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As filed with the Securities and Exchange Commission on March 3, 2004

Registration No. 333-110472

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 3

to

FORM S-11

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Arbor Realty Trust, Inc.

(Exact Name of Registrant as Specified in its Governing Instruments)

333 Earle Ovington Boulevard

Suite 900
Uniondale, New York 11553
(516) 832-8002
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Frederick C. Herbst

Chief Financial Officer and Treasurer
Arbor Realty Trust, Inc.
333 Earle Ovington Boulevard
Suite 900
Uniondale, New York 11553
(516) 832-7408
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copies to:

David J. Goldschmidt
Fred White, III
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036-6522
(212) 735-3000

Eric S. Haueter
James O'Connor
Sidley Austin Brown & Wood LLP
787 Seventh Avenue
New York, NY 10019
(212) 839-5300

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. ☐

CALCULATION OF REGISTRATION FEE

Title of Securities Being Registered	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value $0.01 per share, being registered for sale by Arbor Realty Trust, Inc.	$ (1)(2)	$

Common Stock, par value $0.01 per share, being registered for sale by the selling stockholders(3)	(2)(3)	$
Total	$150,000,000(1)(2)	$12,398.13(4)

(1) Includes shares that the underwriters have the option to purchase from us to cover over-allotments, if any.

(2) Estimated solely for the purpose of computing the registration fee in accordance with Rule 457(o) of the Securities Act of 1933, as amended.

(3) 469,000 shares of common stock are being registered for sale by the selling stockholders, including 34,000 shares of common stock to be issued upon exercise of warrants.

(4) Of this amount, $11,670.23 was paid in connection with the initial filing of this registration statement on November 13, 2003 and $727.90 was paid in connection with the filing of the registration statement on February 5, 2004.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission acting, pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Registration Statement contains a prospectus for an underwritten offering of shares of our common stock, together with separate pages relating to a prospectus for a concurrent direct offering of our common stock to C. Michael Kojaian who has expressed an interest in purchasing shares of our common stock. The complete prospectus for the underwritten offering of our common stock follows immediately. Following the prospectus for the underwritten offering are the alternate front and back pages for the prospectus relating to the direct offering of common stock to Mr. Kojaian.

The complete prospectus for each of the underwritten offering and the direct offering to Mr. Kojaian will be filed with the Securities and Exchange Commission in accordance with Rule 424 under the Securities Act of 1933.

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The information in this preliminary prospectus is not complete and may be changed or supplemented. These securities may not be sold until the registration statement with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

PROSPECTUS

SUBJECT TO COMPLETION, DATED MARCH 3, 2004

Shares

Arbor Realty Trust, Inc.

Common Stock

This is our initial public offering. We are offering shares of our common stock and the selling stockholders are offering 469,000 shares of our common stock. We will not receive any proceeds from the sale of our common stock by the selling stockholders.

We expect the public offering price to be between $ and $ per share. Prior to this offering, there has been no public market for our common stock. We intend to apply to list our common stock on the New York Stock Exchange under the symbol " ."

Investing in our common stock involves risks. See "Risk Factors" beginning on page 19 for a discussion of these risks.

- We have a limited operating history and may not operate successfully.
- Historical consolidated financial statements included in this prospectus include expenses that would not have been incurred had we operated as a separate entity during the periods presented and exclude the management fees payable pursuant to the management agreement.
- We are substantially controlled by Arbor Commercial Mortgage 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.
- 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 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.
- Failure to maintain an exemption from the Investment Company Act would adversely affect our results of operations.
- If Arbor Commercial Mortgage ceases to be our manager, the financial institutions providing our credit facilities may not provide future financing to us.
- If we do not qualify as a REIT or 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 common or capital stock, and attempts to acquire our capital stock in excess of these limits are ineffective without prior approval from our board of directors.

	Per Share	Total
Public Offering Price	$	$
Underwriting Discount(1)	$	$
Proceeds, before expenses, to Arbor Realty Trust, Inc.(1)	$	$
Proceeds, before expenses, to Selling Stockholders	$	$

(1) See "Underwriting — Directed Shares" for information with respect to shares that may be sold under the directed share program.

Delivery of the shares of common stock will be made on or about , 2004.

We have granted the underwriters an option to purchase from us a maximum of additional shares of our common stock to cover over-allotment of shares exercisable at any time until 30 days after the date of this prospectus.

The underwriters have reserved up to 5% of the shares of common stock for our directors, officers, employees, and officers and employees of Arbor Commercial Mortgage and their families, and other persons associated with us who express an interest in purchasing these shares of common stock in this offering, at the public offering price. For more information, see “Underwriting — Directed Shares.”

Concurrently with this offering, we are also offering, at the public offering price, an aggregate of shares of our common stock to one of our directors, C. Michael Kojaian who has expressed an interest in purchasing shares of our common stock. The shares to be offered to Mr. Kojaian represent approximately % of the total number of shares to be offered in both offerings (assuming no exercise of the underwriters' over-allotment option).

Neither the Securities and Exchange Commission, any state securities commission, nor any other regulatory body has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Wachovia Securities
Sole Book-Running and Joint-Lead Manager

UBS Investment Bank
Joint-Lead Manager

JMP Securities

The date of this prospectus is , 2004.

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You should rely only on the information contained in this prospectus. Neither we nor the underwriters have authorized anyone to provide you with different or additional information. This prospectus does not constitute an offer to sell, or a solicitation of an offer to purchase, the securities offered by this prospectus in any jurisdiction to or from any person to whom or from whom it is unlawful to make such offer or solicitation of an offer in such jurisdiction. You should not assume that the information contained in this prospectus is accurate as of any date other than the date on the front cover of this prospectus. Neither the delivery of this prospectus nor any distribution of securities pursuant to this prospectus shall, under any circumstances, create any implication that there has been no change in the information set forth in this prospectus or in our affairs since the date of this prospectus.

Until   , 2004, (25 days after the commencement of this offering), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This delivery is in addition to the dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to their unsold allotments or subscriptions.

PROSPECTUS SUMMARY

This summary highlights information more fully described elsewhere in this prospectus and contains the material terms of this offering. However, you should read this entire prospectus carefully before deciding to invest in our common stock. Unless otherwise mentioned or unless the context otherwise requires, all references in this prospectus to (a) "we," "us," "our," or similar references mean Arbor Realty Trust, Inc. and its subsidiaries, including Arbor Realty Limited Partnership, our operating partnership, and (b) "Arbor Commercial Mortgage", or "our manager" means Arbor Commercial Mortgage, LLC.

Arbor Realty Trust, Inc.

We are a specialized real estate finance company investing in real estate-related bridge and mezzanine loans, preferred equity and, in limited cases, discounted mortgage notes and other real estate-related assets, which we collectively refer to as structured finance investments. Our 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 commenced operations in July 2003 and conduct substantially all of our operations through our operating partnership, Arbor Realty Limited Partnership. We intend to elect to be taxed as a real estate investment trust, or REIT, under the Internal Revenue Code and generally will not be subject to federal taxes on our income to the extent we distribute our income to our stockholders and maintain our qualification as a REIT.

We actively pursue lending and investment opportunities with property owners and developers who need interim financing until permanent financing can be obtained. Our structured finance investments generally have maturities of two to five years, depending on the type, have extension options when appropriate, and generally require a balloon payment of principal at maturity. Our financings typically range in size from $1 million to $30 million, with interest rates ranging from 4.00% to 7.00% over 30-day LIBOR for mezzanine financings and 3.00% to 5.00% over 30-day LIBOR for bridge financings. Borrowers in the market for these types of loans include owners or developers who seek either to acquire or refurbish real estate or pay down debt and reposition a property for permanent financing. Our investment program emphasizes the following 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 are predominantly secured by first mortgage liens on the property. Borrowers usually use the proceeds of a conventional mortgage loan to repay a bridge loan.

- ***Mezzanine Financing*** — We offer mezzanine loans, which are loans subordinate to a conventional first mortgage loan and senior to the borrower's equity in a transaction. Our 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.

- ***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 interests 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.

- ***Other Investments*** — We may engage in other investment activities, including the purchase of discounted first lien mortgage notes from other lenders and opportunistic investments including the acquisition of properties. Typically, these transactions, which may be conducted through taxable subsidiaries, are analyzed with the expectation that, upon property repositioning or renovation, they will be sold to achieve a significant return on invested capital.

We borrow against or leverage our investments to the extent consistent with our investment guidelines in order to increase the size of our portfolio and potential returns to our stockholders. We generate profits to the extent interest and fee income exceed interest expense, loan losses and operating expenses. We also generate profits from gains on investments.

We are externally managed and advised by Arbor Commercial Mortgage, LLC. Our manager is a national commercial real estate finance company operating through 15 offices in the United States, specializing in debt and equity financing for multi-family and commercial real estate. We believe Arbor Commercial Mortgage's experience and reputation positions it to originate attractive investment opportunities for us. Our management agreement with Arbor Commercial Mortgage was developed to capitalize on synergies with Arbor Commercial Mortgage's origination infrastructure, existing business relationships and management expertise.

Arbor Commercial Mortgage has granted us a right of first refusal to pursue all structured finance investment opportunities identified by Arbor Commercial Mortgage. We have agreed not to pursue, and to allow Arbor Commercial Mortgage to pursue, any real estate opportunities other than structured finance transactions. This has historically included providing and servicing multi-family and commercial mortgage loans under Fannie Mae, Federal Housing Administration and conduit commercial lending programs, which we believe will offer customer relationship synergies to our business. Our portfolio currently contains loans and investments that we originated and loans and investments that we purchased from third parties or from affiliates.

We have a senior management team with significant industry experience. Mr. Ivan Kaufman, the chief executive officer of Arbor Commercial Mortgage, and Mr. Frederick Herbst, the chief financial officer of Arbor Commercial Mortgage, also serve as our chief executive officer and chief financial officer, respectively. Mr. Kaufman is the former co-founder and chairman of Arbor National Holdings.

As of December 31, 2003, our portfolio had an aggregate outstanding balance of $323.5 million with a weighted average interest rate of 7.49%. This balance was comprised of $158.8 million of bridge loans with a weighted average interest rate of 5.43%, $129.3 million of mezzanine loans with a weighted average interest rate of 9.91%, $33.4 million of preferred equity investments with a weighted average interest rate of 7.33%, and $2.0 million of other investments with a weighted average interest rate of 7.39%. Our borrowings against our portfolio at December 31, 2003 totaled $172.5 million and had a weighted average interest rate of 3.40%.

Our Business Strategy

We believe the financing of multi-family and commercial real estate offers significant growth opportunities that demand customized financing solutions.

- Consolidation in the financial services industry has reduced the number of companies providing multi-family and commercial real estate financing products.

- We believe this consolidation has led to a trend among remaining institutions to focus on larger, more standardized transactions.

- The growth of a market for securitized commercial real estate pools has provided a new source of financing for real estate assets.

We believe we have the necessary levels of capital and financial flexibility to compete effectively in today's rapidly changing market. Our borrowers, who in the past relied on banks and life insurance companies as their primary source for commercial real estate financing, have benefited from our flexible underwriting standards. This flexibility has created significant demand for our bridge, mezzanine and other forms of innovative financing.

Our principal business objectives are to invest in bridge and mezzanine loans, preferred equity and other real estate-related assets and actively manage our 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;

- Focus on a niche market in smaller loan balances;

- Execute transactions rapidly;

- Manage and maintain credit quality;

- Use Arbor Commercial Mortgage's relationships with existing borrowers and origination infrastructure;

- Offer broader products and expand customer base; and

- Leverage the experience of the executive officers and employees of Arbor Commercial Mortgage and us.

Our asset management group is integrated into the underwriting and structuring process for all transactions in order to enhance the credit quality of our originations before transactions close. We believe that after closing, our asset management group's experience in managing complex restructurings, refinancings and asset dispositions will help to improve the credit quality and yield on managed investments. We also believe our asset management group's involvement in our credit underwriting process helps to mitigate investment risk after the closing of a transaction.

Our Manager

Arbor Commercial Mortgage is a national commercial real estate finance company founded in 1993 as a subsidiary of Arbor National Holdings, Inc., an originator and servicer of single-family residential mortgage loans. Our chief executive officer, Mr. Ivan Kaufman, is also Arbor Commercial Mortgage's chief executive officer and its controlling equity owner, and was the co-founder, chairman and majority shareholder of Arbor National Holdings. Under Mr. Kaufman's direction, Arbor National Holdings grew to 25 branches in 11 states and funded more than $4 billion in loans in its last full year of operations. Arbor National Holdings became a public company in 1992 and was sold to BankAmerica in 1995.

In connection with the sale of Arbor National Holdings, Mr. Kaufman purchased its commercial mortgage lending operations and the rights to the "Arbor" name and retained a significant portion of Arbor National Holdings' senior management team. This senior management team has guided Arbor Commercial Mortgage's growth from a company originally capitalized with approximately $8 million of equity value, including its partnership interest in Arbor Realty Limited Partnership, to approximately $64 million of equity value as of December 31, 2003. Arbor Commercial Mortgage is now a full service provider of financial services to owners and developers of multi-family and commercial real estate properties. Arbor Commercial Mortgage has derived revenue from the origination for sale and servicing of government-sponsored and conduit mortgage loans for commercial and multi-family real estate properties as well as from the origination of structured finance loans and investments. Arbor Commercial Mortgage originated over $800 million in government-sponsored and conduit mortgage loans in 2003. Arbor Commercial Mortgage originated over $115 million in structured finance investments from the beginning of 2003 until the contribution of the majority of its structured finance portfolio to us in July 2003. Arbor Commercial Mortgage is currently servicing a portfolio with a principal balance of $3.0 billion, including loans serviced for Arbor Realty Limited Partnership.

Our primary business will be investing in structured finance loans and investments. We do not intend to originate or service government-sponsored investment grade assets, but we may invest in such assets in the future.

Arbor Commercial Mortgage's executive officers and employees have extensive experience in originating and managing structured commercial real estate investments. The senior management team has an average of over 20 years experience in the financial services industry. Arbor Commercial Mortgage currently has 129 employees spread among its corporate headquarters in Uniondale, New York, 13 other sales offices located throughout the United States and the servicing administration office in Buffalo, New York.

We and our operating partnership have entered into a management agreement with Arbor Commercial Mortgage pursuant to which Arbor Commercial Mortgage has agreed to provide us with structured finance investment opportunities and loan servicing as well as other services necessary to operate our business.

We pay our manager an annual base management fee based on the equity of our operating partnership, as further discussed below. The amount of the base management fee does not depend on the performance of the services provided by our manager or the types of assets it selects for our investment, but the value of our operating partnership's equity will be affected by the performance of these assets. We also pay our manager incentive compensation each fiscal quarter. We have paid $587,734 in base management fees to Arbor Commercial Mortgage for management services rendered for the period from June 24, 2003 (inception) to December 31, 2003. Our manager did not earn incentive compensation for the quarters ended September 30, 2003 or December 31, 2003.

The table summarizes the calculation of the base management fee, incentive compensation and other fees and expenses payable to our manager pursuant to the management agreement.

Type	Description and Method of Computation	Payable
Base management fee(1)	(1) 0.75% per annum of the first $400 million of our operating partnership's equity, (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.	Monthly in arrears in cash
Incentive compensation(2)	(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) 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 Arbor Commercial Mortgage to our operating partnership per operating partnership unit, $15.00 (representing the offering price per share of our common stock in the private placement)(3), the offering price per share of our common stock (including shares of common stock issued upon exercise of warrants or options) in any subsequent offerings (adjusted for any prior capital dividends or distributions) 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 operating partnership units.	Each fiscal quarter, with at least 25% paid in our common stock
Overhead expenses	Compensation of our independent directors, legal, accounting, due diligence tasks and other services that outside professionals perform for us.	Each fiscal quarter in cash
Origination fee income(4)	An amount equal to 100% of the origination fees paid by the borrower to us with respect to each bridge loan and mezzanine loan we originate, up to 1% of the loan's principal amount.	Upon closing of each loan
Termination fee(5)	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.	Upon termination

(1) For purposes of calculating the base management fee, our operating partnership's equity equals the month-end value computed in accordance with generally accepted accounting principles 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) At least 25% of the incentive compensation paid to our manager will be in the form of shares of our common stock, subject to ownership limitations in our charter. Beginning on January 1, 2004, the incentive compensation will be measured over a full fiscal year, subject to recalculation and potential reconciliation at the end of each fiscal year. We intend to pay our manager each installment of the incentive compensation within sixty (60) days following the last day of the fiscal quarter with respect to which such incentive compensation payment is payable.

(3) We allocated the $75.00 offering price per unit to the five shares of common stock comprising each unit, resulting in an offering price of $15.00 per share of common stock in the private placement. We did not allocate any value to the one warrant underlying each unit because the warrants have an initial exercise price of $15.00 and they are

not exercisable, detachable or freely tradable for an indeterminable period of time (i.e., until after the registration and listing of the common stock comprising the units on a national securities exchange or The Nasdaq Stock Market).

(4) 100% of the origination fees paid by the borrower in excess of 1% of the loan's principal amount are retained by us.

(5) 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.

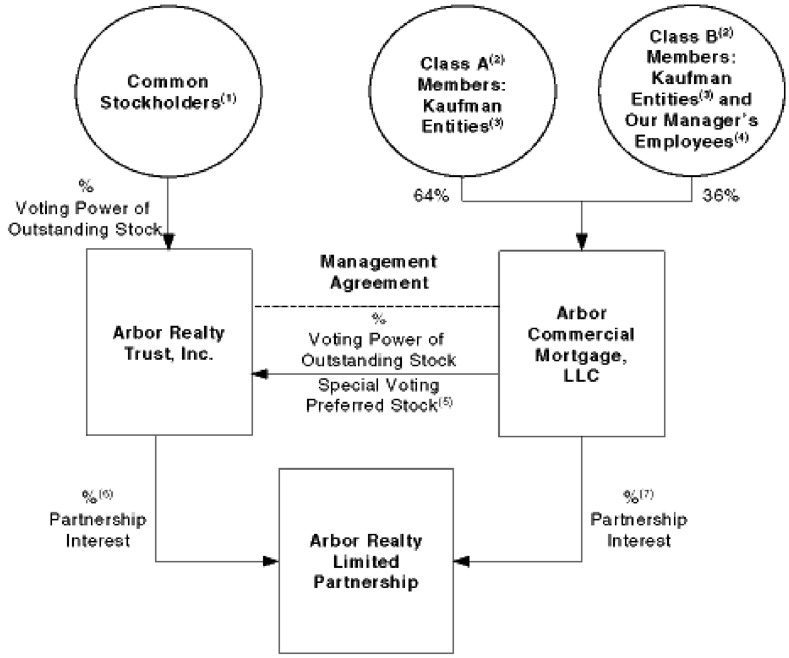
Our Corporate History

On July 1, 2003, Arbor Commercial Mortgage contributed the majority of its structured finance portfolio to our operating partnership. These initial assets, consisting of 12 bridge loans, five mezzanine loans, five preferred equity investments and two other real estate related investments, were transferred at book value, which approximates fair value, that, at June 30, 2003, represented $213.1 million in assets financed by $169.2 million borrowed under Arbor Commercial Mortgage's credit facilities and supported by $43.9 million in equity. Simultaneously with Arbor Commercial Mortgage's contribution of assets, we issued and sold 1,610,000 of our units, each consisting of five shares of common stock and one warrant to purchase an additional share of common stock, in a private offering, which we refer to as the private placement.

In connection with its contribution of the initial assets, Arbor Commercial Mortgage arranged for us to have substantially similar credit facilities as those used by Arbor Commercial Mortgage to finance these assets. In exchange for the asset contribution, we issued to Arbor Commercial Mortgage approximately 3.1 million operating partnership units, each of which Arbor Commercial Mortgage 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 Arbor Commercial Mortgage 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 Arbor Commercial Mortgage 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. Each of the approximately 3.1 million operating partnership units received by Arbor Commercial Mortgage 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. See "Description of Stock — Special Voting Preferred Stock." As a result of Arbor Commercial Mortgage's asset contribution and the related formation transactions, Arbor Commercial Mortgage owns approximately a 28% limited partnership interest in our operating partnership and the remaining 72% interest in our operating partnership is owned by us. After giving effect to this offering and the concurrent offering to C. Michael Kojaian, one of our directors, Arbor Commercial Mortgage will own approximately a % interest in our operating partnership and we will own the remaining %. In addition, Arbor Commercial Mortgage has approximately 28% of the voting power of our outstanding stock (without giving effect to the exercise of Arbor Commercial Mortgage's warrants for additional operating partnership units). After giving effect to this offering and the concurrent offering to Mr. Kojaian, Arbor Commercial Mortgage will have approximately % of the voting power of outstanding stock (without giving effect to the exercise of Arbor Commercial Mortgage's warrants for additional operating partnership units).

Our Structure

The following chart shows our structure after giving effect to this offering and the concurrent offering to Mr. Kojaian, which we refer to as the concurrent offerings:



(1) Upon consummation of the concurrent offerings, investors purchasing shares of our common stock in the concurrent offerings will own % of our outstanding common stock, purchasers of our units in the private placement will own % of our outstanding common stock and grantees of restricted stock pursuant to our stock incentive plan will own the remaining %.

(2) Holders of Class A and Class B membership interests of Arbor Commercial Mortgage have the same voting rights and are both entitled to distributions in accordance with their percentage ownership interests in the company. However, holders of Class B membership interests cannot transfer their interests or compete with Arbor Commercial Mortgage without the consent of the managing member, Arbor Management, LLC, an entity wholly owned by Mr. Ivan Kaufman and his wife.

(3) Mr. Kaufman, the Ivan and Lisa Kaufman Family Trust, a trust created by Mr. Kaufman for the benefit of Mr. Kaufman's family and Arbor Management collectively hold all the outstanding Class A membership interests which constitute 64% of the outstanding membership interests of Arbor Commercial Mortgage. 24% of the outstanding membership interests of Arbor Commercial Mortgage previously held by Mr. Kaufman and the Ivan Kaufman Grantor Retained Trust, of which Mr. Kaufman is a co-trustee, as Class A membership interests have been reclassified as Class B membership interests, effective as of January 1, 2003. Mr. Kaufman, together with the Kaufman entities which include the Ivan and Lisa Kaufman Family Trust, the Ivan Kaufman Grantor Retained Trust and Arbor Management, beneficially own approximately 88% of the outstanding membership interests of Arbor Commercial Mortgage. See "Security Ownership of Beneficial Owners and Management."

(4) Messrs. Herbst, Palmier and Weber and Messrs. Martello and Horn, two of our directors, collectively hold 5% of the outstanding membership interests in Arbor Commercial Mortgage as Class B membership interests. In addition, Mr. Martello also serves as (a) trustee of the Ivan and Lisa Kaufman Family Trust and (b) co-trustee, along with Mr. Kaufman, of the Ivan Kaufman Grantor Retained Annuity Trust.

(5) Arbor Commercial Mortgage holds 3,146,724 shares of our special voting preferred stock which will entitle it to % of the voting power of our outstanding stock upon consummation of the concurrent offerings. These shares of special voting preferred

stock are paired with 3,146,724 operating partnership units held by Arbor Commercial Mortgage and will be redeemed upon redemption of these operating partnership units. Assuming the redemption of all Arbor Commercial Mortgage's operating partnership units for shares of our common stock after the consummation of the concurrent offerings, Arbor Commercial Mortgage would retain % of the voting power of our outstanding stock. The % figure does not give effect to the exercise of Arbor Commercial Mortgage's 629,345 warrants for additional operating partnership units, each of which is exercisable for an additional partnership unit that will be paired with one share of our special voting preferred stock. Assuming Arbor Commercial Mortgage's exercise of all warrants for additional operating partnership units paired with shares of our special voting preferred stock after the consummation of the concurrent offerings, it would have a % partnership interest in our operating partnership and % of the voting power of our outstanding stock.

(6) We hold our % partnership interest, representing a voting and economic interest in our operating partnership, through two wholly owned subsidiaries, Arbor Realty GPOP, Inc., the holder of a 0.1% general partner interest, and Arbor Realty LPOP, Inc., the holder of a % limited partner interest upon consummation of the concurrent offerings. Our only material subsidiaries are Arbor Realty Limited Partnership, Arbor Realty GPOP, Inc., Arbor Realty LPOP, Inc. and Arbor Realty Funding, LLC.

(7) Arbor Commercial Mortgage's % partnership interest, representing a voting and economic interest in our operating partnership, does not give effect to the exercise of Arbor Commercial Mortgage's 629,345 warrants for additional operating partnership units, each of which is exercisable for an additional partnership unit that will be paired with one share of our special voting preferred stock. Arbor Commercial Mortgage may acquire up to 3,776,069 shares of our common stock upon redemption of its operating partnership units (including 629,345 operating partnership units issuable upon exercise of warrants for additional operating partnership units) should we elect to issue shares of our common stock upon such redemption.

Summary Risk Factors

An investment in our common stock involves a number of risks. You should consider carefully the risks discussed below and under "Risk Factors" beginning on page 19 before purchasing our common stock.

- We have a limited operating history and may not operate successfully.
- Historical consolidated financial statements included in this prospectus include expenses that would not have been incurred had we operated as a separate entity during the periods presented and exclude the management fees payable pursuant to the management agreement.
- We are substantially controlled by Arbor Commercial Mortgage 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.
- We invest in multi-family and commercial real estate loans, which involve a greater risk of loss than single family 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.
- Failure to maintain an exemption from the Investment Company Act would adversely affect our results of operations.

- If Arbor Commercial Mortgage ceases to be our manager pursuant to the management agreement, the financial institutions providing our credit facilities may not provide future financing to us.

- If we do not qualify as a REIT or fail to remain qualified as a REIT, we will be subject to tax as a regular corporation and could face substantial tax liability.

- There is no public market for our common stock, and there may be no market for our common stock after the completion of the concurrent offerings.

- Our charter generally does not permit ownership in excess of 9.6% of our common or capital stock, and attempts to acquire our capital stock in excess of these limits are ineffective without prior approval from our board of directors.

Restrictions on Ownership of Stock

In order for us to maintain our qualification as a REIT under the Code, not more than 50% (by value) of our outstanding shares of capital stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities). For the purpose of preserving our REIT qualification, our charter generally prohibits direct or indirect ownership of more than 9.6% of the outstanding shares of capital stock. Our board of directors may, however, in its discretion, exempt a person from this ownership limitation, and, as a condition to such exemption, may require a satisfactory ruling from the Internal Revenue Service, or IRS, an opinion of counsel (as to our continued REIT status) and/or certain representations and undertakings from such person. We granted Arbor Commercial Mortgage and Ivan Kaufman, as its controlling equity owner, an exemption from this ownership limitation, in connection with Arbor Commercial Mortgage's acquisition of approximately 3.1 million shares of our special voting preferred stock on July 1, 2003.

Distribution Policy

To maintain our qualification as a REIT, we intend to make regular quarterly distributions to our stockholders of at least 90% of our taxable income, which does not necessarily equal net income as calculated in accordance with generally accepted accounting principles. Distributions are authorized by our board of directors and declared by us based upon a variety of factors deemed relevant by our directors, and our distribution policy may change in the future. Our ability to make distributions to our stockholders depends, in part, upon our receipt of distributions from our operating partnership, Arbor Realty Limited Partnership, which may depend, in part, upon the performance of our investment portfolio, and, in turn, upon Arbor Commercial Mortgage's management of our business. In order to maximize the return on our funds, cash generated from operations is generally used to temporarily pay down borrowings under our credit facilities. When making distributions, we generally borrow the required funds by drawing on credit capacity available under our credit facilities. Our distributions have not exceeded cash generated from operations and we do not anticipate that distributions will significantly exceed cash generated from operations in the future. If distributions exceed the amount of cash generated from operations, we may be required to borrow additional funds or sell assets in order to meet our REIT distribution requirements. Distributions to our stockholders are generally taxable to our stockholders as ordinary income, although a portion of these distributions may be designated by us as short-term or long-term capital gains to the extent they are attributable to capital gain income recognized by us, or may constitute a return of capital to the extent they exceed our earnings and profits as determined for tax purposes.

Our charter allows us to issue preferred stock with a preference on distributions. We currently have no intention to issue any such preferred stock with a preference on distributions but if we do, the dividend preference on the preferred stock could limit our ability to make a dividend distribution to our common stockholders.

On November 5, 2003, our board authorized and we declared a dividend of $0.25 per share of common stock, payable with respect to the quarter ending September 30, 2003, to stockholders of record at the close of business on November 5, 2003. We distributed this dividend on November 18, 2003. On December 19, 2003, our board of directors authorized and we declared a dividend of $0.25 per share of common stock, payable with respect to the quarter ending December 31, 2003, to stockholders of record at the close of business on December 19, 2003. We distributed this dividend on December 30, 2003. Of the dividends paid in 2003, 76% were taxable as ordinary income and 24% represented a return of capital. The portion representing the return of capital arose because the distribution paid, which approximated cash generated from operations, exceeded taxable income for the year.

Preferred Stock

Pursuant to a pairing agreement that we entered into with our operating partnership and our manager, each operating partnership unit issued to Arbor Commercial Mortgage and its affiliates in connection with the contribution of the initial assets (including operating partnership units issuable upon the exercise of Arbor Commercial Mortgage's warrants) is paired with one share of our special voting preferred stock. No operating partnership unit that is paired with a share of special voting preferred stock may be transferred unless accompanied by such special voting share. A holder of special voting preferred stock is not entitled to any regular or special dividend payments or other distributions, other than a $0.01 per share liquidation preference.

Each share of special voting preferred stock entitles the holder to one vote on all matters submitted to a vote of our stockholders. Therefore, through its ownership of the "paired" special voting preferred stock, Arbor Commercial Mortgage is currently entitled to a number of votes representing approximately 28% of the voting power of all shares entitled to vote on matters submitted to a vote of our stockholders (without giving effect to the exercise of Arbor Commercial Mortgage's warrants). After giving effect to the concurrent offerings, Arbor Commercial Mortgage will have approximately % of the voting power of our outstanding stock (without giving effect to the exercise of Arbor Commercial Mortgage's warrants for additional operating partnership units). The holders of special voting preferred stock have no separate class voting rights except as provided by our charter.

Upon redemption of any operating partnership unit that is paired with a share of special voting preferred stock, the share of special voting preferred stock will be redeemed and cancelled by us. Other than the shares of special voting preferred stock to be issued to Arbor Commercial Mortgage upon exercise of its warrants for additional operating partnership units, we do not intend to issue operating partnership units that would be paired with shares of our special preferred voting stock in the future.

Tax Status

We intend to elect to be treated as a REIT for federal income tax purposes. To qualify as a REIT, we must meet various tax law requirements, including, among others, requirements relating to the nature of our assets, the sources of our income, the timing and amount of distributions that we make and the composition of our stockholders. As a REIT, we generally are not subject to federal income tax on income that we distribute to our stockholders. If we fail to qualify as a REIT in any taxable year, we will be subject to federal income tax at regular corporate rates, and we may be precluded from qualifying as a REIT for the subsequent four taxable years following the year during which we lost our qualification. Further, even to the extent that we qualify as a REIT, we will be subject to tax at normal corporate rates on net income or capital gains not distributed to our stockholders, and we may be subject to other taxes, including payroll taxes, and state and local income, franchise, property, sales and other taxes. Moreover, we may have subsidiary entities that are subject to federal income taxation and to various other taxes. Any dividends received from us will generally, with limited exceptions, not be eligible for taxation at the preferred capital gain rates that currently apply, pursuant to recently enacted legislation, to dividends received by individuals from taxable corporations. See "Federal Income Tax Considerations."

Conflicts of Interest

We, our executive officers and Arbor Commercial Mortgage face conflicts of interest because of our relationships with each other. Mr. Ivan Kaufman is our chief executive officer and the chief executive officer of Arbor Commercial Mortgage. Mr. Kaufman and entities controlled by him, or the Kaufman entities, together beneficially own approximately 88% of the outstanding membership interests of Arbor Commercial Mortgage. Mr. Frederick C. Herbst is our chief financial officer and the chief financial officer of Arbor Commercial Mortgage. Mr. Herbst, two of our executive vice presidents, Messrs. Dan Palmier and Fred Weber, and two of our directors, Mr. Joseph Martello and Mr. Walter Horn, collectively, have a minority ownership interest in Arbor Commercial Mortgage. In addition, Mr. Martello serves as trustee of one of the Kaufman entities that owns a majority of the outstanding membership interests in Arbor Commercial Mortgage and co-trustee of another Kaufman entity.

Arbor Commercial Mortgage will continue, among other activities, to originate, acquire and service multi-family and commercial mortgage loans that meet the underwriting and approval guidelines of Fannie Mae, the Federal Housing Administration and conduit commercial lending programs secured by first liens on real property. Accordingly, Messrs. Kaufman and Herbst will devote substantial amounts of their time to operating portions of Arbor Commercial Mortgage's business that do not involve managing us. Further conflicts of interest may arise because Arbor Commercial Mortgage may also provide permanent mortgage financing to real estate concerns to which we have made temporary loans, or because Arbor Commercial Mortgage may have equity interests in real estate concerns that borrow money from us. In addition, Messrs. Palmier and Weber will continue to provide services to Arbor Commercial Mortgage as members of Arbor Commercial Mortgage's executive committee, and may receive fees for originating loans on behalf of Arbor Commercial Mortgage.

Arbor Commercial Mortgage holds a 28% limited partnership interest in our operating partnership as a result of the contribution of the initial assets. After giving effect to the concurrent offerings, Arbor Commercial Mortgage will own approximately a % interest in our operating partnership and we will own the remaining %. Arbor Commercial Mortgage also owns approximately 3.1 million shares of our special voting preferred stock that entitle it to 28% of the voting power of our outstanding stock (without giving effect to the exercise of Arbor Commercial Mortgage's warrants). After giving effect to the concurrent offerings, Arbor Commercial Mortgage will have approximately % of the voting power of our outstanding stock (without giving effect to the exercise of Arbor Commercial Mortgage's warrants for additional operating partnership units).

We were formed by Arbor Commercial Mortgage and the terms of our management agreement and the contribution of the initial assets were not negotiated at arm's length. To address some of these conflicts of interest, our charter requires that a majority of our board of directors be independent directors and that a majority of our independent directors make any determinations 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 specific policy that decisions concerning our management agreement, including termination, renewal and enforcement of the management agreement, or our participation in any transactions with Arbor Commercial Mortgage 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 Arbor Commercial Mortgage, must be reviewed and approved by a majority of our independent directors. Finally, our independent directors will periodically review the general investment standards established for the manager under the management agreement.

Private Placement

On July 1, 2003, we issued and sold 1,610,000 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. 1,327,989 of these units were sold to JMP Securities LLC, as initial purchaser, and were simultaneously resold by JMP Securities in transactions exempt from the registration requirements of the Securities Act of 1933, as amended, to persons reasonably believed by JMP Securities to be "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) and to a limited number of institutional "accredited investors" (as defined in Rule 501 under the Securities Act). The remaining 282,011 units were sold directly by us to individual accredited investors. Certain investors in the private placement included institutions and individuals affiliated with us and JMP Securities. JMP Securities is an underwriter in this offering.

Registration Rights

In connection with the private placement, we entered into a registration rights agreement with JMP Securities. Pursuant to that agreement, we have included in a registration statement, of which this prospectus is a part, 435,000 shares of common stock and 34,000 shares of common stock to be issued upon exercise of warrants by the selling stockholders named in this prospectus simultaneously with this offering. These shares of common stock offered by the selling stockholders pursuant to this prospectus are listed under "— The Offering."

At the time of the private placement we also entered into a registration rights agreement with Arbor Commercial Mortgage whereby we granted Arbor Commercial Mortgage certain demand and other registration rights with respect to shares of common stock that may be issued to Arbor Commercial Mortgage upon redemption of the 3,146,724 operating partnership units issued to Arbor Commercial Mortgage and 629,345 operating partnership units issuable to Arbor Commercial Mortgage upon exercise of its warrants for additional operating partnership units.

The Offering

Common stock offered by us in this offering	shares.
Common stock offered by stockholders selling in this offering	469,000 shares.(1)
Common stock offered by us to C. Michael Kojaian in the concurrent offering	shares.
Total	shares.
Common stock to be outstanding after the concurrent offerings	shares.(2)
Offering price	The public offering price of our common stock will be $ per share, for a total of $ million.
Use of proceeds	We estimate that the net proceeds from our sale of shares of common stock in this offering, at the initial public offering price of $ per share, which is the midpoint of the range listed on the cover page of this prospectus, after deducting the underwriting discount and other estimated offering expenses, will be approximately $ million. If the underwriters exercise their over-allotment option in full, we estimate that the net proceeds, after deducting the underwriting discount and other estimated offering expenses, of the sale of common stock by us will be approximately $ million. We estimate that the net proceeds from the sale of 469,000 shares of common stock by the selling stockholders at the initial public offering price of $ per share, after deducting the underwriting discount, will be approximately $ million. We will not receive any proceeds from the sale of shares of our common stock by the selling stockholders. Concurrently with this offering, we may sell shares at the initial public offering price to Mr. Kojaian who has expressed an interest in purchasing shares of our common stock. We are not paying any underwriting discounts or commissions on these shares. Accordingly, we estimate that our net proceeds from this concurrent offering will be approximately $ million. In addition, we estimate that the proceeds we will receive from the exercise of 34,000 warrants by the selling stockholders who propose to offer their underlying shares in this offering will be approximately $510,000. We intend to use all of the net proceeds of the concurrent offerings and the exercise of the warrants by the selling stockholders to repay indebtedness under our warehouse credit agreement and master repurchase agreements. We anticipate that

	we will use the additional borrowing capacity created by the repayments under these credit facilities to fund our lending business in connection with newly originated and existing loans in our portfolio as the need arises.
Proposed New York Stock Exchange symbol	"______"

(1) Includes 34,000 shares to be issued upon the exercise of warrants simultaneously with this offering.

(2) The number of shares to be outstanding after the concurrent offerings excludes (a) shares to be issued if the underwriters exercise the over-allotment option in full, (b) 35,500 shares authorized and reserved for issuance under our stock incentive plan and (c) 53,000 shares issuable upon the exercise of warrants held by the selling stockholders that are immediately exercisable upon the consummation of the concurrent offerings.

Summary Selected Consolidated Financial Information

of Arbor Realty Trust, Inc. and Subsidiaries

The following tables present selected historical consolidated financial information as of December 31, 2003 and for the period from June 24, 2003 (inception) to December 31, 2003, which we refer to in this prospectus as the period ended 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, interim 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 Arbor Realty Trust, Inc. and Subsidiaries” and our historical consolidated financial statements, including the related notes, included elsewhere in this prospectus.

	Period from June 24, 2003 (inception) to December 31, 2003
Consolidated Income Statement Data:	
Interest income	$ 10,012,449
Other income	156,502
Total revenue	10,168,951
Total expenses	5,452,865
Net income	3,407,919
Earnings per share, basic and diluted[(1)]	0.42
Dividends declared per common share[(2)]	0.50

	At December 31, 2003
Consolidated Balance Sheet Data:	
Loans and investments, net	$300,846,001
Related party loans, net	21,131,490
Total assets	338,164,432
Notes payable and repurchase agreements	172,528,471
Total liabilities	183,416,716
Minority interest	43,631,602
Total stockholders’ equity	$111,116,114

	Period from June 24, 2003 (inception) to December 31, 2003
Other Data:	
Total originations	$ 186,289,922

(1) 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 in the private placement and approximates the market value of our common stock at December 31, 2003. Therefore, the assumed exercise of the warrants were not considered to be dilutive for purposes of calculating diluted earnings per share.

(2) On November 5, 2003, our board authorized and we declared a dividend of $0.25 per share of common stock, payable with respect to the quarter ending September 30, 2003, to common stockholders of record at the close of business on November 5, 2003. We distributed this dividend on November 18, 2003. On December 19, 2003, our board of directors authorized and we declared a dividend of $0.25 per share of common stock, payable with respect to the quarter ending December 31, 2003, to stockholders of record at the close of business on December 19, 2003. We distributed this dividend on December 30, 2003.

Summary 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, and 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 prospectus. The historical consolidated financial information presented under the caption "Consolidated Statement of Revenue and Direct Operating Expenses Data" for the six month period 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 Revenue and Direct Operating Expenses Data" for the years ended December 31, 1999 and 1998 and the caption "Consolidated Statement of Assets and Liabilities Data" as of December 31, 2000, 1999 and 1998 have 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 prospectus 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

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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 prospectus.

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)	1999(1)	1998(1)
		(Unaudited)				(Unaudited)	(Unaudited)
Interest income	$7,688,465	$7,482,750	$14,532,504	$14,667,916	$10,707,551	$ 6,964,873	$ 6,807,617
Income from real estate held for sale, net of operating expenses	—	—	—	—	—	925,999	1,608,172
Other income	1,552,414	553,625	1,090,106	1,668,215	652,970	2,838,639	7,064,294
Total revenue	9,240,879	8,036,375	15,622,610	16,336,131	11,360,521	10,729,511	15,480,083
Total direct operating expenses	5,737,688	8,344,302	13,639,755	10,997,800	9,227,274	7,145,469	6,589,274
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	3,584,042	8,890,809
Gain on sale of loans and real estate	1,024,268	7,006,432	7,470,999	3,226,648	1,880,825	1,818,299	1,898,558
Income from equity affiliates	—	601,100	632,350	1,403,014	5,028,835	3,592,398	567,006
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	8,994,739	11,356,373

Consolidated Statement of Assets and Liabilities Data:

	At December 31,				
	2002	2001	2000	1999	1998
			(Unaudited)	(Unaudited)	(Unaudited)
Loans and investments, net	$172,142,511	$160,183,066	$ 85,547,323	$50,156,022	$75,604,351
Related party loans, net	15,952,078	15,880,207	—	—	—
Investment in equity affiliates	2,586,026	2,957,072	20,506,417	23,459,586	20,092,793
Total assets	200,563,236	183,713,747	119,110,446	84,751,032	96,537,674
Notes payable and repurchase agreements	141,836,477	132,409,735	70,473,501	47,154,530	58,678,062
Total liabilities	144,280,806	134,086,301	72,266,700	48,025,934	59,193,306
Net assets	56,282,430	49,627,446	46,843,746	36,725,098	37,344,368

Other Data (Unaudited):

	Six Months Ended June 30,		Year Ended December 31,				
	2003	2002	2002	2001	2000	1999	1998
Total originations	$117,965,000	$30,660,000	$130,043,000	$86,700,000	$108,378,000(2)	$120,378,900(2)	$230,718,353(2)

(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. The activities of the former joint venture have been included in the statements of revenue and direct operating expenses from the date of acquisition, August 2001. See the consolidated financial statements of Arbor Commercial Mortgage's structured finance business and the related notes to the consolidated financial statements included elsewhere in this prospectus for further information.

(2) Total originations for 1998, 1999 and 2000 include originations from Arbor Commercial Mortgage's joint venture with SFG I discussed in footnote 1.

Arbor Realty Trust, Inc. was incorporated in the State of Maryland in June 2003. Our principal executive offices are located at 333 Earle Ovington Boulevard, Suite 900, Uniondale, New York 11553. Our telephone number is (516) 832-8002.

RISK FACTORS

An investment in our common stock involves a number of risks. Before making an investment decision, you should carefully consider all of the risks described below and the other information contained in this prospectus. If any of the risks discussed in this prospectus actually occur, our business, financial condition and results of operations could be materially adversely affected. If this were to occur, the value of our common stock could decline and you may lose all or part of your investment.

Risks Related to Our Business

We have a limited operating history and may not operate successfully.

We were organized in June 2003 and have a limited operating history. The results of our operations depend on many factors, including the performance of the initial assets, the availability of opportunities for the acquisition of additional assets, the level and volatility of interest rates, readily accessible short and long term financing, conditions in the financial markets and economic conditions, and we may not operate successfully. We face substantial competition in acquiring suitable investments, which could adversely impact our yields.

Historical consolidated financial statements included in this prospectus include expenses that would not have been incurred had we operated as a separate entity during the periods presented and exclude the management fees payable pursuant to the management agreement.

The historical consolidated financial statements included in this prospectus for the two years ended December 31, 2002 and at December 31, 2002 and 2001 and the six months ended June 30, 2003 and 2002 relate to the structured finance business of Arbor Commercial Mortgage and may not reflect what our results of operations, financial condition and cash flows would have been had we operated as a separate, stand-alone entity during the periods presented. This historical financial information includes assets in the structured finance portfolio of Arbor Commercial Mortgage that were not contributed to us. It also includes employee compensation and benefit expenses for the costs of originations, underwriting services and the servicing of all our contributed assets that we would not have incurred had we operated as a separate entity during the periods presented because they would have been borne by Arbor Commercial Mortgage under the terms of the management agreement. This historical financial information does not include the management fees that we pay our manager.

Historical consolidated financial statements included in this prospectus present historical financial information for the structured finance business of Arbor Commercial Mortgage which never operated as a separate business division of Arbor Commercial Mortgage during the periods presented.

The structured finance business of Arbor Commercial Mortgage never operated as a separate business division or segment of Arbor Commercial Mortgage. The historical consolidated financial statements of the structured finance business of Arbor Commercial Mortgage presented in this prospectus do not reflect the historical financial information of Arbor Commercial Mortgage's entire business because it operates two business lines in addition to the structured finance business that was contributed to us. These other business lines generate revenues and expenses, which are included in Arbor Commercial Mortgage's historical financial statements, but are not included in the historical financial information included in this prospectus. We prepared the historical consolidated financial statements included in this prospectus for the two years ended December 31, 2002 and at December 31, 2002 and 2001 and the six months ended June 30, 2003 and 2002 from Arbor Commercial Mortgage's historical accounting records. The revenues, expenses, assets, liabilities and cash flows during each respective period that pertained to Arbor Commercial Mortgage's structured finance business were allocated to us. All of these allocations are based on assumptions that management believes are reasonable under the circumstances. However, these allocations may not be indicative of the revenues, expenses, assets, liabilities and cash flows that would have existed or resulted if we had operated as a separate entity during the periods presented.

We may be unable to invest excess equity capital on acceptable terms or at all, which would adversely affect our operating results.

We may not be able to identify investments that meet our investment criteria and we may not be successful in closing the investments that we identify. Unless and until we identify structured finance investments consistent with our investment criteria, any excess equity capital may be used to repay borrowings under our warehouse credit facility and repurchase agreements, which would not produce a return on capital. In addition, the investments that we acquire with our equity capital may not produce a return on capital. There can be no assurance that we will be able to identify attractive opportunities to invest our equity capital which would adversely affect our results of operations.

We may change our investment strategy without stockholder consent, which may result in riskier investments than our current investments.

We may change our investment strategy and guidelines at any time without the consent of our stockholders, which could result in our making investments that are different from, and possibly riskier than, the investments described in this prospectus. A change in our investment strategy or guidelines may increase our exposure to interest rate and real estate market fluctuations.

We depend on key personnel with long standing business relationships, the loss of whom could threaten our ability to operate our business successfully.

Our future success depends, to a significant extent, upon the continued services of our manager and our employees. In particular, the mortgage lending experience of Mr. Ivan Kaufman and Mr. Fred Weber and the extent and nature of the relationships they have developed with developers of multi-family and commercial properties and other financial institutions are critical to the success of our business. We cannot assure you of their continued employment with Arbor Commercial Mortgage or us. The loss of services of one or more members of our manager's officers or our officers could harm our business and our prospects.

If we cannot obtain additional financing substantially similar to the credit facilities we currently have, our growth will be limited.

We are generally required to distribute to our stockholders at least 90% of our taxable income each year to continue to qualify as a REIT, and we must distribute all of our taxable income in order to avert any corporate income taxes on retained income. As a result, our retained earnings available to fund the origination of new loans are nominal, and we rely upon the availability of additional debt or equity capital to fund these activities. Our long term ability to grow through investment in structured finance assets will be limited if we cannot obtain additional financing substantially similar to the credit facilities we currently have, including interest rates and advance rates. Market conditions may make it difficult to obtain financing on favorable terms or at all.

If Arbor Commercial Mortgage ceases to be our manager pursuant to the management agreement, financial institutions providing our credit facilities may not provide future financing to us.

The financial institutions that finance our investments pursuant to our $250 million warehouse credit facility and our $50 million repurchase agreement require that Arbor Commercial Mortgage manage our operations pursuant to the management agreement as a condition to making advances to us under these credit facilities. Additionally, if Arbor Commercial Mortgage ceases to be our manager, each of the financial institutions under these credit facilities has the right to terminate their facility and their obligation to advance funds to us in order to finance our future investments. If Arbor Commercial Mortgage ceases to be our manager for any reason and we are not able to obtain financing under these credit facilities, our growth may be limited.

The repurchase agreements and credit facilities that we use to finance our investments may require us to provide additional collateral and may leave us without funding should our funding sources file for bankruptcy.

Credit facilities, including repurchase agreements, involve the risk that the market value of the loans pledged or sold by us to the funding source may decline in value, in which case the lending institution may require us to provide additional collateral to pay down a portion of the funds advanced. In addition, in the event that the funding source files for bankruptcy or becomes insolvent, our loans may become subject to the bankruptcy or insolvency proceedings, thus depriving us, at least temporarily, of the benefit of these assets. Such an event could materially adversely affect our results of operations.

Mezzanine loans involve greater risks of loss than senior loans secured by income producing properties.

We invest in mezzanine loans that take the form of subordinated loans secured by second mortgages on the underlying property or loans secured by a pledge of the ownership interests of either the entity owning the property or a pledge of the ownership interests of the entity that owns the interest in the entity owning the property. These types of investments involve a higher degree of risk than long term senior mortgage lending secured by income producing real property because the investment may become unsecured as a result of foreclosure by the senior lender. In the event of a bankruptcy of the entity providing the pledge of its ownership interests as security, we may not have full recourse to the assets of such entity, or the assets of the entity may not be sufficient to satisfy our mezzanine loan. If a borrower defaults on our mezzanine loan or debt senior to our loan, or in the event of a borrower bankruptcy, our mezzanine loan will be satisfied only after the senior debt. As a result, we may not recover some or all of our investment. In addition, mezzanine loans may have higher loan to value ratios than conventional mortgage loans, resulting in less equity in the property and increasing the risk of loss of principal.

Preferred equity investments involve a greater risk of loss than traditional debt financing.

We invest in preferred equity investments, which involve a higher degree of risk than traditional debt financing due to a variety of factors, including that such investments are subordinate to other loans and are not secured by property underlying the investment. Furthermore, should the issuer default on our investment, we would only be able to proceed against the partnership in which we have an interest, and not the property underlying our investment. As a result, we may not recover some or all of our investment.

Mortgage investments that are not United States government insured and non-investment grade mortgage assets involve risk of loss.

We originate and acquire uninsured and non-investment grade mortgage loans and mortgage assets as part of our investment strategy. Such loans and assets include mezzanine loans and bridge loans. While holding such interests, we are subject to risks of borrower defaults, bankruptcies, fraud, losses and special hazard losses that are not covered by standard hazard insurance. In the event of any default under mortgage loans held by us, we bear the risk of loss of principal and non-payment of interest and fees to the extent of any deficiency between the value of the mortgage collateral and the principal amount of the mortgage loan. To the extent we suffer such losses with respect to our investments in mortgage loans, the value of our company and the price of our common stock may be adversely affected.

We invest in multi-family and commercial real estate loans, which involve a greater risk of loss than single family loans.

Our investments include multi-family and commercial real estate loans that are considered to involve a higher degree of risk than single family residential lending because of a variety of factors, including generally larger loan balances, dependency for repayment on successful operation of the mortgaged property and tenant businesses operating therein, and loan terms that include amortization schedules longer than the stated maturity and provide for balloon payments at stated maturity rather than periodic principal payments. In addition, the value of commercial real estate can be affected significantly by the supply and demand in the market for that type of property.

We may invest in direct ownership of real estate, the value of which may fluctuate.

We may make investments in the direct ownership of real property. In addition, our loans held for investment are generally directly or indirectly secured by a lien on real property that, upon the occurrence of a default on the loan, could result in our acquiring ownership of the property. Investments in real property or real property related assets are subject to varying degrees of risk. The value of each property is affected significantly by its ability to generate cash flow and net income, which in turn depends on the amount of rental income that can be generated net of expenses required to be incurred with respect to the property. The rental income from these properties may be adversely affected by a number of factors, including general economic climate and local real estate conditions, an oversupply of (or a reduction in demand for) space in properties in the areas where particular properties are located and the attractiveness of particular properties to prospective tenants. Net income from properties also is affected by such factors as the cost of compliance with government regulations, including zoning and tax laws, and the potential for liability under applicable laws. Many expenditures associated with properties (such as operating expenses and capital expenditures) cannot be reduced when there is a reduction in income from the properties. Adverse changes in these factors may have a material adverse effect on the ability of our borrowers to pay their loans, as well as on the value that we can realize from properties we own or acquire.

Risks of cost overruns and noncompletion of renovation of the properties underlying rehabilitation loans may materially adversely affect our investment.

The renovation, refurbishment or expansion by a borrower under a mortgaged property involves risks of cost overruns and noncompletion. Estimates of the costs of improvements to bring an acquired property up to standards established for the market position intended for that property may prove inaccurate. Other risks may include rehabilitation costs exceeding original estimates, possibly making a project uneconomical, environmental risks and rehabilitation and subsequent leasing of the property not being completed on schedule. If such renovation is not completed in a timely manner, or if it costs more than expected, the borrower may experience a prolonged impairment of net operating income and may not be able to make payments on our investment.

Participating interests may not be available and, even if obtained, may not be realized.

In connection with the acquisition and origination of certain structured finance assets, we may obtain participating interests, or equity “kickers,” in the owner of the property that entitle us to payments based upon a development’s cash flow, profits or any increase in the value of the development that would be realized upon a refinancing or sale of the development. Competition for participating interests is dependent to a large degree upon market conditions. Participating interests are more difficult to obtain when multi-family and commercial real estate financing is available at relatively low interest rates. In the current interest rate environment, we may have greater difficulty obtaining participating interests. Participating interests are not government insured or guaranteed and are therefore subject to the general risks inherent in real estate investments. Therefore, even if we are successful in originating mortgage loans that provide for participating interests, there can be no assurance that such interests will result in additional payments to us.

Competition in acquiring desirable investments may limit their availability, which could, in turn, negatively affect our ability to maintain our dividend distribution.

We compete in investing in structured finance assets with numerous public and private real estate investment vehicles, such as other REITs, mortgage banks, pension funds, institutional investors and individuals. Structured finance assets are often obtained through a competitive bidding process. Many of our competitors are larger than us, have access to greater capital and other resources, have management personnel with more experience than our officers or our manager and have other advantages over us and our manager in conducting certain business and providing certain services. Competition may result in higher prices for structured finance assets, lower yields and a narrower spread of yields over our borrowing costs. In addition, competition for desirable investments could delay the investment of our equity capital in desirable assets, which may, in turn, reduce earnings per share and may negatively affect our ability to maintain our dividend distribution. There can be no assurance that we will achieve investment results that will allow any specified level of cash distribution.

Interest rate fluctuations may adversely affect the value of our assets, net income and common stock.

Interest rates are highly sensitive to many factors, including governmental monetary and tax policies, domestic and international economic and political considerations and other factors beyond our control. Interest rate fluctuations present a variety of risks including the risk of a mismatch between asset yields and borrowing rates, variances in the yield curve and fluctuating prepayment rates and may adversely affect our income and value of our common stock.

Prepayment rates can increase, thus adversely affecting yields.

The value of our assets may be affected by prepayment rates on mortgage loans. Prepayment rates on loans are influenced by changes in current interest rates and a variety of economic, geographic and other factors beyond our control, and consequently, such prepayment rates cannot be predicted with certainty. In periods of declining interest rates, prepayments on loans generally increase. If general interest rates decline as well, the proceeds of such prepayments received during such periods are likely to be reinvested by us in assets yielding less than the yields on the assets that were prepaid. In addition, the market value of the structured finance assets may, because of the risk of prepayment, benefit less than other fixed income securities from declining interest rates. Under certain interest rate and prepayment scenarios we may fail to recoup fully our cost of acquisition of certain investments. A portion of our investments require payments of deferred interest upon prepayment or maturity of the investment. This deferred interest will generally discourage a borrower from repaying an investment ahead of its scheduled maturity. We may not be able to structure future investments that contain similar deferred interest payments.

All of the initial assets contributed by Arbor Commercial Mortgage and substantially all of the assets currently in our portfolio do not have prepayment protection. Since July 2003, seven of the investments contributed by Arbor Commercial Mortgage, totaling $61.2 million, were repaid in full prior to maturity.

Refinancing our credit facilities may materially adversely affect our results of operations.

We borrow funds under our credit facilities to fund the origination of our structured finance investments. Our investments may have maturities that are different from the maturities for the credit facilities under which we borrow to finance them. If the credit facilities under which we borrow funds to finance our investments mature and we are required to repay these amounts before the related investment matures, we would have to seek new financing for these investments that may not be on as favorable terms as our existing credit facilities and our net income would be adversely affected.

Changes in market conditions may adversely affect our credit facilities and repurchase agreements.

Credit facilities, including repurchase agreements, involve the risk that the market value of the loans pledged or sold to the funding source by us may decline, in which case the lending institution may require us to provide additional collateral or pay down a portion of the funds advanced. In addition, in the event the funding source files for bankruptcy or becomes insolvent, our loans may become subject to the bankruptcy or insolvency proceedings, thus depriving us, at least temporarily, of the benefit of these assets. Such an event could materially adversely affect our business.

In order to close transactions in a time frame that meets our customers' needs we may perform underwriting analyses in a very short period of time, which may result in credit decisions based on limited information.

From time to time, we gain a competitive advantage by being able to analyze and close transactions within a very short period of time. Our underwriting guidelines require a thorough analysis of many factors, including the underlying property's financial performance and condition, geographic market assessment, experience and financial strength of the borrower and future prospects of the property within the market. If we make the decision to extend credit to a borrower prior to the completion of one or more of these analyses, we may fail to identify certain credit risks that we would otherwise have identified.

The geographic concentration of the properties underlying our investments may increase our risk of loss.

We have not established any limit upon the geographic concentration of properties underlying our investments. As a result, properties underlying our investments may be overly concentrated in certain geographic areas, and we may experience losses as a result. As of December 31, 2003, 32%, 14%, 12%, 8% and 8% of the outstanding balance of the structured finance investments we hold had underlying properties in New York, Maryland, Florida, Nevada and New Jersey, respectively. A worsening of economic conditions in these states could have an adverse effect on our business, including reducing the demand for new financings, limiting the ability of customers to pay financed amounts and impairing the value of our collateral.

Volatility of values of multi-family and commercial properties may adversely affect our loans and investments.

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 a property's net operating income decreases, a borrower may have difficulty paying our loan, 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.

We may be unable to generate sufficient revenue from operations to pay our operating expenses and to pay dividends to our stockholders.

As a REIT, we are generally required to distribute at least 90% of our taxable income each year to our stockholders. In order to qualify for the tax benefits accorded to REITs, we intend to pay quarterly dividends and to make distributions to our stockholders in amounts such that we distribute all or substantially all of our taxable income each year, subject to certain adjustments. However, our ability to make distributions may be adversely affected by the risk factors described in this prospectus. In the event of a downturn in our operating results and financial performance or unanticipated declines in the value of our asset portfolio, we may be unable to declare or pay quarterly dividends or make distributions to our stockholders. The timing and amount of dividends are in the sole discretion of our board of directors, which considers, among other factors, our earnings, financial condition, debt service obligations and applicable debt covenants, REIT qualification requirements and other tax considerations and capital expenditure requirements as our board may deem relevant from time to time.

Among the factors that could adversely affect our results of operations and impair our ability to make distributions to our stockholders are:

- the profitability of the investment of the net proceeds of the private placement;
- our ability to make profitable structured finance investments;
- defaults in our asset portfolio or decreases in the value of our portfolio;
- the fact that anticipated operating expense levels may not prove accurate, as actual results may vary from estimates; and
- increased debt service requirements, including those resulting from higher interest rates on variable rate indebtedness.

A change in any one of these factors could affect our ability to make distributions. If we are not able to comply with the restrictive covenants and financial ratios contained in our credit facilities, our ability to make distributions to our stockholders may also be impaired. We cannot assure you that we will be able to make distributions to our stockholders in the future or that the level of any distributions we make will increase over time.

In addition, distributions to stockholders are generally taxable to our stockholders as ordinary income, but a portion of these distributions may be designated by us as long-term capital gains to the extent they are attributable to capital gain income recognized by us, or may constitute a return of capital to the extent they exceed our earnings and profits as determined for tax purposes.

We may need to borrow funds under our credit facilities in order to satisfy our REIT distribution requirements.

We may need to borrow funds to meet the REIT requirement that we distribute at least 90% of our taxable income each year to our stockholders if our cash flows from operations are not sufficient to cover the distribution requirements or because there are differences in timing between the recognition of taxable income and the actual receipt of income. Our warehouse credit facility and master repurchase agreements allow us to borrow up to a maximum amount against each of our investments financed under these credit facilities. If we have not borrowed the maximum allowable amount against any of these investments, we may borrow funds under our credit facilities up to these maximum amounts in order to satisfy REIT distribution requirements.

In order to maximize the return on our funds, cash generated from operations is generally used to temporarily pay down borrowings. When making distributions, we generally borrow the required funds by drawing on credit capacity available under our credit facilities. To date, our distributions have been funded in this manner and our distributions have not exceeded cash generated from operations. If distributions exceed the amount of cash generated from operations, we may be required to borrow additional funds, which, in turn, would reduce the amount of funds available for other purposes.

Failure to maintain an exemption from the Investment Company Act would adversely affect our results of operations.

We believe that we conduct our business in a manner that allows us to avoid being regulated as an investment company under the Investment Company Act of 1940, as amended, or the Investment Company Act. Under Section 3(c) (5) (C), the Investment Company Act exempts entities that are primarily engaged in the business of purchasing or otherwise acquiring “mortgages and other liens on and interests in real estate.” The staff of the SEC has provided guidance on the availability of this exemption. Specifically, the staff’s position generally requires us to maintain at least 55% of our assets directly in qualifying real estate interests. To constitute a qualifying real estate interest under this 55% requirement, a real estate interest must meet various criteria. Loans that are secured by equity interests in the owners of real property rather than the property itself, direct equity interests in entities that own real property and certain mortgage backed securities may not qualify for purposes of the 55% requirement depending upon the type of entity. Our ownership of these equity interests, therefore, is limited by the provisions of the Investment Company Act. In addition, we could, among other things, be required either (a) to change the manner in which we conduct our operations to avoid being required to register as an investment company or (b) to register as an investment company, either of which could have an adverse effect on us and the market price of our common stock.

ERISA may restrict investments by plans in our common stock.

A plan fiduciary considering an investment in our common stock should consider, among other things, whether such an investment might constitute or give rise to a prohibited transaction under ERISA, the Internal Revenue Code or any substantially similar federal, state or local law and whether an exemption from such prohibited transaction rules is available. See "ERISA Considerations."

We are subject to various risks related to our use of, and dependence on, debt.

The amount we have to pay on variable rate debt increases as interest rates increase, which may decrease cash available for distribution to stockholders. All of our outstanding debt, which as of December 31, 2003, was $172.5 million, consists of variable rate debt under the warehouse credit agreement and the master repurchase agreements that we use to finance our loans and other investments. We cannot assure you that we will be able to meet our debt service obligations. If we do not meet our debt service obligations, we risk the loss of some or all of our assets. Changes in economic conditions or our financial results or prospects could (1) result in higher interest rates on variable rate debt, (2) reduce the availability of debt financing generally or debt financing at favorable rates, (3) reduce cash available for distribution to stockholders and (4) increase the risk that we could be forced to liquidate assets to repay debt, any of which could have a material adverse affect on us.

Our warehouse credit agreement and master repurchase agreements contain covenants which prohibit us from effecting a change in control or disposing of or encumbering assets being financed and restrict us from making any material amendment to our underwriting guidelines without approval of the lender. We are also required to maintain financial ratios under these agreements including minimum net worth, minimum debt-to-equity and minimum liquidity ratios. If we violate these covenants in any of these agreements, 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 a line of credit, even if repayment of some or all borrowings is not required.

In any event, financial covenants under our current or future debt obligations could impair our business strategies by limiting our ability to borrow beyond certain amounts or for certain purposes.

We leverage our portfolio, which may adversely affect our return on our investments and may reduce cash available for distribution.

We leverage our portfolio through borrowings, generally through the use of warehouse credit facilities and repurchase agreements. The percentage of our leverage varies depending on our ability to obtain credit facilities and the lender's estimate of the stability of the portfolio's cash flow. We currently have a policy limiting our leverage to 80% of the value of our assets on an aggregate basis unless approval to exceed the 80% limit is obtained from our board of directors. Our return on our investments and cash available for distribution to our stockholders may be reduced to the extent that changes in market conditions cause the cost of our financing to increase relative to the income that can be derived from the assets acquired.

Our debt service payments reduce the net income available for distributions to stockholders. We may not be able to meet our debt service obligations and, to the extent that we cannot, we risk the loss of some or all of our assets to foreclosure or sale to satisfy our debt obligations.

A decrease in the value of the assets may lead to a requirement that we repay certain borrowings. We may not have the funds available to satisfy such repayments.

A general economic slowdown could have a material effect on our business.

Periods of economic slowdown or recession may be accompanied by declines in real estate values. Delinquencies, foreclosures and losses generally increase during economic slowdowns or recessions. Because a portion of the investments we make are subordinate to other creditors, the rate of delinquencies, foreclosures and losses on our mortgage loans could be higher than those generally experienced in the mortgage lending industry. If our loans go into and remain in default, we may have to foreclose and may incur substantial losses. Because real estate investments are relatively illiquid, our ability to promptly sell one or more investments or properties underlying foreclosed investments in our portfolio may be limited. In addition, any material decline in real estate values would increase the loan to value ratio of loans that we have previously extended, weaken our collateral coverage and increase the possibility of a loss in the event of a borrower default. Any sustained period of increased delinquencies, foreclosures or losses is likely to materially and adversely affect our ability to finance loans in the future. Furthermore, certain international events have caused significant uncertainty in the global financial markets. While the long term effects of these events and their potential consequences are uncertain, they could have a material adverse effect on general economic conditions, consumer confidence and market liquidity.

Liability relating to environmental matters may impact the value of the underlying properties.

Under various federal, state and local laws, an owner or operator of real property may become liable for the costs of removal of certain hazardous substances released on its property. Such laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the release of such hazardous substances. The presence of hazardous substances may adversely affect an owner’s ability to sell real estate or borrow using real estate as collateral. To the extent that an owner of an underlying property becomes liable for removal costs, the ability of the owner to make debt payments may be reduced, which in turn may adversely affect the value of the relevant mortgage asset held by us.

We are substantially controlled by Arbor Commercial Mortgage and its controlling equity owner, Mr. Kaufman.

Mr. Ivan Kaufman is our chairman and chief executive officer and the president and chief executive officer of our manager. Further, Mr. Kaufman and the Kaufman entities together beneficially own approximately 88% of the outstanding membership interests of Arbor Commercial Mortgage. Arbor Commercial Mortgage owns approximately 3.1 million operating partnership units, representing a 28% limited partnership interest in our operating partnership and warrants to purchase 629,345 additional operating partnership units. After giving effect to the concurrent offerings, Arbor Commercial Mortgage will own approximately a % interest in our operating partnership and we will own the remaining % (without giving effect to the exercise of Arbor Commercial Mortgage’s warrants for additional operating partnership units). The operating partnership units are redeemable, at our election, for shares of our common stock generally on a one-for-one basis. Each of the operating partnership units Arbor Commercial Mortgage owns is paired with one share of our special voting preferred stock, each of which entitle Arbor Commercial Mortgage to one vote on all matters submitted to a vote of our stockholders. Therefore, Arbor Commercial Mortgage is currently entitled to approximately 3.1 million votes, or 28% of the voting power of our outstanding stock. We granted Arbor Commercial Mortgage and Mr. Kaufman, as its controlling equity owner, an exemption from the ownership limitation contained in our charter, in connection with Arbor Commercial Mortgage’s acquisition of approximately 3.1 million shares of our special voting preferred stock on July 1, 2003. After giving effect to the concurrent offerings, Arbor Commercial Mortgage will have approximately % of the voting power of our outstanding stock (without giving effect to the exercise of Arbor Commercial Mortgage’s warrants for additional operating partnership units). Because of his position with us and our manager and his ability to effectively vote a substantial minority of our outstanding voting stock, Mr. Kaufman has significant influence over our policies and strategy.

We may engage in hedging transactions that may limit our gains or result in losses.

We may use derivatives to hedge our liabilities and this has certain risks, including:

- losses on a hedge position may reduce the cash available for distribution to stockholders and such losses may exceed the amount invested in such instruments;
- counterparties to a hedging arrangement could default on their obligations; and
- we may have to pay certain costs, such as transaction fees or brokerage costs.

Our board of directors has adopted a general policy with respect to our use of interest rate swaps, the purchase or sale of interest rate collars, caps or floors, options, mortgage derivatives and other hedging instruments in order to hedge as much of the interest rate risk as our manager 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. Our board's policy does not set forth specific policies and procedures for the use of these instruments. We may use these hedging instruments in our risk management strategy to limit the effects of changes in interest rates on our operations. A hedge may not be effective in eliminating all of the risks inherent in any particular position. Our profitability may be adversely affected during any period as a result of the use of derivatives.

Risks Related to Conflicts of Interest

We are dependent on our manager with whom we have conflicts of interest.

We have only eleven employees, including Mr. Fred Weber, Mr. Daniel M. Palmier, Mr. John C. Kovarik and an eight-person asset management group, and are dependent upon our manager, Arbor Commercial Mortgage, to provide services to us that are vital to our operations. Our chairman, chief executive officer and president, Mr. Ivan Kaufman, is also the chief executive officer and president of our manager. Our chief financial officer, Mr. Frederick Herbst, is the chief financial officer of our manager and our secretary and general counsel, Mr. Walter Horn, is the general counsel of our manager. In addition, Mr. Kaufman and the Kaufman entities together beneficially own approximately 88% of the outstanding membership interests of Arbor Commercial Mortgage and Messrs. Herbst, Weber, Palmier, Martello and Horn, collectively hold a 5% ownership interest in Arbor Commercial Mortgage. Mr. Martello also serves as the trustee of one of the Kaufman entities that holds a majority of the outstanding membership interests in Arbor Commercial Mortgage and co-trustee of another Kaufman entity that owns an equity interest in our manager. Arbor Commercial Mortgage holds a 28% limited partnership interest in our operating partnership and 28% of the voting power of our outstanding stock (without giving effect to the exercise of Arbor Commercial Mortgage's warrants for additional operating partnership units). Upon consummation of the concurrent offerings, Arbor Commercial Mortgage will hold a % limited partnership interest in our operating partnership and have % of the voting power of our outstanding stock.

We may enter into transactions with Arbor Commercial Mortgage outside the terms of the management agreement with the approval of majority vote of the independent members of our board of directors. Transactions required to be approved by a majority of our independent directors include, but are not limited to, our ability to purchase securities and mortgage and other assets from Arbor Commercial Mortgage or to sell securities and assets to Arbor Commercial Mortgage. Arbor Commercial Mortgage may from time to time provide permanent mortgage loan financing to clients of ours, which will be used to refinance bridge financing provided by us. We and Arbor Commercial Mortgage may also make loans to the same borrower or to borrowers that are under common control. Additionally, our policies and those of Arbor Commercial Mortgage may require us to enter into intercreditor agreements in situations where loans are made by us and Arbor Commercial Mortgage to the same borrower.

We have entered into a management agreement with our manager under which our manager provides us with all of the services vital to our operations other than asset management services. However, the management agreement was not negotiated at arm's length and its terms, including fees payable, may not be as favorable to us as if it had been negotiated with an unaffiliated third party. Certain matters relating to our organization also were not approved at arm's length and the terms of the contribution of assets to us may not be as favorable to us as if the contribution was with an unaffiliated third party.

The results of our operations is dependent upon the availability of, and our manager's ability to identify and capitalize on, investment opportunities. Our manager's officers and employees are also responsible for providing the same services for Arbor Commercial Mortgage's portfolio of investments. As a result, they may not be able to devote sufficient time to the management of our business operations.

Conflicts of interest could arise in transactions where we lend to borrowers in which Arbor Commercial Mortgage holds an equity interest.

Arbor Commercial Mortgage has contributed loans to us that are secured by properties in which Arbor Commercial Mortgage owns equity interests in the borrower. Every transaction that we enter into with an entity in which Arbor Commercial Mortgage holds equity interests raises a potential conflict of interest. Conflicts of interest with respect to these mortgage loans include, among others, decisions regarding (1) whether to waive defaults of such borrower, (2) whether to foreclose on a loan, and (3) whether to permit additional financing on the properties securing our investments other than financing provided by us.

Termination of our management agreement may be costly.

Termination of the management agreement with our manager is difficult and costly. Our management agreement may be terminated by us (1) without cause, after the initial two year period, on six months' prior written notice and (2) with cause in the event of our manager's uncured breach of the management agreement, if approved by a majority of our independent directors. If we terminate the management agreement without cause or elect not to renew the management agreement in connection with the decision to manage our portfolio internally, we are required to pay our manager a termination fee equal to the base management fee and the incentive compensation earned during the twelve month period preceding the termination. If we terminate the management agreement without cause (except in a case where we become internally managed) or elect not to renew the management agreement for any other reason, including a change of control of us, we are required to pay our manager a termination fee equal to two times the base management fee and the incentive compensation earned during the twelve-month period preceding the termination. If we terminate without cause and become internally managed, we are required to pay our manager a termination fee equal to the base management fee and the incentive compensation earned during the 12-month period preceding the termination. These provisions may increase the effective cost to us of terminating the management agreement, thereby adversely affecting our ability to terminate our manager without cause.

If our manager terminates the management agreement, we may not be able to find an adequate replacement manager.

At any time after the initial two-year term of the management agreement, our manager may terminate the management agreement without cause or elect not to renew the agreement, without penalty (except in certain cases of a change in control of the manager during the first three years of the management agreement), on six months' prior written notice to us. In the event of our uncured breach of the management agreement, our manager may also terminate the agreement for cause without penalty. If our manager terminates our agreement, we may not be able to find an adequate replacement manager.

Our directors have approved very broad investment guidelines for our manager and do not approve each investment decision made by our manager.

Our manager is authorized to follow very broad investment guidelines. Our directors will periodically review our investment guidelines and our investment portfolio. However, our board does not review each proposed investment. In addition, in conducting periodic reviews, the directors rely primarily on information provided to them by our manager. Furthermore, transactions entered into by our manager may be difficult or impossible to unwind by the time they are reviewed by the directors. Our manager has great latitude within the broad investment guidelines in determining the types of assets it may decide are proper investments for us.

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.

Our manager has broad discretion, within the general investment criteria established by our board of directors, to allocate the proceeds of the concurrent offerings and the exercise of the warrants by the selling stockholders and to determine the timing of investment of such proceeds. Such discretion could result in allocation of proceeds to assets where the investment returns are substantially below expectations or that result in net operating losses, which would materially and adversely affect our business, operations and results.

The management compensation structure that we have agreed to with our manager may cause our manager to invest in high risk investments. Our manager is entitled to a base management fee, which is based on the equity of our operating partnership. The amount of the base management fee does not depend on the performance of the services provided by our manager or the types of assets it selects for our investment, but the value of our operating partnership's equity will be affected by the performance of these assets. Our manager is also entitled to receive incentive compensation based in part upon our achievement of targeted levels of funds from operations. In evaluating investments and other management strategies, the opportunity to earn incentive compensation based on funds from operations may lead our manager to place undue emphasis on the maximization of funds from operations at the expense of other criteria, such as preservation of capital, in order to achieve higher incentive compensation. Investments with higher yield potential are generally riskier or more speculative. This could result in increased risk to the value of our invested portfolio.

Risks Related to Our Status as a REIT

If we do not qualify as a REIT or fail to remain qualified as a REIT, we will be subject to tax as a regular corporation and could face substantial tax liability.

We intend to operate so as to qualify as a REIT under the Internal Revenue Code. However, qualification as a REIT involves the application of highly technical and complex Internal Revenue Code provisions for which only limited judicial and administrative authorities exist. Even a technical or inadvertent mistake could jeopardize our REIT status. Our continued qualification as a REIT will depend on our satisfaction of certain asset, income, organizational, distribution, stockholder ownership and other requirements on a continuing basis. In particular, our ability to qualify as a REIT depends in part on the relative values of our common and special voting preferred stock, which have not been determined by independent appraisal, are susceptible to fluctuation, and could, if successfully challenged by the IRS, cause us to fail to meet the ownership requirements. In addition, our ability to satisfy the requirements to qualify as a REIT depends in part on the actions of third parties over which we have no control or only limited influence, including in cases where we own a preferred equity interest in an entity that is classified as a partnership for U.S. federal income tax purposes.

Furthermore, new tax legislation, administrative guidance or court decisions, in each instance potentially with retroactive effect, could make it more difficult or impossible for us to qualify as a REIT. If we fail to qualify as a REIT in any tax year, then:

- we would be taxed as a regular domestic corporation, which, among other things, means we would be unable to deduct distributions to stockholders in computing taxable income and would be subject to federal income tax on our taxable income at regular corporate rates;
- any resulting tax liability could be substantial and would reduce the amount of cash available for distribution to stockholders; and

- unless we were entitled to relief under applicable statutory provisions, we would be disqualified from treatment as a REIT for the subsequent four taxable years following the year during which we lost our qualification, and thus, our cash available for distribution to stockholders would be reduced for each of the years during which we did not qualify as a REIT.

Even if we remain qualified as a REIT, we may face other tax liabilities that reduce our cash flow.

Even if we remain qualified for taxation as a REIT, we may be subject to certain federal, state and local taxes on our income and assets, including taxes on any undistributed income, tax on income from some activities conducted as a result of a foreclosure, and state or local income, property and transfer taxes, such as mortgage recording taxes. See “Federal Income Tax Considerations — Taxation of Arbor Realty — Taxation of REITs in General.” Any of these taxes would decrease cash available for distribution to our stockholders. In addition, in order to meet the REIT qualification requirements, or to avert the imposition of a 100% tax that applies to certain gains derived by a REIT from dealer property or inventory, we may hold some of our assets through taxable subsidiary corporations.

Complying with REIT requirements may cause us to forego otherwise attractive opportunities.

To qualify as a REIT for federal income tax purposes we must continually satisfy tests concerning, among other things, the sources of our income, the nature and diversification of our assets, the amounts we distribute to our stockholders and the ownership of our stock. We may be required to make distributions to stockholders at disadvantageous times or when we do not have funds readily available for distribution. Thus, compliance with the REIT requirements may hinder our ability to operate solely on the basis of maximizing profits.

Complying with REIT requirements may force us to liquidate otherwise attractive investments.

To qualify as a REIT we must ensure that at the end of each calendar quarter at least 75% of the value of our assets consists of cash, cash items, government securities and qualified REIT real estate assets. The remainder of our investment in securities (other than government securities and qualified real estate assets) generally cannot include more than 10% of the outstanding voting securities of any one issuer or more than 10% of the total value of the outstanding securities of any one issuer. In addition, in general, no more than 5% of the value of our assets (other than government securities and qualified real estate assets) can consist of the securities of any one issuer, and no more than 20% of the value of our total securities can be represented by securities of one or more taxable REIT subsidiaries. If we fail to comply with these requirements at the end of any calendar quarter, we must correct such failure within 30 days after the end of the calendar quarter to avoid losing our REIT status and suffering adverse tax consequences. As a result, we may be required to liquidate otherwise attractive investments.

Liquidation of collateral may jeopardize our REIT status.

To continue to qualify as a REIT, we must comply with requirements regarding our assets and our sources of income. If we are compelled to liquidate our mortgage and preferred equity investments to satisfy our obligations to our lenders, we may be unable to comply with these requirements, ultimately jeopardizing our status as a REIT.

Complying with REIT requirements may force us to borrow to make distributions to stockholders.

As a REIT, we must generally distribute at least 90% of our annual taxable income, subject to certain adjustments, to our stockholders. To the extent that we satisfy the distribution requirement, but distribute less than 100% of our taxable income, we will be subject to federal corporate income tax on our undistributed taxable income. In addition, we will be subject to a 4% nondeductible excise tax if the actual amount that we pay out to our stockholders in a calendar year is less than a minimum amount specified under federal tax laws.

From time to time, we may generate taxable income greater than our net income for financial reporting purposes due to, among other things, amortization of capitalized purchase premiums, or our taxable income may be greater than our cash flow available for distribution to stockholders (for example, where a borrower defers the payment of interest in cash pursuant to a contractual right or otherwise). If we do not have other funds available in these situations we could be required to borrow funds, sell investments at disadvantageous prices or find another alternative source of funds to make distributions sufficient to enable us to pay out enough of our taxable income to satisfy the REIT distribution requirement and to avoid corporate income tax and the 4% excise tax in a particular year. These alternatives could increase our costs or reduce our equity.

We may be subject to adverse legislative or regulatory tax changes that could reduce the market price of our common stock.

At any time, the federal income tax laws governing REITs or the administrative interpretations of those laws may be amended. Any of those new laws or interpretations may take effect retroactively and could adversely affect us or you as a stockholder. On May 28, 2003, The Jobs and Growth Tax Relief Reconciliation Act of 2003 was enacted, which decreases the tax rate on most dividends paid by corporations to individual investors to a maximum of 15% from current rates, and such rates are retroactive to the beginning of January 2003. REIT dividends, with limited exceptions, will not benefit from the rate reduction, because a REIT’s income generally is not subject to corporate level tax. As such, this legislation could cause shares in non-REIT corporations to be a more attractive investment to individual investors than shares in REITs and could have an adverse effect on the value of our common stock.

