Advancing Agent shall have been appointed and an instrument of acceptance by a successor Advancing Agent shall not have been delivered to the Advancing Agent within 30 days after the giving of such notice of resignation, the resigning Advancing Agent, the Trustee or any Preferred Shareholder, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Advancing Agent.

(e) The Issuer and the Co-Issuer shall give prompt notice of each resignation and each removal of the Advancing Agent and each appointment of a successor Advancing Agent by mailing written notice of such event by first class mail, postage prepaid, to each Rating Agency, each Hedge Counterparty and to the Holders of the Notes as their names and addresses appear in the Notes Register.

(f) No resignation or removal of the Advancing Agent and no appointment of a Successor Advancing Agent shall become effective until the acceptance of appointment by the Successor Advancing Agent.

Section 17.6 Acceptance of Appointment by Successor Advancing Agent.

(a) Every successor Advancing Agent appointed hereunder shall execute, acknowledge and deliver to the Issuer, the Co-Issuer, each Hedge Counterparty, the Collateral Manager, the Trustee and the retiring Advancing Agent an instrument accepting such appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Advancing Agent shall become effective and such successor Advancing Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of the retiring Advancing Agent.

(b) No appointment of a successor Advancing Agent shall become effective unless each Rating Agency has confirmed in writing that the employment of such successor would not adversely affect the rating on the Notes.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Indenture as of the day and year first above written.

Executed as a Deed

ARBOR REALTY MORTGAGE SECURITIES
SERIES 2004-1, LTD., as Issuer

By /s/ Guy R. Milone, Jr.

Name: Guy R. Milone, Jr.
Title: Authorized Signatory

Witness:

/s/ Patrice Bourdreau

ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1 LLC, as Co-Issuer

By: /s/ Guy R. Milone, Jr.

Name: Guy R. Milone, Jr.
Title: Authorized Signatory

LASALLE BANK NATIONAL ASSOCIATION, solely as Trustee, Paying Agent, Calculation Agent, Transfer Agent, Custodial Securities Intermediary and Notes Registrar and not in its individual capacity

By: /s/ Barbara A. Wolf

Name: Barbara A. Wolf
Title: Vice President

ARBOR REALTY SR, INC., as Advancing Agent

By: /s/ Guy R. Milone, Jr.

Name: Guy R. Milone, Jr.
Title: Authorized Signatory

SCHEDULE A

MOODY'S LOSS SCENARIO MATRIX

The following information has been provided to the Issuer by Moody's and the capitalized terms used therein and not otherwise defined with respect to types of securities have the meanings ascribed thereto by Moody's.

For CMBS Securities the recovery rate is assumed as follows:

	RATING OF A TRANCHE AT ISSUANCE					
TRANCHE AS % OF CAPITAL STRUCTURE AT ISSUANCE	Aaa	Aa	A	Baa	Ba	B
greater than 70%	85%	80%	65%	55%	45%	30%
greater than 10% and less than or equal to 70%	75%	70%	55%	45%	35%	25%
greater than 5% and less than or equal to 10%	65%	55%	45%	35%	25%	15%
greater than 2% and less than or equal to 5%	55%	45%	35%	30%	20%	10%
less than or equal to 2%	45%	35%	25%	20%	10%	5%

With respect to Loans (other than Mezzanine Loans), the Recovery Rate is as follows:

	RATING OF A TRANCHE AT ISSUANCE(1)						
TRANCHE AS % OF CAPITAL STRUCTURE AT ISSUANCE(1)	Aaa	Aa	A	Baa	Ba	B	BELOW B
greater than 70%	85%	80%	65%	55%	45%	30%	15%
greater than 10% and less than or equal to 70%	75%	70%	55%	45%	35%	25%	10%
greater than 5% and less than or equal to 10%	65%	55%	45%	35%	25%	15%	0%
greater than 2% and less than or equal to 5%	55%	45%	35%	30%	20%	10%	0%
less than or equal to 2%	45%	35%	25%	20%	10%	5%	0%

With respect to Mezzanine Loans and Preferred Equity Securities, the Recovery Rate is as follows:

TRANCHE AS % OF CAPITAL STRUCTURE AT ISSUANCE(2)	RATING OF A TRANCHE AT ISSUANCE(3)						
	Aaa	Aa	A	Baa	Ba	B	BELOW B
greater than 70%	75%	70%	55%	45%	35%	35%	10%
greater than 10% and less than or equal to 70%	65%	60%	45%	35%	25%	25%	5%
greater than 5% and less than or equal to 10%	55%	45%	35%	25%	15%	15%	0%
greater than 2% and less than or equal to 5%	45%	35%	25%	20%	10%	10%	0%
less than or equal to 2%	35%	25%	15%	10%	0%	0%	0%

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1 For purposes of calculating the tranche as a percentage of capital structure at issuance with respect to a Loan, such amount shall be a percentage equal to a fraction, the numerator of which is the aggregate Principal Balance of (a) such Loan and (b) any Loan which is pari passu with such Loan and secured by the same commercial mortgage and the denominator of which is the total principal balance of the commercial mortgage loan related to such Loan.

2 For purposes of calculating the tranche as a percentage of capital structure at issuance with respect to a Mezzanine Loan, such amount shall be a percentage equal to a fraction, the numerator of which is the aggregate Principal Balance of (a) such Mezzanine Loan and (b) any Mezzanine Loan which is pari passu with such Mezzanine Loan and secured by an interest in an entity related to the same commercial property and the denominator of which is the total principal balance of any Loans related to the same commercial property.

The Moody's Recovery Rate for REIT unsecured debt securities is 40% (other than for mortgage and healthcare related REIT debt securities, for which it is 10%).

If the timely payment of principal of and interest on a Collateral Debt Security is guaranteed by another person or entity, the Moody's Recovery Rate will be determined in consultation with Moody's.

SCHEDULE B

STANDARD & POOR'S RECOVERY MATRIX

A. IF THE COLLATERAL DEBT SECURITY IS A CMBS SECURITY THE S&P RECOVERY RATE WILL BE AS FOLLOWS:

SENIOR ASSET CLASS	LIABILITY RATING => AAA	AA	A	BBB	BB	B	CCC
AAA	80.0%	85.0%	90.0%	90.0%	90.0%	90.0%	90.0%
AA	70.0%	75.0%	85.0%	90.0%	90.0%	90.0%	90.0%
A	60.0%	65.0%	75.0%	85.0%	90.0%	90.0%	90.0%
BBB	50.0%	55.0%	65.0%	75.0%	85.0%	85.0%	85.0%

JUNIOR ASSET CLASS	AAA	AA	A	BBB	BB	B	CCC
AAA							
AA	55.0%	65.0%	75.0%	80.0%	80.0%	80.0%	80.0%
A	40.0%	45.0%	55.0%	65.0%	80.0%	80.0%	80.0%
BBB	30.0%	35.0%	40.0%	45.0%	50.0%	60.0%	70.0%
BB	10.0%	10.0%	10.0%	25.0%	35.0%	40.0%	50.0%
B	2.5%	5.0%	5.0%	10.0%	10.0%	20.0%	25.0%
CCC	0.0%	0.0%	0.0%	0.0%	2.5%	5.0%	5.0%

B. If the Collateral Debt Security is a REIT Debt Security or a debt security issued by a real estate operating company, the recovery rate will be 40%. The recovery rate will be 50% for monolines and 40% for all other third party guarantees. If the Underlying Instruments permit investment in non-U.S. securities in excess of 20% of the underlying collateral by principal amount of underlying collateral, the recovery rate will be assigned by S&P upon the acquisition of such security by the Issuer.

C. If the Collateral Debt Security is a whole Loan, the recovery rate will be 50%. If the Participation is a senior Participation, senior B-Note or Rake Bond at the level of the underlying commercial mortgage loan, the recovery rate will be 35%; all other Participations, B Notes, Single Asset Mortgage Securities or Single Borrower Mortgage Securities will have a recovery rate of 30%. If the Collateral Debt Security is a Mezzanine Loan or Preferred Equity Security, the recovery rate will be 25%.

SCHEDULE C

S&P NON-ELIGIBLE NOTCHING ASSET TYPES

The following asset classes are not eligible to be notched.
Credit estimates must be performed.
This schedule may be modified or adjusted at any time, so please verify applicability.

ASSET TYPE

(1) Non-U.S. Structured Finance Securities

(2) Guaranteed Securities

(3) CDOs of Structured Finance and Real Estate

(4) CBOs of CDOs

(5) CLOs of Distressed Debt

(6) Mutual Fund Fee Securities

(7) Catastrophic Bonds

(8) First Loss Tranches of any public securitization

(9) Synthetics

(10) Synthetic CBOs

(11) Combination Securities

(12) Re-REMICs

(13) Market value collateralized debt obligations

(14) Net Interest Margin Securities (NIMs)

SCHEDULE D

S&P ELIGIBLE NOTCHING ASSET TYPES

Asset classes eligible for notching if they are not first loss tranches or combination securities. If the security is rated by two agencies, notch down as shown below based on the lowest rating. If rated only by one agency, then notch down what is shown below plus one more notch. This schedule may be modified or adjusted at any time, so please verify applicability.

		ISSUED PRIOR TO 8/1/01 CURRENT RATING IS:		ISSUED AFTER 8/1/01 CURRENT RATING IS:	
		INV. GRADE	NON INV. GRADE	INV. GRADE	NON INV. GRADE
1.	CONSUMER ABS Automobile Loan Receivable Securities Automobile Lease Receivable Securities Credit Card Securities Healthcare Securities Student Loan Securities	-1	-2	-2	-3
2.	COMMERCIAL ABS Cargo Securities Equipment Leasing Securities Aircraft Leasing Securities Small Business Loan Securities Restaurant and Food Services Securities Tobacco Litigation Securities	-1	-2	-2	-3
3.	Non-RE-REMIC RMBS Manufactured Housing Loan Securities	-1	-2	-2	-3
4.	Non-RE-REMIC CMBS CMBS - Conduit CMBS - Credit Tenant Lease CMBS - Large Loan CMBS - Single Borrower CMBS - Single Property	-1	-2	-2	-3
5.	REITs REIT - Multifamily & Mobile Home Park REIT - Retail REIT - Hospitality REIT - Office REIT - Industrial REIT - Healthcare REIT - Warehouse REIT - Self Storage REIT - Mixed Use	-1	-2	-2	-3
6.	SPECIALTY STRUCTURED Stadium Financings Project Finance Future flows	-3	-4	-3	-4

	PRIOR TO 8/1/01 CURRENT RATING IS:		ISSUD PRIOR TO 8/1/01 CURRENT RATING IS:	
7. RESIDENTIAL MORTGAGES Residential "A" Residential "B/C" Home equity loans	-1	-2	-2	-3
8. REAL ESTATE OPERATING COMPANIES	-1	-2	-2	-3

ANNEX 1 - SCHEDULE D

Loans (including Participations, B Notes and Mezzanine Loans): With respect to Loans (including Participations, B Notes and Mezzanine Loans), if such Loan is not rated by S&P and the aggregate Principal Balance of Loans not rated (or shadow rated) by S&P does not exceed 15% of the Aggregate Collateral Balance, then the S&P Rating of such Loan will be the rating corresponding to the LTV of such Loan classified by the type of mortgage property securing such Loan or the related underlying Loan as set forth on Annex 1 (whole Loans), Annex 2 (B Notes and Participations) and Annex 3 (Mezzanine Loans) with respect to the specific Loan type.

STANDARD & POOR'S SHADOW RATING GRID - WHOLE LOANS

	MALLS	
OFFICE, INDUSTRIAL, NON-MALL RETAIL	ALL IN	

	OFFICE, INDUSTRIAL, NON-MALL RETAIL			MALLS		
	ALL IN LTV < 85%	ALL IN LTV 85.1-99.9%	ALL IN LTV > 100%	ALL IN LTV < 85%	ALL IN LTV 85.1-99.9%	ALL IN LTV > 100%
AAA	35.375%	33.625%	31.875%	40.250%	38.250%	36.250%
AA+	37.125%	35.375%	33.625%	42.250%	40.250%	38.250%
AA	38.875%	37.125%	35.375%	44.250%	42.250%	40.250%
AA-	40.042%	38.292%	36.542%	45.583%	43.583%	41.583%
A+	41.208%	39.458%	37.708%	46.917%	44.917%	42.917%
A	42.375%	40.625%	38.875%	48.250%	46.250%	44.250%
A-	43.542%	41.792%	40.042%	49.583%	47.583%	45.583%
BBB+	44.708%	42.958%	41.208%	50.917%	48.917%	46.917%
BBB	45.875%	44.125%	42.375%	52.250%	50.250%	48.250%
BBB-	48.500%	46.750%	45.000%	55.250%	53.250%	51.250%
BB+	52.000%	50.250%	48.500%	59.250%	57.250%	55.250%
BB	55.500%	53.750%	52.000%	63.250%	61.250%	59.250%
BB-	57.250%	55.500%	53.750%	65.250%	63.250%	61.250%
B+	59.000%	57.250%	55.500%	67.250%	65.250%	63.250%
B	60.750%	59.000%	57.250%	69.250%	67.250%	65.250%
B-	62.500%	60.750%	59.000%	71.250%	69.250%	67.250%
CCC+	64.250%	62.500%	60.750%	73.250%	71.250%	69.250%
CCC	66.000%	64.250%	62.500%	75.250%	73.250%	71.250%
CCC-	67.750%	66.000%	64.250%	77.250%	75.250%	73.250%

	MULTIFAMILY & MANUFACTURED HOUSING			HOTELS		
	ALL IN LTV < 85%	ALL IN LTV 85.1-99.9%	ALL IN LTV > 100%	ALL IN LTV < 85%	ALL IN LTV 85.1-99.9%	ALL IN LTV > 100%
AAA	37.125%	35.375%	33.625%	23.125%	21.875%	20.625%
AA+	38.875%	37.125%	35.375%	24.375%	23.125%	21.875%
AA	40.625%	38.875%	37.125%	25.625%	24.375%	23.125%
AA-	41.792%	40.042%	38.292%	26.458%	25.208%	23.958%
A+	42.958%	41.208%	39.458%	27.292%	26.042%	24.792%
A	44.125%	42.375%	40.625%	28.125%	26.875%	25.625%
A-	45.292%	43.542%	41.792%	28.958%	27.708%	26.458%
BBB+	46.458%	44.708%	42.958%	29.792%	28.542%	27.292%
BBB	47.625%	45.875%	44.125%	30.625%	29.375%	28.125%
BBB-	50.250%	48.500%	46.750%	33.750%	32.500%	31.250%
BB+	53.750%	52.000%	50.250%	36.250%	35.000%	33.750%
BB	57.250%	55.500%	53.750%	38.750%	37.500%	36.250%
BB-	59.000%	57.250%	55.500%	40.000%	38.750%	37.500%
B+	60.750%	59.000%	57.250%	41.250%	40.000%	38.750%
B	62.500%	60.750%	59.000%	42.500%	41.250%	40.000%
B-	64.250%	62.500%	60.750%	43.750%	42.500%	41.250%
CCC+	66.000%	64.250%	62.500%	45.000%	43.750%	42.500%
CCC	67.750%	66.000%	64.250%	46.250%	45.000%	43.750%
CCC-	69.500%	67.750%	66.000%	47.500%	46.250%	45.000%

LTVs are based on MAI appraisal values (no more than 6 months old)

ANNEX 2 - SCHEDULE D

STANDARD & POOR'S SHADOW RATING GRID - B NOTES AND PARTICIPATIONS

	ALL IN LTV < 85%	ALL IN LTV 85.1-99.9%	ALL IN LTV > 100%	LTV < 85%	85.1- 99.9%	LTV > 100%
AAA	34.125%	32.375%	30.625%	39.000%	37.000%	35.000%
AA+	35.875%	34.125%	32.375%	41.000%	39.000%	37.000%
AA	37.625%	35.875%	34.125%	43.000%	41.000%	39.000%
AA-	38.792%	37.042%	35.292%	44.333%	42.333%	40.333%
A+	39.958%	38.208%	36.458%	45.667%	43.667%	41.667%
A	41.125%	39.375%	37.625%	47.000%	45.000%	43.000%
A-	42.292%	40.542%	38.792%	48.333%	46.333%	44.333%
BBB+	43.458%	41.708%	39.958%	49.667%	47.667%	45.667%
BBB	44.625%	42.875%	41.125%	51.000%	49.000%	47.000%
BBB-	47.250%	45.500%	43.750%	54.000%	52.000%	50.000%
BB+	50.750%	49.000%	47.250%	58.000%	56.000%	54.000%
BB	54.250%	52.500%	50.750%	62.000%	60.000%	58.000%
BB-	56.000%	54.250%	52.500%	64.000%	62.000%	60.000%
B+	57.750%	56.000%	54.250%	66.000%	64.000%	62.000%
B	59.500%	57.750%	56.000%	68.000%	66.000%	64.000%
B-	61.250%	59.500%	57.750%	70.000%	68.000%	66.000%
CCC+	63.000%	61.250%	59.500%	72.000%	70.000%	68.000%
CCC	64.750%	63.000%	61.250%	74.000%	72.000%	70.000%
CCC-	66.500%	64.750%	63.000%	76.000%	74.000%	72.000%

	MULTIFAMILY & MANUFACTURED HOUSING			HOTELS		
	ALL IN LTV < 85%	ALL IN LTV 85.1-99.9%	ALL IN LTV > 100%	ALL IN LTV < 85%	ALL IN LTV 85.1- 99.9%	ALL IN LTV > 100%
AAA	35.875%	34.125%	32.375%	21.875%	20.625%	19.375%
AA+	37.625%	35.875%	34.125%	23.125%	21.875%	20.625%
AA	39.375%	37.625%	35.875%	24.375%	23.125%	21.875%
AA-	40.542%	38.792%	37.042%	25.208%	23.958%	22.708%
A+	41.708%	39.958%	38.208%	26.042%	24.792%	23.542%
A	42.875%	41.125%	39.375%	26.875%	25.625%	24.375%
A-	44.042%	42.292%	40.542%	27.708%	26.458%	25.208%
BBB+	45.208%	43.458%	41.708%	28.542%	27.292%	26.042%
BBB	46.375%	44.625%	42.875%	29.375%	28.125%	26.875%
BBB-	49.000%	47.250%	45.500%	32.500%	31.250%	30.000%
BB+	52.500%	50.750%	49.000%	35.000%	33.750%	32.500%
BB	56.000%	54.250%	52.500%	37.500%	36.250%	35.000%
BB-	57.750%	56.000%	54.250%	38.750%	37.500%	36.250%
B+	59.500%	57.750%	56.000%	40.000%	38.750%	37.500%
B	61.250%	59.500%	57.750%	41.250%	40.000%	38.750%
B-	63.000%	61.250%	59.500%	42.500%	41.250%	40.000%
CCC+	64.750%	63.000%	61.250%	43.750%	42.500%	41.250%
CCC	66.500%	64.750%	63.000%	45.000%	43.750%	42.500%
CCC-	68.250%	66.500%	64.750%	46.250%	45.000%	43.750%

LTVs are based on MAI appraisal values (no more than 6 months old)

EXHIBIT A

FORM OF CLASS A NOTE
[REGULATION S GLOBAL SECURITY] [RULE 144A GLOBAL SECURITY]

THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND NEITHER THE ISSUER NOR THE CO-ISSUER HAS BEEN REGISTERED UNDER THE UNITED STATES INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "1940 ACT"). THIS NOTE MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED, EXCEPT (A)(1) TO A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT (A "QIB") WHO IS A QUALIFIED PURCHASER AS DEFINED IN SECTION 2(A)(51) OF THE INVESTMENT COMPANY

ACT (A "QUALIFIED PURCHASER") AND IS EITHER PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER WHO IS A QUALIFIED PURCHASER, IN A PRINCIPAL AMOUNT OF NOT LESS THAN $500,000 (AND INTEGRAL MULTIPLES OF $1,000 IN EXCESS THEREOF), FOR THE PURCHASER AND FOR EACH SUCH ACCOUNT, IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, SUBJECT TO THE SATISFACTION OF CERTAIN CONDITIONS SPECIFIED IN THE INDENTURE, OR (2) TO A NON-U.S. PERSON IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 903 OR RULE 904 (AS APPLICABLE) OF REGULATION S UNDER THE SECURITIES ACT IN A PRINCIPAL AMOUNT OF NOT LESS THAN $500,000 (AND INTEGRAL MULTIPLES OF $1,000 IN EXCESS THEREOF), SUBJECT TO THE SATISFACTION OF CERTAIN CONDITIONS SPECIFIED IN THE INDENTURE, AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES AND ANY OTHER APPLICABLE JURISDICTION. EACH PURCHASER OF A GLOBAL SECURITY WILL BE DEEMED TO HAVE MADE THE REPRESENTATIONS AND AGREEMENTS SET FORTH IN SECTION 2.5 OF THE INDENTURE. ANY TRANSFER IN VIOLATION OF THE FOREGOING WILL BE OF NO FORCE AND EFFECT, WILL BE VOID AB INITIO, AND WILL NOT OPERATE TO TRANSFER ANY RIGHTS TO THE TRANSFEREE, NOTWITHSTANDING ANY INSTRUCTIONS TO THE CONTRARY TO THE ISSUER, THE CO-ISSUER, AS APPLICABLE, THE TRUSTEE OR ANY INTERMEDIARY. IF AT ANY TIME, THE ISSUER AND THE CO-ISSUER, IF APPLICABLE, DETERMINE OR ARE NOTIFIED THAT THE HOLDER OF SUCH BENEFICIAL INTEREST IN SUCH SECURITY WAS IN BREACH, AT THE TIME GIVEN, OF ANY OF THE REPRESENTATIONS SET FORTH IN THE INDENTURE, THE TRUSTEE MAY CONSIDER THE ACQUISITION OF THIS NOTE OR SUCH INTEREST IN SUCH SECURITY VOID AND REQUIRE THAT THIS NOTE OR SUCH INTEREST HEREIN BE TRANSFERRED TO A PERSON DESIGNATED BY THE ISSUER AND THE CO-ISSUER, IF APPLICABLE.

ANY TRANSFER, PLEDGE OR OTHER USE OF THIS NOTE FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN, UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC"), NEW YORK, NEW YORK, TO THE CO-ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR OF SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO.).

THIS NOTE IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS NOTE MAY NOT BE EXCHANGED OR TRANSFERRED IN WHOLE OR IN PART FOR A NOTE REGISTERED IN THE NAME OF ANY PERSON OTHER THAN THAT DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

PRINCIPAL OF THIS NOTE IS PAYABLE AS SET FORTH HEREIN. ACCORDINGLY, THE OUTSTANDING PRINCIPAL OF THIS NOTE AT ANY TIME MAY BE LESS THAN THE AMOUNT SHOWN

ON THE FACE HEREOF. ANY PERSON ACQUIRING THIS NOTE MAY ASCERTAIN ITS CURRENT PRINCIPAL AMOUNT BY INQUIRY OF THE TRUSTEE.

ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1, LTD.
ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1 LLC

CLASS A SENIOR SECURED
FLOATING RATE TERM NOTE DUE 2040

No. [Reg. S][144A]/R-___ [Up to]
CUSIP No. U.S. $182,910,000

Each of ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1, LTD., an exempted company incorporated in the Cayman Islands (the "Issuer") and ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1 LLC, a limited liability company formed under the laws of Delaware (the "Co-Issuer") for value received, hereby promises to pay to CEDE & CO. or its registered assigns (a) upon presentation and surrender of this Note (except as otherwise permitted by the Indenture referred to below), the principal sum of up to ONE HUNDRED EIGHTY TWO MILLION NINE HUNDRED TEN THOUSAND United States Dollars (U.S. $182,910,000) on February 20, 2040 (the "Stated Maturity"), to the extent not previously paid, in accordance with the Indenture referred to below unless the unpaid principal of this Note becomes due and payable at an earlier date by declaration of acceleration, call for redemption or otherwise and (b) the Class A Interest Distribution Amount allocable to this Note in accordance with the Indenture payable initially on

April 21, 2005, and quarterly on each July 21, October 21, January 21 and April 21 thereafter (or if such day is not a Business Day, then on the next succeeding Business Day) (each, a "Payment Date"). Interest shall be computed on the basis of the actual number of days in the Interest Accrual Period applicable to the Class A Notes divided by 360. The interest so payable on any Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Note (or one or more predecessor Notes) is registered at the close of business on the Record Date for such interest, which shall be the fifteenth day (whether or not a Business Day) prior to the applicable Payment Date.

The obligations of the Issuer and the Co-Issuer under this Note and the Indenture are limited recourse obligations of the Issuer and the Co-Issuer payable solely from the Collateral Debt Securities and other Assets pledged by the Issuer, and in the event the Collateral Debt Securities and other such Assets are insufficient to satisfy such obligations, any claims of the Holders of the Notes shall be extinguished.

The payment of the interest on this Note is senior to the payments of the principal of and interest on the Class B, Class C Notes, the Class D Notes and the Preferred Shares. So long as any Class A Notes are Outstanding, the Class B Notes, Class C Notes, Class D Notes and the Preferred Shares will receive payments only in accordance with the Priority of Payments. The principal of this Note shall be due and payable no later than the Stated Maturity unless the unpaid principal of such Note becomes due and payable at an earlier date by declaration of acceleration, call for redemption or otherwise.

Payments in respect of principal and interest and any other amounts due on any Payment Date on this Note shall be payable by the Trustee or a Paying Agent, subject to any laws or regulations applicable thereto, by wire transfer in immediately available funds to a Dollar account maintained by the Registered Holder hereof; provided that the Registered Holder shall have provided wiring instructions to the Trustee on or before the related Record Date, or, if wire transfer cannot be effected, by Dollar check drawn on a bank as provided in the Indenture and mailed to the Registered Holder at its address in the Notes Register.

Interest will cease to accrue on this Note, or in the case of a partial repayment, on such part, from the date of repayment or Stated Maturity unless payment of principal is improperly withheld or unless a Default is otherwise made with respect to such payments of principal.

Notwithstanding the foregoing, the final payment of interest and principal due on this Note shall be made only upon presentation and surrender of this Note (except as otherwise provided in the Indenture) at the Corporate Trust Office of the Trustee or at any Paying Agent.

The Registered Holder of this Note shall be treated as the owner hereof for all purposes.

Except as specifically provided herein and in the Indenture, neither the Issuer nor the Co-Issuer shall be required to make any payment with respect to any tax, assessment or other governmental charge imposed by any government or any political subdivision or taxing authority thereof or therein.

Unless the certificate of authentication hereon has been executed by the Trustee by the manual signature of one of its authorized officers, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

This Note is one of a duly authorized issue of Class A Senior Secured Floating Rate Term Notes Due 2040, of the Issuer and the Co-Issuer (the "Class A Notes"), limited in aggregate principal amount to U.S. $182,910,000 to be issued under an indenture dated as of January 19, 2005 (the "Indenture") by and among the Issuer, the Co-Issuer, LaSalle Bank National Association as trustee, paying agent, calculation agent, transfer agent, custodial securities intermediary and notes registrar (in such capacity and together with any successor trustee permitted under the Indenture, the "Trustee") and Arbor Realty SR, Inc., as advancing agent. Also authorized under the Indenture are (a) U.S. $51,590,000 Class B Second Priority Floating Rate Term Notes Due 2040 (the "Class B Notes"), (b) U.S. $50,417,000 Class C Third Priority Floating Rate Term Notes Due 2040 (the "Class C Notes") and (c) U.S. $20,402,000 Class D Fourth Priority Floating Rate Term Notes Due 2040 (the "Class D Notes", together with

the Class A Notes, the Class B Notes and the Class C Notes, the "Notes").

The Issuer will also issue 163,707,380 Preferred Shares having a par value of U.S. $0.01 per share and a notional amount of U.S. $1.00 per share (the "Preferred Shares"), under the Issuer's Memorandum and Articles of Association as part of its issued share capital.

Reference is hereby made to the Indenture and all indentures supplemental thereto for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Issuer, the Co-Issuer, the Trustee, the Holders of the Notes and the Preferred Shareholders and the terms upon which the Notes and the Preferred Shares are, and are to be, executed, authenticated and delivered.

Payments of principal of the Class A Notes shall be payable in accordance with Section 11.1(a) of the Indenture.

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Indenture.

Pursuant to Section 9.1 of the Indenture, the Notes are subject to redemption by the Issuer at the direction of the Collateral Manager, in whole but not in part, upon notice given in the manner provided in the Indenture, on or after the Payment Date on which the Aggregate Outstanding Amount of the Notes (excluding any Class C Capitalized Interest or Class D Capitalized Interest) has been reduced to 10% of the Aggregate Outstanding Amount of the Notes on the Closing Date; provided that no such redemption may be made until any payments due and payable upon a termination of each Hedge Agreement shall be made in accordance with the procedures as set forth therein; provided, further, that the funds available to be used for such redemption will be sufficient to pay the Total Redemption Price.

Pursuant to Section 9.1 of the Indenture, the Notes and the Preferred Shares are subject to redemption by the Issuer at a price equal to the applicable Redemption Price, on any Payment Date on or after the Payment Date occurring in January 2008 at the direction of the Issuer (such redemption, an "Optional Redemption"), in whole but not in part (i) by Act of a Majority of the Preferred Shares delivered to the Trustee, or (ii) at the direction of the Collateral Manager unless a Majority of the Preferred Shares object; provided, however, that any payments due and payable upon a termination of each Hedge Agreement will be made in accordance with the terms thereof and the Indenture; and provided further, the funds available to be used for such Optional Redemption will be sufficient to pay the Total Redemption Price.

Pursuant to Section 9.2 of the Indenture, the Notes and the Preferred Shares are subject to redemption by the Issuer, during the period from and including the Payment Date occurring in January 2015 and to but not including the first Payment Date on which the Clean-up Call may be exercised, in whole but not in part, if a Successful Auction is completed (such redemption, an "Auction Call Redemption"), at their applicable Redemption Prices; provided, that any payments due and payable upon a termination of each Hedge Agreement shall be made on the Auction Call Redemption Date in accordance with the terms thereof and in the Indenture; provided, further, that the funds available to be used for such Auction Call Redemption will be sufficient to pay the Total Redemption Price. In addition, the Notes are subject to redemption by the Issuer and the Co-Issuer or, in the case of the Preferred Shares, by the Issuer, upon notice given in the manner provided below, on any Payment Date under certain circumstances as provided in the Indenture. The Redemption Price for any Note redeemed pursuant to Section 9.1 or Section 9.2 of the Indenture shall be as set forth in the Indenture.

In the case of any redemption of the Notes, interest installments whose Payment Date is on or prior to the applicable redemption date will be payable to the Holders of such Notes (or one or more predecessor Notes) registered as such at the close of business on the relevant Record Date. Notes for whose redemption and payment provision is made in accordance with the Indenture shall cease to bear interest on the applicable redemption date (unless the Issuer shall default in the payment of the Redemption Price).

Pursuant to Section 9.6 of the Indenture, if any Coverage Tests applicable to any Class of Notes are not met on a Measurement Date, then on the following Payment Date certain Interest Proceeds and certain Principal Proceeds

may be used to redeem the Notes, in the order and manner provided in Section 9.6 of the Indenture, until each applicable Coverage Test is satisfied.