Restrictions on share accumulation in REITs could discourage a change of control of us.

In order for us to qualify as a REIT, not more than 50% of the number or value of our outstanding shares of capital stock may be owned, directly or indirectly, by five or fewer individuals during the last half of a taxable year.

In order to prevent five or fewer individuals from acquiring more than 50% of our outstanding shares and a resulting failure to qualify as a REIT, our charter provides that, subject to certain exceptions, no person may own, or be deemed to own by virtue of the attribution provisions of the Internal Revenue Code, more than 9.6% of the aggregate value or number (whichever is more restrictive) of shares of our outstanding common stock or 9.6% by value of our outstanding capital stock. For purposes of this calculation, warrants held by such person will be deemed to have been exercised. The shares most recently acquired by a person that are in excess of these limits will not have any voting rights exercisable by such person. Any attempt to own or transfer shares of our common or preferred stock in excess of the ownership limit without the consent of the board of directors will result in the shares being automatically transferred to a charitable trust (or otherwise be void) and be deemed to have been offered for sale to us for a period subsequent to the acquisition. Any person who acquires shares in excess of these limits is obliged to immediately give written notice to us and provide us with any information we may request in order to determine the effect of the acquisition on our status as a REIT.

While these restrictions are designed to prevent any five individuals from owning more than 50% of our shares, they could also discourage a change in control of our company. These restrictions may also deter tender offers that may be attractive to stockholders or limit the opportunity for stockholders to receive a premium for their shares if an investor makes purchases of shares to acquire a block of shares.

Complying with REIT requirements may limit our ability to hedge effectively.

The REIT provisions of the Internal Revenue Code may limit our ability to hedge our operations by requiring us to limit our income in each year from qualified hedges, together with any other income not generated from qualified real estate assets, to no more than 25% of our gross income. In addition, we must limit our aggregate income from nonqualified hedging transactions, from our provision of services and from other non-qualifying sources to no more than 5% of our annual gross income. As a result, we may have to limit our use of advantageous hedging techniques. This could result in greater risks associated with changes in interest rates than we would otherwise want to incur. If we were to violate the 25% or 5% limitations, we would possibly have to pay a penalty tax equal to the amount of income in excess of those limitations, multiplied by a fraction intended to reflect our profitability. If we fail to satisfy the REIT gross income tests, unless our failure was due to reasonable cause and not due to willful neglect, we could lose our REIT status for federal income tax purposes.

Risks Related to the Offering

There may not be an active market for our common stock, which may cause our common stock to trade at a discount and make it difficult to sell the common stock you purchase.

Prior to the concurrent offerings, there has been no public market for our common stock. We cannot assure you that an active trading market for our common stock will develop or be sustained after the concurrent offerings. The initial public offering price for our common stock will be determined by negotiations between the underwriters and us. We cannot assure you that the initial public offering price will correspond to the price at which our common stock will trade in the public market subsequent to the concurrent offerings or that the price of our shares available in the public market will reflect our actual financial performance.

We intend to apply to list our common stock on the New York Stock Exchange. Quotation through the New York Stock Exchange would not ensure that an actual market will develop for our common stock. Accordingly, no assurance can be given as to (i) the likelihood that an actual market for our common stock will develop, (ii) the liquidity of any such market, (iii) the ability of any holder to sell shares of our common stock, or (iv) the prices that may be obtained for our common stock.

Our charter generally does not permit ownership in excess of 9.6% of our common or capital stock, and attempts to acquire our capital stock in excess of these limits are ineffective without prior approval from our board of directors.

For the purpose of preserving our REIT qualification, our charter generally prohibits direct or constructive ownership by any person of more than 9.6% (by value or by number of shares, whichever is more restrictive) of the outstanding shares of our common stock or 9.6% (by value) of our outstanding shares of capital stock. For purposes of this calculation, warrants held by such person will be deemed to have been exercised if such exercise would result in a violation. Our charter's constructive ownership rules are complex and may cause the outstanding stock owned by a group of related individuals or entities to be deemed to be constructively owned by one individual or entity. As a result, the acquisition of less than these percentages of the outstanding stock by an individual or entity could cause that individual or entity to own constructively in excess of these percentages of the outstanding stock and thus be subject to our charter's ownership limit. Any attempt to own or transfer shares of our common or preferred stock in excess of the ownership limit without the consent of the board of directors will result in the shares being automatically transferred to a charitable trust or otherwise be void.

Maryland takeover statutes may prevent a change of our control. This could depress our stock price.

Under Maryland law, "business combinations" between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. The statute permits various exceptions, including business combinations that are exempted by the board of directors before the time that an interested stockholder becomes an interested stockholder. An interested stockholder is defined as:

- any person who beneficially owns 10% or more of the voting power of the corporation's shares; or

- an affiliate or associate of the corporation who, at any time within the two year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding voting stock of the corporation.

A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which he otherwise would have become an interested stockholder.

After the five year prohibition, any business combination between the Maryland corporation and an interested stockholder generally must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and

- two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

The business combination statute may prevent or discourage others from trying to acquire control of us and increase the difficulty of consummating any offer, including potential acquisitions that might involve a premium price for our common stock or otherwise be in the best interest of our stockholders. See "Important Provisions of Maryland Law and of Our Charter and Bylaws — Business Combinations" and "— Control Share Acquisitions."

Our staggered board and other provisions of our charter and bylaws may prevent a change in our control.

Our board of directors is divided into three classes of directors. The current terms of the Class I, Class II and Class III directors will expire in 2004, 2005 and 2006, respectively. Directors of each class are chosen for three year terms upon the expiration of their current terms, and each year one class of directors is elected by the stockholders. The staggered terms of our directors may reduce the possibility of a tender offer or an attempt at a change in control, even though a tender offer or change in control might be in the best interest of our stockholders. In addition, our charter and bylaws also contain other provisions that may delay or prevent a transaction or a change in control that might involve a premium price for our common stock or otherwise be in the best interest of our stockholders. See "Important Provisions of Maryland Law and of Our Charter and Bylaws."

Future offerings of debt securities, which would be senior to our common stock upon liquidation, or equity securities, which would dilute the holdings of our existing stockholders and may be senior to our common stock for the purposes of dividend distributions or distributions upon liquidation, may adversely affect the market price of our common stock.

In the future we may attempt to increase our capital resources by making additional offerings of debt or equity securities, including commercial paper, medium term notes, senior or subordinated notes and classes of preferred stock or common stock. Upon liquidation, holders of our debt securities and shares of preferred stock and lenders with respect to other borrowings will receive a distribution of our available assets prior to the holders of our common stock. Additional equity offerings may dilute the holdings of our existing stockholders or reduce the market price of our common stock, or both. If we decide to issue preferred stock in addition to our special voting preferred stock already issued, it could have a preference on liquidating distributions or a preference on dividend payments that could limit our ability to make a dividend distribution to the holders of our common stock. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Thus, our stockholders bear the risk of our future offerings reducing the market price of our common stock and diluting their stock holdings in us.

Securities eligible for future sale may have adverse effects on our share price.

The effect of future sales of our common stock or the availability of our common stock for future sales may affect the market price of our common stock. Prior to the concurrent offerings, 8,199,567 shares of our common stock are outstanding, 1,610,000 shares authorized for issuance upon exercise of the warrants for shares of common stock, 35,500 shares reserved and authorized for issuance under our stock incentive plan and 3,776,069 shares authorized for issuance upon redemption of operating partnership units, including 629,345 operating partnership units issuable upon exercise of warrants for additional operating partnership units. After giving effect to the concurrent offerings, there will be shares of common stock outstanding. Of the shares of our common stock currently outstanding, 435,000 shares of common stock are being registered pursuant to the IPO registration statement of which this prospectus is a part. We have agreed to register the remaining 7,615,000 shares comprising our units and 1,576,000 shares underlying warrants comprising our units for resale by the remaining holders of our units within 180 days of the date of this prospectus. We may also register the 149,500 shares of restricted common stock issued to our directors, executive officers, employees and certain employees of Arbor Commercial Mortgage pursuant to our stock incentive plan after the expiration of the 180 day lock-up period for our directors and executive officers. If Arbor Commercial Mortgage redeems its 3,776,069 operating partnership units (including 629,345 operating partnership units issuable upon exercise of warrants for additional operating partnership units) and we elect to issue shares of our common stock upon such redemption, an additional 3,776,069 shares would be eligible for future sale. We have granted registration rights to Arbor Commercial Mortgage relating to the resale of shares of common stock that we may issue upon redemption of its operating partnership units. Furthermore, we satisfy our obligation to pay up to 25% of the incentive compensation payable to our manager under the management agreement with shares of our common stock. The issuance of common stock could cause dilution of our existing common stock and a decrease in the market price.

You should not rely on lock-up agreements in connection with the original offering or this offering to limit the amount of common stock sold into the market.

We will agree with the underwriters not to offer to sell, contract to sell, or otherwise dispose of, loan, pledge or grant any rights with respect to any shares of our common stock, any options or warrants to purchase any shares of our common stock or any securities convertible into or exercisable for any of our common stock, including our units, for a period of 180 days following the completion of this offering, subject to certain exceptions. Our directors and officers, Arbor Commercial Mortgage and certain members of the senior management of Arbor Commercial Mortgage will agree, with limited exceptions, for a period of 180 days after the date of this prospectus, and all selling stockholders and remaining holders of units will agree, with limited exceptions, for a period of 60 days after the date of this prospectus, that they will not, without the prior written consent of Wachovia Capital Markets, LLC, directly or indirectly, offer to sell, sell or otherwise dispose of any shares of our common stock or any securities convertible into, or exercisable or exchangeable for, shares of our common or our other capital stock, other than the shares of common stock sold by the selling stockholders in this offering.

Arbor Commercial Mortgage and each of the persons serving as our directors and executive officers at the consummation of the private placement also entered into lock-up agreements with respect to their units, common stock, warrants and the shares of common stock issuable upon redemption of operating partnership units restricting the sale of such securities without the consent of JMP Securities until the earlier of 180 days after the date of effectiveness of the registration statement of which this prospectus is a part or two years from the consummation of private placement, subject to certain exceptions. Wachovia Capital Markets, LLC and JMP Securities, respectively, may, at any time, release all or a portion of the securities subject to the foregoing lock-up provisions. If the restrictions under the lock-up agreements with members of our senior management and directors are waived or terminated, approximately shares and 260,750 units, including 1,303,750 shares of common stock and 260,750 warrants comprising the units, will be available for sale into the market, subject only to applicable securities rules and regulations, which could reduce the market price for our common stock.

We may allocate the net proceeds from the concurrent offerings in ways with which you may not agree.

Our business plan is general in nature and is subject to change based upon changing conditions and opportunities. Our management has significant flexibility in applying the total $ million in net proceeds we expect to receive in the concurrent offerings and from the exercise of warrants by the selling stockholders ($ million if the underwriters' over-allotment option is exercised in full). Because the net proceeds is not required to be allocated to any specific investment or transaction, you cannot determine at this time the value or propriety of our application of the proceeds, and you and other stockholders may not agree with our decisions. See "Use of Proceeds" for a more detailed description of how management intends to apply the proceeds from the concurrent offerings.

We have not established a minimum dividend payment level and there are no assurances of our ability to pay dividends in the future.

We intend to pay quarterly dividends and to make distributions to our stockholders in an amount such that all or substantially all of our taxable income in each year, subject to certain adjustments, is distributed. We have not established a minimum dividend payment level and our ability to pay dividends may be adversely affected by the risk factors described in this prospectus. All distributions will be made at the discretion of our board of directors and will depend on our earnings, our financial condition, maintenance of our REIT status and such other factors as our board of directors may deem relevant from time to time. There are no assurances of our ability to pay dividends in the future. In addition, some of our distributions may include a return of capital.

An increase in market interest rates may have an adverse effect on the market price of our common stock.

One of the factors that investors may consider in deciding whether to buy or sell shares of our common stock is our dividend rate as a percentage of our share price relative to market interest rates. If the market price of our common stock is based primarily on the earnings and return that we derive from our investments and income with respect to our properties and our related distributions to stockholders, and not from the market value or underlying appraised value of the properties or investments themselves, then interest rate fluctuations and capital market conditions will likely affect the market price of our common stock. For instance, if market rates rise without an increase in our dividend rate, the market price of our common stock could decrease as potential investors may require a higher dividend yield on our common stock or seek other securities paying higher dividends or interest. In addition, rising interest rates would result in increased interest expense on our variable rate debt, thereby adversely affecting cash flow and our ability to service our indebtedness and pay dividends.

Investors in the concurrent offerings will suffer immediate and substantial dilution.

The initial public offering price of our common stock is higher than the net tangible book value per share of our common stock outstanding immediately after the concurrent offerings. Our net tangible book value per share as of December 31, 2003 was approximately $. Net tangible book value per share as of December 31, 2003 represents the amount of our total tangible assets minus our total liabilities, divided by the 8,199,567 shares of our common stock that were outstanding on December 31, 2003. Investors who purchase our common stock in the concurrent offerings will pay a price per share that substantially exceeds the net tangible book value per share of our common stock. If you purchase our common stock in the concurrent offerings, you will experience immediate and substantial dilution of $ in the net tangible book value per share of our common stock, based upon the initial public offering price of $ per share. Additional dilution will occur upon the exercise of outstanding options. Investors who purchase our common stock in the concurrent offerings will have purchased % of the shares outstanding immediately after the offering, but will have paid % of the total consideration for those shares.

Broad market fluctuations could negatively impact the market price of our common stock.

The stock market has experienced extreme price and volume fluctuations that have affected the market price of many companies in industries similar or related to ours and that have been unrelated to these companies' operating performances. These broad market fluctuations could reduce the market price of our common stock. Furthermore, our operating results and prospects may be below the expectations of public market analysts and investors or may be lower than those of companies with comparable market capitalizations, which could lead to a material decline in the market price of our common stock.

Wachovia will receive benefits from this offering in addition to its underwriting discount.

Certain of the net proceeds from the concurrent offerings will be used to repay outstanding indebtedness under a master repurchase agreement with an affiliate of Wachovia Capital Markets, LLC, an underwriter in this offering. See "Use of Proceeds" and "Underwriting."

FORWARD LOOKING STATEMENTS

We make forward looking statements in this prospectus that are subject to risks and uncertainties. These forward looking statements include information about possible or assumed future results of our business and our financial condition, liquidity, results of operations, plans, and objectives. They also include, among other things, statements concerning anticipated revenues, income or loss, capital expenditures, dividends, capital structure, or other financial terms, as well as statements regarding the subjects that are forward looking by their nature, such as:

- our business strategy;
- completion of any pending transactions;
- our ability to obtain future financing arrangements;
- our understanding of our competition;
- our projected operating results;
- the operating results presented in the historical consolidated financial statements included in this prospectus;
- market trends;
- estimates relating to our future dividends;
- projected capital expenditures; and
- the impact of technology on our operations and business.

The forward looking statements are based on our beliefs, assumptions, and expectations of our future performance, taking into account the information currently available to us. We do not intend to update our forward looking statements. These beliefs, assumptions, and expectations can change as a result of many possible events or factors, not all of which are known to us. If a change occurs, our business, financial condition, liquidity, and results of operations may vary materially from those expressed in our forward looking statements. You should carefully consider this risk when you make a decision concerning an investment in our common stock.

When we use words such as “will likely result,” “may,” “shall,” “will,” “believe,” “expect,” “anticipate,” “project,” “intend,” “estimate,” “goal,” “objective,” or similar expressions, we intend to identify forward looking statements. You should not place undue reliance on these forward looking statements. We are not obligated to publicly update or revise any forward looking statements, whether as a result of new information, future events, or otherwise.

USE OF PROCEEDS

We estimate that the net proceeds from our sale of shares of common stock in this offering, at the initial public offering price of $ per share, which is the midpoint of the range listed on the cover page of this prospectus, after deducting the underwriting discount and other estimated offering expenses, will be approximately $ million. If the underwriters exercise their over-allotment option in full, we estimate that the net proceeds, after deducting the underwriting discount and other estimated offering expenses, of the offering of common stock by us will be approximately $ million. We will not receive any proceeds from the sale of shares of our common stock by the selling stockholders.

Concurrently with this offering, we may sell shares of common stock at the initial public offering price to Mr. Kojaian, one of our directors who has expressed an interest in purchasing shares of our common stock. We are not paying any underwriting discounts or commissions on these shares. Accordingly, we estimate that our net proceeds from this concurrent offering will be approximately $ million.

In addition, we estimate that the proceeds we will receive from the exercise of 34,000 warrants by selling stockholders who propose to offer their underlying shares in this offering will be approximately $510,000.

We intend to use all of the net proceeds of the concurrent offerings and the exercise of the warrants by the selling stockholders to repay indebtedness under our warehouse credit agreement and master repurchase agreements. We anticipate that we will use the additional borrowing capacity created by the repayments under these credit facilities to fund our lending business in connection with newly originated and existing loans in our portfolio as the need arises. As of January 31, 2004, $69.6 million was outstanding under our $150 million master repurchase agreement, which matures in December 2006, with a weighted average interest rate of 3.58%. This repurchase agreement is with an affiliate of Wachovia Capital Markets, LLC, an underwriter in this offering. As of January 31, 2004, the outstanding balance under our $100 million master repurchase agreement, which matures on December 31, 2004, was $52.1 million with a weighted average interest rate of 3.3%. As of January 31, 2004, $79.7 million was outstanding under our primary $250 million warehouse credit agreement, which matures on December 31, 2004, with a weighted average interest rate of 3.46%. During the last year, we borrowed money under these facilities to fund our lending business as required in connection with newly originated and existing loans in our portfolio.

DISTRIBUTION POLICY

We have made and intend to make, regular quarterly distributions to our stockholders. To qualify as a REIT we must distribute to our stockholders an amount at least equal to:

- 90% of our REIT taxable income, determined before the deduction for dividends paid and excluding any net capital gain (which does not necessarily equal net income as calculated in accordance with generally accepted accounting principals); plus

- 90% of the excess of our net income from foreclosure property (as defined in Section 856 of the Internal Revenue Code) over the tax imposed on such income by the Internal Revenue Code; less

- any excess non-cash income (as determined under the Internal Revenue Code). See “Federal Income Tax Considerations.”

We are subject to income tax on income that is not distributed and to an excise tax to the extent that certain percentages of our income are not distributed by specified dates. See “Federal Income Tax Considerations.” Income as computed for purposes of the foregoing tax rules will not necessarily correspond to our income as determined for financial reporting purposes.

Distributions are authorized by our board of directors and declared by us based upon a number of factors, including:

- actual results of operations;

- restrictions under Maryland law;

• the timing of the investment of our equity capital;

• the amount of funds from operations;

• our financial condition;

• debt service requirements;

• capital expenditure requirements;

• our taxable income;

• the annual distribution requirements under the REIT provisions of the Internal Revenue Code;

• our operating expenses; and

• other factors our directors deem relevant.

Our ability to make distributions to our stockholders depends upon our receipt of distributions from our operating partnership, Arbor Realty Limited Partnership, which may depend, in part, upon the performance of our investment portfolio, and, in turn, from Arbor Commercial Mortgage's management of our business. Distributions are made in cash to the extent that cash is available for distribution. In order to maximize the return on our funds, cash generated from operations is generally used to temporarily pay down borrowings. When making distributions, we generally borrow the required funds by drawing on credit capacity available under our credit facilities. Our distributions have not exceeded cash generated from operations and we do not anticipate that distributions will significantly exceed cash generated from operations in the future. If distributions exceed the amount of cash generated from operations, we may be required to borrow additional funds or sell assets in order to meet our REIT distribution requirements.

Distributions to stockholders are generally taxable to our stockholders as ordinary income, although a portion of these distributions may be designated by us as short-term or long-term capital gains to the extent they are attributable to capital gain income recognized by us, or may constitute a return of capital to the extent they exceed our earnings and profits as determined for tax purposes. We will furnish annually to each of our stockholders a statement setting forth distributions paid during the preceding year and their federal income tax status. For a discussion of the federal income tax treatment of our distributions, see "Federal Income Tax Considerations — Taxation of Arbor Realty" and "Federal Income Tax Considerations — Taxation of Stockholders."

We may not be able to generate sufficient revenue from operations to pay distributions to our stockholders. In addition, our directors may change our distribution policy in the future. See "Risk Factors."

Our charter allows us to issue preferred stock that could have a preference on distributions. We currently have no intention to issue any such preferred stock, but if we do, the dividend preference on the preferred stock could limit our ability to make a dividend distribution to the holders of our common stock. We have previously issued approximately 3.1 million shares of our special voting preferred stock to Arbor Commercial Mortgage which does not have any preferential dividend, except a $0.01 per share liquidation preference upon a liquidation or redemption.

On November 5, 2003, our board authorized and we declared a dividend of $0.25 per share of common stock, payable with respect to the quarter ending September 30, 2003, to stockholders of record at the close of business on November 5, 2003. We distributed this dividend on November 18, 2003. On December 19, 2003, our board of directors authorized a dividend of $0.25 per share of common stock, payable with respect to the quarter ending December 31, 2003, to stockholders of record at the close of business on December 19, 2003. We distributed this dividend on December 30, 2003. Of the dividends paid in 2003, 76% were taxable as ordinary income and 24% represented a return of capital. The portion representing the return of capital arose because the distribution paid, which approximated cash generated from operations, exceeded taxable income for the year.

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CAPITALIZATION

The following table sets forth our capitalization as of December 31, 2003, on an actual basis and as adjusted to give effect to the concurrent offerings and the exercise of 34,000 warrants by selling stockholders for shares of our common stock at an exercise price of $15.00 per share, and the application of the estimated net proceeds that we expect to receive from our sale of common stock in the concurrent offerings and the exercise of the warrants as described under "Use of Proceeds." This table should be read together with "Use of Proceeds," "Management's Discussion and Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc., and Subsidiaries" and our consolidated financial statements and related notes included elsewhere in this prospectus.

	As of December 31, 2003	
	Actual	As Adjusted
	(In thousands, except per share data)	
Cash and cash equivalents	$ 6,116	
Long term debt	172,528	
Minority interest	43,632	
Stockholders' equity		
Preferred stock, par value $0.01 per share, 100,000,000 shares authorized; 3,146,724 shares issued and outstanding, actual and as adjusted	31	31
Common stock, par value $0.01 per share, 500,000,000 shares authorized; 8,199,567 shares issued and outstanding, actual; shares issued and outstanding, as adjusted	82	
Additional paid in capital	112,216	
Distributions in excess of earnings	(692)	(692)
Deferred compensation	(521)	(521)
Total stockholders' equity	$111,116	
Total capitalization	$333,392	

DILUTION

Our net tangible book value as of December 31, 2003 was approximately $ million, or $ per share of our common stock. Net tangible book value per share represents the amount of our total tangible assets minus our total liabilities, divided by the 8,199,567 shares of our common stock that were outstanding on December 31, 2003. After giving effect to the sale of shares of our common stock in the concurrent offerings, each at the initial public offering price of $ per share, which is the midpoint of the range listed on the cover page of this prospectus, our net tangible book value on December 31, 2003 would have been approximately $ million, or $ per share. This represents an immediate increase in net tangible book value of $ per share to our existing stockholders and an immediate dilution of $ per share to new investors who purchase our common stock in the concurrent offerings at the initial public offering price. The following table shows this immediate per share dilution:

Initial public offering price per share		$
Net tangible book value per share on December 31, 2003, before giving effect to the concurrent offerings	$	
Increase in net tangible book value per share attributable to the concurrent offerings		
Pro forma net tangible book value per share on December 31, 2003, after giving effect to the concurrent offerings		
Dilution in pro forma net tangible book value per share to new investors		$

The discussion and table above exclude 49,833 shares of our common stock subject to restricted stock awards, which are not vested.

The following table summarizes, as of December 31, 2003, the differences between the average price per share paid by our existing stockholders and by new investors purchasing shares of common stock in the concurrent offerings at the initial public offering price of $ per share, before deducting the underwriting discounts and commissions and estimated offering expenses payable by us in this offering:

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders					
New investors					
Total					

If the underwriters fully exercise their over-allotment option, the number of shares of common stock held by existing holders will be reduced to % of the aggregate number of shares of common stock outstanding after the concurrent offerings and the number of shares of common stock held by new investors will be increased to , or %, of the aggregate number of shares of common stock outstanding after the concurrent offerings.

SELECTED CONSOLIDATED FINANCIAL INFORMATION

OF ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

The following tables present selected historical consolidated financial information as of December 31, 2003 and for the period ended 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, interim 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 prospectus.

	Period from June 24, 2003 (inception) to December 31, 2003
Consolidated Income Statement Data:	
Interest income	$ 10,012,449
Other income	156,502
Total revenue	10,168,951
Total expenses	5,452,865
Net income	3,407,919
Earnings per share, basic and diluted(1)	0.42
Dividends declared per common share(2)	0.50

	At December 31, 2003
Consolidated Balance Sheet Data:	
Loans and investments, net	$ 300,846,001
Related party loans, net	21,131,490
Total assets	338,164,432
Notes payable and repurchase agreements	172,528,471
Total liabilities	183,416,716
Minority interest	43,631,602
Total stockholders’ equity	111,116,114

	Period from June 24, 2003 (inception) to December 31, 2003
Other Data:	
Total originations	$ 186,289,922

(1) 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 in the private placement and approximates the market value of our common stock at December 31, 2003. Therefore, the assumed exercise of the warrants were not considered to be dilutive for purposes of calculating diluted earnings per share.

(2) On November 5, 2003, our board authorized and we declared a dividend of $0.25 per share of common stock, payable with respect to the quarter ending September 30, 2003, to stockholders of record at the close of business on November 5, 2003. We distributed this dividend on November 18, 2003. On December 19, 2003, our board of directors authorized and we declared a dividend of $0.25 per share of common stock, payable with respect to the quarter ending December 31, 2003, to stockholders of record at the close of business on December 19, 2003. We distributed this dividend on December 30, 2003.

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, and 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 prospectus. 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, 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 Revenue and Direct Operating Expenses Data" for the years ended December 31, 1999 and 1998 and the caption "Consolidated Statement of Assets and Liabilities Data" as of December 31, 2000, 1999 and 1998 have 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 prospectus 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

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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 prospectus.

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)	1999(1)	1998(1)
		(Unaudited)				(Unaudited)	(Unaudited)
Interest income	$7,688,465	$7,482,750	$14,532,504	$14,667,916	$10,707,551	$ 6,964,873	$ 6,807,617
Income from real estate held for sale, net of operating expenses	—	—	—	—	—	925,999	1,608,172
Other income	1,552,414	553,625	1,090,106	1,668,215	652,970	2,838,639	7,064,294
Total revenue	9,240,879	8,036,375	15,622,610	16,336,131	11,360,521	10,729,511	15,480,083
Total direct operating expenses	5,737,688	8,344,302	13,639,755	10,997,800	9,227,274	7,145,469	6,589,274
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	3,584,042	8,890,809
Gain on sale of loans and real estate	1,024,268	7,006,432	7,470,999	3,226,648	1,880,825	1,818,299	1,898,558
Income from equity affiliates	—	601,100	632,350	1,403,014	5,028,835	3,592,398	567,006
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	8,994,739	11,356,373

Consolidated Statement of Assets and Liabilities Data:

	At December 31,				
	2002	2001	2000	1999	1998
			(Unaudited)	(Unaudited)	(Unaudited)
Loans and investments, net	$172,142,511	$160,183,066	$ 85,547,323	$50,156,022	$75,604,351
Related party loans, net	15,952,078	15,880,207	—	—	—
Investment in equity affiliates	2,586,026	2,957,072	20,506,417	23,459,586	20,092,793
Total assets	200,563,236	183,713,747	119,110,446	84,751,032	96,537,674
Notes payable and repurchase agreements	141,836,477	132,409,735	70,473,501	47,154,530	58,678,062
Total liabilities	144,280,806	134,086,301	72,266,700	48,025,934	59,193,306
Net assets	56,282,430	49,627,446	46,843,746	36,725,098	37,344,368

Other Data (Unaudited):

	Six Months Ended June 30,		Year Ended December 31,				
	2003	2002	2002	2001	2000	1999	1998
Total originations	$117,965,000	$30,660,000	$130,043,000	$86,700,000	$108,378,000(2)	$120,378,900(2)	$230,718,353(2)

(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. The activities of the former joint venture have been included in the statements of revenue and direct operating expenses from the date of acquisition, August 2001. See the consolidated financial statements of Arbor Commercial Mortgage's structured finance business and the related notes to the consolidated financial statements included elsewhere in this prospectus for further information.

(2) Total originations for 1998, 1999 and 2000 include originations from Arbor Commercial Mortgage's joint venture with SFG I discussed in footnote 1.

MANAGEMENT'S DISCUSSION & 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 prospectus entitled "Risk Factors", "Forward-Looking Statements" and "Selected Consolidated Financial Information of Arbor Realty Trust, Inc. and Subsidiaries" and our historical consolidated financial statements, including related notes, included elsewhere in this prospectus.

Overview

We are 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, discounted mortgage notes and other real estate related assets. We conduct substantially all of our operations through our operating partnership.

Our operating performance is driven primarily by several 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, this will have a positive impact on earnings. Similarly, if 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 and other general and administrative expenses. As the size of the portfolio increases, certain of these expenses, particularly employee compensation expenses, may increase.

On July 1, 2003, Arbor Commercial Mortgage 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 our operating partnership. In addition, certain employees of Arbor Commercial Mortgage were transferred to our operating partnership. These assets, liabilities and employees represent a substantial portion of Arbor Commercial Mortgage's structured finance business. We are externally managed and advised by Arbor Commercial Mortgage and pay Arbor Commercial Mortgage a management fee in accordance with a management agreement. Arbor Commercial Mortgage will also originate, underwrite and service all structured finance assets on behalf of our operating partnership.

Concurrently with Arbor Commercial Mortgage's asset contribution, we consummated a private equity offering of units, each consisting of five shares of common stock and one warrant to purchase one share of common stock. The offering price per unit was $75.00, and gross proceeds from the private financing totaled $120.2 million. From the $120.2 million of gross proceeds from the private placement, we repaid $105.6 million of borrowings under our warehouse credit facility and repurchase agreements, purchased two mezzanine loans and one preferred equity investment from Arbor Commercial Mortgage for $6.7 million, paid offering expenses of $7.6 million and funded $0.3 million of operating capital. Gross proceeds from the private financing combined with the concurrent equity contribution by Arbor Commercial Mortgage totaled approximately $164.1 million in equity capital. Offering expenses paid or accrued totaled $10.1 million, resulting in stockholders' equity and minority interest of $154.0 million as a result of the private placement.

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. For the period ended December 31, 2003, interest represented approximately 98% of our total revenues. 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.

We also derive operating revenues from other income that represents loan structuring and miscellaneous asset management fees associated with our loans and investments portfolio. For the period ended December 31, 2003, revenue from other income represented approximately 2% of our total revenue.

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.

We may 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.

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 prospectus. 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 prospectus and require the application of significant judgment by management and, as a result, are subject to a degree of uncertainty.

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. 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. The allowance for each loan is maintained at a level believed adequate by management to absorb probable losses.

Revenue Recognition

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. 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.

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, a VIE, to be consolidated by its primary beneficiary. The primary beneficiary 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. In adopting FIN 46 and in anticipation of adopting FIN 46-R, we have evaluated our loans and investments and investments in equity affiliates made to entities created after February 1, 2003 to determine whether they are VIE's. As a result of this evaluation, we determined that our mezzanine loans, preferred equity investments and investments in equity affiliates were potential variable interests. For each of these investments, we have evaluated the sufficiency of the fair value of the entities' equity investments at risk to absorb losses. For these investments we have determined that the entities have sufficient equity at risk and, accordingly, they are not VIE's. As such, we have continued to account for the mezzanine loans and preferred equity investments and investments in equity investments as a loan, joint venture or real estate, as appropriate.

We are still in the process of evaluating our investments made into entities created before February 1, 2003 and a definitive conclusion cannot be reached until the evaluation has been completed.

In November 2002, the FASB issued FASB Interpretation No. 45 ("FIN 45"), "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others," an interpretation of FASB Statement of Financial Accounting Standards No. 5 ("SFAS No. 5"), "Accounting for Contingencies," Statement of Financial Accounting Standards No. 57, "Related Party Disclosures," Statement of Financial Accounting Standards No. 107, "Disclosures about Fair Value of Financial Instruments" and rescinded FASB Interpretation No. 34, "Disclosure of Indirect Guarantees of Indebtedness of Others, an Interpretation of SFAS No. 5." It requires that upon issuance of a guarantee, the guarantor must recognize a liability for the fair value of the obligation it assumes under that guarantee regardless of whether it receives separately identifiable consideration (i.e., a premium). The new disclosure requirements were effective December 31, 2002. The adoption of FIN 45 did not have a material impact on our consolidated financial statements, nor is it expected to have a material impact in the future.

Results of Operations

Period from June 24, 2003 (inception) to December 31, 2003

The following table sets forth our results of operations for the period ended December 31, 2003:

	Period from June 24, 2003 (inception) to December 31, 2003
Revenue:	
Interest income	$ 10,012,449
Other income	156,502
Total revenue	$ 10,168,951
Expenses:	
Interest expense	1,669,731
Employee compensation and benefits	940,336
Stock based compensation	1,721,367
Selling and administrative	533,697
Management fee	587,734
Total expenses	5,452,865
Income before minority interest	4,716,086
Income allocated to minority interest	1,308,167
Net income	$ 3,407,919

Revenue. Interest income was $10.0 million. The average balance of the loan and investment portfolio was $254.9 million during the period ended December 31, 2003. The average yield on these assets was 7.68%.

Other income was $157,000, which represents loan structuring and miscellaneous asset management fees associated with our loans and investments portfolio.

Expenses. Interest expense was $1.7 million. The average balance of debt financing was $92.5 million during the period ended December 31, 2003. The average cost of these borrowings was 3.53%. Our average leverage for the period ended December 31, 2003 was 36%, resulting in our interest margin on a levered basis being 10.27%.

Employee compensation and benefits expense was $940,000, which represents salaries, benefits and incentive compensation for the 12 employees employed by us during the period ended December 31, 2003.

Stock-based compensation expense was $1.7 million. 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 will vest over three years. The amount of compensation expense recorded for the period ended December 31, 2003 represents the full expense of the vested shares and a ratable portion of the expense of the unvested shares.

Selling and administrative expense was $534,000. This amount is comprised primarily of professional fees, including legal and accounting services.

Management fees were $588,000. This amount represents the base management fee as provided for in the management agreement with our manager. The management agreement also provides for incentive compensation; however, the requirements for incentive compensation were not satisfied and no incentive compensation was recorded in the period.

Income Allocated to Minority Interest. Income allocated to minority interest was $1.3 million. This amount represents the portion of our income allocated to our manager, which owns a 28% limited partnership interest in our operating partnership and is allocated 28% of our income.

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 and maintain 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, borrowings under credit agreements, net cash provided by operating activities, repayments of outstanding loans and investments and the issuance of common, convertible and/or preferred equity securities.

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.

Gross proceeds from the private placement on July 1, 2003 totaled $120.2 million, which combined with Arbor Commercial Mortgage's equity contribution of $43.9 million, resulted in total contributed capital of $164.1 million. From the $120.2 million of gross proceeds from the private placement, we repaid $105.6 million of borrowings under our warehouse credit facility and repurchase agreements, purchased two mezzanine loans and one preferred equity investment from Arbor Commercial Mortgage for $6.7 million, paid offering expenses of $7.6 million and funded $0.3 million of operating capital. We paid or 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.

We also maintain liquidity through one warehouse credit agreement and two master repurchase agreements with three different financial institutions with which Arbor Commercial Mortgage had similar financing facilities and an additional master repurchase agreement that we entered into with another financial institution in December 2003.

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. 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. On January 31, 2004, the outstanding balance under this facility was $79.7 million.

We have a $100.0 million master repurchase agreement with a second financial institution, dated as of November 18, 2002, with a one-year term, renewable annually. This repurchase agreement was assigned from Arbor Commercial Mortgage to us on July 1, 2003. On January 31, 2004, the outstanding balance under this facility was $52.1 million. In February 2004, we entered into an amendment to this repurchase agreement, which extended the term of this facility until December 31, 2004. Under the terms of this amendment, $3.2 million of borrowings related to the CDS Portfolio preferred equity investment must be repaid by March 31, 2004. In addition, the interest rates on the borrowings related to the Schron A preferred equity investment and the Tropical Gardens and Palmetto Villas Apartments bridge loans were adjusted to LIBOR plus 3.50%, 2.25% and 2.50%, respectively. We do not believe the revised terms will have a material impact on our results of operations.

We have a $50.0 million master repurchase agreement with a third financial institution, dated as of July 1, 2003, which matures in November 2005. This facility has not yet been utilized.

We have a $150.0 million master repurchase agreement with a fourth financial institution (which is an affiliate of Wachovia Capital Markets, LLC, an underwriter for this offering), dated as of December 23, 2003 with a term of three years and an interest rate based on LIBOR. As of December 31, 2003, this facility had not been utilized. In December 2003, we entered into a temporary repurchase agreement arrangement with this financial institution to finance three mezzanine loans that were originated in December 2003. In January 2004, we transferred the financing of these three loans from the temporary facility to the $150.0 million facility. As of January 31, 2004, $69.6 million was outstanding under this facility. On March 2, 2004, we amended this facility on a temporary basis. The amendment provides for an increase in the facility size from $150 million to $250 million. Borrowings may be taken up to 100% of our asset amount at a cost of 2.0% greater than the existing cost of funds. To date, no advances have been made subject to this amendment. In the event there are advances under this amendment in the future, we anticipate such advances will be repaid with proceeds from this offering.

The warehouse credit agreement and the three master repurchase agreements require that we pay interest monthly, based on our 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. Our pricing over LIBOR is summarized in the table on the following page.

The warehouse credit agreement and the three master repurchase agreements 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.

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. These liquidity needs, which are present in the short-term and long-term, include ongoing commitments to repay borrowings, fund future investments, fund operating costs and fund distributions. Our loans and investments, the majority of which have been contributed to us, 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.

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The maximum borrowing capacities, advance rates and other principal terms of our credit facilities are listed below:

	Warehouse Facility	Repurchase Agreement	Repurchase Agreement	Repurchase Agreement(1)
Total Facility Amount	$250,000,000	$100,000,000	$50,000,000	$ 150,000,000
Sublimits based on Investment Type				
Bridge Loan Sublimit Amount	$125,000,000	$ 75,000,000	$50,000,000	N/A
Maximum Advance Rate(2)	85%(3)	80%	80%	70%-80%(4)
Pricing over LIBOR	2.00%	2.00%	1.25%	1.75%- 2.875%(4)
Profit Share(5)	20.0%			
Mezzanine Loans/ Preferred Equity Sublimit Amount	$175,000,000	$ 25,000,000	$50,000,000	$ 90,000,000
Maximum Advance Rate(2)	80%(6)	65%	75%	55%-70%(4)
Pricing over LIBOR	2.75%	2.75%	2.50%	2.10%- 3.225%(4)
Profit Share(5)	20.0%			
Note Acquisitions Sublimit Amount	$125,000,000			
Maximum Advance Rate(6)	80%(7)			
Pricing over LIBOR	2.50%			
Property Acquisitions Total Line	$125,000,000			
Maximum Advance Rate	80%			
Pricing over LIBOR	2.50%			
Financial Covenants:				
Minimum net worth	$115,000,000(8)	$ 45,000,000(8)	(9)	$ 75,000,000
Leverage (debt to net worth) ratio must not exceed	6 to 1	8 to 1	6 to 1	4 to 1
Minimum Liquidity(10)	$ 3,000,000	N/A	N/A	$ 15,000,000

(1) This repurchase agreement is with an affiliate of Wachovia Capital Markets, LLC, an underwriter in this offering. We have increased our borrowing capacity under this facility on a temporary basis up to $250 million.

(2) Advance rates for certain investments funded under the credit facilities are negotiated on an individual basis and may differ from the maximum advance rate listed.

(3) Maximum loan amount advanced per bridge loan equal to $20.0 million.

(4) Advance rates and pricing over LIBOR vary due to the type of asset financed.

(5) Certain investments included in contribution of the initial assets are financed under prior profit sharing agreements between the financial institution and Arbor Commercial Mortgage with profit sharing percentages ranging from 17.5% to 45% of net interest income of the loans and investments financed.

(6) Maximum loan amount advanced per mezzanine loan equal to $20.0 million.

(7) Maximum loan amount advanced per acquisition equal to $20.0 million.

(8) Minimum net worth is defined as net worth of our operating partnership.

(9) Minimum net worth is equal to 75% of the highest level reached over the preceding twelve consecutive calendar months.

(10) Minimum liquidity is defined as liquid assets and available financing under the facilities.

In addition to the financial covenants presented in the table above, our warehouse credit agreement and master repurchase agreements contain covenants that prohibit us from effecting a change in control or disposing of or encumbering assets being financed and restrict us from making any material amendment to our underwriting guidelines without approval of the lender. This offering will not be considered a change in control for purposes of these agreements. Furthermore, the credit facilities include various covenants not deemed to be restrictive including preservation of company existence, conduct of business, compliance with applicable laws, financial statement reporting requirements, maintenance of paper records and files and loan performance and servicing date reporting requirements. If we violate these covenants in any of these agreements, 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 a line of credit, even if repayment of some or all borrowings is not required. As of December 31, 2003 we are in compliance with all covenants and restrictions.

Contractual Commitments

Pursuant to our management agreement with Arbor Commercial Mortgage, we pay Arbor Commercial Mortgage an annual base management fee based on the equity of our operating partnership, as further discussed below. The amount of the base management fee does not depend on the performance of the services provided by our manager or the types of assets it selects for our investment, but the value of our operating partnership's equity will be affected by the performance of these assets. We also pay our manager incentive compensation each fiscal quarter. We have paid $587,734 in base management fees to Arbor Commercial Mortgage for management services rendered for the period ended December 31, 2003. Our manager did not earn incentive compensation for the quarters ended September 30, 2003 or December 31, 2003. The table below summarizes the calculation of the base management fee, incentive compensation and other fees and expenses payable to our manager pursuant to the management agreement.

Type	Description and Method of Computation	Payable
Base management fee[(1)]	(1) 0.75% per annum of the first $400 million of our operating partnership's equity (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.	Monthly in arrears in cash
Incentive compensation[(2)]	(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) 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 Arbor Commercial Mortgage to our operating partnership per operating partnership unit, $15.00 (representing the offering price per share of our common stock in the private placement), [(3)] 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 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.	Each fiscal quarter, with at least 25% paid in our common stock

Type	Description and Method of Computation	Payable
Overhead expenses	Compensation of our independent directors, legal, accounting, due diligence tasks and other services that outside professionals perform for us.	Each fiscal quarter in cash
Origination fee income[(4)]	An amount equal to 100% of the origination fees paid by the borrower to us with respect to each bridge loan and mezzanine loan we originate, up to 1% of the loan's principal amount.	Upon closing of each loan
Termination fee[(5)]	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.	Upon termination

(1) For purposes of calculating the base management fee, our operating partnership's equity equals the month-end value computed in accordance with generally accepted accounting principles 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) At least 25% of the incentive compensation paid to our manager will be in the form of shares of our common stock, subject to ownership limitations in our charter. Beginning on January 1, 2004, the incentive compensation will be measured over a full fiscal year, subject to recalculation and potential reconciliation at the end of each fiscal year. We intend to pay our manager each installment of the incentive compensation within sixty (60) days following the last day of the fiscal quarter with respect to which such incentive compensation payment is payable.

(3) We allocated the $75.00 offering price per unit to the five shares of common stock comprising each unit, resulting in an offering price of $15.00 per share of common stock in the private placement. We did not allocate any value to the one warrant underlying each unit because the warrants have an initial exercise price of $15.00 and they are not exercisable, detachable or freely tradable for an indeterminable period of time (i.e., until after the registration and listing of the common stock comprising the units on national securities exchange or The Nasdaq Stock Market).

(4) 100% of the origination fees paid by the borrower in excess of 1% of the loan's principal amount are retained by us.

(5) 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.

The incentive compensation fee will be measured annually in arrears; provided, however, Arbor Commercial Mortgage 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. At least 25% of this incentive compensation fee is paid to Arbor Commercial Mortgage in shares of our common stock. For purposes of determining the number of shares to be paid to Arbor Commercial Mortgage to satisfy the common stock portion of the incentive compensation fee, 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 compensation fee is being paid. In the event the calculated incentive compensation fee for the full year is an amount less than the total of the installment payments made to our manager for the year, Arbor Commercial Mortgage will refund to us the amount of such overpayment in cash regardless of whether such installments were paid in cash or common stock. In such case, we would record a negative incentive compensation fee expense in the quarter when such overpayment is determined.

Related Party Transactions

Related Party Loans

Arbor Commercial Mortgage 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, 2003, Arbor Commercial Mortgage's investments in this joint venture were approximately $2.6 million. At December 31, 2003, we 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 our chief executive officer and 50% by the key principal of the joint venture. The loan requires monthly interest payments based on LIBOR and matures in May 2006. We have 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 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 Arbor Commercial Mortgage in June 2003 and purchased by us in July 2003, will be earned on the full $4.0 million, while the interest on the second component, of which $1.1 million was funded as of December 31, 2003, will be earned as the $4.0 million is drawn down. This additional financing is secured by a second mortgage lien on the property. Interest income recorded from these loans was approximately $486,000, for the period ended December 31, 2003.

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

At the time of Arbor Commercial Mortgage'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 Arbor Commercial Mortgage participating interests that share in a percentage of the cash flows of the underlying properties. Upon contribution of the structured finance assets, Arbor Commercial Mortgage 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. Arbor Commercial Mortgage agreed that if any portion of the outstanding amount of any of these four contributed assets (which had an aggregate balance of $48.3 million as of December 31, 2003) is not paid at the its maturity or repurchase date, Arbor Commercial Mortgage will pay 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 Arbor Commercial Mortgage due to the realization of any profits on its retained interests associated with any other of the four contributed assets. However, Arbor Commercial Mortgage 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 is in default.

As of December 31, 2003, we had a $13.75 million first mortgage loan and a $1.2 million second mortgage loan, each of which bear interest at a variable rate of one month LIBOR plus 4.25% and mature in March 2004, outstanding 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 and that institution. Interest income recorded from these loans was approximately $402,000 for the period ended December 31, 2003.

In addition, Arbor Commercial Mortgage received a brokerage fee for services rendered in arranging a loan facility for a borrower. Arbor Commercial Mortgage credited $146,918 of this brokerage fee to us, representing our proportionate share of the loan facility provided to the borrower. This amount is included in other assets at December 31, 2003, and was received in January 2004.

Related Party Formation Transactions

Arbor Commercial Mortgage 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. Arbor Commercial Mortgage has agreed to indemnify us and our operating partnership against breaches of those representations and warranties. In connection with its asset contribution Arbor Commercial Mortgage has also agreed to guaranty a portion of the principal amount of four contributed assets in which Arbor Commercial Mortgage has retained a participating interest or a joint venture interest in the borrower.

In exchange for Arbor Commercial Mortgage's asset contribution, we issued to Arbor Commercial Mortgage approximately 3.1 million operating partnership units, each of which Arbor Commercial Mortgage 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 Arbor Commercial Mortgage 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 Arbor Commercial Mortgage 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 Arbor Commercial Mortgage 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 Arbor Commercial Mortgage 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 Arbor Commercial Mortgage asset contribution and the related formation transactions, Arbor Commercial Mortgage 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, Arbor Commercial Mortgage has approximately 28% of the voting power of our outstanding stock (without giving effect to the exercise of Arbor Commercial Mortgage warrants for additional operating partnership units). Upon consummation of the concurrent offerings, Arbor will hold a % limited partnership interest in our operating partnership and % of the voting power of our outstanding stock.

We and our operating partnership have entered into a management agreement with Arbor Commercial Mortgage pursuant to which Arbor Commercial Mortgage 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 Arbor Commercial Mortgage a portion of the origination fees that we receive on loans we originate with Arbor Commercial Mortgage pursuant to this agreement.

Under the terms of the management agreement, Arbor Commercial Mortgage is also required to provide us with a right of first refusal with respect to all structured finance transactions identified by Arbor Commercial Mortgage or its affiliates. We have agreed not to pursue, and to allow Arbor Commercial Mortgage 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 Arbor Commercial Mortgage pursuant to which our asset management group provides asset management services to Arbor Commercial Mortgage. 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.

Recent Developments

Since December 31, 2003, we have made six new loans totaling $141.9 million. These new loans are summarized in the table below.

Name	Loan Amount (thousands)	Amount Funded (thousands)	Interest Rate	Initial Term	Loan Type	LIBOR Floor
1775 Broadway	$ 35,000	$ 35,000	LIBOR + 5.75%	24 months	Mezzanine	1.75%
Volvo Building	5,100	4,640	LIBOR + 6.00	36 months	Bridge	1.50
260 Madison Ave.	30,000	30,000	LIBOR + 7.50	24 months	Mezzanine	n/a
60 Spring Street	47,900	40,384	LIBOR + 5.00	12 months	Bridge	1.10
60 Spring Street	11,400	10,316	LIBOR + 6.00	12 months	Mezzanine	1.10
Harrington Farms	12,500	12,500	LIBOR + 5.50	24 months	Junior participating interest	n/a
	$141,900	$132,840				

Since December 31, 2003, the following loans totaling $17.9 million were repaid in full, including all current and deferred interest, prior to their scheduled maturity:

- ***Dylan Hotel*** — This bridge loan had an outstanding balance of $14.0 million when it was repaid. At that time, we held a balance of $11.9 million on the loan and a third party held a $2.1 million participation interest in the loan.

- ***60 Spring Street*** — This $6.0 million mezzanine loan was originated by us in December 2003. In connection with our refinancing of this mezzanine loan and the existing first mortgage lien, this loan was repaid in full and replaced with the $47.9 million bridge loan and the $11.4 million mezzanine loan described above.

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 and interest rate risk.

Real Estate Risk

Commercial mortgage assets may be viewed as exposing an investor to greater risk of loss that 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 and 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 assets and our borrowing costs. Most of our assets 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 assets and liabilities as of December 31, 2003, and assuming the balances of these assets and liabilities remain unchanged for the subsequent months, a 1% increase in LIBOR would not materially change our annual net income and cash flows because the principal amount of assets that would be subject to an interest rate adjustment under this scenario are less than the amount of liabilities that would subject to an interest rate adjustment. A 1% decrease in LIBOR would increase our annual net income and cash flows by approximately $1.1 million because the principal amount of assets 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 and the percentage of borrowings as a percent of assets increases, a change 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.

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 prospectus 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 prospectus.

Overview and Basis of Presentation

We are 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, discounted mortgage notes and other real estate related assets. We conduct substantially all of our operations through our operating partnership, Arbor Realty Limited Partnership. We intend to elect to be treated as a REIT for federal income tax purposes.

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 related to its structured finance business became our employees. These assets, liabilities and employees represented a substantial portion of Arbor Commercial Mortgage'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 Arbor Commercial Mortgage is not a separate legal entity and the assets and liabilities associated with Arbor Commercial Mortgage's structured finance business are components of a larger business. We obtained the information in the consolidated financial statements included elsewhere in this prospectus from Arbor Commercial Mortgage's consolidated historical accounting records.

The structured finance business of Arbor Commercial Mortgage never operated as a separate business segment or division 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 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 Arbor Commercial Mortgage. All of these allocations are based on assumptions that management believes are reasonable under the circumstances.

The consolidated financial statements in this prospectus 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 Arbor Commercial Mortgage.

Since the structured finance business never operated as a separate business division or segment of Arbor Commercial Mortgage, the consolidated financial statements included in this prospectus 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 the registration statement of which this prospectus is part 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 prospectus 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%, 90% and 94% of total revenue for the years ended December 31, 2002, December 31, 2001 and December 31, 2000, 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%, 10% and 6% of total revenue for the years ended December 31, 2002, December 31, 2001 and December 31, 2000, 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 Arbor Commercial Mortgage’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 prospectus. 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 prospectus 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 Arbor Commercial Mortgage 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.

Arbor Commercial Mortgage's structured finance business historically invested in preferred equity interests that allowed Arbor Commercial Mortgage 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 Arbor Commercial Mortgage'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/ (Decrease)	
	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 $206,000, 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 $554,000 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 $350,000 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 $337,000 and (c) increased accelerated amortization of revenue of $390,000 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 $97,000, 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 $341,000, 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 $90,000, or 24%, to $458,000 for the six months ended June 30, 2003 from $368,000 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 $60,000 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,		Increase/ (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 $900,000 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,		Increase/ (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 $135,000, 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 $578,000, 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 $215,000 and decreased funds received on paid off loans of $361,000.

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 $443,000, 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 $71,000, or 8%, to $911,000 for 2002 from $840,000 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 $240,000 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 $276,000 decrease in income from the sale of foreclosed loans.

Income from equity affiliates decreased $770,000, or 55%, to $632,000 for 2002 from $1.4 million for 2001. This decrease was primarily attributable to a $868,000 decrease in net income from joint venture interests due to dissolutions of joint ventures in 2001 and 2002, partially offset by a $97,000 increase in net income from other joint venture interest.

Years Ended December 31, 2001 and 2000

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

	Year Ended December 31,		Increase/ (Decrease)	
	2001	2000	Amount	Percent
Interest income	$14,667,916	$10,707,551	$3,960,365	37%
Other income	1,668,215	652,970	1,015,245	155
Total revenue	$16,336,131	$11,360,521	$4,975,610	44%

Interest income increased $4.0 million, or 37%, to $14.7 million for 2001 from $10.7 million for 2000. This increase was primarily due to a 81% increase in the weighted average balance of loans and investment partially offset by a 24% decrease in the weighted average effective interest rate of loans and investments primarily due to a decline in market interest rates.

Other income increased $1.0 million, or 155%, to $1.7 million for 2001 from $653,000 for 2000. This increase was primarily attributable to increased funds received on paid off loans of $900,000.

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

	Year Ended December 31,		Increase/ (Decrease)	
	2001	2000	Amount	Percent
Interest expense	$ 7,029,374	$5,518,463	$1,510,911	27%
Employee compensation and benefits	2,888,603	3,026,324	(137,721)	(5)
Selling and administrative	839,823	442,487	397,336	90
Provision for loan losses	240,000	240,000	—	—
Total direct operating expenses	$10,997,800	$9,227,274	$1,770,526	19%

Interest expense increased $1.5 million, or 27%, to $7.0 million for 2001 from $5.5 million for 2000. This increase was primarily attributable to a 73% increase in the weighted average borrowings partially offset by a 26% decrease in the weighted average effective financing rate primarily due to a decline in market interest rates.

Employee compensation and benefits decreased $138,000, or 5%, to $2.9 million for 2001 from $3.0 million for 2000. This decrease was primarily attributable to the streamlining of certain levels of management of Arbor Commercial Mortgage's structured finance business.

Selling and administrative expenses increased $397,000, or 90%, to $840,000 in 2001 from $442,000 for 2000. 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 was stable from 2000 to 2001.

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)	
	2001	2000	Amount	Percent
Gain on sale of loans and real estate	$3,226,648	$1,880,825	$ 1,345,823	72%
Income from equity affiliates	$1,403,014	$5,028,835	$(3,625,821)	(72)%

Gain on sale of loans and real estate increased $1.3 million, or 72%, to $3.2 million for 2001 from $1.9 million for 2000. This increase was primarily attributable to a $2.2 million gain from the sale of property from a joint venture interest partially offset by reduced gains on sales of foreclosed loans of $800,000.

Income from equity affiliates decreased $3.6 million, or 72%, to $1.4 million for 2001 from $5.0 million for 2000. This decrease was due to (a) a $3.3 million decrease in net income from a joint venture interest due to the dissolution of the joint venture interest in 2001 and (b) a $353,000 decrease 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 Arbor Commercial Mortgage. 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 financing totaled $120.2 million. In exchange for a commensurate equity ownership in our operating subsidiary, Arbor Commercial Mortgage 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 Arbor Commercial Mortgage's structured finance business as of June 30, 2003. In addition, certain employees of Arbor Commercial Mortgage were transferred to us.

We are externally managed and advised by Arbor Commercial Mortgage and pay Arbor Commercial Mortgage a management fee in accordance with the terms of the management agreement. Arbor Commercial Mortgage 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 Arbor Commercial Mortgage'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 $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 Arbor Commercial Mortgage under terms of the management agreement. Similarly, selling and administrative expense would have decreased 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 management agreement, we will pay Arbor Commercial Mortgage 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 25% of the amount that our funds from operations, adjusted for certain gains and losses, divided by contributed capital, exceeds 9.5% per annum or the Ten Year U.S. Treasury Rate plus 3.5%, whichever is greater.

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 Arbor Commercial Mortgage'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 Arbor Commercial Mortgage 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 Arbor Commercial Mortgage during the entire period. Had these proceeds been available to the structured finance business of Arbor Commercial Mortgage 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 Arbor Commercial Mortgage include the results of operations of the structured finance business segment of Arbor Commercial Mortgage 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 Arbor Commercial Mortgage 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, Arbor Commercial Mortgage 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 Arbor Commercial Mortgage, 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 Arbor Commercial Mortgage 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, 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 the structured finance business of Arbor Commercial Mortgage.

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 Arbor Commercial Mortgage 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 Arbor Commercial Mortgage have been conducted by us. Therefore, a description of the liquidity and capital resources of the structured finance business of Arbor Commercial Mortgage is not presented. A description of our liquidity and capital resources is presented in the section of this prospectus 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

Arbor Commercial Mortgage 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, Arbor Commercial Mortgage’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, Arbor Commercial Mortgage 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 Arbor Commercial Mortgage and 50% by the key principal of the joint venture. The loan requires monthly interest payments based on LIBOR and matures in May 2006. Arbor Commercial Mortgage 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 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 Arbor Commercial Mortgage 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 $217,000, $449,000 and $148,000 for the periods ended June 30, 2003, December 31, 2002 and 2001, respectively.

In June 2003, Arbor Commercial Mortgage invested approximately $818,000 in exchange for a 12.5% non-controlling interest in two joint ventures, which were formed to acquire, develop and/or sell real estate assets. This investment is accounted for under the equity method. In June, 2003, Arbor Commercial Mortgage 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 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

Arbor Commercial Mortgage 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. Arbor Commercial Mortgage has agreed to indemnify us and our operating partnership against breaches of those representations and warranties.

In exchange for Arbor Commercial Mortgage's asset contribution, we issued to Arbor Commercial Mortgage approximately 3.1 million operating partnership units, each of which Arbor Commercial Mortgage 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 Arbor Commercial Mortgage 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 Arbor Commercial Mortgage 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 Arbor Commercial Mortgage 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 Arbor Commercial Mortgage 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 Arbor Commercial Mortgage's asset contribution and the related formation transactions, Arbor Commercial Mortgage 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, Arbor Commercial Mortgage has approximately 28% of the voting power of our outstanding stock (without giving effect to the exercise of Arbor Commercial Mortgage's warrants for additional operating partnership units).

We and our operating partnership have entered into a management agreement with Arbor Commercial Mortgage pursuant to which Arbor Commercial Mortgage has agreed to provide us with structured finance investment opportunities and loan servicing as well as other services necessary to operate our business. Arbor Commercial Mortgage is also required to provide us with a right of first refusal with respect to all structured finance identified by Arbor Commercial Mortgage or its affiliates. We have agreed not to pursue, and to allow Arbor Commercial Mortgage 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 — Liquidity and Capital Resources — Contractual Commitments," we have agreed to pay our manager an annual base management fee and incentive compensation each fiscal quarter and share with Arbor Commercial Mortgage a portion of the origination fees that we receive on loans we originate with Arbor Commercial Mortgage pursuant to this agreement.

We and our operating partnership have also entered into a services agreement with Arbor Commercial Mortgage pursuant to which our asset management group provides asset management services to Arbor Commercial Mortgage. 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 Arbor Commercial Mortgage have been conducted by us. Therefore, quantitative and qualitative disclosures about market risk relating to the structured finance business of Arbor Commercial Mortgage is not presented. A description of market risks relating to our business is presented in the section of this prospectus entitled "Management's Discussion & Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries — Quantitative and Qualitative Disclosures about Market Risk."

ARBOR REALTY TRUST, INC.

We are a specialized real estate finance company investing in real estate-related bridge and mezzanine loans, preferred equity and, in limited cases, discounted mortgage notes and other real estate related assets, which we collectively refer to as structured finance investments. Our 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 commenced operations in July 2003 and conduct substantially all of our operations through our operating partnership, Arbor Realty Limited Partnership. We intend to elect to be taxed as a real estate investment trust, or REIT, under the Internal Revenue Code and generally will not be subject to federal taxes on our income to the extent we distribute our income to our stockholders and maintain our qualification as a REIT.

On July 1, 2003, Arbor Commercial Mortgage contributed the majority of its structured finance portfolio to our operating partnership. These initial assets, consisting of 12 bridge loans, five mezzanine loans, five preferred equity investments and two other real estate related investments, were transferred at book value, which, at June 30, 2003, represented $213.1 million in assets financed by $169.2 million borrowed under Arbor Commercial Mortgage's credit facilities, giving effect to notes payable equal to the financing amount available for each contributed investment under Arbor Commercial Mortgage's credit facilities, and supported by $43.9 million in equity.

We are externally managed and advised by Arbor Commercial Mortgage. Our manager is a national commercial real estate finance company operating through 15 regional offices in the United States, specializing in debt and equity financing for multi-family and commercial real estate. We believe Arbor Commercial Mortgage's experience and reputation positions it to originate attractive investment opportunities for us. Our management agreement with Arbor Commercial Mortgage was developed to capitalize on synergies with Arbor Commercial Mortgage'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. Arbor Commercial Mortgage has granted us a right of first refusal to pursue all structured finance investment opportunities identified by Arbor Commercial Mortgage. Arbor Commercial Mortgage will continue to provide 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 portfolio currently contains loans and investments that we originated and loans and investments that we purchased from third parties or from affiliates.

We have a strong senior management team with significant industry experience. Mr. Ivan Kaufman, the chief executive officer of Arbor Commercial Mortgage, and Mr. Frederick Herbst, the chief financial officer of Arbor Commercial Mortgage, also serve as our chief executive officer and chief financial officer, respectively. Mr. Fred Weber, the head of the structured finance group at Arbor Commercial Mortgage since 1999, is our executive vice president of structured finance. Mr. Daniel M. Palmier, the head of Arbor Commercial Mortgage's asset management group since 1997, is our executive vice president of asset management, and the eight additional employees who comprised the asset management group of Arbor Commercial Mortgage have also joined us. In October 2003, we hired Mr. John C. Kovarik as our chief credit officer. Messrs. Kaufman, Weber, Palmier and Kovarik serve as members of our credit committee, which has the authority to decide whether we will invest in an individual loan or security originated by Arbor Commercial Mortgage.

We believe the asset management group's involvement in our credit underwriting process helps to mitigate investment risk after the closing of a transaction. The asset management group is integrated into the underwriting and structuring process for all transactions in order to enhance the credit quality of our originations before a transaction closes. We believe that after the closing of structured finance transactions, the asset management group's experience in managing complex restructurings, refinancings and asset dispositions will help to improve the credit quality and yield on managed investments.

In connection with Arbor Commercial Mortgage's contribution of the initial assets, Arbor Commercial Mortgage arranged for us to have substantially similar credit facilities as those used by Arbor Commercial Mortgage to finance these assets. In exchange for Arbor Commercial Mortgage's asset contribution, we issued to Arbor Commercial Mortgage approximately 3.1 million operating partnership units, each of which Arbor Commercial Mortgage 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 Arbor Commercial Mortgage to purchase one additional operating partnership unit at an initial exercise price of $15. The operating partnership units and warrants for additional operating partnership units issued to Arbor Commercial Mortgage 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. Each of the approximately 3.1 million operating partnership units received by Arbor Commercial Mortgage 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. See "Description of Stock — Special Voting Preferred Stock."

Industry Overview

Multi-family and commercial real estate encompasses a wide spectrum of assets including multi-family, office, industrial, retail and hospitality properties. We believe the financing of multi-family and commercial real estate offers significant growth opportunities that demand customized financing solutions.

- Consolidation in the financial services industry has reduced the number of companies providing multi-family and commercial real estate financing products.

- We believe this consolidation has led to a trend among remaining institutions to focus on larger, more standardized transactions.

- The growth of a market for securitized commercial real estate pools has provided a new source of financing for real estate assets.

We believe we have the necessary levels of capital and financial flexibility to compete effectively in today's rapidly changing market. Our borrowers, who in the past relied on banks and life insurance companies as their primary source for commercial real estate financing, have benefited from our flexible underwriting standards. This flexibility has created significant demand for our bridge, mezzanine and other forms of innovative financing.

Our Business Strategy

We capitalize on this demand by investing in a diversified portfolio of structured finance assets in the multi-family and commercial real estate market. Our principal business objectives are to invest in bridge and mezzanine loans, preferred equity and other real estate related assets and actively manage this 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. Historically, Arbor Commercial Mortgage has attempted to provide customized loan structures and other financing alternatives to fit the characteristics and purpose of each individual borrower and its financing requirements and we employ a similar strategy.

Focus on a Niche Market in Smaller Loan Balances. We focus on loans with principal amounts under $20 million, which many larger lending firms do not target. We can afford to invest the time and effort required to close loans with smaller principal amounts 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 $20 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 Arbor Commercial Mortgage's reputation in the commercial real estate finance industry. Arbor Commercial Mortgage has relationships with over 125 distinct borrowers nationwide. Since Arbor Commercial Mortgage's originators offer Arbor Commercial Mortgage's senior mortgage loans as well as our structured finance products, we are able to benefit from Arbor Commercial Mortgage's 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 Arbor Commercial Mortgage 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 Arbor Commercial Mortgage could previously offer.

Leverage the Experience of Executive Officers and Employees of Arbor Commercial Mortgage and Us. Our executive officers and employees, and those of Arbor Commercial Mortgage, 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. Additionally, our executive officers have prior experience in managing and operating a public company, the predecessor company to Arbor Commercial Mortgage.

Our Investment Guidelines

Our board of directors has adopted general guidelines for our investments and borrowings to the effect that:

- no investment will be made that would cause us to fail to qualify as a REIT;
- no investment will be made that would cause us to be regulated as an investment company under the Investment Company Act;
- no more than 25% of our equity, determined as of the date of such investment, will be invested in any single asset;
- our leverage will generally not exceed 80% of the value of our assets, in the aggregate; and
- we will not co-invest with our manager or any of its affiliates unless (i) our co-investment is otherwise in accordance with these guidelines and (ii) the terms of such co-investment are at least as favorable to us as to our manager or such affiliate (as applicable) making such co-investment.

Our manager is required to seek the approval of a majority of the independent members of our board of directors before we engage in a material transaction with another entity managed by our manager. These investment guidelines may be changed by our board of directors without the approval of our stockholders.

Our Investment Strategy

We actively pursue lending and investment opportunities with property owners and developers who need interim financing until permanent financing can be obtained. We will initially target transactions under $20 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.

We target borrowers with reputations for enhancing value, but whose options are limited by conventional bank financing and can benefit from the sophisticated financing products we offer. Loan structures vary as they are customized to fit the characteristics and purpose of the financing. Our structured finance assets are underwritten in accordance with guidelines designed to evaluate the borrower and its ability to satisfy the repayment conditions of the loan, including an analysis of the various repayment strategies available to the investment. In certain instances, especially in our mezzanine and preferred equity investments, we may underwrite investments based on a stabilized value of the underlying property.

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 $1 million to $25 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 5.00% 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 which are subordinate to a conventional first mortgage loan and senior to the borrower's equity in a transaction. Our 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 $5 million to $30 million and have terms of up to seven years. Historically, interest rates have ranged from 4.00% to 7.00% 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 intend to hold our mezzanine loans through our operating partnership or subsidiaries that are pass-through entities for tax purposes. However, we may hold some of our mezzanine loans in a taxable subsidiary corporation if necessary for REIT or other tax compliance.

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 will generally 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.

We borrow against or leverage our investments to the extent consistent with our investment guidelines in order to increase the size of our portfolio and potential returns to our stockholders. We are currently in negotiations with the providers of the credit facilities to provide similar credit facilities and to increase the amounts available under these credit facilities, but there can be no assurance that we will be able to obtain additional financing. We may also sell participating interests in our investments.

In order to meet the REIT qualification requirements, or to avert the imposition of a 100% tax that applies to certain gains derived by a REIT from dealer property or inventory, we may hold some of our assets through taxable subsidiary corporations. See “Federal Income Tax Considerations — Taxation of Arbor Realty.”

Our Real Estate Assets

We own a diversified portfolio of structured finance investments consisting principally of bridge and mezzanine loans as well as preferred equity investments. $151.9 million of $213.1 million of the loan or investment balance of the initial assets contributed by Arbor Commercial Mortgage are currently outstanding and constitute the majority of our existing portfolio. Since the commencement of our operations in July 2003, we have originated structured finance loans and investments and purchased additional loans and investments from Arbor Commercial Mortgage.

At December 31, 2003, we had 33 loans and investments in our portfolio, totaling $324 million. These loans and investments were for 22 multi-family properties, three hotels, two commercial properties, two office properties, two retail properties, one co-op and one residential property. There are no loans that are non-performing within the portfolio. We continue to actively manage every single loan in the portfolio and believe that our strict underwriting and active asset management enable us to maintain the credit quality of our portfolio.

The yield for the period ended December 31, 2003 was 7.68% on average assets of $255 million. This yield is computed by dividing the interest income earned for the period ended December 31, 2003 by the average assets during the period ended December 31, 2003 and annualizing the result. Our cost of funds for the period ended December 31, 2003 was 3.53% on average borrowings of $93 million. This cost of funds is computed by dividing the interest expense incurred during the period ended December 31, 2003 by the average borrowing during the period ended December 31, 2003 and annualizing the results. Our average equity (average assets less average borrowings) invested for the period ended December 31, 2003 was $162 million, resulting in average leverage for the period ended December 31, 2003 of 36%. The net interest income earned for the period ended December 31, 2003 yielded a 10.27% annualized return on the average equity invested during the period ended December 31, 2003. This yield is computed by dividing the net interest (interest income less interest expense) earned during the period ended December 31, 2003 by the average equity (computed as average assets minus average borrowings) invested during the period ended December 31, 2003 and annualizing the results. As we add more loans and investments to our portfolio, we anticipate our leverage ratio, levered return and level of earnings will increase over time. Our business plan contemplates an increase of our leverage ratio to 65% to 70% over time. 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.

The table on the following page lists the principal terms of each of our bridge and mezzanine loans, preferred equity investments and other real estate-related assets and the financing relating to each individual investment, each as of December 31, 2003.

OUR REAL ESTATE ASSETS

As of December 31, 2003

Property Information			Investment Information					Funding Information				
Name	**Type**	**Location**	**Balance(1)**	**Origination Date**	**Maturity Date**	**Interest Pay Rate Index**	**Interest Rate(2)**	**Balance**	**Interest Rate Index**	**Interest Rate(3)**	**Profit Share(3)**	**Advance Rate**
Bridge Loans:												
80 Evergreen Ave	Commercial	Brooklyn, NY	$ 4,800,000	10/2003	10/2006	Libor + 4.75%	5.92%	—	—	—	No	—
130 West 30th	Multifamily	New York, NY	$ 16,000,000	9/2001	5/2006	Libor + 2.25%	3.42%	$13,600,000	Libor + 2.00%	2.62%	Yes	85.00%
1025 5th Avenue	Co-op	New York, NY	$ 1,100,000	10/2002	10/2004	10.00%	10.00%	—	—	—	No	—
Concord and Henry	Multifamily	Massachusetts	$ 2,899,875	4/2003	4/2004	Libor + 5.50% Floor 7.00%	7.00%	$ 2,319,900	Libor + 2.00%	3.12%	No	80.00%
Dylan Hotel(4)	Hotel	New York, NY	$ 14,000,000	3/2003	3/2005	Libor + 5.00% Floor 6.50%	6.50%	$ 9,800,000	Libor + 2.00%	3.12%	No	70.00%
Less: Participation			$ (2,100,000)			50% of net spread less 50% asset mgmt fee	(3.00%)			(1.575%)		
			$ 11,900,000				3.50%			1.575%		
Fairfax Gardens Apts	Multifamily	Baltimore, MD	$ 6,825,340	12/2003	12/2005	Libor + 6.50% Floor 8.00%	8.00%	—	—	—	No	—
Gainesville Outlet Mall	Retail	Gainesville, TX	$ 4,800,000	12/2003	3/2004	Libor + 8.50% Floor 9.50%	9.67%	—	—	—	No	—
Grand Plaza	Multifamily	Las Vegas, Nevada	$ 25,140,436	11/2002	12/2004	Libor + 3.00% Floor 5.25%	5.25%	$20,161,344	Libor + 2.00%	3.12%	No	80.19%
Indiana Portfolio(5)	Multifamily	Indiana	$ 14,809,391	2/2003	3/2004	Libor + 4.25%	5.42%	$10,400,000	Libor + 2.25%	3.37%	No	70.23%
Lakeshore Club Apts — A	Multifamily	Tampa, Florida	$ 21,500,000	10/2003	10/2005	Libor + 3.50% Floor 5.00%	5.00%	—	Libor + 2.00%	—	Yes	—
Lakeshore Club Apts — B	Multifamily	Tampa, Florida	$ 5,500,000	10/2003	10/2005	Libor + 6.50% Floor 8.50%	8.50%	—	Libor + 2.00%	—	Yes	—
Palmetto Villas Apts	Multifamily	Ontario, California	$ 9,130,000	5/2003	4/2005	Libor + 4.00% Floor 5.50%	5.50%	$ 7,304,000	Libor + 2.00%	3.12%	No	80.00%
Partners Portfolio —	Multifamily	Baltimore, Maryland										
Tranche A			$ 14,200,000	4/2003	5/2006	Libor + 3.50% Floor 5.00%	5.00%	$11,983,726	Libor + 2.00%	3.12%	Yes	84.39%
Tranche B			$ 4,725,569	4/2003	5/2006	Libor + 4.50% (Year 1); Libor + 6.50% (Year 2); Libor + 7.50% (Year 3) Floor 2.00%	6.50%	—	Libor + 3.00% Libor Floor 2.00% Floor 2.00%	—	Yes	—
Tropical Gardens	Multifamily	Lauderdale Lakes, FL	$ 8,800,000	12/2002	12/2004	Libor + 3.50% Floor 5.50%	5.50%	$ 7,040,000	Libor + 2.00%	3.12%	No	80.00%
Walbridge Terrace	Multifamily	San Francisco, California	$ 6,200,000	7/2003	7/2004	Libor + 4.50% Floor 6.00%	6.00%	$ 5,270,000	Libor + 2.00%	3.12%	No	85.00%
Westbury Square	Residential	Westbury, NY	$ 450,000	12/2003	7/2004	Libor + 8.00% Floor 12.00%	12.00%	—	—	—	No	—
Bridge Loans — Total			$158,780,611				5.43%	$87,878,970		2.90%		

(1) The balances in this column represent the net balance of each loan and investment which equals the outstanding principal amount of the loan or investment, excluding the unearned portions of revenue, at December 31, 2003.

(2) Interest rate excludes deferred interest component. See asset descriptions for terms.

(3) Interest rate does not include deferred interest component due to profit sharing arrangements pursuant to our warehouse facility. See "Management's Discussion & Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries — Liquidity and Capital Resources" for a description of these profit sharing arrangements.

(4) This loan, together with all interest due, was repaid in full in January 2004.

(5) This loan consists of a $13.75 million first mortgage loan and a $1.2 million second mortgage loan, of which $1,059,391 was funded as of December 31, 2003.

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OUR REAL ESTATE ASSETS

As of December 31, 2003

Property Information			Investment Information				
Name	Type	Location	Balance(1)	Origination Date	Maturity Date	Interest Pay Rate Index	Interest Rate(2)
Mezzanine Loans:							
60 Spring St(4)	Multifamily	New York, NY	$ 5,250,000	12/2003	12/2005	Libor + 6.00% Floor 1.17%	7.17%
130 West 30th St	Multifamily	New York, NY	$ 5,131,490	6/2003	5/2006	Libor + 7.00% Floor 10.00%	10.00%
333 E. 34th Street	Multifamily	New York, NY	$ 10,000,000	1/2002	2/2005	Libor + 3.00% Floor: 8.00%	8.00%
450 West 33rd St	Office	New York, NY	$ 30,000,000	12/2003	1/2006	12.30% Fixed	12.29%
450 West 33rd St	Office	New York, NY	$ 15,000,000	12/2003	1/2006	Libor + 11.50% Floor 3.00%	13.00%
930 Flushing Ave.	Commercial	Brooklyn, NY	$ 3,500,000	6/2003	6/2006	Libor + 3.50% Floor 5.00%	5.00%
The Crossings	Multifamily	Glassboro, New Jersey	$ 2,000,000	6/2003	5/2006	Libor + 7.00% Floor 10.00%	10.00%
James Hotel	Hotel	Scottsdale, Arizona	$ 6,640,000	8/2003	8/2006	Libor + 7.00% Floor 9.00% Cap 10.00%	9.00%
Maple Leaf	Multifamily	New Orleans, LA	$ 2,300,000	11/2003	11/2006	Libor + 7.00%	10.00%
Prime Portfolio	Retail	Various	$ 35,000,000	12/2003	1/2006	Libor + 8.50% Floor 9.50%	9.67%
Schron B	Multifamily	New Jersey	$ 3,000,000	7/2003	4/2005	Libor + 5.25% Floor 6.75%	6.75%
SMC Portfolio	Multifamily	Baltimore, Maryland	$ 11,520,000	9/2003	9/2005	Libor + 5.50% (Year 1); Libor + 6.50% (Year 2); Libor + 7.50% (Year 3) Libor Floor 2.00%	7.50%
Mezzanine Loans — Total			**$129,341,490**				**9.91%**

[Additional columns below]

[Continued from above table, first column(s) repeated]

Pr	Funding Information				
Name	Balance	Interest Rate Index	Interest Rate(3)	Profit Share(3)	Advance Rate
Mezzanine Loans:					
60 Spring St(4)	—	—	—	No	—
130 West 30th St	—	Libor + 2.25% Floor 1.75%	—	Yes	—
333 E. 34th Street	—	Libor + 4.00% Libor 2.00%	—	Yes	—
450 West 33rd St	$18,866,670	Libor + 2.60%	3.74%	No	62.89%
450 West 33rd St	$ 9,433,330	Libor + 2.60%	3.74%	No	62.89%
930 Flushing Ave.	—	—	—	No	—
The Crossings	$ 1,700,000	Libor + 3.00% Libor Floor 2.00%	5.00%	Yes	85.00%
James Hotel	—	—	—	No	—
Maple Leaf	—	—	—	No	—
Prime Portfolio	$21,875,000	Libor + 2.50%	3.67%	No	62.50%
Schron B	—	Libor + 4.00% Libor Floor 2.00%	—	No	—
SMC Portfolio	$ 9,216,000	Libor + 2.75% Libor Floor 1.75%	4.50%	Yes	80.00%
Mezzanine Loans — Total	**$61,091,000**		**3.86%**		

(1) The balances in this column represent the net balance of each loan and investment which equals the outstanding principal amount of the loan or investment, excluding the unearned portions of revenue, at December 31, 2003.

(2) Interest rate excludes deferred interest component. See asset descriptions for terms.

(3) Interest rate does not include deferred interest component due to profit sharing arrangements pursuant to our warehouse facility. See "Management's Discussion & Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries — Liquidity and Capital Resources" for a description of these profit sharing arrangements.

(4) This loan, together with all interest due, was repaid in full in January 2004.

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OUR REAL ESTATE ASSETS

As of December 31, 2003

Name	Type (Property Information)	Location (Property Information)	Balance(1) (Investment Information)	Origination Date	Maturity Date	Interest Pay Rate Index	Interest Rate(2)
Preferred Equity:							
CDS Portfolio	Multifamily	Texas	$ 4,253,742	12/1998	1/2005	Libor + 4.50% Floor 9.56%	9.56%
Dutch Village	Multifamily	Baltimore, Maryland	$ 7,074,431	6/2003	11/2006	Libor + 4.50% (Year 1); Libor + 6.50% (Year 2); Libor + 7.50% (Year 3) Libor Floor 2.00%	6.50%
Schron A	Multifamily	New Jersey	$ 19,300,000	6/2003	4/2005	Libor + 5.25% Floor 6.75%	6.75%
Villages at Gateway	Multifamily	Denver, Colorado	$ 2,800,000	2/2002	3/2004	Libor + 6.00% Floor 10.00%	10.00%
Preferred Equity — Total			**$ 33,428,173**				**7.33%**
Other Investments:							
Albion	Hotel	Miami, Florida	$ 1,967,867	3/2001	8/2023	7.39% Fixed	7.39%
Other — Total			**$ 1,967,867**				**7.39%**
Total			**$323,518,140**				**7.49%**

[Additional columns below]

[Continued from above table, first column(s) repeated]

Name	Balance (Funding Information)	Interest Rate Index	Interest Rate(3)	Profit Share(3)	Advance Rate
Preferred Equity:					
CDS Portfolio	$ 3,190,306	Libor + 2.75%	3.87%	No	75.00%
Dutch Village	$ 4,686,671	Libor + 3.00% Libor Floor 2.00%	5.00%	Yes	66.25%
Schron A	$ 13,907,297	Libor + 2.75%	3.87%	No	72.06%
Villages at Gateway	$ 1,774,227	Libor + 2.25%	3.37%	Yes	63.37%
Preferred Equity — Total	$ 23,558,501		4.06%		
Other Investments:					
Albion	—	—	—	No	—
Other — Total	$ 0		0.00%		
Total	$172,528,471		3.40%		

(1) The balances in this column represent the net balance of each loan and investment which equals the outstanding principal amount of the loan or investment, excluding the unearned portions of revenue, at December 31, 2003.

(2) Interest rate excludes deferred interest component. See asset descriptions for terms.

(3) Interest rate does not include deferred interest component due to profit sharing arrangements pursuant to our warehouse facility. See "Management's Discussion & Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries — Liquidity and Capital Resources" for a description of these profit sharing arrangements.

A description of the terms and characteristics of each of the investments listed in the table above follows.

Bridge Loans

80 Evergreen. We originated this $4.8 million bridge loan to Stanev Associates, LLC in October 2003. This loan bears a variable rate of interest on one-month LIBOR plus 4.75% and will mature in October 2006. Interest payments are due monthly, and the principal balance is due in full upon maturity. The loan is secured by a first mortgage lien on the property. The borrower has the option to extend the term of the loan for two 12-month periods with no change in the rate of interest. This bridge loan refinanced the $2.5 million mezzanine loan made by Arbor Commercial Mortgage and purchased by us in August 2003 and a $1.6 million first mortgage lien held by a third party lender relating to 80 Evergreen. The borrower used the $2.5 million mezzanine loan proceeds to acquire and make repairs to a 77,680 square foot warehouse/ industrial space located in Brooklyn, New York.

In August 2003, we also purchased a 12.5% preferred interest in two joint ventures which own and operate 80 Evergreen and 930 Flushing Avenue for approximately $818,000. The borrower under the 80 Evergreen bridge loan is an affiliate of the joint ventures.

130 West 30th Street. Arbor Commercial Mortgage originated this $16.0 million bridge loan to 130 West 30th, LLC in September 2001 and contributed it to us upon the consummation of the private placement. The borrower used the proceeds to acquire an 18 story office building in New York, New York. It is currently undergoing construction to convert the building from office to residential condominiums using the Arbor Commercial Mortgage mezzanine loan proceeds purchased by us on July 1, 2003.

The loan bears interest at a variable rate of LIBOR plus 2.25%. In connection with Arbor Commercial Mortgage providing the borrower with additional mezzanine financing in June 2003, the maturity date of this bridge loan was extended to May 31, 2006. Interest payments are due monthly, and the principal balance is due in full upon maturity. The loan is secured by a first mortgage lien on the property. There is a limited guarantee on the loan of 50% by Mr. Ivan Kaufman and 50% by the key principal of the borrower.

The borrower has the option to extend the term of the loan for one 12-month period with no change in the rate of interest.

Arbor Commercial Mortgage holds a 50% membership interest in 130 West 30th, LLC which it did not contribute to us in connection with the asset contribution. This interest is used to partially fund a loan loss guarantee by Arbor Commercial Mortgage. See "— Participating Interests in Our Investments Retained by Arbor Commercial Mortgage" and "Management's Discussion & Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries — Related Party Transactions — Related Party Loans" elsewhere in this prospectus.

1025 5th Avenue. Arbor Commercial Mortgage originated this $1.1 million bridge loan in October 2002 and contributed it to us upon the consummation of the private placement. The borrowers used the loan proceeds to renovate an apartment in a cooperative building in New York, New York.

This loan matures in October 2004 and has an interest rate of 10.00%. Interest payments are due monthly and the principal balance is due in full upon maturity. The loan is secured by a pledge of 225 cooperative shares owned by the lessee of the apartment and the apartment lease.

Concord Street & Henry Terrace. Arbor Commercial Mortgage originated this $5.0 million bridge loan to Henry Terrace, LLC and 100 Concord St., LLC in April 2003 and contributed it to us upon the consummation of the private placement. The borrowers used the proceeds to refinance an existing loan on a 74 unit multi-family residential property in Worcester, Massachusetts and a commercial property in Framingham, Massachusetts.

The loan bears interest at a variable rate of LIBOR plus 5.50%, with a 7.00% floor, and matures in April 2004. Interest payments are due monthly, and the principal balance is due in full upon maturity. In addition, upon maturity or prepayment of the loan, the borrower must pay deferred interest equal to the greater of 2.00% of the original principal balance or the amount necessary to generate an aggregate annual internal rate of return of 14.00%. The loan is secured by a first mortgage lien on the properties.

The borrower has the option to extend the term of the loan for one 6-month period with no change in the rate of interest if the loan has an outstanding principal balance of not more than $1.5 million at the time the extension is requested. In December 2003 the borrower made a principal payment of $2.1 million, reducing the outstanding loan balance to $2.9 million.

Dylan Hotel. Arbor Commercial Mortgage refinanced a discounted loan between Debis Financial Services Inc. and Grand Palace Hotel at the Park LLC with a $14.0 million bridge loan to Grand Palace Hotel at the Park LLC in March 2003. Arbor Commercial Mortgage contributed this bridge loan to us upon the consummation of the private placement. The borrower is the owner of a 107 room hotel in New York, New York.

The loan bears interest at a variable rate of one month LIBOR plus 5.00% with a floor of 6.50%, and matures in March 2005. Interest payments are due monthly, and the principal balance is due in full upon maturity.

In addition, upon maturity of the loan, the borrower must pay deferred interest of 1.00% on the principal repaid. The loan is secured by a first mortgage lien on the property.

The borrower has the option to extend the term of the loan for one 12-month period for additional interest of 1.00% on the outstanding principal balance upon such extension, but only if the borrower is in compliance with certain financial covenants.

Arbor Commercial Mortgage entered into a participation agreement with BD Hotels, LLC pursuant to which BD Hotels funded $2.1 million of the equity in the loan and is entitled to receive 50% of the net interest received by Arbor Commercial Mortgage, less a 0.50% management fee payable to Arbor Commercial Mortgage.

In January 2004, this bridge loan, together with all interest due, was repaid in full.

Fairfax Gardens. We originated this $6.8 million bridge loan to Greens at Forest Park, LLC in December 2003. The borrower used the proceeds to acquire a 191-unit, garden-style apartment complex located in Baltimore, Maryland and fund a $3.9 million capital improvement program.

The loan bears interest at a variable rate of LIBOR plus 6.50%, with a floor of 8.0%, and matures in December 2005. The borrower paid a 1.25% origination fee on the date the loan closed. In accordance with our management agreement with Arbor Commercial Mortgage, the first 1.00% was paid to Arbor Commercial Mortgage and we retained the remaining 0.25%. Interest payments are due monthly and the principal balance is due in full upon maturity. In addition, upon maturity or prepayment of the loan, the borrower must pay deferred interest equal to 1.25% of the principal being paid. The loan is secured by a first mortgage lien on the property.

The borrower has the option to extend the term of the loan for one 12-month period for additional interest of 1.00% of the original principal balance.

Gainesville Outlet Mall. We originated this $4.8 million bridge loan to Gainesville Outlet Mall, LLC in December 2003. The borrower used the proceeds to acquire the Gainesville Outlet Mall, which is a 315,660 square foot factory outlet center located in Gainesville, Texas.

The loan bears interest at a variable rate of LIBOR plus 8.50% with a floor of 9.50%, with a term of 30 days. The borrower paid a 2.00% origination fee, net of a broker fee, on the date the loan closed. In accordance with our management agreement with Arbor Commercial Mortgage, the first 1.00% of the origination fee was paid to Arbor Commercial Mortgage and we retained the remaining 1.00%. Interest payments are due monthly and the principal balance is due in full upon maturity. The loan is secured by a first mortgage lien on the property.

The borrower has executed his option to extend the term of the loan for two 30-day periods at a rate of 12% with a new maturity date of March 2004.

Grand Plaza. Arbor Commercial Mortgage originated a $25.5 million bridge loan to Grand Plaza Limited Partnership in November 2002 and contributed it to us upon the consummation of the private placement. The borrower used the loan proceeds to refinance outstanding debt on a 676 unit multifamily residential property located in Las Vegas, Nevada. The current outstanding balance on the loan is approximately $25.1 million.

The loan bears interest at a variable rate of LIBOR plus 3.00%, with a floor of 5.25%, and matures in December 2004. Interest and principal payments are due monthly. The loan is secured by a first mortgage lien on the property.

The borrower has the option to extend the term of the loan for one 12-month period with no change in the rate of interest.

Indiana Portfolio. In February 2003, Arbor Commercial Mortgage originated a $13.75 million bridge loan to NSH Affordable Housing of Indiana, Inc., a not-for-profit corporation that holds and manages investment property from the endowment of the North Shore Hebrew Academy High School. Two of our directors, Mr. Kaufman and Dr. Helmreich, are members of the board of trustees of North Shore Hebrew Academy High School and NSH Affordable Housing of Indiana, Inc. Arbor Commercial Mortgage contributed this loan to us upon the consummation of the private placement. The borrower used the loan proceeds to acquire four affordable housing multi family properties located in Evansville, Indianapolis and Marion, Indiana. See “Management’s Discussion & Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries — Related Party Transactions — Related Party Loans.”

The loan bears interest at a variable rate of one month LIBOR plus 4.25% and matures in March 2004. Interest payments are due monthly, and the principal balance is due in full upon maturity. The loan is secured by a first mortgage lien on the properties.

Arbor Commercial Mortgage also originated a separate $1.2 million bridge loan to the same borrower to fund renovations on the four properties described above and contributed it to us upon consummation of this offering. This loan also bears interest at a variable rate of one month LIBOR plus 4.25% and matures in March 2004. Interest payments on amounts drawn on the loan are due monthly, and the principal balance is due in full upon maturity. As of December 31, 2003, the outstanding principal balance was approximately $1.1 million. This loan is secured by a second mortgage lien on the properties.

Lakeshore Club Apartments. We originated this $27 million bridge loan to Egypt Lake LP in October 2003. The borrower used the proceeds to retire an existing first mortgage lien and our prior mezzanine loan to the borrower. The property recently underwent a $6.6 million renovation.

The loan is tranched into two separate notes with different interest rates. Note A, in the amount of $21.5 million, bears interest at a variable rate of LIBOR plus 3.50%, with a floor of 5.00%. Note B, in the amount of $5.5 million, bears interest at a variable rate of LIBOR plus 6.50%, with a floor of 8.50%. The loan matures in October 2005. The borrower paid a 1.50% origination fee on both Note A and Note B on the date the loan closed. In accordance with our management agreement with Arbor Commercial Mortgage, the first 1.00% was paid to Arbor Commercial Mortgage and we retained the remaining 0.50% with respect to each tranche. Interest payments are due monthly and the principal balance is due in full upon maturity. In addition, upon maturity or prepayment of the loan, the borrower must pay deferred interest of 1.50% of the principal amount being paid. The loan is secured by a first mortgage lien, a pledge of 100% of the ownership interest in the borrowing entity, as well as a first loss payment guaranty from the key principals of $5.5 million.

The borrower has the option to extend the term of the loan for one 12-month period at the initial interest rate for additional interest of 1% of the outstanding balance of each loan at the time of extension.

Palmetto Villas Apartments. Arbor Commercial Mortgage originated this $9.1 million bridge loan to Palmetto Villas Investors, LLC in May 2003 and contributed it to us upon the consummation of the private placement. The borrower used the loan proceeds to acquire and renovate a 134-unit multi-family residential property in Ontario, California.

The loan bears interest at a variable rate of one month LIBOR plus 4.00%, with a floor of 5.50%, and matures in April 2005. Interest payments are due monthly, and the principal balance is due in full upon maturity. In addition, upon maturity or prepayment of the loan, the borrower must pay deferred interest of 1.00% on the principal repaid. The loan is secured by a first mortgage lien on the property.

The borrower has the option to extend the term of the loan for two 6-month periods. If the loan is extended the interest rate will increase to one month LIBOR plus 4.50%, with a floor of 6.00%. Additionally, the borrower must pay additional interest of 0.50% on the outstanding principal balance upon each such extension.

Partners Portfolio. Arbor Commercial Mortgage originated this $18.9 million bridge loan to SRH/ LA Chesapeake Apartments L.P., SRH/ LA Nottingham, LLC, SRH/ LA Hunter, LLC and SRH/ LA Melvin, LLC in April 2003. Arbor Commercial Mortgage contributed this loan to us upon the consummation of the private placement. The borrowers used the loan proceeds to acquire an 834-unit multi-family residential portfolio, consisting of five properties in Baltimore, Maryland and fund a $2.4 million capital improvement program.

The loan has two tranches with different interest rates. Tranche A of the loan, in the amount of $14.2 million, bears interest at a variable rate of LIBOR plus 3.50% with a floor of 5.00%. Tranche B of the loan, in the amount of $4.7 million, bears interest at a variable rate of (1) in the first year, LIBOR plus 4.50%, with a floor of 6.50%, (2) in the second year, LIBOR plus 6.50%, with a floor of 8.50% and (3) in the third year, LIBOR plus 7.50%, with a floor of 9.50%. The loan matures in May 2006. Interest payments are due monthly, and the principal balance is due in full upon maturity. In addition, upon maturity or prepayment of the loan, the borrowers must pay deferred interest of 1.00% of the principal repaid. The loan is secured by a first mortgage lien on three of the properties and a pledge of all the limited partnership interests in the owners of two other properties.

Tropical Gardens Apartments. Arbor Commercial Mortgage originated this $8.8 million bridge loan to NHP Tropical Gardens Limited Partnership in December 2002 and contributed it to us upon the consummation of the private placement. The borrower used the loan proceeds to acquire and renovate a 245 unit multi family residential property located in Lauderdale Lakes, Florida.

The loan bears interest at a variable rate of LIBOR plus 3.50%, with a floor of 5.50%, and matures in December 2004. Interest payments are due monthly, and the principal balance is due in full upon maturity. In addition, upon maturity or prepayment of the loan, the borrower must pay deferred interest of 1.00% on the principal repaid. The loan is secured by a first mortgage lien on the property.

Walbridge Terrace. We originated this $6.2 million bridge loan to Silver Lake Apartments, LLC in July 2003. The borrower used the loan proceeds to repay the existing construction loan and complete construction of this 40-unit senior housing property with 6,500 square feet of ground floor retail space in San Francisco, California.

The loan bears a variable rate of interest of LIBOR plus 4.50%, with a 6.00% floor, and matures in July 2004. The borrower paid a 2.00% origination fee on the date the loan closed. In accordance with our management agreement with Arbor Commercial Mortgage, the first 1.00% was paid to Arbor Commercial Mortgage and we retained the remaining 1.00%. The borrower must pay 1.00% of deferred interest upon the prepayment or maturity of the loan unless the loan is refinanced with permanent financing from Arbor Commercial Mortgage in which case, the deferred interest will be waived, and Arbor Commercial Mortgage will reduce the management fee payable by us to Arbor Commercial Mortgage by an amount equal to 50% of the deferred interest waived. The loan is secured by a first mortgage lien on the property and has been unconditionally guaranteed by key principals of the borrower.

Westbury Square. We originated this $450,000 bridge loan to Westbury Square, LLC in December 2003. The borrower used the proceeds to acquire this 0.45-acre parcel of developed land, in Westbury, New York. The borrower will be seeking construction financing in order to develop loft style Townhouse units on the land.

The loan bears interest at a variable rate of LIBOR plus 8.00%, with a floor of 12.00%, and matures in July 2004. The borrower paid a 2.00% origination fee on the date the loan closed. In accordance with our management agreement with Arbor Commercial Mortgage, the first 1.00% was paid to Arbor Commercial Mortgage and we retained the remaining 1.00%. Interest payments are due monthly and the principal balance is due in full upon maturity. The loan is secured by an absolute and unconditional personal guaranty by certain affiliates of the borrower.

Mezzanine Loans

60 Spring St. We originated this $6.0 million mezzanine loan to Spring-Lafayette, LLC in December 2003. Of the $6.0 million loan, $5.25 million was funded to the borrower and $750,000 funded an interest reserve. The borrower used the proceeds to provide additional funding needed to acquire and convert a 13-story office building in New York, New York into 40 residential condominium units and approximately 10,000 square feet of ground floor retail space.

The loan bears interest at a variable rate of LIBOR plus 6.00%, with a LIBOR floor of 1.17% and matures in December 2005. The borrower paid a 2.00% origination fee on the date the loan closed. In accordance with our management agreement with Arbor Commercial Mortgage, the first 1.00% was paid to Arbor Commercial Mortgage and we retained the remaining 1.00%. Interest payments are due monthly and the principal balance is due in full upon maturity. In addition, upon maturity or prepayment of the loan, the borrower must pay deferred interest equal to the amount necessary to generate a monthly compounded internal rate of return of 12.00%. The loan is secured by a pledge of 100% of the ownership interests in the mortgage borrower, as well as a full recourse guarantee executed by one of the key principals. The loan is subordinate to a first mortgage lien of approximately $45.6 held by a third party lender.

In connection with our refinancing of this mezzanine loan and the first mortgage lien in February 2004, this loan was repaid in full and replaced with a $47.9 million bridge loan and a $11.4 million mezzanine loan made by us. The bridge loan bears a variable rate of interest of LIBOR plus 5.00% with a LIBOR floor of 1.10% and the mezzanine loan bears a variable rate of interest of LIBOR plus 6.00% with a LIBOR floor of 1.10%. The loans mature in January 2005.

The borrower has the option to extend the term of the loan for one 12-month period for additional interest of 1.00%.

130 West 30th Street. In connection with Arbor Commercial Mortgage's refinancing of the $16.0 million bridge loan to 130 West 30th, LLC in June 2003, Arbor Commercial Mortgage agreed to provide the borrower with additional mezzanine financing in the amount of up to $8.0 million. This mezzanine loan matures in May 2006. We purchased this mezzanine loan from Arbor Commercial Mortgage on July 1, 2003 with a portion of the net proceeds from the private placement.

The additional financing will allow for the renovation/ conversion of the office building to residential condominiums. The estimated cost of the construction project is $14.0 million, and it is estimated that the project will be completed by the end of the first quarter of 2004. Additional funds to complete construction are anticipated to come from the sales of the condominium units, cash flow from the operations and partner equity contributions.

The mezzanine financing bears interest at a variable rate of one-month LIBOR plus 7.00%, with a floor of 10.00%, and will be funded in two equal installments of $4.0 million. The two key principals will each contribute $1.0 million before either component is funded. The funding will be drawn down as construction progresses. The interest on the first component, which has been funded, will be earned on the full $4.0 million, while the interest on the second component, of which $1.1 million was funded as of

December 31, 2003 and is earning interest, will be earned as the $4.0 million is drawn down. The unfunded portion of the second component will remain unfunded unless a specified number of condominiums have been sold. The additional financing is secured by a second mortgage lien on the property.

333 East 34th Street. Arbor Commercial Mortgage originated this $10.0 million mezzanine loan to 333 East 34th, LLC in January 2002 and contributed it to us upon consummation of the private placement. The borrower used the loan proceeds to acquire and renovate a multi family residential building located in New York. The borrower has converted the New York rental property into condominiums.

The loan bears a variable rate of interest of one month LIBOR plus 5.00%, with a 12.50% floor, and was scheduled to mature in February 2004. The borrower has executed its option to extend the loan for a 12-month period. The borrower has the option to remit interest at a rate of LIBOR plus 3.00% with an 8.00% floor and to accrue the differential interest owed. Interest payments are due monthly, and the principal balance is due in full upon maturity. The loan is secured by a pledge of 85% of the membership interests in the borrower, and two affiliates of the borrower have personally guaranteed the loan for up to $1.0 million. The loan is subordinate to a $31.0 million first mortgage lien held by a third party lender.

The borrower has the option to extend the term of the loan for two additional 12-month periods, the first of which requires a payment of additional interest of $300,000.

Arbor Commercial Mortgage holds a 15% membership interest in 333 East 34th, LLC, the borrower under the mezzanine loan which it did not contribute to us in connection with the asset contribution. This interest is used to partially fund a loan loss guarantee by Arbor Commercial Mortgage. See "— Participating Interests in Our Investments Retained by Arbor Commercial Mortgage" below.

450 West 33rd Street. In December 2003, we originated a $30 million mezzanine loan to 450 Partners Mezz III LLC, the owner of 100% of the membership interests in 450 Partners Mezz II LLC, and a $15 million mezzanine loan to 450 Partners Mezz II LLC, the owner of 100% of the membership interests in 450 Partners Mezz I LLC. The borrowers used the proceeds from the loans to recapitalize and refinance a 1.7 million-square-foot office building in Manhattan.

The $30 million loan bears interest at a fixed rate of 12.3% and matures in January 2006. The borrower has three options to extend the maturity date of the loan for one year each; no extension fee is required for the exercise of such options. The borrower paid a 1.00% origination fee on the date the loan closed and, in accordance with our management agreement with Arbor Commercial Mortgage, this amount was paid to Arbor Commercial Mortgage. Interest payments are due monthly; beginning in 2005, principal payments are due monthly based on an 18-year amortization schedule; and the remaining principal balance is due in full upon maturity. The mezzanine loan is secured by a pledge, by 450 Partners Mezz III LLC, of 100% of the membership interests in 450 Partners Mezz II LLC. This loan is subordinate to a $200 million first mortgage and a $70 million mezzanine loan with third party lenders and to our $15 million mezzanine loan described below.

The $15 million loan bears interest at a variable rate of LIBOR plus 14.92%, with a LIBOR floor of 1.50%**,** and matures in January 2006. The borrower has three options to extend the maturity date of the loan for one year each; each of such extensions is conditioned on the achievement of a certain net operating income for the property, and each of the second and third extension options requires the payment of a fee of .0125% of the outstanding balance of the loan. The borrower paid a 1.00% origination fee on the date the loan closed and, in accordance with our management agreement, this amount was paid to Arbor Commercial Mortgage. We are required to pay BN Holdings LLC, an unrelated party, as a structuring fee, the portion of each monthly interest payment which results from a LIBOR spread in excess of 11.50%. Interest payments are due monthly, and the principal balance is due in full upon maturity. The mezzanine loan is secured by a pledge, by 450 Partners of Mezz II LLC, of 100% membership interests in 450 Partners Mezz I LLC. This loan is subordinate to a $200 million first mortgage and a $70 million mezzanine loan with third party lenders.

At the closing of the loans, we made a $3 million investment in the entity that controls the borrowers and arranged for an additional $12 million of equity to be invested by third parties. In exchange for making the loans and arranging the equity investments, we received an approximately 24% profits participation in the property and we were designated the co-managing member of the entity that controls the property. We sold our $3 million equity investment in January 2004 and retained our profits participation and position as co-managing member.

930 Flushing Avenue. Arbor Commercial Mortgage originated this $3.5 million mezzanine loan in June 2003. We purchased this loan from Arbor Commercial Mortgage effective August 1, 2003. The borrower used the loan proceeds to acquire the 300,000 square foot warehouse/industrial space located in Brooklyn, New York.

The loan bears a variable rate of interest of one-month LIBOR plus 8.00% with a floor of 9.50% and matures in June 2006. The borrower pays interest at a rate of LIBOR plus 3.50% with a 5.00% floor and the difference accrues interest at the higher rate payable at maturity. Interest payments are due monthly, and the principal balance is due in full upon maturity. The loan is secured by a junior lien on the property. The loan is subordinate to a $7.7 million first mortgage lien held by a third party lender.

The borrower has the option to extend the term of the loan for two 12-month periods for additional interest of 3.00% of the outstanding principal balance upon exercise of each extension.

In August 2003, we also purchased a 12.5% preferred interest in two joint ventures which own and operate 80 Evergreen and 930 Flushing Avenue for approximately $818,000. The borrower under the 930 Flushing Avenue mezzanine loan is an affiliate of the joint ventures.

The Crossings Apartments. Arbor Commercial Mortgage originated this $2.0 million mezzanine loan to Audubon Glassboro, LLC in June 2003. We purchased this loan from Arbor Commercial Mortgage on July 1, 2003 with a portion of the net proceeds from the private placement. The borrowers used the loan proceeds to acquire and renovate a 328-unit multi-family apartment complex located in Glassboro, Gloucester County, New Jersey.

The loan bears interest at a variable rate of LIBOR plus 7.00%, with a 10.00% floor, and matures in May 2006. Interest payments are due monthly, and the unpaid principal balance is due in full upon maturity. In addition, upon maturity or prepayment of the loan, the borrower must pay deferred interest equal to the amount necessary to provide an aggregate annual internal rate of return of 13.00%. The loan is secured by a pledge of membership interest in the borrowing entity. The loan is subordinate to a $11.0 million first mortgage loan on the property held by a third party lender.

The borrower has the option to extend the term of the loan for two 12-month periods upon payment of additional interest of $30,000, for the first extension, and $50,000, for the second extension, if the borrower is in compliance with certain financial covenants.

James Hotel. We originated this $6.6 million mezzanine loan to James Hotel Scottsdale, LLC in August 2003. The borrower is currently using the loan proceeds to renovate this recently acquired 206-room independent hotel located in Scottsdale, Arizona.

The loan bears a variable rate of interest of LIBOR plus 7.00%, with a 9.00% floor and a 10.00% cap. The loan matures in August 2006. The borrower paid a 2.00% origination fee on the date the loan closed. In accordance with our management agreement with Arbor Commercial Mortgage, the first 1.00% was paid to Arbor Commercial Mortgage and we retained the remaining 1.00%. Interest payments are due monthly, and the principal balance is due in full upon maturity. In addition, upon maturity of the loan, the borrower must pay deferred interest in an amount necessary to generate an aggregate annual internal rate of return of 18.00%. The loan is secured by a pledge of the membership interests in the borrower. The loan is subordinate to a $5.0 million first mortgage lien and a $5.0 million second mortgage lien held by a third party lender.

The borrower has the option to extend the term of the loan for one additional 12-month period for additional interest payment of 1.00% on the outstanding principal balance upon such extension.

Maple Leaf. We originated this $2.3 million mezzanine loan to Audubon-Algiers Partners, LLC in November 2003. A portion of the proceeds of the loan were used to make a capital contribution into Algiers Holdings II, LLC, which then made a capital contribution to Algiers Holdings I, LLC, which then made a capital contribution to Audubon-Algiers, LLC. $130,000 of the proceeds were placed in an interest reserve, and the borrower used the remainder of the proceeds to acquire a multi-family residential building located in New Orleans, Louisiana and fund a $1.3 million capital improvement plan.

The loan bears a variable rate of interest of one-month LIBOR plus 7.0%. The loan matures in November 2006. The borrower paid a 3.00% origination fee on the date the loan closed. In accordance with our management agreement with Arbor Commercial Mortgage, the first 1.00% was paid to Arbor Commercial Mortgage and we retained the remaining 2.00%. Interest payments are due monthly, and the principal balance is due in full upon maturity. Upon maturity of the loan, the borrower must pay deferred interest in an amount sufficient to provide Arbor with an annualized rate of return of 13%, exclusive of additional interest for extensions. The loan is secured by a pledge of the membership interest in Audubon-Algiers Holdings II, LLC. The loan is subordinate to an approximately $6.57 million first mortgage lien held by a third party lender.

The borrower has the option to extend the term of the loan for three 12-month periods at the initial interest rate provided the borrower pays us additional interest of $34,500 for the exercise of each of the options.

Prime Retail Portfolio. We originated this $35 million mezzanine loan to Prime Outlets Member LLC, or POM in December 2003. We also acquired, for total consideration of $2.1 million, indirect equity interests in Prime Outlets Acquisition Company LLC, or POAC, the indirect parent of POM, in December 2003. The borrower used the proceeds of the loan to purchase Prime Retail, Inc. In 2003, POAC merged with Prime Retail Inc. and is the surviving entity of the merger. As successor to Prime Retail Inc., POAC now owns and/or controls 36 factory outlet centers and one office building totaling approximately 10.2 million square feet of gross leasable area in 26 states. Prior to its merger with POAC, Prime Retail Inc. was a publicly held REIT engaged in the ownership, leasing, marketing and management of outlet centers throughout the United States and Puerto Rico. POM, through subsidiary entities, owns ten of POAC’s outlet properties.

This mezzanine loan bears interest at a variable rate of LIBOR plus 8.50%, with a floor of 9.50%, and matures in January 2006. The borrower paid a 1.67% origination fee, net of a broker fee paid to one of the partners of the borrower. In accordance with our management agreement with Arbor Commercial Mortgage, the first 1.00% of the origination fee was paid to Arbor Commercial Mortgage, and we retained the remaining 0.67%. Interest payments on the loan are due monthly, and the principal balance is amortized over 12.5 years. The borrower has the option to extend the term of the loan for three 12-month periods. In order to exercise the second and third extension options, the borrower must pay additional interest of 0.5% of the then outstanding principal balance.

The loan is secured by a pledge of the equity interests in the entities that directly or indirectly own the ten underlying properties. In addition, the loan is guaranteed by POAC and another affiliate, and the guarantors’ obligations are secured by pledges of their interests in POM and in certain other assets, including two other properties that are currently being marketed for sale.

We have the following indirect equity interests in POAC:

- a 7.5% capital interest,
- a 25% carried profits interest after specified returns have been achieved, and
- a preferred distribution in an amount that, when added to the interest paid by POM on the mezzanine loan, results in a combined return of 12.5%.

The interests described in second and third bullet points above are held through AR Prime Holdings LLC, in which we hold two-thirds of the ownership interests and third parties own the remaining one-third.

Schron Portfolio B. Arbor Commercial Mortgage originated this $8.5 million mezzanine loan to Central Jersey Sub VI LLC and Central Jersey Sub VII LLC in July 2000 and contributed it to us upon consummation of the private placement. The borrower used the loan proceeds to acquire and renovate two multi family properties in New Jersey. The loan has been modified twice, first in October 2002 in connection with the repayment of $5.5 million of outstanding principal, and in May 2003 to extend the term.

The loan bears interest at a variable rate of LIBOR plus 5.25%, with a floor of 6.75%, and matures in April 2005. Interest payments are due monthly, and the principal balance is due in full upon maturity. The loan is secured by the ownership interests of certain affiliates of the borrower. The loan is subordinate to a first mortgage lien with a current unpaid principal balance of approximately $14.0 million.

The borrower has the option to extend the term of the loan for three one-year periods with no change in the rate of interest. Upon maturity or prepayment of the loan, the borrower must pay deferred interest in an amount sufficient to provide the lender with an annualized internal rate of return of 14.0%.

Arbor Commercial Mortgage holds an 18% interest in the properties which it did not contribute to us in connection with the asset contribution. This interest is used to partially fund a loan loss guarantee by Arbor Commercial Mortgage. See "— Participating Interests in Our Investments Retained by Arbor Commercial Mortgage" below.

SMC Portfolio. We originated this $11.5 million mezzanine loan to SRH/LA Baltimore Properties L.P. in September 2003. The borrowers used the loan proceeds to refinance the existing mezzanine debt and make certain renovations to this 1,951-unit multi-family residential portfolio consisting of five properties in Baltimore, Maryland.

The loan bears interest at a variable rate of (1) in the first year, LIBOR plus 5.50%, with a floor of 7.50% (2) in the second year, LIBOR plus 6.50%, with a floor of 8.50% and (3) in the extension periods, if applicable, LIBOR plus 7.50%, with a floor of 9.50%. The loan matures in September 2005. Interest payments are due monthly, and the principal balance is due in full upon maturity. In addition, upon maturity or prepayment of the loan, the borrower must pay deferred interest of 1.0% of the principal repaid. The loan is secured by a pledge of the membership interests in the property owners as well as excess cash flow from another eight properties with first mortgage financing through Arbor Commercial Mortgage's Fannie Mae DUS lending program. The loan is subordinate to $59.2 million of first mortgage liens held by third party lenders.

The borrowers have the option to extend the term of the loan for three 12-month periods, the first of which requires a payment of additional interest of 1% of the outstanding principal balance upon such extension.

Preferred Equity Investments

CDS Texas Portfolio. Arbor Commercial Mortgage made this preferred equity investment in December 1998 and contributed it to us upon consummation of the private placement. This investment facilitated the acquisition and renovation of a nine property portfolio (Sea Breeze, Autumn Manor, Malibu, Lake Crest, Santa Fe, La Mesa, Trevino, Apache Arms and Harvard) containing 1,347 units located in Austin and El Paso, Texas. The investment was originally funded in the amount of $11.3 million. Subsequently, the property owner refinanced Lake Crest, Trevino, and Apache Arms and sold Harvard to reduce the principal balance. As of December 31, 2003, the outstanding equity balance was $4.3 million. The properties are also security to debt amounting to $12.8 million held by third party lenders.

The investment bears a preferred return at a variable rate of six month LIBOR plus 4.50%, with a floor of 9.56%. The investment is required to be repurchased in January 2005 and upon such repurchase, the holder of the preferred interest is entitled to receive an additional preferred return of 2.00%.

Dutch Village Preferred Equity. Arbor Commercial Mortgage made this $7.1 million preferred equity investment in Dutch Village, LLC. We purchased this investment from Arbor Commercial Mortgage on July 1, 2003 with a portion of the net proceeds from the private placement.

The investment proceeds were used to acquire a 544-unit multi-family apartment complex located in Baltimore, Maryland. The investment provides a variable rate return of (1) LIBOR plus 4.50%, with a floor of 6.50%, in the first year, (2) LIBOR plus 6.50%, with a floor of 8.50%, in the second year and (3) LIBOR plus 7.50%, with a floor of 9.50%, in the third year. Although the companies in which we have made this investment are required to redeem the preferred equity investment in November 2006, this date may be extended by the company upon the exercise of three one-year extension periods. Upon the redemption, either on the redemption date or prior to such date, of the preferred equity investment, the company is required to pay an additional return of 1.00% of the purchase price of the redeemed preferred interest. The property is subject to a first mortgage lien with a current unpaid principal balance of $11.7 million held by a third party lender.

Schron Portfolio A. Arbor Commercial Mortgage made a $19.3 million preferred equity investment in Central Jersey Prime Holdings LLC in June 2003 and contributed it to us upon consummation of the private placement. Arbor Commercial Mortgage had originally invested in May 2000 and also had an investment with a related party which was combined with this investment in May 2003. The investment proceeds were originally used to acquire 13 multi-family properties located throughout the state of New Jersey.

The investment bears a preferred return at a variable rate of LIBOR plus 5.25%, with a floor of 6.75%. The investment must be repurchased in April 2005, although the owner has the option to extend this obligation for three one year periods with no additional return. The properties are subject to a first mortgage lien with a current unpaid principal balance of approximately $189.3 million.

Arbor Commercial Mortgage holds an 18% interest in the properties which it did not transfer to us in connection with the asset contribution. This interest is used to partially fund a loan loss guarantee by Arbor Commercial Mortgage. See "— Participating Interests in Our Investments Retained by Arbor Commercial Mortgage" below.

Villages at Gateway. Arbor Commercial Mortgage made this $4.3 million preferred equity investment in February 2002 in BP-C0 4 Property Associates, LLC, the owner of a 764 unit multi family residential property in Denver, Colorado. Arbor Commercial Mortgage contributed this investment to us upon consummation of the private placement. The owner used the proceeds to acquire and renovate the property. The investment was originally made in two components of $1.5 million and $2.8 million, one of which was repurchased by the owner leaving $2.8 million outstanding.

The investment bears a preferred return at a variable rate of LIBOR plus 6.00%, with a floor of 10.00%. The equity interest must be repurchased by the owner in March 2004, although the owner has the option to extend the repurchase date for one 12-month period at no additional return, followed by two six-month extensions subject to an additional return of $126,000 for the first and $140,000 for the second extension. The property secures a first mortgage lien with a current unpaid principal balance of approximately $23.4 million.

Upon repurchase of the interests, the owner must make an additional distribution, depending upon the year of repurchase: $100,240 during the first year, $300,160 during the second year and $529,760 during the third year and beyond. This additional distribution has not been accrued. Upon receipt of this additional distribution, we will allocate a portion of the amount received to our manager pro rata based on the time frame this investment was held by our manager prior to Arbor Commercial Mortgage's asset contribution.

Other Investments

Albion. Upon consummation of the private placement, Arbor Commercial Mortgage contributed to us the B note of a bifurcated bridge loan that it made to Albion Associates, LTD in August 1998. The borrower used the proceeds of the original loan to acquire and renovate a 96 room hotel in Miami Beach, Florida.

The B note currently has an unpaid balance of approximately $2.0 million, bears interest at a fixed rate of 7.39%, is amortized over 30 years, and matures in September 2023. However, if the loan is not repaid by September 2008, the interest rate is increased by 5.00% and additional provisions regarding the allocations of the borrower’s cash flow become effective. Pursuant to an agreement with the holder of the A note, a third party lender, the B note is subordinate to the A note with respect to the right to receive payments of interest and principal. In addition, following an event of default, the B note holder is subject to a standstill whereby the B note holder cannot exercise its remedies to realize upon the collateral until such time that all interest, principal, fees and costs are fully repaid to the A note holder.

Arbor Commercial Mortgage’s Retained Interests in Our Investments

At the time of Arbor Commercial Mortgage’s origination of three of the assets contributed to us upon consummation of the private placement, the 333 East 34th Street and Schron B mezzanine loans and the Schron A preferred equity investment, each of the property owners related to these investments granted Arbor Commercial Mortgage participating interests that share in a percentage of the cash flows of the underlying properties. At the time Arbor Commercial Mortgage made the 130 West 30th Street bridge loan also contributed to us, Arbor Commercial Mortgage and the borrower also entered into a joint venture in which each partner contributed 50% of the capital and is equally entitled to share in the profits and losses of the venture. Upon contribution of these four investments to us, Arbor Commercial Mortgage retained its participating interests in the three investment and its interest in the joint venture with the borrower under the 130 West 30th Street bridge loan, which we refer to collectively as Arbor Commercial Mortgage’s retained interests. After each of the related investments is repaid or repurchased, Arbor Commercial Mortgage may realize value from the associated retained interests. Arbor Commercial Mortgage has agreed that if any portion of the outstanding amount of any of these four investments is not paid at the investment’s maturity or repurchase date, Arbor Commercial Mortgage will pay to us, subject to the limitation described below, the portion of the unpaid amount of the investments up to the total amount then received by Arbor Commercial Mortgage due to the realization of any retained interests associated with any other of the four investments. However, Arbor Commercial Mortgage will no longer be obligated to make such payments to us when the remaining accumulated principal amount of the four investments, collectively, falls below $5 million and none of the four investments is in default.

The principal amount for each contributed investment protected by this payment obligation is equal to the principal balance of the investment at the time of contribution, plus the investment’s interest expense paid by us in cash since contribution, less the investment income and deferred interest or preferred return received by us in cash since contribution.

Operations

Our Manager’s Investment Services

Under the management agreement, Arbor Commercial Mortgage is responsible for sourcing originations, providing underwriting services and processing approvals for all loans and other investments in our portfolio. Arbor Commercial Mortgage also provides certain administrative loan servicing functions with respect to our loans and investments. We are able to capitalize on Arbor Commercial Mortgage’s well established operations and services in each of these areas as described below.

Origination

Our manager will source the origination of most of our investments. Arbor Commercial Mortgage serves its markets directly through its network of 14 sales offices located in Atlanta, Georgia; Bethesda, Maryland; Bloomfield Hills, Michigan; Boca Raton, Florida; Boston, Massachusetts; Chicago, Illinois; Dallas, Texas; Denver, Colorado; Los Angeles, California; Rochester, New York; San Clement, California; New York, New York; San Francisco, California; and Uniondale, New York. These offices are staffed by approximately

20 loan originators, each of which are employed by our manager, 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 Arbor Commercial Mortgage's marketing effort occurs at the branch level, Arbor Commercial Mortgage also markets its products in industry publications and targeted direct mailings. Our manager markets structured finance products as our product offerings using the same methods.

Once potential borrowers have been identified, Arbor Commercial Mortgage 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 Arbor Commercial Mortgage's financing products and our structured finance products. After identifying a suitable product, Arbor Commercial Mortgage works with the borrower to prepare a loan application. Upon completion by the borrower, the application is forwarded to Arbor Commercial Mortgage's underwriters for due diligence. See "— Underwriting."

Underwriting

Our manager's loan originators work in conjunction with underwriters who are also employed by our manager. These underwriters have the responsibility to perform due diligence on all proposed transactions prior to loan approval and commitment. Upon receipt of each new loan application, the underwriter analyzes it in accordance with the guidelines set forth below in order to determine the loan's conformance and suitability with respect to those guidelines. In general, Arbor Commercial Mortgage'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. Arbor Commercial Mortgage will refine its underwriting criteria based upon actual loan portfolio experience and as market conditions and investor requirements evolve.

Investment Approval Process

Arbor Commercial Mortgage 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 Arbor Commercial Mortgage's seven member credit committee for approval. The presentation 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 presentation 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 Arbor Commercial Mortgage's credit committee, it is presented for approval to our credit committee, which consists of our chief executive officer, our chief credit officer, our executive vice president of structured finance and our executive vice president of asset management. All transactions require the approval of a majority of the members of our credit committee, including the vote of our executive vice president of structured finance.

Following the approval of any such transaction, Arbor Commercial Mortgage'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 independent directors reject the loan and the independent directors allow Arbor Commercial Mortgage or one of its affiliates to pursue it, Arbor Commercial Mortgage will have the opportunity to execute the transaction. See "Our Manager and the Management Agreement — Rights of First Refusal."

Servicing

Arbor Commercial Mortgage services our loans through its internal servicing operations. Our manager currently services an expanding portfolio, consisting of approximately 500 loans with outstanding balances of $2.7 billion through its loan administration department in Buffalo, New York. Arbor Commercial Mortgage'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 Arbor Commercial Mortgage'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. Arbor Commercial Mortgage 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 nine employees that comprised the asset management group at Arbor Commercial Mortgage. The experience and depth of services of the asset management group enabled Arbor Commercial Mortgage to improve the credit quality and yield of its structured finance investments. The asset management group, while at Arbor Commercial Mortgage, was responsible for managing over $2.5 billion in assets consisting of more than 500 real estate related investments for Arbor Commercial Mortgage. The asset management group has successfully managed numerous transactions, including complex restructurings, refinancings and asset dispositions. Through active participation in the financing and structuring strategies of transactions, many of these transactions have directly created value by generating excess cash flow or by enhancing asset values. Other transactions have dramatically reduced Arbor Commercial Mortgage's financial exposure.

The professionals that are part of this group are experienced in managing and servicing many types and classes of assets. Because each property and loan is unique, the asset management group, at the point of origination, customizes an asset management plan with the origination and underwriting teams to track the asset from origination through disposition. The asset management group is committed to effectively communicating to senior management the status of transactions against a pre-established plan, enhancing and preserving capital, as well as avoiding litigation and potential exposure. The asset management group also performs frequent site inspections, conducts meetings with borrowers and evaluates and participates in the budgeting process, financial review of operations and the asset's renovation plans.

Effective asset and portfolio management is essential to maximizing the performance and value of a real estate/ mortgage investment. The asset management group monitors each investment's operating history and assesses potential financial performance to accurately evaluate and ultimately improve operations and financial viability. As an asset and portfolio manager, the asset management group focuses on increasing the productivity of on site property managers and leasing brokers as well. The asset management group also monitors local economic trends, rental and occupancy rates and property competitiveness within its market.

Accurate identification of an investment's current issues and each stockholder's objectives is important in the loan workout and restructuring process. Since existing management may not have the requisite expertise to effectively implement and manage the workout process, 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 identifies and evaluates alternatives in order to maximize the value of an investment.

Our asset management group continues to provide its services to Arbor Commercial Mortgage on a limited basis pursuant to an asset management services agreement between Arbor Commercial Mortgage 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

Capital and Leverage Policies

Currently, we are financing our acquisition of mortgage assets through the proceeds of the private placement and through borrowings under our credit facility. In the future, we will finance our acquisition of mortgage assets 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 of up to 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 interest income (net of credit losses) from our investments. These conditions could occur, for example, due to credit losses or when, due to interest rate fluctuations, interest income on our investments lags behind interest rate increases in our borrowings, which are expected to be predominantly variable rate. See "Risk Factors — Risks Related to our Business."

Liabilities

Our investments are financed primarily at short term borrowing rates through warehouse lines of credit, repurchase agreements, loan agreements, commercial paper borrowings and other credit facilities with institutional lenders. Although we expect that commercial warehouse lines of credit and repurchase agreements 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. We have substantially similar credit facilities as those used by Arbor Commercial Mortgage to finance the initial assets. These credit facilities are further described under "Management's Discussion & Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries — Liquidity and Capital Resources — Sources of Liquidity."

Credit Risk Management

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 minimum debt service coverage standards established by us. Arbor Commercial Mortgage, as our manager, and our chief credit officer review and monitor credit risk and other risks of loss associated with each investment. In addition, Arbor Commercial Mortgage 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.

Asset/ Liability Management

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.

Hedging Activities

Although Arbor Commercial Mortgage has not found it advantageous to enter into hedging transactions in the past, we may enter into such transactions in the future 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 Arbor Commercial Mortgage 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 under current law 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 would be qualifying income for purposes of the REIT 95% gross income test, but not for the 75% gross income test. See “Federal Income Tax Considerations — Taxation of Arbor Realty — Derivatives and Hedging Transactions.” Arbor Commercial Mortgage 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.

Disposition Policies

Although there are no current plans to dispose of properties or other assets within our portfolio, Arbor Commercial Mortgage 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, Arbor Commercial Mortgage 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. Our existing stockholders, including stockholders purchasing in the concurrent offerings, will have no preemptive right to additional shares issued in any offering, and any offering might cause a dilution of investment. See “Description of Stock.” 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 remain a REIT.

Conflicts of Interest Policies

We, our executive officers and Arbor Commercial Mortgage face conflicts of interests because of our relationships with each other. Mr. Ivan Kaufman is our chief executive officer and the chief executive officer of Arbor Commercial Mortgage and serves on our credit committee and Mr. Kaufman and the Kaufman entities own approximately 88% of the outstanding membership interests of Arbor Commercial Mortgage. Mr. Frederick C. Herbst is our chief financial officer and the chief financial officer of Arbor Commercial Mortgage. In addition, Mr. Herbst, two of our executive vice presidents, Mr. Fred Weber and Mr. Daniel M. Palmier, and two of our directors, Mr. Joseph Martello and Mr. Walter Horn, have minority ownership interests in Arbor Commercial Mortgage, and Mr. Martello serves as the trustee of a trust through which Mr. Kaufman owns the majority of his ownership interest in Arbor Commercial Mortgage and co-trustee of another Kaufman entity that owns an equity interest in Arbor Commercial Mortgage.

We have implemented several policies, through board action and through the terms of our constituent documents and of our agreements with Arbor Commercial Mortgage, 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 determinations 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 Arbor Commercial Mortgage, including termination, renewal and enforcement thereof or our participation in any transactions with Arbor Commercial Mortgage 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 Arbor Commercial Mortgage, 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 Arbor Commercial Mortgage under the management agreement.

- Our management agreement with Arbor Commercial Mortgage provides that Arbor Commercial Mortgage may not assign duties under the management agreement, except to certain affiliates of Arbor Commercial Mortgage, 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 Arbor Commercial Mortgage or Mr. Kaufman wish to pursue will be made by a majority of our independent directors.

Other Policies

We intend to operate in a manner that will not subject us to regulation under the Investment Company Act. We may invest in the securities of other issuers for the purpose of exercising control over such issuers and underwrite securities of other issuers, particularly in the course of disposing of their assets.

Future Revisions in Policies and Strategies

Our board of directors has approved the investment guidelines and the operating policies and the strategies set forth in this prospectus. The board of directors has the power to modify or waive these policies and strategies, or amend our agreements with Arbor Commercial Mortgage, 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 our best interest or 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.

Our Operating Partnership

We have organized Arbor Realty Limited Partnership, our operating partnership, as a limited partnership under the Delaware Revised Uniform Limited Partnership Act. We serve as the sole general partner of our operating partnership, and own a 72% partnership interest in our operating partnership represented by operating partnership units that we obtained in exchange for our contribution of the net proceeds of the private placement to our operating partnership. The remaining 28% partnership interest in our operating partnership is owned by Arbor Commercial Mortgage. After giving effect to the concurrent offerings, Arbor Commercial Mortgage will own approximately a % interest in our operating partnership and we will own the remaining %. In exchange for the contribution of the initial assets to our partnership, Arbor Commercial Mortgage received approximately 3.1 million operating partnership units and 629,345 warrants, each of which entitles Arbor Commercial Mortgage to purchase one additional operating partnership unit for two years from the date of issue. Arbor Commercial Mortgage's operating partnership units, including units issued upon exercise of the warrants, each is paired to one share of our special voting preferred stock and is redeemable, at the option of Arbor Commercial Mortgage, for cash, or at our election, our common stock, generally on a one for one basis, at any time after the earlier of (1) two years following the closing of the private placement and (2) six months (180 days) following the effectiveness of the registration statement of which this prospectus is a part. However, Arbor Commercial Mortgage is limited at any given time to redeeming (whether for cash or stock) a number of units such that, if we were to issue shares of our common stock to satisfy the redemption right, Arbor Commercial Mortgage would not exceed the REIT-related ownership limitations contained in our charter.

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 eleven employees, including Mr. Kovarik, our chief credit officer, Mr. Weber, our executive vice president of structured finance, Mr. Palmier, our executive vice president of asset management, and a eight person asset management group. Mr. Kaufman, who serves as our chief executive officer and Mr. Herbst, who serves as our chief financial officer, 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.

Legal Proceedings

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

Mr. Kaufman and entities controlled by Mr. Kaufman, but unrelated to us and our manager, are involved in certain litigation actions in connection with the development and operation by those entities of a gaming casino in northern New York State on behalf of the St. Regis Mohawk Indian Tribe. Mr. Kaufman and those entities have instituted litigation actions to recover damages and monies owed pursuant to contracts and are also vigorously defending various actions subsequently brought by others relating to the gaming casino. Neither we nor our manager is a party to any of these actions and we do not believe these actions will have a material adverse effect on us or our manager.

OUR MANAGER AND THE MANAGEMENT AGREEMENT

Manager

We have chosen to be externally managed by Arbor Commercial Mortgage to take advantage of the existing business relationships, operational and risk management systems, expertise and economies of scale associated with Arbor Commercial Mortgage's current business operations. Arbor Commercial Mortgage is a national commercial real estate finance company, which was founded in 1993 as a subsidiary of Arbor National Holdings, which was primarily an originator and servicer of single-family residential mortgage loans. Our chief executive officer, Mr. Ivan Kaufman, is also Arbor Commercial Mortgage's chief executive officer and controlling equity owner, and was the co-founder, chairman and majority stockholder of Arbor National Holdings. Under Mr. Kaufman's direction, Arbor National Holdings grew to 25 branches in 11 states and funded more than $4 billion in loans in its last full year of operations. Arbor National Holdings became a public company in 1992 and was sold to BankAmerica in 1995. As chairman and chief executive officer of Arbor National Holdings, Mr. Kaufman developed significant experience operating and managing a publicly traded company.

In connection with the sale of Arbor National Holdings, Mr. Kaufman purchased its commercial mortgage lending operations and the rights to the "Arbor Commercial Mortgage" name and retained a significant portion of Arbor National Holdings' senior management team. This senior management team has guided Arbor Commercial Mortgage's growth from a company originally capitalized with approximately $8.0 million, to its equity value, including its partnership interest in Arbor Realty Limited Partnership, of approximately $64 million as of December 31, 2003. Arbor Commercial Mortgage is now a full service provider of financial services to owners and developers of commercial and multi-family real estate properties. Arbor Commercial Mortgage has derived revenue from the origination for sale and servicing of government-sponsored and conduit mortgage loans for commercial and multi-family real estate properties as well as from the origination of structured finance loans and investments. Arbor Commercial Mortgage originated over $800 million in government-sponsored and conduit mortgage loans in 2003. Arbor Commercial Mortgage originated over $115 million in structured finance investments from the beginning of 2003 until the contribution of the majority of its structured finance portfolio to us in July 2003. Arbor Commercial Mortgage is currently servicing a portfolio with a principal balance of $3.0 billion, including loans serviced for Arbor Realty Limited Partnership.

Our primary business will be investing in structured finance loans and investments. We do not intend to originate or service government-sponsored investment grade assets, but we may invest in such assets in the future.

Arbor Commercial Mortgage's executive officers and employees have extensive experience in originating and managing structured commercial real estate investments. The senior management team has an average of over 20 years experience in the financial services industry. Arbor Commercial Mortgage currently has 129 employees spread among its corporate headquarters in Uniondale, New York and 14 offices located throughout the United States.

At December 31, 2003, Mr. Kaufman and the Kaufman entities together beneficially owned approximately 88% of the outstanding membership interests in Arbor Commercial Mortgage. Our chief financial officer, our executive vice presidents of structured finance and asset management and our secretary collectively own an approximately 3.5% membership interest in Arbor Commercial Mortgage. One of our directors, Mr. Martello, owns an approximately 1.3% membership interest in Arbor Commercial Mortgage and serves as the trustee of one of the Kaufman entities that owns a majority of the outstanding membership interests in Arbor Commercial Mortgage and co-trustee of another Kaufman entity that owns an equity interest in Arbor Commercial Mortgage. In exchange for Arbor Commercial Mortgage's contribution of the initial assets and related liabilities to our operating partnership, our operating partnership issued to Arbor Commercial Mortgage approximately 3.1 million units of limited partnership interest and 629,345 warrants to purchase additional units of limited partnership interest at an initial exercise price of $15.00 each, each of which are redeemable, at our election, for cash or one share of our common stock. Each of the approximately 3.1 million operating partnership units received by Arbor

Commercial Mortgage, is paired with one share of our special voting preferred stock that has one vote on all matters submitted to a vote of the stockholders.

We have granted our non-employee executive officers and other employees of our manager who provide services to us awards of 128,500 shares of restricted stock in the aggregate, representing 1.6% of the number of shares of common stock currently outstanding. Our manager and its employees have a total beneficial ownership in our common stock of approximately 33%, taking into account (1) operating partnership units that are held of record by Arbor Commercial Mortgage and that may be acquired by Arbor Commercial Mortgage upon exercise of warrants for additional operating partnership units, (2) the restricted stock awards to certain executive officers and employees of our manager who provide services to us and (3) units purchased in the private placement by such individuals and others affiliated with our manager. Our manager is entitled to receive an annual base management fee from us and may receive incentive compensation based on certain performance criteria and certain other fees.

The executive offices of our manager are located at 333 Earle Ovington Boulevard, Suite 900, Uniondale, New York 11553 and the telephone number of its executive offices is (516) 832-8002.

Officers of Our Manager

The following table sets forth certain information with respect to the executive officers of our manager.

Name	Age	Position with Our Manager
Ivan Kaufman	43	Chief Executive Officer and President
Frederick C. Herbst	46	Chief Financial Officer
Ronald D. Gaither	45	Chief Operating Officer
Walter K. Horn	60	General Counsel
John Caulfield	39	Senior Vice President — Capital Markets

Ivan Kaufman. Mr. Kaufman has served as our chairman of the board, chief executive officer and president since June 2003. Mr. Kaufman has been chief executive officer and president of Arbor Commercial Mortgage since its inception in 1993. In 1983, he co-founded a predecessor of Arbor National Holdings and its residential lending subsidiary, Arbor National Mortgage Inc. which became a public company in 1992 and was sold to BankAmerica in 1995. As chairman and chief executive officer of Arbor National Holdings, Mr. Kaufman developed significant experience operating and managing a publicly traded company. From January 1998 to April 2000, Mr. Kaufman was also the president of Massena Management, LLC, the general partner of President R.C.-St. Regis Management Company, which entered into a management agreement with the St. Regis Mohawk Tribe to finance, construct and manage a casino on the tribe's reservation in Hogansburg, New York. Mr. Kaufman was named regional "Entrepreneur of the Year" by Inc. Magazine for outstanding achievements in financial services in 1990. He was appointed to the National Advisory Board of Fannie Mae in 1994. Mr. Kaufman has also served on Fannie Mae's regional advisory and technology boards, as well as the board of directors of the Empire State Mortgage Bankers Association.

Frederick C. Herbst. Mr. Herbst has served as our chief financial officer since June 2003. Mr. Herbst has been chief financial officer of Arbor Commercial Mortgage since joining the company in November 1999. He is a member of Arbor Commercial Mortgage's executive committee and is responsible for all aspects of Arbor Commercial Mortgage's financial operations, including financial reporting, tax planning, budgeting and the appropriate utilization of Arbor Commercial Mortgage's capital. From October 1998 until he joined Arbor Commercial Mortgage in November 1999, Mr. Herbst was chief financial officer with The Hurst Companies, Inc., where he was responsible for all financial operations, including financial reporting, budgeting and banking relationships. Previously, Mr. Herbst was controller with The Long Island Savings Bank, FSB, vice president finance with Eastern States Bankcard Association and senior manager with Ernst & Young. Mr. Herbst became a certified public accountant in 1983.

Ronald D. Gaither. Mr. Gaither is a member of Arbor Commercial Mortgage's executive committee and is the senior credit officer. Before joining Arbor Commercial Mortgage in March 1999, he was the chief credit officer for PNC Mortgage Corporation in Chicago. During his tenure, he served on the board of directors of PNC Mortgage Reinsurance Corporation. Mr. Gaither also served on the Affordable Housing Advisory Board with Freddie Mac. Mr. Gaither has held senior management positions with Amerin Guaranty, Prudential Home Mortgage and First Union National Bank.

Walter K. Horn. Mr. Horn has served as our secretary, general counsel and one of our directors since his appointment in November 2003. Mr. Horn is also a member of Arbor Commercial Mortgage's executive committee and is responsible for providing all legal services for Arbor Commercial Mortgage. Previously, Mr. Horn was general counsel with Arbor National Holdings from 1991 until its sale in 1995 and has continued in a similar capacity with Arbor Commercial Mortgage. From January 1998 to April 2000, Mr. Horn was the general counsel and secretary of Massena Management, LLC, the general partner of President R.C.-St. Regis Management Company, which entered into a management agreement with the St. Regis Mohawk Tribe to finance, construct and manage a casino on the tribe's reservation in Hogansburg, New York. Mr. Horn's experience also includes serving as general counsel with Resource One, Inc. and Long Island Trust Company.

John Caulfield. Mr. Caulfield is a member of Arbor Commercial Mortgage's executive committee and is responsible for all capital markets activities, including interest rate, risk management and secondary marketing activities for Arbor Commercial Mortgage. Mr. Caulfield's responsibilities include the pricing and selling of Fannie Mae MBS/ DUS and conduit loans and managing Arbor Commercial Mortgage's pipeline to ensure timely underwriting and funding. Before joining Arbor Commercial Mortgage in 1995, Mr. Caulfield was vice president of secondary marketing with Arbor National Holdings.

The Management Agreement

We and our operating partnership entered into a management agreement with Arbor Commercial Mortgage, pursuant to which Arbor Commercial Mortgage has agreed to provide us with structured finance investment opportunities and loan servicing as well as other services necessary to operate our business. We employ only three executive officers and eight individuals who provide asset management services for our portfolio of investments. Our chief executive officer, chief financial officer and our secretary are not our employees. We rely to a significant extent on the facilities and resources of our manager to conduct our operations.

The management agreement requires our manager to manage our business affairs in conformity with the policies and the general investment guidelines that are approved and monitored by our board of directors. Our manager's management is under the direction of our board of directors.

Our directors will periodically review the investment guidelines and our investment portfolio but do not review each proposed investment. In conducting their periodic reviews, the directors rely on information provided to them by our manager. Transactions entered into by our manager may be difficult or impossible to unwind by the time they are reviewed by the directors.

Mr. Kaufman, our chairman and chief executive officer, and Mr. Herbst, our chief financial officer, also serve as chief executive officer and chief financial officer, respectively, of our manager, and we were formed by our manager. As a result, the management agreement was not negotiated at arm's length and its terms, including fees payable, may not be as favorable to us as if the agreement had been negotiated with an unaffiliated third party. In addition, Walter Horn, who is the general counsel of our manager, became our secretary after the private placement.

Management Services

Pursuant to the terms of the management agreement, our manager is required to provide a dedicated management team, including a chief executive officer, chief financial officer and secretary, Messrs. Kaufman, Herbst and Horn, respectively, to provide the management services to us, the members of which team will devote such of their time to the management of us as our independent directors reasonably deem necessary and appropriate, commensurate with our level of activity from time to time.

Our manager is responsible for our day to day operations and performs (or causes to be performed) such services and activities relating to our assets and operations as may be appropriate, including, without limitation, the services described below.

Management Oversight

- Providing executive and administrative personnel, office space and office services required in rendering services to us;
- Administering our day to day operations and functions necessary to our management as may be agreed upon by our manager and the board of directors, including the collection of interest, fee and other income, the payment of our debts and obligations, the payment of dividends or distributions to our stockholders and maintenance of appropriate back office infrastructure to perform such administrative functions;
- Serving as our consultant with respect to the periodic review of the investment criteria and parameters for our investments, borrowings and operations for the approval of our board of directors;
- Counseling us in connection with policy decisions to be made by our board of directors;
- Using commercially reasonable efforts to cause expenses incurred by us or on our behalf to be reasonable and customary and within any budgeted parameters or expense guidelines set by our board of directors from time to time;
- Advising us as to our capital structure and capital raising;
- Coordinating and managing operations of any joint venture or co-investment interests held by us and conducting all matters with the joint venture or co investment partners;
- Communicating on our behalf with the holders of any of our equity or debt securities as required to satisfy the reporting and other requirements of any governmental bodies or agencies or trading markets and to maintain effective relations with such holders;
- Handling and resolving all claims, disputes or controversies (including all litigation, arbitration, settlement or other proceedings or negotiations) in which we may be involved or to which we may be subject arising out of our day to day operations, subject to such limitations or parameters as may be imposed from time to time by our board of directors; and
- Evaluating and recommending to our board of directors, and engaging in potential hedging activities on our behalf, consistent with our status as a REIT and with the investment guidelines.

Origination and Investment Expertise

- Building borrower relationships, originating investment opportunities with those borrowers and analyzing and underwriting possible investment opportunities for eventual submission to our credit committee;
- Assisting us in developing criteria for investment commitments that are specifically tailored to our investment objectives and making available to us its knowledge and experience with respect to mortgage loans, real estate and other real estate related assets; and
- Investing or reinvesting any money of ours, including investing in short term investments pending investment in long term asset investments.

Regulatory Compliance

- Assisting us in complying with all regulatory requirements applicable to us in respect of our business activities, including preparing or causing to be prepared all consolidated financial statements required under applicable regulations and contractual undertakings and all reports and documents, if any, required under the Securities Exchange Act;
- Taking all necessary actions to enable us to make required tax filings and reports, including soliciting stockholders for required information to the extent provided by the REIT provisions of the Code and the Treasury Regulations promulgated thereunder;
- Counseling us regarding the maintenance of our status as a REIT and monitoring compliance with the various REIT qualification tests and other rules set out in the Code and the Treasury Regulations promulgated thereunder;
- Causing us to retain qualified accountants and legal counsel, as applicable, to assist in developing appropriate accounting procedures, compliance procedures and testing systems with respect to financial reporting obligations and compliance with the REIT provisions of the Code and the Treasury Regulations promulgated thereunder and to conduct quarterly compliance reviews with respect thereto;
- Counseling us regarding the maintenance of our exemption from the Investment Company Act and monitoring compliance with the requirements for maintaining an exemption from that Act;
- Causing us to qualify to do business in all applicable jurisdictions and to obtain and maintain all appropriate licenses; and
- Using commercially reasonable efforts to cause us to comply with all other applicable laws.

Pursuant to the management agreement, our manager does not assume any responsibility other than to render the services called for thereunder and is not responsible for any action of our board of directors in following or declining to follow our managers' advice or recommendations. Our manager, its directors and its officers are not liable to us, any subsidiary of ours, our directors, our stockholders or any subsidiary's stockholders for acts performed in accordance with and pursuant to the management agreement, except by reason of acts constituting bad faith, willful misconduct, gross negligence, or breach of their duties under the management agreement and except for claims by manager's employees relating to the terms and conditions of their employment. Pursuant to the management agreement, we agree to indemnify our manager, its directors and its officers with respect to all expenses, losses, damages, liabilities, demands, charges and claims arising from acts of our manager not constituting bad faith, willful misconduct, gross negligence, or breach of duties, performed in good faith in accordance with and pursuant to the management agreement but excluding claims by the manager's employees relating to the terms and conditions of their employment. Our manager agrees to indemnify us, our directors and officers with respect to all expenses, losses, damages, liabilities, demands, charges and claims arising from acts of our manager constituting bad faith, willful misconduct, gross negligence or breach of its duties under the management agreement and any claims by the manager's employees relating to the terms and conditions of their employment. Our manager also carries errors and omissions and other customary insurance.

Term

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.

Our Termination Rights

After the initial two-year term, we will be able to terminate the management agreement without cause for any reason upon six months' prior written notice to Arbor Commercial Mortgage. If we terminate the management agreement without cause, or we give Arbor Commercial Mortgage notice of non-renewal, in order to manage our operations internally, we will be required to pay our manager a termination fee equal to the base management fee and the incentive compensation earned during the 12-month period preceding the termination. If, without cause, we terminate the management agreement or elect not to renew it for any other reason, including a change of control of us but excluding a change in control of our manager, we will be required to pay a termination fee equal to two times the base management fee and the incentive compensation earned during the 12-month period preceding the termination.

Notwithstanding the paragraph above, if we provide our six month notice of termination without cause because our independent directors have determined that the management fees are unfair, then Arbor Commercial Mortgage may agree to perform its management services at the fees our independent directors determine to be fair and the management agreement will not terminate. If Arbor Commercial Mortgage does not agree to perform its management services for those fees, or if Arbor Commercial Mortgage so agrees but then gives us notice that it wishes to renegotiate the fees, then we and Arbor Commercial Mortgage must negotiate in good faith and if we cannot agree on a revised fee structure at the end of our six-month notice period, the agreement will terminate and we must pay the termination fees described above.

We also have the right to terminate the management agreement for cause upon prior written notice to Arbor Commercial Mortgage with the approval of our board of directors including the consenting vote of a majority of our independent directors. In such a case, we would not be required to pay a termination fee. “Cause” is defined as fraud, misappropriation of funds, willful violation of the management agreement, gross negligence, breach by our manager of a material term of the management agreement that is not timely cured, the removal by us of Mr. Ivan Kaufman as our chief executive officer for cause, or a change in control of our manager (other than a change in control because of a public offering of our manager).

Arbor Commercial Mortgage’s Termination Rights

Arbor Commercial Mortgage has the right to terminate the management agreement (effective upon expiration of the cure period) upon a breach of a material term of the management agreement by us that is not timely cured. Arbor Commercial Mortgage also has the right to terminate the management agreement after the initial two-year term without cause on six months’ prior written notice to us. Except in connection with a change in control of Arbor Commercial Mortgage within the first three years as described below, Arbor Commercial Mortgage will not be obligated to pay us a termination fee if it terminates or elects not to renew the management agreement.

Change of Control of Arbor Commercial Mortgage

Within the initial two-year term and the first one-year renewal term of the management agreement, if:

- Arbor Commercial Mortgage or its successor elects not to renew or to terminate the management agreement within two years after a change in control of Arbor Commercial Mortgage or the execution of an agreement that will cause a change in control of Arbor Commercial Mortgage, or

- Arbor Commercial Mortgage gives us a notice of non-renewal or termination, then experiences a change of control or executes an agreement that will cause a change in control of Arbor Commercial Mortgage in one year, then Arbor Commercial Mortgage or its successor will have to pay us a fee in an amount equal to two times the base management fee and the incentive compensation earned during the 12-month period preceding the termination or non renewal notice.

  We are able to terminate the management agreement upon 30 days’ prior written notice to Arbor Commercial Mortgage, without payment of a fee, if:

  - Mr. Kaufman is no longer chief executive officer of Arbor Commercial Mortgage, but not by reason of his death, disability or incapacity, or

  - a change of control of Arbor Commercial Mortgage occurs.

As defined in the management agreement, change of control of Arbor Commercial Mortgage shall not include any public offering of the capital stock of Arbor Commercial Mortgage.

Assignment

Neither we nor Arbor Commercial Mortgage are able to assign its rights or obligations under the management agreement without the consent of the other party. However, Arbor Commercial Mortgage may, without our consent, assign the management agreement to an "affiliate" (meaning any entity controlling, controlled by or under common control with Arbor Commercial Mortgage, and "control" means the direct or indirect ownership of at least 51% of the beneficial equity interests and voting power of such entity) whose day to day business and operations are managed and supervised by Mr. Kaufman, provided that Arbor Commercial Mortgage shall be fully responsible to us for all errors or omissions of such assignee. Our manager is also be permitted to subcontract or assign certain of its duties under the management agreement to any affiliate of our manager that meets the foregoing qualification.

Management Fees and Incentive Compensation

Since we employ only three executive officers and eight other employees, 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, Arbor Commercial Mortgage receives a base management fee and incentive compensation calculated as described below. Our manager uses the proceeds from its base management fee in part to pay compensation to its officers and employees who, notwithstanding that some of them are also our officers, receive no direct compensation from us, other than restricted stock that may be granted pursuant to our stock incentive plan.

Base Management Fee. Our manager receives an annual base management fee based on the equity of our operating partnership, as further discussed below. The amount of the base management fee does not depend of the performance of the services provided by our manager or the types of assets its selects for our investment, but the value of our operating partnership's equity will be affected by the performance of these assets. The base management fee is payable monthly in arrears in cash, calculated monthly as a percentage of our equity and equal to 0.75% per annum of the equity up to $400 million, 0.625% per annum of the equity between $400 million and $800 million and 0.50% per annum of the equity in excess of $800 million. For purposes of calculating the base management fee, the term "equity" means the month end value computed in accordance with generally accepted accounting principles of (1) total partners' equity in our operating partnership, plus or minus (2) any unrealized gains, losses or other items that do not affect realized net income. We have paid $587,734 in base management fees to Arbor Commercial Mortgage for management services rendered for the period ended December 31, 2003.

Incentive Compensation. Our manager is entitled to receive incentive compensation in installments each fiscal quarter. In addition, our manager is entitled to receive incentive compensation each fiscal quarter in an annual amount equal to the product of:

(1) 25% of the dollar amount by which:

- the sum of: (i) our operating partnership's "Funds From Operations" (before the incentive compensation) per operating partnership unit (based on the weighted average number of operating partnership units outstanding, including operating partnership units issued to us equal to the number of shares of our common stock issued by us) for such quarter and (ii) gains (or losses) from debt restructuring and sales of property per operating partnership unit (based on the weighted average number of units outstanding, including operating partnership units issued to us equal to the number of shares of our common stock issued by us) for such quarter; exceeds

- the product of (i) the weighted average (based on shares of our common stock and operating partnership units) of (a) the per operating partnership unit book value of the net assets contributed by Arbor Commercial Mortgage, (b) the $15.00 offering price per share of our common stock in the private placement, (c) the offering price per share (including shares of common stock issued upon exercise of warrants or options) of any subsequent offerings by us of our common stock (adjusted for any prior capital dividends or distributions) and (d) the issue price per operating partnership unit for subsequent contributions to our operating partnership, and (ii) the greater of (x) 9.50% per annum and (y) the Ten Year U.S. Treasury Rate plus 3.50% per annum; multiplied by

(2) the weighted average number of operating partnership units outstanding, including operating partnership units issued to us equal to the number of shares of our common stock issued by us.

The incentive compensation will be measured in fiscal quarters for the remainder of 2003. Our manager did not earn any incentive compensation for the quarters ended September 30, 2003 or December 31, 2003. Beginning on January 1, 2004, the incentive management fee will be measured over a full fiscal year, subject to recalculation and potential reconciliation at the end of each fiscal year.

"Funds From Operations" as defined by National Association of Real Estate Investment Trusts means net income, computed in accordance with generally accepted accounting principals, 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. Funds from operations does not represent cash generated from operating activities in accordance with GAAP and should not be considered as an alternative to net income as an indication of our performance or to cash flows as a measure of liquidity or ability to make distributions.

The manager's incentive compensation is based, in part, on the $15.00 offering price per share of common stock in the private placement. We allocated the $75.00 offering price per unit in the private placement to the five shares of common stock comprising each unit, resulting in this offering price per share. We did not allocate any value to the one warrant underlying each unit because the warrants have an initial exercise price of $15.00 and they are not exercisable, detachable or freely tradable for an indeterminable period of time (i.e., until after the registration and listing of the common stock comprising the units on a national securities exchange or The Nasdaq Stock Market).

As used in calculating the manager's incentive compensation, the term "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 10 years) published by the Federal Reserve Board during a quarter, 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 us. If we determine in good faith that the Ten Year U.S. Treasury Rate cannot be calculated as provided above, then the rate shall 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 nor more than 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 recognized dealers in U.S. government securities selected by us.

The management agreement provides that at least 25% of our manager's incentive compensation is to be paid in shares of our common stock (subject to the ownership limitations contained in our charter) and the balance in cash. However, our manager is able to elect to receive a greater percentage of its incentive compensation in the form of our common stock. We may provide for registration rights for shares of common stock used to pay our manager's incentive compensation. Under our management agreement, Arbor Commercial Mortgage agrees that it may not elect to receive shares of our common stock as payment of its incentive compensation, except in accordance with all applicable securities exchange rules and securities laws (including prohibitions on insider trading). In addition, Arbor Commercial Mortgage is not able to receive our stock in payment of fees, whether automatically or by Arbor Commercial Mortgage's election, if it would cause Arbor Commercial Mortgage or Mr. Kaufman to beneficially own an amount of our common stock in violation of the ownership limitations in our charter.

For purposes of determining the number of shares to be delivered in satisfaction of the incentive compensation to be paid with our common stock, we will value our shares at the average per share closing price based on the period of 20 days ending on and including the last day of the applicable fiscal quarter.

In evaluating investments and other management strategies, the opportunity to earn incentive return based on Funds From Operations may lead our manager to place undue emphasis on the maximization of Funds From Operations at the expense of other criteria, such as preservation of capital, in order to achieve a higher incentive return. Investments with higher yield potential are generally riskier or more speculative. This could result in increased risk to the value of our invested portfolio.

The following examples illustrate how we calculate our manager's incentive compensation in accordance with the management agreement. These calculations are for illustrative purposes only and do not reflect our actual operating results.

Example 1:

Assumptions:	
Adjusted Annual FFO Per OP Unit(1)	$2.00
Hurdle Rate(2)	9.50%
Weighted Average Book Value Per OP Unit(3)	$14.70
Weighted Average OP Units Outstanding(4)	11,196,724

Calculation of Incentive compensation:

= 25% × (Adjusted Annual FFO Per OP Unit - (Hurdle Rate × Weighted Average Book Value Per OP Unit)) × Weighted Average OP Units Outstanding
= 25% × ($2.00 - (9.50% × $14.70)) × 11,196,724
= 25% × ($2.00 - $1.3965) × 11,196,724
= 25% × $0.6035 × 11,196,724
= $1,689,306

Example 2:

Assumptions:	
Adjusted Annual FFO Per OP Unit(1)	$1.00
Hurdle Rate(2)	9.50%
Weighted Average Book Value Per OP Unit(3)	$14.70
Weighted Average OP Units Outstanding(4)	11,196,724

Calculation of Incentive compensation:

= 25% × (Adjusted Annual FFO Per OP Unit - (Hurdle Rate × Weighted Average Book Value Per OP Unit)) × Weighted Average OP Units Outstanding
= 25% × ($1.00 - (9.50% × $14.70)) × 11,196,724
= 25% × ($1.00 - $1.3965) × 11,196,724
= 25% × -$0.3965 × 11,196,724
= Negative calculation results in no incentive compensation

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(1) "Adjusted Annual FFO per OP Unit" means our operating partnership's funds from operations per operating partnership unit, adjusted for certain gains and losses.

(2) "Hurdle Rate" means 9.5% per annum or the 10 year Treasury Rate plus 3.5%, whichever is greater.

(3) "Weighted Average Book Value Per OP Unit" means the weighted average of the book value of the net assets contributed by Arbor Commercial Mortgage to Arbor Realty Limited Partnership per operating partnership unit, the offering price per share of our common equity in the private placement and subsequent offerings and the issue price per operating partnership unit for subsequent contributions to Arbor Realty Limited Partnership.

(4) "Weighted Average OP Units Outstanding" means the weighted average of Arbor Realty Limited Partnership's outstanding operating partnership units.

The incentive compensation fee will be measured annually in arrears; provided, however, Arbor Commercial Mortgage 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 than the total of the installment payments made to Arbor Commercial Mortgage for the year, Arbor Commercial Mortgage will refund to us the amount of such overpayment in cash. In such case, we would record a negative incentive fee expense in the quarter when such overpayment is determined.

Reimbursement of Expenses

Our manager is responsible for all costs incident to the performance of its duties under the management agreement, including compensation of our manager's employees, rent for facilities and other "overhead" expenses.

The expenses required to be paid by us or for which we reimburse our manager include, but are not limited to:

- legal, accounting and auditing fees and expenses of third parties for services rendered for us that are paid by the manager;
- the compensation, benefits and expenses of our independent directors and employees;
- travel and other out of pocket expenses of our employees in connection with the purchase, financing or sale of our investments;
- the costs of printing and mailing proxies and reports to stockholders;
- costs to obtain liability insurance to indemnify our directors and officers, the manager and its employees and directors and the underwriters;
- key man life insurance costs for our chief executive officer; and
- the compensation and expenses of our custodian and transfer agent, if any.

We are also required to pay or reimburse our manager for all expenses incurred on behalf of us in connection with:

- raising of capital or the incurrence of debt,
- interest expenses,
- taxes and license fees,
- litigation and
- extraordinary or non recurring expenses.

Expense reimbursements to our manager are be made quarterly.

Restricted Stock Awards

We have granted to certain executive officers and employees of our manager who provide services to us 127,500 shares of restricted stock pursuant to our stock incentive plan. We have also reserved up to 35,500 shares for future grants to directors, officers and certain of our employees and certain employees of our managers. Two-thirds of the shares granted vested immediately and the remaining one-third will vest ratably over three years at a rate of 33.33% on each of the subsequent three anniversary dates of the date of grant. These restricted shares provide a means of performance based compensation in order to provide an additional incentive for our manager’s employees to enhance the value of our common stock.

Origination Fees

With respect to each bridge loan and mezzanine loan originated during the term of the management agreement, we agreed with Arbor Commercial Mortgage that we will (1) pay Arbor Commercial Mortgage an amount equal to 100% of the origination fees paid by the borrower to us, up to 1% of the loan’s principal amount, and (2) retain 100% of the origination fees paid by the borrower in excess of 1% of the loan’s principal amount.

Additional Interest

Under the management agreement, we receive any additional interest and other payments due upon maturity of any loan and fees paid by borrowers under bridge and mezzanine loans originated during the term of the management agreement, except that origination fees are allocated according the agreement described in the paragraph above. We have agreed with Arbor Commercial Mortgage that we are entitled to deduct from the applicable monthly installment of the base management fee due to Arbor Commercial Mortgage an amount equal to 50% of any otherwise payable additional interest due upon maturity of any of our loans if such interest is waived in accordance with the provision of the applicable loan agreement because the borrower refinances one of our structured finance investments with a Fannie Mae, FHA or conduit commercial loan originated by Arbor Commercial Mortgage.

Rights of First Refusal

Arbor Commercial Mortgage and Mr. Kaufman, through his non-competition agreement with us, have granted us a right of first refusal to pursue all opportunities identified by them or their affiliates related to structured finance investments in or with respect to commercial or multi-family real estate properties that are consistent with our investment objectives and guidelines and would not adversely affect our status as a REIT. If such investment opportunities are identified, Arbor Commercial Mortgage or Mr. Kaufman, as the case may be, will give our credit committee written notice and description of the investment opportunity. Our credit committee, which will consist of Mr. Kaufman, our chief executive officer, Mr. Weber, our executive vice president of structured finance, Mr. Palmier, our executive vice president of asset management and Mr. Kovarik, our chief credit officer, may either accept or reject the investment opportunity by a majority vote. If the committee rejects the opportunity, then Arbor Commercial Mortgage or Mr. Kaufman, as the case may be, will be able to present the opportunity to our independent directors. If our independent directors, by majority vote, reject the opportunity and allow Arbor Commercial Mortgage or one of its affiliates to pursue it, then Arbor Commercial Mortgage or the affiliate, as the case may be, will be able to do so on the same terms offered to us. If the terms of the investment opportunity materially change so that the benefits thereof are materially beneficial to Arbor Commercial Mortgage than such terms to us would have been under the transaction described in the original offer, then Arbor Commercial Mortgage must offer the revised investment opportunity to our credit committee and, if rejected, to our independent directors, who may again accept or reject the opportunity on our behalf. Arbor Commercial Mortgage will be able to pursue the revised opportunity on the terms offered to us if our independent directors reject the revised opportunity and approve Arbor Commercial Mortgage’s pursuit of such opportunity.

During the term of the management agreement, we have agreed not to pursue, and to allow Arbor Commercial Mortgage to pursue, among other transactions and investment opportunities, opportunities related to multi-family and commercial mortgage loans that meet the underwriting and approval guidelines of Fannie Mae, FHA and conduit commercial lending programs secured by first liens on real property.

Mr. Kaufman's Non-Competition Agreement

Pursuant to his non-competition agreement with us, Mr. Kaufman has also agreed that:

- as long as he is serving as our chief executive officer or, during the term of the management agreement and the origination period described below, an affiliate of Arbor Commercial Mortgage, he will not pursue structured finance lending opportunities (and will refer those opportunities to us), unless our independent board members affirmatively approve the pursuit by Arbor Commercial Mortgage or one of its affiliates of structured finance lending opportunities that they have rejected on our behalf, See "— Rights of First Refusal";

- if he is no longer an affiliate of Arbor Commercial Mortgage and, within the first five years of the term of the management agreement, he is no longer our chief executive officer other than by reason of (1) his termination of his position for good reason, (2) our termination of him without cause, or (3) a change of control of Arbor Commercial Mortgage (which shall not be deemed to include any public offering of stock by Arbor Commercial Mortgage), he will not engage in the structured finance lending business for a period of one year after the earlier of his departure from us or the regular expiration of the one year origination period described below; and

- if there is a change of control of Arbor Commercial Mortgage within the first three years of the term of the management agreement, and he is no longer an affiliate of Arbor Commercial Mortgage and leaves us without good reason in that three year period, he will not engage in the structured finance lending business for one year after the date of his departure from us.