Pursuant to Section 9.7 of the Indenture, the Notes may be amortized in part by the Issuer (at the election and direction of the Collateral Manager) if, during the Reinvestment Period, under certain circumstances, the Collateral Manager has been unable, for a period of at least 30 consecutive days, to identify Substitute Collateral Debt Securities that it determines would be appropriate and would meet the Eligibility Criteria in sufficient amounts to permit the reinvestment of all or a portion of the Principal Proceeds then on deposit in the Principal Collection Account and the amounts on deposit in the Unused Proceeds Account in Substitute Collateral Debt Securities.

If an Event of Default shall occur and be continuing, the Class A Notes may become or be declared due and payable in the manner and with the effect provided in the Indenture.

By written notice to the Issuer, the Co-Issuer, the Trustee and each Hedge Counterparty, a Majority of each and every Class of Notes (voting as a separate Class) may rescind a declaration of acceleration of the maturity of the Notes at any time prior to a judgment or decree for payment of money due, provided that certain conditions set forth in the Indenture are satisfied.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuer and the Co-Issuer and the rights of the Holders under the Indenture at any time by the Issuer and the Co-Issuer with the consent of each Hedge Counterparty, a Majority of each Class of Notes adversely affected thereby and a Majority of the Preferred Shares adversely affected thereby and subject to satisfaction of the Rating Agency Condition. Upon the execution of any supplemental indenture, the Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of the Indenture for all purposes; and every Holder of Notes theretofore authenticated and delivered thereunder shall be bound thereby. The Indenture also contains provisions permitting, on behalf of the Holders of all the Notes, a Majority of each and every Class of Notes (voting as a separate Class) to waive compliance by the Issuer with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligations of the Issuer and the Co-Issuer, which are absolute and unconditional to the extent permitted by applicable law, to pay the principal of and interest on this Note at the times, places and rate, and in the coin or currency, herein prescribed.

The Notes are issuable in minimum denominations of $500,000 and integral multiples of $1,000 in excess thereof.

The principal of each Note shall be payable at the Stated Maturity thereof unless the unpaid principal of such Note becomes due and payable on an earlier date by declaration of acceleration, call for redemption or otherwise.

The term "Issuer" as used in this Note includes any successor to the Issuer under the Indenture and the term "Co-Issuer" as used in this Note includes any successor to the Co-Issuer under the Indenture.

The Class A Notes are non-recourse obligations of the Issuer and the Co-Issuer and are limited in right of payment to amounts available from the Assets as provided in the Indenture. No other assets will be available to satisfy payments on the Class A Notes.

Each purchaser and any subsequent transferee of this Note or any interest herein shall, by virtue of its purchase or other acquisition of this Note or interest herein, be deemed to have agreed to treat this Note as debt for U.S. federal income tax purposes.

No service charge shall be made for exchange or registration of transfer of this Note, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The remedies of the Trustee or the Holder hereof, as provided herein or in the Indenture, shall be cumulative and concurrent and may be pursued

solely against the assets of the Issuer and the Co-Issuer. No failure on the part of the Holder in exercising any right or remedy hereunder shall operate as a waiver or release thereof, nor shall any single or partial exercise of any such right or remedy preclude any other further exercise thereof or the exercise of any other right or remedy hereunder.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

THE HOLDER OF THIS NOTE AGREES NOT TO CAUSE THE FILING OF A PETITION IN BANKRUPTCY AGAINST THE ISSUER OR THE CO-ISSUER IN ANY APPLICABLE OR RELEVANT JURISDICTION UNTIL AT LEAST ONE YEAR AND ONE DAY, OR IF LONGER THE APPLICABLE PREFERENCE PERIOD THEN IN EFFECT PLUS ONE DAY, AFTER THE PAYMENT IN FULL OF ALL NOTES ISSUED UNDER THE INDENTURE.

AS PROVIDED IN THE INDENTURE, THE INDENTURE AND THE NOTES SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED THEREIN WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

IN WITNESS WHEREOF, the Issuer has caused this Note to be duly executed.

Dated as of January 19, 2005

ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1, LTD.,
as Issuer

By: _____
Name:
Title:

ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1 LLC,
as Co-Issuer

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

This is one of the Notes referred to in the within-mentioned Indenture.

LASALLE BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

ASSIGNMENT FORM

For value received _____

hereby sell, assign and transfer unto

_____

_____

Please insert social security or
other identifying number of assignee

Please print or type name
and address, including zip code,
of assignee:

the within Note and does hereby irrevocably constitute and appoint_____ Attorney to transfer the Note on the books of the Issuer with full power of substitution in the premises.

Date: Your Signature:

(Sign exactly as your name appears on this Note)

SCHEDULE OF EXCHANGES IN GLOBAL SECURITY

On the Closing Date the Principal Amount of this Note was $182,910,000. The following exchanges of a part of this Global Security have been made since the Closing Date:

DATE OF EXCHANGE	AMOUNT OF DECREASE IN PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY	AMOUNT OF INCREASE IN PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY	PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY FOLLOWING SUCH DECREASE (OR INCREASE)	SIGNATURE OF AUTHORIZED OFFICER OF TRUSTEE OR SECURITIES CUSTODIAN

EXHIBIT B

FORM OF CLASS B NOTE
[REGULATION S GLOBAL SECURITY] [RULE 144A GLOBAL SECURITY]

THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND NEITHER THE ISSUER NOR THE CO-ISSUER HAS BEEN REGISTERED UNDER THE UNITED STATES INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "1940 ACT"). THIS NOTE MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED, EXCEPT (A)(1) TO A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT (A "QIB") WHO IS A QUALIFIED PURCHASER AS DEFINED IN SECTION 2(A)(51) OF THE INVESTMENT COMPANY ACT (A "QUALIFIED PURCHASER") AND IS EITHER PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER WHO IS A QUALIFIED PURCHASER, IN A PRINCIPAL AMOUNT OF NOT LESS THAN $500,000 (AND INTEGRAL MULTIPLES OF $1,000 IN EXCESS THEREOF), FOR THE PURCHASER AND FOR EACH SUCH ACCOUNT, IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, SUBJECT TO THE SATISFACTION OF CERTAIN CONDITIONS SPECIFIED IN THE INDENTURE, OR (2) TO A NON-U.S. PERSON IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 903 OR RULE 904 (AS APPLICABLE) OF REGULATION S UNDER THE SECURITIES ACT IN A PRINCIPAL AMOUNT OF NOT LESS THAN $500,000 (AND INTEGRAL MULTIPLES OF $1,000 IN EXCESS THEREOF), SUBJECT TO THE SATISFACTION OF CERTAIN CONDITIONS SPECIFIED IN THE INDENTURE, AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES AND ANY OTHER APPLICABLE JURISDICTION. EACH PURCHASER OF A GLOBAL SECURITY WILL BE DEEMED TO HAVE MADE THE REPRESENTATIONS AND AGREEMENTS SET FORTH IN SECTION 2.5 OF THE INDENTURE. ANY TRANSFER IN VIOLATION OF THE FOREGOING WILL BE OF NO FORCE AND EFFECT, WILL BE VOID AB INITIO, AND WILL NOT OPERATE TO TRANSFER ANY RIGHTS TO THE TRANSFEREE, NOTWITHSTANDING ANY INSTRUCTIONS TO THE CONTRARY TO THE ISSUER, THE CO-ISSUER, AS APPLICABLE, THE TRUSTEE OR ANY INTERMEDIARY. IF AT ANY TIME, THE ISSUER AND THE CO-ISSUER, IF APPLICABLE, DETERMINE OR ARE NOTIFIED THAT THE HOLDER OF SUCH BENEFICIAL INTEREST IN SUCH SECURITY WAS IN BREACH, AT THE TIME GIVEN, OF ANY OF THE REPRESENTATIONS SET FORTH IN THE INDENTURE, THE TRUSTEE MAY CONSIDER THE ACQUISITION OF THIS NOTE OR SUCH INTEREST IN SUCH SECURITY VOID AND REQUIRE THAT THIS NOTE OR SUCH INTEREST HEREIN BE TRANSFERRED TO A PERSON DESIGNATED BY THE ISSUER AND THE CO-ISSUER, IF APPLICABLE.

ANY TRANSFER, PLEDGE OR OTHER USE OF THIS NOTE FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN, UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC"), NEW YORK, NEW YORK, TO THE CO-ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR OF SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY

PAYMENT HEREON IS MADE TO CEDE & CO.).

THIS NOTE IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS NOTE MAY NOT BE EXCHANGED OR TRANSFERRED IN WHOLE OR IN PART FOR A NOTE REGISTERED IN THE NAME OF ANY PERSON OTHER THAN THAT DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

PRINCIPAL OF THIS NOTE IS PAYABLE AS SET FORTH HEREIN. ACCORDINGLY, THE OUTSTANDING PRINCIPAL OF THIS NOTE AT ANY TIME MAY BE LESS THAN THE AMOUNT SHOWN

ON THE FACE HEREOF. ANY PERSON ACQUIRING THIS NOTE MAY ASCERTAIN ITS CURRENT PRINCIPAL AMOUNT BY INQUIRY OF THE TRUSTEE.

ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1, LTD.
ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1 LLC

CLASS B SECOND PRIORITY
FLOATING RATE TERM NOTE DUE 2040

No. [Reg. S][144A]/R-___ [Up to]

CUSIP No. U.S. $51,590,000

Each of ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1, LTD., an exempted company incorporated in the Cayman Islands (the "Issuer") and ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1 LLC, a limited liability company formed under the laws of Delaware (the "Co-Issuer") for value received, hereby promises to pay to CEDE & CO. or its registered assigns (a) upon presentation and surrender of this Note (except as otherwise permitted by the Indenture referred to below), the principal sum of up to FIFTY ONE MILLION FIVE HUNDRED NINETY THOUSAND United States Dollars (U.S. $51,590,000) on February 20, 2040 (the "Stated Maturity"), to the extent not previously paid, in accordance with the Indenture referred to below unless the unpaid principal of this Note becomes due and payable at an earlier date by declaration of acceleration, call for redemption or otherwise and (b) the Class B Interest Distribution Amount allocable to this Note in accordance with the Indenture payable initially on April 21, 2005, and quarterly on each July 21, October 21, January 21 and April 21 thereafter (or if such day is not a Business Day, then on the next succeeding Business Day) (each, a "Payment Date"). Interest shall be computed on the basis of the actual number of days in the Interest Accrual Period applicable to the Class B Notes divided by 360. The interest so payable on any Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Note (or one or more predecessor Notes) is registered at the close of business on the Record Date for such interest, which shall be the fifteenth day (whether or not a Business Day) prior to the applicable Payment Date.

The obligations of the Issuer and the Co-Issuer under this Note and the Indenture are limited recourse obligations of the Issuer and the Co-Issuer payable solely from the Collateral Debt Securities and other Assets pledged by the Issuer, and in the event the Collateral Debt Securities and other such Assets are insufficient to satisfy such obligations, any claims of the Holders of the Notes shall be extinguished.

The payment of the interest on this Note is senior to the payments of the principal of and interest on the Class C Notes, the Class D Notes and the Preferred Shares. Payments on this Note are subordinate to the payment on any Payment Date of interest on the Class A Notes and payment of other amounts payable in accordance with the Priority of Payments. So long as any Class A Notes are Outstanding, the Class B Notes will receive payments only in accordance with the Priority of Payments. The principal of this Note shall be due and payable no later than the Stated Maturity unless the unpaid principal of such Note becomes due and payable at an earlier date by declaration of acceleration, call for redemption or otherwise.

Payments in respect of principal and interest and any other amounts due on any Payment Date on this Note shall be payable by the Trustee or a Paying Agent, subject to any laws or regulations applicable thereto, by wire transfer

in immediately available funds to a Dollar account maintained by the Registered Holder hereof; provided that the Registered Holder shall have provided wiring instructions to the Trustee on or before the related Record Date, or, if wire transfer cannot be effected, by Dollar check drawn on a bank as provided in the Indenture and mailed to the Registered Holder at its address in the Notes Register.

Interest will cease to accrue on this Note, or in the case of a partial repayment, on such part, from the date of repayment or Stated Maturity unless payment of principal is improperly withheld or unless a Default is otherwise made with respect to such payments of principal.

Notwithstanding the foregoing, the final payment of interest and principal due on this Note shall be made only upon presentation and surrender of this Note (except as otherwise provided in the Indenture) at the Corporate Trust Office of the Trustee or at any Paying Agent.

The Registered Holder of this Note shall be treated as the owner hereof for all purposes.

Except as specifically provided herein and in the Indenture, neither the Issuer nor the Co-Issuer shall be required to make any payment with respect to any tax, assessment or other governmental charge imposed by any government or any political subdivision or taxing authority thereof or therein.

Unless the certificate of authentication hereon has been executed by the Trustee by the manual signature of one of its authorized officers, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

This Note is one of a duly authorized issue of Class B Second Priority Floating Rate Term Notes Due 2040, of the Issuer and the Co-Issuer (the "Class B Notes"), limited in aggregate principal amount to U.S. $51,590,000 to be issued under an indenture dated as of January 19, 2005 (the "Indenture") by and among the Issuer, the Co-Issuer, LaSalle Bank National Association as trustee, paying agent, calculation agent, transfer agent, custodial securities intermediary and notes registrar (in such capacity and together with any successor trustee permitted under the Indenture, the "Trustee") and Arbor Realty SR, Inc., as advancing agent. Also authorized under the Indenture are (a) U.S. $182,910,000 Class A Senior Secured Floating Rate Term Notes Due 2040 (the "Class A Notes"), (b) U.S. $50,417,000 Class C Third Priority Floating Rate Term Notes Due 2040 (the "Class C Notes") and (c) U.S. $20,402,000 Class D Fourth Priority Floating Rate Term Notes Due 2040 (the "Class D Notes", together with the Class A Notes, the Class B Notes and the Class C Notes, the "Notes").

The Issuer will also issuer 163,707,380 Preferred Shares having a par value of U.S. $0.01 per share and a notional amount of U.S. $1.00 per share (the "Preferred Shares"), under the Issuer's Memorandum and Articles of Association as part of its issued share capital.

Reference is hereby made to the Indenture and all indentures supplemental thereto for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Issuer, the Co-Issuer, the Trustee, the Holders of the Notes and the Preferred Shareholders and the terms upon which the Notes and the Preferred Shares are, and are to be, executed, authenticated and delivered.

Payments of principal of the Class B Notes shall be payable in accordance with Section 11.1(a) of the Indenture.

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Indenture.

Pursuant to Section 9.1 of the Indenture, the Notes are subject to redemption by the Issuer at the direction of the Collateral Manager, in whole but not in part, upon notice given in the manner provided in the Indenture, on or after the Payment Date on which the Aggregate Outstanding Amount of the Notes (excluding any Class C Capitalized Interest or Class D Capitalized Interest) has been reduced to 10% of the Aggregate Outstanding Amount of the Notes on the Closing Date; provided that no such redemption may be made until any payments due and payable upon a termination of each Hedge Agreement shall be made in accordance with the procedures as set forth therein; provided, further, that the

funds available to be used for such redemption will be sufficient to pay the Total Redemption Price.

Pursuant to Section 9.1 of the Indenture, the Notes and the Preferred Shares are subject to redemption by the Issuer at a price equal to the applicable Redemption Price, on any Payment Date on or after the Payment Date occurring in January 2008 at the direction of the Issuer (such redemption, an "Optional Redemption"), in whole but not in part (i) by Act of a Majority of the Preferred Shares delivered to the Trustee, or (ii) at the direction of the Collateral Manager unless a Majority of the Preferred Shares object; provided, however, that any payments due and payable upon a termination of each Hedge Agreement will be made in accordance with the terms thereof and the Indenture; and provided further, the funds available to be used for such Optional Redemption will be sufficient to pay the Total Redemption Price.

Pursuant to Section 9.2 of the Indenture, the Notes and the Preferred Shares are subject to redemption by the Issuer, during the period from and including the Payment Date occurring in January 2015 and to but not including the first Payment Date on which the Clean-up Call may be exercised, in whole but not in part, if a Successful Auction is completed (such redemption, an "Auction Call Redemption"), at their applicable Redemption Prices; provided, that any payments due and payable upon a termination of each Hedge Agreement shall be made on the Auction Call Redemption Date in accordance with the terms thereof and in the Indenture; provided, further, that the funds available to be used for such Auction Call Redemption will be sufficient to pay the Total Redemption Price. In addition, the Notes are subject to redemption by the Issuer and the Co-Issuer or, in the case of the Preferred Shares, by the Issuer, upon notice given in the manner provided below, on any Payment Date under certain circumstances as provided in the Indenture. The Redemption Price for any Note redeemed pursuant to Section 9.1 or Section 9.2 of the Indenture shall be as set forth in the Indenture.

In the case of any redemption of the Notes, interest installments whose Payment Date is on or prior to the applicable redemption date will be payable to the Holders of such Notes (or one or more predecessor Notes) registered as such at the close of business on the relevant Record Date. Notes for whose redemption and payment provision is made in accordance with the Indenture shall cease to bear interest on the applicable redemption date (unless the Issuer shall default in the payment of the Redemption Price).

Pursuant to Section 9.6 of the Indenture, if any Coverage Tests applicable to any Class of Notes are not met on a Measurement Date, then on the following Payment Date certain Interest Proceeds and certain Principal Proceeds may be used to redeem the Notes, in the order and manner provided in Section 9.6 of the Indenture, until each applicable Coverage Test is satisfied.

Pursuant to Section 9.7 of the Indenture, the Notes may be amortized in part by the Issuer (at the election and direction of the Collateral Manager) if, during the Reinvestment Period, under certain circumstances, the Collateral Manager has been unable, for a period of at least 30 consecutive days, to identify Substitute Collateral Debt Securities that it determines would be appropriate and would meet the Eligibility Criteria in sufficient amounts to permit the reinvestment of all or a portion of the Principal Proceeds then on deposit in the Principal Collection Account and the amounts on deposit in the Unused Proceeds Account in Substitute Collateral Debt Securities.

If an Event of Default shall occur and be continuing, the Class B Notes may become or be declared due and payable in the manner and with the effect provided in the Indenture.

By written notice to the Issuer, the Co-Issuer, the Trustee and each Hedge Counterparty, a Majority of each and every Class of Notes (voting as a separate Class) may rescind a declaration of acceleration of the maturity of the Notes at any time prior to a judgment or decree for payment of money due, provided that certain conditions set forth in the Indenture are satisfied.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuer and the Co-Issuer and the rights of the Holders under the Indenture at any time by the Issuer and the Co-Issuer with the consent of each Hedge Counterparty, a Majority of each Class of Notes adversely affected thereby and a Majority of the Preferred Shares adversely affected thereby and subject to

satisfaction of the Rating Agency Condition. Upon the execution of any supplemental indenture, the Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of the Indenture for all purposes; and every Holder of Notes theretofore authenticated and delivered thereunder shall be bound thereby. The Indenture also contains provisions permitting, on behalf of the Holders of all the Notes, a Majority of each and every Class of Notes (voting as a separate Class) to waive compliance by the Issuer with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligations of the Issuer and the Co-Issuer, which are absolute and unconditional to the extent permitted by applicable law, to pay the principal of and interest on this Note at the times, places and rate, and in the coin or currency, herein prescribed.

The Notes are issuable in minimum denominations of $500,000 and integral multiples of $1,000 in excess thereof.

The principal of each Note shall be payable at the Stated Maturity thereof unless the unpaid principal of such Note becomes due and payable on an earlier date by declaration of acceleration, call for redemption or otherwise.

The term "Issuer" as used in this Note includes any successor to the Issuer under the Indenture and the term "Co-Issuer" as used in this Note includes any successor to the Co-Issuer under the Indenture.

The Class B Notes are non-recourse obligations of the Issuer and the Co-Issuer and are limited in right of payment to amounts available from the Assets as provided in the Indenture. No other assets will be available to satisfy payments on the Class B Notes.

Each purchaser and any subsequent transferee of this Note or any interest herein shall, by virtue of its purchase or other acquisition of this Note or interest herein, be deemed to have agreed to treat this Note as debt for U.S. federal income tax purposes.

No service charge shall be made for exchange or registration of transfer of this Note, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The remedies of the Trustee or the Holder hereof, as provided herein or in the Indenture, shall be cumulative and concurrent and may be pursued solely against the assets of the Issuer and the Co-Issuer. No failure on the part of the Holder in exercising any right or remedy hereunder shall operate as a waiver or release thereof, nor shall any single or partial exercise of any such right or remedy preclude any other further exercise thereof or the exercise of any other right or remedy hereunder.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

THE HOLDER OF THIS NOTE AGREES NOT TO CAUSE THE FILING OF A PETITION IN BANKRUPTCY AGAINST THE ISSUER OR THE CO-ISSUER IN ANY APPLICABLE OR RELEVANT JURISDICTION UNTIL AT LEAST ONE YEAR AND ONE DAY, OR IF LONGER THE APPLICABLE PREFERENCE PERIOD THEN IN EFFECT PLUS ONE DAY, AFTER THE PAYMENT IN FULL OF ALL NOTES ISSUED UNDER THE INDENTURE.

AS PROVIDED IN THE INDENTURE, THE INDENTURE AND THE NOTES SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED THEREIN WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

IN WITNESS WHEREOF, the Issuer has caused this Note to be duly executed.

Dated as of January 19, 2005

ARBOR REALTY MORTGAGE SECURITIES SERIES

2004-1, LTD.,
as Issuer

By: _____
Name:
Title:

ARBOR REALTY MORTGAGE SECURITIES SERIES
2004-1 LLC,
as Co-Issuer

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

This is one of the Notes referred to in the within-mentioned Indenture.

LASALLE BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

ASSIGNMENT FORM

For value received _____

hereby sell, assign and transfer unto

_____

_____

Please insert social security or
other identifying number of assignee

Please print or type name
and address, including zip code,
of assignee:

the within Note and does hereby irrevocably constitute and appoint_____ Attorney to transfer the Note on the books of the Issuer with full power of substitution in the premises.

Date: Your Signature:

(Sign exactly as your name appears on this Note)

SCHEDULE OF EXCHANGES IN GLOBAL SECURITY

On the Closing Date the Principal Amount of this Note was $51,590,000. The following exchanges of a part of this Global Security have been made since the Closing Date:

DATE OF EXCHANGE	AMOUNT OF DECREASE IN PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY	AMOUNT OF INCREASE IN PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY	PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY FOLLOWING SUCH DECREASE (OR INCREASE)	SIGNATURE OF AUTHORIZED OFFICER OF TRUSTEE OR SECURITIES CUSTODIAN

EXHIBIT C

FORM OF CLASS C NOTE
[REGULATION S GLOBAL SECURITY][RULE 144A GLOBAL SECURITY]

THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND NEITHER THE ISSUER NOR THE CO-ISSUER HAS BEEN REGISTERED UNDER THE UNITED STATES INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "1940 ACT"). THIS NOTE MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED, EXCEPT (A)(1) TO A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT (A "QIB") WHO IS A QUALIFIED PURCHASER AS DEFINED IN SECTION 2(A)(51) OF THE INVESTMENT COMPANY ACT (A "QUALIFIED PURCHASER") AND IS EITHER PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER WHO IS A QUALIFIED PURCHASER, IN A PRINCIPAL AMOUNT OF NOT LESS THAN $500,000 (AND INTEGRAL MULTIPLES OF $1,000 IN EXCESS THEREOF), FOR THE PURCHASER AND FOR EACH SUCH ACCOUNT, IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, SUBJECT TO THE SATISFACTION OF CERTAIN CONDITIONS SPECIFIED IN THE INDENTURE, OR (2) TO A NON-U.S. PERSON IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 903 OR RULE 904 (AS APPLICABLE) OF REGULATION S UNDER THE SECURITIES ACT IN A PRINCIPAL AMOUNT OF NOT LESS THAN $500,000 (AND INTEGRAL MULTIPLES OF $1,000 IN EXCESS THEREOF), SUBJECT TO THE SATISFACTION OF CERTAIN CONDITIONS SPECIFIED IN THE INDENTURE, AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES AND ANY OTHER APPLICABLE JURISDICTION. EACH PURCHASER OF A GLOBAL SECURITY WILL BE DEEMED TO HAVE MADE THE REPRESENTATIONS AND AGREEMENTS SET FORTH IN SECTION 2.5 OF THE INDENTURE. ANY TRANSFER IN VIOLATION OF THE FOREGOING WILL BE OF NO FORCE AND EFFECT, WILL BE VOID AB INITIO, AND WILL NOT OPERATE TO TRANSFER ANY RIGHTS TO THE TRANSFEREE, NOTWITHSTANDING ANY INSTRUCTIONS TO THE CONTRARY TO THE ISSUER, THE CO-ISSUER, AS APPLICABLE, THE TRUSTEE OR ANY INTERMEDIARY. IF AT ANY TIME, THE ISSUER AND THE CO-ISSUER, IF APPLICABLE, DETERMINE OR ARE NOTIFIED THAT THE HOLDER OF SUCH BENEFICIAL INTEREST IN SUCH SECURITY WAS IN BREACH, AT THE TIME GIVEN, OF ANY OF THE REPRESENTATIONS SET FORTH IN THE INDENTURE, THE TRUSTEE MAY CONSIDER THE ACQUISITION OF THIS NOTE OR SUCH INTEREST IN SUCH SECURITY VOID AND REQUIRE THAT THIS NOTE OR SUCH INTEREST HEREIN BE TRANSFERRED TO A PERSON DESIGNATED BY THE ISSUER AND THE CO-ISSUER, IF APPLICABLE.

ANY TRANSFER, PLEDGE OR OTHER USE OF THIS NOTE FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN, UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC"), NEW YORK, NEW YORK, TO THE CO-ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR OF SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO.).

THIS NOTE IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS NOTE MAY NOT BE EXCHANGED OR TRANSFERRED IN WHOLE OR IN PART FOR A NOTE REGISTERED IN THE NAME OF ANY PERSON OTHER THAN THAT DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

PRINCIPAL OF THIS NOTE IS PAYABLE AS SET FORTH HEREIN. ACCORDINGLY, THE OUTSTANDING PRINCIPAL OF THIS NOTE AT ANY TIME MAY BE LESS THAN THE AMOUNT SHOWN

ON THE FACE HEREOF. ANY PERSON ACQUIRING THIS NOTE MAY ASCERTAIN ITS CURRENT PRINCIPAL AMOUNT BY INQUIRY OF THE TRUSTEE.

ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1, LTD.
ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1 LLC

CLASS C THIRD PRIORITY
FLOATING RATE TERM NOTE, DUE 2040

No. [Reg. S][144A]/R-___ [Up to]
CUSIP No. U.S. $50,417,000

Each of ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1, LTD., an exempted company incorporated in the Cayman Islands (the "Issuer") and ARBOR

REALTY MORTGAGE SECURITIES SERIES 2004-1 LLC, a limited liability company formed under the laws of Delaware (the "Co-Issuer") for value received, hereby promises to pay to CEDE & CO. or its registered assigns (a) upon presentation and surrender of this Note (except as otherwise permitted by the Indenture referred to below), the principal sum of up to FIFTY MILLION FOUR HUNDRED SEVENTEEN THOUSAND United States Dollars (U.S. $50,417,000) on February 20, 2040 (the "Stated Maturity"), to the extent not previously paid, in accordance with the Indenture referred to below unless the unpaid principal of this Note becomes due and payable at an earlier date by declaration of acceleration, call for redemption or otherwise and (b) the Class C Interest Distribution Amount allocable to this Note in accordance with the Indenture payable initially on April 21, 2005, and quarterly on each July 21, October 21, January 21 and April 21 thereafter (or if such day is not a Business Day, then on the next succeeding Business Day) (each, a "Payment Date"). Interest shall be computed on the basis of the actual number of days in the Interest Accrual Period applicable to the Class C Notes divided by 360. The interest so payable on any Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Note (or one or more predecessor Notes) is registered at the close of business on the Record Date for such interest, which shall be the fifteenth day (whether or not a Business Day) prior to the applicable Payment Date.

The obligations of the Issuer and the Co-Issuer under this Note and the Indenture are limited recourse obligations of the Issuer and the Co-Issuer payable solely from the Collateral Debt Securities and other Assets pledged by the Issuer, and in the event the Collateral Debt Securities and other such Assets are insufficient to satisfy such obligations, any claims of the Holders of the Notes shall be extinguished.

The payment of the interest on this Note is senior to the payments of the principal of and interest on the Class D Notes and the Preferred Shares. Except as set forth in the Indenture, the payment of principal of this Note is subordinate to the payments of principal of and interest on the Class A Notes and the Class B Notes and no payments of principal on the Class C Notes will be made until the Class A Notes and the Class B Notes are paid in full, except as otherwise provided in the Indenture. The principal of this Note shall be due and payable no later than the Stated Maturity unless the unpaid principal of such Note becomes due and payable at an earlier date by declaration of acceleration, call for redemption or otherwise; provided, however, that, except as set forth in the Indenture, the payment of principal of this Note may only occur after principal on the Class A Notes and the Class B Notes has been paid in full and is subordinated to the payment on each Payment Date of the principal and interest due and payable on the Class A Notes, the Class B Notes and other amounts in accordance with the Priority of Payments.

Payments in respect of principal and interest and any other amounts due on any Payment Date on this Note shall be payable by the Trustee or a Paying Agent, subject to any laws or regulations applicable thereto, by wire transfer in immediately available funds to a Dollar account maintained by the Registered Holder hereof; provided that the Registered Holder shall have provided wiring instructions to the Trustee on or before the related Record Date, or, if wire transfer cannot be effected, by Dollar check drawn on a bank as provided in the Indenture and mailed to the Registered Holder at its address in the Notes Register.

Interest will cease to accrue on this Note, or in the case of a partial repayment, on such part, from the date of repayment or Stated Maturity unless payment of principal is improperly withheld or unless a Default is otherwise made with respect to such payments of principal.

Notwithstanding the foregoing, the final payment of interest and principal due on this Note shall be made only upon presentation and surrender of this Note (except as otherwise provided in the Indenture) at the Corporate Trust Office of the Trustee or at any Paying Agent.

The Registered Holder of this Note shall be treated as the owner hereof for all purposes.

Except as specifically provided herein and in the Indenture, neither the Issuer nor the Co-Issuer shall be required to make any payment with respect to any tax, assessment or other governmental charge imposed by any government or any political subdivision or taxing authority thereof or therein.

Unless the certificate of authentication hereon has been executed by the Trustee by the manual signature of one of its authorized officers, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

This Note is one of a duly authorized issue of Class C Third Priority Floating Rate Term Notes Due 2040, of the Issuer and the Co-Issuer (the "Class C Notes"), limited in aggregate principal amount to U.S. $50,417,000 to be issued under an indenture dated as of January 19, 2005 (the "Indenture") by and among the Issuer, the Co-Issuer, LaSalle Bank National Association as trustee, paying agent, calculation agent, transfer agent, custodial securities intermediary and notes registrar (in such capacity and together with any successor trustee permitted under the Indenture, the "Trustee") and Arbor Realty SR, Inc., as advancing agent. Also authorized under the Indenture are (a) U.S. $182,910,000 Class A Senior Secured Floating Rate Term Notes Due 2040 (the "Class A Notes"), (b) U.S. $51,590,000 Class B Second Priority Floating Rate Term Notes Due 2040 (the "Class B Notes") and (c) U.S. $20,402,000 Class D Fourth Priority Floating Rate Term Notes Due 2040 (the "Class D Notes", together with the Class A Notes, the Class B Notes, and the Class C Notes, the "Notes").

The Issuer will also issuer 163,707,380 Preferred Shares having a par value of U.S. $0.01 per share and a notional amount of U.S. $1.00 per share (the "Preferred Shares"), under the Issuer's Memorandum and Articles of Association as part of its issued share capital.

Reference is hereby made to the Indenture and all indentures supplemental thereto for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Issuer, the Co-Issuer, the Trustee and the Holders of the Notes and the Preferred Shareholders and the terms upon which the Notes and the Preferred Shares are, and are to be, executed, authenticated and delivered.

Payments of principal of the Class C Notes shall be payable in accordance with Section 11.1(a) of the Indenture.

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Indenture.

Pursuant to Section 9.1 of the Indenture, the Notes are subject to redemption by the Issuer at the direction of the Collateral Manager, in whole but not in part, upon notice given in the manner provided in the Indenture, on or after the Payment Date on which the Aggregate Outstanding Amount of the Notes (excluding any Class C Capitalized Interest or Class D Capitalized Interest) has been reduced to 10% of the Aggregate Outstanding Amount of the Notes on the Closing Date; provided that no such redemption may be made until any payments due and payable upon a termination of each Hedge Agreement shall be made in accordance with the procedures as set forth therein; provided, further, that the funds available to be used for such redemption will be sufficient to pay the Total Redemption Price.

Pursuant to Section 9.1 of the Indenture, the Notes and the Preferred Shares are subject to redemption by the Issuer at a price equal to the applicable Redemption Price, on any Payment Date on or after the Payment Date occurring in January 2008 at the direction of the Issuer (such redemption, an "Optional Redemption"), in whole but not in part (i) by Act of a Majority of the Preferred Shares delivered to the Trustee, or (ii) at the direction of the Collateral Manager unless a Majority of the Preferred Shares object; provided, however, that any payments due and payable upon a termination of each Hedge Agreement will be made in accordance with

the terms thereof and the Indenture; and provided further, the funds available to be used for such Optional Redemption will be sufficient to pay the Total Redemption Price.

Pursuant to Section 9.2 of the Indenture, the Notes and the Preferred Shares are subject to redemption by the Issuer, during the period from and including the Payment Date occurring in January 2015 and to but not including the first Payment Date on which the Clean-up Call may be exercised, in whole but not in part, if a Successful Auction is completed (such redemption, an "Auction Call Redemption"), at their applicable Redemption Prices; provided, that any payments due and payable upon a termination of each Hedge Agreement

shall be made on the Auction Call Redemption Date in accordance with the terms thereof and in the Indenture; provided, further, that the funds available to be used for such Auction Call Redemption will be sufficient to pay the Total Redemption Price. In addition, the Notes are subject to redemption by the Issuer and the Co-Issuer or, in the case of the Preferred Shares, by the Issuer, upon notice given in the manner provided below, on any Payment Date under certain circumstances as provided in the Indenture. The Redemption Price for any Note redeemed pursuant to Section 9.1 or Section 9.2 of the Indenture shall be as set forth in the Indenture.

In the case of any redemption of the Notes, interest installments whose Payment Date is on or prior to the applicable redemption date will be payable to the Holders of such Notes (or one or more predecessor Notes) registered as such at the close of business on the relevant Record Date. Notes for whose redemption and payment provision is made in accordance with the Indenture shall cease to bear interest on the applicable redemption date (unless the Issuer shall default in the payment of the Redemption Price).

Pursuant to Section 9.6 of the Indenture, if any Coverage Tests applicable to any Class of Notes are not met on a Measurement Date, then on the following Payment Date certain Interest Proceeds and certain Principal Proceeds may be used to redeem the Notes, in the order and manner provided in Section 9.6 of the Indenture, until each applicable Coverage Test is satisfied.

Pursuant to Section 9.7 of the Indenture, the Notes may be amortized in part by the Issuer (at the election and direction of the Collateral Manager) if, during the Reinvestment Period, under certain circumstances, the Collateral Manager has been unable, for a period of at least 30 consecutive days, to identify Substitute Collateral Debt Securities that it determines would be appropriate and would meet the Eligibility Criteria in sufficient amounts to permit the reinvestment of all or a portion of the Principal Proceeds then on deposit in the Principal Collection Account and the amounts on deposit in the Unused Proceeds Account in Substitute Collateral Debt Securities.

If an Event of Default shall occur and be continuing, the Class C Notes may become or be declared due and payable in the manner and with the effect provided in the Indenture.

By written notice to the Issuer, the Co-Issuer, the Trustee and each Hedge Counterparty, a Majority of each and every Class of Notes (voting as a separate Class) may rescind a declaration of acceleration of the maturity of the Notes at any time prior to a judgment or decree for payment of money due, provided that certain conditions set forth in the Indenture are satisfied.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuer and the Co-Issuer and the rights of the Holders under the Indenture at any time by the Issuer and the Co-Issuer with the consent of each Hedge Counterparty, a Majority of each Class of Notes adversely affected thereby and a Majority of the Preferred Shares adversely affected thereby and subject to satisfaction of the Rating Agency Condition. Upon the execution of any supplemental indenture, the Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of the Indenture for all purposes; and every Holder of Notes theretofore authenticated and delivered thereunder shall be bound thereby. The Indenture also contains provisions permitting, on behalf of the Holders of all the Notes, a Majority of each and every Class of Notes (voting as a separate Class) to waive compliance by the Issuer with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligations of the Issuer and the Co-Issuer, which are absolute and unconditional to the extent permitted by applicable law, to pay the principal of and interest on this Note at the times, places and rate, and in the coin or currency, herein prescribed.

The Notes are issuable in minimum denominations of $500,000 and integral multiples of $1,000 in excess thereof.

The principal of each Note shall be payable at the Stated Maturity thereof unless the unpaid principal of such Note becomes due and payable on an earlier date by declaration of acceleration, call for redemption or otherwise.

The term "Issuer" as used in this Note includes any successor to the Issuer under the Indenture and the term "Co-Issuer" as used in this Note includes any successor to the Co-Issuer under the Indenture.

The Class C Notes are non-recourse obligations of the Issuer and the Co-Issuer and are limited in right of payment to amounts available from the Assets as provided in the Indenture. No other assets will be available to satisfy payments on the Class C Notes.

Each purchaser and any subsequent transferee of this Note or any interest herein shall, by virtue of its purchase or other acquisition of this Note or interest herein, be deemed to have agreed to treat this Note as debt for U.S. federal income tax purposes.

No service charge shall be made for exchange or registration of transfer of this Note, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The remedies of the Trustee or the Holder hereof, as provided herein or in the Indenture, shall be cumulative and concurrent and may be pursued solely against the assets of the Issuer and the Co-Issuer. No failure on the part of the Holder in exercising any right or remedy hereunder shall operate as a waiver or release thereof, nor shall any single or partial exercise of any such right or remedy preclude any other further exercise thereof or the exercise of any other right or remedy hereunder.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

THE HOLDER OF THIS NOTE AGREES NOT TO CAUSE THE FILING OF A PETITION IN BANKRUPTCY AGAINST THE ISSUER OR THE CO-ISSUER IN ANY APPLICABLE OR RELEVANT JURISDICTION UNTIL AT LEAST ONE YEAR AND ONE DAY, OR IF LONGER THE APPLICABLE PREFERENCE PERIOD THEN IN EFFECT PLUS ONE DAY, AFTER THE PAYMENT IN FULL OF ALL NOTES ISSUED UNDER THE INDENTURE.

AS PROVIDED IN THE INDENTURE, THE INDENTURE AND THE NOTES SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED THEREIN WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

IN WITNESS WHEREOF, the Issuer has caused this Note to be duly executed.

Dated as of January 19, 2005

ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1, LTD.,
as Issuer

By:_____
Name:
Title:

ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1 LLC,
as Co-Issuer

By:_____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

This is one of the Notes referred to in the within-mentioned Indenture.

LASALLE BANK NATIONAL ASSOCIATION,
as Trustee

By:_____
Authorized Signatory

ASSIGNMENT FORM

For value received _____

hereby sell, assign and transfer unto

_____

_____
Please insert social security or
other identifying number of assignee

Please print or type name
and address, including zip code,
of assignee:

the within Note and does hereby irrevocably constitute and appoint _____ Attorney to transfer the Note on the books of the Issuer with full power of substitution in the premises.

Date: Your Signature:

(Sign exactly as your name appears on this Note)

SCHEDULE OF EXCHANGES IN GLOBAL SECURITY

On the Closing Date the Principal Amount of this Note was $50,417,000. The following exchanges of a part of this Global Security have been made since the Closing Date:

DATE OF EXCHANGE	AMOUNT OF DECREASE IN PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY	AMOUNT OF INCREASE IN PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY	PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY FOLLOWING SUCH DECREASE (OR INCREASE)	SIGNATURE OF AUTHORIZED OFFICER OF TRUSTEE OR SECURITIES CUSTODIAN

EXHIBIT D

FORM OF CLASS D NOTE
[REGULATION S GLOBAL SECURITY] [RULE 144A GLOBAL SECURITY]

THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND NEITHER THE ISSUER NOR THE CO-ISSUER HAS BEEN REGISTERED UNDER THE UNITED STATES INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "1940 ACT"). THIS NOTE MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED, EXCEPT (A)(1) TO A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT (A "QIB") WHO IS A QUALIFIED PURCHASER AS DEFINED IN SECTION 2(A)(51) OF THE INVESTMENT COMPANY ACT (A "QUALIFIED PURCHASER") AND IS EITHER PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER WHO IS A QUALIFIED PURCHASER, IN A PRINCIPAL AMOUNT OF NOT LESS THAN $500,000 (AND INTEGRAL MULTIPLES OF $1,000 IN EXCESS THEREOF), FOR THE PURCHASER AND FOR EACH SUCH ACCOUNT, IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, SUBJECT TO THE SATISFACTION OF CERTAIN CONDITIONS SPECIFIED IN THE INDENTURE, OR (2) TO A NON-U.S. PERSON IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 903 OR RULE 904 (AS APPLICABLE) OF REGULATION S UNDER THE SECURITIES ACT IN A PRINCIPAL AMOUNT OF NOT LESS THAN $500,000 (AND INTEGRAL MULTIPLES OF $1,000 IN EXCESS THEREOF), SUBJECT TO THE SATISFACTION OF CERTAIN CONDITIONS SPECIFIED IN THE INDENTURE, AND (B) IN

ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES AND ANY OTHER APPLICABLE JURISDICTION. EACH PURCHASER OF A GLOBAL SECURITY WILL BE DEEMED TO HAVE MADE THE REPRESENTATIONS AND AGREEMENTS SET FORTH IN SECTION 2.5 OF THE INDENTURE. ANY TRANSFER IN VIOLATION OF THE FOREGOING WILL BE OF NO FORCE AND EFFECT, WILL BE VOID AB INITIO, AND WILL NOT OPERATE TO TRANSFER ANY RIGHTS TO THE TRANSFEREE, NOTWITHSTANDING ANY INSTRUCTIONS TO THE CONTRARY TO THE ISSUER, THE CO-ISSUER, AS APPLICABLE, THE TRUSTEE OR ANY INTERMEDIARY. IF AT ANY TIME, THE ISSUER AND THE CO-ISSUER, IF APPLICABLE, DETERMINE OR ARE NOTIFIED THAT THE HOLDER OF SUCH BENEFICIAL INTEREST IN SUCH SECURITY WAS IN BREACH, AT THE TIME GIVEN, OF ANY OF THE REPRESENTATIONS SET FORTH IN THE INDENTURE, THE TRUSTEE MAY CONSIDER THE ACQUISITION OF THIS NOTE OR SUCH INTEREST IN SUCH SECURITY VOID AND REQUIRE THAT THIS NOTE OR SUCH INTEREST HEREIN BE TRANSFERRED TO A PERSON DESIGNATED BY THE ISSUER AND THE CO-ISSUER, IF APPLICABLE.

ANY TRANSFER, PLEDGE OR OTHER USE OF THIS NOTE FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN, UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC"), NEW YORK, NEW YORK, TO THE CO-ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR OF SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO.).

THIS NOTE IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS NOTE MAY NOT BE EXCHANGED OR TRANSFERRED IN WHOLE OR IN PART FOR A NOTE REGISTERED IN THE NAME OF ANY PERSON OTHER THAN THAT DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

PRINCIPAL OF THIS NOTE IS PAYABLE AS SET FORTH HEREIN. ACCORDINGLY, THE OUTSTANDING PRINCIPAL OF THIS NOTE AT ANY TIME MAY BE LESS THAN THE AMOUNT SHOWN

ON THE FACE HEREOF. ANY PERSON ACQUIRING THIS NOTE MAY ASCERTAIN ITS CURRENT PRINCIPAL AMOUNT BY INQUIRY OF THE TRUSTEE.

ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1, LTD.
ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1 LLC

CLASS D FOURTH PRIORITY
FLOATING RATE TERM NOTE, DUE 2040

No. [Reg. S][144A]/R-___ [Up to]
CUSIP No. U.S. $20,402,000

Each of ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1, LTD., an exempted company incorporated in the Cayman Islands (the "Issuer") and ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1 LLC, a limited liability company formed under the laws of Delaware (the "Co-Issuer") for value received, hereby promises to pay to CEDE & CO. or its registered assigns (a) upon presentation and surrender of this Note (except as otherwise permitted by the Indenture referred to below), the principal sum of up to TWENTY MILLION FOUR HUNDRED TWO THOUSAND United States Dollars (U.S. $20,402,000) on February 20, 2040 (the "Stated Maturity"), to the extent not previously paid, in accordance with the Indenture referred to below unless the unpaid principal of this Note becomes due and payable at an earlier date by declaration of acceleration, call for redemption or otherwise and (b) the Class D Interest Distribution Amount allocable to this Note in accordance with the Indenture payable initially on April 21, 2005, and quarterly on each July 21, October 21, January 21 and April 21 thereafter (or if such day is not a Business Day, then on the next succeeding Business Day) (each, a "Payment Date"). Interest shall be computed on the basis of the actual number of days in the Interest Accrual Period applicable to the Class D Notes divided by 360. The interest so payable on any Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Note (or one or more predecessor Notes) is registered at the close of business on the Record Date for such interest, which shall be the fifteenth day (whether or not a Business Day) prior to the applicable Payment Date.

The obligations of the Issuer and the Co-Issuer under this Note and

the Indenture are limited recourse obligations of the Issuer and the Co-Issuer payable solely from the Collateral Debt Securities and other Assets pledged by the Issuer, and in the event the Collateral Debt Securities and other such Assets are insufficient to satisfy such obligations, any claims of the Holders of the Notes shall be extinguished.

The payment of the interest on this Note is senior to the payments of the principal of and interest on the Preferred Shares. Except as set forth in the Indenture, payments on this Note are subordinate to the payment on any Payment Date of the principal of and interest on the Class A Notes, the Class B Notes and Class C Notes and payment of other amounts payable in accordance with the Priority of Payments. So long as any Class C Notes are Outstanding, the Class D Notes will receive payments only in accordance with the Priority of Payments and the failure to make payments on the Class D Notes in accordance with the Priority of Payments shall not be an Event of Default under the Indenture. The principal of this Note shall be due and payable no later than the Stated Maturity unless the unpaid principal of such Note becomes due and payable at an earlier date by declaration of acceleration, call for redemption or otherwise; provided, however, that except as set forth in the Indenture, the payment of principal of this Note may only occur after principal on the Class C Notes has been paid in full and is subordinated to the payment on each Payment Date of the principal and interest due and payable on the Class A Notes, the Class B Notes and the Class C Notes and other amounts in accordance with the Priority of Payments.

Payments of principal and interest and any other amounts due on any Payment Date on this Note shall be payable by the Trustee or a Paying Agent, subject to any laws or regulations applicable thereto, by wire transfer in immediately available funds to a Dollar account maintained by the Registered Holder hereof; provided that the Registered Holder shall have provided wiring instructions to the Trustee on or before the related Record Date, or, if wire transfer cannot be effected, by Dollar check drawn on a bank as provided in the Indenture and mailed to the Registered Holder at its address in the Notes Register.

Interest will cease to accrue on this Note, or in the case of a partial repayment, on such part, from the date of repayment or Stated Maturity unless payment of principal is improperly withheld or unless a Default is otherwise made with respect to such payments of principal.

Notwithstanding the foregoing, the final payment of interest and principal due on this Note shall be made only upon presentation and surrender of this Note (except as otherwise provided in the Indenture) at the Corporate Trust Office of the Trustee or at any Paying Agent.

The Registered Holder of this Note shall be treated as the owner hereof for all purposes.

Except as specifically provided herein and in the Indenture, neither the Issuer nor the Co-Issuer shall be required to make any payment with respect to any tax, assessment or other governmental charge imposed by any government or any political subdivision or taxing authority thereof or therein.

Unless the certificate of authentication hereon has been executed by the Trustee by the manual signature of one of its authorized officers, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

This Note is one of a duly authorized issue of Class D Fourth Priority Floating Rate Term Notes Due 2040, of the Issuer and the Co-Issuer (the "Class D Notes"), limited in aggregate principal amount to U.S. $20,402,000 to be issued under an indenture dated as of January 19, 2005 (the "Indenture") by and among the Issuer, the Co-Issuer, LaSalle Bank National Association as trustee, paying agent, calculation agent, transfer agent, custodial securities intermediary and notes registrar (in such capacity and together with any successor trustee permitted under the Indenture, the "Trustee") and Arbor Realty SR, Inc., as advancing agent. Also authorized under the Indenture are (a) U.S. $182,910,000 Class A Senior Secured Floating Rate Term Notes Due 2040 (the "Class A Notes"), (b) U.S. $51,590,000 Class B Second Priority Floating Rate Term Notes Due 2040 (the "Class B Notes") and (c) U.S. $50,417,000 Class C Third Priority Floating Rate Term Notes Due 2040 (the "Class C Notes", together with the Class A Notes, the Class B Notes and the Class D Notes, the "Notes").

The Issuer will also issue 163,707,380 Preferred Shares having a par value of U.S. $0.01 per share and a notional amount of U.S. $1.00 per share (the "Preferred Shares"), under the Issuer's Memorandum and Articles of Association as part of its issued share capital.

Reference is hereby made to the Indenture and all indentures supplemental thereto for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Issuer, the Co-Issuer, the Trustee and the Holders of the Notes and the Preferred Shareholders and the terms upon which the Notes and the Preferred Shares are, and are to be, executed, authenticated and delivered.

Payments of principal of the Class D Notes shall be payable in accordance with Section 11.1(a) of the Indenture.

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Indenture.

Pursuant to Section 9.1 of the Indenture, the Notes are subject to redemption by the Issuer at the direction of the Collateral Manager, in whole but not in part, upon notice given in the manner provided in the Indenture, on or after the Payment Date on which the Aggregate Outstanding Amount of the Notes (excluding any Class C Capitalized Interest or Class D Capitalized Interest) has been reduced to 10% of the Aggregate Outstanding Amount of the Notes on the Closing Date; provided that no such redemption may be made until any payments due and payable upon a termination of each Hedge Agreement shall be made in accordance with the procedures as set forth therein; provided, further, that the funds available to be used for such redemption will be sufficient to pay the Total Redemption Price.

Pursuant to Section 9.1 of the Indenture, the Notes and the Preferred Shares are subject to redemption by the Issuer at a price equal to the applicable Redemption Price, on any Payment Date on or after the Payment Date occurring in January 2008 at the direction of the Issuer (such redemption, an "Optional Redemption"), in whole but not in part (i) by Act of a Majority of the Preferred Shares delivered to the Trustee, or (ii) at the direction of the Collateral Manager unless a Majority of the Preferred Shares object; provided, however, that any payments due and payable upon a termination of each Hedge Agreement will be made in accordance with

the terms thereof and the Indenture; and provided further, the funds available to be used for such Optional Redemption will be sufficient to pay the Total Redemption Price.

Pursuant to Section 9.2 of the Indenture, the Notes and the Preferred Shares are subject to redemption by the Issuer, during the period from and including the Payment Date occurring in January 2015 and to but not including the first Payment Date on which the Clean-up Call may be exercised, in whole but not in part, if a Successful Auction is completed (such redemption, an "Auction Call Redemption"), at their applicable Redemption Prices; provided, that any payments due and payable upon a termination of each Hedge Agreement shall be made on the Auction Call Redemption Date in accordance with the terms thereof and in the Indenture; provided, further, that the funds available to be used for such Auction Call Redemption will be sufficient to pay the Total Redemption Price. In addition, the Notes are subject to redemption by the Issuer and the Co-Issuer or, in the case of the Preferred Shares, by the Issuer, upon notice given in the manner provided below, on any Payment Date under certain circumstances as provided in the Indenture. The Redemption Price for any Note redeemed pursuant to Section 9.1 or Section 9.2 of the Indenture shall be as set forth in the Indenture.

In the case of any redemption of the Notes, interest installments whose Payment Date is on or prior to the applicable redemption date will be payable to the Holders of such Notes (or one or more predecessor Notes) registered as such at the close of business on the relevant Record Date. Notes for whose redemption and payment provision is made in accordance with the Indenture shall cease to bear interest on the applicable redemption date (unless the Issuer shall default in the payment of the Redemption Price).

Pursuant to Section 9.6 of the Indenture, if any Coverage Tests applicable to any Class of Notes are not met on a Measurement Date, then on the

following Payment Date certain Interest Proceeds and certain Principal Proceeds may be used to redeem the Notes, in the order and manner provided in Section 9.6 of the Indenture, until each applicable Coverage Test is satisfied.

Pursuant to Section 9.7 of the Indenture, the Notes may be amortized in part by the Issuer (at the election and direction of the Collateral Manager) if, during the Reinvestment Period, under certain circumstances, the Collateral Manager has been unable, for a period of at least 30 consecutive days, to identify Substitute Collateral Debt Securities that it determines would be appropriate and would meet the Eligibility Criteria in sufficient amounts to permit the reinvestment of all or a portion of the Principal Proceeds then on deposit in the Principal Collection Account and the amounts on deposit in the Unused Proceeds Account in Substitute Collateral Debt Securities.

If an Event of Default shall occur and be continuing, the Class D Notes may become or be declared due and payable in the manner and with the effect provided in the Indenture.

By written notice to the Issuer, the Co-Issuer, the Trustee and each Hedge Counterparty, a Majority of each and every Class of Notes (voting as a separate Class) may rescind a declaration of acceleration of the maturity of the Notes at any time prior to a judgment or decree for payment of money due, provided that certain conditions set forth in the Indenture are satisfied.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuer and the Co-Issuer and the rights of the Holders under the Indenture at any time by the Issuer and the Co-Issuer with the consent of each Hedge Counterparty, a Majority of each Class of Notes adversely affected thereby and a Majority of the Preferred Shares adversely affected thereby and subject to satisfaction of the Rating Agency Condition. Upon the execution of any supplemental indenture, the Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of the Indenture for all purposes; and every Holder of Notes theretofore authenticated and delivered thereunder shall be bound thereby. The Indenture also contains provisions permitting, on behalf of the Holders of all the Notes, a Majority of each and every Class of Notes (voting as a separate Class) to waive compliance by the Issuer with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligations of the Issuer and the Co-Issuer, which are absolute and unconditional to the extent permitted by applicable law, to pay the principal of and interest on this Note at the times, places and rate, and in the coin or currency, herein prescribed.

The Notes are issuable in minimum denominations of $500,000 and integral multiples of $1,000 in excess thereof.

The principal of each Note shall be payable at the Stated Maturity thereof unless the unpaid principal of such Note becomes due and payable on an earlier date by declaration of acceleration, call for redemption or otherwise.

The term "Issuer" as used in this Note includes any successor to the Issuer under the Indenture and the term "Co-Issuer" as used in this Note includes any successor to the Co-Issuer under the Indenture.

The Class D Notes are non-recourse obligations of the Issuer and the Co-Issuer and are limited in right of payment to amounts available from the Assets as provided in the Indenture. No other assets will be available to satisfy payments on the Class D Notes.

Each purchaser and any subsequent transferee of this Note or any interest herein shall, by virtue of its purchase or other acquisition of this Note or interest herein, be deemed to have agreed to treat this Note as debt for U.S. federal income tax purposes.

No service charge shall be made for exchange or registration of transfer of this Note, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The remedies of the Trustee or the Holder hereof, as provided herein

or in the Indenture, shall be cumulative and concurrent and may be pursued solely against the assets of the Issuer and the Co-Issuer. No failure on the part of the Holder in exercising any right or remedy hereunder shall operate as a waiver or release thereof, nor shall any single or partial exercise of any such right or remedy preclude any other further exercise thereof or the exercise of any other right or remedy hereunder.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

THE HOLDER OF THIS NOTE AGREES NOT TO CAUSE THE FILING OF A PETITION IN BANKRUPTCY AGAINST THE ISSUER OR THE CO-ISSUER IN ANY APPLICABLE OR RELEVANT JURISDICTION UNTIL AT LEAST ONE YEAR AND ONE DAY, OR IF LONGER THE APPLICABLE PREFERENCE PERIOD THEN IN EFFECT PLUS ONE DAY, AFTER THE PAYMENT IN FULL OF ALL NOTES ISSUED UNDER THE INDENTURE.

AS PROVIDED IN THE INDENTURE, THE INDENTURE AND THE NOTES SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED THEREIN WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

IN WITNESS WHEREOF, the Issuer has caused this Note to be duly executed.

Dated as of January 19, 2005

ARBOR REALTY MORTGAGE SECURITIES SERIES
2004-1, LTD.,
as Issuer

By:_____
Name:
Title:

ARBOR REALTY MORTGAGE SECURITIES SERIES
2004-1 LLC,
as Co-Issuer

By:_____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

This is one of the Notes referred to in the within-mentioned Indenture.

LASALLE BANK NATIONAL ASSOCIATION,
as Trustee

By:_____
Authorized Signatory

ASSIGNMENT FORM

For value received _____

hereby sell, assign and transfer unto

_____

_____
Please insert social security or
other identifying number of assignee

Please print or type name
and address, including zip code,
of assignee:

the within Note and does hereby irrevocably constitute and appoint

_____ Attorney to transfer the Note on the books of the Issuer with full power of substitution in the premises.

Date: Your Signature:

(Sign exactly as your name appears on this Note)

SCHEDULE OF EXCHANGES IN GLOBAL SECURITY

On the Closing Date the Principal Amount of this Note was $20,402,000. The following exchanges of a part of this Global Security have been made since the Closing Date:

DATE OF EXCHANGE	AMOUNT OF DECREASE IN PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY	AMOUNT OF INCREASE IN PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY	PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY FOLLOWING SUCH DECREASE (OR INCREASE)	SIGNATURE OF AUTHORIZED OFFICER OF TRUSTEE OR SECURITIES CUSTODIAN

EXHIBIT E

FORM OF TRANSFER CERTIFICATE
FOR (1) TRANSFER AT THE CLOSING TO A REGULATION S GLOBAL SECURITY OR
(2) SUBSEQUENT TRANSFER FROM A RULE 144A GLOBAL SECURITY TO A REGULATION S GLOBAL SECURITY (Transfer pursuant to Section 2.5(e)(iii) of the Indenture)

LaSalle Bank National Association
as Trustee
135 South LaSalle Street
Suite 1625
Chicago, Illinois 60603
Attention: CDO Trust Services Group - CDO 2004-1

Re: Arbor Realty Mortgage Securities Series 2004-1, Ltd., as Issuer and Arbor Realty Mortgage Securities Series 2004-1 LLC, as Co-Issuer of: Class A Senior Secured Floating Rate Term Notes, Due 2040 Class B Second Priority Floating Rate Term Notes, Due 2040 Class C Third Priority Floating Rate Term Notes, Due 2040 Class D Fourth Priority Floating Rate Term Notes, Due 2040 (the "Transferred Notes")

Reference is hereby made to the Indenture, dated as of January 19, 2005 (the "Indenture") by and among Arbor Realty Mortgage Securities Series 2004-1, Ltd., as Issuer and Arbor Realty Mortgage Securities Series 2004-1 LLC, as Co-Issuer of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, LaSalle Bank National Association, as Trustee, and Arbor Realty SR, Inc., as Advancing Agent. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Indenture and if not defined in the Indenture then such terms shall have the meanings assigned to them in Regulation S ("Regulation S"), or Rule 144A ("Rule 144A"), under the United States Securities Act of 1933, as amended (the "Securities Act"), and the rules promulgated thereunder or as defined under the Investment Company Act of 1940, as amended (the "Investment Company Act").

This letter relates to the [transfer] of $[__] aggregate principal amount of [Class A][Class B][Class C][Class D] Notes [being transferred for an equivalent beneficial interest in a Regulation S Global Security of the same Class] in the name of [name of transferee] (the "Transferee").