Mr. Kaufman's non-competition agreement also prohibits Mr. Kaufman from soliciting our customers or employees during its term.

Origination Period

For a period of one year following the expiration or termination of the management agreement due to our notice of non-renewal or termination without cause or our manager's termination for cause:

- our manager and Mr. Kaufman agree to originate structured finance transactions for us, and

- we have granted them the exclusive right to provide these origination services to us.

If we terminate the management agreement for cause (including because of a change in control of the manager), or if the manager terminates or elects not to renew the management agreement without cause, we will be able to accept origination services from others during the origination period.

With respect to each bridge loan and mezzanine loan originated during the origination period, we have agreed with Arbor Commercial Mortgage that we will (1) pay Arbor Commercial Mortgage an amount equal to 100% of the origination fees paid by the borrower to us, up to 1% of the loan's principal amount, and (2) retain 100% of the origination fees paid by the borrower in excess of 1% of the loan's principal amount.

We, Arbor Commercial Mortgage and, through his non-competition agreement, Mr. Kaufman have also agreed that (1) our right of first refusal to pursue all structured finance investment opportunities regarding commercial or multi-family real estate properties that are identified by Arbor Commercial Mortgage, Mr. Kaufman (so long as he is an affiliate of Arbor Commercial Mortgage) or their affiliates and

(2) Arbor Commercial Mortgage's right of exclusivity regarding Fannie Mae, FHA and conduit commercial lending programs will each continue to apply during the origination period.

If such structured finance investment opportunities are identified during the origination period, Arbor Commercial Mortgage and, so long as he is an affiliate of Arbor Commercial Mortgage, Mr. Kaufman will give our credit committee written notice and description of the investment opportunity. Our credit committee will be able to either accept or reject the investment opportunity. If the committee rejects the opportunity, then Arbor Commercial Mortgage or Mr. Kaufman, as the case may be, will be able to present the opportunity to our independent directors. If our independent directors, by majority vote, reject the opportunity on behalf of us and approve Arbor Commercial Mortgage's pursuit of that opportunity, then Arbor Commercial Mortgage may pursue the opportunity on the same terms offered to us. If the terms of the investment opportunity materially change, then Arbor Commercial Mortgage will be able to offer the revised investment opportunity to our credit committee and, if rejected, to our independent directors, who will be able to again be able to accept or reject the opportunity on behalf of us. Arbor Commercial Mortgage will be able to pursue the opportunity on the terms offered to us, if our independent directors reject the revised opportunity and approve Arbor Commercial Mortgage's pursuit of such opportunity.

MANAGEMENT

Our Directors and Executive Officers

Our board of directors consists of seven directors, four of whom are independent directors. See "— Corporate Governance — Board of Directors and Committees." Pursuant to our charter, the board of directors is divided into three classes of directors. The current terms of the Class I, Class II and Class III directors will expire in 2004, 2005 and 2006, respectively. Upon the expiration of their current terms, directors of each class will be elected to serve a term of three years and until their successors are elected and qualify each year and one class of directors will be elected by the stockholders. The following table sets forth certain information about our directors and executive officers.

Name	Age	Position with Us	Class
Ivan Kaufman	43	Chairman of the Board of Directors, Chief Executive Officer and President	Class II
Frederick C. Herbst	46	Chief Financial Officer and Treasurer	
John C. Kovarik	44	Chief Credit Officer	
Daniel M. Palmier	42	Executive Vice President — Asset Management	
Fred Weber	42	Executive Vice President — Structured Finance	
Jonathan A. Bernstein	57	Independent Director	Class I
William Helmreich	58	Independent Director	Class III
C. Michael Kojaian	43	Independent Director	Class II
Melvin F. Lazar	65	Independent Director	Class II
Walter K. Horn	60	General Counsel, Secretary and Director	Class III
Joseph Martello	48	Director	Class I

Information for each of our executive officers and directors is set forth below. For information regarding Messrs. Kaufman, Herbst and Horn, see "Our Manager and the Management Agreement — Officers of Our Manager."

John C. Kovarik. Mr. Kovarik was hired to serve as our chief credit officer in October 2003. From 1997 until October 2003, Mr. Kovarik was Senior Vice President and Chief Credit Officer of RER Resources, a commercial real estate consulting, underwriting and asset management services provider based in Virginia, where he was responsible for underwriting income property secured loans and managing teams providing acquisition underwriting. Mr. Kovarik has over twenty years of experience in credit, financial analysis and commercial real estate underwriting for various types of commercial properties.

Daniel M. Palmier. Mr. Palmier has served as our executive vice president of asset management since June 2003. Since 1998, he has provided, and continues to provide, services to Arbor Commercial Mortgage in his capacity as a continuing member of Arbor Commercial Mortgage's executive committee. From 1998 until the consummation of the private placement, he directed Arbor Commercial Mortgage's asset management group, where he was responsible for asset management and formulation of value enhancement and disposition strategies of Arbor Commercial Mortgage's debt and equity positions, with particular concentration on structured finance assets. Before joining Arbor Commercial Mortgage in 1998, Mr. Palmier was a vice president with Lehman Brothers Holdings Inc., where he was involved with asset management, restructuring, refinancing, development, leasing and disposition of commercial, retail and residential properties and mortgages. Mr. Palmier, a certified public accountant, has more than 18 years experience in various aspects of real estate management and practice.

Fred Weber. Mr. Weber has served as our executive vice president of structured finance since June 2003. He also continues to provide services to Arbor Commercial Mortgage in his capacity as a continuing member of Arbor Commercial Mortgage's executive committee. Mr. Weber was employed by Arbor Commercial Mortgage from May 1999 until the consummation of the private placement. At Arbor Commercial Mortgage, Mr. Weber oversaw Arbor Commercial Mortgage's structured finance and principal transaction group, where he was responsible for origination, underwriting and closing coordination of debt and equity financing for various asset types and classes of commercial real estate nationwide. He has been involved in the mortgage banking industry for more than 16 years and has extensive real estate finance and acquisition experience. Mr. Weber is a member of the real estate finance committee of the Real Estate Board of New York. From July 1997 through February 1999, Mr. Weber was a partner and co-head of the real estate department with Kronish, Lieb, Weiner & Hellman. Previously, Mr. Weber was a partner with the law firm of Weil, Gotschal & Manges.

Jonathan A. Bernstein. Mr. Bernstein has served as one of our directors since June 2003. Mr. Bernstein is of counsel at Pryor, Cashman, Sherman & Flynn, where he is head of the real estate department, specializing in finance and focusing on REITs and structured financing involving real estate. Mr. Bernstein joined Pryor Cashman in 1993. He serves as an advisor to REITs and investment banks in the real estate area. Mr. Bernstein is also the vice chairman and a director of TractManager LLC, an internet based software company, with offices in Saddle Brook, New Jersey and Chattanooga, Tennessee, specializing in contract management in the health care area and a partner of the Shore Club Hotel in Miami, Florida.

William Helmreich. Dr. Helmreich has served as one of our directors since June 2003. Dr. Helmreich is the founder, and since 1980, owner and president of Byron Research and Consulting, a market research firm specializing in financial research, political polling, legal consulting, and issues relating to food products and real estate. He is a professor of Sociology at City College of New York and the CUNY Graduate Center where he teaches sociology of marketing and consumer behavior. Since 2000, Dr. Helmreich has also been retained as chairman for Academic Affairs for North Shore Hebrew Academy. He is a member of the board of Transaction Inc., North Shore Hebrew Academy, North Shore Hebrew Academy High School and NSH Affordable Housing of Indiana, Inc., as well as other not for profit boards, and was, for many years, a senior vice president of Good Earth Teas.

C. Michael Kojaian. Mr. Kojaian has served as one of our directors since June 2003. Since 1998 Mr. Kojaian has been the chief operating officer of the Kojaian group of companies, a national multi-faceted real estate development investment and asset management organization. Mr. Kojaian is the chairman of the board of Grubb & Ellis, a commercial real estate advisory firm, a member of the board of directors of Flagstar Bank and the United States President's Export Council.

Melvin F. Lazar. Mr. Lazar has served as one of our directors since his appointment in November 2003. Mr. Lazar is the founder of Lazar Levine & Felix LLP, certified public accountants, was its managing partner from 1969 until September 2002, and is still an employee of the firm. Mr. Lazar specializes in business valuations and merger and acquisition activities. Mr. Lazar serves on the board of directors of Enzo Biochem, Inc., a publicly-held biotechnology company, Active Media Services, Inc., a privately-held corporate barter company, and CECO Environmental Corp., a publicly-held provider of innovative solutions to industrial ventilation and air quality problems.

Joseph Martello. Mr. Martello has served as one of our directors since June 2003. Mr. Martello is currently chief operating officer of Arbor Management, LLC, the managing member of Arbor Commercial Mortgage, where he is responsible for management of the investment portfolio and overseeing the day-to-day operations. From 1995 to 1999, Mr. Martello was chief financial officer of Arbor Commercial Mortgage. From 1990 to 1995, Mr. Martello was the chief financial officer of Arbor National Holdings, Inc. Prior to that, he was a senior manager with the international accounting and consulting firm of Ernst & Young for eleven years. Mr. Martello is a member of the American Institute of Certified Public Accountants and the New York State Society of Certified Public Accountants where he is a former executive member of the board of directors of the Suffolk County chapter.

Corporate Governance — Board of Directors and Committees

Our business is ultimately managed through the oversight and direction of our board of directors, which has established investment guidelines for Arbor Commercial Mortgage to follow in its day to day management of our business. At least a majority of our board of directors are "independent," with independence being defined in our charter, and are nominated by our nominating/ corporate governance committee.

Our board consists of seven directors, three of whom are affiliated with Arbor Commercial Mortgage, Messrs. Kaufman, Martello and Horn, and four of whom are "independent" directors, Messrs. Bernstein, Kojaian and Lazar and Dr. Helmreich. The directors keep informed about our business at meetings of the board and its committees and through supplemental reports and communications. Our independent directors expect to meet regularly in executive sessions without the presence of our corporate officers.

Our board has established four committees, the principal functions of which are briefly described below. Matters put to a vote at any one of our four committees must be approved by a majority of the directors on the committee who are present at a meeting at which there is a quorum or by unanimous written consent of the directors on that committee.

Audit Committee

Our board of directors has established an audit committee, which is composed of three of our independent directors, Messrs. Bernstein, Lazar and Dr. Helmreich. Mr. Lazar serves as chairman of the audit committee. The audit committee assists the board in overseeing (1) our accounting and financial reporting processes; (2) the integrity and audits of our consolidated financial statements; (3) our compliance with legal and regulatory requirements; (4) the qualifications and independence of our independent auditors; and (5) the performance of our independent auditors and any internal auditors.

Compensation Committee

Our board of directors has established a compensation committee, which is composed of Messrs. Bernstein, Kojaian and Lazar and Dr. Helmreich. On March 2, 2004, Mr. Kojaian was appointed as a member and the chairman of the compensation committee. The principal functions of the compensation committee will be to (1) evaluate the performance of our officers, (2) review the compensation payable to our officers, (3) evaluate the performance of Arbor Commercial Mortgage, (4) review the compensation and fees payable to Arbor Commercial Mortgage under our management agreement and (5) administer the issuance of any stock issued to our employees or, the employees of Arbor Commercial Mortgage who provide services to us.

Nominating/Corporate Governance Committee

Our board of directors has established a nominating/ corporate governance committee, which is composed of Messrs. Bernstein and Lazar and Dr. Helmreich. Dr. Helmreich serves as chairman of the nominating/ corporate governance committee. The nominating/ corporate governance committee will be responsible for seeking, considering and recommending to the board qualified candidates for election as directors and recommending a slate of nominees for election as directors at the annual meeting. It will also periodically prepare and submit to the board for adoption the committee's selection criteria for director nominees. It will review and make recommendations on matters involving general operation of the board and our corporate governance, and annually will recommend to the board nominees for each committee of the board. In addition, the committee annually facilitates the assessment of the board of directors' performance as a whole and of the individual directors and reports thereon to the board.

Independent Director Committee

Our board of directors has established an independent director committee, which is composed of all of our independent directors, Messrs. Bernstein, Kojaian and Lazar and Dr. Helmreich. The independent director committee is responsible for considering and voting upon matters as to which the board of directors determines Arbor Commercial Mortgage or its affiliates (other than us or our subsidiaries) or any of our directors (other than an independent director) or officers has a conflict of interest, including the approval of transactions between us and Arbor Commercial Mortgage.

Director Compensation

Each of our independent directors are paid a director's fee of $25,000 per year. Each director who serves as a committee chairman of the audit, compensation or nominating/corporate governance committee is paid an additional fee of $3,000. Each director is also paid a fee of $2,000 for each board or committee meeting that he or she attends. Each director is also paid a fee of $1,000 for each telephone board or committee meeting that he attends. In addition, we reimburse all directors for reasonable out of pocket expenses incurred in connection with their services on the board of directors.

Our stock incentive plan provides for grants of restricted stock and other equity based awards with respect to our common stock. On July 1, 2003, Messrs. Bernstein, Kojaian, Martello and Dr. Helmreich each received 1,000 shares of our restricted common stock. Upon their appointment to the board, Messrs. Horn and Lazar each received 1,000 shares of our restricted common stock. Two-thirds of the restricted stock granted to these directors vested immediately upon the date of grant and the remaining one-third will vest ratably over three years from the date of grant at a rate of 33.33% on each of the subsequent three anniversary dates of the date of grant.

Executive Compensation

Because our management agreement provides that our manager assumes principal responsibility for managing our affairs, certain of our executive officers, who are employees of our manager, do not receive compensation from us for serving as our executive officers. However, in their capacities as officers or employees of our manager, or its affiliates, they devote such portion of their time to our affairs as is required for the performance of the duties of our manager under the management agreement. Mr. Ivan Kaufman, our chairman of the board of directors, president and chief executive officer serves as the chairman and chief executive officer of Arbor Commercial Mortgage. Mr. Frederick C. Herbst, our chief financial officer, also serves as chief financial officer of our manager. Walter Horn, our secretary and general counsel also serves as secretary and general counsel of Arbor Commercial Mortgage. Each of Messrs. Kaufman, Herbst and Horn receive their compensation from our manager.

On July 1, 2003, we granted Mr. Kaufman and Mr. Herbst, 120,000 shares and 4,000 shares, respectively, of restricted stock pursuant to our stock incentive plan, two-thirds of which vested immediately and the remaining one-third of which will vest ratably over three years at a rate of 33.33% on each of the subsequent three anniversary dates of the date of grant. On November 5, 2003, we granted Mr. Horn 1,000 shares of restricted stock pursuant to our stock incentive plan with the same vesting schedule. Our manager has informed us that, because the services to be performed by its officers or employees in their capacities as such is not performed exclusively for us, it cannot segregate and identify that portion of the compensation awarded to, earned by or paid to our executive officers by the manager that relates solely to their services to us.

Three of our officers, Mr. Fred Weber, our executive vice president of structured finance, Mr. Daniel M. Palmier, our executive vice president of asset management and Mr. John C. Kovarik, our chief credit officer, are employed and paid directly by us. Each of Mr. Weber and Mr. Palmier receive annual compensation of $360,000, plus a bonus to be determined at the discretion of the compensation committee of our board of directors, which will not exceed $140,000 per year. On July 1, 2003, we granted each of Messrs. Palmier and Weber 7,000 shares of restricted stock pursuant to our stock incentive plan, two-thirds of which vested immediately and the remaining one-third of which will vest ratably over three years at a rate of 33.33% on each of the subsequent three anniversary dates of the date of grant. Mr. Kovarik receives annual compensation of $150,000 plus a bonus to be determined at the discretion of the compensation committee of our board of directors, which will not exceed $75,000 per year. We began compensating our employee executive officers at the annual rates set forth above upon the commencement of our operations on July 1, 2003.

The following table sets forth the total compensation amounts paid to our chief executive officer and each of our other executive officers who are directly employed and compensated by us for the year ended December 31, 2003.

		Annual Compensation			Long-Term Compensation: Awards		Long-Term Compensation: Payouts	
Name and Principal Position(a)	Year (b)	Salary ($)(c)	Bonus ($)(1)(d)	Other Annual Compensation ($)(2)(e)	Restricted Stock Award (s)($)(2)(f)	Securities Underlying Options/ SARs (#)(g)	LTIP Payouts ($)(h)	All Other Compensation ($)(i)
Ivan Kaufman Chief Executive Officer & President	2003	—		$1,200,000	$600,000(3)			—
John Kovarik Chief Credit Officer	2003	$ 27,885(4)						—
Dan Palmier Executive Vice President — Asset Management	2003	$180,000(5)		$ 70,000	$ 35,000(6)			$ 2,562(7)
Fred Weber Executive Vice President — Structured Finance	2003	$180,000(8)		$ 70,000	$ 35,000(9)			$ 2,603(10)

(1) Messrs. Kovarik, Palmier and Weber may also earn bonuses for the year ended December 31, 2003. The compensation committee of our board of directors intends to make these determinations and we will disclose any such amounts after these determinations are made.

(2) On July 1, 2003, we granted 120,000, 7,000 and 7,000 shares of restricted stock to Messrs. Kaufman, Palmier and Weber, respectively, pursuant to our stock incentive plan. None of these executive officers paid any value for these grants of restricted shares. Dividends have been and will be paid on these restricted shares whether or not vested at the same rate and in the same manner as paid to our other common stockholders. As of the date of grant and at December 31, 2003, two-thirds of the shares granted to each of these executive officers were fully vested. The remaining one third of these restricted shares will vest ratably over three years at a rate of 33.33% on each of the subsequent three anniversary dates of the date of grant. The dollar amounts included in column (e) represent the total fair market value at the date of grant of fully vested shares of restricted stock granted to each of these executive officers. The dollar amounts included in column (f) represent the value of the shares granted to each of these executive officers pursuant to our stock incentive plan on July 1, 2003 that were not vested on the date of grant and that will vest according to the aforementioned schedule.

(3) The value of the unvested portion of Mr. Kaufman's restricted stock included in this column (f) as of December 31, 2003 was $600,000.

(4) Mr. Kovarik was hired in October, 2003 and earns a salary of $150,000 per year. The amount given is his pro rata salary paid for the year ended December 31, 2003.

(5) Mr. Palmier began working for us when we commenced operations on July 1, 2003 and earns a salary of $360,000 per year. The amount given is his pro rata salary paid for the year ended December 31, 2003.

(6) The value of the unvested portion of Mr. Palmier's restricted stock included in this column (f) as of December 31, 2003 was $35,000.

(7) Of the $2,562 total, $2,400 was granted to Mr. Palmier as a match to money invested by him in his 401(k) plan, and $162 dollars were granted in the form of basic term life insurance.

(8) Mr. Weber began working for us when we commenced operations on July 1, 2003 and earns a salary of $360,000 per year. The amount given is his pro rata salary paid for the year ended December 31, 2003.

(9) The value of the unvested portion of Mr. Weber's restricted stock included in this column (f) as of December 31, 2003 was $35,000.

(10) Of the $2,603 total, $2,400 was granted to Mr. Weber as a match to money invested by him in his 401(k) plan, and $203 dollars were granted in the form of basic term life insurance.

Mr. Kaufman's Non-Competition Agreement

Pursuant to his non-competition agreement with us, Mr. Kaufman has also agreed:

- not to pursue any structured finance investment opportunities, except if our independent board members affirmatively approve the pursuit by Arbor Commercial Mortgage or one of its affiliates of structured finance opportunities that they have rejected on our behalf;

- if he is no longer an affiliate of Arbor Commercial Mortgage and, within the first five years of the term of the management agreement, he is no longer our chief executive officer other than by certain reasons, he will not engage in the structured finance lending business for a period of one year after the earlier of his departure from us or the regular expiration of the one year origination period; and

- if there is a change of control of Arbor Commercial Mortgage within the first three years of the term of the management agreement, and he is no longer an affiliate of Arbor Commercial Mortgage and leaves us without good reason in that three year period, he will not engage in the structured finance lending business for one year after the date of his departure from us.

Mr. Kaufman's non-competition agreement also prohibits Mr. Kaufman from soliciting our customers or employees during its term. See "Our Manager and the Management Agreement — Mr. Kaufman's Non Competition Agreement."

Stock Incentive Plan

We have adopted the Arbor Realty Trust, Inc. 2003 Omnibus Stock Incentive Plan, referred to in this prospectus as the stock incentive plan, to provide incentives to attract and retain the highest qualified directors, officers, employees, advisors, consultants and other personnel, including our manager and employees of our manager. The stock incentive plan is administered by our full board of directors or a committee appointed by our board of directors.

The stock incentive plan permits the granting of restricted stock awards. Under the stock incentive plan, 185,000 shares of common stock are reserved for issuance pursuant to restricted stock awards, subject to adjustment upon certain corporate transactions, and 147,500 restricted shares were issued upon consummation of the private placement. The initial awards were made to each of our initial directors, our chief executive officer, our chief financial officer, certain of our employees and certain employees of our manager who provide services to us. The remaining shares were reserved for issuance of restricted stock awards in the future. In addition, 1,000 restricted shares were issued to each of Messrs. Horn and Lazar upon their appointment to the board of directors.

A restricted stock award is an award of shares of common stock that is subject to restrictions on transferability and such other restrictions, if any, as our board of directors or committee may impose at the date of grant. Of the shares subject to the initial awards, two-thirds vested immediately and one-third will vest ratably over three years at a rate of 33.33% on each of the subsequent three anniversary dates of the date of grant. Future grants of restricted stock will be subject to vesting schedules as determined by our board of directors or the committee. The restrictions may lapse separately or in combination at such times, under such circumstances, including, without limitation, a specified period of employment or the satisfaction of pre-established criteria, in such installments or otherwise, as our board of directors or a committee of our board of directors may determine. Except to the extent restricted under the award agreement relating to the restricted stock, a participant granted restricted stock has all of the rights of a stockholder, including, without limitation, the right to vote and the right to receive dividends on the restricted shares. Although dividends are paid on all restricted stock, whether or not vested, at the same rate and on the same date as on shares of our common stock, holders of restricted stock are prohibited from selling such shares until they vest.

Our board of directors may amend, alter or discontinue the stock incentive plan, but cannot take any action that would impair the rights of a participant without such participant's consent. To the extent necessary and desirable, the board of directors must obtain approval of the stockholders, for any amendment that would:

- other than through adjustment as provided in the stock incentive plan, increase the total number of shares of our common stock reserved for issuance under the stock incentive plan; or

- change the class of officers, directors, employees, consultants and advisors eligible to participate in the stock incentive plan.

Our board of directors (or a committee appointed by our board of directors to act as administrator of the stock incentive plan) may amend the terms of any award granted under the stock incentive plan, prospectively or retroactively, but, generally may not impair the rights of any participant without his or her consent.

REGISTRATION RIGHTS AND LOCK-UP AGREEMENTS

In accordance with a registration rights agreement that we entered into with JMP Securities in connection with the private placement, we have included in the IPO registration statement, of which this prospectus is a part, 435,000 shares of common stock comprising units and 34,000 shares of common stock to be issued upon exercise of the warrants comprising the units originally issued and sold in the private placement. The registration rights agreement is described below. The summary of the registration rights agreement is not complete and is subject to and qualified in its entirety by reference to the registration rights agreement, a copy of which is filed as an exhibit to the registration statement of which this prospectus is a part. JMP Securities is an underwriter in this offering.

Under our registration rights agreement with JMP Securities, we agreed to file with the SEC by December 31, 2003, either a registration statement on the appropriate form under the Securities Act providing for the initial public offering of our common stock, referred to as an IPO registration statement or a registration statement on the appropriate form under the Securities Act providing for the resale pursuant to Rule 415 under the Securities Act from time to time by the holders of the securities issued and sold in the private placement, referred to as a shelf registration statement. We must use our best efforts to cause the IPO registration statement of which this prospectus is a part to become effective by December 31, 2003, but in no case later than June 30, 2004.

We would be obligated to pay additional dividends to the holders of securities that are eligible to be registered under the registration rights agreement if:

- we had not filed with the Securities and Exchange Commission by December 31, 2003 either a shelf or IPO registration statement;
- an IPO registration statement is filed with the Securities and Exchange Commission but is not declared effective by June 30, 2004;
- after the earlier of the withdrawal or abandonment of the offering pursuant to the IPO registration statement, we have not filed a shelf registration statement with the SEC prior to the later of December 31, 2003 and 30 days after such withdrawal or abandonment;
- a sale of our common stock pursuant to an IPO registration statement has not taken place and a shelf registration statement has not been declared effective by June 30, 2004;
- a sale of our common stock pursuant to an IPO registration statement takes place, after which we are still obligated to file a shelf registration statement, and we do not file a shelf registration statement within 180 days after the completion of the sale of common stock under the IPO registration statement or that shelf registration is not declared effective within 80 days of its filing; or
- after our IPO registration statement or our shelf registration statement, as applicable, has been declared effective, it ceases to be effective or usable in connection with resales during a period in which it is required to be effective without being immediately succeeded by an additional registration statement or a post-effective amendment to our registration statement.

We refer to each of the events listed above as a registration failure. During the first quarter immediately following a registration failure, we would be obligated to pay additional dividends at a rate of $0.0625 per share of common stock representing or underlying any registrable security, escalating at the end of such quarter and at the end of each quarter thereafter by an additional $0.0625 per share, up to a maximum rate of $0.25 per share per quarter, until the registration failure is cured. The funds needed to pay the additional dividends are required to be allocated and distributed by us by our operating partnership out of its income. We will pay these additional dividends from additional allocations of income and distributions from our operating partnership to which we will be entitled. Pursuant to the operating partnership agreement, Arbor Commercial Mortgage, as a holder of operating partnership units will not have a right to receive any additional dividend paid as a result of a registration failure.

We agreed to use our best efforts to list the shares of common stock comprising the units and the shares of common stock issued upon exercise of the warrants comprising the units originally issued and sold to the selling stockholders named in this prospectus on The Nasdaq Stock Market unless we qualify and choose to list these securities on the New York Stock Exchange, in which case we agreed to use our best efforts to list these securities on the New York Stock Exchange.

We have agreed to maintain the effectiveness of any shelf registration statement required to be filed until the first to occur of:

- the disposition of all offered securities under a registration statement or pursuant to Rule 144;
- the date on which the offered securities are saleable under Rule 144(k) under the Securities Act;
- the date that is two years after the effective date of the shelf registration statement; or
- the date on which the offered securities are sold to us.

Lock-Up Agreements

In connection with the private placement on July 1, 2003, Arbor Commercial Mortgage, our directors and officers and certain members of the senior management of Arbor Commercial Mortgage agreed with JMP Securities not to offer, pledge, sell contract to sell, sell any option or contract to purchase or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock, or any securities convertible into or exercisable for any of our common stock or any right to acquire our common stock, until the earlier of:

- 180 days from the effective date of the IPO registration statement; and
- two years from the consummation of the private placement, subject to certain exceptions.

JMP Securities, at any time, and without notice, may release all or any portion of the common stock subject to the foregoing lock-up agreements.

In addition, we will agree with the underwriters not to offer to sell, contract to sell, or otherwise dispose of, loan, pledge or grant any rights with respect to any shares of our common stock, any options or warrants to purchase any shares of our common stock or any securities convertible into or exercisable for any of our common stock, including our units, for a period of 180 days following the completion of this offering, subject to certain exceptions. Our directors and officers, Arbor Commercial Mortgage and certain members of the senior management of Arbor Commercial Mortgage will agree, with limited exceptions, for a period of 180 days after the date of this prospectus, and all existing stockholders will agree, with limited exceptions, for a period of 60 days after the date of this prospectus, that they will not, without the prior written consent of Wachovia Capital Markets, LLC, directly or indirectly, offer to sell, sell or otherwise dispose of any shares of our common stock or any securities convertible into, or exercisable or exchangeable for, shares of our common or our other capital stock, other than the shares of common stock sold by the selling stockholders in this offering. See “Underwriting — Lock-Up Agreements.”

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Conflicts of Interest with Our Manager

At the consummation of the private placement, Arbor Commercial Mortgage contributed the majority of its structured finance portfolio and related liabilities to our operating partnership in exchange for 3,146,724 operating partnership units and 629,345 warrants to purchase additional operating partnership units, representing a 28% limited partnership interest in our operating partnership (without giving effect to the exercise of the warrants).

Mr. Ivan Kaufman, our chairman and chief executive officer, is also the chief executive officer of Arbor Commercial Mortgage. Mr. Kaufman and the Kaufman entities collectively own 88% of the outstanding membership interests in Arbor Commercial Mortgage. Mr. Frederick C. Herbst, our chief financial officer, is also the chief financial officer of Arbor Commercial Mortgage. Mr. Herbst owns a 0.5% interest in Arbor Commercial Mortgage. Mr. Joseph Martello, one of our directors, currently serves as the chief operating officer of Arbor Management. Mr. Martello owns a 1.3% interest in Arbor Commercial Mortgage and is also the sole trustee of the Ivan and Lisa Kaufman Family Trust for the benefit of Mr. Kaufman's family, which owns a 59% interest in Arbor Commercial Mortgage, and a co-trustee, along with Mr. Kaufman, of the Ivan Kaufman Grantor Retained Annuity Trust which also owns an equity interest in Arbor Commercial Mortgage. Mr. Walter Horn, our secretary and general counsel and one of our directors, currently serves as the general counsel of Arbor Commercial Mortgage. Mr. Horn owns a 2.0% interest in Arbor Commercial Mortgage.

Mr. Daniel M. Palmier, our executive vice president of asset management, directed Arbor Commercial Mortgage's asset management group from 1997 until the consummation of the private placement. Mr. Palmier owns a 0.2% interest in Arbor Commercial Mortgage. Mr. Fred Weber, our executive vice president of structured finance, was responsible for overseeing Arbor Commercial Mortgage's structured finance and principal transactions group from 1999 until the consummation of the private placement. Mr. Weber owns a 0.9% interest in Arbor Commercial Mortgage.

As a result of the relationships described above, certain matters relating to our organization, some of which are discussed below, were not negotiated at arm's length, and their terms may not be as favorable to us as if they were negotiated with an unaffiliated third party.

Formation Transactions

Asset Contribution and Guaranty

Arbor Commercial Mortgage 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. Arbor Commercial Mortgage has agreed to indemnify us and our operating partnership against breaches of those representations and warranties.

At the time of Arbor Commercial Mortgage's origination of three investments that it contributed to us on July 1, 2003, each of the property owners granted Arbor Commercial Mortgage participating interests that share in a percentage of the cash flows of the underlying properties. Arbor Commercial Mortgage also made one of the contributed bridge loans to a joint venture in which it had a 50% non-controlling interest. Upon contribution of the structured finance assets, Arbor Commercial Mortgage retained these participating and joint venture interests. In connection with its asset contribution, Arbor Commercial Mortgage agreed that if any portion of the outstanding amount of any of these four contributed assets is not paid at the its maturity or repurchase date, Arbor Commercial Mortgage will pay 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 Arbor Commercial Mortgage due to the realization of any profits on its retained interests associated with any other of the four contributed assets. Arbor Commercial Mortgage 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 is in default.

Arbor Commercial Mortgage Registration Rights

We have granted Arbor Commercial Mortgage shelf registration rights, or, if such rights are not available, demand registration rights with respect to shares of our common stock that may be issued upon redemption of operating partnership units. Holders of our operating partnership units are entitled to participate in primary or secondary offerings of our common stock with respect to such shares. We have also agreed to certain restrictions on the registration rights that we may grant to any other holder or prospective holder of our securities without the prior written consent of the holders of the majority of the shares of common stock and common stock equivalents representing or underlying the then outstanding securities that are registrable under the registration rights agreements.

Special Voting Preferred Stock

Each of the approximately 3.1 million operating partnership units received by Arbor Commercial Mortgage, as well as each operating partnership unit that may be issued upon exercise of any of the warrants, are, in each case, paired with one share of our special voting preferred stock. Each share of our special voting preferred stock entitles the holder to one vote on all matters submitted to a vote of our stockholders. Therefore, Arbor Commercial Mortgage is entitled to a number of votes representing approximately 28% of the voting power of all shares entitled to vote on matters submitted to a vote of our stockholders. After giving effect to the concurrent offerings, Arbor Commercial Mortgage will have approximately % of the voting power of our outstanding stock (without giving effect to the exercise of Arbor Commercial Mortgage's warrants for additional operating partnership units).

Management and Services Agreements

We and our operating partnership have entered into a management agreement with Arbor Commercial Mortgage, pursuant to which Arbor Commercial Mortgage provides for the day to day management of our operations. Arbor Commercial Mortgage is also required to provide us with a right of first refusal with respect to all structured finance identified by Arbor Commercial Mortgage or its affiliates. We have agreed not to pursue, and to allow Arbor Commercial Mortgage to pursue, any real estate opportunities other than structured finance transactions. We are required to pay Arbor Commercial Mortgage a base management fee and an incentive management fee as well as reimburse Arbor Commercial Mortgage for certain of its expenses. We have paid $587,734 in base management fees to Arbor Commercial Mortgage for management services rendered for the period ended December 31, 2003. Our manager did not earn any incentive compensation for the quarters ended September 30, 2003 or December 31, 2003. See "Our Manager and the Management Agreement" for more information regarding the services Arbor Commercial Mortgage provides to us and the fees we pay to Arbor Commercial Mortgage.

We and our operating partnership have also entered into a services agreement with Arbor Commercial Mortgage pursuant to which our asset management group provides asset management services to Arbor Commercial Mortgage. 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. As of December 31, 2003, there have been no payments to us pursuant to the services agreement. See "Arbor Realty Trust, Inc. — Operations" and "— Our Asset Management Operations."

Non-Competition Agreement

We have entered into a non-competition agreement with Mr. Kaufman pursuant to which he has agreed not to pursue any structured finance opportunities, unless our independent board members affirmatively approve the pursuit by Arbor Commercial Mortgage or one of its affiliates of such opportunities that they have rejected on our behalf. See "Our Manager and the Management Agreement — Mr. Kaufman's Non Competition Agreement."

Benefits Participation Agreement

We have also entered into a benefits participation agreement with Arbor Commercial Mortgage, pursuant to which our employees are able to participate in any employee benefit plans maintained by Arbor Management, LLC, Arbor Commercial Mortgage's managing member, for the benefit of Arbor Commercial Mortgage employees. Arbor Management charges us an amount equal to its cost of providing benefits to each of our employees.

Restricted Stock Grants under Stock Incentive Plan

We granted 147,500 restricted shares of common stock under our stock incentive plan upon consummation of the private placement. The initial awards were made to our directors, officers and certain of our employees and certain employees of our manager who provide services to us. In addition, 1,000 restricted shares were issued to Messrs. Horn and Lazar upon their appointment to the board of directors in November 2003.

Related Party Loans and Investments

Arbor Commercial Mortgage has a 50% non-controlling interest in a joint venture, which was formed to acquire, develop and/or sell real estate assets. We currently have a $16.0 million bridge loan outstanding to the joint venture. There is a limited guarantee on the loan of 50% by our chief executive officer and 50% by the key principal of the joint venture. We have agreed to provide the borrower with additional mezzanine financing in the amount of up to $8.0 million. Arbor Commercial Mortgage has also agreed to provide a limited guarantee of the principal amount of this bridge loan as described under "— Asset Contribution and Guaranty."

On July 1, 2003, we purchased two mezzanine loans, 130 West 30th Street and The Crossings, and a preferred equity investment, Dutch Village, which collectively represented $13.1 million in assets, based on the assets' June 30, 2003 book value, from Arbor Commercial Mortgage. We used $6.7 million of the net proceeds of the private placement and assumed $6.4 million under our credit facilities in order to acquire these investments from Arbor Commercial Mortgage.

Arbor Commercial Mortgage contributed four investments to us that are secured by properties in which Arbor Commercial Mortgage has a participating or joint venture interest in the borrower. Every transaction entered into between us and an entity in which Arbor Commercial Mortgage holds equity interests raises a potential conflict of interest. Conflicts of interest with respect to these investments include, among others, decisions regarding (1) whether to waive defaults of such borrower, (2) whether to foreclose on the investment and (3) whether to permit additional financing on the properties securing our investments other than financing provided by us.

In February 2003, Arbor Commercial Mortgage originated a $13.75 million first mortgage loan and a $1.2 million second mortgage loan, each of which bear interest at a variable rate of one month LIBOR plus 4.25% and mature in March 2004, to NSH Affordable Housing of Indiana, Inc., a not-for-profit corporation that holds and manages investment property from the endowment of the North Shore Hebrew Academy High School. Arbor Commercial Mortgage contributed both loans to us upon the consummation of the private placement. Two of our directors, Mr. Kaufman and Dr. Helmreich, are members of the board of trustees of North Shore Hebrew Academy High School and NSH Affordable Housing of Indiana, Inc.

Arbor Commercial Mortgage may from time to time provide permanent mortgage loan financing to clients of ours, which will be used to refinance bridge financing provided by us. We and Arbor Commercial Mortgage may also make loans to the same borrower or to borrowers that are under common control. Additionally, our policies and those of Arbor Commercial Mortgage may require us to enter into intercreditor agreements in situations where loans are made by us and Arbor Commercial Mortgage to the same borrower. In addition, we may enter into future transactions with Arbor Commercial Mortgage with the approval of our independent directors.

Equity Investments in Our Borrowers

In December 2003, we originated a $30 million mezzanine loan to 450 Partners Mezz III LLC and a $15 million mezzanine loan to 450 Partners Mezz II LLC. The $30 million loan is bears interest at a fixed rate and the $15 million loan requires monthly interest payments based on LIBOR. Both loans mature in January 2006. At the closing of the loans, we made a $3 million investment in the entity that controls the borrowers and arranged for an additional $12 million of equity to be invested by third parties. In exchange for making the loans and arranging the equity investments, we received an approximately 24% profits participation in the property and we were designated the co-managing member of the entity that controls the property. We sold our $3 million equity investment in January 2004 and retained our profits participation and position as co-managing member.

In December 2003, we originated a $35 million mezzanine loan to Prime Outlets Member LLC, or POM. The loan requires monthly interest payments based on LIBOR and matures in January 2006. We also acquired, for a total consideration of $2.1 million, indirect equity interests in Prime Outlets Acquisition Company LLC, the indirect parent of POM, consisting of 7.5% capital interest, 25% carried profits interest after specified returns are achieved, and a preferred distribution that when added to the interest paid by POM on the mezzanine loan, results in a combined return of 12.5%.

In June 2003, Arbor Commercial Mortgage invested approximately $818,000 in exchange for a 12.5% non-controlling interest in two joint ventures, which own and operate the properties located at 80 Evergreen and 930 Flushing Avenue. We purchased this investment from Arbor Commercial Mortgage in August 2003. As of December 31, 2003, we had the $2.5 million 80 Evergreen bridge loan, maturing in October 2006, and the $3.5 million 930 Flushing Avenue mezzanine loan, maturing in June 2006, outstanding to affiliates of these joint ventures.

Other Relationships and Related Transactions

Two of our employees, Daniel M. Palmier, our executive vice president of asset management, and Fred Weber, our executive vice president of structured finance, continue to serve on Arbor Commercial Mortgage's executive committee and provide services to Arbor Commercial Mortgage. Messrs. Palmier and Weber do not receive a salary from Arbor Commercial Mortgage, but may receive production payments from Arbor Commercial Mortgage for originating loans on its behalf.

Arbor Management, LLC, the managing member of Arbor Commercial Mortgage, loaned Mr. Herbst and Mr. Palmier $225,000 and $800,000, respectively, for the purpose of financing a portion of each of their investments in the private placement. Arbor Management's loan to Mr. Herbst is secured by a pledge of his .5% membership interest in Arbor Commercial Mortgage. The loan made to Mr. Palmier is secured by a pledge of the 13,350 units he purchased in the private placement. Arbor Management has also made additional loans to Mr. Herbst and Mr. Palmier in the amounts of $57,142 and $7,500, respectively, prior to the private placement. In addition, Arbor Management loaned Walter Horn, our general counsel and secretary and one of our directors, and Mr. Weber $28,857 and $157,545, respectively prior to the private placement. Arbor Management will not make any loans in the future to any of our directors, officers or employees and will not modify the terms of or extend the maturity date of any outstanding loans to our directors, executives officers and employees. The current policies and procedures of Arbor Commercial Mortgage and us do not allow for the lending of funds to any of our directors, officers or employees.

One of our directors, Dr. Helmreich, has been retained as a part-time consultant in the capacity of chairman for Academic Affairs by North Shore Hebrew Academy since 2000. Prior to 2000, Dr. Helmreich was the president of North Shore Hebrew Academy. Our chairman and chief executive officer, Mr. Kaufman and Dr. Helmreich are both members of the board of trustees of North Shore Hebrew Academy.

In 2000 and 2001, Arbor Commercial Mortgage paid $65,394 and $85,000, respectively, for legal services rendered, to Pryor, Cashman, Sherman & Flynn, where Mr. Jonathan A. Bernstein, who serves as one of our directors, is of counsel.

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SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information regarding the ownership of each class of capital stock by:

- each of our directors;
- each of our executive officers;
- each holder of five percent or more of each class of our capital stock, as of January 28, 2004; and
- all of our directors and executive officers as a group.

Unless otherwise indicated, all shares are owned directly and the indicated person has sole voting and investment power. Except as indicated in the footnotes to the table below, the business address of the stockholders listed below is the address of our principal executive office, 333 Earle Ovington Boulevard, Suite 900, Uniondale, New York 11553.

	Prior to the Concurrent Offerings		After the Concurrent Offerings	
Name	Number of Shares Beneficially Owned(1)	Percent of Class(2)	Number of Shares Beneficially Owned(1)	Percent of Class
Arbor Commercial Mortgage, LLC(3)	3,776,136	31.5%		
Ivan Kaufman(4)	3,898,136	32.6		
Perry Partners, L.P.(5)	650,000	5.7		
WS Partners, L.L.C.(6)	650,000	5.7		
Hunter Global Investors	582,500	5.1		
Joseph Martello(7)	6,000	*		
Jonathan A. Bernstein(8)	1,000	*		
William Helmreich(9)	21,000	*		
C. Michael Kojaian(10)	1,000	*		
Frederick C. Herbst(11)	24,000	*		
Daniel M. Palmier(12)	73,750	*		
Fred Weber(13)	12,000	*		
Walter K. Horn(14)	8,000	*		
Melvin F. Lazar(15)	1,000	*		
All directors and officers as a group (10 persons)	4,045,886	33.8%		

* Less than 1%

(1) Beneficial ownership is determined in accordance with the rules of the SEC and generally includes securities over which a person has voting or investment power and securities that a person has the right to acquire within 60 days of the date hereof. For purposes of the table above, we have also assumed that all units of our operating partnership, Arbor Realty Limited Partnership, held by such person or group of persons are redeemed for common stock (regardless of when such units are redeemable).

At the consummation of the private placement, Arbor Commercial Mortgage received 3,146,724 operating partnership units and warrants to purchase an additional 629,345 operating partnership units. Each of these operating partnership units held by Arbor Commercial Mortgage is paired with one share of our special voting preferred stock, which is entitled to one vote per share on all matters submitted to our stockholders. Each share of special voting preferred stock will be redeemed and cancelled by us upon the redemption of its paired operating partnership unit for shares of our common stock or cash. As this table assumes that all operating partnership units issued to Arbor

Commercial Mortgage, including those issuable upon exercise of the warrants issued to Arbor Commercial Mortgage, have been redeemed for shares of our common stock, we have assumed that the shares of special voting preferred stock to be held by Arbor Commercial Mortgage have been redeemed and cancelled by us.

(2) Shares of common stock subject to options or warrants exercisable within 60 days of the date hereof are deemed to be outstanding for computing the percentage of the person holding such options or warrants but are not deemed outstanding for computing the percentage of any other person. Shares of common stock issuable upon the redemption of operating partnership units are deemed to be outstanding for computing the percentage of the person holding such operating partnership units but are not deemed outstanding for computing the percentage of any other person.

(3) Includes shares of our common stock issuable upon redemption of the operating partnership units that are issuable upon exercise of warrants held by Arbor Commercial Mortgage.

(4) Includes shares of our common stock issuable upon redemption of the operating partnership units held by Arbor Commercial Mortgage and subject to warrants held by Arbor Commercial Mortgage. Mr. Kaufman, together with the Kaufman entities, including the Ivan and Lisa Kaufman Family Trust, the Ivan Kaufman Grantor Retained Trust and Arbor Management, beneficially own approximately 88% of the outstanding membership interests of Arbor Commercial Mortgage. Also includes 120,000 of shares of restricted common stock that we granted to Mr. Kaufman and 2,000 shares of our common stock purchased by Mr. Kaufman's wife in the private placement.

(5) Based on information provided to us as of January 28, 2004. The address for Perry Partners, L.P. is 599 Lexington Avenue, New York, NY 10022.

(6) Based on information provided to us as of January 28, 2004. Includes (i) 513,000 shares directly held by Watershed Capital Institutional Partners, L.P. ("WCIP") and (ii) 137,000 shares directly held by Watershed Capital Partners, L.P. ("WCP" and, together with WCIP, the "Watershed Partnerships"). WS Partners, L.L.C. ("WSP"), as the general partner to the Watershed Partnerships, may, for purposes of Rule 13d-3 under the Exchange Act, be deemed to own beneficially the shares held by the Watershed Partnerships. As senior managing member of WSP, Meridee A. Moore may, for purposes of Rule 13d-3 under the Exchange Act, be deemed to own beneficially the shares owned by the WS Partnerships. WS Partnerships and Meridee A. Moore disclaim any beneficial ownership of such shares. All of the above-mentioned entities and person disclaim group attribution. The address for all of the above-mentioned entities and person is c/o Watershed Asset Management, L.L.C., One Maritime Plaza, Suite 2535, San Francisco, CA 94111.

(7) Includes 6,000 shares of our common stock, 5,000 of which Mr. Martello purchased in the private placement, and 1,000 of which were granted to him as restricted shares for his services as a director. Mr. Martello holds a 1.3% Class B membership interest in Arbor Commercial Mortgage. For purposes of the SEC beneficial ownership rules, the operating partnership units held by Arbor Commercial Mortgage are not deemed to be beneficially owned by Mr. Martello.

(8) The address for Mr. Bernstein is 333 Earle Ovington Boulevard, Uniondale, NY 11553.

(9) The address for Dr. Helmreich is 333 Earle Ovington Boulevard, Uniondale, NY 11553.

(10) Includes shares of common stock purchased in the concurrent offering. The address for Mr. Kojaian is 333 Earle Ovington Boulevard, Uniondale, NY 11553.

(11) Includes 24,000 shares of our common stock, 20,000 of which Mr. Herbst purchased in the private placement, and 4,000 of which were granted to him as restricted shares for his services as an executive officer. Mr. Herbst holds a 0.5% Class B membership interest in Arbor Commercial Mortgage. For purposes of the SEC beneficial ownership rules, the operating partnership units held by Arbor Commercial Mortgage are not deemed to be beneficially owned by Mr. Herbst.

(12) Includes 73,750 shares of our common stock, 66,750 of which Mr. Palmier purchased in the private placement, and 7,000 of which were granted to him as restricted shares for his services as an executive officer. Mr. Palmier holds a 0.2% Class B membership interest in Arbor Commercial Mortgage. For purposes of the SEC beneficial ownership rules, the operating partnership units held by Arbor Commercial Mortgage are not deemed to be beneficially owned by Mr. Palmier.

(13) Includes 12,000 shares of our common stock, 5,000 of which Mr. Weber purchased in the private placement, and 7,000 of which were granted to him as restricted shares for his services as an executive officer. Mr. Weber holds a 0.9% Class B membership interest in Arbor Commercial Mortgage. For purposes of the SEC beneficial ownership rules, the operating partnership units held by Arbor Commercial Mortgage are not deemed to be beneficially owned by Mr. Weber.

(14) Includes 8,000 shares of our common stock, 7,000 of which he purchased in the private placement, and 1,000 of which were granted to him as restricted shares for his services as a director. Mr. Horn holds a 2.0% Class B membership interest in Arbor Commercial Mortgage. For purposes of the SEC beneficial ownership rules, the operating partnership units held by Arbor Commercial Mortgage are not deemed to be beneficially owned by Mr. Horn.

(15) The address for Mr. Lazar is 333 Earle Ovington Boulevard, Uniondale, NY 11553.

DESCRIPTION OF STOCK

The following is a summary of the material provisions of our stock.

General

We were formed under the laws of the State of Maryland. Rights of our stockholders are governed by the Maryland General Corporation Law, or the MGCL, our charter and our bylaws, copies of each of which are available upon request. See “Available Information.”

Authorized Stock

Our charter provides that we may issue 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. There are approximately 8.2 million shares of common stock issued and outstanding and approximately 3.1 million shares of preferred stock issued and outstanding.

Under Maryland law, our stockholders are generally not liable for our debts or obligations.

Common Stock

All shares of our common stock offered hereby are duly authorized and will be validly issued, fully paid and nonassessable. Subject to the preferential rights of any other class or series of stock and to the provisions of the charter regarding the restrictions on transfer of stock, holders of shares of our common stock are entitled to receive dividends on such stock when, as and if authorized by our board of directors out of funds legally available therefor and declared by us and to share ratably in the assets of our company legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding up after payment of or adequate provision for all known debts and liabilities of our company, including the preferential rights on dissolution of any class or classes of preferred stock.

Subject to the provisions of our charter regarding the restrictions on transfer of stock, each outstanding share of common stock entitles the holder to one vote on all matters submitted to the vote of stockholders, including the election of directors. There is no cumulative voting in the election of our board of directors, which means that the holders of a majority of the outstanding shares of our common stock can elect all of the directors then standing for election and the holders of the remaining shares of our common stock are not able to elect any directors.

Holders of shares of our common stock have no preference, conversion, exchange, sinking fund, redemption or appraisal rights and have no preemptive rights to subscribe for any securities of our company. Subject to the provisions of the charter regarding the restrictions on transfer of stock, shares of our common stock have equal dividend, liquidation and other rights.

Under the MGCL, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, engage in a statutory share exchange or engage in similar transactions outside the ordinary course of business unless declared advisable by the board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is set forth in the corporation’s charter. Our charter, however, provides for approval of these matters, except with respect to certain charter amendments, by an affirmative vote of stockholders entitled to cast at least a majority of the votes entitled to be cast on the matter.

Our charter authorizes our board of directors to increase the number of shares of authorized common stock, to issue additional authorized but unissued shares of our common stock, to reclassify any unissued shares of our common stock into other classes or series of classes of stock and to establish the number of shares in each class or series and to set the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption for each such class or series without stockholder approval.

There are no limitations imposed on dividend payouts to stockholders in our warehouse credit agreement and our master repurchase agreements provided that such dividend payout does not cause us to violate the minimum net worth and minimum liquidity covenants contained in those agreements.

Preferred Stock

Our charter authorizes our board of directors to increase the number of authorized shares of preferred stock, to issue additional authorized but unissued shares of our preferred stock, to classify or reclassify any unissued shares of preferred stock and to reclassify any previously classified but unissued shares of any series without stockholder approval. Prior to issuance of shares of each series, our board of directors is required by the MGCL and our charter to set the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each such series. Thus, our board of directors could authorize the issuance of shares of preferred stock with terms and conditions that could have the effect of delaying, deferring or preventing a transaction or a change of control of our company that might involve a premium price for holders of our common stock or otherwise be in their best interest.

Special Voting Preferred Stock

We, our operating partnership and our manager have entered into a pairing agreement. Pursuant to the pairing agreement, each operating partnership unit issued to Arbor Commercial Mortgage in connection with the contribution of the initial assets (including operating partnership units issuable upon the exercise of Arbor Commercial Mortgage's warrants for additional operating partnership units) is paired with one share of our special voting preferred stock.

A holder of special voting preferred stock is not entitled to any regular or special dividend payments or other distributions, including any dividend or other distributions declared or paid with respect to shares of our common stock or any other shares of our stock. A holder of shares of special voting preferred stock is only entitled to receive a $0.01 distribution per share in the event of our liquidation, dissolution or redemption of the special voting preferred stock.

Each share of special voting preferred stock entitles the holder to one vote on all matters submitted to a vote of our stockholders. The holders of special voting preferred stock have no separate class voting rights, except as specifically provided by our charter. We may not issue any additional shares of special voting preferred stock in the future unless such shares are paired with operating partnership units.

Upon any redemption of an operating partnership unit that is paired with a share of special voting preferred stock in accordance with the redemption provisions of the operating partnership agreement, the share of special voting preferred stock will be redeemed by us and cancelled.

If we complete a merger transaction in connection with which the holders of operating partnership units either continue to hold interests in our operating partnership or receive partnership interests or other securities of another operating partnership in an "umbrella partnership" REIT structure, then the holders of special voting preferred stock are generally entitled to vote separately as a class on such a merger transaction, unless they receive a voting security comparable to the special voting preferred stock.

Warrants

The warrants comprising part of the units were issued pursuant to a warrant agreement dated as of July 1, 2003 between us and American Stock Transfer & Trust Company who acts as warrant agent. The following is a brief summary of certain provisions of the warrant agreement and does not purport to be complete and is qualified in its entirety by reference to the warrant agreement including the definitions of certain terms used below.

Each unit consists of five shares of our common stock, par value $0.01 per share, and one warrant that has an initial exercise price of $15 and entitles the holder to purchase one share of our common stock subject to certain anti-dilution adjustments. The warrants are exercisable until 5:00 p.m. New York City time on July 1, 2005. The warrants comprising the units do not become exercisable, detachable and freely tradeable until after the shares of the common stock comprising the units are registered under the Securities Act and either listed on a national securities exchange or The Nasdaq Stock Market, Inc. The shares of common stock and the warrants comprising the units may not be traded separately until such listing.

The warrants, held in certificated form, may be exercised by surrendering to the warrant agent the definitive warrant certificates evidencing such warrants, with the accompanying form of election to purchase properly completed and executed, together with payment of the exercise price. Payment of the exercise price may be made (1) in the form of cash or by certified or official bank check payable to the order of us, or (2) by surrendering additional warrants or shares of common stock for cancellation to the extent we may lawfully accept shares of common stock, with the value of such shares of common stock for such purpose equal to the average trading price of the common stock during the 20 trading days preceding the date surrendered and the value of the warrants to equal the difference between such value of a share of common stock and the exercise price.

No fractional shares of common stock will be issued upon exercise of the warrants. In lieu of any fractional shares of our common stock that would otherwise be issuable upon exercise of the warrants, we will pay the holders the equivalent cash value of the fractional warrants. The holders of the warrants have no right to vote on matters submitted to our stockholders and have no right to receive dividends. The holders of the warrants not yet exercised are not entitled to share in our assets in the event of our liquidation or dissolution, or the winding up of our affairs.

The exercise price of the warrants will be appropriately adjusted if we (1) pay a dividend or make a distribution on our common stock in shares of our common stock or make certain other dividends or distributions on our common stock (other than cash dividends out of funds legally available therefore), (2) subdivide our outstanding shares of common stock into a greater number of shares, (3) combine our outstanding shares of common stock into a smaller number of shares or (4) issue by reclassification of our common stock any other shares of our stock.

In the case of our consolidation or merger in which we are not the surviving entity, or our liquidation or the sale of all or substantially all of our assets to another person or entity, each warrant will thereafter be deemed exercised for the right to receive the kind and amount of shares of stock or other securities or property to which such holder would have been entitled as a result of such consolidation, merger, or sale had the warrants been exercised immediately prior thereto, less the exercise price.

Power to Increase Authorized Stock and Issue Additional Shares

of our Common Stock and Preferred Stock

Our board of directors has the power to increase the number of authorized shares of our preferred and common stock, issue additional authorized but unissued shares of our common stock or preferred stock and to classify or reclassify unissued shares of our common stock or preferred stock and thereafter to cause us to issue such classified or reclassified shares of stock without further action by our stockholders, unless stockholder consent is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. We believe that this power provides us with flexibility in structuring possible future financings and acquisitions and in meeting other business needs that might arise. Although our board of directors does not intend to do so, it could authorize us to issue a class or series that could, depending upon the terms of the particular class or series, delay, defer or prevent a transaction or a change of control of our company that might involve a premium price for our stockholders or otherwise be in their best interest.

Restrictions on Transfer

In order for us to qualify as a REIT under the Internal Revenue Code, our stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months (other than the first year for which an election to be a REIT has been made) or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of the outstanding shares of stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities) during the last half of a taxable year (other than the first year for which an election to be a REIT has been made).

Our charter contains restrictions on the ownership and transfer of our common stock that are intended to assist us in complying with these requirements and continuing to qualify as a REIT. The relevant sections of our charter provide that subject to the exceptions described below, no person or entity may beneficially own, or be deemed to own by virtue of the applicable constructive ownership provisions of the Internal Revenue Code, more than 9.6% (by value or by number of shares, whichever is more restrictive) of the outstanding shares of our common stock or 9.6% by value of our outstanding capital stock. We refer to this restriction as the “ownership limit.” Our charter provisions further prohibit any person from beneficially or constructively owning shares of our stock that would result in us being “closely held” under Section 856(h) of the Internal Revenue Code or otherwise cause us to fail to qualify as a REIT.

The constructive ownership rules under the Internal Revenue Code are complex and may cause stock owned actually or constructively by a group of related individuals and/ or entities to be owned constructively by one individual or entity. As a result, the acquisition of less than 9.6% of our outstanding common or capital stock (or the acquisition of an interest in an entity that owns, actually or constructively, less than 9.6% of our outstanding common or capital stock) by an individual or entity, could, nevertheless cause that individual or entity, or another individual or entity, to own constructively in excess of these limits on our outstanding stock and thereby subject the stock to the applicable ownership limit.

Our board of directors may, in its sole discretion, waive the ownership limit with respect to a particular stockholder if it:

- determines that any exemption from the ownership limit will not jeopardize our status as a REIT under the Internal Revenue Code; and
- determines that such stockholder does not and will not own, actually or constructively, an interest in a tenant of ours (or a tenant of any entity owned in whole or in part by us) that would cause us to own, actually or constructively, more than a 9.9% interest (as set forth in Section 856 (d)(2)(B) of the Internal Revenue Code) in such tenant or that any such ownership would not cause us to fail to qualify as a REIT under the Internal Revenue Code.

We granted Arbor Commercial Mortgage and Ivan Kaufman, as its controlling entity owner, an exemption from this ownership limitation, in connection with Arbor Commercial Mortgage’s acquisition of approximately 3.1 million shares of our special voting preferred stock.

As a condition of our waiver, our board of directors may require an opinion of counsel or an IRS ruling satisfactory to our board of directors, and/ or representations or undertakings from the applicant with respect to preserving our REIT status. Additionally, the waiver of the ownership limit may not allow five or fewer stockholders to beneficially own more than 50% in value of our outstanding capital stock. Our charter provisions further prohibit:

- any person from beneficially or constructively owning shares of our stock that would result in us being closely held under Section 856(h) of the Internal Revenue Code or otherwise cause us to fail to qualify as a REIT; and

- any person from transferring shares of our stock after January 29, 2004 if such transfer would result in shares of our stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution).

Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of shares of our common stock that will or may violate any of the foregoing restrictions on transferability and ownership will be required to give notice immediately to us and provide us with such other information as we may request in order to determine the effect of such transfer on our status as a REIT. The foregoing provisions on transferability and ownership will not apply if our board of directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT.

Pursuant to our charter, if any purported transfer of our stock or any other event would otherwise result in any person violating the ownership limits or such other limit as permitted by our board of directors, then any such purported transfer will be ineffective as to that number of shares in excess of the applicable ownership limit (rounded up to the nearest whole). That number of shares in excess of the ownership limit will be automatically transferred to, and held by, a trust for the exclusive benefit of one or more charitable organizations selected by us. A person or entity that becomes subject to the ownership limit by virtue of a violative transfer that results in a transfer to a trust, as set forth above, is referred to as a "purported beneficial transferee" if, had the violative transfer been effective, the person or entity would have been a record owner and beneficial owner or solely a beneficial owner of our common stock, or is referred to as a "purported record transferee" if, had the violative transfer been effective, the person or entity would have been solely a record owner of our common stock. The automatic transfer will be effective as of the close of business on the business day prior to the date of the violative transfer or other event that results in a transfer to the trust. Any dividend or other distribution paid to the purported record transferee, prior to our discovery that the shares had been automatically transferred to a trust as described above, must be repaid to the trustee upon demand for distribution to the beneficiary of the trust. If the transfer to the trust as described above is not automatically effective, for any reason, to prevent violation of the applicable ownership limit or as otherwise permitted by our board of directors, then our charter provides that the transfer of the excess shares will be void.

Shares of our stock transferred to the trustee are deemed offered for sale to us, or our designee, at a price per share equal to the lesser of (1) the price paid by the purported record transferee for the shares (or, if the event that resulted in the transfer to the trust did not involve a purchase of such shares of our stock at market price, the last reported sales price reported on a national securities exchange or the Nasdaq Stock Market on the trading day immediately preceding the day of the event that resulted in the transfer of such shares of our stock to the trust if the shares are then traded) and (2) the market price on the date we, or our designee, accepts such offer. We have the right to accept such offer until the trustee has sold the shares of our common stock held in the trust pursuant to the clauses discussed below. Upon a sale to us, the interest of the charitable beneficiary in the shares sold terminates and the trustee must distribute the net proceeds of the sale to the purported record transferee and any dividends or other distributions held by the trustee with respect to such common stock will be paid to the charitable beneficiary.

If we do not buy the shares, the trustee must, within 20 days of receiving notice from us of the transfer of shares to the trust, sell the shares to a person or entity designated by the trustee who could own the shares without violating the ownership limits or as otherwise permitted by our board of directors. After that, the trustee must distribute to the purported record transferee an amount equal to the lesser of (1) the price paid by the purported record transferee or owner for the shares (or, if the event that resulted in the transfer to the trust did not involve a purchase of such shares at market price, the last reported sales price reported on a national securities exchange or the Nasdaq Stock Market on the trading day immediately preceding the relevant date if the shares are then traded), and (2) the sales proceeds (net of commissions and other expenses of sale) received by the trust for the shares. The purported beneficial transferee or purported record transferee has no rights in the shares held by the trustee.

The trustee shall be designated by us and shall be unaffiliated with us and with any purported record transferee or purported beneficial transferee. Prior to the sale of any excess shares by the trust, the trustee will receive, in trust for the beneficiary, all dividends and other distributions paid by us with respect to the excess shares, and may also exercise all voting rights with respect to the excess shares.

Subject to Maryland law, effective as of the date that the shares have been transferred to the trust, the trustee shall have the authority, at the trustee's sole discretion, to:

- rescind as void any vote cast by a purported record transferee prior to our discovery that the shares have been transferred to the trust; and
- recast the vote in accordance with the desires of the trustee acting for the benefit of the beneficiary of the trust.

However, if we have already taken irreversible corporate action, then the trustee may not rescind or recast the vote.

Any beneficial owner or constructive owner of shares of our stock and any person or entity (including the stockholder of record) who is holding shares of our stock for a beneficial owner must, on request, provide us with a completed questionnaire containing the information regarding their ownership of such shares, as set forth in the applicable Treasury regulations. In addition, any person or entity that is a beneficial owner or constructive owner of shares of our stock and any person or entity (including the stockholder of record) who is holding shares of our stock for a beneficial owner or constructive owner shall, on request, be required to disclose to us in writing such information as we may request in order to determine the effect, if any, of such stockholder's actual and constructive ownership of shares of our common stock on our status as a REIT and to ensure compliance with the ownership limit, or as otherwise permitted by our board of directors.

All certificates representing shares of our stock bear a legend referring to the restrictions described above.

These ownership limits could delay, defer or prevent a transaction or a change of control of our company that might involve a premium price for our common stock or otherwise be in the best interest of our stockholders.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company.

SECURITIES ELIGIBLE FOR FUTURE SALE

Prior to the concurrent offerings, 8,199,567 shares of our common stock are outstanding, 1,610,000 shares authorized for issuance upon exercise of warrants for shares of common stock 35,500 shares reserved and authorized for issuance under our stock incentive plan, and 3,776,069 shares of common stock authorized for issuance upon redemption of operating partnership units (including 629,345 operating partnership units issuable upon exercise of warrants for additional operating partnership units).

Upon completion of the concurrent offerings and giving effect to the potential exercise of warrants and redemption of operating partnership units for shares of our common stock, shares of our common stock will be outstanding, assuming no exercise of the underwriters' over-allotment option. Of the outstanding shares, the shares of our common stock sold by us in the concurrent offerings will be freely tradable without restriction or limitation under the Securities Act, with the exception of any shares purchased by our affiliates. Any shares of common stock purchased by our affiliates in the concurrent offerings will be subject to the manner of sale and volume limitations of Rule 144 promulgated under the Securities Act. In addition, the shares of common stock held by C. Michael Kojaian, one of our directors, in the concurrent offering will be subject to the lock-up agreement described below.

We, our directors and officers, Arbor Commercial Mortgage and certain members of the senior management of Arbor Commercial Mortgage will agree, with limited exceptions, for a period of 180 days after the date of this prospectus, and all existing stockholders will agree, with limited exceptions, for a period of 60 days after the date of this prospectus, that we and they will not, without the prior written consent of Wachovia Capital Markets, LLC, directly or indirectly, offer to sell, sell or otherwise dispose of any shares of our common stock or any securities convertible into, or exercisable or exchangeable for, shares of our common or our other capital stock, other than the shares of common stock sold by the selling stockholders in this offering. Existing stockholders who have not elected to sell their shares of common stock in this offering and their transferees have the right to require us to register under the Securities Act their securities for sale into the public markets, subject to the lock-up agreements. In connection with the private placement, our directors and executive officers, Arbor Commercial Mortgage and certain members of the senior management of Arbor Commercial Mortgage agreed with JMP Securities, the initial purchaser in the private placement, not to offer, pledge, sell contract to sell, sell any option or contract to purchase or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock, or any securities convertible into or exercisable for any of our common stock or any right to acquire our common stock, for a period of 180 days from the effective date of this registration statement of which this prospectus is a part, subject to certain exceptions.

Wachovia Capital Markets, LLC or JMP Securities, at any time, and without notice, may release all or any portion of the common stock subject to the foregoing lock-up agreements.

Registration Rights

Pursuant to our registration rights agreement with JMP Securities, we granted the investors in the private placement "piggyback" registration rights that allow these holders to include their shares of common stock in any public offering initiated by us, subject to cutbacks if the underwriters determine in good faith that marketing factors require a limitation on the amount of shares that may be underwritten in any such offering. We have filed an IPO registration statement, of which this prospectus forms a part, which includes 469,000 shares of common stock, including 34,000 shares of common stock issued upon exercise of the warrants proposed to be offered by the selling stockholders.

Pursuant to our registration rights agreement we are also required to file a shelf registration statement within six months after the consummation of this offering in order to provide for the resale of any shares of common stock purchased by the investors in the private placement that do not elect to sell their shares in this offering.

Under our registration rights agreement with JMP Securities, we may suspend sales under the shelf registration statement by the stockholders holding securities issued and sold in the private placement. For a period not to exceed thirty days in any three month period or ninety days in the aggregate in any twelve-month period in the event of:

- an underwritten offering where we are advised by the representative of the underwriters that the sale of securities pursuant to the shelf registration statement would have a material adverse effect on our underwritten offering; or
- pending negotiations relating to, or the consummation of, a transaction or the occurrence of an event
  - that would require additional disclosure of material information by us in the shelf registration statement and that has not been so disclosed;
  - as to which we have a bona fide business purpose for preserving confidentiality; or
  - that renders us unable to comply with Securities and Exchange Commission requirements, in each case under circumstances that would make it unduly burdensome to cause the shelf registration statement to become effective or to promptly amend or supplement the shelf registration statement on a post effective basis, as applicable.

No assurance can be given as to (1) the likelihood that an active market for our common stock will develop, (2) the liquidity of any such market, (3) the ability of the stockholders to sell our common stock or (4) the prices that stockholders may obtain for any of the shares of our common stock. No prediction can be made as to the effect, if any, that future sales of our common stock, or the availability of securities for future sale, will have on the market price-prevailing from time to time. Sales of substantial amounts of our common stock, or the perception that such sales could occur, may adversely affect prevailing market prices of the common stock. See “Risk Factors-Risk Factors Related to the Offering.”

For a description of certain restrictions on transfers of our common stock held by certain of our stockholders, “Underwriting.”

IMPORTANT PROVISIONS OF MARYLAND LAW AND

OF OUR CHARTER AND BYLAWS

The following is a summary of important provisions of the MGCL, our charter and our bylaws, copies of each of which are available upon request. See “Available Information.”

The Board of Directors

Our bylaws provide that the number of directors of our company may be established by our board of directors but may not be fewer than the minimum number permitted under the MGCL (currently, one) nor more than nine. Any vacancy will be filled, at any regular meeting or at any special meeting called for that purpose, by a majority of the remaining directors, except that a vacancy resulting from an increase in the number of directors may be filled by a majority of our entire board of directors. In addition, our charter provides that at least a majority of our directors are required to be independent.

Pursuant to our charter, the board of directors is divided into three classes of directors. The current terms of the Class I, Class II and Class III directors will expire at the annual meeting of stockholders in 2004, 2005 and 2006, respectively. Directors of each class will be nominated for three year terms upon the expiration of each three year term and each year one class of directors will be elected by the stockholders. We believe that classification of the board of directors helps to assure the continuity and stability of our business strategies and policies as determined by the board of directors. Holders of shares of our common stock have no right to cumulative voting in the election of directors. Consequently, at each annual meeting of stockholders, the holders of a majority of the shares of our common stock are able to elect all of the successors of the class of directors whose terms expire at that meeting.

The classified board provision could have the effect of making the replacement of incumbent directors more time consuming and difficult. At least two annual meetings of stockholders, instead of one, is generally required to effect a change in a majority of our board of directors. Thus, the classified board provision could increase the likelihood that incumbent directors will retain their positions. The staggered terms of directors may delay, defer or prevent a tender offer or an attempt to change the control of us, even though the tender offer or change in control might be in the best interest of our stockholders.

Removal of Directors

Our charter provides that a director may be removed only for cause (as defined in the charter) and then only by the affirmative vote of at least two-thirds of the votes entitled to be cast in the election of directors. This provision, when coupled with the provision in our bylaws authorizing our board of directors to fill vacant directorships, precludes stockholders from removing incumbent directors except for cause and by a substantial affirmative vote and filling the vacancies created by the removal with their own nominees.

Liability and Indemnification of Officers and Directors

Maryland law permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (1) actual receipt of an improper benefit or profit in money, property or services or (2) active and deliberate dishonesty established by a final judgment and that is material to the cause of action. Our charter contains such a provision that eliminates directors’ and officers’ liability to the maximum extent permitted by Maryland law.

Our charter authorizes us, to the maximum extent permitted by Maryland law, to indemnify any present or former director or officer or any individual who, while our director and at our request, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee, from and against any claim or liability to which that person may become subject or which that person may incur by reason of his status as a present or former director or officer of ours and to pay or reimburse their reasonable expenses in advance of final disposition of a proceeding. Our bylaws obligate us, to the maximum extent permitted by Maryland law, to indemnify any present or former director or officer or any individual who, while our director and at our request, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee and who is made a party to the proceeding by reason of his service in that capacity from and against any claim or liability to which that person may become subject or which that person may incur by reason of his or her status as a present or former director or officer of ours and to pay or reimburse their reasonable expenses in advance of final disposition of a proceeding. The charter and bylaws also permit us to indemnify and advance expenses to any person who served a predecessor of ours in any of the capacities described above and any employee or agent of ours or a predecessor of ours.

Maryland law requires a corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful in the defense of any proceeding to which he is made a party by reason of his service in that capacity. Maryland law permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, under Maryland law, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, Maryland law permits a corporation to advance reasonable expenses to a director or officer upon the corporation’s receipt of (a) a written affirmation by the director or officer of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by him or on his behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the standard of conduct was not met.

Business Combinations

Under Maryland law, “business combinations” between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange, or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. An interested stockholder is defined as:

- any person who beneficially owns 10% or more of the voting power of the corporation’s shares; or
- an affiliate or associate of the corporation who, at any time within the two year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding voting stock of the corporation.

A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which he otherwise would have become an interested stockholder. However, in approving a transaction, the board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the board.

After the five year prohibition, any business combination between the Maryland corporation and an interested stockholder generally must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and

- two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares of voting stock held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

These super majority vote requirements do not apply if the corporation's common stockholders receive a minimum price, as defined under Maryland law, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares.

The statute permits various exemptions from its provisions, including business combinations that are exempted by the board of directors before the time that the interested stockholder becomes an interested stockholder. Pursuant to the statute, our board of directors has exempted by resolution any business combinations (a) between us and Arbor Commercial Mortgage or any of its affiliates and (b) between us and any interested stockholder, provided that any such business combination is first approved by our board of directors (including a majority of our directors who are not affiliates or associates of such interested stockholder). Consequently, the five year prohibition and the super majority vote requirements do not apply to business combinations between us and any of them. As a result, such parties may be able to enter into business combinations with us that may not be in the best interest of our stockholders, without compliance with the supermajority vote requirements and the other provisions of the statute.

The business combination statute may discourage others from trying to acquire control of us and increase the difficulty of consummating any offer.

Control Share Acquisitions

Maryland law provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved by the stockholders by a vote of two thirds of the votes entitled to be cast on the matter, excluding all interested shares. Shares owned by the acquiror, by our officers or by directors who are employees of the corporation are excluded from shares entitled to vote on the matter. Control shares are voting shares of stock which, if aggregated with all other shares of stock owned by the acquiror or in respect of which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiror to exercise voting power in electing directors within one of the following ranges of voting power:

- one-tenth or more but less than one third,

- one-third or more but less than a majority, or

- a majority or more of all voting power.

Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A control share acquisition means the acquisition of control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition may compel the board of directors of the corporation to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares. The right to compel the calling of a special meeting is subject to the satisfaction of certain conditions, including an undertaking to pay the expenses of the meeting. If no request for a meeting is made, the corporation may itself present the question at any stockholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the statute, then the corporation may redeem for fair value any or all of the control shares, except those for which voting rights have previously been approved. The right of the corporation to redeem control shares is subject to certain conditions and limitations. Fair value is determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquiror or of any meeting of stockholders at which the voting rights of the shares are considered and not approved.

The control share acquisition statute does not apply (a) to shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction, or (b) to acquisitions approved or exempted by the charter or bylaws of the corporation.

Article II, Section 13 of our bylaws contains a provision exempting from the control share acquisition statute any and all acquisitions by any person of shares of our stock. This provision may be amended or eliminated at any time in the future.

Amendment to Our Charter

Our charter generally may be amended only by the affirmative vote of the holders of not less than a majority vote of all of the votes entitled to be cast on the matter, with certain exceptions, including provisions regarding classification of our board of directors, our independent directors and the removal of directors, that in each case, require the affirmative vote of stockholders entitled to cast not less than two-thirds of all of the votes entitled to be cast on the matter.

Advance Notice of Director Nominations and New Business

Our bylaws provide that with respect to an annual meeting of stockholders, nominations of persons for election to our board of directors and the proposal of business to be considered by stockholders may be made only (i) pursuant to our notice of the meeting, (ii) by our board of directors or (iii) by a stockholder of record who is entitled to vote at the meeting and who has complied with the advance notice procedures of our bylaws. With respect to special meetings of stockholders, only the business specified in our notice of the meeting may be brought before the meeting. Nominations of persons for election to our board of directors at a special meeting may be made only (i) pursuant to our notice of the meeting, (ii) by the board of directors or (iii) provided that the board of directors has determined that directors will be elected at the meeting, by a stockholder who is entitled to vote at the meeting and who has complied with the advance notice provisions of our bylaws.

Anti-Takeover Effect of Certain Provisions of Maryland Law and of Our Charter and Bylaws

The business combination provisions and, if the applicable provision in our bylaws is rescinded, the control share acquisition provisions of Maryland law, the provisions of our charter on classification of our board of directors and removal of directors and the advance notice provisions of our bylaws could delay, defer or prevent a transaction or a change in the control of us that might involve a premium price for holders of our common stock or otherwise be in their best interest.

OUR OPERATING PARTNERSHIP AGREEMENT

Management

Arbor Realty Limited Partnership, our operating partnership, was formed as a Delaware limited partnership on June 24, 2003. We hold all of our interests in our operating partnership through two wholly owned subsidiaries, Arbor Realty GPOP, Inc., the general partner, and Arbor Realty LPOP, Inc., the initial limited partner. The general partner and the initial limited partner of our operating partnership entered into a partnership agreement on June 24, 2003, which was amended and restated on July 1, 2003 , and included Arbor Commercial Mortgage as an additional limited partner. Our operating partnership commenced operations on July 1, 2003. We are the sole general partner of our operating partnership, and we, along with Arbor Commercial Mortgage, are the sole limited partners. We own approximately a 72% interest in our operating partnership, and Arbor Commercial Mortgage owns the remaining interest of approximately 28%. After giving effect to the concurrent offerings, Arbor Commercial Mortgage will own approximately a % interest in our operating partnership and we will own the remaining %. In the future, additional operating partnership units may be issued to us, to Arbor Commercial Mortgage or its affiliates, or to third parties.

Pursuant to the partnership agreement of our operating partnership, we, as the sole general partner, generally have full, exclusive and complete responsibility and discretion in the management, operation and control of the partnership, including the ability to cause the partnership to enter into certain major transactions, including acquisitions and dispositions of loans and other assets and refinancings of existing indebtedness. No limited partners may take part in the operation, management or control of the business of our operating partnership by virtue of being a holder of operating partnership units. Pursuant to the management agreement between us and Arbor Commercial Mortgage, and subject to the oversight of our board of directors, Arbor Commercial Mortgage manages our business, including our management and operation of our operating partnership.

We may not be removed as general partner of the partnership, except that upon our bankruptcy or dissolution, the limited partners may appoint a successor general partner to continue the partnership.

We are not obligated to consider the interests of the limited partners separately from the interests of our stockholders in deciding whether to cause the operating partnership to take or decline to take any actions.

Transferability of Interests

General Partner

The partnership agreement provides that we may not sell, assign, transfer, pledge or otherwise dispose of our general partner interest without the consent of the holders of a majority of the limited partnership interests, except for transfers:

- to a subsidiary of ours; or
- in connection with our merger into another entity, if the surviving entity contributes substantially all its assets to our operating partnership.

Limited Partners

The partnership agreement prohibits the sale, assignment, transfer, pledge or disposition of all or any portion of the limited partners’ operating partnership units without our consent, which we may give or withhold in our sole discretion. However, an individual partner may transfer his operating partnership units to his immediate family or a trust for his immediate family, without our consent but subject to our right not to admit the transferee as a limited partner in our operating partnership. In addition, the partnership agreement contains other restrictions on transfer of operating partnership units if, among other things, that transfer:

- would require registration of the partnership units under federal or state securities laws or would require our operating partnership to become a reporting company under the Exchange Act,
- would cause us to fail to comply with the REIT rules under the Internal Revenue Code, or
- would cause us to become a publicly traded partnership under the Internal Revenue Code.

Capital Contributions and Borrowings

We contributed to the partnership all the net proceeds of the private placement of our units to the partnership as our initial capital contribution in exchange for a 72% interest in our operating partnership, 0.1% of which is in the form of a general partner interest, and the remaining 71.9% of which is held as a limited partner interest. Arbor Commercial Mortgage contributed the initial assets to the partnership in exchange for the remaining 28% interest in our operating partnership, which is a limited partner interest. In connection with its limited partner interest, Arbor Commercial Mortgage also received warrants to purchase additional limited partnership interests for an exercise price of $15.00 per operating partnership unit. Upon exercise of such warrants by Arbor Commercial Mortgage, and in the absence of any additional issuances of operating partnership units or changes in the ownership of our operating partnership, Arbor Commercial Mortgage would own approximately a 32% interest in our operating partnership.

The partnership agreement provides that we may determine that the partnership requires additional funds and that we may:

- on behalf of the partnership, accept additional capital contributions from existing partners or other persons,
- cause the partnership to borrow funds from a financial institution or other person,
- borrow such funds from a lending institution or other person and subsequently lend such funds to the partnership, or
- directly lend funds to the operating partnership.

Under the partnership agreement, we are obligated to contribute the proceeds of any offering of stock as additional capital to the partnership. Our operating partnership is authorized to issue partnership interests for less than fair market value if we conclude in good faith that such issuance is in both the partnership's and our best interests. Partnership interests may be issued for less than their fair market value on the date of issuance in connection with the exercise by Arbor Commercial Mortgage of its warrants to acquire operating partnership units, or in connection with our contribution of proceeds that we receive upon the issuance of our stock pursuant to the exercise of stock options or warrants.

While the limited partners have no preemptive right to make additional capital contributions, the partnership agreement provides that we, as general partner, may make additional capital contributions to the partnership, in exchange for additional operating partnership units or additional assets, as we determine in good faith to be desirable to further the purposes or business of the partnership. If we contribute additional capital to the partnership and receive additional partnership interests for such capital contribution, our percentage interests will be increased on a proportionate basis based on the amount of such additional capital contributions and the value of the partnership at the time of such contributions. Conversely, the percentage interests of the other limited partners will be decreased on a proportionate basis. In addition, if we contribute additional capital to the partnership and receive additional partnership interests for such capital contribution, we may revalue the assets of the partnership to their fair market value (as determined by us) and the capital accounts of the partners will be adjusted to reflect the manner in which the unrealized gain or loss inherent in such assets (that has not been reflected in the capital accounts previously) would be allocated among the partners under the terms of the partnership agreement if there were a disposition of such assets for such fair market value on the date of the revaluation. Our operating partnership could also issue operating partnership units to Arbor Commercial Mortgage or its affiliates, or to third parties, in exchange for assets contributed to or services provided for our operating partnership. Such transactions may give rise to a revaluation of the partnership's assets and an adjustment to partners' capital accounts.

Our operating partnership could also issue preferred partnership interests in connection with acquisitions of assets or otherwise. Any such preferred partnership interests would have priority over common partnership interests with respect to distributions from the partnership, including the partnership interests that we own directly or through subsidiaries.

Redemption Rights

Under the partnership agreement, each limited partner (other than us and any of our subsidiaries that may hold limited partner interests) has the right to redeem their operating partnership units. This right may be exercised at the election of that limited partner by giving us written notice, subject to some limitations. The purchase price for each of the operating partnership units to be redeemed will equal the fair market value of one share of our common stock, calculated as the average of the daily closing prices for the ten consecutive trading days immediately preceding the date of determination, or, if no closing price is available, the fair market value as determined in good faith by the board of directors of the general partner. The purchase price for the operating partnership units may be paid in cash, or, in our discretion, by the issuance by us of a number of shares of our common stock equal to the number of operating partnership units with respect to which the rights are being exercised.

No limited partner may exercise its redemption rights if we could not issue stock to the redeeming partner in satisfaction of the redemption (regardless of whether we would in fact do so instead of paying cash) because of the ownership limitations contained in our charter, or if the redemption would cause us to violate the REIT requirements. The relevant sections of our charter generally prohibit direct or indirect ownership of more than 9.6% (by value or by number of shares, whichever is more restrictive) of the outstanding shares of our common stock or 9.6% by value of our outstanding capital stock. Our charter provisions further prohibit any person from beneficially or constructively owning shares of our stock that would result in us being "closely held" under Section 856(h) of the Internal Revenue Code or otherwise cause us to fail to qualify as a REIT. In addition, no limited partner may exercise the redemption right:

- for fewer than 500 operating partnership units or, if a limited partner holds fewer than 500 operating partnership units, all of the operating partnership units held by such limited partner,
- unless permitted by us, more than once each fiscal quarter, or
- if the issuance of our common stock to satisfy the redemption would be likely to cause the acquisition of common stock by such redeeming limited partner to be "integrated" with any other distribution of common stock or limited partnership interests for purposes of complying with the Securities Act.

Arbor Commercial Mortgage's right to cause a redemption of operating partnership units that it holds will not be exercisable until after the earlier of (1) two years following the closing of the private placement, and (2) six months (180 days) following the effectiveness the registration statement of which this prospectus is a part.

The aggregate number of shares of common stock issuable upon exercise of the redemption rights, including redemption rights with respect to operating partnership units that may be issued upon exercise of warrants granted to Arbor Commercial Mortgage, is approximately 3.7 million. The number of shares of common stock issuable and the cash amount payable upon exercise of the redemption rights will be adjusted to account for share splits, mergers, consolidations or similar pro rata share transactions.

Operations

The agreement allows us to operate the operating partnership in a manner that permits us to qualify as a REIT at all times and to cause the partnership not to take any action that would cause us to incur additional federal income or excise tax liability under the Internal Revenue Code. The partnership agreement also provides that we may not conduct any business other than in connection with the management of the operating partnership's business, our operations as a REIT and related activities and generally obligates us to own our assets through the operating partnership.

The operating partnership must reimburse us for all amounts we spend in connection with the partnership's business, including:

- expenses relating to our ownership and management of the partnership;
- the management fees owing to Arbor Commercial Mortgage, and the fees or compensation owing to directors, officers and employees; and
- if we become a public company, the expense of our being a public company.

Allocations

Profits and losses of our operating partnership (including depreciation and amortization deductions) for each fiscal year generally are allocated to us and the other limited partners in accordance with the respective percentage interests of the partners in the partnership. In the event, however, that the registration statement of which this prospectus forms a part is not declared effective by June 30, 2004, then the operating partnership will allocate to us, for each quarter that the condition continues, income in the amount of $0.0625 per operating partnership unit that we hold, prior to any other allocations by the partnership. Our operating partnership would have also been obligated to make such an allocation to us had we not filed the registration statement of which this prospectus forms a part by December 31, 2003. The number of operating partnership units that we hold generally corresponds to the number of shares of our common stock outstanding. All of the foregoing allocations are subject to compliance with the provisions of Internal Revenue Code sections 704(b) and 704(c) and Treasury regulations promulgated thereunder.

Distributions

The partnership agreement provides that our operating partnership makes quarterly cash distributions in amounts determined by us in our sole discretion, to us and other limited partners, generally in accordance with the respective percentage interests of the partners in the partnership. To the extent, however, that the registration statement of which this prospectus forms a part is not declared effective by June 30, 2004, and, as a result, income is specially allocated to us by the operating partnership in the manner and amounts referenced above, then an amount equal to such special allocations will be distributed to us, and available for distribution by us to our stockholders, prior to other distributions by the operating partnership.

Upon liquidation of the partnership, after payment of, or adequate provisions for, debts and obligations of the partnership, including any partner loans, any remaining assets of the partnership will be distributed to us and the other limited partners with positive capital accounts in accordance with the respective positive capital account balances of the partners.

Amendments

Generally, we, as the general partner of our operating partnership, may not amend the partnership agreement without the consent of the holders of the majority of the limited partnership interest, except that without the consent of any limited partner we may amend the agreement to:

- add to our obligations or surrender our rights, as general partner, under the agreement for the benefit of the limited partners,
- reflect the issuance of additional partnership units or the admission, substitution, termination or withdrawal of partners in accordance with the partnership agreement,
- reflect inconsequential changes, cure any ambiguity, correct or supplement any provision not inconsistent with law or another provision of the partnership agreement, or make other changes concerning matters under the agreement not otherwise inconsistent with the law or the agreement,
- satisfy requirements or guidelines under federal or state law,
- reflect changes that are reasonably necessary for us, as general partner, to satisfy the REIT requirements or reflect the transfer of partnership interests from us, as general partner, to a subsidiary of ours,
- modify the manner in which capital accounts are computed but only to the extent set forth in the operating partnership agreement in order to comply with the requirements of the Internal Revenue Code and the Treasury Regulations promulgated thereunder, or
- issue additional partnership interests in the operating partnership.

We may not, without the consent of each limited partner adversely affected, make any amendment to the operating partnership agreement that would (1) convert a limited partnership interest into a general partner interest or modify the limited liability of a limited partner, (2) alter the distribution rights or the allocations described in the agreement, or (3) modify the redemption rights.

Exculpation and Indemnification of the General Partner

The partnership agreement of our operating partnership provides that neither we, as general partner, nor any of our directors and officers are liable to the partnership or to any of its partners as a result of errors in judgment or mistakes of fact or law or of any act or omission, if we, our director or our officer acted in good faith.

In addition, the partnership agreement requires our operating partnership to indemnify and hold us, as general partner, and our directors, officers and any other person we designate, from and against any and all claims arising from operations of the operating partnership in which any such indemnitee may be involved, or is threatened to be involved, as a party or otherwise, unless it is established that:

- the act or omission of the indemnitee was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty,
- the indemnitee actually received an improper personal benefit in money, property or services, or
- in the case of any criminal proceeding, the indemnitee has reasonable cause to believe that the act or omission was unlawful.

No indemnitee may subject any partner of our operating partnership to personal liability with respect to this indemnification obligation.

Term

The partnership will continue until dissolved upon:

- the general partner's bankruptcy or dissolution or withdrawal (unless the limited partners elect to continue the) or a decree of judicial dissolution under Delaware law;
- the sale or other disposition of all or substantially all the assets of the partnership;
- the redemption of all partnership units (other than those held by us or our subsidiaries); or
- an election by us, in our sole discretion, in our capacity as the general partner.

Tax Matters

We are the tax matters partner of our operating partnership, and we have the authority to make tax elections under the Internal Revenue Code on behalf of the partnership.

FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of the material federal income tax consequences relating to the acquisition, holding and disposition of common stock of Arbor Realty. For purposes of this section under the heading "Federal Income Tax Considerations," references to "Arbor Realty," "we," "our" and "us" mean only Arbor Realty Trust, Inc. and not its subsidiaries or other lower-tier entities, except as otherwise indicated. This summary is based upon the Internal Revenue Code, the regulations promulgated by the U.S. Treasury Department, rulings and other administrative pronouncements issued by the IRS and judicial decisions, all as currently in effect, and all of which are subject to differing interpretations or to change, possibly with retroactive effect. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below. No advance ruling has been or will be sought from the IRS regarding any matter discussed in this prospectus. The summary is also based upon the assumption that the operation of Arbor Realty, and of its subsidiaries and other lower-tier and affiliated entities, will in each case be in accordance with its applicable organizational documents or partnership agreement. This summary of the material federal income tax consequences of an investment in our common stock does not purport to discuss all aspects of federal income taxation that may be relevant to a particular investor in light of its investment or tax circumstances, or to investors subject to special tax rules, such as:

- financial institutions;
- insurance companies;
- broker-dealers;
- regulated investment companies;
- holders who receive Arbor Realty common stock through the exercise of employee stock options or otherwise as compensation;
- persons holding Arbor Realty common stock as part of a "straddle," "hedge," "conversion transaction," "synthetic security" or other integrated investment;

and, except to the extent discussed below:

- tax-exempt organizations; and
- foreign investors.

This summary assumes that investors will hold our common stock as capital assets, which generally means as property held for investment.

THE FEDERAL INCOME TAX TREATMENT OF HOLDERS OF ARBOR REALTY COMMON STOCK DEPENDS IN SOME INSTANCES ON DETERMINATIONS OF FACT AND INTERPRETATIONS OF COMPLEX PROVISIONS OF FEDERAL INCOME TAX LAW FOR WHICH NO CLEAR PRECEDENT OR AUTHORITY MAY BE AVAILABLE. IN ADDITION, THE TAX CONSEQUENCES OF HOLDING ARBOR REALTY COMMON STOCK TO ANY PARTICULAR INVESTOR WILL DEPEND ON THE INVESTOR'S PARTICULAR TAX CIRCUMSTANCES. YOU ARE URGED TO CONSULT YOUR TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES TO YOU, IN LIGHT OF YOUR PARTICULAR INVESTMENT OR TAX CIRCUMSTANCES, OF ACQUIRING, HOLDING, EXCHANGING OR OTHERWISE DISPOSING OF ARBOR REALTY COMMON STOCK.

Taxation of Arbor Realty

Arbor Realty intends to elect to be taxed as a REIT, commencing with its initial taxable year ended December 31, 2003, upon the filing of its federal income tax return for that year. We believe that we were organized and have operated in such a manner as to qualify for taxation as a REIT, and intend to continue to operate in such a manner.

The law firm of Skadden, Arps, Slate, Meagher & Flom LLP has acted as our tax counsel in connection with our formation. We expect to receive the opinion of Skadden, Arps, Slate, Meagher & Flom LLP to the effect that commencing with Arbor Realty's initial taxable year ended December 31, 2003, Arbor Realty was organized in conformity with the requirements for qualification as a REIT under the Internal Revenue Code, and its actual method of operation through the date hereof has enabled, and its proposed method of operation will enable, it to meet the requirements for qualification and taxation as a REIT. It must be emphasized that an opinion of counsel is expressed as of the date given, is based on various assumptions relating to the organization and operation of Arbor Realty, and is conditioned upon representations and covenants made by the management of Arbor Realty and affiliated entities regarding its organization, assets and the past, present and future conduct of its business operations. While Arbor Realty intends to operate so that it will qualify as a REIT, given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations and the possibility of future changes in the circumstances of Arbor Realty, no assurance can be given by Skadden, Arps, Slate, Meagher & Flom LLP or Arbor Realty that Arbor Realty will so qualify for any particular year. Counsel will have no obligation to advise Arbor Realty or the holders of Arbor Realty common stock of any subsequent change in the matters stated, represented or assumed, or of any subsequent change in the applicable law. You should be aware that opinions of counsel are not binding on the IRS, and no assurance can be given that the IRS will not challenge the conclusions set forth in such opinions.

Qualification and taxation as a REIT depends on the ability of Arbor Realty to meet, on a continuing basis, through actual operating results, distribution levels, and diversity of stock ownership, various qualification requirements imposed upon REITs by the Internal Revenue Code. Compliance with these requirements will not be reviewed by Skadden, Arps, Slate, Meagher & Flom LLP subsequent to the date of its opinion, although our status as a REIT at that time will depend in part on our continued compliance with these requirements. Arbor Realty's ability to qualify as a REIT also requires that it satisfies certain asset tests, some of which depend upon the fair market values of assets directly or indirectly owned by Arbor Realty. Such values may not be susceptible to a precise determination. Accordingly, no assurance can be given that the actual results of Arbor Realty's operations for any taxable year satisfy such requirements for qualification and taxation as a REIT.

Taxation of REITs in General

As indicated above, qualification and taxation as a REIT depends upon the ability of Arbor Realty to meet, on a continuing basis, various qualification requirements imposed upon REITs by the Internal Revenue Code. The material qualification requirements are summarized below under "Requirements for Qualification — General." While Arbor Realty intends to operate so that it qualifies as a REIT, no assurance can be given that the IRS will not challenge its qualification, or that it will be able to operate in accordance with the REIT requirements in the future. See "— Failure to Qualify" below.

Provided that Arbor Realty qualifies as a REIT, it will generally be entitled to a deduction for dividends that it pays and therefore will not be subject to federal corporate income tax on its net income that is currently distributed to its stockholders. This treatment substantially eliminates the "double taxation" at the corporate and stockholder levels that historically has resulted from investment in a corporation. Rather, income generated by a REIT generally is taxed only at the stockholder level upon a distribution of dividends by the REIT.

The Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "Jobs and Growth Act") was enacted in 2003. Among other provisions, the Jobs and Growth Act generally lowers the rate at which stockholders who are individuals are taxed on corporate dividends, from a maximum of 38.6% (as ordinary income) to a maximum of 15% (the same as long-term capital gains), for the 2003 through 2008 tax years, thereby substantially reducing, though not completely eliminating, the double taxation that has historically applied to corporate dividends. With limited exceptions, however, dividends received by stockholders from Arbor Realty or from other entities that are taxed as REITs will continue to be taxed at rates applicable to ordinary income, which, pursuant to the Jobs and Growth Act, will be as high as 35% through 2010. See "Taxation of Stockholders — Taxation of Taxable U.S. Stockholders — Distributions."

Net operating losses, foreign tax credits and other tax attributes of a REIT generally do not pass through to the stockholders of the REIT, subject to special rules for certain items such as capital gains recognized by REITs. See "Taxation of Stockholders."

If Arbor Realty qualifies as a REIT, it will nonetheless be subject to federal tax in the following circumstances:

- Arbor Realty will be taxed at regular corporate rates on any undistributed income, including undistributed net capital gains.

- Arbor Realty may be subject to the "alternative minimum tax" on its items of tax preference, including any deductions of net operating losses.

- If Arbor Realty has net income from prohibited transactions, which are, in general, sales or other dispositions of property held primarily for sale to customers in the ordinary course of business, other than foreclosure property, such income will be subject to a 100% tax. See "— Prohibited Transactions," and "— Foreclosure Property," below.

- If Arbor Realty elects to treat property that it acquires in connection with a foreclosure of a mortgage loan or certain leasehold terminations as "foreclosure property," it may thereby avoid the 100% tax on gain from a resale of that property (if the sale would otherwise constitute a prohibited transaction), but the income from the sale or operation of the property may be subject to corporate income tax at the highest applicable rate (currently 35%).

- If Arbor Realty fails to satisfy the 75% gross income test or the 95% gross income test, as discussed below, but nonetheless maintains its qualification as a REIT because other requirements are met, it will be subject to a 100% tax on an amount based upon the magnitude of the failure, adjusted to reflect the profit margin associated with Arbor Realty's gross income.

- If Arbor Realty fails to distribute during each calendar year at least the sum of (a) 85% of its REIT ordinary income for such year, (b) 95% of its REIT capital gain net income for such year and (c) any undistributed taxable income from prior periods, Arbor Realty will be subject to a 4% excise tax on the excess of the required distribution over the sum of (i) the amounts actually distributed, plus (ii) retained amounts on which income tax is paid at the corporate level.

- Arbor Realty may be required to pay monetary penalties to the IRS in certain circumstances, including if it fails to meet record-keeping requirements intended to monitor its compliance with rules relating to the composition of a REIT's stockholders, as described below in "Requirements for Qualification — General."

- A 100% tax may be imposed on some items of income and expense that are directly or constructively paid between a REIT and a taxable REIT subsidiary (as described below) if and to the extent that the IRS successfully adjusts the reported amounts of these items.

- If Arbor Realty acquires appreciated assets from a corporation that is not a REIT (i.e., a corporation taxable under subchapter C of the Internal Revenue Code) in a transaction in which the adjusted tax basis of the assets in the hands of Arbor Realty is determined by reference to the adjusted tax basis of the assets in the hands of the subchapter C corporation, Arbor Realty may be subject to tax on such appreciation at the highest corporate income tax rate then applicable if it subsequently recognizes gain on a disposition of any such assets during the ten-year period following their acquisition from the subchapter C corporation.

- The earnings of Arbor Realty's subsidiaries could be subject to federal corporate income tax to the extent that such subsidiaries are subchapter C corporations.

In addition, Arbor Realty and its subsidiaries may be subject to a variety of taxes, including payroll taxes and state, local and foreign income, property and other taxes on their assets and operations. Arbor Realty could also be subject to tax in situations and on transactions not presently contemplated.

Requirements for Qualification-General

The Internal Revenue Code defines a REIT as a corporation, trust or association:

(1) that is managed by one or more trustees or directors;

(2) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;

(3) that would be taxable as a domestic corporation but for the special Internal Revenue Code provisions applicable to REITs;

(4) that is neither a financial institution nor an insurance company subject to specific provisions of the Internal Revenue Code;

(5) the beneficial ownership of which is held by 100 or more persons;

(6) in which, during the last half of each taxable year, not more than 50% in value of the outstanding stock is owned, directly or indirectly, by five or fewer "individuals" (as defined in the Internal Revenue Code to include specified tax-exempt entities); and

(7) which meets other tests described below, including with respect to the nature of its income and assets.

The Internal Revenue Code provides that conditions (1) through (4) must be met during the entire taxable year, and that condition (5) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a shorter taxable year. Arbor Realty's charter provides restrictions regarding the ownership and transfer of its shares, which are intended to assist in satisfying the share ownership requirements described in conditions (5) and (6) above. For purposes of condition (6), an "individual" generally includes a supplemental unemployment compensation benefit plan, a private foundation, or a portion of a trust permanently set aside or used exclusively for charitable purposes, but does not include a qualified pension plan or profit sharing trust. Arbor Realty is not required to satisfy conditions (5) and (6) for its initial taxable year ending December 31, 2003.

To monitor compliance with the share ownership requirements, Arbor Realty is generally required to maintain records regarding the actual ownership of its shares. To do so, Arbor Realty must demand written statements each year from the record holders of specified percentages of its stock in which the record holders are to disclose the actual owners of the shares, i.e., the persons required to include in gross income the dividends paid by Arbor Realty. A list of those persons failing or refusing to comply with this demand must be maintained as part of the records of Arbor Realty. Failure by Arbor Realty to comply with these record-keeping requirements could subject it to monetary penalties. If Arbor Realty satisfies these requirements and has no reason to know that condition (6) is not satisfied, it will be deemed to have satisfied such condition. A stockholder that fails or refuses to comply with the demand is required by

Treasury regulations to submit a statement with its tax return disclosing the actual ownership of the shares and other information.

Arbor Realty's ability to satisfy the share ownership requirements depends in part on the relative values of our common stock, special voting preferred stock, and any other classes of stock that might be issued in the future. Although Arbor Realty believes that the stockholder ownership limitations contained in its charter will enable it to meet such requirements, the relative values of its classes of stock have not been determined by independent appraisal, and no assurance can be given that despite compliance with the charter limitations, the relative values of the classes of stock would not be successfully challenged by the IRS so as to cause Arbor Realty to fail such REIT ownership requirements.

In addition, a corporation generally may not elect to become a REIT unless its taxable year is the calendar year. Arbor Realty satisfies this requirement.

Effect of Subsidiary Entities

Ownership of Partnership Interests. In the case of a REIT that is a partner in a partnership, Treasury regulations provide that the REIT is deemed to own its proportionate share of the partnership's assets, and to earn its proportionate share of the partnership's income, for purposes of the asset and gross income tests applicable to REITs as described below. In addition, the assets and gross income of the partnership are deemed to retain the same character in the hands of the REIT. Thus, Arbor Realty's proportionate share, based upon its percentage capital interest, of the assets and items of income of partnerships in which it owns an equity interest (including its interest in the operating partnership and its preferred equity interests in lower-tier partnerships), are treated as assets and items of income of Arbor Realty for purposes of applying the REIT requirements described below. Consequently, to the extent that Arbor Realty directly or indirectly holds a preferred or other equity interest in a partnership, the partnership's assets and operations may affect Arbor Realty's ability to qualify as a REIT, even though Arbor Realty may have no control, or only limited influence, over the partnership. A summary of certain rules governing the federal income taxation of partnerships and their partners is provided below in "Tax Aspects of Investments in Partnerships."

Disregarded Subsidiaries. If a REIT owns a corporate subsidiary that is a "qualified REIT subsidiary," that subsidiary is disregarded for federal income tax purposes, and all assets, liabilities and items of income, deduction and credit of the subsidiary are treated as assets, liabilities and items of income, deduction and credit of the REIT itself, including for purposes of the gross income and asset tests applicable to REITs as summarized below. A qualified REIT subsidiary is any corporation, other than a "taxable REIT subsidiary" as described below, that is wholly owned by a REIT, or by other disregarded subsidiaries, or by a combination of the two. Other entities that are wholly owned by a REIT, including single member limited liability companies, are also generally disregarded as a separate entities for federal income tax purposes, including for purposes of the REIT income and asset tests. Disregarded subsidiaries, along with partnerships in which Arbor Realty holds an equity interest, are sometimes referred to herein as "pass-through subsidiaries."

In the event that a disregarded subsidiary of Arbor Realty ceases to be wholly owned-for example, if any equity interest in the subsidiary is acquired by a person other than Arbor Realty or another disregarded subsidiary of Arbor Realty — the subsidiary's separate existence would no longer be disregarded for federal income tax purposes. Instead, it would have multiple owners and would be treated as either a partnership or a taxable corporation. Such an event could, depending on the circumstances, adversely affect Arbor Realty's ability to satisfy the various asset and gross income requirements applicable to REITs, including the requirement that REITs generally may not own, directly or indirectly, more than 10% of the securities of another corporation. See "— Asset Tests" and "— Income Tests."

Taxable Subsidiaries. A REIT, in general, may jointly elect with subsidiary corporations, whether or not wholly owned, to treat the subsidiary corporation as a taxable REIT subsidiary ("TRS"). The separate existence of a TRS or other taxable corporation, unlike a disregarded subsidiary as discussed above, is not ignored for federal income tax purposes. Accordingly, such an entity would generally be subject to corporate income tax on its earnings, which may reduce the cash flow generated by Arbor Realty and its subsidiaries in the aggregate, and Arbor Realty's ability to make distributions to its stockholders.

A REIT is not treated as holding the assets of a taxable subsidiary corporation or as receiving any income that the subsidiary earns. Rather, the stock issued by the subsidiary is an asset in the hands of the REIT, and the REIT recognizes as income, the dividends, if any, that it receives from the subsidiary. This treatment can affect the income and asset test calculations that apply to the REIT, as described below. Because a parent REIT does not include the assets and income of such subsidiary corporations in determining the parent's compliance with the REIT requirements, such entities may be used by the parent REIT to undertake indirectly activities that the REIT rules might otherwise preclude it from doing directly or through pass-through subsidiaries (for example, activities that give rise to certain categories of income such as management fees or foreign currency gains).

Income Tests

In order to maintain qualification as a REIT, Arbor Realty annually must satisfy two gross income requirements. First, at least 75% of Arbor Realty's gross income for each taxable year, excluding gross income from sales of inventory or dealer property in "prohibited transactions," must be derived from investments relating to real property or mortgages on real property, including "rents from real property," dividends received from other REITs, interest income derived from mortgage loans secured by real property (including certain types of mortgage backed securities), and gains from the sale of real estate assets, as well as income from some kinds of temporary investments. Second, at least 95% of Arbor Realty's gross income in each taxable year, excluding gross income from prohibited transactions, must be derived from some combination of income that qualifies under the 75% income test described above, as well as other dividends, interest, and gain from the sale or disposition of stock or securities, which need not have any relation to real property.

Interest income constitutes qualifying mortgage interest for purposes of the 75% income test (as described above) to the extent that the obligation is secured by a mortgage on real property. If Arbor Realty receives interest income with respect to a mortgage loan that is secured by both real property and other property, and the highest principal amount of the loan outstanding during a taxable year exceeds the fair market value of the real property on the date that Arbor Realty acquired or originated the mortgage loan, the interest income will be apportioned between the real property and the other collateral, and Arbor Realty's income from the arrangement will qualify for purposes of the 75% income test only to the extent that the interest is allocable to the real property. Even if a loan is not secured by real property, or is undersecured, the income that it generates may nonetheless qualify for purposes of the 95% income test.

To the extent that the terms of a loan provide for contingent interest that is based on the cash proceeds realized upon the sale of the property securing the loan (a "shared appreciation provision"), income attributable to the participation feature will be treated as gain from sale of the underlying property, which generally will be qualifying income for purposes of both the 75% and 95% gross income tests, provided that the property is not inventory or dealer property in the hands of the borrower or the REIT.

To the extent that a REIT derives interest income from a mortgage loan or income from the rental of real property where all or a portion of the amount of interest or rental income payable is contingent, such income generally will qualify for purposes of the gross income tests only if it is based upon the gross receipts or sales, and not the net income or profits, of the borrower or lessee. This limitation does not apply, however, where the borrower or lessee leases substantially all of its interest in the property to tenants or subtenants, to the extent that the rental income derived by the borrower or lessee, as the case may be, would qualify as rents from real property had it been earned directly by a REIT, as described below.

Among the assets held by Arbor Realty and its subsidiaries are mezzanine loans, which are loans secured by equity interests in an entity that directly or indirectly owns real property, rather than by a direct mortgage of the real property. The IRS recently issued Revenue Procedure 2003-65, which provides a safe harbor pursuant to which a mezzanine loan, if it meets each of the requirements contained in the Revenue Procedure, will be treated by the IRS as a real estate asset for purposes of the REIT asset tests described below, and interest derived from it will be treated as qualifying mortgage interest for purposes of the REIT 75% income test. Although the Revenue Procedure provides a safe harbor on which taxpayers may rely, it does not prescribe rules of substantive tax law. While Arbor Realty and its advisors believe, on the basis of relevant regulations and IRS rulings, that its mezzanine loans qualify as real estate assets and give rise to qualifying mortgage interest for purposes of the REIT asset and income requirements, or otherwise do not adversely affect its status as a REIT, the loans do not meet all of the requirements for reliance on the safe harbor, and there can be no assurance that the IRS will not challenge the tax treatment of these loans.

Rents received by Arbor Realty will qualify as “rents from real property” in satisfying the gross income requirements described above, only if several conditions are met, including the following. If rent is partly attributable to personal property leased in connection with a lease of real property, the portion of the total rent that is attributable to the personal property will not qualify as “rents from real property” unless it constitutes 15% or less of the total rent received under the lease. Moreover, for rents received to qualify as “rents from real property,” the REIT generally must not operate or manage the property or furnish or render services to the tenants of such property, other than through an “independent contractor” from which the REIT derives no revenue. Arbor Realty and its affiliates are permitted, however, to perform services that are “usually or customarily rendered” in connection with the rental of space for occupancy only and are not otherwise considered rendered to the occupant of the property. In addition, Arbor Realty and its affiliates may directly or indirectly provide non customary services to tenants of its properties without disqualifying all of the rent from the property if the payment for such services does not exceed 1% of the total gross income from the property. For purposes of this test, the income received from such non-customary services is deemed to be at least 150% of the direct cost of providing the services. Moreover, Arbor Realty is generally permitted to provide services to tenants or others through a TRS without disqualifying the rental income received from tenants for purposes of the REIT income requirements. Also, rental income will generally qualify as rents from real property only to the extent that Arbor Realty does not directly or constructively hold a 10% or greater interest, as measured by vote or value, in the lessee’s equity.

Arbor Realty may indirectly receive distributions from TRSs or other corporations that are not REITs or qualified REIT subsidiaries. These distributions will be classified as dividend income to the extent of the earnings and profits of the distributing corporation. Such distributions will generally constitute qualifying income for purposes of the 95% gross income test, but not under the 75% gross income test. Any dividends received by Arbor Realty from a REIT will be qualifying income in Arbor Realty’s hands for purposes of both the 95% and 75% income tests.

If Arbor Realty fails to satisfy one or both of the 75% or 95% gross income tests for any taxable year, it may still qualify as a REIT for the year if it is entitled to relief under applicable provisions of the Internal Revenue Code. These relief provisions will generally be available if the failure of Arbor Realty to meet these tests was due to reasonable cause and not due to willful neglect, Arbor Realty attaches to its tax return a schedule of the sources of its income, and any incorrect information on the schedule was not due to fraud with intent to evade tax. It is not possible to state whether Arbor Realty would be entitled to the benefit of these relief provisions in all circumstances. If these relief provisions are inapplicable to a particular set of circumstances involving Arbor Realty, Arbor Realty will not qualify as a REIT. As discussed above under “Taxation of REITs in General,” even where these relief provisions apply, a tax would be imposed that is based upon the amount by which Arbor Realty fails to satisfy the particular gross income test.

Asset Tests

Arbor Realty, at the close of each calendar quarter, must also satisfy four tests relating to the nature of its assets. First, at least 75% of the value of the total assets of Arbor Realty must be represented by some combination of “real estate assets,” cash, cash items, U.S. government securities, and, under some circumstances, stock or debt instruments purchased with new capital. For this purpose, real estate assets include interests in real property, such as land, buildings, leasehold interests in real property, stock of other corporations that qualify as REITs, and certain kinds of mortgage backed securities and mortgage loans. Assets that do not qualify for purposes of the 75% test are subject to the additional asset tests described below.

The second asset test is that the value of any one issuer’s securities owned by Arbor Realty may not exceed 5% of the value of Arbor Realty’s total assets. Third, Arbor Realty may not own more than 10% of any one issuer’s outstanding securities, as measured by either voting power or value. The 5% and 10% asset tests do not apply to securities of TRSs, and the 10% value test does not apply to “straight debt” having specified characteristics. Fourth, the aggregate value of all securities of TRSs held by a REIT may not exceed 20% of the value of the REIT’s total assets.

Notwithstanding the general rule, as noted above, that for purposes of the REIT income and asset tests, a REIT is treated as owning its share of the underlying assets of a subsidiary partnership, if a REIT holds indebtedness issued by a partnership, the indebtedness will be subject to, and may cause a violation of the asset tests, unless it is a qualifying mortgage asset, satisfies the rules for “straight debt,” or is sufficiently small so as not to otherwise cause an asset test violation.

Any interests held by a REIT in a real estate mortgage investment conduit, or “REMIC,” are generally treated as qualifying real estate assets, and income derived by a REIT from interests in REMICs is generally treated as qualifying income for purposes of the REIT income tests described above. If less than 95% of the assets of a REMIC are real estate assets, however, then only a proportionate part of the REIT’s interest in the REMIC, and its income derived from the interest, qualifies for purposes of the REIT asset and income tests. Where a REIT holds a “residual interest” in a REMIC from which it derives “excess inclusion income,” the REIT will be required to either distribute the excess inclusion income or pay tax on it (or a combination of the two), even though the income may not be received in cash by the REIT. To the extent that distributed excess inclusion income is allocable to a particular stockholder, the income (i) would not be allowed to be offset by any net operating losses otherwise available to the stockholder, (ii) would be subject to tax as unrelated business taxable income in the hands of most types of stockholders that are otherwise generally exempt from federal income tax, and (iii) would result in the application of U.S. federal income tax withholding at the maximum rate (30%), without reduction for any otherwise applicable income tax treaty, to the extent allocable to most types of foreign stockholders. See “Taxation of Stockholders.”

Arbor Realty believes that its holdings of securities and other assets will comply with the foregoing REIT asset requirements, and it intends to monitor compliance on an ongoing basis. Independent appraisals have not been obtained, however, to support Arbor Realty’s conclusions as to the value of all of its assets. Moreover, values of some assets may not be susceptible to a precise determination, and values are subject to change in the future. Furthermore, the proper classification of an instrument as debt or equity for federal income tax purposes may be uncertain in some circumstances, which could affect the application of the REIT asset requirements. Accordingly, there can be no assurance that the IRS will not contend that Arbor Realty’s interests in subsidiaries or in the securities of other issuers will not cause a violation of the REIT asset requirements.

Annual Distribution Requirements

In order to qualify as a REIT, Arbor Realty is required to distribute dividends, other than capital gain dividends, to its stockholders in an amount at least equal to:

(a) the sum of:

(1) 90% of the "REIT taxable income" of Arbor Realty (computed without regard to the deduction for dividends paid and net capital gains of Arbor Realty), and

(2) 90% of the net income, if any, (after tax) from foreclosure property (as described below), minus

(b) the sum of specified items of non-cash income.

These distributions generally must be paid in the taxable year to which they relate, or in the following taxable year if declared before Arbor Realty timely files its tax return for the year and if paid with or before the first regular dividend payment after such declaration. In order for distributions to be counted for this purpose, and to give rise to a tax deduction by Arbor Realty, they must not be "preferential dividends." A dividend is not a preferential dividend if it is pro rata among all outstanding shares of stock within a particular class, and is in accordance with the preferences among different classes of stock as set forth in the organizational documents.

To the extent that Arbor Realty distributes at least 90%, but less than 100%, of its "REIT taxable income," as adjusted, it will be subject to tax at ordinary corporate tax rates on the retained portion. Arbor Realty may elect to retain, rather than distribute, its net long-term capital gains and pay tax on such gains. In this case, Arbor Realty could elect to have its stockholders include their proportionate share of such undistributed long-term capital gains in income and receive a corresponding credit for their share of the tax paid by Arbor Realty. Stockholders of Arbor Realty would then increase the adjusted basis of their Arbor Realty stock by the difference between the designated amounts included in their long-term capital gains and the tax deemed paid with respect to their shares.

To the extent that a REIT has any net operating losses carried forward from prior tax years, such losses may reduce the amount of distributions that it must make in order to comply with the REIT distribution requirements. Such losses, however, will generally not affect the character, in the hands of stockholders, of any distributions that are actually made by the REIT, which are generally taxable to stockholders to the extent that the REIT has current or accumulated earnings and profits. See "Taxation of Stockholders — Taxation of Taxable U.S. Stockholders."

If Arbor Realty fails to distribute during each calendar year at least the sum of (a) 85% of its REIT ordinary income for such year, (b) 95% of its REIT capital gain net income for such year and (c) any undistributed taxable income from prior periods, Arbor Realty will be subject to a 4% excise tax on the excess of such required distribution over the sum of (x) the amounts actually distributed and (y) the amounts of income retained on which it has paid corporate income tax. Arbor Realty intends to make timely distributions so that it is not subject to the 4% excise tax.

It is possible that Arbor Realty, from time to time, may not have sufficient cash to meet the distribution requirements due to timing differences between (a) the actual receipt of cash, including receipt of distributions from its subsidiaries, and (b) the inclusion of items in income by Arbor Realty for federal income tax purposes. Potential sources of non-cash taxable income include loans or mortgage-backed securities held by Arbor Realty as assets that are issued at a discount and require the accrual of taxable economic interest in advance of its receipt in cash, loans on which the borrower is permitted to defer cash payments of interest and distressed loans on which Arbor Realty may be required to accrue taxable interest income even though the borrower is unable to make current servicing payments in cash. In the event that such timing differences occur, in order to meet the distribution requirements, it might be necessary to arrange for short-term, or possibly long-term, borrowings, or to pay dividends in the form of taxable in kind distributions of property.

Arbor Realty may be able to rectify a failure to meet the distribution requirements for a year by paying “deficiency dividends” to stockholders in a later year, which may be included in Arbor Realty’s deduction for dividends paid for the earlier year. In this case, Arbor Realty may be able to avoid losing its REIT status or being taxed on amounts distributed as deficiency dividends. However, Arbor Realty will be required to pay interest and a penalty based on the amount of any deduction taken for deficiency dividends.

Failure to Qualify

If Arbor Realty fails to qualify for taxation as a REIT in any taxable year, and the relief provisions do not apply, Arbor Realty will be subject to tax, including any applicable alternative minimum tax, on its taxable income at regular corporate rates. Distributions to stockholders in any year in which Arbor Realty is not a REIT will not be deductible by Arbor Realty, nor will they be required to be made. In this situation, to the extent of current and accumulated earnings and profits, distributions to stockholders will generally be taxable in the case of stockholders who are individuals, at preferential rates, pursuant to the Jobs and Growth Act and, subject to limitations of the Internal Revenue Code, corporate distributees may be eligible for the dividends received deduction. Unless Arbor Realty is entitled to relief under specific statutory provisions, Arbor Realty will also be disqualified from re-electing to be taxed as a REIT for the four taxable years following the year during which qualification was lost. It is not possible to state whether, in all circumstances, Arbor Realty will be entitled to this statutory relief.

Prohibited Transactions

Net income derived from a prohibited transaction is subject to a 100% tax. The term “prohibited transaction” generally includes a sale or other disposition of property (other than foreclosure property) that is held primarily for sale to customers in the ordinary course of a trade or business by a REIT, by a lower-tier partnership in which the REIT holds an equity interest or by a borrower that has issued a shared appreciation mortgage or similar debt instrument to the REIT. Whether property is held “primarily for sale to customers in the ordinary course of a trade or business” depends on the particular facts and circumstances. No assurance can be given that any particular property in which Arbor Realty holds a direct or indirect interest will not be treated as property held for sale to customers, or that certain safe-harbor provisions of the Internal Revenue Code that prevent such treatment will apply. The 100% tax will not apply to gains from the sale of property that is held through a TRS or other taxable corporation, although such income will be subject to tax in the hands of the corporation at regular corporate income tax rates.

Foreclosure Property

Foreclosure property is real property and any personal property incident to such real property (i) that is acquired by a REIT as the result of the REIT having bid in the property at foreclosure, or having otherwise reduced the property to ownership or possession by agreement or process of law, after there was a default (or default was imminent) on a lease of the property or a mortgage loan held by the REIT and secured by the property, (ii) for which the related loan or lease was acquired by the REIT at a time when default was not imminent or anticipated and (iii) for which such REIT makes a proper election to treat the property as foreclosure property. REITs generally are subject to tax at the maximum corporate rate (currently 35%) on any net income from foreclosure property, including any gain from the disposition of the foreclosure property, other than income that would otherwise be qualifying income for purposes of the 75% gross income test. Any gain from the sale of property for which a foreclosure property election has been made will not be subject to the 100% tax on gains from prohibited transactions described above, even if the property would otherwise constitute inventory or dealer property in the hands of the selling

REIT. Arbor Realty does not anticipate that it will receive any income from foreclosure property that is not qualifying income for purposes of the 75% gross income test, but, if Arbor Realty does receive any such income, it intends to make an election to treat the related property as foreclosure property.

Foreign Investments

To the extent that Arbor Realty and its subsidiaries hold or acquire any investments and, accordingly, pay taxes, in foreign countries, taxes paid by Arbor Realty in foreign jurisdictions may not be passed through to or used by, its stockholders, as a foreign tax credit or otherwise. Any foreign investments may also generate foreign currency gains and losses. Foreign currency gains are treated as income that does not qualify under the 95% or 75% income tests, unless certain technical requirements are met. No assurance can be given that these technical requirements will be met in the case of any foreign currency gains recognized by Arbor Realty directly or through pass-through subsidiaries, or that any such gains will not adversely affect Arbor Realty's ability to satisfy the REIT qualification requirements.

Derivatives and Hedging Transactions

Arbor Realty and its subsidiaries may enter into hedging transactions with respect to interest rate exposure on one or more of their assets or liabilities. Any such hedging transactions could take a variety of forms, including the use of derivative instruments such as interest rate swap contracts, interest rate cap or floor contracts, futures or forward contracts and options. To the extent that Arbor Realty or a pass-through subsidiary enters into such a contract to reduce interest rate risk on indebtedness incurred to acquire or carry real estate assets, any periodic income from the instrument, or gain from the disposition of it, would be qualifying income for purposes of the REIT 95% gross income test, but not for the 75% gross income test. Recently proposed legislation, if enacted, would exclude such income from the REIT 95% gross income test altogether, treating it as neither qualifying nor non-qualifying income for purposes of that test, while not changing the treatment as non-qualifying income for purposes of the 75% income test. To the extent that Arbor Realty hedges with other types of financial instruments or in other situations (for example, hedging interest rate risk on loans held by Arbor Realty or hedges against fluctuations in the value of foreign currencies), the resultant income will be treated as income that does not qualify under the 95% or 75% income tests unless certain technical requirements are met. Proposed legislation, if enacted, would exclude from the REIT 95% income test calculation, but not from the 75% test, foreign currency gains arising from transactions to hedge risks associated with debt incurred to acquire or carry real estate assets. Arbor Realty intends to structure any hedging transactions in a manner that does not jeopardize its status as a REIT. Arbor Realty may conduct some or all of its hedging activities through a TRS or other corporate entity, the income from which may be subject to federal income tax, rather than participating in the arrangements directly or through pass-through subsidiaries. No assurance can be given, however, that Arbor Realty's hedging activities will not give rise to income that does not qualify for purposes of either or both of the REIT income tests, and will not adversely affect Arbor Realty's ability to satisfy the REIT qualification requirements.

Taxable Mortgage Pools

An entity, or a portion of an entity, may be classified as a taxable mortgage pool ("TMP") under the Internal Revenue Code if (1) substantially all of its assets consist of debt obligations or interests in debt obligations, (2) more than 50% of those debt obligations are real estate mortgages or interests in real estate mortgages as of specified testing dates, (3) the entity has issued debt obligations (liabilities) that have two or more maturities, and (4) the payments required to be made by the entity on its debt obligations (liabilities) "bear a relationship" to the payments to be received by the entity on the debt obligations that it holds as assets. Under regulations issued by the U.S. Treasury Department, if less than 80% of the assets of an entity (or a portion of an entity) consist of debt obligations, these debt obligations are considered not to comprise "substantially all" of its assets, and therefore the entity would not be treated as a TMP. Financing arrangements entered into, directly or indirectly, by Arbor Realty could give rise to TMPs, with the consequences as described below.

Where an entity, or a portion of an entity, is classified as a TMP, it is generally treated as a taxable corporation for federal income tax purposes. In the case of a REIT, or a portion of a REIT, or a disregarded subsidiary of a REIT, that is a TMP, however, special rules apply. The TMP is not treated as a corporation that is subject to corporate income tax, and the TMP classification does not directly affect the tax status of the REIT. Rather, the consequences of the TMP classification would, in general, except as described below, be limited to the stockholders of the REIT. The Treasury Department has not yet issued regulations to govern the treatment of stockholders as described below. A portion of the REIT's income from the TMP arrangement, which might be non-cash accrued income, could be treated as "excess inclusion income." The REIT's excess inclusion income would be allocated among its stockholders. A stockholder's share of excess inclusion income (i) would not be allowed to be offset by any net operating losses otherwise available to the stockholder, (ii) would be subject to tax as unrelated business taxable income in the hands of most types of stockholders that are otherwise generally exempt from federal income tax, and (iii) would result in the application of U.S. federal income tax withholding at the maximum rate (30%), without reduction for any otherwise applicable income tax treaty, to the extent allocable to most types of foreign stockholders. See "Taxation of Stockholders." To the extent that excess inclusion income were allocated to a tax-exempt stockholder of a REIT that is not subject to unrelated business income tax (such as government entities), the REIT would be taxable on this income at the highest applicable corporate tax rate (currently 35%). The manner in which excess inclusion income would be allocated among shares of different classes of stock is not clear under current law. Tax-exempt investors, foreign investors and taxpayers with net operating losses should carefully consider the tax consequences described above and are urged to consult their tax advisors.

If a subsidiary partnership, not wholly owned by Arbor Realty directly or through one or more disregarded entities (such as the operating partnership), were a TMP, the foregoing rules would not apply. Rather, the partnership that is a TMP would be treated as a corporation for federal income tax purposes, and would potentially be subject to corporate income tax. In addition, this characterization would alter Arbor Realty's REIT income and asset test calculations, and could adversely affect its compliance with those requirements. Arbor Realty intends to monitor the structure of any TMPs in which it has an interest to ensure that they will not adversely affect its status as a REIT.

Tax Aspects of Investments in Partnerships

General

Arbor Realty may hold investments through entities that are classified as partnerships for federal income tax purposes, including its interest in the operating partnership and the preferred equity interests in lower-tier partnerships. In general, partnerships are "pass-through" entities that are not subject to federal income tax. Rather, partners are allocated their proportionate shares of the items of income, gain, loss, deduction and credit of a partnership, and are potentially subject to tax on these items, without regard to whether the partners receive a distribution from the partnership. Arbor Realty will include in its income its proportionate share of these partnership items for purposes of the various REIT income tests and in the computation of its REIT taxable income. Moreover, for purposes of the REIT asset tests, Arbor Realty will include its proportionate share of assets held by subsidiary partnerships. See "Taxation of Arbor Realty — Effect of Subsidiary Entities — Ownership of Partnership Interests."

Consequently, to the extent that Arbor Realty holds a preferred or other equity interest in a partnership, the partnership's assets and operations may affect Arbor Realty's ability to qualify as a REIT, even though Arbor Realty may have no control, or only limited influence, over the partnership.

Entity Classification

The investment by Arbor Realty in partnerships involves special tax considerations, including the possibility of a challenge by the IRS of the status of any of Arbor Realty's subsidiary partnerships as a partnership, as opposed to an association taxable as a corporation, for federal income tax purposes (for example, if the IRS were to assert that a subsidiary partnership is a TMP). See "Taxation of Arbor Realty — Taxable Mortgage Pools." If any of these entities were treated as an association for federal income tax purposes, it would be taxable as a corporation and therefore could be subject to an entity-level tax on its income. In such a situation, the character of the assets of Arbor Realty and items of gross income of Arbor Realty would change and could preclude Arbor Realty from satisfying the REIT asset tests (particularly the tests generally preventing a REIT from owning more than 10% of the voting securities, or more than 10% of the securities by value, of a corporation) or the gross income tests as discussed in "Taxation of Arbor Realty — Asset Tests" and "— Income Tests," and in turn could prevent Arbor Realty from qualifying as a REIT. See "Taxation of Arbor Realty — Failure to Qualify," above, for a discussion of the effect of the failure of Arbor Realty to meet these tests for a taxable year. In addition, any change in the status of any of Arbor Realty's subsidiary partnerships for tax purposes might be treated as a taxable event, in which case Arbor Realty could have taxable income that is subject to the REIT distribution requirements without receiving any cash.

Tax Allocations with Respect to Partnership Properties

Under the Internal Revenue Code and the Treasury regulations, income, gain, loss and deduction attributable to appreciated or depreciated property that is contributed to a partnership in exchange for an interest in the partnership must be allocated for tax purposes in a manner such that the contributing partner is charged with, or benefits from, the unrealized gain or unrealized loss associated with the property at the time of the contribution. The amount of the unrealized gain or unrealized loss is generally equal to the difference between the fair market value of the contributed property at the time of contribution, and the adjusted tax basis of such property at the time of contribution (a "book-tax difference"). Such allocations are solely for federal income tax purposes and do not affect the book capital accounts or other economic or legal arrangements among the partners.

To the extent that any subsidiary partnership of Arbor Realty acquires appreciated (or depreciated) properties by way of capital contributions from its partners, allocations would need to be made in a manner consistent with these requirements. Where a partner contributes cash to a partnership at a time that the partnership holds appreciated (or depreciated) property, the Treasury regulations provide for a similar allocation of these items to the other (i.e. non-contributing) partners. These rules may apply to the contribution by Arbor Realty to any subsidiary partnerships of the cash proceeds received in offerings of its stock. As a result, partners, including Arbor Realty, in subsidiary partnerships, could be allocated greater or lesser amounts of depreciation and taxable income in respect of a partnership's properties than would be the case if all of the partnership's assets (including any contributed assets) had a tax basis equal to their fair market values at the time of any contributions to that partnership. This could cause Arbor Realty to recognize, over a period of time, taxable income in excess of cash flow from the partnership, which might adversely affect Arbor Realty's ability to comply with the REIT distribution requirements discussed above.

Taxation of Stockholders

Taxation of Taxable U.S. Stockholders

This section summarizes the taxation of U.S. stockholders that are not tax-exempt organizations. For these purposes, a U.S. stockholder is a holder of common stock that for U.S. federal income tax purposes is:

- a citizen or resident of the United States;
- a corporation (including an entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States or of a political subdivision thereof;
- an estate whose income is subject to U.S. federal income taxation regardless of its source; or
- any trust if (1) a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) it has a valid election in place to be treated as a U.S. person.

If a partnership, including for this purpose any entity treated as a partnership for U.S. federal income tax purposes, holds common stock issued by Arbor Realty, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. An investor that is a partnership and the partners in such partnership should consult their tax advisors about the U.S. federal income tax consequences of the acquisition, ownership and disposition of common stock.

Distributions. Provided that Arbor Realty qualifies as a REIT, distributions made to its taxable U.S. stockholders out of current or accumulated earnings and profits, and not designated as capital gain dividends, will generally be taken into account by them as ordinary income but will not be eligible for the dividends received deduction for corporations. Dividends received from REITs are generally not eligible to be taxed at the preferential qualified dividend income rates (15% maximum federal rate through 2008) applicable to individuals who receive dividends from taxable C corporations pursuant to the Jobs and Growth Act. An exception applies, however, and individual stockholders are taxed at such rates on dividends designated by and received from REITs, to the extent that the dividends are attributable to (i) income that the REIT previously retained in the prior year, and on which it was subject to corporate level tax, (ii) dividends received by the REIT from TRSs or other taxable C corporations, or (iii) income from sales of appreciated property acquired from C corporations in carryover basis transactions.

In addition, distributions from Arbor Realty that are designated as capital gain dividends will be taxed to stockholders as long-term capital gains, to the extent that they do not exceed the actual net capital gain of Arbor Realty for the taxable year, without regard to the period for which the stockholder has held its stock. A similar treatment will apply to long-term capital gains retained by Arbor Realty, to the extent that Arbor Realty elects the application of provisions of the Internal Revenue Code that treat stockholders of a REIT as having received, for federal income tax purposes, undistributed capital gains of the REIT, while passing through to stockholders a corresponding credit for taxes paid by the REIT on such retained capital gains. Corporate stockholders may be required to treat up to 20% of some capital gain dividends as ordinary income. Long-term capital gains are generally taxable at maximum federal rates of 15% (through 2008) in the case of stockholders who are individuals, and 35% for corporations. Capital gains attributable to the sale of depreciable real property held for more than one year are subject to a 25% maximum federal income tax rate for taxpayers who are individuals, to the extent of previously claimed depreciation deductions.

Distributions in excess of current and accumulated earnings and profits will not be taxable to a stockholder to the extent that they do not exceed the adjusted basis of the stockholder's shares in respect of which the distributions were made, but rather, will reduce the adjusted basis of these shares. To the extent that such distributions exceed the adjusted basis of a stockholder's shares, they will be included in income as long-term capital gains, or short-term capital gain if the shares have been held for one year or less. In addition, any dividend declared by Arbor Realty in October, November or December of any year and payable to a stockholder of record on a specified date in any such month will be treated as both paid by Arbor Realty and received by the stockholder on December 31 of such year, provided that the dividend is actually paid by Arbor Realty before the end of January of the following calendar year.

To the extent that a REIT has available net operating losses and capital losses carried forward from prior tax years, such losses may reduce the amount of distributions that must be made in order to comply with the REIT distribution requirements. See "Taxation of Arbor Realty — Annual Distribution Requirements." Such losses, however, are not passed through to stockholders and do not offset income of stockholders from other sources, nor do they affect the character of any distributions that are actually made by a REIT, which are generally subject to tax in the hands of stockholders to the extent that the REIT has current or accumulated earnings and profits.

If excess inclusion income from a REMIC residual interest or taxable mortgage pool is allocated to any Arbor Realty stockholder, that income will be taxable in the hands of the stockholder and would not be offset by any net operating losses of the stockholder that would otherwise be available. See "Taxation of Arbor Realty — Taxable Mortgage Pools."

Dispositions of Arbor Realty Stock. In general, capital gains recognized by individuals upon the sale or disposition of shares of Arbor Realty stock will, pursuant to the Jobs and Growth Act, be subject to a maximum federal income tax rate of 15% for taxable years through 2008, if the Arbor Realty stock is held for more than one year, and will be taxed at ordinary income rates (of up to 35% through 2010) if the Arbor Realty stock is held for one year or less. Gains recognized by stockholders that are corporations are subject to federal income tax at a maximum rate of 35%, whether or not classified as long-term capital gains. Capital losses recognized by a stockholder upon the disposition of Arbor Realty stock held for more than one year at the time of disposition will be considered long-term capital losses, and are generally available only to offset capital gain income of the stockholder but not ordinary income (except in the case of individuals, who may offset up to $3,000 of ordinary income each year). In addition, any loss upon a sale or exchange of shares of Arbor Realty stock by a stockholder who has held the shares for six months or less, after applying holding period rules, will be treated as a long-term capital loss to the extent of distributions received from Arbor Realty that are required to be treated by the stockholder as long-term capital gains.

If a stockholder recognizes a loss upon a subsequent disposition of Arbor Realty stock in an amount that exceeds a prescribed threshold, it is possible that the provisions of recently adopted Treasury regulations involving "reportable transactions" could apply, with a resulting requirement to separately disclose the loss generating transaction to the IRS. While these regulations are directed towards "tax shelters," they are written quite broadly, and apply to transactions that would not typically be considered tax shelters. In addition, legislative proposals have been introduced in Congress, that, if enacted, would impose significant penalties for failure to comply with these requirements. You should consult your tax advisors concerning any possible disclosure obligation with respect to the receipt or disposition of Arbor Realty stock, or transactions that might be undertaken directly or indirectly by Arbor Realty. Moreover, you should be aware that Arbor Realty and other participants in transactions involving Arbor Realty (including their advisors) might be subject to disclosure or other requirements pursuant to these regulations.

Taxation of Non-U.S. Stockholders

The following is a summary of certain United States federal income and estate tax consequences of the ownership and disposition of Arbor Realty stock applicable to non-U.S. holders of Arbor Realty stock. The discussion is based on current law and is for general information only. It addresses only selective and not all aspects of United States federal income and estate taxation.

Ordinary Dividends. The portion of dividends received by non-U.S. holders payable out of the earnings and profits of Arbor Realty which are not attributable to capital gains of Arbor Realty and which are not effectively connected with a U.S. trade or business of the non-U.S. holder will generally be subject to U.S. withholding tax at the rate of 30%, unless reduced by treaty. Reduced treaty rates are not available to the extent that income is excess inclusion income allocated to the foreign stockholder. See "Taxation of Arbor Realty — Taxable Mortgage Pools."

In general, non-U.S. holders will not be considered to be engaged in a U.S. trade or business solely as a result of their ownership of Arbor Realty stock. In cases where the dividend income from a non-U.S. holder's investment in Arbor Realty stock is, or is treated as, effectively connected with the non-U.S. holder's conduct of a U.S. trade or business, the non-U.S. holder generally will be subject to U.S. tax at graduated rates, in the same manner as U.S. stockholders are taxed with respect to such dividends, and may also be subject to the 30% branch profits tax in the case of a non-U.S. holder that is a corporation.

Non-dividend Distributions. Unless Arbor Realty stock constitutes a U.S. real property interest (a "USRPI"), distributions by Arbor Realty which are not dividends out of the earnings and profits of Arbor Realty will not be subject to U.S. income tax. If it cannot be determined at the time at which a distribution is made whether or not the distribution will exceed current and accumulated earnings and profits, the distribution will be subject to withholding at the rate applicable to dividends. However, the non-U.S. holder may seek a refund from the IRS of any amounts withheld if it is subsequently determined that the distribution was, in fact, in excess of Arbor Realty's current and accumulated earnings and profits. If Arbor Realty stock constitutes a USRPI, as described below, distributions by Arbor Realty in excess of the sum of its earnings and profits plus the stockholder's basis in its Arbor Realty stock will be taxed under the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA") at the rate of tax, including any applicable capital gains rates, that would apply to a U.S. stockholder of the same type (e.g., an individual or a corporation, as the case may be), and the collection of the tax will be enforced by a refundable withholding at a rate of 10% of the amount by which the distribution exceeds the stockholder's share of Arbor Realty's earnings and profits.

Capital Gain Dividends. Under FIRPTA, a distribution made by Arbor Realty to a non-U.S. holder, to the extent attributable to gains from dispositions of USRPIs held by Arbor Realty directly or through pass-through subsidiaries ("USRPI capital gains"), will be considered effectively connected with a U.S. trade or business of the non-U.S. holder and will be subject to U.S. income tax at the rates applicable to U.S. individuals or corporations, without regard to whether the distribution is designated as a capital gain dividend. In addition, Arbor Realty will be required to withhold tax equal to 35% of the amount of dividends to the extent the dividends constitute USRPI capital gains. Recently proposed legislation, if enacted, would modify the tax treatment of capital gain dividends distributed by REITs to non-U.S. holders. See "Other Tax Considerations — Legislative or Other Actions Affecting REITs." Distributions subject to FIRPTA may also be subject to a 30% branch profits tax in the hands of a non-U.S. holder that is a corporation. A distribution is not a USRPI capital gain if Arbor Realty held the underlying asset solely as a creditor, although the holding of a shared appreciation mortgage loan or similarly instrument would not be solely as a creditor. Capital gain dividends received by a non-U.S. holder from a REIT that are not USRPI capital gains are generally not subject to U.S. income or withholding tax.

Dispositions of Arbor Realty Stock. Unless Arbor Realty stock constitutes a USRPI, a sale of the stock by a non-U.S. holder generally will not be subject to U.S. taxation under FIRPTA. The stock will not be treated as a USRPI if less than 50% of Arbor Realty's assets throughout a prescribed testing period consist of interests in real property located within the United States, excluding, for this purpose, interests in real property solely in a capacity as a creditor.

Even if the foregoing test is not met, Arbor Realty stock nonetheless will not constitute a USRPI if Arbor Realty is a "domestically controlled REIT." A domestically controlled REIT is a REIT in which, at all times during a specified testing period, less than 50% in value of its shares is held directly or indirectly by non-U.S. holders. Arbor Realty believes that it is, and it expects to continue to be, a domestically controlled

REIT and, therefore, the sale of Arbor Realty stock should not be subject to taxation under FIRPTA. Because Arbor Realty stock is transferable, however, no assurance can be given that Arbor Realty will be a domestically controlled REIT.

In the event that Arbor Realty does not constitute a domestically controlled REIT, a non-U.S. holder's sale of stock nonetheless will generally not be subject to tax under FIRPTA as a sale of a USRPI, provided that (a) the stock owned is of a class that is "regularly traded," as defined by applicable Treasury Department regulations, on an established securities market, and (b) the selling non-U.S. holder held 5% or less of Arbor Realty's outstanding stock of that class at all times during a specified testing period.

If gain on the sale of stock of Arbor Realty were subject to taxation under FIRPTA, the non-U.S. holder would be subject to the same treatment as a U.S. stockholder with respect to such gain, subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals, and the purchaser of the stock could be required to withhold 10% of the purchase price and remit such amount to the IRS.

Gain from the sale of Arbor Realty stock that would not otherwise be subject to FIRPTA will nonetheless be taxable in the United States to a non-U.S. holder in two cases: (a) if the non-U.S. holder's investment in the Arbor Realty stock is effectively connected with a U.S. trade or business conducted by such non-U.S. holder, the non-U.S. holder will be subject to the same treatment as a U.S. stockholder with respect to such gain, or (b) if the non-U.S. holder is a nonresident alien individual who was present in the United States for 183 days or more during the taxable year and has a "tax home" in the United States, the nonresident alien individual will be subject to a 30% tax on the individual's capital gain.

Estate Tax. Arbor Realty stock owned or treated as owned by an individual who is not a citizen or resident (as specially defined for U.S. federal estate tax purposes) of the United States at the time of death will be includable in the individual's gross estate for U.S. federal estate tax purposes, unless an applicable estate tax treaty provides otherwise, and may therefore be subject to U.S. federal estate tax.

Taxation of Tax-Exempt Stockholders

Tax-exempt entities, including qualified employee pension and profit sharing trusts and individual retirement accounts, generally are exempt from federal income taxation. However, they are subject to taxation on their unrelated business taxable income ("UBTI"). While some investments in real estate may generate UBTI, the IRS has ruled that dividend distributions from a REIT to a tax-exempt entity do not constitute UBTI. Based on that ruling, and provided that (1) a tax-exempt stockholder has not held its Arbor Realty stock as "debt financed property" within the meaning of the Internal Revenue Code (i.e. where the acquisition or holding of the property is financed through a borrowing by the tax-exempt stockholder), and (2) the Arbor Realty stock is not otherwise used in an unrelated trade or business, distributions from Arbor Realty and income from the sale of the Arbor Realty stock should not give rise to UBTI to a tax-exempt stockholder. To the extent, however, that Arbor Realty (or a part of Arbor Realty, or a disregarded subsidiary of Arbor Realty) is a TMP, or if Arbor Realty holds residual interests in a REMIC, a portion of the dividends paid to a tax-exempt stockholder that is allocable to excess inclusion income may be subject to tax as UBTI. See "Taxation of Arbor Realty — Taxable Mortgage Pools."

Tax-exempt stockholders that are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts and qualified group legal services plans exempt from federal income taxation under sections 501(c)(7),(c)(9),(c)(17) and (c)(20) of the Internal Revenue Code, respectively, are subject to different UBTI rules, which generally will require them to characterize distributions from Arbor Realty as UBTI.

In certain circumstances, a pension trust that owns more than 10% of Arbor Realty's stock could be required to treat a percentage of the dividends from Arbor Realty as UBTI, if Arbor Realty is a "pension-held REIT." Arbor Realty will not be a pension-held REIT unless either (A) one pension trust owns more than 25% of the value of Arbor Realty's stock, or (B) a group of pension trusts, each individually holding more than 10% of the value of Arbor Realty's stock, collectively owns more than 50% of such stock. Certain restrictions on ownership and transfer of Arbor Realty's stock should generally prevent a tax-exempt entity from owning more than 10% of the value of Arbor Realty's stock, or Arbor Realty from becoming a pension-held REIT.

Tax-exempt stockholders are urged to consult their tax advisors regarding the federal, state, local and foreign tax consequences of owning Arbor Realty stock.

Other Tax Considerations

Legislative or Other Actions Affecting REITs

The recently enacted Jobs and Growth Tax Relief Reconciliation Act of 2003 reduced the rates at which individuals are taxed on capital gains (a maximum rate of 15% replaces the prior maximum rate of 20%, through 2008), and gains from the stock of REITs are eligible for the reduced rates. Tax rates for individuals on dividends received from taxable C corporations were also reduced (with the maximum rate falling from 38.6% to 15% for tax years through 2008), although dividends received from REITs would generally continue to be taxed at regular ordinary income rates (now at a maximum rate of 35% through 2010). See "Taxation of Stockholders — Taxation of Taxable U.S. Stockholders — Distributions." This change in the tax treatment of dividends could cause investors to perceive investments in REITs to be comparatively less attractive than investments in other corporations, which could adversely affect the value of the stock of REITs, including Arbor Realty.

Recently proposed legislation would modify the tax treatment of capital gain dividends distributed by REITs to non-U.S. stockholders. See "Taxation of Stockholders — Taxation of Non-U.S. Stockholders — Capital Gain Dividends." The proposed legislation would treat capital gain dividends received by a non-U.S. stockholder in the same manner as ordinary income dividends, provided that (1) the capital gain dividends are received with respect to a class of stock that is regularly traded on an established securities market located in the United States, and (2) the non-U.S. stockholder does not own more than 5% of that class of stock at any time during the taxable year in which the capital gain dividends are received. Another proposal would modify the effect of specified types of hedging income on the REIT 95% gross income requirement. See "Taxation of Arbor Realty — Derivatives and Hedging Transactions." These proposals would apply to taxable years beginning after the date of enactment.

The rules dealing with federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Treasury Department. No assurance can be given as to whether, or in what form, the legislative proposals described above (or any other proposals affecting REITs or their stockholders) will be enacted. Changes to the federal tax laws and interpretations of federal tax laws could adversely affect an investment in Arbor Realty.

State, Local and Foreign Taxes

Arbor Realty and its subsidiaries and stockholders may be subject to state, local or foreign taxation in various jurisdictions, including those in which it or they transact business, own property or reside. Arbor Realty owns interests in properties located in a number of jurisdictions, and may be required to file tax returns in certain of those jurisdictions. The state, local or foreign tax treatment of Arbor Realty and its stockholders may not conform to the federal income tax treatment discussed above. Any foreign taxes incurred by Arbor Realty would not pass through to stockholders as a credit against their United States federal income tax liability. Prospective investors should consult their tax advisors regarding the application and effect of state, local and foreign income and other tax laws on an investment in common stock of Arbor Realty.

ERISA CONSIDERATIONS

The Employee Retirement Income Security Act of 1974, as amended or ERISA, and Section 4975 of the Internal Revenue Code impose certain restrictions on (a) employee benefit plans (as defined in Section 3(3) of ERISA) that are subject to Title I of ERISA, (b) plans (as defined in Section 4975(e)(1) of the Internal Revenue Code) that are subject to Section 4975 of the Internal Revenue Code, including individual retirement accounts or Keogh plans, (c) any entities whose underlying assets include plan assets by reason of such a plan's investment in such entities, each of (a), (b) and (c), a Plan and (d) persons who have certain specified relationships to Plans (referred to as "parties in interest" under ERISA and "disqualified persons" under the Internal Revenue Code). Moreover, based on the reasoning of the United States Supreme Court in *John Hancock Life Ins. Co. v. Harris Trust and Sav. Bank*, 510 U.S. 86 (1993), an insurance company's general account may be deemed to include assets of the plans investing in the general account (for example, through the purchase of an annuity contract), and such insurance company might be treated as a party in interest with respect to a plan by virtue of such investment. ERISA also imposes certain duties on persons who are fiduciaries of plans subject to ERISA, and ERISA and Section 4975 of the Internal Revenue Code prohibit certain transactions between a plan and parties in interest or disqualified persons with respect to such plan. Violations of these rules may result in the imposition of excise taxes and other penalties and liabilities under ERISA and the Internal Revenue Code.

ERISA and Section 4975 of the Internal Revenue Code prohibit a broad range of transactions involving plan assets and parties in interest and disqualified persons, unless a statutory or administrative exemption is available. Parties in interest and disqualified persons that participate in a prohibited transaction may be subject to a penalty imposed under ERISA and/or an excise tax imposed pursuant to Section 4975 of the Internal Revenue Code, unless a statutory or administrative exemption is available. These prohibited transactions generally are set forth in Section 406 of ERISA and Section 4975 of the Internal Revenue Code.

In addition, under Department of Labor Regulation Section 2510.3 101, 29 C.F.R. 2510.3-101 (the "Plan Assets Regulation"), the purchase with plan assets of equity interests in us would cause our assets to be deemed plan assets of the investing Plan which, in turn, would subject us and our assets to the fiduciary responsibility provisions of ERISA and the prohibited transaction provisions of ERISA and Section 4975 of the Internal Revenue Code unless an exception to this regulation is applicable.

Prior to the concurrent offerings, we have not allowed Plans (subject to ERISA or the Code) to invest in classes of our equity. As a result of this offering, we expect that the common stock offered hereby will meet the criteria for the exception under the Plan Assets Regulation that provides that an investing plan's assets will not include any of the underlying assets of an entity if the class of "equity" interests in question are "publicly offered securities," defined as securities that are (1) held by 100 or more investors who are independent of the issuer and each other, (2) freely transferable, and (3) either (a) part of a class of securities registered under Section 12(b) or 12(g) of the Exchange Act or (b) sold to the plan as part of an offering of securities to the public under an effective registration statement under the Securities Act and the class of securities of which that security is part is registered under the Exchange Act within the requisite time.

It is anticipated that the shares of common stock offered hereunder will meet the criteria of "publicly offered securities" pursuant to the Plan Assets Regulation.

Although no assurances can be given, the underwriters expect that:

- there will be no restrictions imposed on the transfer of interests in the shares of common stock,
- shares of common stock will be held by at least 100 independent investors at the conclusion of the offering, and
- the shares of common stock will be sold as part of an offering pursuant to an effective registration statement under the Securities Act and then will be timely registered under the Exchange Act.

If the shares of common stock fail to meet the criteria of publicly-offered securities, our assets may be deemed to include assets of plans that are stockholders. In that event, transactions involving our assets and parties in interest or disqualified persons with respect to such plans will be prohibited under ERISA and the Internal Revenue Code unless we qualify for another exception to the "look through" rule under the regulation or a statutory or administrative exemption is applicable.

Prospective fiduciaries of a plan considering the purchase of common stock should consult with their legal advisors concerning the impact of ERISA and the Internal Revenue Code and the potential consequences of making an investment in the certificates with respect to their specific circumstances. Each plan fiduciary should take into account, among other considerations:

- whether the fiduciary has the authority to make the investment,
- the composition of the plan's portfolio with respect to diversification by type of asset,
- the plan's funding objectives,
- the tax effects of the investment,
- whether the assets of the trust which are represented by such interests would be considered plan assets, and
- whether, under the general fiduciary standards of investment prudence and diversification an investment in certificates of any series is appropriate for the plan taking into account the overall investment policy of the plan and the composition of the plan's investment portfolio.

Any purchaser that is an insurance company using the assets of an insurance company general account should note that pursuant to Section 401(c), the Department of Labor issued final regulations (the "General Account Regulations") providing that the assets of an insurance company general account will not be treated as "plan assets" for purposes of the fiduciary responsibility provisions of ERISA and Section 4975 of the Code to the extent such assets relate to contracts issued to employee benefit plans on or before December 31, 1998 and the insurer satisfies various conditions. The plan asset status of insurance company separate accounts is unaffected by Section 401 (c) of ERISA, and separate account assets continue to be treated as the plan assets of any such plan invested in a separate account.

Certain employee benefit plans, such as governmental plans (as defined in Section 3(32) of ERISA) and certain church plans (as defined in Section 3(33) of ERISA), are not subject to the requirements of ERISA or Section 4975 of the Code. Accordingly, assets of such plans may be invested in the offered securities without regard to the ERISA considerations described herein, subject to the provisions or other applicable federal and state law. However, any such plan that is qualified and exempt from taxation under Sections 401 (a) and 501 (a) of the Code is subject to the prohibited transaction rules set forth in Section 503 of the Code.

SELLING STOCKHOLDERS

The shares of common stock offered by the selling stockholders pursuant to this prospectus were originally issued and sold by us in the private placement on July 1, 2003 or are being issued simultaneously with this offering upon the exercise of warrants. The term selling stockholders includes the holders listed below and the beneficial owners of our common stock and their transferees, pledgees, donees or other successors.

The following table sets forth information, as of February 5, 2004, with respect to the selling stockholders and shares of our common stock beneficially owned by each selling stockholder that they propose to offer pursuant to this prospectus.

Selling Stockholder	Shares of Common Stock Beneficially Owned and Offered	Percentage of Class Beneficially Owned Before Resale(1)	Shares of Common Stock Beneficially Owned After Resale
Bricoleur Enhanced, LP	43,500	*	0
Bricoleur Enhanced Offshore, LTD	10,300	*	0
Bricoleur Offshore, LTD	46,700	*	0
Bricoleur Partners, L.P.	52,100	*	0
Bricoleur Partners, II, LP	60,750	*	0
BRIC 6, L.P.	36,650	*	0
Farbitrage Partners	36,000(2)	*	0
Liongate Capital	15,000	*	0
Precept Capital Master Fund, G.P.	18,000(3)	*	0
Prism Partners I, L.P.	75,000(4)	*	0
Prism Partners II Offshore Fund	75,000(5)	*	0

* Represents less than 1%

(1) Shares of common stock subject to warrants exercisable within 60 days of the date hereof are deemed to be outstanding for computing the percentage of the person or entity holding such warrants but are not deemed to be outstanding for computing the percentage of any other person or entity.

(2) Includes 30,000 shares of common stock and 6,000 shares of common stock to be issued upon exercise of warrants.

(3) Includes 15,000 shares of common stock and 3,000 shares of common stock to be issued upon exercise of warrants.

(4) Includes 62,500 shares of common stock and 12,500 shares of common stock to be issued upon exercise of warrants.

(5) Includes 62,500 shares of common stock and 12,500 shares of common stock to be issued upon exercise of warrants.

Selling Stockholder	Natural Person or Persons with Voting or Dispositive Power
Bricoleur Enhanced, LP	*
Bricoleur Enhanced Offshore, LTD	*
Bricoleur Offshore, LTD	*
Bricoleur Partners, L.P.	*
Bricoleur Partners, II, LP	*
BRIC 6, L.P.	*
Farbitrage Partners	Richard Kayne
Lion Gate Capital	*
Precept Capital Master Fund, G.P.	D. Blair Baker
Prism Partners I, L.P.	Jerald M. Weintraub
Prism Partners II Offshore Fund	Jerald M. Weintraub

* The stockholder has informed us that there is no natural person with voting or investment power over the respective shares of common stock. In these instances, voting or dispositive power is exercised through resolution, in the case of corporations, or consensus, in the case of limited partnerships.

Except as indicated above, none of the selling stockholders has, or within the past three years has had, any position, office or other material relationship with us or any of our predecessors or affiliates. The selling stockholders identified above may have sold, transferred or otherwise disposed of all or a portion of their securities since the date on which they provided the information regarding their securities, in transactions exempt from the registration requirements of the Securities Act.

The selling stockholders will agree, with limited exceptions, for a period of 60 days after the date of this prospectus, that they will not, without the prior written consent of Wachovia Capital Markets, LLC, directly or indirectly, offer to sell, sell or otherwise dispose of any shares of our common stock or any securities convertible into, or exercisable or exchangeable for, shares of our common or our other capital stock, other than the shares of common stock sold by the selling stockholders in this offering.

UNDERWRITING

Subject to the terms and conditions of the underwriting agreement, we and the selling stockholders have agreed to sell to the underwriters named below, and the underwriters have severally agreed to purchase from us and the selling stockholders, the respective number of shares of common stock appearing opposite their names below.

	Number of Shares	
Underwriters	Offered by Us	Offered by the Selling Stockholders
Wachovia Capital Markets, LLC		
UBS Securities LLC		
JMP Securities LLC		
Total		

The underwriters have agreed to purchase all of the shares of common stock shown in the above table if any of the shares of common stock are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the non-defaulting underwriters may be increased or the underwriting agreement may be terminated.

The shares of common stock are offered by the underwriters, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by counsel for the underwriters and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officers' certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify the offer and to reject orders in whole or in part.

The underwriters have advised us that they do not intend to confirm sales to any account over which they exercise discretionary authority.

Commissions and Discounts

The underwriters have advised us that they propose to offer the shares of common stock to the public at the public offering price falling within the range listed on the cover page of this prospectus and to certain dealers at that price less a concession of not more than $ per share, of which $ may be reallowed to other dealers. After the completion of the concurrent offerings, the public offering price, concession and reallowance to dealers may be changed.

The following table shows the public offering price, underwriting discount and proceeds, before expenses, to us and to the selling stockholders, both on a per share basis and in total, assuming either no exercise or full exercise by the underwriters of their over-allotment option.

		Total	
	Per Share	Without Option	With Option
Public offering price			
Underwriting discount(1)			
Proceeds, before expenses, to us(1)			
Proceeds, before expenses, to the selling stockholders			

(1) See "— Directed Shares" below for information with respect to shares that may be sold under the directed share program.

We estimate that the expenses of this offering payable by us, not including the underwriting discount, will be approximately $ million.

Over-allotment Option

We have granted to the underwriters an option, exercisable during the 30-day period after the date of this prospectus, to purchase up to a total of additional shares of common stock from us at the public offering price per share less the underwriting discount per share shown on the cover page of this prospectus. To the extent that the underwriters exercise this option, each of the underwriters will have a firm commitment, subject to conditions, to purchase approximately the same percentage of the additional shares that the number of shares of common stock to be purchased by that underwriter as shown in the above table represents as a percentage of the total number of shares shown in that table.

Directed Shares

The underwriters have reserved for sale, at the initial public offering price, up to 5% of the shares of common stock for our directors, officers, employees and officers and employees of Arbor Commercial Mortgage and their families, and other persons associated with us who express an interest in purchasing these shares of common stock in this offering. The number of shares available for sale to the general public in the offering will be reduced to the extent these persons purchase reserved shares. Any reserved shares not purchased by these persons will be offered by the underwriters to the general public on the same terms as the other shares offered in this offering.

All sales of shares pursuant to the directed share program will be made at the public offering price set forth on the cover page of this prospectus. The underwriters will receive a discount of % on the shares being sold pursuant to the directed share program. As a result, we will receive an additional $ per share from the sale of the shares pursuant to the directed share program as we will from the sale of shares to the general public.

Indemnity

We and the selling stockholders have agreed to indemnify the underwriters against specified liabilities, including liabilities under the Securities Act, or to contribute to payments that the underwriters may be required to make in respect of those liabilities.

Lock-up Agreements

Our directors and officers, Arbor Commercial Mortgage and certain members of the senior management of Arbor Commercial Mortgage will agree, with limited exceptions, for a period of 180 days after the date of this prospectus, and all selling stockholders and remaining holders of units will agree, with limited exceptions, for a period of 60 days after the date of this prospectus, that they will not, without the prior written consent of Wachovia Capital Markets, LLC, offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any of the offered securities, shares of our common stock or other capital stock or any securities convertible into, or exercisable or exchangeable for, shares of our common or our other capital stock, except that such directors, officers and stockholders will be permitted to transfer any of these securities by gift, will or intestate succession (so long as any recipient of those securities enters into a similar lock-up agreement), the selling stockholders will be permitted to distribute securities to their partners (so long as any recipient of those securities enters into a similar lock-up agreement), and selling stockholders will be permitted to sell shares of common stock in this offering.

In addition, we have agreed that, for a period of 180 days following the completion of this offering, we will not, without the prior written consent of Wachovia Capital Markets, LLC, offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any shares of our common stock or other capital stock or any securities convertible into, or exercisable or exchangeable for, shares of our common stock or other capital stock, except for:

- the shares of common stock being sold by us in this offering; and
- the issuance of shares of common stock pursuant to our stock incentive plan as in effect on the date of this prospectus.

Wachovia Capital Markets, LLC may, in its sole discretion and at any time or from time to time, without notice, release all or any portion of the shares of common stock subject to the lock-up agreements listed above.

Concurrent Offering

We expect to offer to sell, at the public offering price, shares to one of our directors, C. Michael Kojaian, who has expressed an interest in purchasing shares of our common stock. We expect to sell these shares directly to Mr. Kojaian, and not through the underwriters or any brokers or dealers.

Stabilization

The underwriters have advised us that, pursuant to Regulation M under the Securities Exchange Act of 1934, certain persons participating in this offering may engage in transactions, including stabilizing bids, syndicate covering transactions or the imposition of penalty bids, which may have the effect of stabilizing or maintaining the market price of our common stock at a level above that which might otherwise prevail in the open market.

- A "stabilizing bid" is a bid for or the purchase of the common stock on behalf of the underwriters for the purpose of fixing or maintaining the price of the common stock.
- A "syndicate covering transaction" is a bid for or the purchase of the common stock on behalf of the underwriters to reduce a short position incurred by the underwriters in connection with this offering.
- A "penalty bid" is an arrangement permitting the underwriters to reclaim the selling concession otherwise accruing to an underwriter or selling group member in connection with this offering if the common stock originally sold by that underwriter or selling group member is purchased by the underwriters in a syndicate covering transactions and has therefore not been effectively placed by that underwriter or selling group member.

The underwriters have advised us that these transactions may be effected on the New York Stock Exchange or otherwise. Neither we nor any of the underwriters makes any representation that the underwriters will engage in any of the transactions described above and these transactions, if commenced, may be discontinued without notice. Neither we nor any of the underwriters makes any representation or prediction as to the direction or magnitude of the effect that the transactions described above, if commenced, may have on the market price of our common stock.

Other Relationships

Wachovia Capital Markets, LLC, JMP Securities LLC and their respective affiliates have provided commercial and investment banking services to us from time to time for which they have received customary fees and expenses. JMP Securities was the initial purchaser of shares in the private placement. Certain investors in the private placement included institutions affiliated with JMP Securities. In addition, Wachovia Bank, National Association, as affiliate of Wachovia Capital Markets, LLC, is the lender under our $150 million loan repurchase agreement under which our borrowing capacity has been recently increased to $250 million on a temporary basis. We intend to use certain of the net proceeds to repay indebtedness under that master repurchase agreement with Wachovia Bank, National Association. The underwriters and their affiliates may, from time to time, engage in other transactions with us and perform other services for us in the ordinary course of their business.

Pricing of this Offering

Prior to the concurrent offerings, there has been no public market for our common stock. Consequently, the initial public offering price for the shares of our common stock will be determined by negotiations among us, the selling stockholders and the underwriters. The factors to be considered in determining the initial public offering price include:

- prevailing market conditions;
- our results of operations and financial condition;
- financial and operating information and market valuations with respect to other companies that we and the representatives of the underwriters believe to be comparable to us;
- the present state of our development; and
- our future prospects.