In connection with such request, the Transferee hereby certifies that such transfer has been effected in accordance with the transfer restrictions set forth in the Indenture and the Offering Memorandum dated as of January 19, 2005 and hereby represents, warrants and agrees for the benefit of

the Issuer, the Co-Issuer, the Trustee, the Collateral Manager and their counsel that:

(i) at the time the buy order was originated, the Transferee was outside the United States;

(ii) the Transferee is not a U.S. Person;

(iii) the transfer is being made pursuant to Rule 903 or 904 under Regulation S of the Securities Act;

(iv) the Transferee will notify future transferees of the transfer restrictions;

(v) the Transferee understands that the Notes, including the Transferred Notes, are being offered only in a transaction not involving any public offering in the United States within

the meaning of the Securities Act, the Notes, including the Transferred Notes, have not been and will not be registered under the Securities Act, and, if in the future the owner decides to offer, resell, pledge or otherwise transfer the Transferred Notes, such Transferred Notes may only be offered, resold, pledged or otherwise transferred in accordance with the Indenture and the legend on such Transferred Notes. The Transferee acknowledges that no representation is made by the Issuer, the Co-Issuer or the Initial Purchaser, as the case may be, as to the availability of any exemption under the Securities Act or any State securities laws for resale of the Transferred Notes;

(vi) the Transferee is not purchasing the Transferred Notes with a view to the resale, distribution or other disposition thereof in violation of the Securities Act. The Transferee understands that an investment in the Transferred Notes involves certain risks, including the risk of loss of all or a substantial part of its investment under certain circumstances. The Transferee has had access to such financial and other information concerning the Issuer, the Co-Issuer and the Transferred Notes as it deemed necessary or appropriate in order to make an informed investment decision with respect to its purchase of the Transferred Notes, including an opportunity to ask questions of and request information from the Collateral Manager, the Initial Purchaser, the Issuer and the Co-Issuer, including without limitation, an opportunity to request and review the Moody's Weighted Average Rating Factor/Weighted Average Recovery Rate Matrix incorporated by reference in the Offering Memorandum;

(vii) in connection with the purchase of the Transferred Notes (A) none of the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee is acting as a fiduciary or financial or investment adviser for the Transferee; (B) the Transferee is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee other than in a current offering memorandum for such Transferred Notes and any representations expressly set forth in a written agreement with such party; (C) none of the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee has given to the Transferee (directly or indirectly through any other person) any assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (including legal, regulatory, tax, financial, accounting, or otherwise) of its purchase; (D) the Transferee has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisers to the extent it has deemed necessary, and it has made its own investment decisions (including decisions regarding the suitability of any transaction pursuant to this Indenture) based upon its own judgment and upon any advice from such advisers as it has deemed necessary and not upon any view expressed by the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee; and (E)

the Transferee is purchasing the Transferred Notes with a full understanding of all of the terms, conditions and risks thereof (economic and otherwise), and is capable of assuming and willing to assume (financially and otherwise) these risks;

(viii) the Transferee understands that the Transferred Notes will bear the applicable legend set forth on such Transferred Notes;

(ix) the Transferee understands that the Issuer, Co-Issuer, Trustee or Paying Agent shall require certification acceptable to it (A) as a condition to the payment of principal of and interest on any Notes without, or at a reduced rate of, U.S. withholding or backup withholding tax, and (B) to enable the Issuer, Co-Issuer, Trustee and Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to pay, deduct or withhold from payments in respect of such Notes or the Holder of such Notes under any present or future law or regulation of the Cayman Islands or the United States or any present or future law or regulation of any political subdivision thereof or taxing authority therein or to comply with any reporting or other requirements under any such law or regulation. Such certification may include U.S. federal income tax forms (such as IRS Form W-8BEN (Certification of Foreign Status of Beneficial Owner), Form W-8IMY (Certification of Foreign Intermediary Status), IRS Form W-9 (Request for Taxpayer Identification Number and Certification), or IRS Form W-8ECI

(Certification of Foreign Person's Claim for Exemption from Withholding on Income Effectively Connected with Conduct of a U.S. Trade or Business) or any successors to such IRS forms). In addition, the Issuer, Co-Issuer, Trustee or Paying Agent may require certification acceptable to it to enable the Issuer to qualify for a reduced rate of withholding in any jurisdiction from or through which the Issuer receives payments on its assets. Each Transferee agrees to provide any certification requested pursuant to this paragraph and to update or replace such form or certification in accordance with its terms or its subsequent amendments;

(x) the Transferee hereby agrees that, for purposes of U.S. federal, state and local income and franchise tax and any other income taxes, (A) the Notes will be treated as indebtedness, and (B) the Preferred Shares will be treated as equity; the Transferee agrees to such treatment and agrees to take no action inconsistent with such treatment, unless required by law;

(xi) the Transferee, if not a "United States person" (as defined in Section 7701(a)(30) of the Code), either: (A) is not a bank (within the meaning of Section 881(c)(3)(A) of the Code); (B) if such Transferee is a bank (within the meaning of Section 881(c)(3)(A) of the Code), after giving effect to its purchase of the Notes, the Transferee (x) will not own more than 50% of the Preferred Shares (by number) or 50% by value of the aggregate of the preferred and all classes of notes that are treated as equity for US federal income tax purposes either directly or indirectly, and will not otherwise be related to the Issuer (within the meaning of section 267(b) of the Code) and (y) has not purchased the Notes in whole or in part to avoid any U.S. federal income tax liability (including, without limitation, any U.S. withholding tax that would be imposed on the Notes with respect to the Collateral Debt Securities if held directly by the Transferee); (C) has provided an IRS Form W-8ECI representing that all payments received or to be received by it from the Issuer are effectively connected with the conduct of a trade or business in the United States, or (D) is eligible for benefits under an income tax treaty with the United States that eliminates U.S. federal income taxation of U.S. source interest not attributable to a permanent establishment in the United States and the Issuer is treated as a fiscally transparent entity (as defined in Treasury regulations section 1.894-1(d)(3)(ii)) under the laws of Transferee's jurisdiction with respect to payments made on the Collateral Debt Securities held by the Transferee;

(xii) unless the Transferee has provided another

representation acceptable to the Trustee, the Collateral Manager, the Issuer and the Co-Issuer, the Transferee represents that either (a) it is not an "employee benefit plan" (as defined in section 3(3) of ERISA) or "plan" (as defined in section 4975(e)(1) of the Code) that is subject to ERISA or section 4975 of the Code, or any other plan which is subject to any federal, state or local law ("Similar Law") that is substantially similar to section 406 of ERISA or section 4975 of the Code (each a "Benefit Plan" and such funds, "Plan Assets") or an entity whose underlying assets include Plan Assets of any such Benefit Plan or (b) its purchase and holding of Transferred Notes are eligible for the exemption to the prohibited transaction rules granted by Prohibited Transaction Class Exemption ("PTCE") 84-14, PTCE 90-1, PTCE 91-38, PTCE 95-60, PTCE 96-23, or a similar exemption; or, in the case of a Benefit Plan subject to Similar Law, do not result in a non-exempt violation of Similar Law;

(xiii) the Transferee will not, at any time, make an offer or invitation to subscribe to the public in the Cayman Islands, within the meaning of Section 194 of the Cayman Islands Companies Law (2004 Revision), unless the Transferred Notes have been listed on the Cayman Islands Stock Exchange; and

(xiv) the Transferee will not, at any time, offer to buy or offer to sell the Transferred Notes by any form of general solicitation or advertising, including, but not limited to, any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio or at a seminar or meeting whose attendees have been invited by general solicitations or advertising.

You, the Issuer, the Co-Issuer and the Collateral Manager are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

[Name of Transferee]

By:_____
Name:
Title:

Dated: _____

cc: Arbor Realty Mortgage Securities Series 2004-1, Ltd.

Arbor Realty Mortgage Securities Series 2004-1 LLC

EXHIBIT F

FORM OF TRANSFER CERTIFICATE
FOR (1) TRANSFER AT THE CLOSING TO A RULE 144A GLOBAL SECURITY AND A RULE 144A
(2) SUBSEQUENT TRANSFER FROM A REGULATIONS GLOBAL SECURITY TO
GLOBAL SECURITY
(Transfer pursuant to Section 2.5(e)(ii) of the Indenture)

LaSalle Bank National Association
as Trustee
135 South LaSalle Street
Suite 1625
Chicago, Illinois 60603
Attention: Trust Services Group - Arbor Realty Mortgage Securities Series 2004-1

Re: Arbor Realty Mortgage Securities Series 2004-1, Ltd., as Issuer and Arbor Realty Mortgage Securities Series 2004-1 LLC, as Co-Issuer of: Class A Senior Secured Floating Rate Term Notes, Due 2040 Class B Second Priority Floating Rate Term Notes, Due 2040 Class C Third Priority Floating Rate Term Notes, Due 2040 Class D Fourth Priority

Floating Rate Term Notes, Due 2040 (the "Transferred Notes")

Reference is hereby made to the Indenture dated as of January 19, 2005 (the "Indenture"), by and among Arbor Realty Mortgage Securities Series 2004-1, Ltd., as Issuer and Arbor Realty Mortgage Securities Series 2004-1 LLC, as Co-Issuer of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes, LaSalle Bank National Association, as Trustee, and Arbor Realty SR, Inc., as Advancing Agent. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Indenture and if not defined in the Indenture then such terms shall have the meanings assigned to them in Regulation S ("Regulation S"), or Rule 144A ("Rule 144A"), under the United States Securities Act of 1933, as amended (the "Securities Act"), and the rules promulgated thereunder or as defined under the Investment Company Act of 1940, as amended (the "Investment Company Act").

This letter relates to [the purchase of] $[__] aggregate principal amount of [Class A][Class B][Class C][Class D] Notes [being transferred in exchange for an equivalent beneficial interest in a Rule 144A Global Security of the same Class] in the name of [name of transferee] (the "Transferee").

In connection with such request, the Transferee hereby certifies that such transfer has been effected in accordance with the transfer restrictions set forth in the Indenture and the Offering Memorandum dated as of January 14, 2005 and hereby represents, warrants and agrees for the benefit of the Issuer, the Co-Issuer and the Trustee that:

(xv) the Transferee is a qualified institutional buyer within the meaning of Rule 144A under the Securities Act and a Qualified Purchaser as defined in Section 2(a)(51) of the Investment Company Act;

(xvi) (A) the Transferee is acquiring a beneficial interest in such Transferred Notes for its own account or for an account that is both a qualified institutional buyer within the meaning of Rule 144A and a Qualified Purchaser as defined in Section 2(a)(51) of the Investment Company Act and as to each of which the Transferee exercises sole investment discretion and (B) the Transferee and each such account is acquiring not less than the minimum denomination of the Transferred Notes;

(xvii) the Transferee will notify future transferees of the transfer restrictions;

(xviii) the Transferee is obtaining the Transferred Notes in a transaction pursuant to Rule 144A;

(xix) the Transferee is obtaining the Transferred Notes in accordance with any applicable securities laws of any state of the United States or any other applicable jurisdiction;

(xx) the Transferee understands that the Notes, including the Transferred Notes, are being offered only in a transaction not involving any public offering in the United States within the meaning of the Securities Act, the Notes, including the Transferred Notes, have not been and will not be registered under the Securities Act, and, if in the future the owner decides to offer, resell, pledge or otherwise transfer the Transferred Notes, such Transferred Notes may only be offered, resold, pledged or otherwise transferred in accordance with the Indenture and the legend on such Transferred Notes. The Transferee acknowledges that no representation is made by the Issuer, the Co-Issuer or the Initial Purchaser, as the case may be, as to the availability of any exemption under the Securities Act or any State securities laws for resale of the Transferred Notes;

(xxi) the Transferee is not purchasing the Transferred Notes with a view to the resale, distribution or other disposition thereof in violation of the Securities Act. The Transferee understands that an investment in the Transferred Notes involves certain risks, including the risk of loss of all or a substantial part of its investment under certain circumstances. The Transferee has had access to such financial and other information concerning the Issuer, the Co-Issuer and the Transferred Notes as it deemed

necessary or appropriate in order to make an informed investment decision with respect to its purchase of the Transferred Notes, including an opportunity to ask questions of and request information from the Collateral Manager, the Initial Purchaser, the Issuer and the Co-Issuer, including without limitation, an opportunity to request and review the Moody's Weighted Average Rating Factor/Weighted Average Recovery Rate Matrix incorporated by reference in the Offering Memorandum;

(xxii) in connection with the purchase of the Transferred Notes (A) none of the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee is acting as a fiduciary or financial or investment adviser for the Transferee; (B) the Transferee is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee other than in a current offering memorandum for such Transferred Notes and any representations expressly set forth in a written agreement with such party; (C) none of the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee has given to the Transferee (directly or indirectly through any other person) any assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (including legal, regulatory, tax, financial, accounting, or otherwise) of its purchase; (D) the Transferee has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisers to the extent it has deemed necessary, and it has made its own investment decisions (including decisions regarding the suitability of any transaction pursuant to this Indenture) based upon its own judgment and upon any advice from such advisers as it has deemed necessary and not upon any view expressed by the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee; and (E) the Transferee is purchasing the Transferred Notes with a full understanding of all of the terms, conditions and risks thereof (economic and otherwise), and is capable of assuming and willing to assume (financially and otherwise) these risks;

(xxiii) the Transferee understands that the Transferred Notes will bear the applicable legend set forth on such Transferred Notes;

(xxiv) the Transferee understands that the Issuer, Co-Issuer, Trustee or Paying Agent shall require certification acceptable to it (A) as a condition to the payment of principal of and

interest on any Notes without, or at a reduced rate of, U.S. withholding or backup withholding tax, and (B) to enable the Issuer, Co-Issuer, Trustee and Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to pay, deduct or withhold from payments in respect of such Notes or the Holder of such Notes under any present or future law or regulation of the Cayman Islands or the United States or any present or future law or regulation of any political subdivision thereof or taxing authority therein or to comply with any reporting or other requirements under any such law or regulation. Such certification may include U.S. federal income tax forms (such as IRS Form W-8BEN (Certification of Foreign Status of Beneficial Owner), Form W-8IMY (Certification of Foreign Intermediary Status), IRS Form W-9 (Request for Taxpayer Identification Number and Certification), or IRS Form W-8ECI (Certification of Foreign Person's Claim for Exemption from Withholding on Income Effectively Connected with Conduct of a U.S. Trade or Business) or any successors to such IRS forms). In addition, the Issuer, Co-Issuer, Trustee or Paying Agent may require certification acceptable to it to enable the Issuer to qualify for a reduced rate of withholding in any jurisdiction from or through which the Issuer receives payments on its assets. Each Transferee agrees to provide any certification requested pursuant to this paragraph and to update or replace such form or certification in accordance with its terms or its subsequent amendments;

(xxv) the Transferee hereby agrees that, for purposes of U.S.

federal, state and local income and franchise tax and any other income taxes, (A) the Notes will be treated as indebtedness, and (B) the Preferred Shares will be treated as equity; the Transferee agrees to such treatment and agrees to take no action inconsistent with such treatment, unless required by law;

(xxvi) the Transferee, if not a "United States person" (as defined in Section 7701(a)(30) of the Code), either: (A) is not a bank (within the meaning of Section 881(c)(3)(A) of the Code); (B) if such Transferee is a bank (within the meaning of Section 881(c)(3)(A) of the Code), after giving effect to its purchase of the Notes, the Transferee (x) will not own more than 50% of the Preferred Shares (by number) or 50% by value of the aggregate of the preferred and all classes of notes that are treated as equity for US federal income tax purposes either directly or indirectly, and will not otherwise be related to the Issuer (within the meaning of section 267(b) of the Code) and (y) has not purchased the Notes in whole or in part to avoid any U.S. federal income tax liability (including, without limitation, any U.S. withholding tax that would be imposed on the Notes with respect to the Collateral Debt Securities if held directly by the Transferee); (C) has provided an IRS Form W-8ECI representing that all payments received or to be received by it from the Issuer are effectively connected with the conduct of a trade or business in the United States, or (D) is eligible for benefits under an income tax treaty with the United States that eliminates U.S. federal income taxation of U.S. source interest not attributable to a permanent establishment in the United States and the Issuer is treated as a fiscally transparent entity (as defined in Treasury regulations section 1.894-1(d)(3)(ii)) under the laws of Transferee's jurisdiction with respect to payments made on the Collateral Debt Securities held by the Transferee;

(xxvii) unless the Transferee has provided another representation acceptable to the Trustee, the Collateral Manager, the Issuer and the Co-Issuer, the Transferee represents that either (a) it is not and is not investing on behalf of an "employee benefit plan" (as defined in section 3(3) of ERISA) or "plan" (as defined in section 4975(e)(1) of the Code) that is subject to ERISA or section 4975 of the Code or any other plan which is subject to any federal, state or local law ("Similar Law") that is substantially similar to section 406 of ERISA or section 4975 of the Code (each a "Benefit Plan" and such funds "Plan Assets") or an entity whose underlying assets include Plan Assets of any such Benefit Plan or (b) its purchase and holding of the Transferred Notes are eligible for the exemption to the prohibited transaction rules granted by Prohibited Transaction Class Exemption ("PTCE") 84-14, PTCE 90-1, PTCE 91-38, PTCE 95-60, PTCE 96-23, or a similar exemption; or, in the case of a Benefit Plan subject to Similar Law, do not result in a non-exempt violation of Similar Law;

(xxviii) the Transferee will not, at any time, make an offer or invitation to subscribe to the public in the Cayman Islands, within the meaning of Section 194 of the Cayman Islands Companies Law (2004 Revision), unless the Transferred Notes have been listed on the Cayman Islands Stock Exchange; and

(xxix) the Transferee will not, at any time, offer to buy or offer to sell the Transferred Notes by any form of general solicitation or advertising, including, but not limited to, any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio or at a seminar or meeting whose attendees have been invited by general solicitations or advertising.

You, the Issuer, the Co-Issuer and the Collateral Manager are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

[Name of Transferee]

By: _____
Name:
Title:

Dated:_____

cc: Arbor Realty Mortgage Securities Series 2004-1, Ltd.

Arbor Realty Mortgage Securities Series 2004-1 LLC

EXHIBIT G

Form of Opinions of Cadwalader, Wickersham & Taft LLP

EXHIBIT H

Form of Opinion of Maples and Calder

EXHIBIT I

Form of Opinion of Skadden, Arps, Slate, Meagher & Flom LLP

EXHIBIT J

Form of Opinion of Counsel to Hedge Counterparty

EXHIBIT K

Form of Opinion of Kronish Lieb Weiner & Hellman LLP

EXHIBIT L

Form of Opinion of Kennedy Covington Lobdell & Hickman, LLP

EXHIBIT M

Form of Opinion of Sherman & Sterling LLP to each CDS Seller

EXHIBIT N

TRUST RECEIPT

Arbor Realty Mortgage Securities Series 2004-1, Ltd.
(the "Issuer")
Arbor Realty Collateral Management LLC
(the "Collateral Manager")

Re: Arbor Realty Mortgage Securities Series 2004-1, Ltd.

Ladies and Gentlemen:

In accordance with the provisions of the Indenture, the undersigned, as the Custodial Securities Intermediary, hereby certifies that it has received the documents identified on Schedule A hereto with respect to the Collateral Debt Securities identified on such schedule and that it is holding all such documents in its capacity as the Custodial Securities Intermediary subject to the terms of the Indenture, dated as of January 19, 2005, by and among the Issuer, Arbor Realty Mortgage Securities 2004-1 LLC, as Co-Issuer, Arbor Realty SR, Inc., as Advancing Agent, and LaSalle Bank, National Association, as Trustee, Paying Agent, Calculation Agent, Transfer Agent, Custodial Securities Intermediary and Notes Registrar. Capitalized terms used but not defined in this Receipt have the meanings assigned to them in the Indenture.

The Custodial Securities Intermediary makes no representations as to, and shall not be responsible to verify, (i) the validity, legality, enforceability, due authorization, recordability, sufficiency, or genuineness of any of the documents in its custody relating to a Collateral Debt Security, or (ii) the collectability, insurability, effectiveness or suitability of any such in its custody relating to a Collateral Debt Security.

LASALLE BANK, NATIONAL ASSOCIATION,
solely in its capacity
as Trustee and Custodial
Security Intermediary

By: _____
Name:
Title

EXHIBIT O

REQUEST FOR RELEASE OF DOCUMENTS AND RECEIPT

To: LaSalle Bank, National Association

In connection with the administration of the Collateral Debt Securities held by you as the Custodial Securities Intermediary on behalf of the Issuer, we request the release, to the Collateral Manager of [specify document] for the Collateral Debt Security described below, for the reason indicated.

BORROWER'S NAME, ADDRESS & ZIP CODE:	SHIP FILES TO:
	Name:
	Address:
	Telephone Number:

Collateral Debt Security Description: _____

Current Outstanding Principal Balance: _____

Reason for Requesting Documents (check one):

__1. Purchased Asset Paid in Full. (The Collateral Manager hereby certifies that all amounts received in connection therewith that are required to be remitted by the borrower or other obligors thereunder have been paid in full and that any amounts in respect thereof required to be remitted to the Trustee pursuant to the Indenture have been so remitted.

__2. Purchased Asset Liquidated By _____. (The Collateral Manager hereby certifies that all proceeds of insurance, condemnation or other liquidation have been finally received and that any amounts in respect thereof required to be remitted to the Trustee pursuant to the Indenture have been so remitted.)

__3. Other (explain) _____.

If box 1 or 2 above is checked, and if all or part of the Underlying Instruments was previously released to us, please release to us our previous request and receipt on file with you, as well as any additional documents in

your possession relating to the specified Collateral Debt Security.

If box 3 above is checked, upon our return of all of the above documents to you as the Custodial Securities Intermediary, please acknowledge your receipt by signing in the space indicated below and returning this form.

If box 3 above is checked, it is hereby acknowledged that a security interest pursuant to the Uniform Commercial Code in the Collateral Debt Securities described above and in the proceeds of said Collateral Debt Securities has been granted to the Trustee pursuant to the Indenture.

If box 3 above is checked, in consideration of the aforesaid delivery by the Custodial Securities Intermediary, the Collateral Manager hereby agrees to hold said Collateral Debt Securities in trust for the Trustee, as provided under and in accordance with all provisions of the Indenture and the Collateral Management Agreement, and to return said Collateral Debt Securities to the Custodial Securities Intermediary no later than the close of business on the twentieth (20th) Business Day following the date hereof or, if such day is not a Business Day, on the immediately preceding Business Day.

The Collateral Manager hereby acknowledges that it shall hold the above-described Collateral Debt Securities and any related Underlying Instruments in trust for, and as the bailee of, the Trustee, and shall return said Collateral Debt Securities and any related documents only to the Custodial Securities Intermediary.

Capitalized terms used but not defined in this Request have the meanings assigned to them in the Indenture, dated as of January 19, 2005, by and among Arbor Realty Mortgage Securities Series 2004-1, Ltd., as Issuer, Arbor Realty Mortgage Securities Series 2004-1 LLC, as Co-Issuer, Arbor Realty SR, Inc. as Advancing Agent, and LaSalle Bank National Association, as Trustee, Paying Agent, Calculation Agent, Transfer Agent, Custodial Securities Intermediary and Notes Registrar.

ARBOR REALTY COLLATERAL MANAGEMENT LLC

By: _____
Name:
Title:

Acknowledgment of documents returned:

LASALLE BANK NATIONAL ASSOCIATION

By:
_____
Name:
Title:

Date:

ANNEX 3 - SCHEDULE D

STANDARD & POOR'S SHADOW RATING GRID - MEZZANINE DEBT

	OFFICE, INDUSTRIAL, NON-MALL RETAIL			MALLS		
	ALL IN LTV <85%	ALL IN LTV 85.1-99.9%	ALL IN LTV >100%	ALL IN LTV <85%	ALL IN LTV 85.1-99.9%	ALL IN LTV >100%
AAA	30.375%	28.625%	26.875%	35.250%	33.250%	31.250%
AA+	32.125%	30.375%	28.625%	37.250%	35.250%	33.250%
AA	33.875%	32.125%	30.375%	39.250%	37.250%	35.250%
AA-	35.042%	33.292%	31.542%	40.583%	38.583%	36.583%
A+	36.208%	34.458%	32.708%	41.917%	39.917%	37.917%
A	37.375%	35.625%	33.875%	43.250%	41.250%	39.250%
A-	38.542%	36.792%	35.042%	44.583%	42.583%	40.583%
BBB+	39.708%	37.958%	36.208%	45.917%	43.917%	41.917%

BBB	40.875%	39.125%	37.375%	47.250%	45.250%	43.250%
BBB-	43.500%	41.750%	40.000%	50.250%	48.250%	46.250%
BB+	47.000%	45.250%	43.500%	54.250%	52.250%	50.250%
BB	50.500%	48.750%	47.000%	58.250%	56.250%	54.250%
BB-	52.250%	50.500%	48.750%	60.250%	58.250%	56.250%
B+	54.000%	52.250%	50.500%	62.250%	60.250%	58.250%
B	55.750%	54.000%	52.250%	64.250%	62.250%	60.250%
B-	57.500%	55.750%	54.000%	66.250%	64.250%	62.250%
CCC+	59.250%	57.500%	55.750%	68.250%	66.250%	64.250%
CCC	61.000%	59.250%	57.500%	70.250%	68.250%	66.250%
CCC-	62.750%	61.000%	59.250%	72.250%	70.250%	68.250%

Sch D-4

	MULTIFAMILY & MANUFACTURED HOUSING			HOTELS		
	ALL IN LTV <85%	ALL IN LTV 85.1-99.9%	ALL IN LTV >100%	ALL IN LTV <85%	ALL IN LTV 85.1- 99.9%	ALL IN LTV >100%
AAA	32.125%	30.375%	28.625%	18.125%	16.875%	15.625%
AA+	33.875%	32.125%	30.375%	19.375%	18.125%	16.875%
AA	35.625%	33.875%	32.125%	20.625%	19.375%	18.125%
AA-	36.792%	35.042%	33.292%	21.458%	20.208%	18.958%
A+	37.958%	36.208%	34.458%	22.292%	21.042%	19.792%
A	39.125%	37.375%	35.625%	23.125%	21.875%	20.625%
A-	40.292%	38.542%	36.792%	23.958%	22.708%	21.458%
BBB+	41.458%	39.708%	37.958%	24.792%	23.542%	22.292%
BBB	42.625%	40.875%	39.125%	25.625%	24.375%	23.125%
BBB-	45.250%	43.500%	41.750%	28.750%	27.500%	26.250%
BB+	48.750%	47.000%	45.250%	31.250%	30.000%	28.750%
BB	52.250%	50.500%	48.750%	33.750%	32.500%	31.250%
BB-	54.000%	52.250%	50.500%	35.000%	33.750%	32.500%
B+	55.750%	54.000%	52.250%	36.250%	35.000%	33.750%
B	57.500%	55.750%	54.000%	37.500%	36.250%	35.000%
B-	59.250%	57.500%	55.750%	38.750%	37.500%	36.250%
CCC+	61.000%	59.250%	57.500%	40.000%	38.750%	37.500%
CCC	62.750%	61.000%	59.250%	41.250%	40.000%	38.750%
CCC-	64.500%	62.750%	61.000%	42.500%	41.250%	40.000%

LTVs are based on MAI appraisal values (no more than 6 months old)

SCHEDULE E

ARBOR REALTY MORTGAGE SECURITIES SERIES 2004-1 COLLATERAL DEBT SECURITIES LISTING

(ON FILE WITH THE COLLATERAL MANAGER)

Sch. E-1

SCHEDULE F

LIBOR

The London interbank offered rate ("LIBOR") shall be determined by the Calculation Agent in accordance with the following provisions:

(i) On the second London Banking Day preceding the first Business Day of an Interest Accrual Period (each such day, a "LIBOR Determination Date"), LIBOR (other than the first Interest Accrual Period) will equal the rate, as obtained by the Calculation Agent, for deposits in U.S. Dollars for a period of three months, which appears on the Moneyline Telerate Service Page 3750 (or such other page as may replace that page on that service, or such other service as may be nominated as the information vendor, for the purpose of displaying comparable rates or prices) (the "Telerate Page 3750"),

in each case as of 11:00 a.m. (London time) on such LIBOR Determination Date. "London Banking Day" means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in London, England.

(ii) If, on any LIBOR Determination Date, such rate does not appear on Telerate Page 3750, the Calculation Agent will determine LIBOR on the basis of the rates at which deposits in U.S. Dollars are offered by Reference Banks at approximately 11:00 a.m. (London time) on the LIBOR Determination Date to prime banks in the London interbank market for a period of three months commencing on the LIBOR Determination Date and in a representative amount of $1,000. The Calculation Agent will request the principal London office of each of the Reference Banks to provide a quotation of its rate. If at least two such quotations are provided, the rate for that LIBOR Determination Date will be the arithmetic mean of the quotations. If fewer than two quotations are provided as requested, the rate for that LIBOR Determination Date will be the arithmetic mean of the rates quoted by major banks in New York City, selected by the Calculation Agent, at approximately 11:00 a.m. (New York City time) on the LIBOR Determination Date for loans in U.S. Dollars to leading European banks for a period of three months commencing on the LIBOR Determination Date and in a representative amount of $100,000. As used herein, "Reference Banks" means four major banks in the London interbank market selected by the Calculation Agent and approved by the Collateral Manager.

(iii) In respect of the initial Interest Accrual Period, LIBOR will equal 2.07455% per annum.

In making the above calculations, all percentages resulting from the calculation will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point.

SCHEDULE G

LIST OF AUTHORIZED OFFICERS OF COLLATERAL MANAGER

1. Ivan Kaufman

2. Frederick Herbst

3. John Kovarik

4. Fred Weber

5. Gene Kilgore

6. Walter K. Horn

SCHEDULE H

FORM OF UNDERLYING TERM LOAN AND UNDERLYING MORTGAGE PROPERTY REPRESENTATIONS AND WARRANTIES

(*All references to Mortgage Loans in this Schedule 1(a) shall mean Mortgage Loans that constitute Collateral Debt Security)

1. Accuracy of Information. The information pertaining to each Mortgage Loan set forth in Annex A was true and correct in all material respects as of the applicable Cut-Off Date.

2. Compliance with Law. As of the date of its origination, such Mortgage Loan complied in all material respects with, or was exempt from, all requirements of federal, state or local law relating to the origination of such Loan.

3. Title of Assets. Immediately prior to the sale, transfer and assignment to the Issuer, the Seller had good and marketable title to, and was the sole owner of, each Mortgage Loan, and the Seller is transferring such Loan free and clear of any and all liens, pledges, charges, security interests or any other ownership interests of any nature encumbering such Mortgage Loan. Upon consummation of the transactions contemplated by the Collateral Debt Securities Purchase Agreement, the Seller will have validly and effectively conveyed to the Issuer all legal and beneficial interest in and to such Mortgage Loan (other than those rights to servicing and related compensation as reflected in the Mortgage Loan Schedule), free and clear of any pledge, lien or security interest.

4. Full Disbursement of Proceeds. The proceeds of such Mortgage Loan have been fully disbursed and there is no requirement for future advances thereunder.

5. Enforceability of Documents. In the case of each Mortgage Loan, each related Underlying Note, Mortgage, Assignment of Leases (if a document separate from the Mortgage) and other agreement executed by the related Underlying Obligor in connection with such Loan is the legal, valid and binding obligation of the related Underlying Obligor (subject to any non-recourse provisions therein and any state anti-deficiency or market value limit deficiency legislation), enforceable in accordance with its terms, except (i) that certain provisions contained in such Loan documents are or may be unenforceable in whole or in part under applicable state or federal laws, but neither the application of any such laws to any such provision nor the inclusion of any such provisions renders any of the Loan documents invalid as a whole and such Loan documents taken as a whole are enforceable to the extent necessary and customary for the practical realization of the rights and benefits customarily afforded institutional mortgage lenders and (ii) as such enforcement may be limited by bankruptcy, insolvency, receivership, reorganization, moratorium, redemption, liquidation or other laws affecting the enforcement of creditors' rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). The related Underlying Note and Mortgage contain no provision limiting the right or ability of the Seller to assign, transfer and convey the related Loan to any other Person. With respect to any Underlying Mortgage Property that has tenants, there exists as either part of the Mortgage or as a separate document, an assignment of leases.

6. Absence of Defenses. In the case of each Mortgage Loan as of the date of its origination, there was no valid offset, defense, counterclaim, abatement or right to rescission with respect to any of the related Underlying Notes, Mortgage(s) or other agreements executed in connection therewith, and, to the Seller's actual knowledge, as of the Closing Date, there is no valid offset, defense, counterclaim or right to rescission with respect to such Underlying Note, Mortgage(s) or other agreements, except in each case, with respect to the enforceability of any provisions requiring the payment of default interest, late fees, additional interest, prepayment premiums or yield maintenance charges, and the Seller has no knowledge of such rights, defenses or counterclaims having been asserted.

7. Valid Assignments. In the case of each Mortgage Loan, each related Assignment of Mortgage and Assignment of Leases from the Seller to the Issuer constitutes the legal, valid and binding first

priority assignment from the Seller, except as such enforcement may be limited by bankruptcy, insolvency, redemption, reorganization, liquidation, receivership, moratorium or other laws relating to or affecting creditors' rights generally or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). Each Mortgage and Assignment of Leases is freely assignable.

8. Mortgage Lien. In the case of each Mortgage Loan, each related Mortgage is a valid and enforceable first lien on the related Underlying Mortgage Property subject only to the exceptions set forth in paragraph (5) above and the following title exceptions (each such title exception, a "Title Exception", and collectively, the "Title Exceptions"): (a) the lien of current real property taxes, water charges, sewer rents and assessments not yet due and payable, (b) covenants, conditions and restrictions, rights of way, easements

and other matters of public record, none of which, individually or in the aggregate, materially and adversely interferes with the current use of the Underlying Mortgage Property or the security intended to be provided by such Mortgage or with the Underlying Obligor's ability to pay its obligations under the Loan when they become due or materially and adversely affects the value of the Underlying Mortgage Property, (c) the exceptions (general and specific) and exclusions set forth in the applicable policy described in paragraph (12) below or appearing of record, none of which, individually or in the aggregate, materially and adversely interferes with the current use of the Underlying Mortgage Property or the security intended to be provided by such Mortgage or with the Underlying Obligor's ability to pay its obligations under the Loan when they become due or materially and adversely affects the value of the Underlying Mortgage Property, (d) other matters to which like properties are commonly subject, none of which, individually or in the aggregate, materially and adversely interferes with the current use of the Underlying Mortgage Property or the security intended to be provided by such Mortgage or with the Underlying Obligor's ability to pay its obligations under the Loan when they become due or materially and adversely affects the value of the Underlying Mortgage Property, (e) the right of tenants (whether under ground leases, space leases or operating leases) at the Underlying Mortgage Property as tenants only pursuant to their respective leases, and (f) if such Loan is a Crossed Loan, the lien of the Mortgage for such other Loan. Except with respect to Crossed Loans and as provided below, there are no mortgage loans that are senior or pari passu with respect to the related Underlying Mortgage Property or such Loan.

9. UCC Financing Statements. In the case of each Mortgage Loan, UCC Financing Statements have been filed and/or recorded (or, if not filed and/or recorded, have been submitted in proper form for filing and recording), in all public places necessary to perfect a valid security interest in all items of personal property securing the Loan located on the Underlying Mortgage Property that are owned by the Underlying Obligor and either (i) are reasonably necessary to operate the Underlying Mortgage Property or (ii) are (as indicated in the appraisal obtained in connection with the origination of the related Loan) material to the value of the Underlying Mortgage Property (other than any personal property subject to a purchase money security interest or a sale and leaseback financing arrangement permitted under the terms of such Loan or any other personal property leases applicable to such personal property), to the extent perfection may be effected pursuant to applicable law by recording or filing, and the Mortgages, security agreements, chattel Mortgages or equivalent documents related to and delivered in connection with the related Loan establish and create a valid and enforceable lien and priority security interest on such items of personalty except as such enforcement may be limited by bankruptcy, insolvency, receivership, reorganization, moratorium, redemption, liquidation or other laws affecting the enforcement of creditor's rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). Notwithstanding any of the foregoing, no representation is made as to the perfection of any security interest in rents or other personal property to the extent that possession or control of such items or actions other than the filing of UCC Financing Statements are required in order to effect such perfection.

10. Taxes. In the case of each Mortgage Loan, all real estate taxes and governmental assessments, or installments thereof, which would be a lien on the Underlying Mortgage Property and that prior to the Closing Date have become delinquent in respect of each related Underlying Mortgage Property have been paid, or an escrow of funds in an amount sufficient to cover such payments has been established. For purposes of this representation and warranty, real estate taxes and governmental assessments and installments thereof shall not be considered delinquent until the earlier of (a) the date on which interest and/or penalties would first be payable thereon and (b) the date on which enforcement action is entitled to be taken by the related taxing authority.

11. Engineering Assessments. In the case of each Mortgage Loan, one or more engineering assessments were performed and prepared by an independent engineering consultant firm, which visited the related

Underlying Mortgage Property not more than 12 months prior to the origination date of the related Loan, and, except as set forth in an engineering report prepared in connection with such assessment, a copy of which has been delivered to the Issuer or its designee, the related Underlying Mortgage Property is, to the Seller's actual knowledge, relying solely on the review of such engineering

assessment(s), in good repair, free and clear of any damage that would materially and adversely affect its value as security for such Loan. If an engineering report revealed any such damage or deficiencies, material deferred maintenance or other similar conditions as described in the preceding sentence either (1) an escrow of funds equal to at least 125% of the amount estimated to effect the necessary repairs, or such other amount as a prudent commercial mortgage lender would deem appropriate under the circumstances was required or a letter of credit in such amount was obtained or (2) such repairs and maintenance have been completed. As of the date of origination of such Loan there was no proceeding pending, and subsequent to such date, the Seller has not received notice of any pending or threatening proceeding for the condemnation of all or any material portion of the Underlying Mortgage Property securing any Loan.

12. Title Insurance. In the case of each Mortgage Loan, the Seller has received an ALTA lender's title insurance policy or a comparable form of lender's title insurance policy (or if such policy has not yet been issued, such insurance may be evidenced by escrow instructions, a "marked up" pro forma or specimen policy or title commitment, in either case, marked as binding and countersigned by the title insurer or its authorized agent at the closing of the related Loan) as adopted in the applicable jurisdiction (the "Title Insurance Policy"), which to the Seller's actual knowledge, was issued by a title insurance company qualified to do business in the jurisdiction where the applicable Underlying Mortgage Property is located to the extent required, insuring that the related Mortgage is a valid first lien in the original principal amount of the related Loan on the Underlying Obligor's fee simple interest (or, if applicable, leasehold interest) in the portion of the Underlying Mortgage Property comprised of real estate, subject only to the Title Exceptions. Such Title Insurance Policy was issued in connection with the origination of the related Loan. No claims have been made by or on behalf of Seller under such Title Insurance Policy. Such Title Insurance Policy is in full force and effect, provides that the originator of the related Loan, its successors or assigns is the sole named insured, and all premiums thereon have been paid. The Seller has not done, by act or omission, and the Seller has no knowledge of, anything that would impair the coverage under such Title Insurance Policy. Immediately following the transfer and assignment of the related Loan to the Issuer (including endorsement and delivery of the related Underlying Note to the Issuer and recording of the related Assignment of Mortgage in favor of Issuer in the applicable real estate records), such Title Insurance Policy will inure to the benefit of the Issuer without the consent of or notice to the title insurer. Such Title Insurance Policy contains no material exclusions for, or affirmatively insures against any losses arising from (other than in jurisdictions in which affirmative insurance is unavailable) (a) failure to have access to a public road, (b) material encroachments of any part of the building thereon over easements and (c) failure of the land shown on the survey to be the same as the property legally described in the Mortgage.

13. Hazard Insurance. In the case of each Mortgage Loan, each Underlying Mortgage Property was covered by (1) a fire and extended perils included within the classification "All Risk of Physical Loss" insurance policy in an amount (subject to a customary deductible) at least equal to the lesser of the replacement cost of improvements located on such Underlying Mortgage Property, with no deduction for depreciation, or the outstanding principal balance of the Loan and in any event, the amount necessary to avoid the operation of any co-insurance provisions; (2) business interruption or rental loss insurance in an amount at least equal to 12 months of operations of the related Underlying Mortgage Property; and (3) comprehensive general liability insurance against claims for personal and bodily injury, death or property damage occurring on, in or about the related Underlying Mortgage Property in an amount customarily required by prudent commercial mortgage lenders, but not less than $1 million. An architectural or engineering consultant has performed an analysis of each of the Underlying Mortgage Properties located in seismic zone 3 or 4 in order to evaluate the structural and seismic condition of such property, for the sole purpose of assessing the probable maximum loss ("PML") for the Underlying Mortgage Property in the event of an earthquake. In such instance, the PML was based on a 475 year lookback with a 10% probability of exceedance in a 50 year period. If the resulting report concluded that the PML would exceed 20% of the amount of the replacement costs of the improvements, earthquake insurance on such Underlying Mortgage Property was obtained by an insurer rated at least "A-:V" (or the equivalent) by A.M. Best Company or "BBB-" (or the equivalent) from S&P or "Baa3" (or the equivalent) from Moody's. Such insurance is required by the Mortgage or related Loan documents and was in full force and effect with respect to each related Underlying Mortgage Property at origination and to the knowledge of the Seller, all insurance coverage required under each Mortgage, is in full force and effect with respect to each related Underlying Mortgage Property; and no notice of termination or

cancellation with respect to any such insurance policy has been received by the Seller; and except for certain amounts not greater than amounts which would be considered prudent by a commercial mortgage lender with respect to a similar mortgage loan and which are set forth in the related Mortgage, any insurance proceeds in respect of a casualty loss will be applied either to (1) the repair or restoration of the related Underlying Mortgage Property with mortgagee or a third party custodian acceptable to the mortgagee having the right to hold and disburse the proceeds as the repair or restoration progresses, other than with respect to amounts that are customarily acceptable to commercial and multifamily mortgage lending institutions, or (2) the reduction of the outstanding principal balance of the Loan and accrued interest thereon. To the Seller's actual knowledge, the insurer with respect to each policy is qualified to write insurance in the relevant jurisdiction to the extent required. The insurance policies contain a standard mortgagee clause naming the originator of the related Loan, its successors and assigns as loss payees in the case of property insurance policies and additional insureds in the case of liability insurance policies and provide that they are not terminable and may not be reduced without 30 days prior written notice to the mortgagee (or, with respect to non-payment of premiums, 10 days prior written notice to the mortgagee) or such lesser period as prescribed by applicable law. Each Mortgage requires that the Underlying Obligor maintain insurance as described above or permits the mortgagee to require insurance as described above, and, either expressly or through general provisions regarding the Underlying Obligor's obligation to reimburse the mortgagee for costs, permits the mortgagee to purchase such insurance at the Underlying Obligor's expense if the Underlying Obligor fails to do so. Additionally, for any Loan having an unpaid principal balance equal to or greater than $15,000,000, the Insurer has a claims paying ability rating from S&P or Fitch of not less than "A-" (or the equivalent) or A.M. Best Company of not less than "A-:V" (or the equivalent).

14. Absence of Default. In the case of each Mortgage Loan: (A) Other than payments due but not yet 30 days or more delinquent, there is no monetary default, breach, violation or event of acceleration existing under the related Underlying Note or the related Mortgage or other security agreement, and to the Seller's actual knowledge no non-monetary default has occurred and no event has occurred (other than payments due but not yet delinquent) which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material default, breach, violation or event of acceleration under the related Mortgage or the related Underlying Note, provided, however, that this representation and warranty does not address or otherwise cover any default, breach, violation or event of acceleration that specifically pertains to any matter otherwise covered by any other representation and warranty made by the Seller in any paragraph of this Schedule 1(a), and (B) neither the Seller nor any servicer on its behalf has waived any material default, breach, violation or event of acceleration under such Mortgage or Underlying Note, except for a written waiver contained in the related Collateral File being delivered to the Issuer, and pursuant to the terms of the related Mortgage or the related Underlying Note and other documents in the related Collateral File no Person or party other than the holder (or any servicer or other party acting on behalf of holder) of such Underlying Note may declare any event of default or accelerate the related indebtedness under either of such Mortgage or Underlying Note.

15. Absence of Delinquencies. As of the Closing Date, each Mortgage Loan is not, and in the prior 12 months (or since the date of origination if such Loan has been originated within the past 12 months), has not been, 30 days or more past due in respect of any Scheduled Payment.

16. Interest Rate. In the case of each Mortgage Loan except with respect to ARD Loans, which provide that the rate at which interest accrues thereon increases after the anticipated repayment date, the mortgage rate (exclusive of any default interest, late charges or prepayment premiums) of such Loan is either (a) a fixed rate or (b) a floating rate based on a fixed percentage above LIBOR.

17. Absence of Other Secured Obligations. In the case of each Mortgage Loan, each related Mortgage does not provide for or permit, without the prior written consent of the holder of the Underlying Note, each related Underlying Mortgage Property to secure any other promissory note or obligation except as expressly described in such Mortgage.

18. Environmental Conditions. In the case of each Mortgage Loan, one or more environmental site assessments or updates thereof (meeting American Society for Testing and Materials (ASTM) standards) were performed by an environmental consulting firm independent of the Seller and the Seller's affiliates with respect to each related Underlying Mortgage Property during the 18-months preceding the origination of the related Loan, and the Seller, having made no independent inquiry other than to review the report(s) prepared in

connection with the assessment(s) referenced herein, has no actual knowledge and has received no notice of any material adverse environmental condition or circumstance affecting such Underlying Mortgage Property that was not disclosed in such report(s). If any such environmental report identified any Recognized Environmental Condition ("REC"), as that term is defined in the Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process Designation: E 1527-00, as recommended by the American Society for Testing and Materials (ASTM), with respect to the related Underlying Mortgage Property and the same have not been subsequently addressed in all material respects, then either (i) an escrow of 100% or more of the amount identified as necessary by the environmental consulting firm to address the REC is held by the Seller for purposes of effecting same (and the borrower has covenanted in the Loan documents to perform such work), (ii) the related borrower or other responsible party having financial resources reasonably estimated to be adequate to address the REC is required to take such actions or is liable for the failure to take such actions, if any, with respect to such circumstances or conditions as have been required by the applicable governmental regulatory authority or any environmental law or regulation, (iii) the borrower has provided an environmental insurance policy, (iv) an operations and maintenance plan has been or will be implemented or (v) such conditions or circumstances were investigated further and based upon such additional investigation, a qualified environmental consultant recommended no further investigation or remediation. All environmental assessments or updates that were in the possession of the Seller and that relate to an Underlying Mortgage Property insured by an environmental insurance policy have been delivered to or disclosed to the environmental insurance carrier or insurance broker issuing such policy prior to the issuance of such policy. The Loan documents require the borrower to comply with all applicable environmental laws and each Underlying Obligor has agreed to indemnify the mortgagee for any losses resulting from any material, adverse environmental condition or failure of the Underlying Obligor to abide by such laws or has provided environmental insurance.

19. Benefits of Mortgage. In the case of each Mortgage Loan, each related Mortgage and Assignment of Leases, together with applicable state law, contains customary and enforceable provisions for comparable mortgaged properties similarly situated such as to render the rights and remedies of the holder thereof adequate for the practical realization against the Underlying Mortgage Property of the benefits of the security, including realization by judicial or, if applicable, non-judicial foreclosure, subject to the effects of bankruptcy, insolvency, reorganization, receivership, moratorium, redemption, liquidation or similar law affecting the right of creditors and the application of principles of equity.

20. Absence of Bankruptcy Debtors. As of the date of origination of each Mortgage Loan, no Underlying Obligor was a debtor in any state or federal bankruptcy or insolvency proceeding and to Seller's knowledge, no Underlying Obligor is a debtor in any state or federal bankruptcy or insolvency proceedings.

21. Whole Loans. Each Mortgage Loan is a whole loan (except for the existence of a Collateral Debt Security that is a B-Note or Participation) and contains no equity participation by the lender or shared appreciation feature and does not provide for any contingent or additional interest in the form of participation in the cash flow of the related Underlying Mortgage Property or, other than the ARD Loans, provide for negative amortization. The Seller holds no preferred equity interest other than as disclosed in writing and consented to by the Issuer prior to the sale of such Loan or, if applicable, a related Participation or B Note.

22. "Due-on-Sale" Clauses and Similar Restrictions. In the case of each Mortgage Loan, the Mortgage contains a "due on sale" clause, which provides for the acceleration of the payment of the unpaid principal balance of the Loan

if, without the prior written consent of the holder of the Mortgage, either the related Underlying Mortgage Property, or any equity interest in the related Underlying Obligor, is directly or indirectly transferred, sold or pledged, other than by reason of family and estate planning transfers, transfers by devise, descent or operation of law upon the death of a member, general partner or shareholder of the related Borrower, transfers of less than a controlling interest (as such term is defined in the related Loan documents) in the Underlying Obligor, issuance of non-controlling new equity interests, transfers to an affiliate meeting the requirements of the Loan, transfers among existing members, partners or shareholders in the Underlying Obligor, transfers among affiliated Underlying Obligors with respect to Crossed Loans or multi-property Loans or transfers of a similar nature to the foregoing meeting the requirements of the Loan (such as pledges of ownership interests that do not result in a change of control). Either expressly or through general provisions regarding the Underlying Obligor's obligations to reimburse the mortgagee for costs, the Mortgage requires the Underlying Obligor to pay all reasonable fees and expenses associated with securing the consents or approvals described in the preceding sentence.

23. Absence of Waivers and Modifications. In the case of each Mortgage Loan, except as set forth in the related Collateral File, the terms of the related Underlying Note, related Mortgage(s) or other security documents have not been waived, modified, altered, satisfied, impaired, canceled, subordinated or rescinded in any manner which materially interferes with the security intended to be provided by such Mortgage.

24. Inspections. In the case of each Mortgage Loan, each related Underlying Mortgage Property was inspected by or on behalf of the related originator or an affiliate during the 12 month period prior to the related origination date.

25. Property Release. In the case of each Mortgage Loan, since origination, no material portion of the related Underlying Mortgage Property has been released from the lien of the related Mortgage, in any manner which materially and adversely affects the value of the Loan or materially interferes with the security intended to be provided by such Mortgage. The terms of the related Mortgage do not provide for release of any material portion of the Underlying Mortgage Property from the lien of the Mortgage except (a) in consideration of payment therefor of not less than 125% of the related allocated loan amount of such Underlying Mortgage Property, (b) upon payment in full of such Loan, (c) upon defeasance permitted under the terms of such Loan by means of substituting for the Underlying Mortgage Property (or, in the case of a Loan secured by multiple Underlying Mortgage Properties, one or more of such Underlying Mortgage Properties) "government securities", as defined in the Investment Company Act of 1940, as amended, sufficient to pay the Loan in accordance with its terms, (d) upon substitution of a replacement property with respect to such Loan as set forth on Schedule 26, (e) where release is conditional upon the satisfaction of certain underwriting and legal requirements which would be acceptable to a reasonably prudent commercial mortgage lender and the payment of a release price that represents at least 125% of the appraised value of such Underlying Mortgage Property or (f) releases of unimproved out-parcels or other portions of the Underlying Mortgage Property which will not have a material adverse effect on the underwritten value of the security for the Loan and which were not afforded any value in the appraisal obtained at the origination of the Loan.

26. Zoning Compliance. In the case of each Mortgage Loan, to the Seller's knowledge, as of the date of origination of such Loan, based on an opinion of counsel, an endorsement to the related title policy, a zoning letter or a zoning report, and, to the Seller's knowledge, as of the Closing Date, there are no violations of any applicable zoning ordinances, building codes and land laws applicable to the Underlying Mortgage Property, the improvements thereon or the use and occupancy thereof which would have a material adverse effect on the value, operation or net operating income of the Underlying Mortgage Property which are not covered by title insurance. Any non-conformity with zoning laws constitutes a legal non-conforming use or structure which, in the event of casualty or destruction up to a specified portion of the Underlying Mortgage Property, may be restored or repaired to the full extent of the use or structure at the time of such casualty, or for which law and ordinance insurance coverage has been obtained in amounts customarily required by prudent commercial mortgage lenders, or such non-conformity does not materially and adversely

affect the use, operation or value of the Underlying Mortgage Property.

27. Absence of Encroachments. In the case of each Mortgage Loan, to the Seller's actual knowledge based on surveys and/or the title policy referred to herein obtained in connection with the origination of each Loan, none of the material improvements which were included for the purposes of determining the appraised value of the related Underlying Mortgage Property at the time of the origination of the Loan lies outside of the boundaries and building restriction lines of such property (except Underlying Mortgage Properties which are legal non-conforming uses), to an extent which would have a material adverse affect on the value of the Underlying Mortgage Property or related Underlying Obligor's use and operation of such Underlying Mortgage Property (unless affirmatively covered by title insurance) and no improvements on adjoining properties encroached upon such Underlying Mortgage Property to any material and adverse extent (unless affirmatively covered by title insurance).

28. Single Purpose Entities. In the case of any related Mortgage Loan in excess of $5,000,000, the related Underlying Obligor has covenanted in its respective organizational documents and/or the underlying Mortgage Loan documents to own no significant asset other than the related Underlying Mortgage Properties, as applicable, and assets incidental to its respective ownership and operation of such Underlying Mortgage Properties, and to hold itself out as being a legal entity, separate and apart from any other Person.

29. Absence of Other Fundings. In the case of each Mortgage Loan, no advance of funds has been made other than pursuant to the loan documents, directly or indirectly, by the Seller to the Underlying Obligor and, to the Seller's actual knowledge, no funds have been received from any Person other than the Underlying Obligor, for or on account of payments due on the Underlying Note or the Mortgage.

30. Absence of Litigation. In the case of each Mortgage Loan as of the date of origination and, to the Seller's actual knowledge, as of the Closing Date, there was no pending action, suit or proceeding, or governmental investigation of which it has received notice, against the related Underlying Obligor or the Underlying Mortgage Property the adverse outcome of which could reasonably be expected to materially and adversely affect such Underlying Obligor's ability to pay principal, interest or any other amounts due under such Loan or the security intended to be provided by the Loan documents or the current use of any Underlying Mortgage Property.

31. Trustees Under Deeds of Trust. In the case of each Mortgage Loan, as of the date of origination, and, to the Seller's actual knowledge, as of the Closing Date, if the related Mortgage is a deed of trust, a trustee, duly qualified under applicable law to serve as such, has either been properly designated and serving under such Mortgage or may be substituted in accordance with the Mortgage and applicable law.

32. Usury. The Mortgage Loan and the interest(exclusive of any default interest, late charges or prepayment premiums) contracted for on such Loan (other than an ARD Loan after the anticipated repayment date) complied as of the date of origination with, or is exempt from, applicable state or federal laws, regulations and other requirements pertaining to usury.

33. Crossed Loans. In the case of each Mortgage Loan, the related Underlying Note is not secured by any collateral that secures a Loan that is not held by the Issuer and each Crossed Loan is cross-collateralized only with other Loans sold pursuant to this Agreement.

34. Flood Insurance. In the case of each Mortgage Loan, the improvements located on the Underlying Mortgage Property are either not located in a federally designated special flood hazard area or, if so located, the Underlying Obligor is required to maintain or the mortgagee maintains, flood insurance with respect to such improvements and such policy is in full force and effect in an amount no less than the lesser of (i) the original principal balance of the Loan, (ii) the value of such improvements on the related Underlying Mortgage Property located in such flood hazard area or (iii) the maximum allowed under the related federal flood insurance program.

35. Escrow Deposits. All escrow deposits and payments required pursuant to the Mortgage Loan as of the Closing Date required to be deposited

with the Seller in accordance with the Loan documents have been so deposited, are in the possession, or under the control, of the Seller or its agent.

36. Licenses and Permits. In the case of each Mortgage Loan, to the Seller's actual knowledge, based on the due diligence customarily performed in the origination (or acquisition, as the case may be) of comparable mortgage loans by prudent commercial and multifamily mortgage lending institutions with respect to the related geographic area and properties comparable to the related Underlying Mortgage Property, as of the date of origination (or acquisition, as the case may be) of the Loan, the related Underlying Obligor, the related lessee, franchisor or operator was in possession of all material licenses, permits and authorizations then required for use of the related Underlying Mortgage Property by the related Underlying Obligor, and, as of the Closing Date, the Seller has no actual knowledge that the related Underlying Obligor, the related lessee, franchisor or operator was not in possession of such licenses, permits and authorizations. The Loan documents require the borrower to maintain all such licenses, permits, authorizations and franchises.

37. Origination Practices. The origination (or acquisition, as the case may be), servicing and collection practices used by the Seller with respect to the Loan have been in all respects legal and have met customary industry standards for servicing of loans similar to such Loan.

38. Fee Simple Interest. In the case of each Mortgage Loan, except for Underlying Obligors under Loans the Underlying Mortgage Property with respect to which includes a Ground Lease, the related Underlying Obligor (or its affiliate) has title in the fee simple interest in each related Underlying Mortgage Property.

39. Recourse Carveouts. The Loan documents for each Mortgage Loan provide that each Loan is non-recourse to the related Underlying Obligor except that the related Underlying Obligor and an additional guarantor who is a natural person accepts responsibility for fraud and/or other intentional material misrepresentation and environmental indemnity. Furthermore, the Loan documents for each Mortgage Loan provide that the related Underlying Obligor and an additional guarantor, who is a natural person, shall be liable to the lender for losses incurred due to the misapplication or misappropriation of rents collected in advance or received by the related Underlying Obligor after the occurrence of an event of default and not paid to the Mortgagee or applied to the Underlying Mortgage Property in the ordinary course of business, misapplication or conversion by the Underlying Obligor of insurance proceeds or condemnation awards or breach of the environmental covenants in the related Loan documents.

40. Security Interest in Leases. In the case of each Mortgage Loan, subject to the exceptions set forth in Paragraph 5 of this Schedule 1(a) and upon possession of the Underlying Mortgage Property as required under applicable state law, the Assignment of Leases set forth in the Mortgage or separate from the related Mortgage and related to and delivered in connection with each Loan establishes and creates a valid, subsisting and enforceable lien and security interest in the related Underlying Obligor's interest in all leases, subleases, licenses and other such agreements.

41. Qualification To Do Business. To the extent required under applicable law as of the date of origination, and necessary for the enforceability or collectability of the Mortgage Loan, the originator of such Mortgage Loan was authorized to do business in the jurisdiction in which the related Underlying Mortgage Property is located at all times when it originated and held the Mortgage Loan.

42. Absence of Required Capital Contribution. Neither the Seller nor any affiliate thereof has any obligation to make any capital contributions to the Underlying Obligor under the Mortgage Loan.

43. Absence of Other Liens. In the case of each Mortgage Loan, none of the Underlying Mortgage Properties is encumbered, and none of the Loan documents permits the related Underlying Mortgage Property to be encumbered subsequent to the Closing Date without the prior written consent of the holder thereof, by any lien securing the payment of money junior to or of equal priority with, or superior to, the lien of the related Mortgage (other than Title Exceptions, taxes, assessments, trade payables payable within 90 days and contested mechanics and materialmens liens that become payable after the

origination date of such Loan).

44. Separate Tax Parcels. In the case of each Mortgage Loan, each related Underlying Mortgage Property constitutes one or more complete separate tax lots (or the related Underlying Obligor has covenanted to obtain separate tax lots and a Person has indemnified the mortgagee for any loss suffered in connection therewith or an escrow of funds in an amount sufficient to pay taxes resulting from a breach thereof has been established) or is subject to an endorsement under the related title insurance policy.

45. Appraisal Standards. In the case of each Mortgage Loan, (a) an appraisal of the related Underlying Mortgage Property was conducted in connection with the origination of such Loan, and (b) such appraisal satisfied either (i) the requirements of the "Uniform Standards of Professional Appraisal Practice" as adopted by the Appraisal Standards Board of the Appraisal Foundation, or (ii) the guidelines in Title XI of the Financial Institutions Reform, Recovery and Enforcement Act or 1989, in either case as in effect on the date such Loan was originated.

46. Absence of Fraud. In the origination, acquisition (if applicable) and servicing of the Loan, neither Seller nor any prior holder of the Mortgage Loan participated in any fraud or intentional material misrepresentation with respect to the Mortgage Loan. To Seller's knowledge, no Underlying Obligor or guarantor originated a Loan.

47. Operating Statements. Each Mortgage Loan requires the Underlying Obligor upon request to provide the owner or holder of the Mortgage with quarterly (except for some Loans with an original principal balance less than $5,000,000) and annual operating statements (or a balance sheet and statement of income and expenses, rent rolls (if there is more than one tenant) and related information.

48. Access to Utilities. In the case of each Mortgage Loan, the related Underlying Obligor represents in the Mortgage Loan documents that the Underlying Mortgage Property is served by public utilities, water and sewer (or septic facilities) and otherwise appropriate for the use in which the Underlying Mortgage Property is currently being utilized.

49. Environmental Insurance. If the Underlying Mortgage Property securing any Mortgage Loan is covered by a secured creditor policy, then:

(a) the Seller:

(i) has disclosed, or is aware that there has been disclosed, in the application for such policy or otherwise to the insurer under such policy the "pollution conditions" (as defined in such policy) identified in any environmental reports related to such Underlying Mortgage Property which are in the Seller's possession or are otherwise known to the Seller; or

(ii) has delivered or caused to be delivered to the insurer or its agent under such policy copies of all environmental reports in the Seller's possession related to such Underlying Mortgage Property;

in each case, with respect to (i) or (ii), to the extent required by such policy or to the extent the failure to make any such disclosure or deliver any such report would materially and adversely affect the Underlying Obligor's ability to recover under such policy;

(b) all premiums for such insurance have been paid;

(c) such insurance is in full force and effect;

(d) such insurance has a term of at least 5 years beyond the maturity date (or the anticipated repayment date for ARD Loans) of such Loan;

(e) an environmental report, a property condition report or an engineering report was prepared that included an assessment for lead based paint ("LBP") (in the case of a multifamily property built prior to 1978), asbestos containing materials ("ACM") (in the case of any property built prior to 1985) and radon gas ("RG") (in the case of a multifamily property) at such Underlying Mortgage Property and (ii) if such report disclosed the existence of a material

and adverse LBP, ACM or RG environmental condition or circumstance affecting such Underlying Mortgage Property, then (A) the related Borrower was required to remediate such condition or circumstance prior to the closing of the subject Loan, or (B) the related Borrower was required to provide additional security reasonably estimated to be adequate to cure such condition or circumstance, or (C) such report did not recommend any action requiring the expenditure of any material funds and the related Loan documents require the related Borrower to establish an operations and maintenance plan with respect to such condition or circumstance after the closing of such Loan; and

(f) rights under such policy inure to the benefit of the Issuer.

50. Ground Leases. In the case of each Mortgage Loan, such Loan is secured by the fee interest in the related Underlying Mortgage Property other than Loans that are secured in whole or in part by the interest of the related Underlying Obligor as a lessee under a ground lease of a Underlying Mortgage Property (a "Ground Lease") (the term Ground Lease shall mean such ground lease, all written amendments and modifications, and any related estoppels or agreements from the ground lessor and, in the event the Underlying Obligor's interest is a ground subleasehold, shall also include not only such ground sublease but also the related ground lease), but not by the related fee interest in such Underlying Mortgage Property (the "Fee Interest") and, with respect to each Ground Lease:

(a) Such Ground Lease or a memorandum thereof has been or will be duly recorded; such Ground Lease permits the interest of the lessee thereunder to be encumbered by the related Mortgage or, if consent of the lessor thereunder is required, it has been obtained prior to the Closing Date, and does not restrict the use of the

related Underlying Mortgage Property by such lessee, its successors or assigns, in a manner that would materially adversely affect the security provided by the related Mortgage; and there has been no material change in the terms of such Ground Lease since its recordation, with the exception of written instruments which are a part of the related Collateral File;

(b) Such Ground Lease is not subject to any liens or encumbrances superior to, or of equal priority with, the related Mortgage, other than the related Fee Interest and Title Exceptions;

(c) The Underlying Obligor's interest in such Ground Lease is assignable to the mortgagee and its successors and assigns upon notice to, but without the consent of, the lessor thereunder (or, if such consent is required, it has been obtained prior to the Closing Date) and, in the event that it is so assigned, is further assignable by the mortgagee and its successors and assigns upon notice to, but without the need to obtain the consent of, such lessor (or, if such consent is required, it has been obtained prior to the Closing Date);

(d) As of the Closing Date such Ground Lease is in full force and effect, and the Seller has not received notice (nor is the Seller otherwise aware) that any default has occurred under such Ground Lease as of the Closing Date;

(e) Seller or its agent has provided the lessor under the Ground Lease with notice of its lien, and such Ground Lease requires the lessor to give notice of any default by the lessee to the mortgagee, and such Ground Lease, further provides that no notice of termination given under such Ground Lease is effective against such mortgagee unless a copy has been delivered to such mortgagee in the manner described in such Ground Lease;

(f) The mortgagee under such Loan is permitted a reasonable opportunity to cure any default under such Ground Lease (including where necessary, sufficient time to gain possession of the interest of the lessee under the Ground Lease), which is curable after the receipt of written notice of any such default, before the lessor thereunder may terminate such Ground Lease, and all of the rights of the Underlying Obligor under such Ground Lease and the related Mortgage (insofar as it relates to the Ground Lease) may be exercised by or on behalf of the mortgagee;

(g) Such Ground Lease has a current term (including one or more optional renewal terms, which, under all circumstances, may be exercised, and

will be enforceable, by the Seller, its successors or assigns) which extends not less than either (i) 10 years beyond the amortization term of the related Loan or (ii) 20 years beyond the maturity date of the Loan;

(h) Such Ground Lease requires the lessor to enter into a new lease with the mortgagee under such Loan upon termination of such Ground Lease for any reason, including rejection of such Ground Lease in a bankruptcy proceeding;

(i) Under the terms of such Ground Lease and the related Mortgage, taken together, any related insurance proceeds or condemnation award will be applied either (i) to the repair or restoration of all or part of the related Underlying Mortgage Property, with the mortgagee under such Loan or a trustee appointed or approved by it having the right to hold and disburse such proceeds as the repair or restoration progresses (except in such cases where a provision entitling another party to hold and disburse such proceeds would not be viewed as commercially unreasonable by a prudent commercial mortgage lender), or (ii) to the payment of the outstanding principal balance of such Loan together with any accrued interest thereon;

(j) Such Ground Lease does not impose any restrictions on subletting which would be viewed as commercially unreasonable by a prudent commercial mortgage lender; and

(k) Such Ground Lease may not be amended or modified without the prior consent of the mortgagee under such Loan and any such action without such consent is not binding on such mortgagee, its successors or assigns.