An active trading market for our common stock may not develop. It is possible that the market price of our common stock after the concurrent offerings may be less than the initial public offering price. In addition, the estimated initial public offering price range appearing on the cover of this preliminary prospectus is subject to change as a result of market conditions or other factors.

New York Stock Exchange Listing

We intend to apply to list our common stock on the New York Stock Exchange, or NYSE, under the symbol "   ." In order to meet the requirements for listing on the NYSE, the underwriters will undertake that the shares of common stock will be sold to ensure that NYSE distribution standards are met.

LEGAL MATTERS

Certain legal matters will be passed upon for us by Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York and Venable LLP, Baltimore, Maryland. Sidley Austin Brown & Wood LLP will act as counsel to the underwriters.

EXPERTS

The consolidated financial statements and schedule of Arbor Realty Trust, Inc. and Subsidiaries at December 31, 2003, and for the period from June 24, 2003 (Inception) through December 31, 2003, and the consolidated statement of revenue and direct operating expenses of the Structured Finance Business of Arbor Commercial Mortgage, LLC and Subsidiaries for the six months ended June 30, 2003 appearing in the registration statement of which this prospectus is a part have been audited by Ernst & Young LLP, independent auditors, as set forth in their reports thereon appearing elsewhere herein.

Such consolidated financial statements are included in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

The consolidated financial statements of the Structured Finance Business of Arbor Commercial Mortgage, LLC and Subsidiaries as of December 31, 2002 and 2001, and for each of the two years in the period ended December 31, 2002 appearing in this prospectus and registration statement have been audited by Grant Thornton LLP, independent auditors, as set forth in their report thereon appearing elsewhere herein, and are included in reliance upon such report given on the authority of Grant Thornton LLP as experts in accounting and auditing.

CHANGE IN ACCOUNTANTS

Grant Thornton LLP was previously the independent accounting firm engaged as the principal accountant to audit the consolidated financial statements of the Structured Finance Business of Arbor Commercial Mortgage and Subsidiaries included in this prospectus. On December 15, 2003, we dismissed Grant Thornton LLP. On December 15, 2003, Ernst & Young LLP was selected as our independent public accountants for the fiscal year ending December 31, 2003 to audit the consolidated financial statements of the Structured Finance Business of Arbor Commercial Mortgage for the six months ended June 30, 2003 and the consolidated financial statements of Arbor Realty Trust Inc. and Subsidiaries for the period ended December 31, 2003. The decision to change accountants was recommended by the audit committee to our board of directors and approved by our board of directors.

We were formed on June 24, 2003. Since our formation until December 15, 2003, the date of Grant Thornton LLP's dismissal, and in connection with the audit of the consolidated financial statements of the Structured Finance Business of Arbor Commercial Mortgage and Subsidiaries as of December 31, 2002 and 2001 and for each of the two years in the period ended December 31, 2002, there were no disagreements with Grant Thornton LLP on any matter of accounting principles or practices, consolidated financial statement disclosure, or auditing scope or procedures, which disagreements if not resolved to their satisfaction would have caused them to make reference in connection with their opinion to the subject matter of the disagreement. Also, during such periods there were no reportable events as set forth in Item 304(a)(1)(v) of Regulation S-K.

The audit report of Grant Thornton LLP on the consolidated financial statements of the Structured Finance Business of Arbor Commercial Mortgage and Subsidiaries as of December 31, 2002 and 2001 and for each of the two years ended December 31, 2002, did not contain any adverse opinion or disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope or accounting principals.

We have provided Grant Thornton LLP with a copy of the disclosure contained under this caption "Change in Accountants" and have requested Grant Thornton LLP to furnish us a letter addressed to the Securities and Exchange Commission stating whether it agrees with the above statements. A copy of that letter, dated March 2, 2004, is filed as Exhibit 16.1 to the registration statement of which this prospectus forms a part.

We have engaged Ernst & Young to serve as our independent public accountants for the fiscal year ended December 31, 2003. Since our formation, we have not consulted Ernst & Young with respect to the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on our consolidated financial statements, or any other matters or reportable events as set forth in Items 304(a)(2)(i) and (ii) of Regulation S-K.

WHERE YOU CAN FIND MORE INFORMATION

We have filed a registration statement, of which this prospectus is a part, on Form S-11 with the Securities and Exchange Commission, or the Commission, relating to this offering. This prospectus does not contain all of the information in the registration statement and the exhibits and consolidated financial statements included with the registration statement. References in this prospectus to any of our contracts, agreements or other documents are not necessarily complete, and you should refer to the exhibits attached to the registration statement for copies of the actual contracts, agreements or documents. You may read and copy the registration statement, the related exhibits and other material we file with the Commission at the Commission's public reference room in Washington, D.C. at Room 1024, Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549. You can also request copies of those documents, upon payment of a duplicating fee, by writing to the Commission. Please call the Commission at 1-800-SEC-0330 for further information on the operation of the public reference rooms. The Commission also maintains an internet site that contains reports, proxy and information statements and other information regarding issuers that file with the Commission. The website address is http://www.sec.gov. You may also request a copy of these filings, at no cost, by writing or telephoning us as follows: Arbor Realty Trust, Inc. at 333 Earle Ovington Boulevard, Suite 900, Uniondale, New York 11553, Attention: Frederick C. Herbst.

Upon the effectiveness of the registration statement, we will be subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and, in accordance with the Exchange Act, will file reports, proxy and information statements and other information with the Commission. Such annual, quarterly and special reports, proxy and information statements and other information can be inspected and copied at the locations set forth above. We will report our consolidated financial statements on a year ended December 31. We intend to furnish our stockholders with annual reports containing consolidated financial statements audited by our independent certified public accountants and with quarterly reports containing unaudited consolidated financial statements for each of the first three quarters of each fiscal year.

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 CERTIFIED PUBLIC ACCOUNTANTS

The Board of Directors

Arbor Realty Trust, Inc. and Subsidiaries

We have audited the accompanying consolidated balance sheet of Arbor Realty Trust, Inc. and Subsidiaries (the “Company”) as of December 31, 2003, and the related consolidated statements of income, stockholders’ equity, and cash flows for the period from June 24, 2003 (Inception) to December 31, 2003. Our audit also included a financial statement schedule listed in the index on page F-1. 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 audit.

We conducted our audit in accordance with auditing standards generally accepted in the 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. An audit 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 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, 2003 and the consolidated results of their operations and their cash flows for period from June 24, 2003 (Inception) to December 31, 2003 in conformity with accounting principles generally accepted in the United States. 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.

ERNST & YOUNG LLP

New York, New York

February 27, 2004

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

	December 31, 2003
Assets:	
Cash	$ 6,115,525
Loans and investments, net	286,036,610
Related party loans, net	35,940,881
Investment in equity affiliates	5,917,542
Other assets	4,153,874
Total assets	$338,164,432
Liabilities and Stockholders Equity:	
Notes payable and repurchase agreements	$172,528,471
Other liabilities	10,888,245
Total liabilities	183,416,716
Minority interest	43,631,602
Commitments and contingencies	—
Stockholders' equity:	
Preferred stock, $0.01 par value: 100,000,000 shares authorized; 3,146,724 shares issued and outstanding	31,467
Common stock, $0.01 par value: 500,000,000 shares authorized; 8,199,567 shares issued and outstanding	81,996
Additional paid-in capital	112,215,649
Distributions in excess of earnings	(691,865)
Deferred compensation	(521,133)
Total stockholders' equity	111,116,114
Total liabilities and stockholders equity	$338,164,432

See notes to consolidated financial statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

CONSOLIDATED INCOME STATEMENT

	Period June 24, 2003 (inception) to December 31, 2003
Revenue:	
Interest income	$ 10,012,449
Other income	156,502
Total revenue	10,168,951
Expenses:	
Interest expense	1,669,731
Employee compensation and benefits	940,336
Stock based compensation	1,721,367
Selling and administrative	533,697
Management fee	587,734
Total expenses	5,452,865
Income before minority interest	4,716,086
Income allocated to minority interest	1,308,167
Net income	$ 3,407,919
Basic earnings per common share	$ .42
Diluted earnings per common share	$ .42

See notes to consolidated financial statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY

For the Period June 24, 2003 (Inception) to December 31, 2003

	Preferred Stock Shares	Preferred Stock Par Value	Common Stock Shares	Common Stock Par Value	Additional Paid-in Capital	Distribution in Excess of Earnings	Deferred Compensation	Total
Initial Capitalization	—	$ —	67	$ 1	$ 1,004	$ —	$ —	$ 1,005
Issuance of preferred stock	3,146,724	31,467						31,467
Issuance of common stock			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
Dividends — common stock						(4,099,784)		(4,099,784)
Net income						3,407,919		3,407,919
Balance — December 31, 2003	3,146,724	$31,467	8,199,567	$81,996	$112,215,649	$ (691,865)	$ (521,133)	$111,116,114

See notes to consolidated financial statements.

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ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

Consolidated Statement of Cash Flows

	Period June 24, 2003 (inception) to December 31, 2003
Operating activities:	
Net income	$ 3,407,919
Adjustments to reconcile net income to cash provided by operating activities	
Stock based compensation	1,721,367
Minority interest, net	(265,195)
Changes in operating assets and liabilities:	
Other assets	(4,153,874)
Other liabilities	10,127,412
Net cash provided by operating activities	10,837,629
Investing activities:	
Loans and investments originated, net	(184,841,507)
Payoffs and paydowns of loans and investments	75,940,655
Investments in equity affiliates	(5,917,542)
Net cash used in investing activities	(114,818,394)
Financing activities:	
Proceeds from notes payable and repurchase agreements	71,047,671
Payoffs and paydowns of notes payable and repurchase agreements	(67,699,042)
Issuance of preferred stock	31,467
Issuance of common stock	120,200,978
Dividends paid on common stock	(4,099,784)
Offering expenses paid	(9,385,000)
Net cash provided by financing activities	110,096,290
Net increase in cash	6,115,525
Cash at beginning of period	—
Cash at end of period	$ 6,115,525
Non cash investing and financing items:	
Loans and investments, net contributed	$ 213,076,639
Notes payable and repurchase agreements contributed	$ 169,179,843
Accrued offering expenses	760,833
Supplemental cash flow information:	
Cash used to pay interest	$ 1,378,637

See notes to consolidated financial statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the Period June 24, 2003 (Inception) to December 31, 2003

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, discounted mortgage notes and other real estate related assets. The Company has not invested in any discounted mortgage notes for the period presented. The Company conducts substantially all of its operations through the 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 financing totaled $120.2 million. Gross proceeds from the private financing 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.

The consolidated financial statements include the financial statements of the Company, its wholly owned subsidiaries, and partnerships or other joint ventures in which the Company holds, directly or indirectly, over fifty percent of the outstanding voting shares. When partnership voting interests are not clearly indicated, the Company reviews other factors to determine control, such as whether the Company is entitled to over 50% of the profits and losses of the partnership. Additionally, for investments in limited partnerships, the Company 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 the Company has a majority voting interest but minority partners have significant participation, such as the right to establish operating and capital decisions of the entity, the Company does not consolidate this entity. Based on this criteria, investments in partnerships or joint ventures that the Company 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.

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.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the Period June 24, 2003 (Inception) to December 31, 2003

Note 2 — Summary of Significant Accounting Policies (continued)

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.

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

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. 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.

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 may invest 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. The gain or loss on disposition of a joint venture interest is recorded as gain on sale of loans and real estate.

Note 2 — Summary of Significant Accounting Policies (continued)

Income Taxes

The Company intends to elect to be taxed as a 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. The Company intends to distribute an amount at least equal to its Taxable Income, and accordingly, there is no provision for federal income taxes. The Company may be subject to state or local income taxes in certain jurisdictions, and to certain other taxes, such as property, transfer, recording, sales, payroll and excise taxes that are not based on income.

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 shareholders 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. In the private offering on July 1, 2003, the Company issued 1,610,000 units, each of which consists of five shares of common stock and a warrant to purchase an additional share of common stock, at $75.00 per unit. The warrants to acquire 1,610,000 shares of common stock have an 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 in the private offering and approximates the market value of the common stock at December 31, 2003. Therefore, the assumed exercise of the warrants were not considered to be dilutive for purposes of calculating diluted earnings per share.

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. In adopting FIN 46 and in anticipation of adopting FIN 46-R, the Company has evaluated its loans and investments and investments in equity affiliates made to entities created after February 1, 2003 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 investment, the Company has evaluated the sufficiency of the fair value of the entities equity investments at risk to absorb losses. For these investments the Company has determined that the entities have sufficient equity at risk and, accordingly, they are not VIE's. As such, the Company has continued to account for the mezzanine loans and preferred equity investments and investments in equity investments as a loan, joint venture or real estate, as appropriate.

The Company is still in the process of evaluating its investments made into entities created before February 1, 2003, and a definitive conclusion cannot be reached until the evaluation has been completed.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the Period June 24, 2003 (Inception) to December 31, 2003

Note 2 — Summary of Significant Accounting Policies (continued)

In November 2002, the FASB issued FASB Interpretation No. 45 (“FIN 45”), “Guarantor’s Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others,” an interpretation of FASB Statement of Financial Accounting Standards No. 5 (“SFAS No. 5”), “Accounting for Contingencies,” Statement of Financial Accounting Standards No. 57, “Related Party Disclosures,” Statement of Financial Accounting Standards No. 107, “Disclosures about Fair Value of Financial Instruments” and rescinded FASB Interpretation No. 34, “Disclosure of Indirect Guarantees of Indebtedness of Others, an Interpretation of SFAS No. 5.” It requires that upon issuance of a guarantee, the guarantor must recognize a liability for the fair value of the obligation it assumes under that guarantee regardless of whether the Company receives separately identifiable consideration (i.e., a premium). The new disclosure requirements were effective December 31, 2002. The adoption of FIN 45 did not have a material impact on the Company’s Consolidated Financial Statements, nor is it expected to have a material impact in the future.

Note 3 — Loans and Investments

	December 31, 2003
Bridge loans	$127,971,220
Mezzanine loans	124,210,000
Preferred equity investments	33,428,173
Other	1,967,867
	287,577,260
Unearned revenue	(1,540,650)
Loans and investments, net	$286,036,610

Concentration of Borrower Risk

The Company is subject to concentration risk in that, 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 has a $35.0 million loan that was originated on December 12, 2003, which represents approximately 10% of total assets, and two loans secured by one property totaling $45.0 million that was originated on December 31, 2003, which represents approximately 13% of total assets. Summarized financial and other information of the borrowing entities is described below.

The Company originated a $35.0 million mezzanine loan to Prime Outlets Member, LLC (“POM”) which owns and operates 10 factory outlet centers in various states on December 12, 2003. The loan is secured by a pledge of equity interest in POM’s subsidiaries that directly or indirectly own the ten underlying properties.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the Period June 24, 2003 (Inception) to December 31, 2003

Note 3 — Loans and Investments (continued)

Summarized financial information:

Balance Sheet:

	December 31, 2003
	(unaudited)
Assets:	
Cash	$ 2,649,711
Net rental real estate	246,669,943
Other assets	72,546,105
Total assets	$321,865,759
Liabilities and equity:	
Notes payable	$181,386,898
Notes payable Arbor	35,000,000
Other liabilities	6,638,162
Total liabilities	223,025,060
Equity	98,840,699
Total liabilities and equity	$321,865,759

Since the loan was originated on December 12, 2003 statement of operation information was not material.

The Company originated a $30 million mezzanine loan to 450 Partners Mezz III LLC, the owner of 100% of the membership interests in 450 Partners Mezz II LLC, and a $15 million mezzanine loan to 450 Partners Mezz II LLC, the owner of 100% of the membership interests in 450 Partners Mezz I LLC, on December 31, 2003. The borrowers used the proceeds from the loans to recapitalize and refinance a 1.7 million-square-foot office building in New York. The loans are secured by a pledge of 100% of the membership interests in 450 Partners Mezz II LLC and 450 Partners Mezz I LLC.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the Period June 24, 2003 (Inception) to December 31, 2003

Note 3 — Loans and Investments (continued)

Summarized financial information:

Balance Sheet:

	December 31, 2003
	(unaudited)
Assets:	
Real estate assets	$340,653,689
Total assets	$340,653,689
Liabilities and equity:	
Senior mortgages	270,000,000
Arbor loans	45,000,000
Total liabilities	315,000,000
Equity	25,653,689
Total liabilities and equity	$340,653,689

Since the loan was originated on December 31, 2003, statement of operation information was not material.

Note 4 — Investment in Equity Affiliates

At December 31, 2003, the Company had approximately $5.9 million of investments in equity affiliates, which are described below.

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

In December 2003, the Company invested approximately $2.1 million in exchange for a 50% non-controlling interest in a joint venture, 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. In addition, as of December 31, 2003, the Company had a $35.0 million mezzanine loan outstanding to an affiliate entity of the joint venture. The loan requires monthly interest payments based on LIBOR and matures in January 2006. In addition, the Company has a 16 2/3% carried profits interest in the borrowing entity.

As of December 31, 2003, the Company had two mezzanine loans totaling $45 million outstanding to a borrower who used the proceeds to acquire and renovate an office building. The loans require monthly interest payments based on 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. The Company retained participating profits interests in several affiliates of the borrower aggregating approximately 24%.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the Period June 24, 2003 (Inception) to December 31, 2003

Note 5 — Notes Payable and Repurchase Agreements

The Company utilizes warehouse lines of credit and repurchase agreements to finance its loans and investments. Borrowings underlying these arrangements are secured by substantially all the Company's loans and investments.

	December 31, 2003
Structured transaction facility, financial institution, $250 million committed line, expiration June 2006, interest rate variable based on LIBOR; the weighted average note rate was 3.54%	$ 58,630,626
Repurchase agreement, financial institution, $100 million committed line, expiration January 2004 interest is variable based on LIBOR; the weighted average note rate was 3.41%	63,722,845
Promissory note, financial institution, expiration April 2004 interest is variable based on LIBOR; the weighted average note rate was 3.74%	28,300,000
Promissory note, financial institution, expiration March 2004 interest is variable based on LIBOR; the weighted average note rate was 3.67%	21,875,000
Repurchase agreement, financial institution, $150 million committed line, expiration December 2006 interest is variable based on LIBOR	—
Repurchase agreement, financial institution, $50 million committed line, expiration November 2005, interest rate variable based on LIBOR	—
Notes payable and repurchase agreements	$172,528,471

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% of net interest income of the loans and investments financed. This cost is included in interest expense.

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 covenants and restrictions for the period presented.

In January 2004, the Company transferred the financing associated with the loans in the two promissory notes to the $150 million repurchase agreement.

In February 2004, the Company entered into an amendment to the $100.0 million master repurchase agreement, which extended this facility until December 31, 2004. Under the terms of this amendment, $3.2 million of borrowings related to a $4.3 million preferred equity investment must be repaid by March 31, 2004. In addition, the interest rates on the borrowings related to a $19.3 million preferred equity investment, an $8.8 million bridge loan and a $9.1 million bridge loan were adjusted to LIBOR plus 3.50%, 2.25% and 2.50%, respectively. The Company does not believe the revised terms will have a material impact on the results of operations.

Note 6 — 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 entitles ACM to a 28% profits interest in the Company which is recorded under the equity method.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the Period June 24, 2003 (Inception) to December 31, 2003

Note 7 — 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 8 — 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 offering 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."

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 offering of units on July 1, 2003 and 2,000 restricted stock awards were made subsequently to certain directors. As of December 31, 2003, 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 ratable over three years on the anniversary date of the initial award. Dividends will be paid on the restricted shares as dividends are 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 options 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 the period from June 24, 2003 (inception) to December 31, 2003, compensation expense related to this plan totaled $1,721,367. Such amounts appear on the Company's Consolidated Statement of Operations under "stock-based compensation expense."

Warrants

In connection with the private offering 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. These warrants expire on July 1, 2005.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the Period June 24, 2003 (Inception) to December 31, 2003

Note 8 — Stockholders' Equity (continued)

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. In addition, ACM paid the Company $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.

Note 9 — Fair Value of Financial Instruments

The following table summarizes the carrying values and the estimated fair values of financial instruments as of December 31, 2003. Fair value estimates are dependent upon subjective assumptions and involve significant uncertainties resulting in variability in estimates with changes in assumptions.

	December 31, 2003	
	Carrying Value	Estimated Fair Value
Financial assets:		
Loans and investments, net	$286,036,610	$286,036,610
Related party loans, net	35,940,881	35,940,881
Financial liabilities:		
Notes payable and repurchase agreements	172,528,471	172,528,471

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.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the Period June 24, 2003 (Inception) to December 31, 2003

Note 10 — Related Party Transactions

Related Party Loans:

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

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, 2003, ACM's investment in this joint venture was approximately $2.6 million. At December 31, 2003, the Company 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 the Company and 50% by the key principal of the joint venture. The loan requires monthly interest payments based on LIBOR and matures in May 2006. The Company has 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 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 and was purchased by the Company in July 2003, will be earned on the full $4.0 million, while the interest on the second component, of which $1.1 million was funded as of December 31, 2003, is earned as the $4.0 million is drawn down. This additional financing is secured by a second mortgage lien on the property. Interest income recorded from these loans was approximately $486,000, for the period ended December 31, 2003.

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 the Company 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 the Company, 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 the Company when the remaining accumulated principal amount of the four contributed assets, collectively, falls below $5 million and none of the four contributed assets is in default.

As of December 31, 2003, we had a $13.75 million first mortgage loan and a $1.2 million second mortgage loan (of which 1.1 million was funded as of December 31, 2003), each of which bears interest at a variable rate of one month LIBOR plus 4.25% and matures in March 2004, outstanding 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 and that institution.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the Period June 24, 2003 (Inception) to December 31, 2003

Note 10 — Related Party Transactions (continued)

Interest income recorded from these loans was approximately $402,000 for the period ended December 31, 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 11 — 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.

For performing services under the management agreement, the Company will pay 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 0.5% 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.

The Company 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 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

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the Period June 24, 2003 (Inception) to December 31, 2003

Note 11 — Management Agreement (continued)

respect to all loans and investments originated during the term of the management agreement, the Company has also agreed with ACM that the Company will pay 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 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. 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 to be paid to ACM to satisfy the common stock portion of the incentive management fee, 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. 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. The incentive compensation fee will be accrued as it is earned. Amounts paid in stock will be expensed as incurred based on the fair value of the stock on the date paid. No incentive compensation was earned or paid in the period from June 24, 2003 (inception) to December 31, 2003.

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 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.

Note 12 — Dividends

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 dividends or, alternatively, may be required to borrow to make sufficient dividend payments.

The Company distributed dividends of $0.25 per share of common stock, payable with respect to the three months ended September 30, 2003 and the three months ended December 31, 2003, to stockholders of record at the close of business on November 5, 2003 and December 19, 2003, respectively.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

SCHEDULE IV — LOANS AND OTHER LENDING INVESTMENTS

As of December 31, 2003

Type	Location	Periodic Payment Terms	Maturity Date	Interest Pay Rate Index	Interest Accrual Rate Index	Prior Liens	Face Amount	Carrying Amount
Senior Mortgages:								
Multi-family	New York, NY	Interest Only	5/2006	Libor + 2.25%	N/A	—	$ 16,000,000	$ 16,000,000
Co-op	New York, NY	Interest Only	10/2004	10.00%	N/A	—	1,100,000	1,100,000
Multi-family	Massachusetts	Interest Only	4/2004	Libor + 5.50% Floor 7.00%	N/A	—	2,899,875	2,899,875
Hotel	New York, NY	Interest Only	3/2005	Libor + 5.00% Floor 6.50%	N/A	—	14,000,000	14,000,000
Less: Participation				.50% of net spread less 0.50% asset management fee			(2,100,000)	(2,100,000)
							11,900,000	11,900,000
Multi-family	Las Vegas, NV	Principal and interest	12/2004	Libor + 3.00% Floor 5.25%	N/A	—	25,140,436	25,140,436
Multi-family	Indiana	Interest Only	3/2004	Libor + 4.25%	N/A	(1)	14,809,391	14,809,391
Multi-family	Ontario, CA	Interest Only	4/2005	Libor + 4.00% Floor 5.50%	N/A	—	9,130,000	9,130,000
Multi-family	Baltimore, MD	Interest Only	5/2006	Tranche A ($14,200,000): Libor + 3.50% Floor 5.00% Tranche B ($4,725,569): Libor + 4.50% (Year 1); Libor + 6.50% (Year 2); Libor + 7.50% (Year 3) Libor Floor 2.00%	N/A	(2)	18,925,569	18,925,569
Multi-family	Lauderdale Lakes, FL	Interest Only	12/2004	Libor + 3.50% Floor 5.50%	N/A	—	8,800,000	8,800,000
Multi-family	San Francisco, CA	Interest Only	7/2004	Libor + 4.50% Floor 6.00%	N/A	—	6,200,000	6,200,000
Commercial	Brooklyn, NY	Interest Only	10/2006	Libor + 4.75%	N/A	—	4,800,000	4,800,000
Multi-family	Tampa, FL	Interest Only	10/2005	Libor + 3.50% Floor 5.00%	N/A	—	21,500,000	21,500,000
Multi-family	Tampa, FL	Interest Only	10/2005	Libor + 6.50% Floor 8.50%	N/A	—	5,500,000	5,500,000
Multi-family	Baltimore, MD	Interest Only	12/2005	Libor + 6.50% Floor 8.00%	N/A	—	6,825,340	6,825,340
Retail	Gainesville, TX	Interest Only	3/2004	Libor + 8.50% Floor 9.50%	N/A	—	4,800,000	4,800,000
Residential	Westbury, NY	Interest Only	7/2004	Libor + 8.00% Floor 12.00%	N/A	—	450,000	450,000
Total Senior Mortgages							$158,780,611	$158,780,611

(1) This investment consists of the following two loans made by the Company to the same borrower: (a) a $13.75 million first mortgage loan and (b) a $1.2 million second mortgage loan, of which $1,059,391 was funded as of December 31, 2003.

(2) The Company made this loan with respect to a portfolio of five properties. The Company has a first mortgage lien on three of the five 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 each of those other properties, totaling $26,600,000.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES

SCHEDULE IV — LOANS AND OTHER LENDING INVESTMENTS — (Continued)

As of December 31, 2003

Type	Location	Periodic Payment Terms	Maturity Date	Interest Pay Rate Index	Interest Accrual Rate Index	Prior Liens	Face Amount	Carrying Amount
Mezzanine Loans:								
Multi-family	New York, NY	Interest Only	5/2006	Libor + 7.00% Floor 10.00%	N/A	$ 16,000,000	$ 5,131,490	$ 5,131,490
Multi-family	New York, NY	Interest Only	2/2004(1)	Libor + 3.00% Floor 8.00%	Libor + 5.00% Floor 12.50%	31,000,000	10,000,000	10,000,000
Commercial	Brooklyn, NY	Interest Only	6/2006	Libor + 3.50% Floor 5.00%	Libor + 8.00% Libor Floor 1.50%	7,776,000	3,500,000	3,500,000
Multi-family	Glassboro, NJ	Interest Only	5/2006	Libor + 7.00% Floor 10.00%	N/A	11,000,000	2,000,000	2,000,000
Hotel	Scottsdale, Arizona	Interest Only	8/2006	Libor + 7.00% Floor 9.00% Cap 10.00%	N/A	10,000,000	6,640,000	6,640,000
Multi-family	New Jersey	Interest Only	4/2005	Libor + 5.25% Floor 6.75%	N/A	13,981,033	3,000,000	3,000,000
Multi-family	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	67,547,115	11,520,000	11,520,000
Multi-family	New Orleans, LA	Interest Only	11/2006	Libor + 7.00%	N/A	6,570,000	2,300,000	2,300,000
Retail	Various	Principal and Interest	1/2006	Libor + 8.50% Floor 9.50%	N/A	336,000,000	35,000,000	35,000,000
Condo Conversion	New York, NY	Interest Only	12/2005	Libor + 6.00% Libor Floor 1.17%	N/A	47,877,500	5,250,000	5,250,000
Office	New York, NY	Interest Only (1st Year)	1/2006	12.30% Fixed	N/A	270,000,000	30,000,000	30,000,000
Office	New York, NY	Interest Only (1st Year)	1/2006	Libor + 14.92%(2) Libor Floor 1.50%	N/A	300,000,000	15,000,000	15,000,000
Total Mezzanine Loans						$1,117,751,648	$129,341,490	$129,341,490
Preferred Equity:								
Multi-family	Texas	Interest Only	1/2005	Libor + 4.50% Floor 9.56%	N/A	$ 10,645,473	$ 4,253,742	$ 4,253,742
Multi-family	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	11,648,047	7,074,431	7,074,431
Multi-family	New Jersey	Interest Only	4/2005	Libor + 5.25% Floor 6.75%	N/A	188,961,964	19,300,000	19,300,000
Multi-family	Denver, CO	Interest Only	3/2004	Libor + 6.00% Floor 10.00%	N/A	23,362,371	2,800,000	2,800,000

Total Preferred Equity					$ 234,617,855	$ 33,428,173	$ 33,428,173
Other Investments:							
Hotel							
	Miami, FL	8/2023	7.39% Fixed	N/A	$ 10,000,000	$ 1,967,867	$ 1,967,867
Total Loans and Investments					$1,362,369,503	$323,518,141	$323,518,141

(1) The borrower has executed its option to extend the loan for a 12-month period.

(2) The Company is required to pay BN Holdings LLC, an unrelated party, as a structuring fee, the portion of each monthly interest payment that results from a LIBOR spread in excess of 11.50%.

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

REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Members of
Arbor Commercial Mortgage, LLC

We have audited the accompanying consolidated statements of assets and liabilities of the Structured Finance Business (the "SF Business" or the "Company") of Arbor Commercial Mortgage, LLC and Subsidiaries ("ACM") as of December 31, 2002 and 2001, and the related consolidated statements of revenue and direct operating expenses for each of the two years in the period ended December 31, 2002. These financial statements are the responsibility of ACM's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform our audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit 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 audits provide a reasonable basis for our opinion.

The accompanying financial statements were 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 assets and liabilities or results of operations that would have resulted if the SF Business had operated as an unaffiliated independent company.

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets and liabilities of the SF Business of ACM as of December 31, 2002 and 2001, and the revenue and direct operating expenses for each of the two years in the period 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 CERTIFIED PUBLIC ACCOUNTANTS

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 auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. 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 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 for inclusion in the Registration Statement on Form S-11 of Arbor Realty Trust, Inc. 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 accounting principles generally accepted in the United States.

Ernst & Young

New York, New York

February 27, 2004

THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC

AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF ASSETS AND LIABILITIES

	December 31, 2002	December 31, 2001
Assets:		
Loans and investments, net	$172,142,511	$160,183,066
Related party loans, net	15,952,078	15,880,207
Investment in equity affiliates	2,586,026	2,957,072
Real estate owned	7,258,931	—
Other assets	2,623,690	4,693,402
Total assets	$200,563,236	$183,713,747
Liabilities:		
Notes payable and repurchase agreements	$141,836,477	$132,409,735
Other liabilities	2,444,329	1,676,566
Total liabilities	144,280,806	134,086,301
Commitments and contingencies	—	—
Net Assets	$ 56,282,430	$ 49,627,446

See notes to consolidated financial statements.

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THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC

AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF REVENUE AND DIRECT OPERATING EXPENSES

	Six Months Ended June 30,	Year Ended December 31,	
	2003	2002	2001
Revenue:			
Interest income	$7,688,465	$14,532,504	$14,667,916
Other income	1,552,414	1,090,106	1,668,215
Total revenue	9,240,879	15,622,610	16,336,131
Direct operating expenses:			
Interest expense	3,468,275	6,586,640	7,029,374
Employee compensation and benefits	1,751,147	2,827,191	2,888,603
Selling and administrative	458,266	910,924	839,823
Provision for loan losses	60,000	3,315,000	240,000
Total direct operating expenses	5,737,688	13,639,755	10,997,800
Revenue in excess of direct operating expenses before gain on sales of loans and real estate and income from equity affiliates	3,503,191	1,982,855	5,338,331
Gain on sale of loans and real estate	1,024,268	7,470,999	3,226,648
Income from equity affiliates	—	632,350	1,403,014
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	$ 9,967,993

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, 2001,
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

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

a majority voting interest but minority partners have significant participation, such as the right to establish operating and 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.

Note 2 — Summary of Significant Accounting Policies (continued)

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.

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-along 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.

Recently Issued Accounting Pronouncements

In January 2003, the FASB issued FASB Interpretation No. 46, "Consolidation of Variable Interest Entities" ("FIN 46"). FIN 46 provides guidance on identifying entities for which control is achieved through means other than through voting rights (a "variable interest entities" or "VIE"), and how to determine when and which business enterprise should consolidate a VIE. In addition, FIN 46 requires that

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Note 2 — Summary of Significant Accounting Policies (continued)

both the primary beneficiary and all other enterprises with a significant variable interest in VIE make additional disclosures. The transitional disclosure requirements will take effect almost immediately and are required for all consolidated financial statements initially issued after January 31, 2003. Management is in the process of evaluating all of its mezzanine loans and preferred equity investments, which may be deemed variable interest entities under the provision of FIN 46. A definitive conclusion can not be reached until the evaluation has been completed.

In November 2002, the FASB issued FASB Interpretation No. 45 (“FIN 45”), “Guarantor’s Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others,” an interpretation of FASB Statement of Financial Accounting Standards No. 5 (“SFAS No. 5”), “Accounting for Contingencies,” Statement of Financial Accounting Standards No. 57, “Related Party Disclosures,” Statement of Financial Accounting Standards No. 107, “Disclosures about Fair Value of Financial Instruments” and rescinded FASB Interpretation No. 34, “Disclosure of Indirect Guarantees of Indebtedness of Others, an Interpretation of SFAS No. 5.” It requires that upon issuance of a guarantee, the guarantor must recognize a liability for the fair value of the obligation it assumes under that guarantee regardless of whether the Company receives separately identifiable consideration (i.e., a premium). The new disclosure requirements were effective December 31, 2002. The adoption of FIN 45 did not have a material impact on the Company’s Consolidated Financial Statements, nor is it expected to have a material impact in the future.

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	December 31, 2001
Cash flows from investing activities:			
Loans and investments originated	$(117,176,849)	$(116,810,564)	$(53,165,836)
Payoffs and paydowns of loans and investments	76,106,055	105,608,865	62,044,959
Proceeds from sale of real estate held for sale	—	—	9,801,548
Purchase of joint venture interest	—	—	(7,619,272)
Cash flows from financing activities:			
Proceeds from notes payable and repurchase agreements	93,228,860	86,853,319	57,558,552
Payoffs and paydowns of notes payable and repurchase agreements	(64,019,933)	77,426,577	(63,111,680)

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

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2002, 2001,
and for the Six Months Ended June 30, 2003

Note 4 — Loans and Investments

	December 31,	
	2002	2001
Bridge loans	$ 93,789,934	$ 81,947,873
Mezzanine loans	59,483,271	58,481,072
Preferred equity investments	12,530,562	5,491,001
Other	9,469,039	18,151,162
	175,272,806	164,071,108
Unearned revenue	(1,167,814)	(2,223,042)
Allowance for loan losses	(1,962,481)	(1,665,000)
Loans and investments, net	$172,142,511	$160,183,066

In 2001 the Company had $1,665,000 in allowance for loan losses related to three bridge loans, that were deemed to be impaired. In accordance with the Company's policy for revenue recognition, income recognition was suspended on these loans. In 2002 these loans were repaid and the total outstanding principal balance was collected. The $1,665,000 of allowance for loan losses was re -allocated to the loans that were deemed to be impaired in 2002.

A bridge loan with a carrying value of $10,333,931 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 bridge loan with a carrying value of $4,100,000 was deemed to be impaired in 2002 and $700,000 of allowance for loan losses was allocated to this loan to reflect this loan at its estimated fair value. In accordance with the Company's policy for revenue recognition, income recognition has been suspended on this loan. In 2003, the Company received a $3.75 million payment from the borrower in partial satisfaction of the loan, which amount was $350,000 in excess of the loan's carrying value. The Company reduced its allowance for loan losses and recorded other income for the excess amount received.

A bridge loan and a mezzanine loan, secured by the same property, with a carrying value of $10,584,492 was deemed to be impaired in 2002 and $305,000 of allowance for loan losses was allocated to these loans to reflect these loans at their estimated fair values. In accordance with the Company's policy for revenue recognition, income recognition has been suspended on these loans.

A mezzanine loan with a carrying value of $1,728,552 was deemed to be impaired in 2002 and $660,000 of allowance for possible loan losses was allocated to this loan as well as 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.

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

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2002, 2001,
and for the Six Months Ended June 30, 2003

Note 4 — Loans and Investments (continued)

Allowance for Loan Losses:

	December 31,	
	2002	2001
Beginning balance	$ 1,665,000	$1,425,000
Provision for loan losses	3,315,000	240,000
Amounts charged against allowance for loan losses	(3,017,519)	—
Ending balance	$ 1,962,481	$1,665,000

Concentration of Borrower Risk

The Company is subject to concentration risk in that, as of December 31, 2002 and 2001, the unpaid principal balance relating to eleven and eight loans represented approximately 46% and 37% of total loans held for investment and are with five and three unrelated borrowers, respectively. The total number of loans and investments by the Company was 36 and 34 as of December 31, 2002 and 2001, respectively.

Note 5 — Business Acquisitions and Investment in Equity Affiliates

In June 1998, the Company entered into a joint venture, Mezzobridge Funding, LLC, with SFG I, an affiliate of Nomura Asset Capital Corp. for the purpose of acquiring up to $250 million of structured finance investments. Capital contributions and profits were shared equally by the partners. Nomura Asset Capital Corp. provided financing to the joint venture in the form of a repurchase agreement. The interest rate charged for the financing was based on LIBOR. On July 31, 2001, the Company purchased from SFG I their interest in the joint venture.

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

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2002, 2001, and for the Six Months Ended June 30, 2003

Note 5 — Business Acquisitions and Investment in Equity Affiliates (continued)

This transaction was accounted for by the purchase accounting method. The activities of the former joint venture have been included in the Company's statements of revenue and direct operating expenses from the date of acquisition, August 2001. Summarized financial data of this joint venture is as follows:

	July 31, 2001
	(Unaudited)
Balance sheets	
Assets	
Cash	$ 1,975,408
Loans held for investment, net	95,130,987
Other receivables and deferred costs	3,320,677
Total assets	$100,427,072
Liabilities and members' capital	
Liabilities	
Notes payable — repurchase agreement	$ 67,494,364
Accounts payable and accrued expenses	661,198
Total liabilities	68,155,562
Members' capital Arbor	16,135,755
Other partner	16,135,755
Total members' capital	32,271,510
Total liabilities and members' capital	$100,427,072

	Seven Months Ended July 31, 2001
	(Unaudited)
Statements of operations	
Interest earned	$ 5,446,464
Interest and other expenses	4,578,950
Net income	$ 867,514
Net income allocated to:	
Arbor	$ 433,757
Other partner	433,757
Total	$ 867,514

The Company purchased the entire interest of its partner for $16,135,755, which was equal to the members' capital of the partner on the date of purchase. The Company financed this purchase with increased debt on the existing repurchase agreement of $6,541,075 and cash of $9,594,680, of which $1,975,408 was on hand in the joint venture at the date of purchase and was distributed to the partner. In

Note 5 — Business Acquisitions and Investment in Equity Affiliates (continued)

conjunction with the purchase, the existing repurchase agreement was assumed by the Company. The repurchase agreement expires in November 2003.

The Company had a 26% interest in a joint venture, which owns and operates a multi-family real estate property. At December 31, 2001 the Company's investment in this joint venture was approximately $900,000. During 2001 the Company recorded net income from this joint venture of $1,022,165. 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. At December 31, 2002 and 2001, the Company's investments in these joint ventures were approximately $2.6 million and $2.1 million, respectively. The Company recorded net income from these joint ventures of $43,750 in 2002 and net losses of $52,908 in 2001.

Note 6 — Notes Payable and Repurchase Agreements

The Company utilizes warehouse lines of credit and repurchase agreements to finance its loans and investments. Borrowings underlying these arrangements are secured by substantially all the Company's loans and investments.

	December 31,	
	2002	2001
Structured transaction facility, financial institution, $150 million committed line, expiration August 2004, interest rate variable based on LIBOR; the weighted average note rate was 4.07% and 5.50%, respectively	$ 70,184,219	$ 61,720,900
Repurchase agreement, financial institution, $100 million committed line, expiration December 2003 interest is variable based on LIBOR; the weighted average note rate was 3.42% and 4.44% respectively	68,267,260	66,941,689
Repurchase agreement, financial institution, $50 million committed line, expiration November 2005, interest rate variable based on LIBOR	—	n/a
Repurchase agreement, financial institution, uncommitted line, Interest rate variable based on LIBOR; the weighted average note rate was 3.35% and 3.68%, respectively	3,384,998	3,747,146
Notes payable and repurchase agreements	$141,836,477	$132,409,735

The $150 million structured transaction facility contains profit-sharing arrangements between the Company and the lender which provide for profit sharing percentages ranging from 30% to 45% of net interest income of the loans and investments financed. This cost is included in interest expense.

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 covenants and restrictions for all periods presented.

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

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2002, 2001, and for the Six Months Ended June 30, 2003

Note 6 — Notes Payable and Repurchase Agreements (continued)

In conjunction with ACM's contribution of a portfolio of structured finance investments and related debt to ARLP the operating partnership of ART, the structured finance facility and the two committed repurchase agreements were assigned to ARLP pursuant to agreements with the relevant financial institutions.

Note 7 — 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 8 — Fair Value of Financial Instruments

The following table summarizes the carrying values and the estimated fair values of financial instruments as of December 31, 2002 and 2001. Fair value estimates are dependent upon subjective assumptions and involve significant uncertainties resulting in variability in estimates with changes in assumptions.

	December 31, 2002		December 31, 2001	
	Carrying Value	Estimated Fair Value	Carrying Value	Estimated Fair Value
Financial assets:				
Loans and investments, net	$172,142,511	$172,142,511	$160,183,066	$160,183,066
Related party loans, net	15,952,078	15,952,078	15,880,207	15,880,207
Financial liabilities:				
Notes payable and repurchase agreements	141,836,477	141,836,477	132,409,735	132,409,735

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.

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

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2002, 2001, and for the Six Months Ended June 30, 2003

Note 9 — Related Party Transactions

Related Party Loans:

	December 31,	
	2002	2001
Bridge loans	$16,000,000	$16,000,000
	16,000,000	16,000,000
Unearned revenue	(47,922)	(119,793)
Related party loans, net	$15,952,078	$15,880,207

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 and 2001, the Company's investments in this joint venture were approximately $2.3 million and $1.8 million, respectively. The Company accounts for this investment under the equity method. At December 31, 2002, the Company 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 LIBOR and matures in October 2004. In connection with the joint venture agreement the Company has 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 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 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 $449,000 and $148,000 for the periods ended December 31, 2002 and 2001, respectively.

In June 2003, the Company invested approximately $818,000 in exchange for a 12.5% preferred interest in two joint ventures, which own and operate 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 totaling $6.0 million. The loans require monthly interest payments based on LIBOR and mature in May 2006. Interest income recorded from these loans was approximately $8,000 for the period ended June 30, 2003.

Note 10 — 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

Note 10 — Subsequent Events (continued)

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 11 — 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 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 0.5% 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.

Note 11 — Unaudited Pro Forma Consolidated Financial Information (continued)

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 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.

Arbor Realty Trust, Inc.

Shares

Common Stock

PROSPECTUS

, 2004

Wachovia Securities

UBS Investment Bank

JMP Securities

Until , 2004, (25 days after the commencement of this offering), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This delivery is in addition to the dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to their unsold allotments or subscriptions.

The information in this preliminary prospectus is not complete and may be changed or supplemented. These securities may not be sold until the registration statement with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

PROSPECTUS

SUBJECT TO COMPLETION, DATED MARCH 3, 2004

Shares

Arbor Realty Trust, Inc.

Common Stock

We are offering an aggregate of shares of our common stock to one of our directors, C. Michael Kojaian who has expressed an interest in purchasing shares of our common stock. We are also offering shares of our common stock and the selling stockholders are offering 469,000 shares of our common stock in a concurrent offering. The shares to be offered to Mr. Kojaian represent approximately % of the total number of shares to be offered in both offerings (assuming no exercise of the underwriters' over-allotment option).

We expect the offering price in this offering and the concurrent public offering to be between $ and $ per share. Prior to this offering, there has been no public market for our common stock. We intend to apply to list our common stock on the New York Stock Exchange under the symbol " ."

Investing in our common stock involves risks. See "Risk Factors" beginning on page 19 for a discussion of these risks.

- We have a limited operating history and may not operate successfully.
- Historical consolidated financial statements included in this prospectus include expenses that would not have been incurred had we operated as a separate entity during the periods presented and exclude the management fees payable pursuant to the management agreement.
- We are substantially controlled by Arbor Commercial Mortgage 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.
- 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 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.
- Failure to maintain an exemption from the Investment Company Act would adversely affect our results of operations.
- If Arbor Commercial Mortgage ceases to be our manager, the financial institutions providing our credit facilities may not provide future financing to us.
- If we do not qualify as a REIT or 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 common or capital stock, and attempts to acquire our capital stock in excess of these limits are ineffective without prior approval from our board of directors.

	Per Share	Total
Price to C. Michael Kojaian	$	$
Proceeds, before expenses, to Arbor Realty Trust, Inc.	$	$

Delivery of the shares of common stock will be made on or about , 2004.

Neither the Securities and Exchange Commission, any state securities commission, nor any other regulatory body has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is , 2004.

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Arbor Realty Trust, Inc.

Shares

Common Stock

PROSPECTUS

, 2004

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 31. *Other Expenses of Issuance and Distribution.*

The following table sets forth the costs and expenses expected to be incurred in connection with the sale and distribution of the securities being registered, all of which are being borne by the registrant.

Securities and Exchange Commission registration fee	$12,398.13
National Association of Securities Dealers, Inc. Fees	$ 15,500
Blue Sky registration fees	
New York Stock Exchange application and listing fee	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Miscellaneous	*
Total	*

* To be filed by amendment.

Item 32. *Sales to Special Parties.*

See Item 33.

Item 33. *Recent Sales of Unregistered Securities*

On June 26, 2003, in connection with the incorporation of Arbor Realty Trust, Inc. (the "Company"), the Company issued 67 shares of common stock, par value $0.01 per share (the "Common Stock") to Arbor Commercial Mortgage, LLC ("ACM") for $1,005. Such issuance was exempt from the registration requirements of the Securities Act pursuant to Section 4(2) thereof.

On July 1, 2003 the Company sold 1,610,000 units, each unit consisting of five shares of Common Stock, and one warrant to purchase one share of Common Stock of the Company (the "Units"). Of the 1,610,000 Units sold, 1,327,989 Units (the "144A Units") were sold to Qualified Institutional Buyers (as defined in Rule 144A under the Securities Act) in reliance on the exemption from the registration requirements of the Securities Act provided by Rule 144A under the Securities Act and to a limited number of "institutional accredited investors" (as defined in Rule 501 under the Securities Act) in reliance on the exemption from the registration requirements of the Securities Act provided by Rule 506 of Regulation D under the Securities Act. The offering price per Unit was $75.00. The initial purchaser of the 144A Units was JMP Securities LLC ("JMP"). The aggregate proceeds to the Company from such offering and the aggregate initial purchaser's discount were $92,627,232.75 and $6,971,942.25, respectively.

On July 1, 2003, the remaining 282,011 Units (the "AI Units") were sold to certain "accredited investors" (as defined in Rule 501 under the Securities Act), including affiliates and employees of each of ACM and JMP, in reliance on the exemption from the registration requirements of the Securities Act provided by Rule 506 of Regulation D under the Securities Act. JMP acted as placement agent in connection with the sale of the AI Units. The offering price per Unit was $75.00, except that 104,767 of the AI Units were sold to JMP employees and certain entities affiliated with JMP at a price of $69.75 per Unit. JMP received a placement fee of $5.25 for 91,697 of the AI Units sold to certain accredited investors and $2.25 for 85,547 of the AI Units sold to accredited investors who were affiliated with the Company. JMP did not receive a placement fee with respect to the sale of the 104,767 AI Units sold to JMP employees and certain entities affiliated with JMP. The aggregate proceeds to the Company from such offering and the aggregate placement fee to JMP were $19,926,908.25 and $673,890.00, respectively.

On July 1, 2003, the Company issued 3,146,724 shares of the Company's special voting preferred stock, par value $0.01 per share, to ACM (the "Special Preferred Stock") for $31,467. Such issuance was exempt from the registration requirements of the Securities Act pursuant to Section 4(2) thereof.

On July 1, 2003, the Company granted a total of 147,500 restricted shares of Common Stock, of which 120,000 restricted shares have been awarded to Mr. Ivan Kaufman, the President and Chief Executive Officer of the Company, pursuant to the Arbor Realty Trust, Inc. 2003 Omnibus Stock Incentive Plan (the "Stock Incentive Plan"). On November 5, 2003, the Company granted 1,000 restricted shares of Common Stock to each of Messrs. Horn and Lazar, directors of the Company, pursuant to the Stock Incentive Plan. For a more detailed description of the Stock Incentive Plan, see "Management — Stock Incentive Plan" in this Registration Statement. In granting the restricted shares, the Company relied upon exemptions from the registration requirements of the Securities Act set forth in Rule 506 of Regulation D under the Securities Act and Section 4(2) of the Securities Act.

On July 1, 2003, Arbor Realty Limited Partnership, a majority owned subsidiary of the Company ("ARLP"), issued 3,146,724 units of limited partnership interest of ARLP ("Limited OP Units") and 629,345 warrants to purchase additional Limited OP Units at an initial exercise price of $15.00 (the "OP Warrants") to ACM in exchange for a contribution of $213.1 million of assets financed by $169.2 million in borrowings and supported by $43.9 million in equity. Such issuance was exempt from the registration requirements of the Securities Act pursuant to Section 4(2) thereof. Each Limited OP Unit issued to ACM is paired with one share of the Special Preferred Stock issued to ACM and is redeemable for cash, or at the election of the Company, shares of Common Stock, generally on a one for one basis. Any Limited OP Units issued to ACM upon exercise of its OP Warrants will also be paired with shares of Special Preferred Stock. Upon any redemption by ACM of a Limited OP Unit for cash or Common Stock, the paired share of the Company's Special Preferred Stock will be redeemed by the Company and cancelled.

Item 34. ***Indemnification of Directors and Officers.***

Maryland law permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment and which is material to the cause of action. The Company's charter contains such a provision which eliminates directors' and officers' liability to the maximum extent permitted by Maryland law.

The charter authorizes the Company, to the maximum extent permitted by Maryland law, to indemnify any present or former director or officer or any individual who, while a director of the Company and at the request of the Company, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee, from and against any claim or liability to which that person may become subject or which that person may incur by reason of his or her status as a present or former director or officer of the Company and to pay or reimburse their reasonable expenses in advance of final disposition of a proceeding. The bylaws obligate the Company, to the maximum extent permitted by Maryland law, to indemnify any present or former director or officer or any individual who, while a director of the Company and at the request of the Company, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee and who is made a party to the proceeding by reason of his service in that capacity from and against any claim or liability to which that person may become subject or which that person may incur by reason of his or her status as a present or former director or officer of the Company and to pay or reimburse their reasonable expenses in advance of final disposition of a proceeding. The charter and bylaws also permit the Company to indemnify and advance expenses to any person who served a predecessor of the Company in any of the capacities described above and any employee or agent of the Company or a predecessor of the Company.

Maryland law requires a corporation (unless its charter provides otherwise, which the Company's charter does not) to indemnify a director or officer who has been successful in the defense of any proceeding to which he is made a party by reason of his service in that capacity. Maryland law permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, under Maryland law, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, Maryland law permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of (a) a written affirmation by the director or officer of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by him or on his behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the standard of conduct was not met.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

The Company has also agreed to indemnify our directors and executive officers to the maximum extent permitted by Maryland law, and pay such persons' expenses in defending any civil or criminal proceeding in advance of final disposition of such proceeding.

Item 35. ***Treatment of Proceeds From Stock Being Registered.***

N/ A

Item 36. ***Financial Statements and Exhibits.***

(a) The following financial statements are being filed as part of this Registration Statement:

(1) Consolidated Financial Statements of Arbor Realty Trust, Inc. and Subsidiaries

Report of Independent Certified Public Accountants

Consolidated Balance Sheet at December 31, 2003

Consolidated Income Statement for the period June 24, 2003 (inception) to December 31, 2003

Consolidated Statement of Stockholders' Equity for the period June 24, 2003 (inception) to December 31, 2003

Consolidated Statement of Cash Flow for the period June 24, 2003 (inception) to December 31, 2003

Notes to Consolidated Financial Statements

  Schedule IV — Loans and Other Lending Investments

(2) Consolidated Financial Statements of the Structured Finance Business of Arbor Commercial Mortgage, LLC and Subsidiaries

Report of Independent Certified Public Accountants

Consolidated Statements of Assets and Liabilities at December 31, 2002 and 2001

Consolidated Statements of Revenue and Direct Operating Expenses for the Years Ended December 31, 2002, 2001, and for the Six Months Ended June 30, 2003

Notes to Consolidated Financial Statements

(b) The following is a list of exhibits filed as part of this Registration Statement.

Exhibit Number	Description
1.1	Form of Underwriting Agreement**
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 of Certificate for Common Stock*
4.2	Form of Global Units Certificate*
4.3	Form of Warrant Certificate (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*
5.1	Opinion of Venable LLP relating to the legality of the securities being registered**
8.1	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP regarding tax matters**
10.1	Management Agreement, dated July 1, 2003, by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC and Arbor Realty Limited Partnership*
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	Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated July 1, 2003, 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 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*
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	Loan Purchase and Repurchase Agreement, dated December 23, 2003, by and among Arbor Reality Funding LLC, as seller, Wachovia Bank, National Association, as purchaser, and Arbor Reality 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

Exhibit Number	Description
10.15	Assignment and Assumption Agreement, dated as of July 1, 2003, by and between Arbor Commercial Mortgage LLC and Arbor Realty Limited Partnership
16.1	Letter from Grant Thornton LLP, dated March 2, 2004
21.1	Subsidiaries of the Registrant*
23.1	Consent of Grant Thornton LLP
23.2	Consent of Venable LLP (contained in Exhibit 5.1)**
23.3	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (contained in Exhibit 8.1)**
23.4	Consent of Ernst & Young LLP
24.1	Powers of attorney*

* Previously filed.

** To be filed by amendment.

Item 37. ***Undertakings***

(a) The undersigned registrant hereby undertakes:

(b) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(c) The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreements, certificates in such denomination and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

(d) The undersigned registrant hereby undertakes that:

(i) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(ii) for the purposes determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-11 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on March 3, 2004.

ARBOR REALTY TRUST, INC.

By: /s/ FREDERICK C. HERBST

Name: Frederick C. Herbst
Title: Chief Financial Officer and Treasurer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* Ivan Kaufman	Chairman of the Board, Chief Executive Officer and President (Principal Executive Officer)	March 3, 2004
/s/ FREDERICK C. HERBST Frederick C. Herbst	Chief Financial Officer and Treasurer (Principal Financial Officer)	March 3, 2004
* Jonathan A. Bernstein	Director	March 3, 2004
* William Helmreich	Director	March 3, 2004
* Walter K. Horn	Director	March 3, 2004
* C. Michael Kojaian	Director	March 3, 2004
* Melvin F. Lazar	Director	March 3, 2004
* Joseph Martello	Director	March 3, 2004

*By: /s/ FREDERICK C. HERBST
As Attorney-in-Fact

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EXHIBIT INDEX

Exhibit Number	Description
1.1	Form of Underwriting Agreement**
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 of Certificate for Common Stock*
4.2	Form of Global Units Certificate*
4.3	Form of Warrant Certificate (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*
5.1	Opinion of Venable LLP relating to the legality of the securities being registered**
8.1	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP regarding tax matters**
10.1	Management Agreement, dated July 1, 2003, by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC and Arbor Realty Limited Partnership*
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	Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated July 1, 2003, 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 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*
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	Loan Purchase and Repurchase Agreement, dated December 23, 2003, 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

Exhibit Number	Description
10.15	Assignment and Assumption Agreement, dated as of July 1, 2003, by and between Arbor Commercial Mortgage LLC and Arbor Realty Limited Partnership
16.1	Letter from Grant Thornton LLP, dated March 2, 2004
21.1	Subsidiaries of the Registrant*
23.1	Consent of Grant Thornton LLP
23.2	Consent of Venable LLP (contained in Exhibit 5.1)**
23.3	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (contained in Exhibit 8.1)**
23.4	Consent of Ernst & Young LLP
24.1	Powers of attorney*

* Previously filed.

** To be filed by amendment.

EXHIBIT 10.12

GMAC Residential Funding

STRUCTURED FACILITY WAREHOUSING CREDIT
AND SECURITY AGREEMENT

BETWEEN

ARBOR REALTY LIMITED PARTNERSHIP,
A DELAWARE LIMITED PARTNERSHIP

AND

RESIDENTIAL FUNDING CORPORATION,
A DELAWARE CORPORATION

DATED AS OF JULY 1, 2003

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EXHIBITS

	Acquisition Loans
Exhibit B-MF/BR	Procedures and Documentation for Warehousing Bridge Mortgage Loans
Exhibit B-MF/MEZ	Procedures and Documentation for Warehousing Mezzanine Loans (Excluding Preferred Equity Interest)
Exhibit B-MF/PEI	Procedures and Documentation for Warehousing Preferred Equity Interest
Exhibit C	Form of Arbor Member Entity Pledge Agreement
Exhibit D	Subsidiaries
Exhibit E	Compliance Certificate
Exhibit F	Schedule of Existing Lines of Credit
Exhibit G	Assumed Names
Exhibit H	Eligible Investments and Other Assets
Exhibit I	Fee Schedule
Exhibit J	Loan Monitoring Analysis Form

STRUCTURED FACILITY WAREHOUSING CREDIT AND SECURITY AGREEMENT

STRUCTURED FACILITY WAREHOUSING CREDIT AND SECURITY AGREEMENT, dated as of July 1, 2003 between Arbor Realty Limited Partnership, a Delaware limited partnership ("Borrower"), and RESIDENTIAL FUNDING CORPORATION, a Delaware corporation ("Lender").

A. Borrower has requested certain financing from Lender.

B. Lender has agreed to provide that financing to Borrower, subject to the terms and conditions of this Agreement.

C. On the Closing Date, ACM will assign the Initial Eligible Investments to Borrower and Borrower will assume certain obligations relating to the Initial Eligible Investments, as contemplated by Article 12 of this Agreement.

D. Lender agrees to the assignment and assumption contemplated by Article 12 of this Agreement.

E. Subject to Borrower's satisfaction of the conditions set forth in Article 5, the "Closing Date" for the transactions contemplated by this Agreement is July 1, 2003.

NOW, THEREFORE, the parties to this Agreement agree as follows:

THE CREDIT

1.1. THE STRUCTURED FACILITY COMMITMENT

On the terms and subject to the conditions and limitations of this Agreement, including Exhibit H, Lender agrees to make Structured Facility Advances to Borrower from the Closing Date to the Business Day immediately preceding the Structured Facility Commitment Termination Date, during which period Borrower may borrow, repay and reborrow in accordance with the provisions of this Agreement. Lender has no obligation to make Structured Facility Advances if, after giving effect to such Structured Facility Advance, the aggregate outstanding principal amount of all Structured Facility Advances would exceed the Structured Facility Commitment Amount. While a Default or Event of Default exists, Lender may refuse to make any additional Structured Facility Advances to Borrower. Effective as of the Closing Date, all "Structured Facility Advances" outstanding under the Existing ACM Agreement will be assumed by Borrower pursuant to Section 12.1, and will be deemed for all purposes to be Structured Facility Advances made under this Agreement. All Structured Facility Advances under this Agreement constitute a single indebtedness, and all of the Collateral is security for the Structured Facility Note and for the performance of all of the Obligations.

1.2. EXPIRATION OF STRUCTURED FACILITY COMMITMENT

The Structured Facility Commitment expires on the earliest of ("Structured Facility Commitment Termination Date"): (a) June 30, 2006, as such date may be extended in writing by Lender, in its sole discretion, on which date the Structured Facility Commitment will expire of its own term, (b) the date ACM for any reason ceases to be the manager of Guarantor and Borrower under and pursuant to the Management Agreement, (c) the date any "event of default" (however defined)

occurs under any agreement between ACM and Lender, and (d) the date the Structured Facility Commitment is terminated or the Structured Facility Advances become due under Section 10.2. Lender agrees that upon request from Borrower Lender will notify Borrower on or before April 30, 2006 if Lender does not expect to extend the Structured Facility Commitment beyond June 30, 2006.

1.3. STRUCTURED FACILITY NOTE

Structured Facility Advances are evidenced by Borrower's promissory note, payable to Lender on the form prescribed by Lender ("Structured Facility Note"). The term "Structured Facility Note" as used in this Agreement includes all amendments, restatements, renewals or replacements of the original Structured Facility Note and all substitutions for it. All terms and provisions of the Structured Facility Note are incorporated into this Agreement.

END OF ARTICLE 1

PROCEDURES FOR OBTAINING STRUCTURED FACILITY ADVANCES

2.1. STRUCTURED FACILITY ADVANCES

To obtain any Structured Facility Advance under this Agreement, Borrower must deliver not later than 10 Business Days before the Business Day on which Borrower desires the Structured Facility Advance (other than the Structured Facility Advances deemed to be outstanding against the Initial Eligible Investments pursuant to Article 12), an Approval Request and Underwriting Documents. Within 10 Business Days after receipt of the Approval Request and supporting documents, Lender may, in its sole discretion, approve the requested Structured Facility Advance by returning to Lender the Approval Request executed by Lender. The approval will remain valid for a period of 30 days, unless extended by Lender in its sole discretion. Lender will notify Borrower within the 3 Business Days after receipt of the Approval Request in the event it rejects that Approval Request. Subject to the delivery and approval of a Structured Facility Advance Request, the delivery of the Underwriting Documents and the satisfaction of the conditions set forth in Sections 5.1 and 5.2, Borrower may obtain a Structured Facility Advance under this Agreement upon compliance with the procedures set forth in this Section and in the applicable Exhibit B, including delivery to Lender of all required Collateral Documents. Lender's current form of Structured Facility Advance Request is set forth in Exhibit A. Upon not less than 3 Business Days' prior Notice to Borrower, Lender may modify its form of Approval Request, Structured Facility Advance Request, and any other Exhibit or document referred to in this Section to conform to current legal requirements or Lender practices and, as so modified, those Exhibits and documents will become part of this Agreement.

END OF ARTICLE 2

INTEREST, PRINCIPAL AND FEES

3.1. INTEREST

3.1 (a) Except as otherwise provided in this Section, Borrower must pay interest on the unpaid amount of each Structured Facility Advance from the date the Structured Facility Advance is made until it is paid in full at the Interest Rate specified in Exhibit H.

3.1 (b) As long as no Default or Event of Default exists, Borrower is entitled to receive a benefit based on the average monthly Eligible Balances of Borrower maintained at a Designated Bank. After the end of each month, Lender will calculate the portion ("Balance Funded Portion") of the Structured Facility Advances that is equal to the lesser of (1) the average amount of Structured Facility Advances outstanding during such month or (2) the average amount of Eligible Balances during such month. Interest that would otherwise be payable by Borrower under Exhibit H on the Balance Funded Portion will be reduced by a "Balance Funding Credit" equal to:

Balance Funded Portion x [(IR - BFR) / AB] x ADP,

where "IR" is the weighted daily average of the Index Rate otherwise applicable under Exhibit H, "BFR" is the applicable Balance Funded Rate, "AB" is the Accrual Basis and "ADP" is the number of days in the month (or other applicable period) for which the Balance Funding Credit is applicable. The Structured Facility Advances outstanding during a month will be allocated to the Balance Funded Portion in the order determined by Lender in its sole discretion.

If, for any month, a portion of the average amount of Eligible Balances remains ("Remainder") after the Balance Funded Portion has been deducted, or Borrower has Eligible Balances on deposit in interest-bearing demand deposit or time deposit accounts in respect of which Lender has received a Depository Benefit, Lender will provide a benefit in the form of an "Earnings Credit" on the Eligible Balances maintained in time deposit accounts with the Designated Bank, and Lender will provide a benefit in the form of an "Earnings Allowance" on the Eligible Balances maintained in demand deposit accounts with the Designated Bank. Any Earnings Allowance will be used first and any Earnings Credit will be used second as a credit against Miscellaneous Fees and Charges (including Designated Bank Charges) and against other fees payable to Lender under this Agreement, including Structured Facility Commitment Fees, and Loan Package Fees, and may be used, at Lender's option, to reduce accrued interest. Any Earnings Allowance not used during the month in which the benefit was received will be accumulated and must be used within 6 months of the month in which the benefit was received. As long as no Default or Event of Default exists, any Earnings Credit not used during the month in which the benefit was received will be used to provide a cash benefit to Borrower. Any Earnings Credit retained by Lender as a result of a Default or Event of Default will be applied to the payment of Borrower's Obligations in the order Lender determines in its sole discretion.

The Balance Funded Portion, the Balance Funding Credit, the Earnings Credit and the Earnings Allowance for any month will be determined by Lender in its sole discretion and Lender's determination of those amounts is conclusive and binding absent manifest error. In no event will the aggregate amount of the benefits received by Borrower under this Section exceed the Depository Benefit.

Dated: 7/1/2003
Amended: 7/24/2003

Either party to this Agreement may terminate the benefits provided for in this Section, in whole or in part, effective immediately upon Notice to the other party, if the terminating party determines (which determination is conclusive and binding on the other party, absent manifest error) at any time that any applicable law, rule, regulation, order or decree or any interpretation or administration of any such law, rule, regulation, order or decree by any governmental authority charged with its interpretation or administration, or compliance by such party with any request or directive (whether or not having the force of law) of any such authority, makes it unlawful or impossible for the party sending the Notice to continue to offer or receive all or any portion of the benefits provided for in this Section. No Notice is required for a termination of benefits as a result of a Default or Event of Default.

3.1 (c) Lender computes interest on the basis of the actual number of days in each month and a year of 360 days ("Accrual Basis"). Borrower must pay interest monthly in arrears, not later than 9 days after the date of Lender's invoice or, if applicable, 2 days after the date of Lender's account analysis statement, commencing with the first month following the Closing Date and on the Structured Facility Maturity Date.

3.1 (d) If, for any reason, (1) Borrower repays a Structured Facility Advance on the same day that it was made by Lender or (2) Borrower instructs Lender not to make a previously requested Structured Facility Advance after Lender has reserved funds or made other arrangements necessary to enable Lender to fund that Structured Facility Advance, Borrower agrees to pay to Lender an administrative fee equal to 1 day of interest on that Structured Facility Advance at the rate of 1.50% per annum. Borrower must pay all administrative fees within 9 days after the date of Lender's invoice or, if applicable, within 2 days after the date of Lender's account analysis statement.

3.1 (e) After an Event of Default occurs and upon Notice to Borrower by Lender, unless and until such Event of Default is waived or cured as provided in this Agreement, the unpaid amount of each Structured Facility Advance will bear interest at the Default Rate until paid in full.

3.1 (f) Lender will adjust the rates of interest provided for in this Agreement as of the effective date of each change in the applicable index. Lender's determination of such rates of interest as of any date of determination are conclusive and binding, absent manifest error.

3.2. INTEREST LIMITATION

Lender does not intend, by reason of this Agreement, the Note or any other Loan Document, to receive interest in excess of the amount permitted by applicable law. If Lender receives any interest in excess of the amount permitted by applicable law, whether by reason of acceleration of the maturity of this Agreement, the Note or otherwise, Lender will apply the excess to the unpaid principal balance of the Structured Facility Advances and not to the payment of interest. If all Structured Facility Advance have been paid in full and the Structured Facility Commitment has expired or has been terminated, Lender will remit any excess to Borrower. This Section controls every other provision of all agreements between Borrower and Lender and is binding upon and available to any subsequent holder of the Note.

3.3. PRINCIPAL PAYMENTS

3.3 (a) Borrower must pay Lender the outstanding principal amount of all Structured Facility Advances in 8 equal monthly installments, commencing on the date 2 months after the Structured Facility Commitment Termination Date and ending on the Structured Facility

Maturity Date. Borrower must pay to Lender all outstanding Obligations on the Structured Facility Maturity Date.

3.3 (b) Except as otherwise provided in Section 3.1(e), Borrower may prepay all or any portion of the Structured Facility Advances without premium or penalty at any time.

3.3 (c) Upon telephonic or written Notice to Borrower by Lender, Borrower must pay to Lender, and Borrower authorizes Lender to cause the Funding Bank to charge Borrower's Operating Account for, the amount of any outstanding Structured Facility Advance against a specific Pledged Asset upon the earliest occurrence of any of the following events:

(1) For any Pledged Asset, the Warehouse Period elapses.

(2) On the date a Structured Facility Advance was made if the Pledged Asset to be funded or acquired with that Structured Facility Advance is not closed and funded or acquired.

(3) One (1) Business Day elapses from the date a Structured Facility Advance was made against a Pledged Asset without receipt of the Collateral Documents relating to that Pledged Asset required to be delivered on that date, or such Collateral Documents, upon examination by Lender, are found not to be in compliance with the requirements of this Agreement.

(4) At the option of Lender, in its sole discretion, ten (10) Business Days elapse without the return of a Collateral Document delivered by Lender to Borrower under a Trust Receipt for correction or completion.

(5) On the date on which a Pledged Asset is determined to have been originated or acquired based on material, untrue, incomplete or inaccurate information or otherwise to be subject to fraud, whether or not Borrower had knowledge of the misrepresentation, incomplete or incorrect information or fraud, on the date on which Borrower knows, has reason to know, or receives Notice from Lender, that (A) one or more of the representations and warranties set forth in Article 9 were inaccurate or incomplete in any material respect on any date when made or deemed made, or (B) Borrower has failed to perform or comply in all material respects with any covenant, term or condition applicable to it set forth in Article 9.

(6) On the date a Pledged Investment or a Lien prior to the interest securing or backing repayment of the Pledged Investment is defaulted and remains in default for a period of 60 days or more.

(7) On the date 60 days after Borrower's initiation of foreclosure proceedings against a Pledged Investment.

(8) On the date 60 days after any bankruptcy proceeding is commenced and has not been dismissed against an obligor on a Pledged Investment.

(9) Upon the sale, maturity, other disposition, refinancing or prepayment of any Pledged Asset.

(10) For any Pledged Asset, Borrower consents to an extension of the maturity without the approval of Lender.

3.3 (d) In addition to the payments required by Sections 3.3(a) and 3.3(c), if the principal amount of any Pledged Investment is prepaid in whole or in part while a Structured Facility Advance is outstanding against such Pledged Investment, Borrower must pay to Lender, without the necessity of prior demand or Notice from Lender, and Borrower authorizes Lender, upon Notice to Borrower, to cause the Funding Bank to charge Borrower's Operating Account for, the amount of the prepayment, to be applied against the applicable Structured Facility Advance.

3.3 (e) The proceeds of the sale, other disposition or repayment of Pledged Assets must be paid directly by the purchaser or refinancing lender to the Cash Collateral Account. Borrower must give Notice to Lender in writing or by telephone followed promptly by written Notice of the Pledged Assets for which proceeds have been received. Upon receipt of Borrower's Notice, Lender will apply any proceeds deposited into the Cash Collateral Account to the payment of the Structured Facility Advances related to the Pledged Assets identified by Borrower in its Notice, and those Pledged Assets will be considered to have been redeemed from pledge. Lender is entitled to rely upon Borrower's affirmation that deposits in the Cash Collateral Account represent proceeds of the purchase or repayment of the Pledged Assets specified by Borrower in its Notice. If the payment for the purchase or repayment of Pledged Assets is less than the outstanding Structured Facility Advances against the Pledged Assets identified by Borrower in its Notice, Borrower must pay to Lender, and Borrower authorizes Lender to cause the Funding Bank to charge Borrower's Operating Account in, an amount equal to that deficiency. As long as no Default or Event of Default exists, Lender will return to Borrower any excess proceeds of Pledged Assets.

3.3 (f) Lender reserves the right to revalue any Pledged Asset against which a Structured Facility Advance is outstanding under this Agreement. Borrower must pay to Lender, without the necessity of prior demand or Notice from Lender, and Borrower authorizes Lender, upon Notice to Borrower, to cause the Funding Bank to charge Borrower's Operating Account for, any amount required after any such revaluation to reduce the principal amount of the Structured Facility Advance outstanding against the revalued Pledged Asset to an amount equal to the Advance Rate for the applicable type of Pledged Asset multiplied by the Fair Market Value of the Pledged Asset.

3.3 (g) Borrower must give Lender Notice not later than 1:00 p.m. on the Business Day immediately preceding the payment to Lender of proceeds of Pledged Assets or any other payment on the Obligations if the amount of the payment exceeds $20,000,000. If Lender is unable to reinvest that payment as a result of Borrower's failure to provide such Notice, Borrower must pay to Lender an administrative fee equal to 1 day of interest on the amount of that payment at a rate of 1.50% per annum. Administrative and other fees are due and payable in the same manner as interest is due and payable under this Agreement.

3.4. BUYDOWNS

Borrower may prepay a portion of the Structured Facility Advances in an amount equal to $1,000,000 or an integral multiple $250,000 in excess thereof pursuant to this Section 3.4 (any such prepayment is hereafter referred to as a "Buydown"). A Buydown shall be deemed a prepayment of Structured Facility Advances as agreed between Borrower and Lender, but shall not entitle Borrower to the release of any Collateral. Borrower shall provide Lender 1 Business Day's advance notice of any Buydown. All or any portion of a Buydown may be reborrowed ("Buyup") in an amount equal to $1,000,000 or an integral multiple of $250,000 in excess thereof, upon written notice to Lender no later than 10:30 a.m. on any Business Day, provided no Default or Event of Default has occurred and is continuing and all other conditions precedent have been satisfied or waived. Lender

shall withdraw each Buydown from Borrower's Operating Account by 12:00 noon on the day thereof. Each request for a Buydown or Buyup will be on the corporate letterhead of Borrower and no more than 2 Buydowns/Buyups will occur in any one-week period. In the event Lender receives a payment of Structured Facility Advances which would, as a result of the Buydown, reduce the outstanding principal balance of the Structured Facility Advances to an amount less than zero, a portion of the Buydown sufficient to eliminate such shortfall equal to $1,000,000 or an integral multiple of $250,000 in excess thereof, will be readvanced to Borrower. Lender may apply the Buydown to reduce the interest on Structured Facility Advances in such order as Lender, in its sole discretion, shall determine.

3.5. STRUCTURED FACILITY COMMITMENT FEES; EXIT FEES; PROFIT SHARING

3.5 (a) At the time of each Structured Facility Advance against a Pledged Investment, Borrower must pay Lender a fee ("Structured Facility Commitment Fee") in the amount as set forth on Exhibit I. Structured Facility Commitment Fees are due when incurred, but are not delinquent if paid within 9 days after the date of Lender's invoice or, if applicable, within 2 days after the date of Lender's account analysis statement.

3.5 (b) In the event Borrower originates or acquires a Refinancing Loan, and the Refinancing Loan is either (i) sold by Borrower to a Person other than Lender or a Subsidiary of Lender, or (ii) is not sold within 180 days after origination of the Refinancing Loan, Borrower will pay to Lender an exit fee in the amount as set forth on Exhibit I ("Exit Fee"). Borrower will promptly notify Lender of its origination or acquisition of any Refinancing Loan, and of the occurrence of one of the events described in clause (i) or (ii) above.

3.5 (c) Upon any refinancing, other repayment, sale or other disposition of a Pledged Investment that is a Bridge Mortgage Loan or a Mezzanine Investment, Borrower will pay to Lender an amount equal to the amount as set forth on Exhibit I. These payments will be retained by Lender from the proceeds of such refinancing, other repayment, sale or other disposition, or Lender shall cause the Funding Bank to charge Borrower's Operating Account for that payment. Not less than 1 Business Day prior to the date proceeds of any refinancing, other repayment, sale or other disposition of a Pledged Investment with respect to which amounts are payable under this Section 3.5(c) are deposited into the Cash Collateral Account, Borrower will provide Lender with a calculation of the Net Profit on such Pledged Investment and the information used by Borrower to make that calculation. If Borrower fails to provide the calculation and information described in the preceding sentence, Lender will not release any excess proceeds of the related Pledged Investment pursuant to Section 3.3(e) until 1 Business Day after such calculation and information are provided. Lender may, in its sole and absolute discretion, recalculate such Net Profit, and in the absence of manifest error, Lender's recalculation of the Net Profit on any such Pledged Investment will be conclusive. Within 3 Business Days of receiving notice of Lender's recalculation of the Net Profit, Borrower must give notice to Lender that it disagrees with such calculation and, in such event the parties agree to, within 3 Business Days of such notice by Borrower, review and discuss the calculation. If the parties are still unable to agree on the calculation of the Net Profit, the calculation will be referred to independent certified public accountants mutually acceptable to Lender and Borrower, and their calculation of Net Profit shall be conclusive. Borrower will bear the cost of the fees and expenses of such accountants.

3.6. MISCELLANEOUS FEES AND CHARGES

Borrower must reimburse Lender for all Miscellaneous Fees and Charges. Borrower must pay all Miscellaneous Fees and Charges within 9 days after the date of Lender's invoice or, if applicable, within 2 days after the date of Lender's account analysis statement.

Dated: 7/1/2003
Amended: 7/24/2003

3.7. OVERDRAFT ADVANCES

If, under the authorization given by Borrower in the Funding Bank Agreement or pursuant to this Agreement, Lender debits Borrower's Operating Account or directs the Funding Bank to honor an item presented against the Operating Account and that debit or direction results in an overdraft, Lender may make an additional Structured Facility Advance to fund that overdraft ("Overdraft Advance"). Borrower must pay (a) the outstanding amount of any Overdraft Advance, within 1 Business Day after the date of the Overdraft Advance, and (b) interest on the amount of the Overdraft Advance, at a rate per annum equal to the Bank One Prime Rate plus 2%, within 9 days after the date of Lender's invoice or, if applicable, within 2 days after the date of Lender's account analysis statement.

3.8. METHOD OF MAKING PAYMENTS

3.8 (a) Unless otherwise specified in this Agreement, Borrower must make all payments under this Agreement to Lender by the close of business on the date when due unless the date is not a Business Day. If the due date is not a Business Day, payment is due on, and interest will accrue to, the next Business Day. Borrower must make all payments in United States dollars in immediately available funds transferred by wire to accounts designated by Lender.

3.8 (b) Borrower authorizes Lender to cause the Funding Bank to charge Borrower's Operating Account for any interest or fees due and payable to Lender on or after the 9th day after the date of Lender's invoice or, if applicable, on or after the 2nd day after the date of Lender's account analysis statement. Prior to the occurrence of an Event of Default, Lender will provide Borrower with reasonable Notice of any such charge. From and after the occurrence of an Event of Default, Lender may cause the Funding Bank to charge the Operating Account without the necessity of prior demand or Notice from Lender.

3.8 (c) While a Default or Event of Default exists, Borrower authorizes Lender to cause the Funding Bank to charge Borrower's Operating Account for any Obligations due and payable to Lender, without the necessity of prior demand or Notice from Lender.

END OF ARTICLE 3

COLLATERAL

4.1. GRANT OF SECURITY INTEREST

As security for the payment of the Structured Facility Note and for the performance of all of Borrower's Obligations, Borrower grants a security interest to Lender in all of Borrower's right, title and interest in and to the following described property ("Collateral"):

4.1 (a) All amounts advanced by Lender to or for the account of Borrower under this Agreement to fund a Mortgage Loan until that Mortgage Loan is closed and those funds disbursed.

4.1 (b) All Mortgage Loans and Mezzanine Investments, including all Mortgage Notes, Mezzanine Notes, Preferred Equity Interests, Mortgages, Security Agreements and Liens evidencing, constituting or securing those Mortgage Loans and Mezzanine Investments, that are delivered or caused to be delivered to Lender (including delivery to a third party on behalf of Lender), or that otherwise come into the possession, custody or control of Lender for the purpose of assignment or pledge in connection with this Agreement, are otherwise described in any Advance Request, or in respect of which Lender has made a Structured Facility Advance under this Agreement, and, in the event the Release Amount has not been paid with respect to any Mortgage Loan or Mezzanine Investment pledged hereunder, any Refinancing Loan the proceeds of which are used, in whole or in part, to refinance such Mortgage Loan or Mezzanine Investment (collectively, "Pledged Investments").

4.1 (c) All Mortgage-backed Securities that are created in whole or in part on the basis of Pledged Investments or that are delivered or caused to be delivered to Lender or that otherwise come into the possession, custody or control of Lender or its agent, bailee or custodian as assignee in connection with this Agreement, or that are pledged to Lender in connection with this Agreement, for such purpose are registered by book-entry in the name of Lender (including registration in the name of a third party on behalf of Lender), in each case for the purpose of pledge in connection with this Agreement, or in respect of which a Structured Facility Advance has been made by Lender under this Agreement (collectively, "Pledged Securities").

4.1 (d) All private mortgage insurance and all commitments issued by the FHA to insure or guarantee any Mortgage Loans included in the Pledged Investments; all Purchase Commitments held by Borrower covering Pledged

Investments or Pledged Securities or Refinancing Loans, and all proceeds from the sale to Investors of Pledged Investments, Pledged Securities and Multifamily Properties against which Structured Facility Advances were made; and all personal property, contract rights, servicing rights or contracts and servicing fees and income or other proceeds, amounts and payments payable to Borrower as compensation or reimbursement, accounts, payments, intangibles and general intangibles of every kind relating to Pledged Assets, Purchase Commitments, FHA commitments, private mortgage insurance and commitments, and all other documents or instruments relating to Pledged Investments and Pledged Securities, including any interest of Borrower in any fire, casualty or hazard insurance policies and any awards made by any public body or decreed by any court of competent jurisdiction for a taking or for degradation of value in any eminent domain proceeding as the same relate to Pledged Asset.