SCHEDULE I

FORM OF B NOTE REPRESENTATIONS AND WARRANTIES

1. Accuracy of Information. The information pertaining to each B Note set forth in Annex A was true and correct in all material respects as of the applicable Cut-off Date.

2. Compliance with Law. On the date of its origination, the B Note complied in all material respects with, or was exempt from, all requirements of federal, state or local law relating to the origination, funding and servicing of the B Note and the B Note complied with, or is exempt from, applicable state or federal laws, regulations or other requirements pertaining to usury.

3. Title to Asset; No Consents Required. Immediately prior to the sale, transfer and assignment to the Issuer, the Seller had good title to, and was the sole owner of, the B Note, the Seller is transferring the B Note free and clear of any and all liens, pledges, charges or security interests of any nature encumbering the B Note, and the transfer of the B Note complies with all requirements and no consents, approvals or authorizations are necessary under any related B Note documents and/or intercreditor agreements to transfer the B Note to the Issuer or any such consent which is required has been obtained.

4. Absence of Fraud. In the origination and servicing of the B Note, neither Seller nor, to Seller's knowledge, any prior holder of the B Note participated in any fraud or intentional material misrepresentation with respect to the B Note. To Seller's knowledge, no Underlying Obligor or guarantor originated a B Note.

5. Secured by a First Lien. The B Note is performing and is secured by a first lien on the Underlying Mortgage Property.

6. Delivery of Documents. Seller has delivered to Issuer or its designee the original promissory note, certificate or other similar indicia of ownership of such B Note, however denominated, together with an original assignment thereof, executed by Seller in blank (or such other name as designated by the Issuer).

7. Absence of Defaults re: Other Interests. To the knowledge of the Seller, no default or event of default has occurred under any agreement pertaining to any lien or other interest that ranks pari passu with or senior to the interests of the holder of such B Note in respect of the related Underlying Mortgage Property and there is no provision in any such agreement which would provide for any increase in the principal amount of any such lien or other

interest.

8. Absence of Defaults. There is no monetary event of default and, to the knowledge of the Seller, no material non-monetary event of default existing under the B Note or any B Note document and the Seller has no knowledge of any substantial and material event or circumstance with respect to which the expiration of an applicable default grace period is imminent that would result in a monetary or non-monetary event of default under the B Note or the B Note documents; Seller has not waived any of the foregoing and to Seller's knowledge no waiver of any of the foregoing exists; and no person other than the holder of the B Note may declare any of the foregoing.

9. Absence of Liabilities. Seller has not received written notice of any outstanding liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind for which the holder of such B Note is or may become obligated.

10. Absence of Bankruptcy Debtors. To the knowledge of the Seller, as of the Closing Date, no issuer of such B Note was a debtor in any outstanding proceeding pursuant to the federal bankruptcy code.

11. Absence of Amendments and Waivers. Except as set forth in the related Collateral File, (a) no provision of the related intercreditor agreement, the related B Note Loan documents or any other document,

agreement or instrument executed in connection with the B Note has been waived, modified, altered, satisfied, canceled, subordinated or rescinded, and no related collateral for the B Note has been released from the lien of the related documents in any manner that materially interferes with the security intended to be provided by such documents, and (b) neither related B Note issuer nor any other party to the B Note documents has been released from any material obligation thereunder.

12. With respect to each B Note, to Seller's knowledge, the representations and warranties set forth on Schedule 1(a), other than those contained in paragraphs 3 and 7 of Schedule 1(a), are true and correct with respect to each related Underlying Term Loan.

SCHEDULE J

FORM OF PARTICIPATION REPRESENTATIONS AND WARRANTIES

1. Accuracy of Information. The information pertaining to each Participation set forth in Annex A was true and correct in all material respects as of the applicable Cut-off Date.

2. Compliance with Law. On the date of its origination, the Participation complied in all material respects with, or was exempt from, all requirements of federal, state or local law relating to the origination, funding and servicing of the Participation and the Participation complied with, or is exempt from, applicable state or federal laws, regulations or other requirements pertaining to usury.

3. Title to Asset; No Consents Required. Immediately prior to the sale, transfer and assignment to the Issuer, the Seller had good title to, and was the sole owner of, the Participation, the Seller is transferring the Participation free and clear of any and all liens, pledges, charges or security interests of any nature encumbering the Participation, and the transfer of the Participation complies with all requirements and no consents, approvals or authorizations are necessary under any related Participation documents and/or intercreditor agreements to transfer the Participation to the Issuer or any such consent which is required has been obtained.

4. Absence of Fraud. In the origination and servicing of the Participation, neither Seller nor any prior holder of the Participation participated in any fraud or intentional material misrepresentation with respect to the Participation. To Seller's knowledge, no Underlying Obligor or guarantor

originated a Participation.

5. Secured by a First Lien. The Participation is secured by a first lien on the Underlying Mortgage Property.

6. Delivery of Documents. Seller has delivered to Issuer or its designee the original certificate or other similar indicia of ownership of such Participation, however denominated, together with an original assignment thereof, executed by Seller in blank.

7. Absence of Defaults re: Other Interests. To the knowledge of the Seller, no default or event of default has occurred under any agreement pertaining to any lien or other interest that ranks pari passu with or senior to the interests of the holder of such Participation in respect of the related Underlying Mortgage Property, and there is no provision in any such agreement which would provide for any increase in the principal amount of any such lien or other interest that is senior to the interests of the holder of such Participation.

8. Absence of Defaults. There is no monetary event of default and, to the knowledge of the Seller, no material non-monetary event of default existing under the Participation or any Participation document and the Seller has no knowledge of any substantial and material event or circumstance with respect to which the expiration of an applicable default grace period is imminent that would result in a monetary or non-monetary event of default under the Participation or the Participation documents; Seller has not waived any of the foregoing and to Seller's knowledge, no waiver of any of the foregoing exists; and no person other than the holder of the Participation may declare any of the foregoing.

9. Absence of Liabilities. Seller has not received written notice of any outstanding liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind for which the holder of such Participation is or may become obligated.

10. Absence of Bankruptcy Debtors. To the knowledge of the Seller, as of the Closing Date, no issuer of such Participation was a debtor in any outstanding proceeding pursuant to the federal bankruptcy code.

11. Absence of Amendments or Waivers. Except as set forth in the related Collateral File, (a) no provision of the related intercreditor agreement, to Seller's knowledge, the related Participation Loan documents or any other document, agreement or instrument executed in connection with the Participation has been waived,

modified, altered, satisfied, canceled, subordinated or rescinded, and no related collateral for the Participation has been released from the lien of the related documents in any manner that materially interferes with the security intended to be provided by such documents, and (b) neither related Participation issuer nor to Seller's knowledge, any other party to the Participation documents has been released from any material obligation thereunder.

12. With respect to each Participation, to Seller's knowledge, the representations and warranties set forth in Schedule 1(a), other than the representations and warranties contained in Paragraphs 3 and 7 of Schedule 1(a), are true and correct with respect to each related Underlying Term Loan.

* All references to "Mortgage Loan" in this Schedule 1(a) shall mean a Mortgage Loan that constitutes a Collateral Debt Security.

SCHEDULE K

FORM OF MEZZANINE LOAN REPRESENTATIONS AND WARRANTIES

1. Compliance with Law. On the date of its origination, the Mezzanine Loan complied in all material respects with, or was exempt from, all requirements of federal, state or local law relating to the origination, funding

and servicing of the Mezzanine Loan, and the Mezzanine Loan complied with, or is exempt from, applicable state or federal laws, regulations or other requirements pertaining to usury.

2. Absence of Amendments or Waivers. Except as set forth in the related Collateral File, (a) no provision of the related intercreditor agreement, the related Mezzanine Loan documents or any other document, agreement or instrument executed in connection with the Mezzanine Loan has been waived, modified, altered, satisfied, canceled, subordinated or rescinded, and no related collateral for the Mezzanine Loan has been released from the lien of the related documents in any manner that materially interferes with the security intended to be provided by such documents, and (b) neither related mezzanine borrower nor any other party to the Mezzanine Loan documents has been released from any material obligation thereunder.

3. Enforceability of Documents. The notes executed by the related mezzanine borrower in connection with the related Mezzanine Loan and the pledge of the ownership interests securing the related Mezzanine Loan are the legal, valid and binding obligations of the related mezzanine borrower and the Seller, as applicable (subject to any nonrecourse provisions therein and any state anti-deficiency legislation), enforceable in accordance with their terms, except with respect to provisions relating to default interest, yield maintenance charges or prepayment premiums (if any) and except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

4. Title to Asset. Immediately prior to the sale, transfer and assignment to the Issuer, the Seller had good title to, and was the sole owner of, the Mezzanine Loan, the Seller is transferring the Mezzanine Loan free and clear of any and all liens, pledges, charges or security interests of any nature encumbering the Mezzanine Loan, and the transfer of the Mezzanine Loan complies with all requirements in, and no consents, approvals or authorizations are necessary under, any related Mezzanine Loan documents and/or intercreditor agreements to transfer the Mezzanine Loan to the Issuer or any such consent which is required has been obtained.

5. Absence of Defenses. As of the date of its origination, there was no right of offset, diminution or rescission or valid defense or counterclaim with respect to the mezzanine note or the Mezzanine Loan documents and, to Seller's knowledge, as of the date such Mezzanine Loan is acquired by the Issuer, there is no right of offset, diminution or rescission or valid defense or counterclaim with respect to such mezzanine note or Mezzanine Loan documents.

6. Valid Assignment. The assignment of the Mezzanine Loan and the agreements executed in connection therewith in favor of the Issuer has been duly authorized, executed and delivered by the Seller and constitutes the legal, valid and binding assignment of such Mezzanine Loan to the Issuer, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, liquidation, receivership, moratorium or other laws relating to or affecting the enforcement of creditors' rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). The Mezzanine Loan and the agreements executed in connection therewith are freely assignable to any person or entity.

7. Security Interest. The pledge of the collateral for the Mezzanine Loan creates a legal, valid and enforceable first priority perfected security interest in such collateral, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, liquidation, receivership, moratorium or other laws relating to or affecting the enforcement of creditors' rights generally, or by general principles of equity.

8. Escrows and Deposits. All escrow deposits and payments required pursuant to the Mezzanine Loan documents are in the possession, or under the control, of the related servicer of the Assets, and to the knowledge of the Seller there are no deficiencies in connection therewith.

9. Power and Authority to Sell. The Seller has full right, power and the authority to sell, assign and transfer the Mezzanine Loan.

10. Documents in Full Force and Effect. The Mezzanine Loan documents are in full force and effect.

11. Full Disbursement of Proceeds. The proceeds of the Mezzanine Loan have been fully disbursed and there is no requirement for future advances thereunder.

12. Source of Payments. The Seller has not (nor to Seller's knowledge, has any prior holder of the Mezzanine Loan) advanced funds or induced, solicited or knowingly received funds from a party other than the mezzanine borrower (or any manager or agent of mezzanine borrower) for the payment of any amounts due in connection with the Mezzanine Loan.

13. No Contingent Interest. The Mezzanine Loan does not have a shared appreciation feature or other contingent interest features.

14. Absence of Negative Amortization. The Mezzanine Loan does not have a negative amortization or deferred interest feature.

15. Outstanding Principal Amount. The total balance of each Mezzanine Loan is set forth on Schedule E hereto, and no party other than the Seller holds an interest in the related Mezzanine Loan. The total balance of the Mortgage Loans related to such Mezzanine Loan as of the Closing Date is also set forth on Schedule E hereto.

16. Absence of Defaults. There is no monetary event of default and, to the knowledge of the Seller, no material non-monetary event of default existing under the Mezzanine Loan or any Mezzanine Loan document and the Seller has no knowledge of any substantial and material event or circumstance with respect to which the expiration of an applicable default grace period is imminent that would result in a monetary or non-monetary event of default under the Mezzanine Loan or the Mezzanine Loan documents; Seller has not waived any of the foregoing and to Seller's knowledge, no waiver of any of the foregoing exists; and no person other than the holder of the Mezzanine Loan may declare any of the foregoing.

17. Absence of Delinquencies. The Mezzanine Loan is not, as of the Closing Date, nor has it been since origination, delinquent for 30 or more days.

18. Security for Mezzanine Loan. The Mezzanine Loan is secured solely by the collateral described in the Mezzanine Loan documents (including, without limitation, the related pledge agreements for such Mezzanine Loan).

19. Absence of Bankruptcy Debtors. To the knowledge of the Seller, as of the Closing Date, no mezzanine borrower was a debtor in any outstanding proceeding pursuant to the federal bankruptcy code.

20. Pledged Equity. The Mezzanine Loan is secured by a pledge of 100% of the direct or indirect equity interests the related Underlying Property Owner. The Underlying Property Owner has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, with requisite power and authority to own its assets and to transact the business in which it is now engaged, the sole purpose of the Underlying Property Owner under its organizational documents is to own, finance, sell or otherwise manage the related Underlying Mortgage Property and to engage in any and all activities related or incidental thereto.

21. UCC 9 Policies. If Seller's security interest in the Mezzanine Loan is covered by a UCC 9 insurance policy, with respect to the "UCC 9" policy relating to the Mezzanine Loan: (i) such policy is assignable by the Seller to the Issuer, (ii) such policy is in full force and effect, (iii) all premiums thereon have been paid, (iv) no claims have been made by or on behalf of Seller thereunder, and (v) no claims have been paid thereunder.

22. Cross-Defaults. An event of default under the related Mortgage Loan will constitute an event of default with respect to the related Mezzanine Loan.

23. Payment Procedure. If a cash management agreement is in place with respect to the Mortgage Loan and Mezzanine Loan, except following the occurrence and during the occurrence of a Mortgage Loan event of default, any

funds remaining in the related lockbox account for the Mortgage Loan after payment of all amounts due under the Mortgage Loan documents are required to be distributed to the holder of the Mezzanine Loan and distributed by the holder or the servicer of the Mortgage Loan, to the holder of the Mezzanine Loan in accordance with the Mezzanine Loan documents.

24. Conditions to Transfer Mezzanine Loan. Pursuant to the terms of the Mezzanine Loan documents, the Seller satisfied any transfer conditions or requirements (or such conditions or requirements were validly waived by any requisite parties) in the Mezzanine Loan documents with respect to the transfer of the Mezzanine Loan to the Issuer.

25. Insurance Proceeds. The Mezzanine Loan documents require that all insurance policies procured by the Mortgage Loan borrower with respect to the property under the related Mortgage Loan documents name the mezzanine lender, the related mezzanine borrower and their respective successors and assigns as the insured or additional insured, as their respective interests may appear.

26. Notice of Defaults. Pursuant to the terms of the Mezzanine Loan documents and intercreditor agreements, the related senior lender is required to provide written notice of defaults under the Mortgage Loan to the holder of the related Mezzanine Loan at the same time such notices are delivered by the related senior lender to the related senior borrower.

27. Cure Rights. Pursuant to the terms of the related intercreditor agreements, the holder of the related Mortgage Loan is not permitted to exercise any rights it may have under the related Mortgage Loan documents or applicable law with respect to a foreclosure or other realization upon the collateral for the related Mortgage Loan without providing prior notice and opportunity to cure to the related holder of the Mezzanine Loan (subject to the rights of any subordinate mezzanine lenders).

28. Purchase Option. Pursuant to the terms of the related intercreditor agreement, the holder of the related Mezzanine Loan has the right to purchase the related Mortgage Loan if upon certain Mortgage Loan events of default and/or acceleration.

29. Property Insurance. The property securing the related Mortgage Loan is required, pursuant to the related Mortgage Loan documents, to be insured by a fire and extended perils insurance policy providing coverage against loss or damage included within the classification of "all risk of physical loss" or the equivalent thereof and, to the extent required as of the date of origination of the related Mezzanine Loan consistent with prudent commercial mortgage lending practices against other risks insured against by persons operating like properties in the locality of the such property; in an amount not less than the lesser of the principal balance of the related Mezzanine Loan and the replacement cost of such property, and not less than the amount necessary to avoid the operation of any co-insurance provisions with respect to such property; in addition, the improvements of such property are either (A) not located in a flood hazard area (as defined by the Federal Insurance Administration) or earthquake zone, or (B) covered by flood hazard or earthquake hazard insurance, as applicable. The related Mortgage Loan documents require that each such fire and extended perils, flood hazard and earthquake hazard insurance policy is required to contain a standard mortgagee clause which names the holder of the Mortgage Loan and its successors and assigns as an additional insured and the Mezzanine Loan Documents requires prior notice to the holder of the related Mezzanine Loan of termination or cancellation, and no such notice has been received, including any notice of nonpayment of premiums, that has not been cured, and the related Mezzanine Loan documents provide that casualty insurance proceeds will be applied either to the restoration or repair of such

property or, subject to the terms of the Mortgage Loan documents, to the reduction of the principal amount of the Mezzanine Loan.

30. Licenses and Permits. To the actual knowledge of the Seller, based on due diligence customarily performed by Seller and reasonable prudent commercial mortgage and mezzanine lenders in the origination of comparable loans, all material licenses, permits and authorizations then required for use of the property securing the related Mortgage Loan had been obtained and were valid and in full force and effect as of the origination date of the related

Mezzanine Loan, except for such licenses, permits and authorizations the failure of which to obtain would not materially adversely affect the value of such Mezzanine Loan.

31. Absence of Litigation. To Seller's knowledge, there is no pending action, suit or proceeding, arbitration or governmental investigation against the mezzanine borrower or the collateral for the Mezzanine Loan, an adverse outcome of which would materially and adversely affect the mezzanine borrower's performance under the Mezzanine Loan documents or the collateral for the Mezzanine Loan.

32. Mortgage Loan File. The Seller has delivered to the Issuer accurate and complete copies of all of the related Mortgage Loan documents and intercreditor arrangements; and as of the Closing Date, none of the Mortgage Loan documents, intercreditor arrangements, or any of the terms thereof have been modified, amended, supplemented, terminated, or waived, and the Seller has not received notice of any such modification, amendment, supplement, termination or waiver.

33. Record Ownership. Upon the transfer to the Issuer, the Issuer will be the owner of the Mezzanine Loan and the related intercreditor agreements and as an owner and holder of the Mezzanine Loan sufficient to ensure the Issuer has all rights to receive principal and interest payments with respect to the Mezzanine Loan.

34. Taxes. All real estate taxes and governmental assessments, or installments thereof, which would be a lien on any Underlying Property and that prior to the Closing Date have become delinquent in respect of such Underlying Property have been paid, or an escrow of funds in an amount sufficient to cover such payments has been established by the holder of the Mezzanine Loan or the holder of the Underlying Note. For purposes of this representation and warranty, real estate taxes and governmental assessments and installments thereof shall not be considered delinquent until the earlier of (a) the date on which interest and/or penalties would first be payable thereon and (b) the date on which enforcement action is entitled to be taken by the related taking authority.

35. Zoning Compliance. To the Seller's knowledge, as of the date of origination of such Mezzanine Loan, and as of the Closing Date, there are no violations of any applicable zoning ordinances, building codes and land laws applicable to the Underlying Property, the improvements thereon or the use and occupancy thereof which would have a material adverse effect on the value, operation or net operating income of the Underlying Property which are not covered by title insurance. Any non-conformity with zoning laws constitutes a legal non-conforming use or structure which, in the event of casualty or destruction up to a specified portion of the Underlying Property, may be restored or repaired to the full extent of the use or structure at the time of such casualty, or for which law and ordinance insurance coverage has been obtained in amounts customarily required by prudent commercial mortgage lenders, or such non-conformity does not materially and adversely affect the use, operation or value of the Underlying Property.

36. Absence of Encroachments. To the Seller's actual knowledge based on surveys and/or the title policy referred to herein obtained in connection with the origination of each Loan, none of the material improvements which were included for the purposes of determining the appraised value of the related Underlying Property at the time of the origination of the Loan lies outside of the boundaries and building restriction lines of such property (except Underlying Mortgage Properties which are legal non-conforming uses), to an extent which would have a material adverse affect on the value of the Underlying Property or related Underlying Obligor's use and operation of such Underlying Property (unless affirmatively covered by title insurance) and no improvements on adjoining properties encroached upon such Underlying Property to any material and adverse extent (unless affirmatively covered by title insurance).

37. Environmental Conditions. One or more environmental site assessments or updates thereof (meeting American Society for Testing and Materials (ASTM) standards) were performed by an environmental consulting firm independent of the Seller and the Seller's affiliates with respect to each related Underlying Property during the 10-months preceding the origination of the related Loan, and the Seller, having made no independent inquiry other than to review the report(s) prepared in connection with the assessment(s) referenced

herein, has no actual knowledge and has received no notice of any material adverse environmental condition or circumstance affecting such Underlying Property that was not disclosed in such report(s). If any such environmental repot identified any Recognized Environmental Condition ("REC"), as that term is defined in the Standard Practice fro Environmental Site Assessments: Phase I Environmental Site Assessment Process Designation: E 1527-00, as recommended by the American Society for Testing and Materials (ASTM), with respect to the related Underlying Property and the same have not been subsequently addressed in all material respects, then any such remaining REC has been addressed by (i) an escrow of 100% or more of the amount identified as necessary by the environmental consulting firm to address such REC, (ii) a responsible party having financial resources reasonably estimated to be adequate to address the REC is required to take such actions or is liable for the failure to take such actions, if any, with respect to such circumstances or conditions as have been required by the applicable governmental regulatory authority or any environmental law regulation, (iii) an environmental insurance policy, (iv) an operations and maintenance plan or (v) a qualified environmental consultant having recommended no further investigation or remediation after further investigation.

38. Mortgage Lien. The lien of the Mortgage securing the related Mortgage Loan is a valid and enforceable first lien on the related Underlying Mortgage Property subject only to the exceptions set forth in paragraph (5) above and the following title exceptions (each such title exception, a "Title Exception", and collectively, the "Title Exceptions"): (a) the lien of current real property taxes, water charges, sewer rents and assessments not yet due and payable, (b) covenants, conditions and restrictions, rights of way, easements and other matters of public record, none of which, individually or in the aggregate, materially and adversely interferes with the current use of the Underlying Mortgage Property or the security intended to be provided by such Mortgage or with the Underlying Obligor's ability to pay its obligations under the Loan when they become due or materially and adversely affects the value of the Underlying Mortgage Property, (c) the exceptions (general and specific) and exclusions set forth in the applicable policy described in paragraph (12) below or appearing of record, none of which, individually or in the aggregate, materially and adversely interferes with the current use of the Underlying Mortgage Property or the security intended to be provided by such Mortgage or with the Underlying Obligor's ability to pay its obligations under the Loan when they become due or materially and adversely affects the value of the Underlying Mortgage Property, (d) other matters to which like properties are commonly subject, none of which, individually or in the aggregate, materially and adversely interferes with the current use of the Underlying Mortgage Property or the security intended to be provided by such Mortgage or with the Underlying Obligor's ability to pay its obligations under the Loan when they become due or materially and adversely affects the value of the Underlying Mortgage Property, (e) the right of tenants (whether under ground leases, space leases or operating leases) at the Underlying Mortgage Property as tenants only pursuant to their respective leases, and (f) if such Loan is a Crossed Loan, the lien of the Mortgage for such other Loan. Except with respect to Crossed Loans and as provided below, there are no mortgage loans that are senior or pari passu with respect to the related Underlying Mortgage Property or such Loan.

SCHEDULE L

FORM OF PREFERRED EQUITY SECURITY REPRESENTATIONS AND WARRANTIES

1. Compliance with Law. On the date of its issuance, the Preferred Equity Security complied in all material respects with, or was exempt from, all requirements of federal, state or local law relating to the issuance and funding of the Preferred Equity Security.

2. Absence of Amendments or Waivers. Except as set forth in the related Collateral File, (a) no provision of the related Preferred Equity Documentation or any other document, agreement or instrument executed in connection with the Preferred Equity Security and which benefits Seller as holder of the Preferred Equity Security has been waived, modified, altered, satisfied, canceled, subordinated or rescinded and (b) neither the related issuer of the Preferred Equity Security nor any other party to the Preferred Equity Documentation has been released from any material obligation thereunder and which benefits Seller as holder of the Preferred Equity Security.

3. Enforceability of Documents. The documents executed by the related Preferred Equity Vehicle in connection with the related Preferred Equity Security for the benefit of the holder of the Preferred Equity Security, including any certificates evidencing or constituting such Preferred Equity Security are the legal, valid and binding obligations of the related issuer of Preferred Equity Security and the Seller, as applicable (subject to any nonrecourse provisions therein and any state anti-deficiency legislation), enforceable in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

4. Title to Asset. Immediately prior to the sale, transfer and assignment to the Issuer, the Seller had good title to, and was the sole owner of, the Preferred Equity Security, the Seller is transferring the Preferred Equity Security free and clear of any and all liens, pledges, charges or security interests of any nature encumbering the Preferred Equity Security, and the transfer of the Preferred Equity Security complies with all requirements and no consents, approvals or authorizations are necessary under any related Preferred Equity Security documents and/or intercreditor agreements to transfer the Preferred Equity Security to the Issuer or any such consent which is required has been obtained.

5. Absence of Defenses. As of the date of its origination, there was no right of offset, diminution or rescission or valid defense or counterclaim with respect to the Preferred Equity Security or the Preferred Equity Documentation which benefit the holder of the Preferred Equity Security and, to Seller's knowledge, as of the date such Preferred Equity Security is acquired by the Issuer, there is no right of offset, diminution or rescission or valid defense or counterclaim with respect to such Preferred Equity Security or such Preferred Equity Documents.

6. Valid Assignment. The assignment of the Preferred Equity Documentation in favor of the Issuer has been duly authorized, executed and delivered by the Seller and constitutes the legal, valid and binding assignment of such Preferred Equity Security to the Issuer, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, liquidation, receivership, moratorium or other laws relating to or affecting the enforcement of creditors' rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). The Preferred Equity Documentation contains customary provisions restricting transfers to qualified institutional lenders.

7. Power and Authority to Sell. The Seller has full right, power and the authority to sell, assign and transfer the Preferred Equity Security.

8. Documents in Full Force and Effect. The Preferred Equity Documentation that benefits the holder of the Preferred Equity Security are in full force and effect.

9. Outstanding Amount. The unreturned capital with respect to each Preferred Equity Security is set forth on Schedule E hereto, and no party other than the Seller holds an interest in the related Preferred Equity Security. The total original principal amount of the Mortgage Loans related to such Preferred Equity Security as of the Closing Date is set forth on Schedule E hereto.

10. Absence of Default. There is no monetary event of default under the terms of the Pledged Equity Security, and the Seller has no knowledge of any substantial and material event or circumstance with respect to which the expiration of an applicable default grace period is imminent that would result in a monetary or non-monetary event of default with respect to the Preferred Equity Documentation which benefits the holder of the Preferred Equity Security; Seller has not waived any of the foregoing and to Seller's knowledge, no waiver of any of the foregoing exists.

11. Absence of Bankruptcy Debtors. To the knowledge of the Seller, as of the Closing Date, no issuer of Preferred Equity Security was a debtor in any outstanding proceeding pursuant to the federal bankruptcy code.

12. Equity Interests in an Owner of Mortgaged Property. The

Preferred Equity Security has been issued by, and represents an equity interest in an owner of an Underlying Property. The Underlying Property Owner has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, with requisite power and authority to own its assets and to transact the business in which it is now engaged, the sole purpose of the Underlying Property Owner under its organizational documents is to own, finance, sell or otherwise manage the related Underlying Mortgage Property and to engage in any all activities related or incidental thereto. The Underlying Property Owner has good and marketable title to the Underlying Property.

13. Payment Procedure. Except following the occurrence and during the occurrence of a Mortgage Loan event of default, any funds remaining in the related lockbox account for the Mortgage Loan after payment of all amounts due under any related Mortgage Loan documents are required to be distributed to the holder of the Preferred Equity Security and distributed by the holder or the servicer of the Mortgage Loan, to the holder of the Preferred Equity Security in accordance with the Preferred Equity Documentation.

14. Conditions to Transfer Preferred Equity Security. Pursuant to the terms of the Preferred Equity Documentation, the Seller satisfied any transfer conditions or requirements (or such conditions or requirements were validly waived by any requisite parties) in the Preferred Equity Security documents with respect to the transfer of the Preferred Equity Security to the Issuer.

15. Notice of Defaults. Pursuant to the terms of the Preferred Equity Documentation and intercreditor agreements, the related senior lender is required to provide written notice of defaults under the Mortgage Loan to the holder of the related Preferred Equity Security at the same time such notices are delivered by the related senior lender to the related senior borrower.

16. Cure Rights. Pursuant to the terms of the related intercreditor agreements, the holder of the related Mortgage Loan is not permitted to exercise any rights it may have under the related Mortgage Loan documents or applicable law with respect to a foreclosure or other realization upon the collateral for the related Mortgage Loan without providing prior notice and opportunity to cure the related holder of the Preferred Equity Security (subject to the rights of any other equity holders).

17. Insurance Proceeds. The Preferred Equity Documentation requires that all insurance policies procured by the Underlying Property Owner with respect to the Underlying Property name the holder of the Preferred Equity Security, the related Preferred Equity Vehicle and their respective successors and assigns as the insured or additional insured, as their respective interests may appear and such insurance policies will inure to the benefit of the Issuer.

18. Property Insurance. The property securing the related Mortgage Loan is required, pursuant to the related Mortgage Loan documents, to be insured by a fire and extended perils insurance policy providing coverage against loss or damage included within the classification of "all risk of physical loss" or the

equivalent thereof and, to the extent required as of the date of origination of the related Preferred Equity Security consistent with prudent commercial mortgage lending practices against other risks insured against by persons operating like properties in the locality of the such property; in an amount not less than the lesser of the principal balance of the related Mortgage Loan and the replacement cost of such property, and not less than the amount necessary to avoid the operation of any co-insurance provisions with respect to such property; in addition, the improvements of such property are either (A) not located in a flood hazard area (as defined by the Federal Insurance Administration) or earthquake zone, or (B) is covered by flood hazard or earthquake hazard insurance, as applicable. The related Mortgage Loan documents require that each such fire and extended perils, flood hazard and earthquake hazard insurance policy is required to contain a standard mortgagee clause which names the holder of the Mortgage Loan and its successors and assigns as an additional insured and the Preferred Equity Documentation requires prior notice to the holder of the related Preferred Equity Security of termination or cancellation, and no such notice has been received, including any notice of nonpayment of premiums, that has not been cured, and the related Preferred Equity Documentation provides that casualty insurance proceeds will be applied

either to the restoration or repair of such property or, subject to the terms of the Mortgage Loan Documents, to the redemption of the Preferred Equity Security.

19. Licenses and Permits. To the actual knowledge of the Seller, all material licenses, permits and authorizations then required for use of the property securing the related Mortgage Loan had been obtained and were valid and in full force and effect as of the origination date of the related Preferred Equity Security, except for such licenses, permits and authorizations the failure of which to obtain would not materially adversely affect the value of such Preferred Equity Security.

20. Absence of Litigation. To Seller's actual knowledge, there is no pending action, suit or proceeding, arbitration or governmental investigation against the issuer of Preferred Equity Security, an adverse outcome of which would materially and adversely affect the issuer of Preferred Equity Security's performance under the Preferred Equity Documentation.

21. Mortgage Loan File. The Seller has delivered to the Issuer accurate and complete copies of all of the related Mortgage Loan documents and intercreditor arrangements; and, to Seller's knowledge, as of the Closing Date, none of the Mortgage Loan documents, or any of the terms thereof have been modified, amended, supplemented, terminated, or waived, and the Seller has not received notice of any such modification, amendment, supplement, termination or waiver.

22. Record Ownership. Upon the transfer to the Issuer, the Issuer will be the owner of the Preferred Equity Security, as an owner of the Preferred Equity Security sufficient to ensure the Issuer has all rights to receive dividends, distributions and redemption amounts with respect to the Preferred Equity Security.

23. Taxes. All real estate taxes and governmental assessments, or installments thereof, which would be a lien on any Underlying Property and that prior to the origination date have become delinquent in respect of such Underlying Property have been paid, or to Seller's knowledge, an escrow of funds with the holder of the related Mortgage Loan in an amount sufficient to cover such payments has been established by the holder of the Preferred Equity Security or the holder of the Underlying Note. For purposes of this representation and warranty, real estate taxes and governmental assessments and installments thereof shall not be considered delinquent until the earlier of (a) the date on which interest and/or penalties would first be payable thereon and (b) the date on which enforcement action is entitled to be taken by the related taking authority.

24. Zoning Compliance. To the Seller's knowledge, as of the date of origination of such Preferred Equity Security, there are no violations of any applicable zoning ordinances, building codes and land laws applicable to the Underlying Property, the improvements thereon or the use and occupancy thereof which would have a material adverse effect on the value, operation or net operating income of the Underlying Property which are not covered by title insurance. Any non-conformity with zoning laws constitutes a legal non-conforming use or structure which, in the event of casualty or destruction up to a specified portion of the Underlying Property, may be restored or repaired to the full extent of the use or structure at the time of such casualty, or for which law and ordinance insurance coverage has been obtained in amounts customarily required by prudent commercial mortgage lenders, or such non-conformity does not materially and adversely affect the use, operation or value of the Underlying Property.

25. Absence of Encroachments. To the Seller's actual knowledge based on surveys and/or the title policy referred to herein obtained in connection with the origination of each Preferred Equity Security, none of the material improvements which were included for the purposes of determining the appraised value of the related Underlying Property at the time of the origination of the Preferred Equity Security lies outside of the boundaries and building restriction lines of such property (except Underlying Properties which are legal non-conforming uses), to an extent which would have a material adverse affect on the value of the Underlying Property or related Underlying Obligor's use and operation of such Underlying Property (unless affirmatively covered by title insurance) and no improvements on adjoining properties encroached upon such Underlying Property to any material and adverse extent (unless affirmatively

covered by title insurance).

26. Environmental Conditions. One or more environmental site assessments or updates thereof (meeting American Society for Testing and Materials (ASTM) standards) were performed by an environmental consulting firm independent of the Seller and the Seller's affiliates with respect to each related Underlying Property during the 12-months preceding the origination of the related Preferred Equity Security, and the Seller, having made no independent inquiry other than to review the report(s) prepared in connection with the assessment(s) referenced herein, has no actual knowledge and has received no notice of any material adverse environmental condition or circumstance affecting such Underlying Property that was not disclosed in such report(s). If any such environmental repot identified any Recognized Environmental Condition ("REC"), as that term is defined in the Standard Practice fro Environmental Site Assessments: Phase I Environmental Site Assessment Process Designation: E 1527-00, as recommended by the American Society for Testing and Materials (ASTM), with respect to the related Underlying Property and the same have not been subsequently addressed in all material respects, then any such remaining REC has been addressed by (i) an escrow of 100% or more of the amount identified as necessary by the environmental consulting firm to address such REC, (ii) a responsible party having financial resources reasonably estimated to be adequate to address the REC is required to take such actions or is liable for the failure to take such actions, if any, with respect to such circumstances or conditions as have been required by the applicable governmental regulatory authority or any environmental law regulation, (iii) an environmental insurance policy, (iv) an operations and maintenance plan or (v) a qualified environmental consultant having recommended no further investigation or remediation after further investigation.

27. Mortgage Loan File. The Seller has delivered to the Issuer accurate and complete copies of all of the related Mortgage Loan documents and intercreditor arrangements; and as of the Closing Date, none of the Mortgage Loan documents, intercreditor arrangements, or any of the terms thereof have been modified, amended, supplemented, terminated, or waived, and the Seller has not received notice of any such modification, amendment, supplement, termination or waiver.

28. Buy/Sell Provisions. Either (A) the Preferred Equity Documentation does not contain any "buy/sell" or similar provisions (a "Buy/Sell Arrangement") which would obligate the purchaser of the Preferred Equity Security to purchase the equity interests of the common equityholders (or any other party having an interest in the Preferred Equity Vehicle), or require that the holder of the Preferred Equity Security sell its Preferred Equity Security to the common equityholders (or any other party having an interest in the Preferred Equity Vehicle); or (B) if the Preferred Equity Documentation contains a Buy/Sell Arrangement, the price at which the holder of the Preferred Equity Security is required to sell its interest in the Preferred Equity Security is at least equal to the total redemption amount of the Preferred Equity Security, together with any unpaid distributions thereon as of the date of such purchase. Other than any such Buy/Sell Arrangement, no other person has the option to purchase the Preferred Equity Security.

29. No Conversion. No portion of the Preferred Equity Security may be converted into common equity or any other interest in the Preferred Equity Vehicle without the prior written consent of the Preferred Equity Investor.

30. Early Redemption. Pursuant to terms of the related Preferred Equity Documentation and the related senior loan documents and/or the related mezzanine loan documents, any prepayment of the related senior loan and/or mezzanine loan requires a mandatory redemption of the related Preferred Equity Security.

31. No Capital Calls; Nondiscretionary Distributions. There is no requirement for the holder of the Preferred Equity Security to make any capital calls to the Preferred Equity Vehicle or other future monetary

advances or contributions in respect to the Preferred Equity Security; no proceeds of the Preferred Equity Security have been applied in redemption of the Preferred Equity Security, or as distributions to the Preferred Equity Investor, nor have any proceeds of the Preferred Equity Security been paid to any taxing authority on behalf of the Preferred Equity Vehicle. The Preferred Equity

Documents provide the regular, periodic distributions to be made in respect of the Preferred Equity Security and to the fullest extent permitted by law, such distributions do not require the consent or approval of the board of directors (or the equivalent) of the Preferred Equity Vehicle, or the common equityholders.

SCHEDULE M

FORM OF CMBS SECURITY REPRESENTATIONS AND WARRANTIES

1. Accuracy of Information. All information contained in the related Collateral File (or as otherwise provided to Issuer) in respect of such CMBS Security is accurate and complete in all material respects.

2. Compliance with Law. As of the date of its issuance, such CMBS Security complied in all material respects with, or was exempt from, all requirements of federal, state or local law relating to the issuance thereof including, without limitation, any registration requirements of the Securities Act of 1933, as amended.

3. Beneficial Interest. The CMBS Security consists of pass-through certificates representing beneficial ownership interests in one or more REMICs consisting of one or more first lien mortgage loans secured by commercial and/or multifamily properties.

4. Title to Asset. Immediately prior to the sale, transfer and assignment to Issuer, (i) Seller had good and marketable title to, and was the sole owner and holder of, such CMBS Security, (ii) Seller full right, power and authority to transfer, and is transferring, such CMBS Security free and clear of any and all liens, pledges, encumbrances, charges, security interests or any other ownership interests of any nature encumbering such CMBS Security, and (iii) no consent, approval or authorization of any Person is required for any such transfer or assignment by the holder of such CMBS Security. Upon consummation of the purchase contemplated to occur in respect of such CMBS Security on the Closing Date, Seller will have validly and effectively conveyed to Issuer all legal and beneficial interest in and to such CMBS Security free and clear of any pledge, lien, encumbrance or security interest.

5. Valid Assignment. Upon consummation of the purchase contemplated to occur in respect of such CMBS Security on the Closing Date, Seller will have validly and effectively conveyed to Issuer all legal and beneficial interest in and to such CMBS Security free and clear of any and all liens, pledges, encumbrances, charges, security interests or any other ownership interests of any nature.

6. Form of Security. The CMBS Security is a certificated security in registered form, or is in uncertificated form and held through the facilities of (a) The Depository Trust Company in New York, New York, or (b) such other clearing organization or book-entry system as is designated in writing by the Issuer.

7. Transfer Documents. With respect to any CMBS Security that is a certificated security, Seller has delivered to Issuer or its designee such certificated security, along with any and all certificates, assignments, bond powers executed in blank, necessary to transfer such certificated security under the issuing documents of such CMBS Security.

8. Absence of Adverse Events. To Seller's best knowledge, except as included in the Collateral File, (i) no interest shortfalls have occurred and no realized losses have been applied to any CMBS Security or otherwise incurred with respect to any mortgage loan related to such CMBS Security nor any class of CMBS Security issued under the same governing documents as any CMBS Security, and (ii) the Seller is not aware of any circumstances that could have a material adverse effect on the CMBS Security.

SCHEDULE N

FITCH RECOVERY MATRIX

DOMICILE	SENIORITY	AAA	AA	A	BBB	BB	B OR LOWER
ABS Senior (>10%)		60.00%	65.00%	75.00%	85.00%	90.25%	95.00%
ABS Senior (< or equal to 10%)		48.00%	56.00%	64.00%	72.00%	76.00%	80.00%
ABS Mezzanine IG (>10%)		30.00%	38.00%	46.00%	54.00%	65.00%	75.00%
ABS Mezzanine IG (< or equal to 10%)		20.00%	27.00%	35.00%	42.00%	50.00%	55.00%
ABS Non IG (>10%)		15.00%	18.00%	21.00%	26.00%	32.00%	35.00%
ABS Non IG (< or equal to 10%)		0.00%	4.00%	8.00%	12.00%	16.00%	20.00%
United States	REITS	52.00%	55.25%	58.50%	61.75%	63.38%	65.00%
United States	Senior Secured (Non IG)	56.00%	59.50%	63.00%	66.50%	68.25%	70.00%
United States	Jr Secured (Non IG)	24.00%	25.50%	27.00%	28.50%	29.25%	30.00%
United States	Senior Unsecured (Non IG)	36.00%	38.25%	40.50%	42.75%	43.88%	45.00%
United States	Subordinate (Non IG)	24.00%	25.50%	27.00%	28.50%	29.25%	30.00%
United States	Senior Unsecured (IG)	44.00%	46.75%	49.50%	52.25%	53.63%	55.00%
United States	Subordinate (IG)	24.00%	25.50%	27.00%	28.50%	29.25%	30.00%

FITCH RECOVERY MATRIX

(FOR FITCH HYPERTRANCHED COLLATERAL DEBT SECURITIES)

	AAA	AA	A	BBB	BB	B OR LOWER
AAA to A- (>10%)	70.0%	75%	85.0%	95.0%	100.0%	100.0%
AAA to AA- (<=10%)	58.0%	66%	74.0%	82.0%	86.0%	90.0%
A+ to BBB- (>10%)	47.0%	55%	63.0%	71.0%	82.0%	92.0%
A+ to BBB- (<=10%)	37.0%	44%	52.0%	59.0%	67.0%	72.0%
BB+ and Below (>10%)	17.0%	20%	23.0%	28.0%	34.0%	37.0%
BB+ and Below (<=10%)	6.0%	10%	14.0%	18.0%	22.0%	26.0%

EXHIBIT 10.19

PURCHASE AGREEMENT

This Purchase Agreement (the "Agreement") is made as of the 19th day of January, 2005, by and among Arbor Realty Mortgage Securities Series 2004-1, Ltd., an exempted company incorporated with limited liability under the laws of the Cayman Islands (the "Issuer"), Arbor Realty Mortgage Securities Series 2004-1 LLC, a Delaware limited liability company (the "Co-Issuer" and, together with the Issuer, the "Co- Issuers") and Wachovia Capital Markets, LLC ("WCM" or the "Initial Purchaser").

W I T N E S S E T H:

WHEREAS, the Co-Issuers intend to issue (a) the U.S. $182,910,000 Class A Senior Secured Floating Rate Term Notes, Due 2040 (the "Class A Notes"), (b) the U.S. $51,590,000 Class B Second Priority Floating Rate Term Notes, Due 2040 (the "Class B Notes"), (c) the U.S. $50,417,000 Class C Third Priority Floating Rate Term Notes, Due 2040 (the "Class C Notes") and (d) the U.S. $20,402,000 Class D Fourth Priority Floating Rate Term Notes, Due 2040 (the "Class D Notes" and together with the Class A Notes, the Class B Notes and the Class C Notes, the "Notes") pursuant to an indenture, dated as of January 19, 2005 (the "Indenture"), by and among the Issuer, the Co-Issuer, LaSalle Bank National Association, as trustee, paying agent, calculation agent, transfer agent, custodial securities intermediary and notes registrar (together with any successor trustee permitted under the Indenture, the "Trustee") and Arbor Realty SR, Inc., as advancing agent;

WHEREAS, pursuant to its organizational documents, corporate resolutions and a preferred shares paying agency agreement, the Issuer also intends to issue the U.S. $163,707,380 aggregate notional amount preferred shares (the "Preferred Shares");

WHEREAS, the Initial Purchaser is a securities firm engaged in the business of selling securities directly to purchasers or through other securities dealers;

WHEREAS, Arbor Realty Collateral Management, LLC ("ARCM") shall act as collateral manager (the "Collateral Manager") of the Issuer's assets in accordance with the terms of a collateral management agreement dated as of January 19, 2005, between the Collateral Manager and the Issuer (the "Collateral Management Agreement");

WHEREAS, the Initial Purchaser hereby acknowledges that it has received good and valuable consideration from the Co-Issuers.

NOW, THEREFORE, the parties agree as follows:

1. Defined Terms. All capitalized terms used and not otherwise defined herein shall have the same meanings ascribed to such terms in the Indenture.

2. Sale and Purchase of the Notes.

(a) Subject to the terms and conditions herein, each of the Issuer and the Co-Issuer hereby agrees to sell on the Closing Date all of the Notes, as applicable, to the Initial Purchaser as provided hereinafter, and the Initial Purchaser agrees to purchase on the Closing Date from the Issuer and Co-Issuer, as applicable, the Notes in the amount set forth opposite the Initial Purchaser's name on Schedule A hereto at the price (the "Purchase Price") set forth under the respective Notes on the Closing Date.

(b) The Purchase Price of the Notes shall be payable to the Issuer or the Co- Issuer, as applicable, as they direct by wire transfer in United States Dollars in immediately available funds on the Closing Date.

(c) Prior to or at the time that the Notes are first issued or delivered, the conditions precedent in Section 7 herein shall have been satisfied.

3. Offer of the Notes. Each of the Issuer and the Co-Issuer understands that the Initial Purchaser intends to offer the Notes as soon after this Agreement has become effective as is advisable in the judgment of the Initial Purchaser. The Issuer and Co-Issuer confirm that they have authorized the

Initial Purchaser, subject to the restrictions set forth below, to distribute copies of the Offering Memorandum in connection with the offering of the Notes.

4. Representations, Warranties and Covenants of each of the Co-Issuers. Each of the Issuer or the Co-Issuer, as applicable, represents and warrants (with respect to itself only) to the Initial Purchaser as of the Closing Date, and agrees with the Initial Purchaser that:

(a) it has not, directly or indirectly, solicited any offer to buy or offered to sell, and shall not, directly or indirectly, solicit any offer to buy or offer to sell, in the United States or to any United States citizen or resident, any security which is or would be integrated with the sale of the Notes in a manner that would require the Notes to be registered under the Securities Act of 1933, as amended (the "Securities Act");

(b) the Notes are not of the same class as any notes of the Issuer or Co-Issuer listed on a national securities exchange registered under Section 6 of the United States Securities Exchange Act, as amended (the "Exchange Act"), or quoted in a United States automated interdealer quotation system;

(c) the Offering Memorandum dated as of January 14, 2005 and the marketing materials dated December 7, 2004 and the related asset summaries (together, the "Offering Materials") have been prepared by the Issuer and the Co-Issuer, as applicable, in connection with the offering of the Notes. The Offering Materials and any amendments or supplements thereto did not and shall not, as of their respective dates, and, as amended or supplemented through the Closing Date, shall not as of the Closing Date, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading except that the representations and warranties set forth in this Section 4(c) do not apply to statements or omissions that are made in reliance upon and in conformity with information relating to the Initial Purchaser furnished to the Issuer by the Initial Purchaser expressly for use in the Offering Materials or any amendment or supplement thereto. It is hereby acknowledged that the

statements set forth in the second paragraph under the caption "Subscription and Sale" constitute the only written information furnished to the Seller by the Initial Purchasers expressly for use in the Offering Circular (or any amendment or supplement thereto).

(d) since the respective dates as of which information is given in the Offering Materials, except as contemplated or set forth in the Offering Memorandum, it has not carried on any business other than as described in the Offering Materials relating to the issue of the Notes;

(e) the Issuer does not have any subsidiaries and the Co-Issuer does not have any subsidiaries;

(f) the Issuer is an exempted company incorporated with limited liability that has been duly and validly incorporated and is existing and in good standing under the laws of the Cayman Islands; the Issuer is duly licensed and duly qualified to do business as a foreign limited liability company and is in good standing in all jurisdictions in which the ownership of its assets or in which the conduct of its business requires or shall require such qualification; the Issuer has full power and authority to own its assets and conduct its business as described in the Offering Materials and to enter into and perform its obligations under this Agreement, the Indenture, each Collateral Debt Securities Purchase Agreement, each Hedge Agreement and the Collateral Management Agreement and to enter into and consummate all the transactions in connection therewith as contemplated by such agreements and in the Offering Materials;

(g) the Co-Issuer is a limited liability company that is in good-standing under the laws of the State of Delaware and is duly licensed and duly qualified to do business as a limited liability company and is in good standing in all jurisdictions in which the ownership of its assets or in which the conduct of its business requires or shall require such qualification; the Co-Issuer has full power and authority to own its assets and conduct its business as described in the Offering Materials and to enter into and perform its obligations under this Agreement and the Indenture and to enter into and consummate all the transactions in connection therewith as contemplated by such agreements and in the Offering Materials;

(h) the Issuer has the authorized share capital as set forth in the Offering Memorandum and all of the issued ordinary shares of the Issuer have been duly and validly authorized and issued and are fully paid and nonassessable and all of the issued ordinary shares of the Issuer shall be held by ARMS 2004-1 Equity Holdings LLC, relating to such ordinary shares;

(i) the Co-Issuer has the authorized capitalization as set forth in the Offering Memorandum and all of the membership interests of the Co-Issuer have been duly and validly authorized and issued and all of the issued membership interests of the Co-Issuer shall be held by Arbor Realty SR, Inc.;

(j) the Notes have been duly authorized by the Co-Issuer, and when issued and delivered and when appropriate entries have been made in the Note Register pursuant to this Agreement and the Indenture against payment therefor, shall have been duly executed, authenticated, issued and delivered and shall constitute valid and legally binding obligations of the Co-Issuer, enforceable against the Co-Issuer in accordance with their terms and entitled to

the benefits provided by the Indenture, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(k) the Notes have been duly authorized by the Issuer and, when issued and delivered and when appropriate entries have been made in the Note Register pursuant to this Agreement and the Indenture against payment therefor, shall have been duly executed, authenticated, issued and delivered and shall constitute valid and legally binding obligations of the Issuer, enforceable against the Issuer in accordance with their terms and entitled to the benefits provided by the Indenture, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(l) each of the Indenture and this Agreement have been duly authorized by the Co-Issuer and, when executed and delivered by the parties thereto, shall constitute a valid and legally binding instrument, enforceable in accordance with their respective terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(m) each of the Indenture, the Collateral Management Agreement, this Agreement, each Collateral Debt Securities Purchase Agreement and each Hedge Agreement has been duly authorized by the Issuer and, when executed and delivered by the parties thereto, shall constitute a valid and legally binding instrument, enforceable in accordance with its terms under the laws of the State of New York and all other relevant laws, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(n) except as may be required under state securities laws, no filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is necessary or required for the performance by the Co-Issuer of its obligations hereunder, in connection with the offering, issuance or sale of the Notes hereunder or the consummation of the transactions contemplated by or for the due execution, delivery or performance of this Agreement, the Indenture or any other agreement or instrument entered into or issued or to be entered into or issued by the Co-Issuer in connection with the consummation of the transactions contemplated herein and in the Offering Materials (including the issuance and sale of the Notes and the use of the proceeds from the sale of the Notes as described in the Offering Memorandum under the caption "Use of Proceeds");

(o) except as may be required under state securities laws, no filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is necessary or required for the performance by the Issuer of its obligations hereunder, in connection with the offering, issuance or sale of the Notes hereunder or the consummation of the transactions contemplated by or for the due execution, delivery or performance of this Agreement, the Indenture, the Notes, each Collateral Debt Securities Purchase Agreement, the Collateral Management Agreement, each Hedge Agreement or any other agreement or instrument entered into or issued or to be entered into or issued by the Issuer in connection with

the consummation of the transactions contemplated herein and in the Offering

Materials (including the issuance and sale of the Notes and the use of the proceeds from the sale of the Notes as described in the Offering Memorandum under the caption "Use of Proceeds");

(p) the statements set forth in the Offering Memorandum under the captions "Description of the Securities," "Security for the Notes," "The Collateral Management Agreement," "Hedge Agreements," "The Issuer" and "The Co-Issuer" insofar as they purport to constitute a description of the Issuer or the Co-Issuer or a summary of the terms of the Notes, the Indenture, the Hedge Agreements and the Collateral Management Agreement and under the captions "Income Tax Considerations," "ERISA Considerations" and "Subscription and Sale," insofar as they purport to describe the provisions of the laws and documents referred to therein, are correct in all material respects;

(q) the issue and sale of the Notes and the compliance by the Issuer or the Co-Issuer as applicable, with all of the provisions of the Indenture, each Collateral Debt Securities Purchase Agreement, the Notes, each Hedge Agreement, the Collateral Management Agreement and this Agreement and the consummation of the transactions herein and therein contemplated shall not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any other agreement or instrument to which the Issuer or the Co-Issuer is a party or by which the Issuer or the Co-Issuer is bound, nor shall such action result in any violation of the provisions of the Governing Documents of each of the Issuer or the Co-Issuer or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Issuer or the Co-Issuer or each of their assets; and, no consent, approval, authorization, order, registration or qualification of or with any court or governmental agency or body is required for the issue and sale of the Notes or the consummation of the transactions by the Issuer and the Co-Issuer contemplated by this Agreement, the Indenture, each Collateral Debt Securities Purchase Agreement, each Hedge Agreement or the Collateral Management Agreement, (other than any governmental or other consents that have already been obtained by either the Issuer or the Co-Issuer and that were in full force and effect);

(r) the Trustee shall have a perfected security interest in the Pledged Obligations and the Issuer's rights under the Collateral Management Agreement, each Hedge Agreement and each Collateral Debt Securities Purchase Agreement for the benefit and security of the holders of the Notes subject to the priorities set forth in the Indenture;

(s) there are no legal or governmental proceedings, inquiries or investigations pending to which the Issuer or the Co-Issuer is a party or of which any property of the Issuer or Co-Issuer is the subject; and, no such proceedings are threatened or contemplated by governmental authorities or threatened by others;

(t) on the Closing Date, there shall not exist any default by any of the Issuer or the Co-Issuer or any condition, event or act, which, with notice or lapse of time or both, would constitute an Event of Default by the Issuer or the Co-Issuer under the Indenture;

(u) none of the Issuer, the Co-Issuer or any persons acting on their behalf (other than the Initial Purchaser as to whom the Co-Issuers make no representation) has engaged or shall engage in any directed selling efforts as defined in Rule 902 of Regulation S under the

Securities Act with respect to the Notes, and none of the foregoing persons has offered or sold any of the Notes except to the Initial Purchaser pursuant to this Agreement,

(v) neither the Issuer nor the Co-Issuer has entered into contractual arrangements (other than this Agreement) with any Person other than the Initial Purchaser with respect to the distribution of the Notes;

(w) no stamp or other issuance or transfer taxes or duties and no capital gains, income, withholding or other taxes are payable by or on behalf of the

Initial Purchaser to the government of the Cayman Islands or any political subdivision or taxing authority thereof or therein in connection with the issuance, sale and delivery by the Issuer and the Co-Issuer or the sale and delivery by the Initial Purchaser outside the Cayman Islands of the Notes to the investors thereof; provided, that Cayman Islands stamp duty will be payable if any of the Notes or Transaction Agreements are executed in, or after execution, brought into the Cayman Islands;

(x) none of the Issuer or the Co-Issuer has offered or sold the Notes by means of any form of general solicitation or general advertising and none of the foregoing persons shall offer to sell, offer for sale or sell the Notes by means of any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;

(y) assuming compliance by the Initial Purchaser with the offer and sale restrictions set forth herein and compliance by the purchaser with the Subscription Agreement, neither the Issuer nor the Co-Issuer is required to be registered as an "investment company" and neither the Issuer nor the Co-Issuer shall be required to register as an investment company under the Investment Company Act as a result of the conduct of its business in the manner contemplated by the Offering Memorandum;

(z) assuming compliance by the Initial Purchaser with the offer and sale restrictions set forth herein and compliance by the purchaser with the Subscription Agreement, no registration of the Notes under the Securities Act is required for the offer and sale of the Notes in the manner contemplated by this Agreement and the Offering Memorandum and no qualification of an indenture under the Trust Indenture Act of 1939, as amended, is required for the offer and sale of the Notes in the manner contemplated by this Agreement and the Offering Memorandum;

(aa) each of the Issuer and the Co-Issuer shall make available to the Initial Purchaser such number of copies of the Offering Memorandum and any amendment or supplement thereto as the Initial Purchaser shall reasonably request;

(bb) neither the Issuer nor the Co-Issuer has offered and neither the Issuer nor the Co-Issuer shall offer the Notes except pursuant to this Agreement;

(cc) each of the Issuer and the Co-Issuer shall immediately notify the Initial Purchaser, and confirm such notice in writing, of (A) any filing made by the Co-Issuers of information relating to the offering of the Notes with any securities exchange or any other regulatory body in the United States or any other jurisdiction, and (B) prior to the completion of

the purchase of the Notes by the Initial Purchaser, any material changes in or affecting the earnings, business affairs or business prospects of either the Issuer or the Co-Issuer which (i) make any statement in the Offering Materials false or misleading in any material respect or (ii) are not disclosed in the Offering Memorandum. In such event or if during such time any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of any of the Issuer, the Co-Issuer, their counsel, the Initial Purchaser or its counsel, to amend or supplement the Offering Materials in order that the final Offering Materials not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances then existing, each of the Issuer and the Co-Issuer shall forthwith amend or supplement the final Offering Materials by preparing and furnishing to the Initial Purchaser an amendment or amendments of, or a supplement or supplements to, the final Offering Materials (in form and in substance satisfactory in the opinion of counsel for the Initial Purchaser) so that, as so amended or supplemented, the final Offering Materials shall not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at the time it is delivered to an investor, not misleading;

(dd) each of the Issuer and the Co-Issuer shall advise the Initial Purchaser promptly of any proposal to amend or supplement the Offering Materials and shall not effect such amendment or supplement without the consent of the

Initial Purchaser, which shall not be unreasonably withheld or delayed. Neither the consent of the Initial Purchaser to, nor the Initial Purchaser's delivery of, any such amendment or supplement, shall constitute a waiver of any of the conditions set forth in Section 7 hereof;

(ee) each of the Issuer and the Co-Issuer agrees that it shall not make any offer or sale of Notes of any class if, as a result of the doctrine of "integration" referred to in Rule 502 promulgated under the Securities Act, such offer or sale would render invalid (for the purpose of (i) the sale of the Notes to the Initial Purchaser or (ii) the resale of the Notes by the initial investors to others) the exemption from the registration requirements of the Securities Act provided by Section 4(2) thereof or by Rule 144A or by Regulation S thereunder;

(ff) each of the Issuer and the Co-Issuer agrees that, in order to render the Notes eligible for resale pursuant to Rule 144A under the Securities Act, while any of the Notes remain outstanding, they shall make available, upon request, to any holder of the Notes or prospective purchasers of the Notes designated by any Holder the information specified in Rule 144A(d)(4), unless each of the Issuer and the Co-Issuer furnishes information to the United States Securities and Exchange Commission (the "Commission") pursuant to Section 13 or 15(d) of the Exchange Act (such information, whether made available to holders or prospective purchasers or furnished to the Commission, is hereinafter referred to as "Additional Information");

(gg) until the expiration of two years after the original issuance of the Notes, each of the Issuer and the Co-Issuer shall not resell any Notes which are "restricted securities" (as such term is defined under Rule 144(a)(3) under the Securities Act) that have been re-acquired by any of them and shall immediately upon any purchase of any such Notes submit such Notes to the Trustee for cancellation;

(hh) each of the Issuer and the Co-Issuer shall use the net proceeds received by them from the sale of the Notes in the manner specified in the Offering Memorandum under "Use of Proceeds";

(ii) during a period of 180 days from the date of the Offering Memorandum, neither the Issuer nor the Co-Issuer shall, directly or indirectly, issue, sell, offer to sell grant any option for the sale of, or otherwise dispose of, any debt securities or guarantees of debt securities of the Issuer or the Co-Issuer, as applicable, or any securities convertible or exchangeable into or exercisable for any debt securities or guarantees of debt securities of the Issuer or the Co-Issuer, as applicable, or any securities convertible or exchangeable into or exercisable for any debt security or guarantee of debt securities of the Issuer or Co-Issuer, except as described in the Offering Memorandum;

(jj) the Co-Issuers shall use all reasonable efforts in cooperation with the Initial Purchaser to permit the Notes to be eligible for clearance and settlement through DTC;

(kk) each certificate representing a Note shall bear the legend contained in the Offering Memorandum for the time period and upon the other terms stated in the Offering Memorandum;

(ll) the Co-Issuers shall have no debt other than as indicated in or contemplated by the Offering Memorandum (including, without limitation, expenses incurred in connection with the offering of the Notes);

(mm) the application of the proceeds of the sale of the Notes shall not be in violation of Regulations T, U or X of the Board of Governors of the Federal Reserve System, as amended and in effect on the Closing Date;

(nn) The Issuers have taken all necessary steps to ensure that any Bloomberg screen containing information about the Notes represented by Rule 144A Global Notes includes the following (or similar) language:

(i) the "Note Box" on the bottom of the "Security Display" page describing the Rule 144A Global Notes shall state: "Iss'd Under 144A/3c7";

(ii) the "Security Display" page shall have flashing red indicator "See Other Available Information"; and

(iii) the indicator shall link to the "Additional Security Information" page, which shall state that the securities "are being offered in reliance on the exemption from registration under Rule 144A of the Securities Act to persons who are both (i) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (ii) qualified purchasers (as defined under Section 3(c)(7) under the 1940 Act)."