4.1 (e) All escrow accounts, documents, instruments, files, surveys, certificates, correspondence, appraisals, computer programs, tapes, discs, cards, accounting

records (including all information, records, tapes, data, programs, discs and cards necessary or helpful in the administration or servicing of the Collateral) and other information and data of Borrower relating to the Collateral.

4.1 (f) All shares of capital stock, membership interests, partnership interests or other ownership interests now owned or hereafter acquired by Borrower (collectively, the "Pledged Shares") in any Property Subsidiary or ARLP Member Entity to the extent a Structured Facility Advance is made with respect to the property of such entity; all certificates representing the Pledged Shares, and all dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect or of in exchange for any or all of the Pledged Shares.

4.1 (g) All cash, whether now existing or acquired after the date of this Agreement, delivered to or otherwise in the possession of Lender, the Funding Bank or Lender's agent, bailee or custodian or designated on the books and records of Borrower as assigned and pledged to Lender, other than cash on deposit with the Funding Bank in a trust or escrow account, including all cash deposited in the Cash Collateral Account and the Wire Disbursement Account.

4.1 (h) All Hedging Arrangements related to the Collateral ("Pledged Hedging Arrangements") and Borrower's accounts in which those Pledged Hedging Arrangements are held ("Pledged Hedging Accounts"), including all rights to payment arising under the Pledged Hedging Arrangements and the Pledged Hedging Accounts, except that Lender's security interest in the Pledged Hedging Arrangements and Pledged Hedging Accounts applies only to benefits, including rights to payment, related to the Collateral.

4.1 (i) All cash and non-cash proceeds of the Collateral, including all dividends, distributions and other rights in connection with, and all additions to, modifications of and replacements for, the Collateral, and all products and proceeds of the Collateral, together with whatever is receivable or received when the Collateral or proceeds of Collateral are sold, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, including all rights to payment with respect to any cause of action affecting or relating to the Collateral or proceeds of Collateral.

4.2. MAINTENANCE OF COLLATERAL RECORDS

As long as the Structured Facility Commitment is outstanding or there remain any Obligations to be paid or performed under this Agreement or under any other Loan Document, Borrower must preserve and maintain, at its chief executive office and principal place of business or in a regional office approved by Lender, or in the office of a computer service bureau engaged by Borrower and approved by Lender and, upon request, make available to Lender the originals, or copies in any case where the originals have been delivered to Lender or to an Investor, of the Mortgage Notes, Mortgages, Mezzanine Notes, and Security Agreements, and other agreements or documents evidencing, securing or backing Pledged Investments, Mortgage-backed Securities delivered to Lender as Pledged Securities, Purchase Commitments, and all related Mortgage Loan documents and instruments, and all files, surveys, certificates, correspondence, appraisals, computer programs, tapes, discs, cards, accounting records and other information and data relating to the Collateral.

Dated: 7/1/2003
Amended: 7/24/2003

4.3. RELEASE OF SECURITY INTEREST IN PLEDGED INVESTMENTS AND PLEDGED SECURITIES

4.3 (a) Lender will release its security interest in the Pledged Assets only against payment to Lender of the Release Amount in connection with those Pledged Assets.

4.3 (b) If Pledged Assets are transferred to a pool custodian or an Investor for inclusion in a Mortgage Pool and Lender has not received the Release Amount with respect to that Pledged Asset before the issuance of the related Mortgage-backed Security, then that Mortgage-backed Security, when issued, is a Pledged Security, Lender's security interest continues in the Pledged Assets backing that Pledged Security and Lender is entitled to possession of the Pledged Security in the manner provided in this Agreement.

4.3 (c) Lender has the exclusive right to possession of all Pledged Securities or, if Pledged Securities are issued in book-entry form or issued in certificated form and delivered to a clearing corporation (as that term is defined in the Uniform Commercial Code of Minnesota) or its nominee, Lender has the right to have the Pledged Securities registered in the name of a securities intermediary (as that term is defined in the Uniform Commercial Code of Minnesota) in an account containing only customer securities and credited to an account of Lender. Lender has no duty or obligation to deliver Pledged Securities to an Investor or to credit Pledged Securities to the account of an Investor or an Investor's designee except against payment for those Pledged Securities. Borrower acknowledges that Lender may enter into one or more standing arrangements with securities intermediaries with respect to Pledged Securities issued in book entry form or issued in certificated form and delivered to a clearing corporation or its designee, under which the Pledged Securities are registered in the name of the securities intermediary, and Borrower agrees, upon request of Lender, to execute and deliver to those securities intermediaries Borrower's written concurrence in any such standing arrangements.

4.3 (d) If no Default or Event of Default has occurred and is continuing, Borrower may redeem a Pledged Asset from Lender's security interest by notifying Lender of its intention to redeem the Pledged Asset from pledge and either (1) paying, or causing an Investor to pay, to Lender, for application as a prepayment on the principal balance of the Structured Facility Note, the Release Amount in connection with the Pledged Asset, or (2) delivering substitute Collateral that, in addition to being acceptable to Lender in its sole discretion, will, when included with the remaining Collateral, result in a Structured Facility Collateral Value of all Pledged Assets held by Lender that is at least equal to the aggregate outstanding Structured Facility Advances.

4.3 (e) After a Default or Event of Default occurs, Lender may, with no liability to Borrower or any Person, continue to release its security interest in any Pledged Asset against payment of the Release Amount for that Pledged Asset.

4.3 (f) The amount to be paid by Borrower to obtain the release of Lender's security interest in a Pledged Asset ("Release Amount") will be (1) in connection with the sale of a Pledged Asset by Lender while an Event of

Default exists, the amount paid to Lender in a commercially reasonable disposition of that Pledged Asset, and (2) otherwise, until an Event of Default occurs, the principal amount of the Structured Facility Advance outstanding against the Pledged Asset.

4.4. COLLECTION AND SERVICING RIGHTS

4.4 (a) If no Event of Default exists, Borrower or Servicer may service and receive and collect directly all sums payable to Borrower in respect of the Collateral other than proceeds of any sale of any Collateral. All proceeds of any sale of Collateral must be paid directly to the Cash Collateral Account for application as provided in this Agreement.

4.4 (b) After an Event of Default, Lender or its designee is entitled to service and receive and collect all sums payable to Borrower in respect of the Collateral, and in such case (1) Lender or its designee in its discretion may, in its own name, in the name of Borrower or otherwise, demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for any of the Collateral, but Lender has no obligation to do so, (2) Borrower must, if Lender requests it to do so, hold in trust for the benefit of Lender and immediately pay to Lender at its office designated by Notice, all amounts received by Borrower upon or in respect of any of the Collateral, advising Lender as to the source of those funds and (3) all amounts so received and collected by Lender will be held by it as part of the Collateral.

4.5. RETURN OF COLLATERAL AT END OF STRUCTURED FACILITY COMMITMENT

If (a) the Structured Facility Commitment has expired or been terminated, and (b) no Structured Facility Advances, interest or other Obligations are outstanding and unpaid, Lender will release its security interest and will deliver all Collateral in its possession to Borrower at Borrower's expense. Borrower's acknowledgement or receipt for any Collateral released or delivered to Borrower under any provision of this Agreement is a complete and full acquittance for the Collateral so returned, and Lender is discharged from any liability or responsibility for that Collateral. Nothing in this Section 4.5 shall limit Lender's obligation to release its security interest in specific items of Collateral as provided elsewhere in this Agreement.

4.6. DELIVERY OF COLLATERAL DOCUMENTS

4.6 (a) Lender may deliver documents relating to the Collateral to Borrower for correction or completion under a Trust Receipt.

4.6 (b) If no Default or Event of Default exists, upon delivery by Borrower to Lender of shipping instructions pursuant to the applicable Exhibit B, Lender will transmit Pledged Investments or Pledged Securities, together with all related loan documents and pool documents previously received by Lender under the requirements of the applicable Exhibit B, to the designated Investor or Approved Custodian or to another party designated by Borrower and acceptable to Lender in its sole discretion.

4.6 (c) If a Default or Event of Default exists, Lender may, without liability to Borrower or any other Person, continue to deliver Pledged Investments or Pledged Securities, together with all related loan documents and pool documents in Lender's possession, to the applicable Investor, or Approved Custodian or to another party acceptable to Lender in its sole discretion.

4.6 (d) Upon payment of the Release Amount for a Multifamily Property or a Commercial Property, Lender agrees to provide a satisfaction for the related Property Mortgage or consent to the transfer thereof by the Property Subsidiary.

4.7. BORROWER REMAINS LIABLE

Anything herein to the contrary notwithstanding, Borrower shall remain liable under each item of the Collateral to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms thereof and any other agreement giving rise thereto, and in accordance with and pursuant to the terms and provisions thereof. Whether or not Lender has exercised any rights in any of the Collateral, Lender shall have no obligation or liability under any of the Collateral (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by Lender of any payment relating thereto, nor shall Lender be obligated in any manner to perform any of the obligations of Borrower under or pursuant to any of the Collateral (or any agreement giving rise thereto) to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any of the Collateral (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

4.8. FURTHER ASSURANCE

Borrower authorizes Lender to file financing statements to perfect and continue Lender's security interest in the Collateral. Borrower will execute and cooperate with Lender in obtaining from third parties control agreements in form satisfactory to Lender with respect to collateral consisting of investment property, deposit accounts, letter-of-credit rights, and electronic chattel paper.

END OF ARTICLE 4

Dated: 7/1/2003
Amended: 7/24/2003

CONDITIONS PRECEDENT

5.1. INITIAL ADVANCE

The effectiveness of this Agreement, including Lender's obligation to make the initial Structured Facility Advance, is subject to the satisfaction, in the sole discretion of Lender, of the following conditions precedent:

5.1 (a) Lender must receive the following, all of which must be satisfactory in form and content to Lender, in its sole discretion:

(1) The Structured Facility Note and this Agreement duly executed by Borrower.

(2) Borrower's certificate of Limited Partnership, together with all amendments, as certified by the Secretary of State of Delaware, Borrower's partnership agreement, together with all amendments, certified by the General Partner of Borrower, and certificates of good standing dated within 30 days of the date of this Agreement, together with a certification from the Franchise Tax Board or other state tax authority stating that Borrower is in good standing with the Franchise Tax Board or such state tax authority, if applicable.

(3) A resolution, consent or approval of all of the partners of Borrower authorizing the execution, delivery and performance of this Agreement and the other Loan Documents, each Structured Facility Advance Request and all other agreements, instruments or documents to be delivered by Borrower under this Agreement.

(4) A certificate as to the incumbency and authenticity of the signatures of the General Partner of Borrower executing this

Agreement and the other Loan Documents, and of the employees of the General Partner delivering each Structured Facility Advance Request and all other agreements, instruments or documents to be delivered under this Agreement (Lender being entitled to rely on that certificate until a new incumbency certificate has been furnished to Lender).

(5) The General Partner's articles or certificate of incorporation, together with all amendments, as certified by the Secretary of State of Delaware, bylaws certified by the corporate secretary of the General Partner and certificates of good standing dated within 30 days of the date of this Agreement.

(6) A resolution of the General Partner's board of directors, certified as of the date of the Agreement by its corporate secretary, authorizing the execution, delivery and performance of this Agreement and the other Loan Documents, each Structured Facility Advance Request and all other agreements, instruments or documents to be delivered under this Agreement.

(7) Guarantor's articles or certificate of incorporation, together with all amendments, as certified by the Secretary of State of Maryland, bylaws certified by the corporate secretary of the Guarantor and certificates of good standing dated within 30 days of the date of this Agreement.

(8) A resolution of the Guarantor's board of directors, certified as of the date of the Agreement by its corporate secretary, authorizing the execution, delivery and performance of this Agreement and the other Loan Documents, each Structured

Facility Advance Request and all other agreements, instruments or documents to be delivered under this Agreement.

(9) Financial statements of the Guarantor (and the Guarantor's Subsidiaries, on a consolidated basis) containing a proforma balance sheet as of the Closing Date, all prepared in accordance with GAAP.

(10) Opinion of counsel for Borrower and Guarantor, in form and substance satisfactory to Lender.

(11) Assumed Name Certificates dated within 30 days of the date of this Agreement for any assumed name used by Borrower in the conduct of its business.

(12) Uniform Commercial Code, tax lien and judgment searches of the appropriate public records for Borrower that do not disclose the existence of any prior Lien on the Collateral other than in favor of Lender or as permitted under this Agreement.

(13) Copies of Borrower's errors and omissions insurance policy or mortgage impairment insurance policy, and blanket bond coverage policy, or certificates in lieu of policies, showing compliance by Borrower as of the date of this Agreement with the provisions of Section 7.8.

(14) A fully-executed Funding Bank Agreement and evidence that all accounts into which Structured Facility Advances will be funded have been established at the Funding Bank.

(15) An executed Guaranty by the Guarantor.

(16) Evidence that the private placement of Equity Interests in the Guarantor described in the Preliminary Offering Memorandum dated as of June 13, 2003 has been completed or will be completed simultaneously upon this Agreement becoming

effective.

(17) Receipt by Lender of any fees due on the date of this Agreement.

5.1 (b) If Borrower is indebted to any of its partners or Affiliates or any director, officer or shareholder of any partner or any Affiliate of any partner, or to the Guarantor, as of the date of this Agreement, the Person to whom Borrower is indebted must have executed a Subordination of Debt Agreement, on the form prescribed by Lender; and Lender must have received an executed copy of that Subordination of Debt Agreement, certified by the General Partner of Borrower to be true and complete and in full force and effect as of the date of the Structured Facility Advance.

5.2. EACH ADVANCE

Lender's obligation to make the initial and each subsequent Structured Facility Advance is subject to the satisfaction, in the sole discretion of Lender, as of the date of each Structured Facility Advance, of the following additional conditions precedent:

5.2 (a) Borrower must have delivered to Lender the Structured Facility Advance Request and Collateral Documents required by, and must have satisfied the procedures set forth in, Article 2 and the Exhibits described in that Article. All items delivered to Lender must be satisfactory to Lender in form and content, and Lender may reject any item that does not satisfy the requirements of this Agreement or of the related Purchase Commitment.

5.2 (b) Lender must have received evidence satisfactory to it as to the making or continuation of any book entry or the due filing and recording in all appropriate offices of all financing statements and other instruments necessary to perfect the security interest of Lender in the Collateral under the Uniform Commercial Code or other applicable law.

5.2 (c) The representations and warranties of Borrower contained in Article 6 and Article 9 must be accurate and complete in all material respects as if made on and as of the date of each Structured Facility Advance.

5.2 (d) Borrower must have performed all agreements to be performed by it under this Agreement, and after giving effect to the requested Structured Facility Advance, no Default or Event of Default will exist under this Agreement.

5.2 (e) The Guarantor must have performed all agreements to be performed by the Guarantor under the Guaranty.

5.2 (f) ACM must be the manager of the Guarantor and Borrower under and pursuant to the Management Agreement.

Delivery of a Structured Facility Advance Request by Borrower will be deemed a representation by Borrower that all conditions set forth in this Section have been satisfied as of the date of the Structured Facility Advance.

5.3. STRUCTURED FACILITY ADVANCES TO FINANCE PREFERRED EQUITY INTERESTS

Lender's obligation to make a Structured Facility Advance being used to finance a Preferred Equity Interest owned or to be owned by a Special Purpose Entity is subject to the delivery by such Special Purpose Entity to Lender of a Pledge Agreement substantially in the form of Exhibit C hereto, duly completed, together with such other documents, including evidence of the Special Purpose Entity's organizational status and authorization of the Pledge Agreement and documentation of the Preferred Equity Interest, as Lender may request.

5.4. FORCE MAJEURE

Notwithstanding Borrower's satisfaction of the conditions set forth in this Agreement, Lender has no obligation to make a Structured Facility Advance if Lender is unable to deliver such funds as a result of any fire or other casualty, failure of power, strike, lockout or other labor trouble, banking moratorium, embargo, sabotage, confiscation, condemnation, riot, civil disturbance, insurrection, act of terrorism, war or other activity of armed forces, act of God or other similar reason beyond the control of Lender. Lender will make the requested Structured Facility Advance as soon as reasonably possible following the occurrence of such an event.

END OF ARTICLE 5

GENERAL REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender, as of the date of this Agreement and as of the date of each Structured Facility Advance Request and the making of each Structured Facility Advance, that:

6.1. PLACE OF BUSINESS

Borrower's chief executive office and principal place of business is 333 Earle Ovington Boulevard, Suite 900, Uniondale, NY, 11553-3617.

6.2. ORGANIZATION; GOOD STANDING; SUBSIDIARIES

Borrower is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the full legal power and authority to own its property and to carry on its business as currently conducted. Borrower is duly qualified as a foreign limited partnership to do business and is in good standing in each jurisdiction in which the transaction of its business makes qualification necessary, except in jurisdictions, if any, where a failure to be in good standing has no material adverse effect on Borrower's business, operations, assets or financial condition as a whole. For the purposes of this Agreement, good standing includes qualification for all licenses and payment of all taxes required in the jurisdiction of its formation and in each jurisdiction in which Borrower transacts business. Borrower has no Subsidiaries except as set forth on Exhibit D, which sets forth with respect to each Subsidiary, its name, address, jurisdiction of organization, each state in which it is qualified to do business, and the percentage ownership of its partnership interests by Borrower. Each of Borrower's Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and has the full legal power and authority to own its property and to carry on its business as currently conducted.

6.3. AUTHORIZATION AND ENFORCEABILITY

Borrower has the power and authority to execute, deliver and perform this Agreement, the Structured Facility Note and other Loan Documents to which Borrower is party and to make the borrowings under this Agreement. The execution, delivery and performance by Borrower of this Agreement, the Structured Facility Note and the other Loan Documents to which Borrower is party and the making of the borrowings under this Agreement, and the Structured Facility Note, have been duly and validly authorized by all necessary limited partnership action on the part of Borrower (none of which actions has been modified or rescinded, and all of which actions are in full force and effect) and do not and will not (a) conflict with or violate any provision of law, of any judgments binding upon Borrower, or of the certificate of Limited Partnership or partnership agreement of Borrower, or (b) conflict with or result in a breach of, constitute a default or require any consent under, or result in or require the acceleration of any indebtedness of Borrower under any agreement, instrument or indenture to which Borrower is a party or by which Borrower or its property may be bound or affected, or result in the creation of any Lien upon any property or assets of Borrower (other than the Lien on the Collateral granted under this Agreement). This Agreement, the Structured Facility Note and the other Loan Documents constitute the legal, valid and binding obligations of Borrower, enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency or other such laws affecting the enforcement of creditors' rights and by general principles of equity.

6.4. AUTHORIZATION AND ENFORCEABILITY OF GUARANTY

The Guarantor has the power and authority to execute, deliver and perform the Guaranty. The Guaranty constitutes the legal, valid, and binding obligation of Guarantor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other such laws affecting the enforcement of creditors' rights.

6.5. APPROVALS

The execution and delivery of this Agreement, the Structured Facility Note and the other Loan Documents and the performance of Borrower's obligations under this Agreement, the Structured Facility Note and the other Loan Documents and the validity and enforceability of this Agreement, the Structured Facility Note and the other Loan Documents do not require any license, consent, approval or other action of any state or federal agency or governmental or regulatory authority other than those that have been obtained and remain in full force and effect.

6.6. FINANCIAL CONDITION

The balance sheet of Borrower (and, if applicable, Borrower's Subsidiaries, on a consolidated basis) as of each Statement Date, and the related statements of income, and cash flows for the fiscal period ended on each Statement Date, furnished to Lender, fairly present the financial condition of Borrower (and, if applicable, Borrower's Subsidiaries) as at that Statement Date and the results of its operations for the fiscal period ended on that Statement Date. Borrower had, on each Statement Date, no known material liabilities, direct or indirect, fixed or contingent, matured or unmatured, or liabilities for taxes, long-term leases or unusual forward or long-term commitments not disclosed by, or reserved against in, those financial statements, and at the present time there are no material unrealized or anticipated losses from any loans, advances or other commitments of Borrower except as previously disclosed to Lender in writing. Those financial statements were prepared in accordance with GAAP applied on a consistent basis throughout the periods involved. Since the Audited Statement Date, there has been no material adverse change in the business, operations, assets or financial condition of Borrower (and, if applicable, Borrower's Subsidiaries), nor is Borrower aware of any state of facts that (with or without notice or lapse of time or both) is reasonably likely to result in any such material adverse change.

6.7. LITIGATION

There are no actions, claims, suits or proceedings pending or, to Borrower's knowledge, threatened or reasonably anticipated against or affecting Borrower or any Subsidiary of Borrower in any court or before any arbitrator or before any government commission, board, bureau or other administrative agency that, if adversely determined, may reasonably be expected to result in a material adverse change in Borrower's business, operations, assets or financial condition as a whole, or that would affect the validity or enforceability of this Agreement, the Structured Facility Note or any other Loan Document.

6.8. COMPLIANCE WITH LAWS

Neither Borrower nor any Subsidiary of Borrower is in violation of any provision of any law, or of any judgment, award, rule, regulation, order, decree, writ or injunction of any court or public regulatory body or authority that is reasonably likely to result in a material adverse change in Borrower's business, operations, assets or financial condition as a whole or that would affect the validity or enforceability of this Agreement, the Structured Facility Note or any other Loan Document.

6.9. REGULATION U

Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Structured Facility Advance made under this Agreement will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock.

6.10. INVESTMENT COMPANY ACT

Borrower is not an "investment company" or controlled by an "investment company" within the meaning of the Investment Company Act.

6.11. PAYMENT OF TAXES

Borrower and each of its Subsidiaries has filed or caused to be filed all federal, state and local income, excise, property and other tax returns that are required to be filed with respect to the operations of Borrower and its Subsidiaries, all such returns are true and correct and Borrower and each of its Subsidiaries has paid or caused to be paid all taxes shown on those returns or on any assessment, to the extent that those taxes have become due, including all FICA payments and withholding taxes, if appropriate. The amounts reserved as a liability for income and other taxes payable in the financial statements described in Section 6.6 are sufficient for payment of all unpaid federal, state and local income, excise, property and other taxes, whether or not disputed, of Borrower and its Subsidiaries accrued for or applicable to the period and on the dates of those financial statements and all years and periods prior to those financial statements and for which Borrower and its Subsidiaries may be liable in their own right or as transferee of the assets of, or as successor to, any other Person. No tax Liens have been filed and no material claims are being asserted against Borrower, any Subsidiary of Borrower or any property of Borrower or any Subsidiary of Borrower with respect to any taxes, fees or charges.

6.12. AGREEMENTS

Neither Borrower nor any Subsidiary of Borrower is a party to any agreement, instrument or indenture or subject to any restriction materially and adversely affecting its business, operations, assets or financial condition, except as disclosed in the financial statements described in Section 6.6. Neither Borrower nor any Subsidiary of Borrower is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement, instrument, or indenture which default is reasonably likely to result in a material adverse change in Borrower's business, operations, properties or financial condition as a whole. No holder of any indebtedness of Borrower or of any of its Subsidiaries has given notice of any asserted default under that indebtedness, and no liquidation or dissolution of Borrower or of any of its Subsidiaries and no receivership, insolvency, bankruptcy, reorganization or other similar proceedings relative to Borrower or of any of its Subsidiaries or any of its or their properties is pending, or to the knowledge of Borrower, threatened.

6.13. TITLE TO PROPERTIES

Borrower and each Subsidiary of Borrower has good, valid, insurable and (in the case of real property) marketable title to all of its properties and assets (whether real or personal, tangible or intangible) reflected on the financial statements described in Section 6.6, except for those properties and assets that Borrower has disposed of since the date of those financial statements either in the ordinary course of business or because they were no longer used or useful in the

conduct of Borrower's or the Subsidiary's business. All of Borrower's properties and assets are free and clear of all Liens except as disclosed in Borrower's financial statements.

6.14. ERISA

Each Plan is in substantial compliance with all applicable requirements of ERISA and the Internal Revenue Code and with all material applicable rulings and regulations issued under the provisions of ERISA and the Internal Revenue Code setting forth those requirements, except where any failure to comply is not reasonably likely to result in a material loss to Borrower or any ERISA Affiliate. All of the minimum funding standards or other contribution obligations applicable to each Plan have been satisfied. No Plan is a defined-benefit pension plan subject to Title IV of ERISA, and there is no Multiemployer Plan.

6.15. NO RETIREE BENEFITS

Except as required under Section 4980B of the Internal Revenue Code, Section 601 of ERISA or applicable state law, neither Borrower nor, if applicable, any Subsidiary is obligated to provide post-retirement medical or insurance benefits with respect to employees or former employees.

6.16. ASSUMED NAMES

Borrower does not originate Mortgage Loans or otherwise conduct business under any names other than its legal name and the assumed names set forth on Exhibit G. Borrower has made all filings and taken all other action as may be required under the laws of any jurisdiction in which it originates Mortgage Loans or otherwise conducts business under any assumed name. Borrower's use of the assumed names set forth on Exhibit G does not conflict with any other Person's legal rights to any such name, nor otherwise give rise to any liability by Borrower to any other Person. Borrower may amend Exhibit G to add or delete any assumed names used by Borrower to conduct business. An amendment to Exhibit G to add an assumed name is not effective until Borrower has delivered to Lender an assumed name certificate in the jurisdictions in which the assumed name is to be used, which must be satisfactory in form and content to Lender, in its sole discretion. In connection with any amendment to delete a name from Exhibit G, Borrower represents and warrants that it has ceased using that assumed name in all jurisdictions.

END OF ARTICLE 6

AFFIRMATIVE COVENANTS

As long as the Structured Facility Commitment is outstanding or there remain any Obligations to be paid or performed under this Agreement or under any other Loan Document, Borrower must:

7.1. PAYMENT OF OBLIGATIONS

Punctually pay or cause to be paid all Obligations, including the Obligations payable under this Agreement and under the Structured Facility Note, in accordance with their terms.

7.1 (a) As soon as available and in any event within 45 days after the end of each fiscal quarter of Borrower, including the last fiscal quarter of Borrower's fiscal year, an interim statement of income of Borrower and Guarantor (and, if applicable, such Person's Subsidiaries, on a consolidated basis) for that fiscal quarter and the period from the beginning of the fiscal year to the end of that fiscal quarter, and the related balance sheet as at the end of that fiscal quarter, all in reasonable detail, subject, however, to year-end audit adjustments.

7.1 (b) As soon as available and in any event within 90 days after the end of each fiscal year of the Guarantor, fiscal year-end statements of income, changes in stockholders' equity and cash flows for the Guarantor (and, if applicable, the Guarantor's Subsidiaries, on a consolidated basis) for that year, and the related balance sheet as at the end of that year (setting forth in comparative form the corresponding figures for the preceding fiscal year), all in reasonable detail and accompanied by (1) an opinion as to those financial statements in form and substance satisfactory to Lender and prepared by independent certified public accountants of recognized standing acceptable to Lender and (2) any management letters, management reports or other supplementary comments or reports delivered by those accountants to the Guarantor.

7.1 (c) Together with each delivery of financial statements required by this Section, a Compliance Certificate substantially in the form of Exhibit E.

7.1 (d) Copies of all regular or periodic financial and other reports that Borrower or Guarantor files with the Securities and Exchange Commission or any successor governmental agency or other entity.

7.2. OTHER BORROWER REPORTS

Deliver to Lender:

7.2 (a) As soon as available and in any event within 30 days after the end of each Calendar Quarter, a consolidated report from ACM as servicer ("Servicing Portfolio Report") as of the end of such Calendar Quarter, as to all Mortgage Loans the servicing rights to which are owned by Borrower (specified by investor type, recourse and non-recourse) regardless of whether the Mortgage Loans are Pledged Loans. The Servicing Portfolio Report must indicate which Mortgage Loans (1) are current and in good standing, (2) are more than 30, 60 or 90 days past due, (3) are the subject of pending bankruptcy or foreclosure proceedings, or (4) have been converted (through foreclosure or other proceedings in lieu of foreclosure) into real estate owned by Borrower.

7.2 (b) As soon as available and in any event within 45 days after the end of each fiscal quarter in the fiscal year of Borrower, a consolidated loan production report as of the end of that

fiscal quarter, presenting the total dollar volume and the number of Mortgage Loans originated and closed or purchased during that fiscal quarter and for the fiscal year-to-date, specified by property type, loan type and Investor to whom each Mortgage Loan was sold.

7.2 (c) Reports in respect of the Pledged Assets in such detail and at such times as Lender in its discretion may reasonably request.

7.2 (d) On or before the 25th day of each month immediately following the end of each fiscal quarter, a loan monitoring analysis with respect to each asset owned by Borrower (whether or not pledged under this Agreement) as of the end of such quarter, in the form attached as Exhibit J.

7.2 (e) A copy of any material change to the Underwriting Guidelines, not fewer than 3 Business Days prior to the effective date of that change.

7.2 (f) On or before the first Business Day of each week, a hedging report, in form and substance satisfactory to Lender, with respect to all fixed-rate Pledged Investments that are not covered by a Purchase Commitment as of the end of the preceding week.

7.2 (g) Other reports in respect of Pledged Assets, including copies of purchase confirmations issued by Investors purchasing Pledged Loans from Borrower, in such detail and at such times as Lender in its discretion may reasonably request.

7.2 (h) With reasonable promptness, all further information regarding the business, operations, properties or financial condition of Borrower as Lender may reasonably request, including copies of any audits, if any, completed by HUD, Ginnie Mae, Fannie Mae, Freddie Mac and any rating agency.

7.2 (i) From time to time, with reasonable promptness, such further information regarding the business, operations, properties or financial condition of Borrower as Lender may reasonably request.

7.3. MAINTENANCE OF EXISTENCE; CONDUCT OF BUSINESS

Preserve and maintain its existence as a Limited Partnership in good standing and all of its rights, privileges, licenses and franchises necessary or desirable in the normal conduct of its business, conduct its business in an orderly and efficient manner; and make no material change in the nature or character of its business or engage in any business in which it was not engaged on the date of this Agreement.

7.4. COMPLIANCE WITH APPLICABLE LAWS

Comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority, a breach of which could reasonably be expected to result in a material adverse change in Borrower's business, operations, assets, or financial condition as a whole or on the enforceability of this Agreement, the Structured Facility Note, any other Loan Document or any Collateral, except where contested in good faith and by appropriate proceedings.

7.5. INSPECTION OF PROPERTIES AND BOOKS; OPERATIONAL REVIEWS

7.5 (a) Permit Lender or any Participant (and their authorized representatives) to discuss the business, operations, assets and financial condition of Borrower and its Subsidiaries with

Borrower's officers, agents and employees, and to examine and make copies or extracts of Borrower's and its Subsidiaries' books of account, all at such reasonable times and, as long as no Default or Event of Default has occurred and is continuing, on such reasonable Notice, as Lender or any Participant may request.

7.5 (b) Provide its accountants with a copy of this Agreement promptly after its execution and authorize and instruct them to answer candidly all questions that the officers of Lender or any Participant or any authorized representatives of Lender or any Participant may address to them in reference to the financial condition or affairs of Borrower and its Subsidiaries. As long as no Default or Event of Default has occurred and is continuing, Lender shall provide Borrower with advance notice of any such inquiry to Borrower's accountants. Borrower may have its representatives in attendance at any meetings held between the officers or other representatives of Lender or any Participant and Borrower's accountants under this authorization.

7.5 (c) Permit Lender or any Participant (and their authorized representatives) access to Borrower's premises and records for the purpose of conducting a review of Borrower's general mortgage business methods, policies and procedures, auditing its loan files, and reviewing the financial and operational aspects of Borrower's business.

7.6. NOTICE

Give prompt Notice to Lender of (a) any action, suit or proceeding instituted by or against Borrower or any of its Subsidiaries or its General Partner in any federal or state court or before any commission or other regulatory body (federal, state or local, domestic or foreign), which action, suit or proceeding has at issue in excess of $500,000 (or, in the case of a personal injury claim fully covered by insurance, $1,000,000), or any such proceedings threatened against Borrower or any of its Subsidiaries or its General Partner in a writing containing the details of that action, suit or proceeding; (b) the filing, recording or assessment of any federal, state or local tax Lien against Borrower, or any of its assets or any of its Subsidiaries or its General Partner; (c) an Event of Default; (d) a Default that continues for more than 5 days; (e) the transfer, loss, nonrenewal or termination of any Servicing Contracts to which Borrower is a party, or which is held for the benefit of Borrower, and the reason for that transfer, loss, nonrenewal or termination; (f) any Prohibited Transaction with respect to any Plan, specifying the nature of the Prohibited Transaction and what action Borrower proposes to take with respect to it; and (g) any other action, event or condition of any nature that may lead to or result in a material adverse change in the business, operations, assets or financial condition of Borrower or any of its Subsidiaries or any of its General Partners.

7.7. PAYMENT OF DEBT, TAXES AND OTHER OBLIGATIONS

Pay, perform and discharge, or cause to be paid, performed and discharged, all of the obligations and indebtedness of Borrower and its Subsidiaries, all taxes, assessments and governmental charges or levies imposed upon Borrower or its Subsidiaries or upon their respective income, receipts or properties before those taxes, assessments and governmental charges or levies become past due, and all lawful claims for labor, materials and supplies or otherwise that, if unpaid, might become a Lien or charge upon any of their respective properties or assets. Borrower and its Subsidiaries are not required to pay, however, any taxes, assessments and governmental charges or levies or claims for labor, materials or supplies for which Borrower or its Subsidiaries have obtained an adequate bond or adequate insurance or that are being contested in good faith and by proper proceedings that are being reasonably and diligently pursued and for which proper reserves have been created.

7.8. INSURANCE

Maintain blanket bond coverage and errors and omissions insurance or mortgage impairment insurance, and liability insurance and fire and other hazard insurance on its properties, in each case with responsible insurance companies acceptable to Lender, in such amounts and against such risks as is customarily carried by similar businesses operating in the same vicinity. Copies of such policies must be furnished to Lender without charge upon request of Lender.

7.9. SUBORDINATION OF CERTAIN INDEBTEDNESS

Cause any indebtedness of Borrower to any partner or Affiliate or any shareholder, director or officer of any partner or Affiliate of Borrower, or to any Guarantor, which indebtedness has a term of more than 1 year or is in excess of $25,000, to be subordinated to the Obligations by the execution and delivery to Lender of a Subordination of Debt Agreement, on the form prescribed by Lender, certified by the General Partner of Borrower to be true and complete and in full force and effect.

7.10. OTHER LOAN OBLIGATIONS

Perform all material obligations under the terms of each loan agreement, note, mortgage, security agreement or debt instrument by which Borrower is bound or to which any of its property is subject, and promptly notify Lender in writing of a declared default under or the termination, cancellation, reduction or nonrenewal of any of its other lines of credit or agreements with any other Lender. Exhibit F is a true and complete list of all such lines of credit or agreements as of the date of this Agreement. Borrower must give Lender at least 30 days Notice before entering into any additional lines of credit or agreements.

7.11. ERISA

Maintain (and, if applicable, cause each ERISA Affiliate to maintain) each Plan in compliance with all material applicable requirements of ERISA and of the Internal Revenue Code and with all applicable rulings and regulations issued under the provisions of ERISA and of the Internal Revenue Code, and not (and, if applicable, not permit any ERISA Affiliate to), (a) engage in any transaction in connection with which Borrower or any ERISA Affiliate would be subject to either a civil penalty assessed pursuant to Section 502(i) of ERISA or a tax imposed by Section 4975 of the Internal Revenue Code, in either case in an amount exceeding $25,000 or (b) fail to make full payment when due of all amounts that, under the provisions of any Plan, Borrower or any ERISA Affiliate is required to pay as contributions to that Plan, or permit to exist any accumulated funding deficiency (as such term is defined in Section 302 of ERISA and Section 412 of the Internal Revenue Code), whether or not waived, with respect to any Plan in an aggregate amount exceeding $25,000.

7.12. HEDGING ARRANGEMENTS

Maintain Hedging Arrangements with respect to the risk that the market value of Borrower's portfolio of fixed rate Mortgage Loans held for sale and not covered by Purchase Commitments (including, without limitation, any such Mortgage Loans that are Pledged Loans) will change as a result of changes in interest rates prior to the sale of such Mortgage Loans mitigating, in accordance with Borrower's hedging practices that are reasonably acceptable to Lender, the risk that the value of such Mortgage Loans will change as a result of changes in interest rates.

7.13. CLOSING INSTRUCTIONS

Indemnify and hold Lender harmless from and against any loss, including reasonable attorneys' fees and costs, attributable to the failure of any title insurance company, agent or attorney to comply with Borrower's disbursement or instruction letter relating to any Mortgage Loan or Mezzanine Investment. Lender has the right to pre-approve, such approval not to be unreasonably withheld or delayed, Borrower's choice of title insurance company, agent or attorney and Borrower's disbursement or instruction letter to them in any case in which Borrower intends to obtain a Structured Facility Advance against the Mortgage Loan or Mezzanine Investment to be created at settlement or to pledge that Mortgage Loan or Mezzanine Investment as Collateral under this Agreement.

7.14. USE OF PROCEEDS OF STRUCTURED FACILITY ADVANCES

Use the proceeds of each Structured Facility Advance solely for the purpose of funding the origination or acquisition of (i) Bridge Mortgage Loans, (ii) Note Acquisition Loans, (iii) Mezzanine Investments or (iv) Multifamily Properties acquired in Property Acquisition. Structured Facility Advances, other than Structured Facility Advances made to finance Property Acquisitions, will be made against the pledge of those Eligible Investments as Collateral. Structured Facility Advances made to finance Property Acquisitions will be made against (i) in the case of a Multifamily Property owned by a Property Subsidiary, the pledge of 100% of the stock or other equity ownership interest in such Property Subsidiary to Lender, or (ii) in the case of a Multifamily Property owned by Borrower, a Property Mortgage covering each Multifamily Property.

END OF ARTICLE 7

NEGATIVE COVENANTS

As long as the Structured Facility Commitment is outstanding or there remain any Obligations to be paid or performed, Borrower must not, either directly or indirectly, without the prior written consent of Lender:

8.1. CONTINGENT LIABILITIES

Assume, guarantee, endorse or otherwise become contingently liable for the obligation of any Person except by endorsement of negotiable instruments for deposit or collection in the ordinary course of business, and except for obligations arising in connection with the sale of Mortgage Loans with recourse in the ordinary course of Borrower's business.

8.2. PLEDGE OF SERVICING CONTRACTS

Pledge or grant a security interest in any existing or future Servicing Contracts of Borrower other than to Lender, or omit to take any action required to keep all of Borrower's Servicing Contracts in full force and effect.

8.3. RESTRICTIONS ON FUNDAMENTAL CHANGES

8.3 (a) Consolidate, merge or enter into any analogous reorganization or transaction with any Person.

8.3 (b) Amend or otherwise modify Borrower's certificate of limited partnership or partnership agreement.

8.3 (c) Liquidate, wind up or dissolve (or suffer any liquidation or dissolution).

8.3 (d) Cease actively to engage in the business of originating or acquiring Mortgage Loans or Mezzanine Investments or make any other material change in the nature or scope of the business in which Borrower engages as of the date of this Agreement.

8.3 (e) Sell, assign, lease, convey, transfer or otherwise dispose of (whether in one transaction or a series of transactions) all or any substantial part of Borrower's business or assets, whether now owned or acquired after the Closing Date, other than, in the ordinary course of business and to the extent not otherwise prohibited by this Agreement, sales of (1) Mortgage Loans, (2) Mortgage-backed Securities and (3) Mezzanine Investments.

8.3 (f) Acquire by purchase or in any other transaction all or substantially all of the business or property of, or all or substantially all of the stock or other ownership interests of, any Person, except in connection with the collection or restructuring of any loan made or Equity Interest acquired by Borrower in the ordinary course of its business.

8.3 (g) Permit any Subsidiary of Borrower to do or take any of the foregoing actions.

8.4. DEFERRAL OF SUBORDINATED DEBT

Except as permitted in the Subordination of Debt Agreement related thereto, pay any Subordinated Debt of Borrower in advance of its stated maturity or, after a Default or Event of Default under this Agreement has occurred, make any payment of any kind on any Subordinated

Debt of Borrower until all of the Obligations have been paid and performed in full and any applicable preference period has expired.

8.5. ACCOUNTING CHANGES

Make, or permit any Subsidiary of Borrower to make, any significant change in accounting treatment or reporting practices, except as required by GAAP, or change its fiscal year or the fiscal year of any Subsidiary of Borrower.

8.6. LEVERAGE RATIO

Permit Borrower's Leverage Ratio at any time to exceed 6 to 1.

8.7. MINIMUM MODIFIED NET WORTH

Permit Modified Net Worth of Borrower (and its Subsidiaries, on a consolidated basis) at any time to be less than $115,000,000 plus 80% of the net proceeds of any private placement or initial public offering of Equity Interests in the Guarantor conducted after the Closing Date.

8.8. MINIMUM LIQUID ASSETS

Permit Borrower's Liquid Assets at any time to be less than $3,000,000.

8.9. PORTFOLIO PERFORMANCE RATIO

Permit Borrower's Portfolio Performance Ratio, measured as of the last day of each month, to be less than 1.25 to 1.00.

8.10. PROFITABILITY

Permit Borrower's (and its Subsidiaries, on a consolidated basis) net income for any fiscal year to be less than zero.

8.11. DISTRIBUTIONS TO PARTNERS

Make any distributions to Borrower's partners (including any purchase or redemption of partnership interests), if a Default or an Event of Default exists or would occur as a result of the distribution.

8.12. TRANSACTIONS WITH AFFILIATES

Directly or indirectly (a) make any loan, advance, extension of credit or capital contribution to any of Borrower's Affiliates, (b) sell, transfer, pledge or assign any of its assets to or on behalf of those Affiliates, (c) merge or consolidate with or purchase or acquire assets from those Affiliates, or (d) pay management fees in excess of those provided for under the Management Agreement in effect on the date of this Agreement; provided, however, that Borrower or any Subsidiary may engage in any transaction described in clause (a) or (b) above if such transaction is in the ordinary course of its business pursuant to the reasonable requirements of Borrower's or such Subsidiary's business and, except in the case of wholly-owned, special purpose Subsidiaries, upon fair and reasonable terms no less favorable to Borrower or such Subsidiary than Borrower or such Subsidiary would obtain in a comparable arms-length transaction.

8.13. SERVICING CONTRACTS

Acquire or enter into Servicing Contracts with any Person other than ACM.

END OF ARTICLE 8

SPECIAL REPRESENTATIONS, WARRANTIES AND COVENANTS CONCERNING COLLATERAL

9.1. SPECIAL REPRESENTATIONS AND WARRANTIES CONCERNING STRUCTURED FACILITY COLLATERAL

Borrower represents and warrants to Lender, as of the date of this Agreement and as of the date of each Structured Facility Advance Request and the making of each Structured Facility Advance, that:

9.1 (a) Borrower has not selected the Collateral in a manner so as to affect adversely Lender's interests.

9.1 (b) Borrower is the legal and equitable owner and holder, free and clear of all Liens (other than Liens granted under this Agreement or the Existing ACM Agreement) of the Pledged Assets (including the Initial Eligible Investments) or of the Property Subsidiary that owns the Multifamily Properties against which Structured Facility Advances are outstanding. All Pledged Assets and any related Purchase Commitments have been duly authorized and validly issued to Borrower, and all of the foregoing items of Collateral comply with all of the requirements of this Agreement, and have been and will continue to be validly pledged or assigned to Lender, subject to no other Liens.

9.1 (c) Borrower has, and will continue to have, the full right, power and authority to pledge the Collateral pledged and to be pledged by it under this Agreement.

9.1 (d) Any Mortgage Loan and any related document included in the Pledged Investments (1) has been duly executed and delivered by the parties thereto, (2) has been made in compliance with all applicable requirements of the Real Estate Settlement Procedures Act, Equal Credit Opportunity Act, the federal Truth-In-Lending Act and all other applicable laws and regulations, (3) is and will continue to be valid and enforceable in accordance with its terms, without defense or offset, (4) has not been modified or amended except in writing, which writing is part of the Collateral Documents, nor any requirements thereof waived, (5) has been evaluated or appraised in accordance with Title XI of FIRREA, and (6) complies and will continue to comply with the terms of this Agreement. Each Mortgage Loan has or will have a title insurance policy, in American Land Title Association form or equivalent thereof, from a recognized title insurance company, insuring the priority of the Lien of the Mortgage and meeting the usual requirements of Investors purchasing such Mortgage Loans.

9.1 (e) Any Mezzanine Investment that is not a Mortgage Loan (1) has been duly executed and delivered by the related obligor, (2) has been made in compliance with all applicable laws and regulations, (3) is and will continue to be valid and enforceable in accordance with its terms, without defense or offset, except as limited by bankruptcy, insolvency or other such laws affecting the enforcement of creditors' right and by general principles of equity, (4) has not been modified or amended, except in writing, which writing is part of the Collateral Documents, nor any requirements thereof waived, (5) is not required to be registered under any federal or applicable state securities laws, and (6) complies and will continue to comply with the terms of this Agreement. Each such Mezzanine Investment has been fully advanced.

9.1 (f) No default has occurred and is continuing for more than 60 days under any Mortgage Loan or other loan included in the Pledged Investments, and no related borrower has failed to declare and pay any scheduled preferred dividends or other income payments in respect of

any Preferred Equity Interest included in the Pledged Investments, without the Structured Facility Advance against such Pledged Investment having been repaid in accordance with Section 3.3(c) hereof.

9.1 (g) Properties securing or otherwise backing Pledged Investments, and Multifamily Properties against which Structured Facility Advances are outstanding located in a special flood hazard area designated as such by the Director of the Federal Emergency Management Agency are and shall continue to be covered by special flood insurance under the National Flood Insurance Program.

9.1 (h) Each Pledged Asset is secured by a Mortgage on, or is otherwise backed by, real property and improvements located in one of the states of the United States or the District of Columbia.

9.1 (i) Each Pledged Investment other than a Note Acquisition Loan has been closed or acquired or will be closed and funded with the Structured Facility Advance made against it.

9.1 (j) Each Bridge Mortgage Loan, Note Acquisition Loan and Mezzanine Investment pledged hereunder is an Eligible Mortgage Investment.

9.1 (k) The Mortgage Note for each Pledged Investment is (1) payable or endorsed to the order of Borrower, (2) an "instrument" within the meaning of Article 9 of the Uniform Commercial Code of all applicable jurisdictions and (3) is denominated and payable in United States dollars.

9.1 (l) No party to a Mortgage Loan or any related document is in violation of any applicable law, rule or regulation that would impair the collectibility of the Mortgage Loan or the performance by the mortgagor or any other obligor of its obligations under the Mortgage Note or any related document.

9.1 (m) All fire and casualty policies covering the real property and improvements encumbered by each Mortgage included in the Pledged Investments, or a Multifamily Property against which a Structured Facility Advance is outstanding, (1) name and will continue to name Borrower and its successors and assigns as the insured under a standard mortgagee clause, except in the case of a Multifamily Property against which a Structured Facility Advance is outstanding, (2) are and will continue to be in full force and effect and (3) afford and will continue to afford insurance against fire and such other risks as are usually insured against in the broad form of extended coverage insurance generally available.

9.1 (n) Neither Borrower nor any of Borrower's Affiliates has any ownership interest, right to acquire any ownership interest or equivalent economic interest in any Multifamily Property or Health Care Facility securing a Pledged Investment or the mortgagor under the Pledged Investment or any other obligor on the Mortgage Note for such Pledged Investment, except for (1) Bridge Mortgage Loans, (2) any such interest constituting a Mezzanine Investment, and (3) any such interest acquired as additional compensation for providing such Pledged Investment.

9.1 (o) The original assignments of Mortgage delivered to Lender for each Pledged Investment that is a Mortgage Loan are in recordable form and comply with all applicable laws and regulations governing the filing and recording of such documents.

9.1 (p) None of the mortgagors, guarantors or other obligors of any Pledged Investment is a Person named in any Restriction List and to whom the provision of financial services is prohibited or otherwise restricted by applicable law.

9.2. SPECIAL AFFIRMATIVE COVENANTS CONCERNING COLLATERAL.

As long as the Structured Facility Commitment is outstanding or there remain any Obligations to be paid or performed under this Agreement or under any other Loan Document, Borrower must:

9.2 (a) Warrant and defend the right, title and interest of Lender in and to the Collateral against the claims and demands of all Persons whomsoever.

9.2 (b) Service or cause to be serviced all Mortgage Loans in accordance with the Underwriting Guidelines, including without limitation taking all actions necessary to enforce the obligations of the obligors under such Mortgage Loans. Service or cause to be serviced all Mortgage Loans serviced pursuant to Servicing Contracts included in the Servicing Portfolio in accordance with the applicable Servicing Contract and all applicable HUD, Fannie Mae, Freddie Mac and Investor requirements, including without limitation taking all actions necessary to enforce the obligations of the obligors under such Mortgage Loans. Borrower will hold all escrow funds collected in respect of Pledged Investments and Mortgage Loans backing Pledged Securities in trust, without commingling the same with non-custodial funds, and apply the same for the purposes for which such funds were collected.

9.2 (c) Pay (or require to be paid) prior to their becoming delinquent all taxes, assessments, insurance premiums, charges, encumbrances and liens now or hereafter imposed upon or affecting any Collateral or Servicing Contracts included in the Servicing Portfolio (provided, that nothing herein shall require Borrower to discharge Liens on properties subject to Mortgage Loans serviced by Borrower).

9.2 (d) Execute and deliver to Lender such further instruments of sale, pledge or assignment or transfer, and such powers of attorney, as required by Lender, and shall do and perform all matters and things necessary or desirable to be done or observed, for the purpose of effectively creating, maintaining and preserving the security and benefits intended to be afforded Lender under this Agreement. Lender will have all the rights and remedies of a secured party under the Uniform Commercial Code of Minnesota, or any other applicable law, in addition to all rights provided for herein.

9.2 (e) Record in the appropriate recording office to perfect a Lien on each Multifamily Property owned by Borrower against which a Structured Facility Advance has been requested a Property Mortgage with respect to such Multifamily Property, including the payment of all recording fees or taxes.

9.2 (f) Promptly upon execution thereof, deliver to Lender a copy of any contract entered into by Borrower for the sale, transfer or other disposition of any Multifamily Property against which a Structured Facility Advance has been made.

9.2 (g) Instruct the purchaser of any Multifamily Property against which a Structured Facility Advance has been made to wire transfer the purchase proceeds of such Multifamily Property to the Cash Collateral Account.

9.2 (h) Deliver all certificates and instruments representing or evidencing the Pledged Shares to Lender, together with stock powers or other instruments of assignment, duly completed in blank contemporaneously with the making of the related Structured Facility Advance.

9.2 (i) (i) Cause each issuer of the Pledged Shares not to issue any stock or other securities in addition to or in substitution for the Pledged Shares issued by such issuer, except to Borrower, and (ii) pledge hereunder, immediately upon its acquisition (directly or indirectly) thereof, any and all additional shares of stock or other securities of each issuer of the Pledged Shares.

9.2 (j) From and after the occurrence and during the continuance of an Event of Default, within 20 days after the request of Lender, deliver to Lender an appraisal of any Property securing or otherwise backing an Eligible Investment against which a Structured Facility Advance is outstanding, setting forth the Appraised Property Value of that Property.

9.2 (k) Compare the names of every mortgagor, guarantor and other obligor of every Mortgage Loan, together with appropriate identifying information concerning those Persons obtained by Borrower, against every Restriction List, and make certain that none of the mortgagors, guarantors or other obligors of any Mortgage Loan is a Person named in any Restriction List and to whom the provision of financial services is prohibited or otherwise restricted by applicable law.

9.2 (l) Review the Underwriting Guidelines periodically to confirm that those policies and procedures are being complied with in all material respects and are adequate to meet Borrower's business objectives.

9.3. SPECIAL NEGATIVE COVENANTS CONCERNING COLLATERAL

As long as the Structured Facility Commitment is outstanding or there remain any Obligations to be paid or performed, Borrower must not, either directly or indirectly, without the prior written consent of Lender:

9.3 (a) Amend or modify, or waive any of the terms and conditions of, or settle or compromise any claim in respect of, any Pledged Investments or Pledged Securities, except for amendments or modifications which (i) do not affect or relate to the principal, interest or any other payments due under the Pledged Investment, (ii) would not result in the Pledged Investment being ineligible to be financed under this Agreement and (iii) do not materially and adversely affect the mortgagee's remedies under such Pledged Investment.

9.3 (b) Borrower shall not sell, assign, transfer or otherwise dispose of, or grant any option with respect to, or pledge or otherwise encumber (except pursuant to this Agreement or as permitted herein) any of the

Collateral.

9.3 (c) Borrower shall not make any compromise, adjustment or settlement in respect of any of the Collateral or accept other than cash in payment or liquidation of the Collateral without providing prior written notice thereof to Lender.

9.3 (d) Borrower shall not make any material change in the Underwriting Guidelines without providing the notice required pursuant to Section 7.2(e) of this Agreement.

9.4. SPECIAL REPRESENTATIONS CONCERNING MULTIFAMILY PROPERTIES

Borrower hereby represents and warrants to Lender, as of the date of this Agreement and as of the date of each Structured Facility Advance Request for a Structured Facility Advance against a Multifamily Property acquired in a Property Acquisition and the making of each such Structured Facility Advance, that each Property Mortgage is in full force and effect, is legal, valid and enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights and by general principles of equity, and

no default or event which, with notice or lapse of time or both, would become a default, exists under any such Property Mortgage.

9.5. SPECIAL REPRESENTATIONS CONCERNING PLEDGED SHARES

Borrower represents and warrants to Lender, as of the date of this Agreement and as of the date of each Structured Facility Advance Request for a Structured Facility Advance and the making of each such Structured Facility Advance, that:

9.5 (a) Borrower has title to the Pledged Shares and will have title to all further Pledged Shares hereafter acquired, free of all Liens except the security interest in favor of Lender.

9.5 (b) Borrower has full power and authority to subject the Pledged Shares to the security interest created hereby.

9.5 (c) No financing statement covering all or part of the Pledged Shares is on file in any public office (except for any financing statements filed by the Lender).

9.5 (d) The Pledged Shares have been duly authorized and validly issued by the issuer thereof and are fully paid and non-assessable. The certificates representing the Pledged Shares are genuine. The Pledged Shares are not subject to any offset or similar right or claim of the issuers thereof.

9.5 (e) The Pledged Shares constitute 100% of the issued and outstanding shares of capital stock, the membership interests or the partnership interests, as applicable, or the respective issuers thereof.

END OF ARTICLE 9

DEFAULTS; REMEDIES

10.1. EVENTS OF DEFAULT

The occurrence of any of the following is an event of default ("Event of Default"):

10.1 (a) Borrower fails to pay the principal of any Structured Facility Advance when due, whether at stated maturity, by acceleration, or otherwise; or fails to pay any installment of interest on any Structured Facility Advance within 9 days after the date of Lender's invoice or, if applicable, within 2 days after the date of Lender's account analysis statement; or fails to pay, within any applicable grace period, any other amount due under this Agreement or any other Obligation of Borrower to Lender.

10.1 (b) Borrower or any of its Subsidiaries or any General Partner of Borrower fails to pay, or defaults in the payment of any principal or interest on, any other indebtedness or any contingent obligation within any applicable grace period; breaches or defaults with respect to any other material term of any other indebtedness or of any loan agreement, mortgage, indenture or other agreement relating to that indebtedness, if the effect of that breach or default is to cause, or to permit the holder or holders of that indebtedness (or a trustee on behalf of such holder or holders) to cause, indebtedness of Borrower or its Subsidiaries or any General Partner of Borrower in the aggregate amount of $250,000 or more to become or be declared due before its stated maturity (upon the giving or receiving of notice, lapse of time, both, or otherwise).

10.1 (c) Borrower fails to perform or comply with any term or condition applicable to it contained in Section 7.3, Section 7.14 or in any Section of Article 8.

10.1 (d) Any representation or warranty made or deemed made by Borrower or any General Partner of Borrower under this Agreement, in any other Loan Document (other than the representations and warranties set forth in Section 9) or in any written statement or certificate at any time given by Borrower or any General Partner of Borrower is inaccurate or incomplete in any material respect on the date as of which it is made or deemed made.

10.1 (e) Borrower defaults in the performance of or compliance with any term contained in this Agreement or any other Loan Document other than those referred to in Sections 10.1(a), 10.1 (c) or 10.1 (d) and such default has not been remedied or waived within 30 days after the earliest of (1) receipt by Borrower of Notice from Lender of that default, (2) receipt by Lender of Notice from Borrower of that default or (3) the date Borrower should have notified Lender of that default under Section 7.6 of this Agreement.

10.1 (f) An "event of default" (however defined) occurs under any agreement between Borrower and Lender other than this Agreement and the other Loan Documents or an "event of default" (however defined) occurs under the Management Agreement or the Servicing Agreement.

10.1 (g) A case (whether voluntary or involuntary) is filed by or against Borrower or any Subsidiary of Borrower or the Guarantor under any applicable bankruptcy, insolvency or other similar federal or state law; or a court of competent jurisdiction appoints a receiver (interim or permanent), liquidator, sequestrator, trustee, custodian or other officer having similar powers over Borrower or any Subsidiary of Borrower or the Guarantor, or over all or a substantial part of their respective properties or assets; or Borrower or any

Subsidiary of Borrower or the Guarantor (1) consents to the appointment of or possession by a receiver (interim or permanent), liquidator, sequestrator, trustee, custodian or other officer having similar powers over Borrower or any Subsidiary of Borrower, or the Guarantor, or over all or a substantial part of their respective properties or assets, (2) makes an assignment for the benefit of creditors, or (3) fails, or admits in writing its inability, to pay its debts as those debts become due.

10.1 (h) Lender's security interest on any portion of the Collateral becomes unenforceable or otherwise impaired.

10.1 (i) A wholly-owned Subsidiary of Guarantor ceases to be the General Partner of Borrower.

10.1 (j) Guarantor for any reason ceases to be a real estate investment trust for United States federal tax purposes.

10.1 (k) Any Person other than ACM is the servicer with respect to any Collateral.

10.1 (l) Guarantor creates or enters into any operating partnership or investment vehicle other than Borrower.

10.2. REMEDIES

10.2 (a) If an Event of Default described in Section 10.1(g) occurs with respect to Borrower or Guarantor, the Structured Facility Commitment will automatically terminate and the unpaid principal amount of and accrued interest on the Structured Facility Note and all other Obligations will automatically become due and payable, without presentment, demand or other Notice or requirements of any kind, all of which Borrower expressly waives.

10.2 (b) If any other Event of Default occurs, Lender may, by Notice to Borrower, terminate the Structured Facility Commitment and declare the Obligations to be immediately due and payable.

10.2 (c) If any Event of Default occurs, Lender may also take any of the following actions:

(1) Foreclose upon or otherwise enforce its security interest in and Lien on the Collateral to secure all payments and performance of the Obligations in any manner permitted by law or provided for in the Loan Documents.

(2) Notify all obligors under any of the Collateral that the Collateral has been assigned to Lender (or to another Person designated by Lender) and that all payments on that Collateral are to be made directly to Lender (or such other Person); settle, compromise or release, in whole or in part, any amounts any obligor or Investor owes on any of the Collateral on terms acceptable to Lender; enforce payment and prosecute any action or proceeding involving any of the Collateral; and where any Collateral is in default, foreclose on and enforce any Liens securing that Collateral in any manner permitted by law and sell any property acquired as a result of those enforcement actions.

(3) Prepare and submit for filing Uniform Commercial Code amendment statements evidencing the assignment to Lender or its designee of any Uniform Commercial Code financing statement filed in connection with any item of Collateral.

(4) Act, or contract with a third party to act, at Borrower's expense, as servicer or subservicer of Collateral requiring servicing, and perform all obligations required under any Collateral, including Servicing Contracts and Purchase Commitments.

(5) Require Borrower to assemble and make available to Lender the Collateral and all related books and records at a place designated by Lender.

(6) Enter onto property where any Collateral or related books and records are located and take possession of those items with or without judicial process; and obtain access to Borrower's data processing equipment, computer hardware and software relating to the Collateral and use all of the foregoing and the

information contained in the foregoing in any manner Lender deems necessary for the purpose of effectuating its rights under this Agreement and any other Loan Document.

(7) Before the disposition of the Collateral, prepare it for disposition in any manner and to the extent Lender deems appropriate.

(8) Exercise all rights and remedies of a secured creditor under the Uniform Commercial Code of Minnesota or other applicable law, including selling or otherwise disposing of all or any portion of the Collateral at one or more public or private sales, whether or not the Collateral is present at the place of sale, for cash or credit or future delivery, on terms and conditions and in the manner as Lender may determine, including sale under any applicable Purchase Commitment. Lender will give Borrower not less than 10 days' notice of any public sale or of the date after which any private sale may be held. Borrower agrees that 10 days' notice is reasonable notice. Lender may, without notice or publication, adjourn any public or private sale one or more times by announcement at the time and place fixed for the sale, and the sale may be held at any time or place announced at the adjournment. In the case of a sale of all or any portion of the Collateral on credit or for future delivery, the Collateral sold on those terms may be retained by Lender until the purchaser pays the selling price or takes possession of the Collateral. Lender has no liability to Borrower if a purchaser fails to pay for or take possession of Collateral sold on those terms, and in the case of any such failure, Lender may sell the Collateral again upon notice complying with this Section.

(9) Instead of or in conjunction with exercising the power of sale authorized by Section 10.2(c)(8), Lender may proceed by suit at law or in equity to collect all amounts due on the Collateral, or to foreclose Lender's Lien on and sell all or any portion of the Collateral pursuant to a judgment or decree of a court of competent jurisdiction.

(10) Proceed against Borrower on the Structured Facility Note or against the Guarantor under the Guaranty.

(11) Retain all excess proceeds from the sale or other disposition of the Collateral, and apply them to the payment of the Obligations under Section 10.3.

10.2 (d) Lender will incur no liability as a result of the commercially reasonable sale or other disposition of all or any portion of the Collateral at any public or private sale or other disposition. Borrower waives (to the extent permitted by law) any claims it may have against Lender arising by reason of the fact that the price at which the Collateral may have been sold at a private sale was less than the price that Lender might have

obtained at a public sale, or was less than the aggregate amount of the outstanding Structured Facility Advances, accrued and unpaid interest on those Structured Facility Advances, and unpaid fees, even if Lender accepts the first offer received and does not offer the Collateral to more than one offeree. Borrower agrees that any sale of Collateral under the terms of a Purchase Commitment, or any other disposition of Collateral arranged by Borrower, whether before or after the occurrence of an Event of Default, will be deemed to have been made in a commercially reasonable manner.

10.2 (e) Borrower specifically waives and releases (to the extent permitted by law) any equity or right of redemption, stay or appraisal that Borrower has or may have under any rule of law or statute now existing or adopted after the date of this Agreement, and any right to require

Lender to (1) proceed against any Person, (2) proceed against or exhaust any of the Collateral or pursue its rights and remedies against the Collateral in any particular order, or (3) pursue any other remedy within its power. Lender is not required to take any action to preserve any rights of Borrower against holders of mortgages having priority to the Lien of any Mortgage or Security Agreement included in the Collateral or to preserve Borrower's rights against other prior parties.

10.2 (f) Lender may, but is not obligated to, advance any sums or do any act or thing necessary to uphold or enforce the Lien and priority of, or the security intended to be afforded by, any Mortgage or Security Agreement included in the Collateral, including payment of delinquent taxes or assessments and insurance premiums. All advances, charges, costs and expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Lender in exercising any right, power or remedy conferred by this Agreement, or in the enforcement of this Agreement, together with interest on those amounts at the Default Rate, from the time paid by Lender until repaid by Borrower, are deemed to be principal outstanding under this Agreement and the Structured Facility Note.

10.2 (g) No failure or delay on the part of Lender to exercise any right, power or remedy provided in this Agreement or under any other Loan Document, at law or in equity, will operate as a waiver of that right, power or remedy. No single or partial exercise by Lender of any right, power or remedy provided under this Agreement or any other Loan Document, at law or in equity, precludes any other or further exercise of that right, power, or remedy by Lender, or Lender's exercise of any other right, power or remedy. Without limiting the foregoing, Borrower waives all defenses based on the statute of limitations to the extent permitted by law. The remedies provided in this Agreement and the other Loan Documents are cumulative and are not exclusive of any remedies provided at law or in equity.

10.2 (h) Borrower grants Lender a license or other right to use, without charge, Borrower's computer programs, other programs, labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in advertising for sale and selling any of the Collateral and Borrower's rights under all licenses and all other agreements related to the foregoing inure to Lender's benefit until the Obligations are paid in full.

10.3. APPLICATION OF PROCEEDS

Lender may apply the proceeds of any sale, disposition or other enforcement of Lender's Lien on all or any portion of the Collateral to the payment of the Obligations in the order Lender determines in its sole discretion. From and after the indefeasible payment to Lender of all of the Obligations, any remaining proceeds of the Collateral will be paid to Borrower, or to its successors or assigns, or as a court of competent jurisdiction may direct. If the proceeds of any

sale, disposition or other enforcement of the Collateral are insufficient to cover the costs and expenses of that sale, disposition or other enforcement and payment in full of all Obligations, Borrower is liable for the deficiency.

10.4. LENDER APPOINTED ATTORNEY-IN-FACT

Borrower appoints Lender its attorney-in-fact, with full power of substitution, for the purpose of carrying out the provisions of this Agreement, the Structured Facility Note and the other Loan Documents and taking any action and executing any instruments that Lender deems necessary or advisable to accomplish that purpose. Borrower's appointment of Lender as attorney-in-fact is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, Lender may give notice of its Lien on the Collateral to any Person, either in Borrower's name or in its own name, endorse all Pledged Investments or Pledged

Securities payable to the order of Borrower, change or cause to be changed the book-entry registration or name of subscriber or Investor on any Pledged Security, prepare and submit for filing Uniform Commercial Code amendment statements with respect to any Uniform Commercial Code financing statements filed in connection with any item of Collateral or receive, endorse and collect all checks made payable to the order of Borrower representing payment on account of the principal of or interest on, or the proceeds of sale of, any of the Pledged Investments or Pledged Securities and give full discharge for those transactions. Lender agrees not to exercise the foregoing power of attorney except after the occurrence and during the continuance of an Event of Default.

10.5. RIGHT OF SET-OFF

If Borrower defaults in the payment of any Obligation, Lender may, without Notice to or demand on Borrower (which Notice or demand Borrower expressly waives), set-off, appropriate or apply any indebtedness at any time owed by Lender to or for the account of Borrower, against the Obligations, whether or not those Obligations have matured.

END OF ARTICLE 10

MISCELLANEOUS

11.1. NOTICES

Except where telephonic or facsimile notice is expressly authorized by this Agreement, all communications required or permitted to be given or made under this Agreement ("Notices") must be in writing and must be sent by manual delivery, facsimile, overnight courier or United States mail (postage prepaid), addressed as follows (or at such other address as may be designated by it in a Notice to the other):

If to Borrower:	Arbor Realty Limited Partnership c/o Arbor Commercial Mortgage, LLC 333 Earle Ovington Boulevard, Suite 900 Uniondale, NY 11553-3617 Attention: Frederick Herbst, CFO and John Natalone, Treasurer Facsimile: (516) 832-6409
If to Lender:	Residential Funding Corporation 7501 Wisconsin Avenue Bethesda, MD 20814 Attention: Chuck Schweitzer, Director Facsimile: 301-215-7212

All periods of Notice will be measured from the date of delivery if delivered manually or by facsimile, from the first Business Day after the date of sending if sent by overnight courier or from 4 days after the date of mailing if sent by United States mail, except that Notices to Lender under Article 2 and Section 3.3 (e) shall be deemed to have been given only when actually received by Lender. Borrower authorizes Lender to accept Borrower's Structured Facility Advance Requests, shipping requests, wire transfer instructions and security delivery instructions transmitted to Lender by facsimile and those documents, when transmitted to Lender by facsimile have the same force and effect as the originals.

11.2. REIMBURSEMENT OF EXPENSES; INDEMNITY

Borrower must: (a) pay Lender a document production fee in connection with the preparation and negotiation of this Agreement; (b) pay such additional documentation production fees as Lender may require and all out-of-pocket costs and expenses of Lender, including reasonable fees, service charges and disbursements of counsel to Lender (including allocated costs of internal counsel), in connection with the amendment, enforcement and administration of this Agreement, the Structured Facility Note, and other Loan Documents, the making, repayment and payment of interest on the Structured Facility Advances and the payment of all other Obligations under Loan Documents; (c) indemnify, pay, and hold harmless Lender and any other holder of the Structured Facility Note from and against, all present and future stamp, documentary and other similar taxes with respect to the foregoing matters and save Lender and any other holder of the Structured Facility Note harmless from and against all liabilities with respect to or resulting from any delay or omission to pay such taxes; and (d) indemnify, pay and hold harmless Lender and all of its Affiliates, officers, directors, employees or agents and any subsequent holder of the Structured Facility Note (collectively called the "Indemnitees") from and against all liabilities, obligations, losses, damages, penalties, judgments, suits, costs, expenses and disbursements of every kind or nature (including the reasonable fees and disbursements of counsel to the Indemnitees (including allocated costs of internal counsel) in connection with any investigative, administrative

or judicial proceeding, whether or not the Indemnitees have been designated as parties to such proceeding) that may be imposed upon, incurred by or asserted against such Indemnitees in any manner relating to or arising out of this Agreement, the Structured Facility Note, or any other Loan Document or any of the transactions contemplated by this Agreement, the Structured Facility Note and the other Loan Documents, including against all liabilities, obligations, losses, damages, penalties, judgments, suits, costs, expenses and disbursements of every kind or nature (including the reasonable fees and disbursements of counsel to the Indemnitees (including allocated costs of internal counsel) in connection with any investigative, administrative or judicial proceeding, whether or not the Indemnitees have been designated as parties to such proceeding) arising from any breach of Sections 9.1(p) and 9.2(k) or the making of any Mortgage Loan in which any mortgagor, guarantor or other obligor is a Person named in any Restriction List and to whom the provision of financial services is prohibited or otherwise restricted by applicable law ("Indemnified Liabilities"), except that Borrower has no obligation under this Agreement with respect to Indemnified Liabilities arising from the gross negligence or willful misconduct of any such Indemnitees. To the extent that the undertaking to indemnify, pay and hold harmless as set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, Borrower must contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. The agreement of Borrower contained in this Article survives the expiration or termination of this Agreement and the payment in full of the Structured Facility Note. Attorneys' fees and disbursements incurred in enforcing, or on appeal from, a judgment under this Agreement are recoverable separately from and in addition to any other amount included in such judgment, and this clause is intended to be severable from the other provisions of this Agreement and to survive and not be merged into such judgment.

11.3. FINANCIAL INFORMATION

All financial statements and reports furnished to Lender under this Agreement must be prepared in accordance with GAAP, applied on a basis consistent with that applied in preparing the financial statements as at the end of and for Borrower's most recent fiscal year (except to the extent otherwise required to conform to good accounting practice).

11.4. TERMS BINDING UPON SUCCESSORS; SURVIVAL OF REPRESENTATIONS

The terms and provisions of this Agreement are binding upon and inure to the benefit of Borrower, Lender and their respective successors and assigns. All of Borrower's representations, warranties, covenants and agreements survive the making of any Structured Facility Advance, and except where a longer period is set forth in this Agreement, remain effective for as long as the Structured Facility Commitment is outstanding or there remain any Obligations to be paid or performed.

11.5. ASSIGNMENTS AND PARTICIPATIONS

This Agreement and the Obligations of Borrower may not be assigned by Borrower. Lender may, subject to the limitations set forth below, assign or transfer, in whole or in part, any Structured Facility Advances, together with its corresponding rights under this Agreement and the other Loan Documents, and further may sell participations in all or any part of any Structured Facility Advances or any other interest in the Obligations or any of its obligations under this Agreement to another Person. The rights of any such assignee or participant against Lender in respect of such assignment or participation are those set forth in the agreement executed by that Lender in favor of the assignee or participant relating thereto, but such assignee or participant shall not become a party to this Agreement. Lender shall remain solely responsible to Borrower for the performance of its obligations under the Loan Documents. Lender shall retain all voting rights with respect to the Structured Facility Note, the Structured Facility Advances hereunder and the Structured

Facility Commitment. Borrower shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations under the Loan Documents. Notwithstanding the foregoing, nothing contained herein shall in any manner or to any extent affect the right of Lender to assign its Structured Facility Note and its right to receive and retain payments on its Structured Facility Note provided Lender remains primarily and directly liable pursuant to the terms and conditions of this Agreement to keep, observe and perform all of its obligations under this Agreement. Lender may furnish any information concerning Borrower in its possession from time to time to Affiliates and to assignees and participants (including prospective assignees and participants) and Borrower hereby consents to the provision of such information. Without limitation of the exclusive right of Lender to collect and enforce such Obligations, Borrower agrees that each disposition will give rise to a debtor-creditor relationship of Borrower to the assignee or participant, and Borrower authorizes each assignee or participant, upon the occurrence of an Event of Default, to proceed directly by right of setoff, banker's lien, or otherwise, against any assets of Borrower which may be in the hands of such assignee or participant.

11.6. AMENDMENTS

Except as otherwise provided in this Agreement, this Agreement may not be amended, modified or supplemented unless the amendment, modification or supplement is set forth in writing signed by both Borrower and Lender.

11.7. GOVERNING LAW

This Agreement and the other Loan Documents are governed by the laws of the State of Minnesota, without reference to its principles of conflicts of laws.

11.8. CONFIDENTIALITY

Lender shall use reasonable efforts to assure that information about Borrower and its operations, affairs and financial condition, not generally disclosed to the public or to trade and other creditors, which is furnished to Lender pursuant to the provisions hereof is used only for the purposes of this Agreement and any other relationship between the Lender and Borrower and not divulged to any Person other than the Lender, its Affiliates and their respective officers, directors, employees and agents, except: (a) to their attorneys and accountants, (b) in connection with the enforcement of the rights of Lender hereunder and under the other Loan Documents or otherwise in connection with applicable litigation, (c) in connection with assignments and participations and the solicitation of prospective assignees and participants referred to in Section 11.5 (provided such assignees, participants and prospecting assignees and participants agree to be bound by this Section 11.8) and (d) as may otherwise be required or requested by any regulatory authority having jurisdiction over Lender or by any applicable law, rule, regulation or judicial process, the opinion of Lender's counsel concerning the making of such disclosure to be binding on the parties hereto.

11.9. RELATIONSHIP OF THE PARTIES

This Agreement provides for the making and repayment of Structured Facility Advances by Lender (in its capacity as a lender) and Borrower (in its capacity as a borrower), for the payment of interest on those Structured Facility Advances and for the payment of certain fees by Borrower to Lender. The relationship between Lender and Borrower is limited to that of creditor and secured party on the part of Lender and of debtor on the part of Borrower. The provisions of this Agreement and the other Loan Documents for compliance with financial covenants and the delivery of financial statements and other operating reports are intended solely for the benefit of Lender to protect its interest as a creditor and secured party. Nothing in this Agreement creates

or may be construed as permitting or obligating Lender to act as a financial or business advisor or consultant to Borrower, as permitting or obligating Lender to control Borrower or to conduct Borrower's operations, as creating any fiduciary obligation on the part of Lender to Borrower, or as creating any joint venture, agency, partnership or other relationship between Lender and Borrower other than as explicitly and specifically stated in the Loan Documents. Borrower acknowledges that it has had the opportunity to obtain the advice of experienced counsel of its own choice in connection with the negotiation and execution of the Loan Documents and to obtain the advice of that counsel with respect to all matters contained in the Loan Documents, including the waivers of jury trial and of punitive, consequential, special or indirect damages contained in Sections 11.17 and 11.18, respectively. Borrower further acknowledges that it is experienced with respect to financial and credit matters and has made its own independent decisions to apply to Lender for credit and to execute and deliver this Agreement.

11.10. SEVERABILITY

If any provision of this Agreement is declared to be illegal or unenforceable in any respect, that provision is null and void and of no force and effect to the extent of the illegality or unenforceability, and does not affect the validity or enforceability of any other provision of the Agreement.

11.11. OPERATIONAL REVIEWS

From time to time upon request, Borrower will permit Lender or its representative access to its premises and records for the purpose of conducting a review of Borrower's general mortgage business methods, policies, and procedures, auditing loan files and reviewing financial operational aspects of Borrower's business.

11.12. CONSENT TO CREDIT REFERENCES

Borrower consents to the disclosure of information regarding Borrower and its Subsidiaries and their relationships with Lender to Persons making credit inquiries to Lender. This consent is revocable by Borrower at any time upon Notice to Lender as provided in Section 11.1.

11.13. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together constitute but one and the same instrument.

11.14. HEADINGS/CAPTIONS

The captions or headings in this Agreement and the other Loan Documents are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Agreement or any other Loan Document.

11.15. ENTIRE AGREEMENT

This Agreement, the Structured Facility Note and the other Loan Documents represent the final agreement among the parties with respect to their subject matter, and may not be contradicted by evidence of prior or contemporaneous oral agreements among the parties. There are no oral agreements among the parties with respect to the subject matter of this Agreement, the Structured Facility Note and the other Loan Documents.

11.16. CONSENT TO JURISDICTION

AT THE OPTION OF LENDER, THIS AGREEMENT, THE STRUCTURED FACILITY NOTE AND THE OTHER LOAN DOCUMENTS MAY BE ENFORCED IN ANY STATE OR FEDERAL COURT WITHIN THE STATE OF MINNESOTA. BORROWER CONSENTS TO THE JURISDICTION AND VENUE OF THOSE COURTS, AND WAIVES ANY OBJECTION TO THE JURISDICTION OR VENUE OF THOSE COURTS, INCLUDING THE OBJECTION THAT VENUE IN THOSE COURTS IS NOT CONVENIENT. ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE COMMENCED AND INSTITUTED BY SERVICE OF PROCESS UPON BORROWER BY FIRST CLASS REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO BORROWER AT ITS ADDRESS LAST KNOWN TO LENDER. BORROWER'S CONSENT AND AGREEMENT UNDER THIS SECTION DOES NOT AFFECT LENDER'S RIGHT TO ACCOMPLISH SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION OR COURT. IN THE EVENT BORROWER COMMENCES ANY ACTION IN ANOTHER JURISDICTION OR VENUE UNDER ANY TORT OR CONTRACT THEORY ARISING DIRECTLY OR INDIRECTLY FROM THE RELATIONSHIP CREATED BY THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, LENDER AT ITS OPTION MAY HAVE THE CASE TRANSFERRED TO A STATE OR FEDERAL COURT WITHIN THE STATE OF MINNESOTA OR, IF A TRANSFER CANNOT BE ACCOMPLISHED UNDER APPLICABLE LAW, MAY HAVE BORROWER'S ACTION DISMISSED WITHOUT PREJUDICE.

11.17. WAIVER OF JURY TRIAL

BORROWER AND LENDER EACH PROMISES AND AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY A JURY, AND FULLY WAIVES ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT NOW EXISTS OR ARISES AFTER THE DATE OF THIS AGREEMENT. THIS WAIVER OF THE RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY, BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS EACH INSTANCE AND EACH ISSUE FOR WHICH THE RIGHT TO TRIAL BY JURY WOULD OTHERWISE APPLY. LENDER AND BORROWER ARE EACH AUTHORIZED AND DIRECTED TO SUBMIT THIS AGREEMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES TO THIS AGREEMENT AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF THE RIGHT TO TRIAL BY JURY. FURTHER, BORROWER AND LENDER EACH CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE OTHER PARTY, INCLUDING THE OTHER PARTY'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, TO ANY OF ITS REPRESENTATIVES OR AGENTS THAT THE OTHER PARTY WILL NOT SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

11.18. WAIVER OF PUNITIVE, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES

BORROWER AND LENDER EACH WAIVES ANY RIGHT IT MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES FROM THE OTHER PARTY AND ANY OF THE OTHER PARTY'S AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY BORROWER AGAINST LENDER OR ANY OF LENDER'S AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS OR BY LENDER AGAINST BORROWER OR ANY OF BORROWER'S AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT. THIS WAIVER OF THE RIGHT TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES IS KNOWINGLY AND VOLUNTARILY GIVEN BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS EACH INSTANCE AND EACH ISSUE FOR

WHICH THE RIGHT TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES WOULD OTHERWISE APPLY. LENDER AND BORROWER ARE EACH AUTHORIZED AND DIRECTED TO SUBMIT THIS AGREEMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES TO THIS AGREEMENT AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF THE RIGHT TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES.

END OF ARTICLE 11

INITIAL ELIGIBLE INVESTMENTS

12.1. ASSIGNMENT AND ASSUMPTION

Prior to the Closing Date, ACM is the owner of the Initial Eligible Investments. ACM has pledged the Initial Eligible Investments to Lender pursuant to the Existing ACM Agreement. Under the Existing ACM Agreement, Lender must consent to any transfer or assignment by ACM of the Initial Eligible Investments. On the Closing Date, ACM desires to transfer and assign all of its right, title and interest in and to the Initial Eligible Investments to Borrower, subject to the indebtedness outstanding against the Initial Eligible Investments under the Existing ACM Agreement (the "Closing Date Asset Transfer"). Borrower desires on the Closing Date to acquire all of ACM's right, title and interest in and to the Initial Eligible Investments, and to assume all of ACM's obligations relating to the Initial Eligible Investments under the Existing ACM Agreement, with all "Structured Facility Advances" and the "Warehousing Advances" against the Vermillion and NHP assets outstanding as of the Closing Date under the Existing ACM Agreement (the "ACM Advances") automatically becoming Structured Facility Advances under this Agreement as of the Closing Date. Subject to the satisfaction of all conditions set forth in Sections 5.1 and 5.2, (i) Lender consents to the Closing Date Asset Transfer, (ii) Lender agrees that all ACM Advances may be assumed by Borrower and will automatically be deemed to be Structured Facility Advances under this Agreement, and (iii) Lender agrees that the outstanding principal balance of "Structured Facility Advances" and the "Warehousing Advances" against the Vermillion and NHP assets under the Existing ACM Agreement will be reduced to zero.