(oo) The Issuers shall instruct The Depository Trust Company ("DTC") to take these or similar steps with respect to the Notes represented by Rule 144A Global Notes:

(i) the DTC 20-character security descriptor and 48-character additional descriptor shall indicate with marker "3c7" that sales are limited to Qualified Institutional Buyers/Qualified Purchasers;

(ii) where the DTC deliver order ticket sent to purchasers by DTC after settlement is physical, it shall have the 20-character security descriptor printed on it. Where the DTC deliver order ticket is electronic, it shall have a "3c7" indicator and a related user manual for participants, which shall contain a description of the relevant restriction;

(iii) DTC shall send an "Important Notice" outlining the 3(c)(7) restrictions applicable to the Rule 144A Global Notes to all DTC participants in connection with the initial offering; and

(iv) DTC shall include the Co-Issuers in the Reference Directory which is distributed by DTC to its participants on the list of all issuers who have advised DTC that they are 3(c)(7) issuers.

(pp) The Co-Issuers, have confirmed that CUSIP has established a "fixed field" attached to the CUSIP numbers for the Notes represented by Rule 144A Global Notes containing "3c7" and "144A" indicators.

5. Representations, Warranties and Covenants of the Initial Purchaser. The Initial Purchaser hereby represents and warrants to the Issuer and the Co-Issuer as of the Closing Date and agrees with the Issuer and the Co-Issuer that:

(a) The Initial Purchaser is a QIB and a Qualified Purchaser, with such knowledge and experience in financial and business matters as are necessary in order to evaluate the merits and risks of an investment in the Notes.

(b) The Initial Purchaser understands that (i) the Notes have not been and shall not be registered under the Securities Act, and (ii) the Issuer and the Co-Issuer are not, and shall not be, registered as investment companies under the Investment Company Act.

(c) The Initial Purchaser shall offer and sell the Notes only to persons (i) who are "qualified purchasers" as defined in Section 2(a)(51) of the Investment Company Act ("Qualified Purchasers") that such Initial Purchaser reasonably believes are "qualified institutional buyers" as defined in Rule 144A under the Securities Act ("Rule 144A") and whom the seller has informed that the reoffer, resale, pledge or other transfer is being made in reliance on Rule 144A or (ii) such Initial Purchaser reasonably believes are not U.S. Persons or U.S. residents for purposes of the Investment Company Act and that the sale, reoffer, resale, pledge or other transfer is being made in compliance with Regulation S under the Securities Act; terms used in this paragraph have the meanings given to them by Regulation S or Rule 144A, as applicable.

(d) The Initial Purchaser shall not invite the public in the Cayman Islands to subscribe for the Notes.

(e) The Initial Purchaser acknowledges that purchases and resales of the Notes are restricted as described under "Transfer Restrictions" in the Offering Memorandum.

(f) (i) The Initial Purchaser has not offered or sold and will not offer or sell any Notes to persons in the United Kingdom prior to the expiry of the period of six months from the Closing Date except to persons whose ordinary

activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their business or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995 (as amended); (ii) the Initial Purchaser has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 (the "FSMA") received by it in connection with the issue or sale of any Notes in circumstances in which section 21(1) of the FSMA does not apply to the Issuer; and (iii) the Initial Purchaser has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Notes in, from or otherwise involving the United Kingdom.

(g) The Initial Purchaser represents and agrees that the Notes offered and sold in reliance on Regulation S have been and will be offered and sold only in offshore transactions. In connection therewith, the Initial Purchaser agrees that it has not offered or sold and will not offer or sell the Notes in the United States or to, or for the benefit or account of, a U.S. Person (other than a distributor), in each case, as defined in Rule 902 under the Securities Act (i) as part of its distribution at any time and (ii) otherwise until 40 days after the later of the commencement of the offering of the Notes pursuant hereto and the Closing Date, other than in accordance with Regulation S of the Securities Act or another exemption from the registration requirements of the Securities Act.

(h) No form of general solicitation or general advertising has been or will be used by the Initial Purchaser or any of its representatives in connection with the offer and sale of any of the Notes, including, but not limited to, articles, notices or other communications published in any newspaper, magazine, or similar medium or broadcast over television or radio, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

Terms used in this Section 5 that have meanings assigned to them in Regulation S are used herein as so defined.

6. Fees and Expenses. The proceeds of the offering of the Notes shall be used to pay all expenses incurred in connection with the offering of the Notes, including the preparation and printing of the preliminary and final offering memorandum, the preparation, issuance and delivery of the Notes to the Initial Purchaser, any fees charged by the Rating Agencies in rating the Notes and the fees of counsel to the Issuer and Co-Issuer, the Initial Purchaser, the fees of the Collateral Manager, the Trustee and all reasonable out-of-pocket expenses of the Initial Purchaser.

7. Conditions Precedent to the Purchase of the Notes. The obligations of the Initial Purchaser hereunder are subject to the accuracy of the representations and warranties of each of either the Issuer or the Co-Issuer contained in Section 4 hereof or in certificates of any of the respective officers of the Issuer or Co-Issuer delivered pursuant to the provisions hereof, to the performance by the Issuer and the Co-Issuer of their covenants and other obligations hereunder, and to the following further conditions precedent:

(a) On the Closing Date, the Initial Purchaser shall have received the opinions, dated as of the Closing Date specified in Sections 3.1(d), (e), (f), (l), (m), (n) and (o) of the Indenture.

(b) On the Closing Date, (i) the Offering Materials, as amended or supplemented, shall not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (ii) there shall not have been, since the date hereof or since the respective dates as of which information is given in the Offering Materials, any material adverse change or prospective material adverse change with respect to the Issuer, the Co-Issuer or the Collateral; (iii) each of the Issuer and the Co-Issuer shall have complied with all agreements and satisfied all conditions on their part to be performed or satisfied pursuant to this Agreement on or prior to Closing Date; and (iv) the representations and warranties of the Issuer and Co-Issuer in Section 4 shall be accurate and true and correct as though expressly made on and as of the Closing Date except as specifically set forth therein.

(c) On the Closing Date, the Initial Purchaser shall have received a certificate of an authorized officer of ARCM, dated as of the Closing Date, substantially in the form attached hereto as Exhibit A.

(d) On the Closing Date, the Initial Purchaser shall have received from KPMG LLP a letter, dated as of the Closing Date in form and substance satisfactory to the Initial Purchaser, with respect to certain financial, statistical and other information contained in the Offering Memorandum.

(e) The Co-Issuer shall have duly authorized, executed and delivered the Indenture and this Agreement.

(f) The Issuer shall have duly authorized, executed and delivered the Indenture, the Collateral Management Agreement, each Collateral Debt Securities Purchase Agreement, and each Hedge Agreement.

(g) ARCM shall have duly authorized, executed and delivered the Collateral Management Agreement.

(h) Each Seller shall have duly authorized, executed and delivered the applicable Collateral Debt Securities Purchase Agreement;

(i) Each Hedge Counterparty shall have duly authorized, executed and delivered the applicable Hedge Agreement;

(j) The Notes shall have been executed by the Issuer and Co-Issuer, as applicable, and authenticated by the Trustee and the conditions precedent thereto, as set forth in the Indenture, shall have been satisfied.

(k) Prior to the initial purchase of the Notes hereunder, the Issuer and Co-Issuer, as applicable, shall have obtained letters from Moody's Investors Service, Inc. ("Moody's"), Fitch, Inc. ("Fitch") and Standard & Poor's Rating Services, a division of The McGraw-Hill Companies ("S&P") that the Class A Notes have been rated "Aaa" by Moody's and "AAA" by S&P and Fitch, that the Class B Notes have been rated at least "Aa2" by Moody's and "AA" by S&P and Fitch, that the Class C Notes have been rated at least "A3" by Moody's and "A-" by S&P and Fitch, that the Class D Notes have been rated at least "Baa2" by Moody's and "BBB" by S&P and Fitch and shall deliver copies of such letters to the Initial Purchaser. The ratings assigned by the Rating Agencies to the Class A Notes, the Class B Notes, the Class C Notes, and the Class D Notes address the ultimate payment of interest and principal as provided under the Indenture. The ratings assigned by Moody's are based on the risk of loss posed to the holders of each Class of the Notes relative to the timing of the payments of principal of and interest on each such Class of Notes.

(l) The Initial Purchaser shall have received such further information, certificates, documents and opinions as the Initial Purchaser may have reasonably requested.

(m) All of the Preferred Shares shall have been purchased by ARMS 2004-1 Equity Holdings LLC on the Closing Date.

8. Indemnification and Contribution.

(a) Subject to the Priority of Payments set forth in Section 11.1 of the Indenture, the Co-Issuers shall indemnify and hold harmless the Initial Purchaser and each of its affiliates, respective officers, directors and each person who controls such Initial Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, an "Initial Purchaser Indemnified Person") against any losses, claims, damages, liabilities or expenses, joint or several, as the same are incurred, to which such Initial Purchaser Indemnified Person may become subject insofar as such losses, claims, damages, liabilities or expenses (or actions in respect thereof) (1) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Offering Materials or any amendment or supplement thereto or arise out of or are based upon the omission or alleged omission to state in the Offering Materials a material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading, other than the Initial Purchaser Information (as defined below) or (2) are based upon any breach by the Co-Issuers of any of its representations, warranties or agreements contained in this Agreement, and shall periodically

reimburse the Initial Purchaser for any and all legal or other expenses reasonably incurred by the Initial Purchaser and each other Initial Purchaser Indemnified Person in connection with investigating or defending, settling, compromising or paying any such losses, claims, damages, liabilities, expenses or actions as such expenses are incurred; provided, however, that the foregoing indemnity with respect to any untrue statement contained in or any statement omitted from any Offering Materials (as the same may be amended or supplemented) shall not inure to the benefit of the Initial Purchaser (or any Person controlling the Initial Purchaser), if (x) such

loss, liability, claim, damage or expense resulted from the fact that the Initial Purchaser sold Notes to a Person to whom there was not sent or given, at or prior to the written confirmation of such sale, a copy of the Offering Memorandum, as then amended or supplemented, (y) the Issuer shall have previously and timely furnished sufficient copies of the Offering Memorandum, as so amended or supplemented, to the Initial Purchaser in accordance with this Agreement and (z) the Offering Memorandum, as so amended or supplemented, would have corrected such untrue statement or omission.

(b) The Initial Purchaser shall indemnify and hold harmless the Issuer and the Co-Issuer, each of their respective affiliates, their respective officers, directors, managers and each person controlling the Issuer and Co-Issuer within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, claims, damages, liabilities or expenses, joint or several, as the same are incurred, to which the Issuer or the Co-Issuer may become subject insofar as such losses, claims, damages, liabilities or expenses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the statements set forth in the Initial Purchaser Information with respect to such Initial Purchaser or acts or omissions thereof or arise out of or are based upon the omission or alleged omission to state in such paragraphs a material fact necessary with respect to such Initial Purchaser or acts or omissions thereof to make the statements in such paragraphs, in the light of the circumstances under which they are made, not misleading. The parties acknowledge that the only information provided by the Initial Purchaser is in the Offering Memorandum on the cover page in the first sentence of the fourth paragraph and in the Section entitled "Subscription and Sale" in the first sentence of the first paragraph, third and fifth paragraphs, second sentence of the sixth paragraph, seventh and eighth paragraphs and twelfth paragraphs (collectively, the "Initial Purchaser Information");

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise under such subsection except to the extent it has been materially prejudiced by such failure. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it may elect, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party; provided, however, that if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of its election so to assume the defense of such action and approval of counsel by the indemnified party, the indemnifying party shall not be liable to such indemnified party under this Section 8 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed

separate counsel in connection with the assertion of legal defenses in

accordance with the proviso to the immediately preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (in addition to local counsel) for the indemnified party), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party at the expense of the indemnifying party to represent the indemnified party within a reasonable time after notice of commencement of the action or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party; and except that, if clause (i) or (iii) is applicable, such liability shall be only in respect of the counsel referred to in such clause (i) or (iii).

(d) If the indemnification provided for in this Section 8 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages, liabilities or expenses (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as incurred as a result of such losses, claims, damages, liabilities or expenses (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Co-Issuers and the Initial Purchaser from the offering of the Notes. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Co-Issuers on the one hand and the Initial Purchaser on the other in connection with the statements or omissions or breaches of representations, warranties or agreements which resulted in such losses, claims, damages, liabilities or expenses (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Co-Issuers and WCM shall be in the same proportion as the total proceeds to the Co-Issuers from the sale of Notes and the discounts and commissions received by WCM bear to each other. The relative fault shall be determined by reference to, among other things, whether the indemnified party failed to give the notice required under subsection (c) above, including the consequences of such failure, and whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Co-Issuers on the one hand or by the Initial Purchaser on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement, omission or breach. The Co-Issuers and the Initial Purchaser agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities or expenses (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim (which shall be limited as provided in subsection (c) above if the indemnifying party has assumed the defense of any such action in accordance with the provisions thereof). Notwithstanding the provisions of this subsection (d), the Initial Purchaser shall not be required to contribute any amount in excess of the amount by which the amount of the discounts and commissions received by such Initial Purchaser exceeds the amount of any damages which such Initial Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of

fraudulent misrepresentation shall be entitled to a contribution from any person who was not guilty of such fraudulent misrepresentation.

9. Duration, Termination and Assignment of this Agreement.

(a) This Agreement shall become effective as of the date first written above and shall remain in force until terminated as provided in this Section 9.

(b) This Agreement may be terminated by WCM at any time without the payment of any penalty by the Initial Purchaser, if there is a breach of any of the representations, warranties, covenants or agreements of the Issuer or the Co-Issuer hereunder or if any of the conditions set forth in Section 7 have not been satisfied.

(c) This Agreement may be terminated by WCM in the event that on or after

the date hereof, there shall have occurred any of the following: (i) a suspension or material limitation in trading in securities generally on the New York Stock Exchange or in trading of the securities of the Collateral Manager or any affiliate of the Collateral Manager on any exchange or over-the-counter market; (ii) a general moratorium on commercial banking activities declared by either federal or New York State authorities; or (iii) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war, or other calamity or crisis, if the effect of any such event specified in this clause (iii) in the judgment of WCM makes it impracticable or inadvisable to proceed with the offering or delivery of the Notes on the terms and in the manner contemplated by this Agreement and in the Offering Memorandum.

(d) The Issuer shall pay all fees and expenses in connection with the offering and sale of the Notes from amounts standing to the credit of the Expense Account immediately following the termination of this Agreement pursuant to Section 9(c) hereof.

(e) This Agreement is not assignable by any party hereto; provided, however, that the Initial Purchaser may assign this Agreement, or any of its rights or obligations hereunder, in writing to any of its affiliates, provided, that the rights of the Issuer or Co-Issuer shall not be affected by such assignment. Upon an assignment by the Initial Purchaser pursuant to this Section 9(e), such Initial Purchaser shall cause the assignee to assume in writing all of the obligations and liabilities of the Initial Purchaser hereunder and shall notify the Issuer and the Co-Issuer of such assignment.

10. Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered or faxed and confirmed to the parties as follows:

If to Wachovia Capital Markets, LLC:

Wachovia Capital Markets, LLC
12 East 49th Street, 45th Floor
New York, New York 10017
Telephone: (212) 909-0035
Fax: (212) 909-0047
Attention: Michelle Tan

If to the Issuer:

Arbor Realty Mortgage Securities Series 2004-1, Ltd.
c/o Maples Finance Limited
Walker House
P.O. Box 1093 GT
Queensgate House, South Church Street
George Town, Grand Cayman, Cayman Islands
Attention: The Directors
Telephone: (345) 945-7099
Fax: (345) 945-7100

with a copy to the Collateral Manager:

Arbor Realty Collateral Management, LLC
333 Earle Ovington Boulevard, 9th Floor
Uniondale, New York 11553
Telephone: (212) 389-6546
Fax: (212) 389-6573
Attention: Executive Vice President, Structured Securitization

If to the Co-Issuer:

Arbor Realty Mortgage Securities Series 2004-1 LLC
c/o Puglisi & Associates
830 Library Avenue, Suite 204,
Newark, Delaware 19711
Attention: Donald J. Puglisi
Telephone: (302) 738-6680
Fax: (302) 738-7210

with a copy to the Collateral Manager (as addressed above).

Any party hereto may change the address for receipt of communications by giving written notice to the others.

11. Consent to Jurisdiction. Each of the Issuer and the Co-Issuer (i) agrees that any legal suit, action or proceeding brought by any party to enforce any rights under or with respect to this Agreement or any other document or the transactions contemplated hereby or thereby may be instituted in any federal court in The City of New York, State of New York, U.S.A.; provided, however, that if a federal court in the City of New York declines jurisdiction for any reason, any legal suit, action or proceeding brought by any party to enforce any rights under or with respect to this Agreement or any other document or the transactions contemplated hereby or thereby may be instituted in any state court in the City of New York, State of New York, U.S.A., (ii) irrevocably waives to the fullest extent permitted by law any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding instituted in the City of New York, State of New York, U.S.A., (iii) irrevocably waives to the fullest extent permitted by law any claim that and agrees not to claim or plead in any court that any such

action, suit or proceeding brought in a court in the City of New York, State of New York, U.S.A. has been brought in an inconvenient forum and (iv) irrevocably submits to the non-exclusive jurisdiction of any such court in any such suit, action or proceeding or for recognition and enforcement of any judgment in respect thereof.

Each of the Issuer and the Co-Issuer hereby irrevocably and unconditionally designates and appoints CT Corporation System, 111 8th Avenue, 13th Floor, New York, New York 10011, U.S.A. (and any successor entity), as its authorized agent to receive and forward on its behalf service of any and all process which may be served in any such suit, action or proceeding in any such court and agrees that service of process upon CT Corporation shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and shall be taken and held to be valid personal service upon it. Said designation and appointment shall be irrevocable. Nothing in this Section 11 shall affect the rights of the Initial Purchaser, its affiliates or any indemnified party to serve process in any manner permitted by law. Each of the Issuer and the Co-Issuer further agrees to take any and all action, including the execution and filing of any and all such documents and instruments, as may be necessary to continue such designation and appointment of CT Corporation in full force and effect so long as the Notes are outstanding but in no event for a period longer than five years from the date of this Agreement. Each of the Issuer and the Co-Issuer hereby irrevocably and unconditionally authorizes and directs CT Corporation to accept such service on their behalf. If for any reason CT Corporation ceases to be available to act as such, each of the Issuer and the Co-Issuer agrees to designate a new agent in New York City on the terms and for the purposes of this provision reasonably satisfactory to the Initial Purchaser.

To the extent that either the Issuer or the Co-Issuer has or hereafter may acquire any immunity from jurisdiction of any court (including, without limitation, any court in the United States, the State of New York, Cayman Islands or any political subdivision thereof) or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property or assets, this Agreement, or any other documents or actions to enforce judgments in respect of any thereof, it hereby irrevocably waives such immunity, and any defense based on such immunity, in respect of its obligations under the above-referenced documents and the transactions contemplated thereby, to the extent permitted by law.

12. Judgment Currency. If pursuant to a judgment or order being made or registered against the either the Issuer or the Co-Issuer, any payment under or in connection with this Agreement to the Initial Purchaser is made or satisfied in a currency (the "Judgment Currency") other than in United States Dollars then, to the extent that the payment (when converted into United States Dollars at the rate of exchange on the date of payment or, if it is not practicable for such Initial Purchaser to purchase United States Dollars with the Judgment Currency on the date of payment, at the rate of exchange as soon thereafter as it is practicable to do so) actually received by such Initial Purchaser falls short of the amount due under the terms of this Agreement, the Issuer or the Co-Issuer, as applicable, shall, to the extent permitted by law, as a separate and independent obligation, indemnify and hold harmless the Initial Purchaser against the amount of such short fall and such indemnity shall continue in full

force and effect notwithstanding any such judgment or order as aforesaid. For the purpose of this Section, "rate of exchange" means the rate at which such Initial Purchaser is able on the relevant date to

purchase United States Dollars with the Judgment Currency and shall take into account any premium and other costs of exchange.

13. Amendments to this Agreement. This Agreement may be amended by the parties hereto only if such amendment is specifically approved in writing by the Issuer, the Co-Issuer and by the Initial Purchaser. The Co-Issuers must provide notice of any amendment or modification of this Agreement to each Rating Agency rating the Notes at the time of any such amendment or modification.

14. Parties. This Agreement shall inure to the benefit of and be binding upon the Initial Purchaser, the Co-Issuers and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Initial Purchaser, the Co-Issuers and their respective successors and the controlling persons and officers and directors referred to in Section 8, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provisions herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Initial Purchaser, the Co-Issuers, each of their respective affiliates and their respective successors, and said controlling persons and officers, directors and managers and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Notes shall be deemed to be a successor by reason merely of such purchase.

15. Governing Law. This Agreement shall be construed in accordance with the internal laws of the State of New York, without giving effect to the choice of law principles thereof.

16. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same agreement.

17. Representations, Warranties and Indemnities to Survive Delivery. The respective representations, warranties and indemnities of the Issuer, the Co-Issuer, of their respective officers and of the Initial Purchaser set forth in or made pursuant to, this Agreement, including any warranty relating to the payment of expenses owed to the Initial Purchaser hereunder shall remain in full force and effect and shall survive delivery of and payment for the Notes and any termination of this Agreement.

18. No Petition Agreement. The Initial Purchaser agrees that, so long as any Note is outstanding and for a period of one year plus one day or, if longer, the applicable preference period then in effect after payment in full of all amounts payable under or in respect of the transaction documents, it shall not institute against or join or assist any other Person in instituting against, any of the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings under any federal or state bankruptcy or similar law. This Section shall survive any termination of this Agreement.

19. Non Recourse Agreement. Notwithstanding any other provision of this Agreement, all obligations of the Issuer or the Co-Issuer arising hereunder or in connection herewith are limited in recourse to the Pledged Obligations and to the extent the proceeds of the

Pledged Obligations, when applied in accordance with the Priority of Payments, are insufficient to meet the obligations of the Issuer or the Co-Issuer hereunder in full, the Issuer or the Co-Issuer, as applicable, shall have no further liability in respect of any such outstanding obligations and any claims against the Issuer or the Co-Issuer, as applicable, shall be extinguished and shall not thereafter revive. This Section shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Purchase Agreement as of the day and year first above written.

ARBOR REALTY MORTGAGE SECURITIES
SERIES 2004-1, LTD., as Issuer

By: /s/ Guy R. Milone, Jr.

Name: Guy R. Milone, Jr.
Title: Authorized Signatory

ARBOR REALTY MORTGAGE SECURITIES
SERIES 2004-1 LLC, as Co-Issuer

By: /s/ Guy R. Milone, Jr.

Name: Guy R. Milone, Jr.
Title: Authorized Signatory

WACHOVIA CAPITAL MARKETS, LLC

By: /s/ Michelle Tan

Name: Michelle Tan
Title: VP

EXHIBIT A

ARBOR REALTY COLLATERAL MANAGEMENT, LLC

Officer's Certificate

The undersigned, _____, pursuant to Section 7(c) of that certain Purchase Agreement dated as of January 19, 2005, by and among Arbor Realty Mortgage Securities Series 2004-1, Ltd., Arbor Realty Mortgage Securities Series 2004-1 LLC and Wachovia Capital Markets, LLC (the "Purchase Agreement") does HEREBY CERTIFY that:

(a) The Collateral Manager (i) has been duly organized, is validly existing and is in good standing under the laws of the State of Delaware, (ii) has full power and authority to own the Collateral Manager's assets and to transact the business in which it is currently engaged, and (iii) is duly qualified and in good standing under the laws of each jurisdiction where the Collateral Manager's ownership or lease of property or the conduct of the Collateral Manager's business requires, or the performance of the Collateral Management Agreement and the Indenture would require, such qualification, except for failures to be so qualified that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Collateral Manager or the ability of the Collateral Manager to perform its obligations under, or on the validity or enforceability of, the Collateral Management Agreement and the provisions of the Indenture applicable to the Collateral Manager; the Collateral Manager has full power and authority to execute, deliver and perform the Collateral Management Agreement and the Collateral Manager's obligations thereunder and the provisions of the Indenture applicable to the Collateral Manager; the Collateral Management Agreement has been duly authorized, executed and delivered by the Collateral Manager and constitutes a legal, valid and binding agreement of the Collateral Manager, enforceable against it in accordance with the terms thereof, except that the enforceability thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law);

(b) Neither the Collateral Manager nor any of its Affiliates is in violation of any Federal or state securities law or regulation promulgated thereunder that would have a material adverse effect upon the ability of the Collateral Manager to perform its duties under the Collateral Management Agreement or the Indenture, and there is no charge, investigation, action, suit or proceeding before or by any court or regulatory agency pending or, to the best knowledge of the Collateral Manager, threatened which could reasonably be expected to have a material adverse effect upon the ability of the Collateral Manager to perform its duties under the Collateral Management Agreement or the Indenture;

(c) Neither the execution and delivery of the Collateral Management

Agreement nor the performance by the Collateral Manager of its duties thereunder or under the Indenture conflicts with or will violate or result in a breach or violation of any of the terms or provisions of, or constitutes a default under: (i) the limited liability company agreement of the Collateral Manager, (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note

agreement or other evidence of indebtedness or other agreement, obligation, condition, covenant or instrument to which the Collateral Manager is a party or is bound, (iii) any law, decree, order, rule or regulation applicable to the Collateral Manager of any court or regulatory, administrative or governmental agency, body or authority or arbitrator having jurisdiction over the Collateral Manager or its properties, and which would have, in the case of any of (i), (ii) or (iii) of this subsection (c), either individually or in the aggregate, a material adverse effect on the business, operations, assets or financial condition of the Collateral Manager or the ability of the Collateral Manager to perform its obligations under the Collateral Management Agreement or the Indenture;

(d) No consent, approval, authorization or order of or declaration or filing with any government, governmental instrumentality or court or other person is required for the performance by the Collateral Manager of its duties under the Collateral Management Agreement and under the Indenture, except such as have been duly made or obtained;

(e) The Offering Memorandum, as of the date thereof (including as of the date of any supplement thereto) and as of the Closing Date does not contain any untrue statement of a material fact and does not omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;

(f) On the Closing Date, there shall not have been, since the respective dates as of which information is given in the Offering Materials, any material adverse change or prospective material adverse change with respect to the Issuer, the Co-Issuer or the Collateral; and

(g) The Collateral Manager is subject to a valid exemption from registration as a registered investment adviser under the Advisers Act. Capitalized terms not set forth herein shall have the meaning ascribed thereto in the Indenture.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 19th day of January, 2005.

ARBOR REALTY COLLATERAL
MANAGEMENT, LLC

By: _____
Name:
Title:

SCHEDULE A

CLASS	PURCHASE PRICE
Class A Notes	
Class B Notes	
Class C Notes	
Class D Notes	

EXHIBIT 21.1

Subsidiaries of Arbor Realty Trust, Inc.

Arbor Realty GPOP, Inc., a Delaware corporation
Arbor Realty LPOP, Inc., a Delaware corporation
Arbor Realty Limited Partnership, a Delaware limited partnership
Arbor Realty SR, Inc., a Maryland corporation
ANMB Holdings LLC, a New York limited liability company
ACM Gateway LLC, a Delaware limited liability company
Arbor Texas CDS, LLC, a New York limited liability company
ANMB Holdings II, LLC, a New York limited liability company
ACM Dutch Village, LLC, a Delaware limited liability company
ACM Evergreen, LLC, a New York limited liability company
Arbor Realty Funding, LLC, a Delaware limited liability company
Arbor Realty Member LLC, a Delaware limited liability company
ART 450 LLC, a Delaware limited liability company
ARMS 2004-1 Equity Holdings LLC, a Delaware limited liability company
Arbor Realty Mortgage Securities Series 2004-1 LLC, a Delaware limited liability company
Arbor Realty Mortgage Securities Series 2004-1, Ltd., a Cayman Islands exempted company with limited liability
Arbor Realty Collateral Management, LLC, a Delaware limited liability company
Arbor Realty Funding LLC, a Delaware limited liability company

EXHIBIT 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement on Form S-8 pertaining to the registration of shares of common stock of Arbor Realty Trust, Inc. issued pursuant to the Arbor Realty Trust, Inc. 2003 Omnibus Stock Incentive Plan, as amended and restated, of our report dated February 28, 2005, except for Note 16, as to which the date is March 29, 2005, with respect to the consolidated financial statements and schedule of Arbor Realty Trust, Inc. included in this annual report (Form 10-K) for the year ended December 31, 2004.

/s/ Ernst & Young LLP

New York, New York
March 29, 2005

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement on Form S-8 (Registration No. 333-121461) pertaining to the registration of shares of common stock of Arbor Realty Trust, Inc. issued pursuant to the Arbor Realty Trust, Inc. 2003 Omnibus Stock Incentive Plan, as amended and restated, of our report dated October 23, 2003, accompanying the consolidated financial statements and schedule of the Structured Finance Business of Arbor Commercial Mortgage, LLC and Subsidiaries, included in this annual report (Form 10-K) for the year ended December 31, 2004.

/s/ GRANT THORNTON LLP

NewYork, New York
March 30, 2005

Exhibit 31.1

Certification of Chief Executive Officer

I, Ivan Kaufman, Chief Executive Officer of Arbor Realty Trust, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Arbor Realty Trust, Inc., for the fiscal year ended December 31, 2004;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Evaluated the effectiveness of the registrants disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   c. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ Ivan Kaufman
Name: Ivan Kaufman
Title: Chief Executive Officer

March 31, 2004

Exhibit 31.2

Certification of Chief Financial Officer

I, Frederick C. Herbst, Chief Financial Officer of Arbor Realty Trust, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Arbor Realty Trust, Inc., for the fiscal year ended December 31, 2004;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Evaluated the effectiveness of the registrants disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   c. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ Frederick C. Herbst
Name: Frederick C. Herbst
Title: Chief Financial Officer

March 31, 2004

Exhibit 32.1

Certification of CEO Pursuant to
18 U.S.C. Section 1350,
As Adopted Pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002

In connection with the Annual Report on Form 10-K of Arbor Realty Trust, Inc. (the "Company") for the annual period ended December 31, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Ivan Kaufman, as Chief Executive Officer of the Company hereby certifies, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

1. The Report fully complies with the requirements of Section 13(a) of the Securities and Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material aspects, the financial condition and results of operations of the Company.

By: /s/ Ivan Kaufman
Name: Ivan Kaufman
Title: Chief Executive Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

Exhibit 32.2

Certification of CFO Pursuant to
18 U.S.C. Section 1350,
As Adopted Pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002

In connection with the Annual Report on Form 10-K of Arbor Realty Trust, Inc. (the "Company") for the annual period ended December 31, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Fredrick C. Herbst, as Chief Financial Officer of the Company hereby certifies, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

1. The Report fully complies with the requirements of Section 13(a) of the Securities and Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material aspects, the financial condition and results of operations of the Company.

By: /s/ Frederick C. Herbst
Name: Frederick C. Herbst
Title: Chief Financial Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.