Dated: 7/1/2003
Amended: 7/24/2003

DEFINITIONS

13.1. DEFINED TERMS

Capitalized terms defined below or elsewhere in this Agreement have the following meanings or, as applicable, the meanings given to those terms in Exhibits to this Agreement:

"Accrual Basis" has the meaning set forth in Section 3.1(c).

"ACM" means Arbor Commercial Mortgage, LLC, a New York limited liability company.

"Acquisition Cost" means (a) with respect to any Mortgage Loan or Mezzanine Investment purchased, and not originated, by Borrower, the cash purchase price paid by Borrower to acquire such Mortgage Loan or Mezzanine Investment minus any portion thereof specifically identified as attributable to amounts other than principal payable with respect to such Mortgage Loan or Mezzanine Investment, and (b) with respect to any Multifamily Property acquired in a Property Acquisition, the cash purchase price by Borrower to acquire such Multifamily Property plus related costs, including, without limitation, brokers fees or commissions, title insurance premiums, legal fees and casualty insurance premiums, in an aggregate amount not to exceed 3% of such cash purchase price.

"Advance Rate" means, with respect to any Eligible Investment, the Advance Rate set forth in Exhibit H for that type of Eligible Investment.

"Affiliate" means, when used with reference to any Person, (a) each Person that, directly or indirectly, controls, is controlled by or is under common control with, the Person referred to, (b) each Person that beneficially owns or holds, directly or indirectly, 5% or more of any class of voting Equity Interests of the Person referred to, (c) each Person, 5% or more of the voting Equity Interests of which is beneficially owned or held, directly or indirectly, by the Person referred to, and (d) each of such Person's officers, directors, joint venturers and partners. For these purposes, the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person in question.

"Agreement" means this Structured Facility Warehousing Credit and Security Agreement, either as originally executed or as it may be amended, restated, renewed or replaced.

"Appraised Property Value" means with respect to an interest in real property, the then current fair market value of the real property and any improvements on it as of recent date determined in accordance with Title XI of FIRREA by a qualified appraiser who is a member of the American Institute of Real Estate Appraisers or other group of professional appraisers.

"Approved Custodian" means a pool custodian or other Person that Lender deems acceptable, in its sole discretion, to hold Mortgage Loans for inclusion in a Mortgage Pool or to hold Mortgage Loans as agent for an Investor that has issued a Purchase Commitment for those Mortgage Loans.

"ARLP Member Entity" means a corporation, limited liability company or limited partnership that is a wholly-owned Subsidiary of Borrower and the organizational documents of which provide that such Person (a) was formed or organized solely for the purpose of owning a Preferred Equity Interest, (b) will not engage in any business other than the ownership of that Preferred Equity Interest, (c) will not own any assets other than that Preferred Equity Interest, (d) will not incur any liabilities, other than

(i) liabilities to the entity in which it holds such Preferred Equity Interest, (ii) under the Loan Documents, and (iii) incidental liabilities relating to its legal status, (e) will maintain its own books, records and accounts separate and apart from those of any other Person, and (f) will hold itself out as being a legal entity separate and distinct from any other Person.

"Audited Statement Date" means the date of Borrower's most recent audited financial statements (and, if applicable, Borrower's Subsidiaries, on a consolidated basis) delivered to Lender under this Agreement.

"Balance Funded Portion" has the meaning set forth in Section 3.1(b).

"Balance Funded Rate" means, for any Structured Facility Advance, the Balance Funded Rate specified for that Advance in Exhibit H.

"Balance Funding Credit" has the meaning set forth in Section 3.1(b).

"Bank One" means Bank One, National Association, or any successor bank.

"Bank One Prime Rate" means, as of any date of determination, the highest prime rate quoted by Bank One and most recently published by Bloomberg L.P. If the prime rate for Bank One is not quoted or published for any period, then during that period the term "Bank One Prime Rate" means the highest prime rate published in the most recent edition of The Wall Street Journal in its regular column entitled "Money Rates."

"Borrower" has the meaning set forth in the first paragraph of this Agreement.

"Bridge Mortgage Loan" has the meaning set forth in Exhibit H.

"Business Day" means any day other than Saturday, Sunday or any other day on which national banking associations are closed for business.

"Buydown" has the meaning set forth in Section 3.4.

"Calendar Quarter" means the 3 month period beginning on each January 1, April 1, July 1 or October 1.

"Cash Collateral Account" means a demand deposit account maintained at the Funding Bank in Lender's name and designated for receipt of the proceeds of the sale or other disposition of Collateral.

"Closing Date" has the meaning set forth in the Recitals to this Agreement.

"Collateral" has the meaning set forth in Section 4.1.

"Collateral Documents" means, with respect to each Pledged Asset, the documents required to be delivered to Lender pursuant to the applicable Exhibit B for the type of Pledged Asset.

"Collateral Value" means (a) with respect to any Eligible Investment as of the date of determination, the lesser of (i) the amount of any Structured Facility Advance made against such Eligible Investment under Section 2.1 hereof or (ii) the Fair Market Value of such Eligible Investment, and (b) with respect to cash, the amount of such cash.

"Commercial Mortgage Loan" means a Mortgage Loan, other than a Bridge Mortgage Loan, secured by a Mortgage on Commercial Property.

"Commercial Property" means improved commercial real property that is, or will following rehabilitation be, an income-producing property, but is not a Multifamily Property or a Health Care Facility.

"Debt" means (a) all indebtedness or other obligations of a Person that, in accordance with GAAP, would be included in determining total liabilities as shown on the liabilities side of a balance sheet of the Person on the date of determination, plus (b) without duplication, all indebtedness or other obligations of the Person for borrowed money or for the deferred purchase price of property or services. For purposes of calculating a Person's Debt, Subordinated Debt not due within 1 year of that date and all deferred taxes arising from capitalized excess servicing fees and capitalized servicing rights may be excluded from a Person's indebtedness.

"Default" means the occurrence of any event or existence of any condition that, but for the giving of Notice or the lapse of time, would constitute an Event of Default.

"Default Rate" means, for any Structured Facility Advance, the Interest Rate applicable to that Structured Advance plus 4% per annum. If no Interest Rate is applicable to a Structured Facility Advance, "Default Rate" means, for that Structured Facility Advance, the highest Interest Rate then applicable to any outstanding Structured Facility Advance plus 4% per annum.

"Depository Benefit" means the compensation received by Lender, directly or indirectly, as a result of Borrower's maintenance of Eligible Balances with a Designated Bank.

"Designated Bank" means any bank designated by Lender as a Designated Bank, but only for as long as Lender has an agreement under which Lender receives Depository Benefits from that bank.

"Designated Bank Charges" means any fees, interest or other charges that would otherwise be payable to a Designated Bank in connection with Eligible Balances maintained at the Designated Bank, including deposit insurance premiums, service charges and any other charges that may be imposed by governmental authorities from time to time.

"Earnings Allowance" has the meaning set forth in Section 3.1(b).

"Earnings Credit" has the meaning set forth in Section 3.1(b).

"Eligible Balances" means all funds of or maintained by Borrower and its Subsidiaries and Affiliates in demand deposit or time deposit accounts at a Designated Bank, minus balances to support float, reserve requirements and any other reductions that may be imposed by governmental authorities from time to time.

"Eligible Investment" means an Eligible Mortgage Investment or Multifamily Property acquired in a Property Acquisition that satisfies the conditions and requirements set forth in Exhibit H.

"Eligible Mortgage Investment" means a Mortgage Loan or Mezzanine Investment which, unless otherwise agreed by the Lender in its sole and absolute discretion, satisfies each of the following conditions:

(a) if it is a Mortgage Loan, as to which:

(1) the Mortgage Note is payable or endorsed to the order of Borrower;

(2) each of the Mortgage Note and Mortgage is a legal, valid and binding obligation of the Mortgagor;

(3) the Mortgage Note is an "instrument" within the meaning of Article 9 of the Uniform Commercial Code of all applicable jurisdictions; and

(4) the Mortgage Note is denominated and payable only in United States dollars;

(b) if it is a Mezzanine Investment other than a Mortgage Loan, as to which:

(1) it is freely assignable;

(2) it is not subject to registration under any federal or applicable state securities law;

(3) Lender may obtain and perfect a security interest therein in accordance with the Uniform Commercial Code of all applicable jurisdictions;

(4) it is either an obligation or a Preferred Equity Interest denominated and payable only in United States dollars; and

(5) Lender may, without further consent of Borrower, any Subsidiary or any other Person, exercise its remedies under Section 10 of this Agreement and the Uniform Commercial Code with respect thereto;

(c) Borrower or (in the case of a Preferred Equity Interest) a Special Purpose Entity owns such Mortgage Loan or Mezzanine Investment free and clear of any Lien (other than the Lien created hereunder);

(d) neither such Mortgage Loan or Mezzanine Investment nor the related Collateral Documents contravene in any material respect any law, rule or regulation applicable thereto (including, without limitation, all laws, rules and regulations relating to usury) if any such contravention would impair the collectibility of such Mortgage Loan or Mezzanine Investment, and no party to the related Collateral Documents is in violation of any such law, rule or regulation (or procedures prescribed thereby) in any material respect if such violation would impair the collectibility of such Mortgage Loan or Mezzanine Investment or the performance by Borrower, any Subsidiary, or any obligor of its obligations with respect thereto;

(e) the Mortgage Loan or Mezzanine Investment is not subject to any rights of setoff, counterclaim or defense in favor of the Mortgagor or any other obligor thereon;

(f) such Mortgage Loan or Mezzanine Investment is not a Fraudulent Loan and complies with all representations and warranties set forth herein with respect thereto;

(g) such Mortgage Loan or Mezzanine Investment is a loan or

Preferred Equity Interest as to which Borrower has conducted its customary due diligence and review, including, without limitation, review of the financial condition of the Mortgagor and inspection of the improved real property subject to the Mortgage or otherwise backing such Mezzanine Investment, directly or indirectly; and

(h) such Mortgage Loan or Mezzanine Investment has been underwritten in accordance with the Underwriting Guidelines.

"Equity Interests" means all shares, interests, participations or other equivalents, however, designated, of or in a Person (other than a natural person), whether or not voting, including common stock, membership interests, warrants, preferred stock, convertible debentures and all agreements, instruments and documents convertible, in whole or in part, into any one or more of the foregoing.

"Event of Default" means any of the conditions or events set forth in Section 10.1.

"Exhibit A" means Exhibit A-PA, Exhibit A-MF/MEZ, Exhibit A-MF/APP or Exhibit A-MF, as applicable to the type of Eligible Investment against which a Structured Facility Advance is to be made.

"Exhibit B" means Exhibit B-MF/NA, Exhibit B-MF/MEZ, Exhibit B-MF/BR, Exhibit B-MF/PEI or Exhibit B-MF/PA, as applicable to the type of Eligible Investment against which a Structured Facility Advance is to be made.

"Existing ACM Agreement" means, collectively, (i) the First Amended And Restated Warehousing Credit, Term Loan And Security Agreement (Structured Facility And Servicing Secured Facility) dated as of April 1, 2003, between ACM and Lender, and (ii) the Third Amended and Restated Warehousing Credit and Security Agreement (Commercial Mortgage Loans and Multifamily Mortgage Loans) (Syndicated Agreement) dated as of April 1, 2003, between ACM, the lenders named therein, and Lender, as credit agent.

"Exit Fee" has the meaning in Section 3.5(b).

"Fair Market Value" means, at any time for an Eligible Mortgage Investment, the market price for such Eligible Mortgage Investment, determined by Lender based on market data for similar Mortgage Loans or Mezzanine Investments and such other criteria as Lender deems appropriate in its sole discretion.

"Fannie Mae" means Fannie Mae, a corporation created under the laws of the United States, and any successor corporation or other entity.

"FHA" means the Federal Housing Administration and any successor agency or other entity.

"FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and all rules and regulations promulgated under that statute, as amended, and any successor statute, rules, and regulations.

"First Mortgage" means a Mortgage that constitutes a first Lien on the real property and improvements described in or covered by that Mortgage.

"First Mortgage Loan" means a Mortgage Loan secured by a First Mortgage.

"Fraudulent Loan" means any Mortgage Loan (a) originated based on any material untrue, incomplete or inaccurate information, whether or not Borrower had knowledge of such misrepresentation or inaccurate information, or (b) that, for any reason, including, without limitation, any fraudulent activity on the part of the mortgagor or Borrower, does not constitute the legal, valid and binding obligation of the mortgagor or other obligor with respect to such Mortgage Loan, enforceable against such mortgagor or other obligor in accordance with its terms.

"Freddie Mac" means Freddie Mac, a corporation created under the laws of the

United States, and any successor corporation or other entity.

"Funding Bank" means Bank One or any other bank designated by Lender as a Funding Bank.

"Funding Bank Agreement" means a letter agreement on the form prescribed by Lender between the Funding Bank and Borrower authorizing Lender's access to the Operating Account.

"GAAP" means generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and in statements and pronouncements of the Financial Accounting Standards Board, or in opinions, statements or pronouncements of any other entity approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

"General Partner" means Arbor Realty GPOP, Inc., a Delaware corporation, and a wholly-owned Subsidiary of Guarantor.

"Ginnie Mae" means the Government National Mortgage Association, an agency of the United States government, and any successor agency or other entity.

"Guarantor" means, individually and collectively, Arbor Realty Trust, Inc., a Maryland corporation, and any other Person that after the date of this Agreement guarantees all or any portion of Borrower's Obligations.

"Guaranty" means a guaranty of all or any portion of Borrower's Obligations. If more than one Guaranty is executed and delivered to Lender, the term "Guaranty" means each of the Guaranties and all of them.

"Health Care Facility" means a retirement service center, a board and care facility, an intermediate care facility, a nursing home or a hospital.

"Hedging Arrangements" means, with respect to any Person, any agreements or other arrangements (including interest rate swap agreements, interest rate cap agreements and forward sale agreements) entered into to protect that Person against changes in interest rates or the market value of assets.

"HUD" means the Department of Housing and Urban Development, and any successor agency or other entity.

"Indemnified Liabilities" has the meaning set forth in Section 11.2.

"Indemnitees" has the meaning set forth in Section 11.2.

"Index Rate" means, for any Structured Facility Advance other than a Structured Facility Advance for which a fixed floor interest rate is specified in Exhibit H, the Interest Rate specified for that Structured Facility Advance in Exhibit H. For Structured Facility Advances for which the fixed floor interest rate is specified in Exhibit H, Index Rate means LIBOR plus the applicable margin set forth in Exhibit H or Section 3.1(b), as applicable.

"Initial Eligible Investments" means the Eligible Investments acquired from ACM on the Closing Date, as described on Schedule 1 attached to this Agreement.

"Interest Rate" means the floating rate of interest specified in Exhibit H.

"Interim Statement Date" means the date of the most recent unaudited financial statements of Borrower (and, if applicable, Borrower's Subsidiaries, on a consolidated basis) delivered to Lender under this Agreement.

"Internal Revenue Code" means the Internal Revenue Code of 1986, Title 26 of the United States Code, and all rules, regulations and interpretations issued under those statutory provisions, as amended, and any subsequent or successor federal income tax law or laws, rules, regulations and interpretations.

"Investor" means Fannie Mae, Freddie Mac or a financially responsible private institution that Lender deems acceptable, in its sole discretion, to issue Purchase Commitments with respect to a particular category of Eligible Investments.

"Lender" has the meaning set forth in the first paragraph of this Agreement.

"Leverage Ratio" means the ratio of a Person's (and, if applicable, the Person's Subsidiaries, on a consolidated basis) Debt to Modified Net Worth. For purposes of calculating a Person's Leverage Ratio, Debt arising under Hedging Arrangements, to the extent of assets arising under those Hedging Arrangements, may be excluded from a Person's Debt.

"LIBOR" means, for each week, the rate of interest per annum that is equal to the arithmetic mean of the U.S. Dollar London Interbank Offered Rates for 1 month periods of certain U.S. banks as of 11:00 a.m. (London time) on the first Business Day of each month on which the London Interbank market is open, as published by Bloomberg L.P. If those interest rates are not offered or published for any period, then during that period LIBOR means the London Interbank Offered Rate for 1 month periods as published in The Wall Street Journal in its regular column entitled "Money Rates" on the first Business Day of each month on which the London Interbank market is open.

"Lien" means any lien, mortgage, deed of trust, pledge, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature of such an agreement and any agreement to give any security interest).

"Liquid Assets" means the following assets owned by a Person as of any date of determination: (a) 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; (b) 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 (c) the amount available to be borrowed under committed working capital or other similar facilities with respect to which all conditions to borrowing have been satisfied.

"Loan Documents" means this Agreement, the Structured Facility Note, the Guaranty, any agreement of Borrower relating to Subordinated Debt, any Security Agreement, if applicable, and each other document, instrument or agreement executed by Borrower in connection with any of those documents, instruments and agreements, as originally executed or as any of the same may be amended, restated, renewed or replaced.

"Management Agreement" means the Management and Advisory Agreement dated July 1, 2003 among Guarantor, Borrower and ACM pursuant to which ACM will provide certain management and advisory services to Borrower and Guarantor.

"Mezzanine Investment" has the meaning set forth in Exhibit H.

"Mezzanine Investment Amount" means, as of the date of determination, (a) in the case of a loan, the then outstanding unpaid principal amount of a Mezzanine Note (whether or not an additional amount is available to be drawn thereunder), and (b) in the case of a Preferred Equity Interest, the amount of the liquidation priority thereof (without giving effect to any accrual of preferred return amounts thereon) or, if less, the minimum amount payable thereon before capital may be returned on any other equity interest in the Borrower.

"Mezzanine Note" means a promissory note evidencing a Mezzanine Investment which is a loan (whether or not such promissory note is a Mortgage Note).

"Miscellaneous Fees and Charges" means the miscellaneous fees set forth on Lender's fee schedule attached as Exhibit I and all miscellaneous disbursements, charges and expenses incurred by or on behalf of Lender for the handling and administration of Structured Facility Advances and Collateral, including costs for Uniform Commercial Code, tax lien and judgment searches conducted by Lender, filing fees, charges for wire transfers and check processing charges, charges for security delivery fees, charges for overnight delivery of Collateral to Investors, recording fees, Funding Bank service fees and overdraft charges and Designated Bank Charges. Upon not less than 3 Business Days' prior Notice to Borrower, Lender may modify Exhibit I and the fees set forth in it to conform to current Lender practices and, as so modified, the revised Exhibit I will become part of this Agreement.

"Modified Net Worth" means the excess of a Person's (and, if applicable, the Person's Subsidiaries, on a consolidated basis) total assets over total liabilities as of the date of determination, each determined in accordance with GAAP applied in a manner consistent with the financial statements referred to in Section 6.6, plus that portion of Subordinated Debt not due within 1 year of that date. For purposes of calculating a Person's Modified Net Worth, the following shall be excluded from total assets: (a) advances or loans to managers, members, employees or Affiliates (other than joint ventures), (b) investments in Affiliates (other than joint ventures), (c) 25% of the amount of Borrower's loans (including Mortgage Loans) and advances to and investments in joint ventures, (d) assets pledged to secure any liabilities not included in the Debt of the Person, and (e) intangible assets.

"Mortgage" means a mortgage or deed of trust on real property that is improved and substantially completed.

"Mortgage-backed Securities" means securities that are secured or otherwise backed by Mortgage Loans.

"Mortgage Loan" means any loan evidenced by a Mortgage Note and secured by a Mortgage and, if applicable, a Security Agreement.

"Mortgage Note" means a promissory note secured by one or more Mortgages and, if applicable, one or more Security Agreements.

"Mortgage Note Amount" means, as of any date of determination, the then outstanding and unpaid principal amount of a Mortgage Note (whether or not an additional amount is available to be drawn under that Mortgage Note).

"Mortgage Pool" means a pool of one or more Mortgage Loans on the basis of which a Mortgage-backed Security is to be issued.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA, to which either Borrower or any ERISA Affiliate of Borrower has any obligation with respect to its employees.

"Multifamily Mortgage Loan" means a Mortgage Loan secured by a Multifamily Property.

"Multifamily Property" means real property that contains or that will contain more than 4 dwelling units.

"Net Profit" means, with respect to any Mortgage Loan or Mezzanine Investment pledged hereunder to secure a Structured Facility Advance, an amount calculated as follows:

NP=[II+OP+(or-)EP+MF] - [IE+CF+AF+EF],

where "NP" means Net Profit, "II" means the aggregate amount of interest, distributions or other income payments (excluding principal, if any) paid to or otherwise received by Borrower pursuant to such Mortgage Loan or Mezzanine Investment, "OP" means the points paid to Borrower (or to Borrower's correspondent and passed through to Borrower) upon the origination or acquisition of such Mortgage Loan or Mezzanine Investment, "EP" means the amount of points or fees paid to Borrower upon the repayment of such Mortgage Loan or Mezzanine Investment or the gain (or loss) realized by Borrower upon the sale or other disposition of such Mortgage Loan or Mezzanine Investment, including the amount of any gain or loss realized by Borrower in connection with the sale, other disposition, redemption or other retirement of any equity interest acquired by Borrower as additional compensation in connection with such Mortgage Loan or Mezzanine Investment, "MF" means the amount of miscellaneous fees (but not expense reimbursements or application fees) received by Borrower in connection with such Mortgage Loan or Mezzanine Investment, "IE" means the amount of interest paid, or accrued and not yet paid, on the related Structured Facility Advance, "CF" means the Structured Facility Commitment Fee paid to the Lender at the time of such Structured Facility Advance, "AF" means the lesser of OP or 1% of the Mortgage Note Amount or Mezzanine Investment Amount of such Mortgage Loan or Mezzanine Investment at the time of its origination or acquisition by Borrower, and "EF" means the Exit Fee, if any, payable to the Lender, and any extension fee paid to the Lender, in connection with the permanent Multifamily Mortgage Loan or Commercial Mortgage Loan that refinances such Mortgage Loan or Mezzanine Investment.

"Note Acquisition" means the acquisition by Borrower of one or more Multifamily Mortgage Loans from a Person who is not an Affiliate, which may occur more than 30 days after the closing of such Multifamily Mortgage Loan(s).

"Note Acquisition Loans" has the meaning set forth in Exhibit H.

"Notices" has the meaning set forth in Section 11.1.

"Obligations" means all indebtedness, obligations and liabilities of Borrower to Lender (whether now existing or arising after the date of this Agreement, voluntary or involuntary, joint or several, direct or indirect, absolute or contingent, liquidated or unliquidated, or decreased or extinguished and later increased and however created or incurred), including Borrower's obligations and liabilities to Lender under the Loan Documents and disbursements made by Lender for Borrower's account.

"Operating Account" means a demand deposit account maintained at the Funding Bank in Borrower's name and designated for funding that portion of each Eligible Investment not funded by a Structured Facility Advance made against that Eligible Investment and for returning any excess payment from an Investor for a Pledged Investment or Pledged Security.

"Overdraft Advance" has the meaning set forth in Section 3.7.

"Parent SPE" means a Special Purpose Entity that owns all of the outstanding equity interests in a Property SPE and no other assets.

"Person" means and includes natural persons, corporations, limited liability companies, limited liability partnerships, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions of those governments.

"Plan" means each employee benefit plan (whether in existence on the date of this Agreement or established after that date), as that term is defined in Section 3 of ERISA, maintained for the benefit of directors, officers or employees of Borrower or any ERISA Affiliate.

"Pledged Assets" means, collectively, Pledged Investments, and Pledged Securities, Multifamily Properties acquired in a Property Acquisition financed by a Structured Facility Advance, and Preferred Equity Interests pledged to Lender by an ARLP Member Entity.

"Pledged Hedging Accounts" has the meaning set forth in Section 4.1 (h).

"Pledged Hedging Arrangements" has the meaning set forth in Section 4.1 (h).

"Pledged Investments" has the meaning set forth in Section 4.1 (b).

"Pledged Securities" has the meaning set forth in Section 4.1 (c).

"Pledged Shares" has the meaning set forth in Section 4.1(f) hereof.

"Portfolio Performance Ratio" means, at any date of determination for all assets owned by Borrower during any month, the ratio of (a) the aggregate amount of all interest income and preferred equity return actually received by Borrower in such month, to (b) the aggregate amount of all interest expense and fees (in the case of financing agreements) and equivalent monthly amounts (in the case of repurchase agreements) payable by Borrower in such month pursuant to any of Borrower's financing or repurchase agreements.

"Preferred Equity Interests" means shares of the capital stock of a corporation, membership interests in a limited liability company or limited partnership interests in a limited partnership that (a) have a specific liquidation preference amount, denominated in United States dollars, with priority over any other equity interests in the issuer thereof, (b) are entitled to a preferred return of capital in a specific amount, denominated in United States dollars, before any capital may be returned on any other equity interests in the issuer thereof, and (c) are entitled, in the event of any non-payment of preferred dividends or other distributions in accordance with the terms thereof, to exercise voting control over such corporation, limited liability company or limited partnership.

"Prohibited Transaction" has the meanings set forth for such term in Section 4975 of the Internal Revenue Code and Section 406 of ERISA.

"Property" means a Multifamily Property or Health Care Facility securing a Mortgage Loan.

"Property Acquisition" has the meaning set forth in Exhibit H.

"Property Mortgage" means a First Mortgage covering Multifamily Property acquired by Borrower in a Property Acquisition which has been executed and delivered by Borrower, as trustor or mortgagor, for the benefit of Lender, in appropriate recordable form in the relevant jurisdiction acceptable to Lender.

"Property SPE" means a Special Purpose Entity that owns a Multifamily Property.

"Property Subsidiary" means a corporation, limited liability company or other business entity that is a wholly-owned Subsidiary of Borrower and the organizational documents of which provide that such Person (i) was formed or organized solely for the purpose of owning Multifamily Properties acquired in Property Acquisitions, (ii) will not engage in any business other than the ownership of such Multifamily Properties, (iii) will not own any assets other than those related to such Multifamily Properties, (iv) will not incur any Debt, except liabilities incidental to its legal status, (v) will maintain its own books, records and accounts separate and apart from those of any other Person, and (vi) will hold itself out as being a legal entity separate and distinct from any other Person.

"Purchase Commitment" means a written commitment, in form and substance satisfactory to Lender, issued in favor of Borrower by an Investor under which that Investor commits to purchase Eligible Mortgage Investments or Mortgage-backed Securities.

"Refinancing Loan" means a permanent Commercial Mortgage Loan, Multifamily Mortgage Loan or other financing originated by Borrower to refinance one or more Pledged Investments.

"Release Amount" has the meaning set forth in Section 4.3(f).

"Remainder" has the meaning set forth in Section 3.1(b).

"Restriction List" and "Restriction Lists" means each and every list of Persons to whom the Government of the United States prohibits or otherwise restricts the provision of financial services. For the purposes of this Agreement, Restriction

Lists include the list of Specifically Designated Nationals and Blocked Persons established pursuant to Executive Order 13224 (September 23, 2001) and maintained by the Office of Foreign Assets Control, U.S. Department of the Treasury, current as of the day the Restriction List is used for purposes of comparison in accordance with the requirements of this Agreement.

"Security Agreement" means a security agreement or other agreement that creates a Lien on personal property, including furniture, fixtures and equipment, to secure repayment of a Mortgage Loan.

"Servicer" means ACM in its capacity as servicer for Borrower under the Servicing Agreement.

"Servicing Agreement" means the Servicing Agreement dated July 1, 2003 among Guarantor, Borrower and ACM pursuant to which ACM will act as servicer for Borrower and Guarantor.

"Servicing Contract" means, with respect to any Person, the arrangement, whether or not in writing, under which that Person has the right to service Mortgage Loans, including the right to service Mortgage Loans originated by Borrower.

"Servicing Portfolio" means, as to any Person, the unpaid principal balance of Mortgage Loans serviced by that Person under Servicing Contracts, minus the principal balance of all Mortgage Loans that are serviced by that Person for others under subservicing arrangements.

"Special Purpose Entity" means a corporation, limited liability company or limited partnership the organizational documents of which provide that such Person (i) was formed or organized solely for the purpose of owning or operating the Property securing a Multifamily Mortgage Loan or Commercial Mortgage Loan, or the equity interests in another Special Purpose Entity, (ii) will not engage in any business other than the ownership, operating and financing of such Property or equity interests, (iii) will not own any assets other than those related to such Property or equity interests and their financing, (iv) will not incur any liabilities other than a Mezzanine Investment, a First Mortgage Loan (in the case of a Special Purpose Entity that owns a Property) and other liabilities not prohibited thereunder, (v) will maintain its own books, records and accounts separate and apart from those of

any other Person, and (vi) will hold itself out as being a legal entity separate and distinct from any other Person.

"Statement Date" means the Audited Statement Date or the Interim Statement Date, as applicable.

"Structured Facility Advance" means a disbursement by Lender under Section 1.1.

"Structured Facility Advance Request" means a request for a Structured Facility Advance in the form attached hereto as Exhibit A-MF, as modified from time to time.

"Structured Facility Collateral Value" means, as of any date of determination, with respect to any Eligible Investment, the lesser of (a) the amount of any Structured Facility Advance made, or that could be made, against such Eligible Investment under Exhibit H or (b) an amount equal to the Advance Rate for the applicable type of Eligible Investment multiplied by the Fair Market Value of such Eligible Investment.

"Structured Facility Commitment" means the obligation of Lender to make Structured Facility Advances to Borrower under Section 1.1.

"Structured Facility Commitment Amount" means $250,000,000.

"Structured Facility Commitment Fee" has the meaning set forth in Section 3.5(a).

"Structured Facility Commitment Termination Date" has the meaning set forth in Section 1.2.

"Structured Facility Maturity Date" means the date that is nine months after the Structured Facility Commitment Termination Date.

"Structured Facility Note" has the meaning set forth in Section 1.3.

"Sublimit" means the aggregate amount of Structured Facility Advances (expressed as a dollar amount or as a percentage of the Structured Facility Commitment Amount) that is permitted to be outstanding at any one time against a specific type of Eligible Investment.

"Subordinated Debt" means (a) all indebtedness of Borrower for borrowed money that is effectively subordinated in right of payment to all present and future Obligations either (1) under a Subordination of Debt Agreement on the form prescribed by Lender or (2) otherwise on terms acceptable to Lender, and (b) solely for purposes of Section 8.4, all indebtedness of Borrower that is required to be subordinated by Sections 5.1 (b) and 7.9.

"Subsidiary" means any corporation, partnership, association or other business entity in which more than 50% of the shares of stock or other ownership interests having voting power for the election of directors, managers, trustees or other Persons performing similar functions is at the time owned or controlled by any Person either directly or indirectly through one or more Subsidiaries of that Person.

"Third Party Originated Loan" means a Mortgage Loan originated and funded by a third party (other than with funds provided by Borrower at closing to purchase the Mortgage Loan) and subsequently purchased by Borrower.

"Trust Receipt" means a trust receipt in a form approved by and under which Lender may deliver any document relating to the Collateral to Borrower for correction or completion.

"Underwriting Documents" means, with respect to any Bridge Mortgage Loan, Note Acquisition Loan, Mezzanine Investment or Property Acquisition submitted to the Lender pursuant to Section 2.1 hereof, the reports, certificates, documents and other information included in the underwriting package and used by Borrower in evaluating and approving such Eligible Investment or Property Acquisition, including, but not limited to, items listed in Exhibit B.

"Underwriting Guidelines" means Borrower's policies and procedures for underwriting Eligible Mortgage Investments secured or otherwise backed by Multifamily Properties, Health Care Facilities or Commercial Properties, as in effect on the date of this Agreement, a copy of which has been provided to and approved by Lender, as the same may be modified from time to time in accordance with this Agreement.

"Warehouse Period" means, for any Eligible Investment, the maximum number of days a Structured Facility Advance against that type of Eligible Investment may remain outstanding as set forth in Exhibit H.

"Wire Disbursement Account" means a demand deposit account maintained at the Funding Bank in Lender's name for clearing wire transfers requested by Borrower to fund Structured Facility Advances.

13.2. OTHER DEFINITIONAL PROVISIONS; TERMS OF CONSTRUCTION

13.2 (a) Accounting terms not otherwise defined in this Agreement have the meanings given to those terms under GAAP.

13.2 (b) Defined terms may be used in the singular or the plural, as the context requires.

13.2 (c) All references to time of day mean the then applicable time in Chicago, Illinois, unless otherwise expressly provided.

13.2 (d) References to Sections, Exhibits, Schedules and like references are to Sections, Exhibits, Schedules and the like of this Agreement unless otherwise expressly provided.

13.2 (e) The words "include," "includes" and "including" are deemed to be followed by the phrase "without limitation."

13.2 (f) Unless the context in which it is used otherwise clearly requires, the word "or" has the inclusive meaning represented by the phrase "and/or."

13.2 (g) All incorporations by reference of provisions from other agreements are incorporated as if such provisions were fully set forth into this Agreement, and include all necessary definitions and related provisions from those other agreements. All provisions from other agreements incorporated into this Agreement by reference survive any termination of those other agreements until the Obligations of Borrower under this Agreement and the Structured Facility Note are irrevocably paid in full and the Structured Facility Commitment is terminated.

13.2 (h) All references to the Uniform Commercial Code shall be deemed to be references to the Uniform Commercial Code in effect on the date of this Agreement in the applicable jurisdiction.

13.2 (i) Unless the context in which it is used otherwise clearly requires, all references to days, weeks and months mean calendar days, weeks and months.

END OF ARTICLE 12

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first above written.

Arbor Realty Limited Partnership,
a Delaware limited partnership

By: Arbor Realty GPOP, Inc.,
a Delaware corporation
Its: General Partner

By: /s/ Frederick C. Herbst

Its: Chief Financial Officer

RESIDENTIAL FUNDING CORPORATION,
a Delaware Corporation

By:/s/ Chuck Schweitzer

Its: Director

EXHIBIT 10.13

EXECUTION COPY

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U.S. $150,000,000

LOAN PURCHASE AND REPURCHASE AGREEMENT

by and among

ARBOR REALTY FUNDING LLC
as the Seller

WACHOVIA BANK, NATIONAL ASSOCIATION,
as the Purchaser

and

ARBOR REALTY TRUST, INC.,
as the Guarantor

Dated as of December 23, 2003

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SCHEDULES

EXHIBITS

LOAN PURCHASE AND REPURCHASE AGREEMENT

THIS LOAN PURCHASE AND REPURCHASE AGREEMENT (such agreement as amended, modified, waived, supplemented, extended, replaced or restated from time to time, the "Agreement") is made as of this 23rd day of December, 2003, by and among:

(1) ARBOR REALTY FUNDING LLC, a Delaware limited liability company, as the seller (together with its successors and permitted assigns in such capacity, the "Seller");

(2) WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association (together with its successors and assigns, "Wachovia"), as the purchaser (together with its successors and assigns in such capacity, the "Purchaser"); and

(3) ARBOR REALTY TRUST, INC., a Maryland corporation (together with its successors and assigns, "Arbor"), as the guarantor (together with its successors and permitted assigns in such capacity, the "Guarantor").

R E C I T A L S

WHEREAS, the Seller desires to sell and the Purchaser desires to purchase from time to time Eligible Assets under the terms and conditions stated herein; and

WHEREAS, the parties desire that the Seller repurchase the Purchased Assets on or before the Facility Maturity Date under the terms and conditions stated herein.

NOW, THEREFORE, based upon the foregoing Recitals, the mutual premises and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 CERTAIN DEFINED TERMS.

(a) Certain capitalized terms used throughout this Agreement are defined above or in this Article I.

(b) As used in this Agreement and the schedules, exhibits and other attachments hereto, unless the context requires a different meaning, the following terms shall have the following meanings:

"40 Act": Defined in Subsection 10.1(e).

"Accepted Servicing Practices": With respect to any Mortgage Asset, those mortgage servicing practices of prudent mortgage lending institutions that service Mortgage Assets of the same type, size and structure as such Mortgage Asset in the jurisdiction where the related Mortgaged Property is located, but in any event, in accordance with the terms of the Repurchase Documents and without prejudice to the interests of the Purchaser.

"Account Agreement": A letter agreement among the Seller, the Purchaser and Wachovia substantially in the form of Exhibit V attached hereto.

"Accrual Period": With respect to the first Payment Date, the period from and including the applicable Purchase Date to but excluding such first Payment Date, and, with respect to any subsequent Payment Date, the period from and including the previous Payment Date to but excluding such subsequent Payment Date.

"Additional Amount": Defined in Section 2.14.

"Adjusted Eurodollar Rate": For any Eurodollar Period, a rate per annum equal to a fraction, expressed as a percentage and rounded upwards (if necessary) to the nearest 1/100 of 1%, (i) the numerator of which is equal to the Eurodollar Rate for such Eurodollar Period and (ii) the denominator of which is equal to 100% minus the Eurodollar Reserve Percentage for such Eurodollar Period.

"Advance Rate": With respect to a Mortgage Asset of a certain Class and the applicable Type of Underlying Mortgaged Property, the "Advance Rate" set forth in the applicable column on Schedule 2 attached hereto.

"Affiliate": With respect to a Person, means any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person, or is a director of such Person. For purposes of this definition, "control" (including the terms "controlling," "controlled by" and "under common control with") when used with respect to any specified Person means the possession, direct or indirect, of the power to vote 20% or more of the voting securities of such Person or to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Aggregate Unpaids": At any time, an amount equal to the sum of the aggregate Purchase Price outstanding for all Transactions, the aggregate Price Differential outstanding, Margin Deficits outstanding, Breakage Costs, Increased Costs, Taxes, Additional Amounts, Late Payment Fees and all other amounts owed by the Seller to the Purchaser or by the Seller or any other Person under this Agreement, the Repurchase Documents and any fee letter (including, without limitation, the Fee Letter and the Custodial Fee Letter) delivered in connection with the transactions contemplated by this Agreement or the Repurchase Documents (whether due or accrued).

"Agreement": Defined in the Preamble of this Agreement.

"ALTA": The American Land Title Association.

"Alternative Market Price Quote": The good faith determination of the price at which a Mortgage Asset could readily be sold by a bona fide third-party that (a) is not the Seller, the Guarantor, the Pledgor or any Affiliate of the Seller, the Guarantor or the Pledgor, (b) regularly engages in the business of buying and/or selling assets similar in type, size and structure as the Purchased Assets and in the same jurisdiction as the related Underlying Mortgaged Property, and (c) is familiar with the market for such Mortgage Assets.

"Anti-Money Laundering Laws": Defined in Subsection 4.1(nn).

"Applicable Law": For any Person or Property of such Person, all existing and future applicable laws, rules, regulations (including temporary and final income tax regulations), statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by any Governmental Authority (including, without limitation, usury laws, the Federal Truth in Lending Act, and Regulation Z and Regulation B of the Board of Governors of the Federal Reserve System), and applicable judgments, decrees, injunctions, writs, awards or orders of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction.

"Asset Schedule and Exception Report": Defined in the Custodial Agreement.

"Asset Tape": Defined in Subsection 5.1(ff).

"Asset Value": As of any date of determination for each Eligible Asset or Purchased Asset, as applicable, with respect to a Mortgage Asset of a certain Class and the applicable Type of Underlying Mortgaged Property, the lesser of (a) the product of the Book Value of such Mortgage Asset times the Advance Rate applicable thereto and (b) the product of the Market Value of such Mortgage Asset times the LTV applicable thereto; provided, however, (i) the Asset Value of any Mortgage Asset shall not include any portion of a Mortgage Asset that exceeds the Sub-Limit applicable thereto at any time, unless waived in writing by the Purchaser in its sole and absolute discretion, and (ii) the Asset Value shall be deemed to be zero (0) for each Mortgage Asset (A) in respect of which there is a breach of a representation and warranty set forth in Schedule 1 (assuming each representation and warranty is made as of the date the Asset Value is determined), (B) in respect of which the complete Mortgage Asset File has not been delivered to the Custodian within the time period required by the Custodial Agreement, (C) which is a Table Funded Purchased Asset in respect of which the Mortgage Asset Files have not been delivered to the Custodian within three (3) Business Days following the Purchase Date, or (D) that has been released from the possession of the Custodian under the Custodial Agreement to the Seller for a period in excess of twenty (20) calendar days.

"Assignment": The transfer of all of the Seller's rights and interests under an Eligible Asset pursuant to an assignment agreement among the Seller and the Purchaser, which agreement shall be in the form of Exhibit XIII and is otherwise satisfactory to the Purchaser in its discretion.

"Assignment of Leases": With respect to any Mortgage, an assignment of leases thereunder, notice of transfer or equivalent instrument in recordable form, sufficient under the laws of the jurisdiction wherein the Underlying Mortgaged Property is located to reflect the assignment of leases to the Purchaser.

"Assignment of Mortgage": With respect to any Mortgage, an assignment of the Mortgage, notice of transfer or equivalent instrument in recordable form, sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect the assignment of the Mortgage to the Purchaser.

"Availability": At any time, an amount equal to the positive excess (if any) of (a) the Maximum Amount minus (b) the aggregate Purchase Price outstanding for all Transactions on such day; provided, however, on and after the occurrence of the Facility Maturity Date (not including any extensions thereof) or a Termination Event, the Availability shall be zero (0).

"Bailee": With respect to each Table Funded Purchased Asset, the related title company or other settlement agent, in each case, approved by the Purchaser in its sole discretion.

"Bailee Agreement": The Bailee Agreement among the Seller, the Purchaser and the Bailee in the form of Annex 13 to the Custodial Agreement.

"Bailee's Trust Receipt": A Trust Receipt in the form of Attachment 2 to the Bailee Agreement.

"Bankruptcy Code": The United States Bankruptcy Reform Act of 1978 (11 U.S.C. Section 101, et seq.), as amended from time to time.

"Base Rate": On any date, a fluctuating rate per annum equal to the lower of (a) the Prime Rate or (b) the Federal Funds Rate plus 0.5%.

"Benefit Plan": Any employee benefit plan as defined in Section 3(3) of ERISA in respect of which the Seller or the Guarantor or any ERISA Affiliate of the Seller or the Guarantor is, or at any time during the immediately preceding six (6) years was, an "employer" as defined in Section 3(5) of ERISA.

"Book Value": With respect to any Mortgage Asset at any time, an amount, as certified by the Seller, equal to the price that the Seller initially paid or advanced for or in respect of such Mortgage Asset, as such Book Value may be marked down by the Seller from time to time, including any loss/price adjustments, less an amount equal to the sum of all principal paydowns paid and realized losses recognized relating to such Mortgaged Asset.

"Borrower": Defined in the Custodial Agreement.

"Borrower Reserve Payments": Any payments made by a Borrower under the applicable Mortgage Loan Documents which, pursuant to the terms of such Mortgage Loan Documents, are required to be deposited into escrow or into a reserve to be used for a specific purpose (e.g., tax and insurance escrows).

"Breakage Costs": Defined in Subsection 2.5(b).

"Business Day": Any day other than a Saturday or a Sunday on which (a) banks are not required or authorized to be closed in Minneapolis, Minnesota or Charlotte, North Carolina, and (b) if the term "Business Day" is used in connection with the determination of the Eurodollar Rate, dealings in United States dollar deposits are carried on in the London interbank market.

"Capital Lease Obligations": For any Person, all obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) Property to the extent such obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP, and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

"Capital Stock": Any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent equity ownership interests in a Person that is not a corporation, including, without limitation, any and all member or other equivalent interests in any limited liability company or partnership interests or other equivalents in any kind of partnership, and any and all warrants or options to purchase any of the foregoing.

"Class": With respect to a Mortgage Asset, such Mortgage Asset's classification as a Whole Loan, a Junior Interest or a Mezzanine Loan.

"Closing Date": December 23, 2003.

"Code": The Internal Revenue Code of 1986, as amended from time to time.

"Collection Account": The account set forth on Schedule 3 established by the Seller in the name of the Purchaser and subject to an Account Agreement, into which all Income shall be deposited. Funds in the Collection Account may be invested at the direction of the Purchaser in Permitted Investments.

"Commercial Real Estate": Any real estate included in the definition of Type.

"Commercial Real Estate Loan": Any loan secured by Commercial Real Estate.

"Commitment Fee": Defined in the Fee Letter.

"Commonly Controlled Entity": An entity, whether or not incorporated, that is under common control with the Seller or the Guarantor within the meaning of Section 4001 of ERISA or is part of a group which includes the Seller or the Guarantor and that is treated as a single employer under Section 414 of the Code.

"Compliance Certificate": Defined in Subsection 3.2(e).

"Confirmation": Defined in Subsection 2.2(c).

"Consolidated Adjusted EBITDA": For any period, the sum, without duplication, for such period of (a) the Net Income of the Seller or the Guarantor for such period, (b) the sum of the provisions for such period for income taxes, interest expense, and depreciation and amortization expense used in determining such Net Income, (c) amounts deducted in accordance with GAAP in respect of other non-cash expenses in determining such Net Income and (d) the amount of any aggregate net loss (or minus the amount of any gain) during such period arising from the sale, exchange or other disposition of capital assets by the Seller or the Guarantor.

"Consolidated Interest Expense": For any period with respect to any Person, the amount that, in conformity with GAAP, would be set forth opposite the caption "interest expense" or any like caption (including, without limitation, imputed interest included in payments under financing leases) on a consolidated income statement of such Person for such period excluding the amortization of any original issue discount.

"Contractual Obligation": With respect to any Person, any provision of any securities issued by such Person or any indenture, mortgage, deed of trust, contract, undertaking, agreement, instrument or other document to which such Person is a party or by which it or any of its Property is bound or is subject.

"Custodial Agreement": That Custodial Agreement, dated as of the date hereof, by and among the Purchaser, the Seller and the Custodian, as the same shall be amended, modified, waived, supplemented, extended, replaced or restated from time to time.

"Custodial Fee Letter": The Custodial Fee Letter between the Seller and the Custodian, as such letter may be amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"Custodial Identification Certificate": Defined in the Custodial Agreement.

"Custodian": Wells Fargo Bank Minnesota, National Association, and its successor in interest as the custodian under the Custodial Agreement, and any successor Custodian under the Custodial Agreement.

"Debt Service Coverage Ratio" or "DSCR": With respect to any Mortgage Asset, as of any date of determination, for the period of time to be determined in the Purchaser's sole discretion (it being understood that it is the Purchaser's intent to make the determination based on the period of twelve (12) consecutive complete calendar months preceding such date (or, if such Mortgage Asset was originated less than twelve (12) months from the date of determination, the number of months from the date of origination)), the ratio of (a) the aggregate Net Cash Flow in respect of the Underlying Mortgaged Properties relating to such Mortgage Asset for such period to (b) the sum of (i) the aggregate amount of all amounts due for such period in respect of all Indebtedness that was outstanding from time to time during such period that is secured, directly or indirectly, by such Underlying Mortgaged Properties (including, without limitation, by way of a pledge of the equity of the owner(s) of such Underlying Mortgaged Properties) or that is otherwise owing by the owner(s) of such Underlying Mortgaged Properties, including, without limitation, all

scheduled principal and/or interest payments due for such period in respect of each Mortgaged Asset that is secured or supported by such Underlying Mortgaged Properties plus (ii) the amount of all Ground Lease payments to be made in respect of such Underlying Mortgaged Properties during such period, as any of the foregoing elements of DSCR may be adjusted by the Purchaser as determined by the Purchaser in its discretion; provided, however, that all such calculations shall be made taking into account any senior or pari passu debt secured directly or indirectly by the applicable Underlying Mortgaged Property; provided, further, however, the DSCR shall not be less than the Minimum DSCR.

"Defaulted Mortgage Asset": Any Mortgage Asset (a) that is ninety (90) days or more delinquent, (b) for which there is a breach of any of the representations and warranties set forth on Schedule 1 hereto, or (c) for which there is a non-monetary default (beyond any applicable notice and cure period) under the related Mortgage Loan Documents.

"Delinquent Mortgage Asset": A Mortgage Asset that is thirty (30) or more days, but less than ninety (90) days, delinquent.

"Dollars" and "$": Lawful money of the United States of America.

"Due Diligence Costs": Defined in Section 13.21.

"Due Diligence Review": The performance by the Purchaser of any or all of the reviews permitted under Section 13.21 with respect to any or all of the Purchased Items, as desired by the Purchaser from time to time.

"Electronic Transmission": The delivery of information and executed documents in an electronic format acceptable to the applicable recipient thereof.

"Eligible Asset": A Mortgage Asset that as of any date of determination:

(a) is not a Defaulted Mortgage Asset or Delinquent Mortgage Asset;

(b) with respect to the portion of such Mortgage Asset to be acquired by the Purchaser, the funding obligations have been satisfied in full and there is no unfunded commitment with respect thereto;

(c) has been approved by the Purchaser in its sole and absolute discretion;

(d) has an LTV not in excess of the Maximum LTV;

(e) has a DSCR equal to or greater than the Minimum DSCR;

(f) is not a construction loan;

(g) is not a loan to an operating business (other than a hotel);

(h) in the case a Junior Interest with a "B note" in an "A/B structure", the "B note" has a floating rate of interest with a remaining term to maturity of less than seven (7) years;

(i) from and after the date that the aggregate Purchase Price for all outstanding Transactions exceeds $100,000,000, the Seller shall, on a prospective basis, maintain a reasonable mix of Mortgage Assets (as among the Whole Loans, the Mezzanine Loans and the Junior Interests), as determined by the Purchaser in its discretion; and

(j) in the case of Wachovia Assets, more than thirty (30) Business Days have elapsed since the date the Seller acquired such Mortgage Asset from the Purchaser or its Affiliates (direct or indirect);

provided, however, notwithstanding a Mortgage Asset's failure to conform to the criteria set forth above, the Purchaser may, in its sole and absolute discretion, designate in writing any such non-compliant Mortgage Asset as an Eligible Asset, which may include a temporary or permanent waiver of one (1) or more Eligible Asset requirements.

"Environmental Laws": Any and all foreign, federal, state and local laws, statutes, ordinances, rules, regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities, relating to the protection of human health or the environment, including, but not limited to, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of hazardous materials. Environmental Laws include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. Section 331 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), the Safe Drinking Water Act (42 U.S.C. Section 300, et seq.), the Environmental Protection Agency's regulations relating to underground storage tanks (40 C.F.R. Parts 280 and 281), and the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.), and the rules and regulations thereunder, each as amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"Equity Interests": Defined in the Pledge Agreement.

"ERISA": The Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate": (a) Any corporation that is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Code) as the Seller or the Guarantor, (b) a trade or business (whether or not incorporated) under common control (within the meaning of Section 414(c) of the Code) with the Seller or the Guarantor, or (c) a member of the same affiliated service group (within the meaning of Section 414(m) of the Code) as the Seller, the Guarantor, any corporation described in clause (a) above or any trade or business described in clause (b) above.

"Eurocurrency Liabilities": Defined in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Eurodollar Disruption Event": The occurrence of any of the following: (a) the Purchaser or any of its assignees or participants has determined that it would be contrary to law or to the directive of any central bank or other Governmental Authority (whether or not having the force of law) to obtain United States dollars in the London interbank market to fund any Transaction, (b) the inability, for any reason, of the Purchaser or any of its assignees or participants to determine the Adjusted Eurodollar Rate, (c) the Purchaser or any of its assignees or participants shall have determined that the rate at which deposits of United States dollars are being offered to the Purchaser or any of its assignees or participants in the London interbank market does not accurately reflect the cost to the Purchaser or such assignee or participant of making, funding or maintaining any Transaction, or (d) the inability of the Purchaser or any of its assignees or participants to obtain United States dollars in the London interbank market to make, fund or maintain any Transaction.

"Eurodollar Period": With respect to any Transaction, (i) initially, the period commencing on the Purchase Date with respect to such Transaction and ending on the earlier of the related Repurchase Date and one-month, two-months, three-months, six-months or such longer period, if available, to be offered by the Purchaser, in each case as selected by the Seller (provided, that the Seller may not select a Eurodollar Period longer than six-months if the last day of such Eurodollar Period occurs after the Facility Maturity Date), and (ii) thereafter, each period commencing on the day following the last day of the preceding Eurodollar Period applicable to such Transaction and ending on the earliest of (x) the related Repurchase Date, (y) the date that is one-month, two-months, three-months, six-months or otherwise thereafter, as the case may be, or (z) the Facility Maturity Date.

"Eurodollar Rate": With respect to each Eurodollar Period during which a Transaction is outstanding, the rate per annum equal to the rate appearing at page 3750 of the Telerate Screen as one-month, two-month, three-month, six-month or other LIBOR, as selected by the Seller in accordance with this Agreement, at or about 9:00 a.m., Charlotte, North Carolina time, three (3) Business Days prior to the beginning of such Eurodollar Period (and if such date is not a Business Day, the Eurodollar Rate in effect on the Business Day immediately preceding such date), or, if no such rate appears on Telerate page 3750 at such time and day, then the Eurodollar Rate shall be determined by Wachovia at its principal office in Charlotte, North Carolina as its rate (each such determination, absent manifest error, to be conclusive and binding on all parties hereto and their assignees) at which thirty (30) day deposits in United States Dollars are being, have been, or would be offered or quoted by Wachovia to major banks in the applicable interbank market for Eurodollar deposits at or about 11:00 a.m. on such day. The Purchaser's determination of Eurodollar Rate shall be conclusive upon the parties absent manifest error on the part of the Purchaser.

"Eurodollar Reserve Percentage": For any period means the percentage, if any, applicable during such period (or, if more than one such percentage shall be so applicable, the daily average of such percentages for those days in such period during which any such percentage shall be so applicable) under regulations issued from time to time by the Board of Governors of the Federal

Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any basic, emergency, supplemental, marginal or other reserve requirements) with respect to liabilities or assets consisting of or including Eurocurrency Liabilities having a term equal to the applicable Eurodollar Period.

"Excepted Persons": Defined in Subsection 13.13(a).

"Exception": Defined in the Custodial Agreement.

"Excess Margin": Defined in Subsection 2.6(a).

"Exchange Act": The Securities Exchange Act of 1934, as amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"Executive Order": Defined in Subsection 4.1(nn).

"Existing Financing Facilities": The financing facilities identified on Schedule 5 hereto.

"Extension Fee": Defined in Section 2.4.

"Extension Fee Payment Date": Defined in Section 2.4.

"Facility Maturity Date": Subject to Article X, the earlier of (a) December 23, 2006, as such original Facility Maturity Date may be extended pursuant to Section 2.4 hereof, or (b) the date on which this Agreement shall terminate in accordance with the provisions hereof or by operation of law.

"Facility Period": The period commencing on the Closing Date and terminating on the Facility Maturity Date.

"FDIA": Defined in Subsection 13.20(b).

"FDICIA": Defined in Subsection 13.20(c).

"Federal Funds Rate": For any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the overnight federal funds rates as in Federal Reserve Board Statistical Release H.15(519) or any successor or substitute publication selected by the Purchaser (or, if such day is not a Business Day, for the next succeeding Business Day), or, if, for any reason, such rate is not available on any day, the rate determined, in the sole opinion of the Purchaser, to be the rate at which overnight federal funds are being offered in the national federal funds market at 9:00 a.m.

"Fee Letter": The Fee Letter, dated December 23, 2003, between the Purchaser and the Seller, as amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"Final Maturity Date": Defined in Section 2.4.

"Financial Covenants": The covenants set forth in Subsections 5.1(bb) - (ee).

"FIRREA Appraisal": An appraisal prepared by an independent third-party appraiser approved by the Purchaser in its reasonable discretion and satisfying the requirements of Title XI of the Federal Institutions, Reform, Recovery and Enforcement Act of 1989 (as supplemented, amended, modified and replaced from time to time) and the regulations promulgated thereunder, as in effect on the date of such appraisal.

"Foreclosed Loan": A loan the security for which has been foreclosed upon by the Seller.

"GAAP": Generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

"Governing Documents": As to any Person, the articles or certificate of incorporation or formation, by-laws, limited liability company agreement, general partnership agreement, limited partnership agreement or other applicable organizational or governing documents of such Person.

"Governmental Authority": Any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any body or entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, any court or arbitrator having jurisdiction over such Person, any of its Subsidiaries or any of its Properties, and any accounting board or authority (whether or not a part of government) that is responsible for the establishment or interpretation of national or international accounting principles, in each case whether foreign or domestic.

"Ground Lease": With respect to any Commercial Real Estate Loan for which the Borrower has a leasehold interest in the related Mortgaged Property or space lease within such Mortgaged Property, the lease agreement creating such leasehold interest.

"Guarantee Obligation": As to any Person (the "guaranteeing person"), any obligation (determined without duplication) of the guaranteeing person (or any other Person, including any bank under any letter of credit, if the guaranteeing person has issued a reimbursement, counter indemnity or similar obligation in favor of such other Person) guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee

Obligation of any guaranteeing person shall be deemed to be the maximum stated amount of the primary obligation relating to such Guarantee Obligation (or, if less, the maximum stated liability set forth in the instrument embodying such Guarantee Obligation); provided, however, that in the absence of any such stated amount or stated liability, the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as reasonably determined by the Guarantor in good faith, subject to the Seller's approval.

"Guarantor": Defined in the Preamble of this Agreement.

"Guaranty": The Guaranty, dated December 23, 2003, executed by the Guarantor in favor of the Purchaser.

"H.15": Federal Reserve Statistical Release H.15.

"Income": With respect to any Purchased Items, at any time, all of the following: collections, prepayments, recoveries, insurance and condemnation proceeds and all other payments or proceeds on or in respect of the Purchased Items, including, without limitation, any principal thereof then payable and all interest, dividends, fees or other distributions payable thereon, less the Servicing Fee, and amounts received from any Interest Rate Protection Agreement. Income shall not include any Borrower Reserve Payments.

"Increased Costs": Any amounts required to be paid by the Seller to the Purchaser pursuant to Section 2.13.

"Indebtedness": For any Person: (a) obligations created, issued or incurred by such Person for borrowed money (whether by loan, the issuance and sale of debt securities or the sale of Property to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such Property from such

Person); (b) obligations of such Person to pay the deferred purchase or acquisition price of Property or services, other than trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business so long as such trade accounts payable are payable within ninety (90) days of the date the respective goods are delivered or the respective services are rendered; (c) indebtedness of others secured by a Lien on the Property of such Person, whether or not the respective indebtedness so secured has been assumed by such Person; (d) obligations (contingent or otherwise) of such Person in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for the account of such Person; (e) obligations of such Person under repurchase agreements, sale/buy-back agreements or like arrangements; (f) indebtedness of others guaranteed by such Person; (g) all obligations of such Person incurred in connection with the acquisition or carrying of fixed assets by such Person; (h) indebtedness of general partnerships of which such Person is secondarily or contingently liable (other than by endorsement of instruments in the course of collection), whether by reason of any agreement to acquire such indebtedness to supply or advance sums or otherwise; and (i) Capital Lease Obligations of such Person.

"Indemnified Amounts": Defined in Subsection 11.1(a).

"Indemnified Parties": Defined in Subsection 11.1(a).

"Independent Director": A natural Person who (a) is not at the time of initial appointment as Independent Director, and may not have been at any time during the five (5) years preceding such initial appointment or at any time while serving as Independent Director, (i) a stockholder, partner, member or direct or indirect legal or beneficial owner of the Seller, the Guarantor or any Affiliate of the Seller or the Guarantor; (ii) a contractor, creditor, customer, supplier, director (with the exception of serving as the Independent Director of the Seller), officer, employee, attorney, manager or other Person who derives any of its purchases or revenues from its activities with the Seller, the Guarantor or any Affiliate of the Seller or the Guarantor; (iii) a natural Person who controls (directly or indirectly or otherwise) the Seller, the Guarantor or any Affiliate of the Seller or Guarantor or who controls or is under common control with any Person that would be excluded from serving as an Independent Director under (i) or (ii), above; or (iv) a member of the immediate family of a natural Person excluded from servicing as an Independent Director under (i) or (ii) above and (b) otherwise satisfies the then current requirements of the Rating Agencies. A Person who is an employee of a nationally recognized organization that supplies independent directors and who otherwise satisfies the criteria in clause (a) but for the fact that such organization receives payment from Seller or Guarantor for providing such independent director shall not be disqualified from serving as an Independent Director hereunder.

"Insolvency Event": With respect to a specified Person, (a) the filing of a decree or order for relief by a court having jurisdiction in the premises in respect of such Person or any substantial part of its Property in an involuntary case under any applicable Insolvency Law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such Person or for any substantial part of its Property, or ordering the winding-up or liquidation of such Person's affairs, and such decree or order shall remain unstayed and in effect for a period of ninety (90) consecutive days; or (b) the commencement by such Person of a voluntary case under any applicable Insolvency Law now or hereafter in effect, or the consent by such Person to the entry of an order for relief in an involuntary case under any such law, or the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such Person or for any substantial part of its Property, or the making by such Person of any general assignment for the benefit of creditors, or the failure by such Person generally to pay its debts as such debts become due, or the taking of action by such Person in furtherance of any of the foregoing.

"Insolvency Laws": The Bankruptcy Code and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, suspension of payments or similar debtor relief laws from time to time in effect affecting the rights of creditors generally.

"Insolvency Proceeding": Any case, action or proceeding before any court or other Governmental Authority relating to any Insolvency Event.

"Instrument": Any "instrument" (as defined in Article 9 of the UCC), other than an instrument that constitutes part of chattel paper.

"Interest Rate Protection Agreement": With respect to any or all of the Mortgage Assets, any short sale of US Treasury securities, futures contracts, options related contracts, interest rate swaps, cap or collar agreements or similar arrangements providing for protection against fluctuations in interest rates or the exchange of nominal interest obligations, either generally or under specific contingencies, and acceptable to the Purchaser in its discretion.

"Junior Interest": (a) A junior participation interest or rated certificate in a performing Commercial Real Estate Loan or (b) a "B note" in an "A/B structure" in a performing Commercial Real Estate Loan.

"Junior Interest Note": The original executed promissory note, Participation Certificate, Participation Agreement and any other evidence of a Junior Interest, as applicable.

"Late Payment Fee": Defined in Subsection 2.5(a).

"Lien": Any mortgage, lien, pledge, charge, right, claim, security interest or encumbrance of any kind of or on any Person's assets or properties in favor of any other Person (including any UCC financing statement or any similar instrument filed against such Person's assets or properties).

"Liquidity": The amount equal to the sum of (i) the Maximum Amount less the aggregate Repurchase Price of all Purchased Assets subject to Transactions under this Repurchase Agreement, plus (ii) the amount of cash flows of the Guarantor in excess of the amount of cash flow required to maintain compliance with the Financial Covenants, plus (iii) any uncalled and unfunded equity capital, plus, (iv) to the extent the Guarantor has availability under its other facilities that is not pledged or utilized to make capital calls in connection with the obligations under the Repurchase Documents, the amount of such unutilized or unpledged availability.

"Loan-to-Value Ratio" or "LTV": With respect to any Mortgage Asset, the ratio of the outstanding principal amount of such Mortgage Asset at the time of a Transaction for such Mortgage Asset to the Market Value of the related Underlying Mortgaged Property at such time, which shall be determined by a third party appraiser selected by the Purchaser, as such LTV may be adjusted by the Purchaser as the Purchaser determines in its sole discretion; provided, however, that all such calculations shall be made taking into account any senior or pari passu debt secured directly or indirectly by the applicable Underlying Mortgaged Property; provided, further, however, the LTV shall not exceed the Maximum LTV.

"Margin Base": On any day, the aggregate Asset Value of all Purchased Assets.

"Margin Deficit": Defined in Subsection 2.7(a).

"Margin Deficit Notice": Defined in Subsection 2.7(a).

"Market Value": As of any date in respect of any Mortgage Asset, the price at which such Mortgage Asset could readily be sold, which shall be determined by a third-party appraiser

selected by the Purchaser, as such determination of price may be adjusted by the Purchaser as the Purchaser determines in its sole discretion (which price may be determined to be zero).

"Material Adverse Effect": A material adverse effect on (a) the Property, business, operations, financial condition or prospects of the Seller, the Guarantor or the Pledgor, (b) the ability of each of the Seller, the Guarantor or the Pledgor to perform its obligations under any of the Repurchase Documents to which it is a party, (c) the validity or enforceability of any of the Repurchase Documents, (d) the rights and remedies of the Purchaser under any of the Repurchase Documents, (e) the timely payment of any amounts payable under the Repurchase Documents, or (f) the Asset Value of the Purchased Assets.

"Materials of Environmental Concern": Any mold, petroleum (including, without limitation, crude oil or any fraction thereof) or petroleum products (including, without limitation, gasoline), or any hazardous or toxic substances, materials or wastes, defined as such in or regulated under any Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls and urea-formaldehyde insulation.

"Maximum Amount": Subject to Subsection 2.3(a), $150,000,000; provided, however, on and after the Facility Maturity Date, the Maximum Amount shall mean the aggregate Purchase Price outstanding for all Transactions.

"Maximum LTV": With respect to any Eligible Asset at any time, the Loan-to-Value Ratio for the related Underlying Mortgaged Property set forth on Schedule 2 under the heading "Maximum LTV" for the applicable Class of such Mortgage Asset and the applicable Type of Underlying Mortgage Property.

"Mezzanine Collateral": Defined in Schedule 1, Part II.

"Mezzanine Loan": A performing mezzanine loan secured by pledges of all the Capital Stock of the Person that owns income producing Commercial Real Estate.

"Mezzanine Note": The original executed promissory note or other evidence of Mezzanine Loan indebtedness.

"Minimum DSCR": With respect to any Eligible Asset at any time, the DSCR for the related Underlying Mortgaged Property set forth on Schedule 2 under the heading "Minimum DSCR" for the applicable Class of such Mortgage Asset and the applicable Type of Underlying Mortgage Property.

"Moody's": Moody's Investors Service, Inc., and any successor thereto.

"Mortgage": Each mortgage, assignment of rents, security agreement and fixture filing, or deed of trust, assignment of rents, security agreement and fixture filing, or similar instrument creating and evidencing a Lien on real property and other property and rights incidental thereto.

"Mortgage Asset": An Assignment of a Whole Loan, a Junior Interest or a Mezzanine Loan (i) the Underlying Mortgaged Property for which is included in the categories for Types of Mortgage Assets, and (ii) that is listed on a Confirmation and the Custodian has been instructed to hold for the Purchaser pursuant to the Custodial Agreement. Mortgage Assets shall not include any Retained Interest (if any).

"Mortgage Asset File": Defined in the Custodial Agreement.

"Mortgage Asset File Checklist": Defined in the Custodial Agreement.

"Mortgage Loan Documents": Defined in the Custodial Agreement.

"Mortgage Note": The original executed promissory note or other evidence of the Indebtedness of a Borrower with respect to a Mortgage Asset.

"Mortgaged Property": The Commercial Real Estate (including all improvements, buildings, fixtures, building equipment and personal property thereon and all additions, alterations and replacements made at any time with respect to the foregoing) and all other collateral securing repayment of the debt evidenced by a Mortgage Note or a Junior Interest Note.

"Mortgagee": The record holder of a Mortgage Note secured by a Mortgage.

"Multiemployer Plan": A "multiemployer plan" as defined in Section 4001(a)(3) of ERISA that is or was at any time during the current year or the immediately preceding five (5) years contributed to by the Seller, the Guarantor or any ERISA Affiliate on behalf of its employees.

"Net Cash Flow": With respect to any Underlying Mortgaged Property, for any period, the Net Income (or deficit) attributable to such property for such period, determined in accordance with GAAP, less the amount of all (a) capital expenditures incurred, (b) reserves established, (c) leasing commissions paid (other than commissions paid from reserves held under the Mortgage Loan Documents) and (d) tenant improvements paid during such period (other than tenant improvements paid from reserves held under the Mortgage Loan Documents) in each case attributable to such property, plus all non-cash charges deducted in the calculation of such net income.

"Net Income": With respect to any Person for any period, the net income of such Person for such period as determined in accordance with GAAP.

"Non-Table Funded Purchased Asset": A Purchased Asset that is not a Table Funded Purchased Asset.

"Non-Wachovia Assets": Any Mortgage Asset issued or extended by a Person other than Wachovia Corporation or an Affiliate of Wachovia Corporation.

"OFAC Regulations": Defined in Subsection 4.1(nn).

"Officer's Certificate": A certificate signed by a Responsible Officer of the Seller or the Guarantor, as applicable.

"Operating Account": The account of the Seller set forth on Schedule 3 hereto.

"Opinion of Counsel": A written opinion of counsel, which opinion and counsel are acceptable to the Purchaser in its sole discretion.

"Original Purchase Date": The date a Purchased Asset was purchased by the Seller or its Affiliates from Wachovia Corporation or its Affiliates other than pursuant to this Agreement.

"Originator": With respect to each Mortgage Asset, the Person who originated such Mortgage Asset.

"Other Costs": Defined in Subsection 13.9(c).

"Participation Agreement": Defined in the Custodial Agreement.

"Participation Certificate": Defined in the Custodial Agreement.

"Payment Date": The next to the last Business Day of each calendar month.

"PBGC": The Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Pension Plans": Defined in Subsection 4.1(u).

"Periodic Advance Repurchase Payment": Defined in Subsection 2.5(a).

"Permitted Investments": Investments of any one or more of the following types:

(a) marketable obligations of the United States, the full and timely payment of which are backed by the full faith and credit of the United States of America and that have a maturity of not more than 270 days from the date of acquisition;

(b) marketable obligations, the full and timely payment of which are directly and fully guaranteed by the full faith and credit of the United States and that have a maturity of not more than 270 days from the date of acquisition;

(c) bankers' acceptances and certificates of deposit and other interest-bearing obligations (in each case having a maturity of not more than

270 days from the date of acquisition) denominated in dollars and issued by any bank with capital, surplus and undivided profits aggregating at least $100,000,000, the short-term obligations of which are rated of least A-1 by S&P and P-1 by Moody's;

(d) repurchase obligations with a term of not more than ten (10) days for underlying securities of the types described in clauses (a), (b) and (c) above entered into with any bank of the type described in clause (c) above;

(e) commercial paper rated at least A-1 by S&P and P-1 by Moody's;

(f) demand deposits, time deposits or certificates of deposit (having original maturities of no more than 365 days) of depository institutions or trust companies incorporated under the laws of the United States of America or any state thereof (or domestic branches of any foreign bank) and subject to supervision and examination by federal or state banking or depository institution authorities; provided, however, that at the time such investment, or the commitment to make such investment, is entered into, the short-term debt rating of such depository institution or trust company shall be at least A-1 by S&P and P-1 by Moody's; and

(g) money market mutual funds possessing the highest available rating from S&P and Moody's.

"Permitted Liens": Any of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced: (a) Liens for state, municipal or other local taxes if such taxes shall not at the time be due and payable, (b) Liens imposed by law, such as materialmen's, mechanics', carriers', workmen's and repairmen's Liens and other similar Liens, arising in the ordinary course of business securing obligations that are not overdue for a period of more than thirty (30) days, (c) Liens granted pursuant to or by the Repurchase Documents, and (d) in the case of the Purchased Assets only and not the Seller's interest therein, with respect to any Underlying Mortgaged Property, Liens which are permitted pursuant to the terms of the Mortgage Loan Documents.

"Person": An individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, sole proprietorship, joint venture, government (or any agency or political subdivision thereof) or other entity.

"Plan": An employee benefit or other plan established or maintained by any Seller, the Guarantor or any ERISA Affiliate and covered by Title IV of ERISA, other than a Multiemployer Plan.

"Pledge Agreement": The Pledge and Security Agreement, dated as of December 23, 2003, between the Purchaser and the Pledgor, as amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"Pledgor": Arbor Realty Limited Partnership, a Delaware limited partnership.

"Pooling and Servicing Agreements": Any and all pooling and servicing agreements governing servicing and other matters entered into in connection with a securitization of the senior interest in a Mortgage Asset, where such transaction is rated by one (1) or more Rating Agencies.

"Post-Default Rate": In respect of any day a Transaction is outstanding or any other amount under this Agreement or any other Repurchase Document is not paid when due to the Purchaser at the stated Repurchase Date or otherwise when due (a "Post-Default Day"), a rate per annum determined on a 360 day per year basis during the period from and including the due date to but excluding the date on which such amount is paid in full equal to the applicable Pricing Rate plus 500 basis points.

"Pre-Approved Purchaser": A bank, financial institution or similar Person having a rating assigned by S&P of BBB or better (or an equivalent rating assigned by another Rating Agency) or a special purpose vehicle.

"Price Differential": For each Accrual Period and each Transaction outstanding, the sum of the products (for each day during such Accrual Period) of:

$$R \times PP \times \frac{1}{D}$$

where:

R = the Rate applicable on such day;

PP = the Purchase Price for such Transaction on such day; and

D = 360 or, to the extent the Rate is based on the Base Rate, 365 or 366 days, as applicable,

provided, however, that (i) no provision of this Agreement shall require the payment or permit the collection of any Price Differential in excess of the maximum permitted by Applicable Law and (ii) the Price Differential shall not be considered paid by any distribution if at any time such distribution is rescinded or must otherwise be returned for any reason.

"Pricing Rate": With respect to a Mortgage Asset of a certain Class and Type, at any date of determination a rate per annum equal to the sum of (a) the applicable Rate on such date plus (b) the applicable Pricing Spread on such date; provided, however, after a Termination Event, the Pricing Rate for each Transaction shall be increased an additional 500 basis points.

"Pricing Spread": The point spreads set forth on Schedule 1 to the Fee Letter corresponding to the Classes and Types of Mortgage Assets set forth therein.

"Prime Rate": The rate announced by Wachovia from time to time as its prime rate in the United States, such rate to change as and when such designated rate changes. The Prime Rate is not intended to be the lowest rate of interest charged by Wachovia in connection with extensions of credit to debtors.

"Property": Any right or interest in or to property of any kind whatsoever, whether real, personal or mixed, and whether tangible or intangible.

"PSA Servicer": A third party servicer (other than the Seller) servicing all or a portion of the Purchased Assets under a Pooling and Servicing Agreement.

"Purchase Agreement": Any purchase agreement by and between the Seller and any third party, including, without limitation, any Affiliate of the Seller, pursuant to which the Seller has purchased Mortgage Assets subsequently sold to the Purchaser hereunder.

"Purchase Date": The date on which Eligible Assets are transferred by the Seller to the Purchaser or its designee (including the Custodian).

"Purchase Price": On each Purchase Date, the price at which Eligible Assets are transferred by the Seller to the Purchaser or its designee (including the Custodian) which shall equal the Asset Value for such Eligible Assets on the Purchase Date decreased by the amount of any cash transferred by the Seller to the Purchaser pursuant to Subsection 2.3(b) or Section 2.7 hereof or applied to reduce the Seller's obligations in respect of principal under Section 2.8 hereof.

"Purchased Asset Data Summary": Defined in Subsection 5.1(t)(vi).

"Purchased Assets": The Eligible Assets sold by the Seller to the Purchaser pursuant to a Transaction in accordance with Article II.

"Purchased Items": Defined in Subsection 8.1(a).

"Purchaser": Defined in the Preamble to this Agreement.

"Purchaser's Account": A special account (account number 4659360000127, ABA # 053000219) in the name of the Purchaser maintained at Wachovia.

"Rate": For any Eurodollar Period and for each Transaction outstanding and for each day during such Eurodollar Period, the Rate per annum equal to the Adjusted Eurodollar Rate plus the applicable Pricing Spread; provided, however, the Rate for any Accrual Period shall be the Base Rate (plus the applicable Pricing Spread) if a Eurodollar Disruption Event occurs or a Termination Event occurs.

"Rating Agency": Each of S&P, Moody's and any other statistical rating agency that has been requested to issue a rating in connection with the matter at issue.

"Regulations T, U and X": Regulations T, U and X of the Board of Governors of the Federal Reserve System (or any successor), as the same may be amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"REO Property": Real property acquired by the Seller, including a Mortgaged Property, acquired through foreclosure of a Mortgage Asset or by deed in lieu of such foreclosure.

"Reportable Event": Any of the events set forth in Section 4043(c) of ERISA or a successor provision thereof, other than those events as to which the notice requirement has been waived by regulation.

"Repurchase Date": The earlier of (i) the Facility Maturity Date or (ii) the Business Day on which the Seller is to repurchase the Purchased Assets from the Purchaser (a) as specified by the Seller and agreed to by the Purchaser in the related Confirmation or (b) if a Transaction is terminable by the Seller on demand, the date determined in accordance with Subsection 2.2(j), as such date in clauses (ii)(a) and (b) may be modified by application of the provisions of Articles II or X.

"Repurchase Documents": This Agreement, the Custodial Agreement, the Account Agreement, the Fee Letter, the Guaranty, the Assignments, the Pledge Agreement, each Confirmation, the Custodial Fee Letter, any UCC financing statements filed pursuant to the terms of this Agreement or any other Repurchase Document and any additional document the execution of which is necessary or incidental to carrying out the terms of the foregoing documents.

"Repurchase Obligations": Defined in Subsection 8.1(b).

"Repurchase Parties": The collective reference to the Seller and the Guarantor.

"Repurchase Price": The price at which Purchased Assets are to be transferred from the Purchaser or its designee (including the Custodian) to the Seller upon termination of a Transaction, which will be determined in each case (including Transactions terminable upon demand) as the sum of the Purchase Price and the accrued and unpaid Price Differential applicable to each such Transaction as of the date of such determination.

"Request for Additional Transaction for Excess Margin": Defined in Subsection 2.6(a).

"Responsible Officer": With respect to any Person, any duly authorized officer of such Person with direct responsibility for the administration of the Repurchase Documents and also, with respect to a particular matter, any other duly authorized officer to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"Retained Interest": (a) With respect to any Mortgage Asset with an unfunded commitment on the part of the Seller, all of the obligations, if any, to provide additional funding with respect to such Eligible Asset, and, (b) with respect to any Eligible Asset that is transferred by the Seller to the Purchaser, (i) all of the obligations, if any, of the agent(s) under the documentation evidencing such Eligible Asset and (ii) the applicable portion of the interests, rights and obligations under the documentation evidencing such Eligible Asset that relate to such portion(s) of the Indebtedness that is owned by another lender or is being retained by the Seller pursuant to clause (a) of this definition.

"S&P": Standard & Poor's, a division of The McGraw Hill Companies, Inc., and any successor thereto.

"SEC": Defined in Subsection 13.19(a).

"Security Agreement": With respect to any Mortgage Asset, any contract, instrument or other document related to security for repayment thereof (other than the related Mortgage and

Mortgage Note) executed by the Borrower and/or others in connection with such Mortgage Asset, including, without limitation, any security agreement, UCC financing statement, Liens, warranties, guaranty, title insurance policy, hazard insurance policy, chattel mortgage, letter of credit, accounts, bank accounts or certificates of deposit or other pledged accounts, and any other documents and records relating to any of the foregoing.

"Seller": Defined in the Preamble of this Agreement.

"Seller Asset Schedule": Defined in the Custodial Agreement.

"Seller-Related Obligations": Any obligations of the Seller hereunder and under any other arrangement between the Seller, the Guarantor or an Affiliate of the Seller or the Guarantor on the one hand and the Purchaser or an Affiliate of the Purchaser on the other hand.

"Seller Release Letter": Defined in Subsection 3.2(l).

"Servicer": A Person (other than the Seller) servicing all or a portion of the Purchased Assets under a Servicing Agreement, which Servicer shall be acceptable to the Purchaser in its reasonable discretion.

"Servicer Account": Any account established by a Servicer or a PSA Servicer in connection with the servicing of the Purchased Assets.

"Servicer Default": Defined in Section 6.15.

"Servicer Notice": The notice from the Seller to a Servicer, substantially in the form of Exhibit VIII attached hereto.

"Servicing Agreement": An agreement entered into by the Seller and a third party for the servicing of the Purchased Assets, the form and substance of which has been approved by the Purchaser in its reasonable discretion.

"Servicing Fee": Defined in Section 6.12.

"Servicing File": With respect to each Purchased Asset, the file retained by the Seller consisting of the originals of all documents in the Mortgage Asset File that are not delivered to the Custodian and copies of all documents in the Mortgage Asset File set forth in Section 3.1 of the Custodial Agreement.

"Servicing Records": Defined in Section 6.2.

"SIPA": Defined in Subsection 13.19(a).

"Solvent": As to any Person at any time, having a state of affairs such that all of the following conditions are met: (a) the fair value of the Property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated for purposes of Section 101(32) of the Bankruptcy Code; (b) the present fair salable value of the Property of such Person in an orderly liquidation of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to realize upon its Property and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's Property would constitute unreasonably small capital.

"Sub-Limit": With respect to the characteristics of the Underlying Mortgaged Properties:

(a) the aggregate Purchase Price for all outstanding Transactions involving Junior Interests shall not exceed 75% of the Maximum Amount;

(b) the aggregate Purchase Price for all outstanding Transactions involving Mezzanine Loans shall not exceed 60% of the Maximum Amount;

(c) the aggregate Purchase Price for all outstanding Transactions involving Ground Leases shall not exceed 25% of the Maximum Amount; and

(d) the aggregate Purchase Price for all outstanding Transactions involving hotels shall not exceed 25% of the Maximum Amount.

"Subsidiary": With respect to any Person, any corporation, partnership, limited liability company or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such corporation, partnership, limited liability company or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person.

"Table Funded Purchased Asset": A Purchased Asset which is sold to the Purchaser simultaneously with the origination or acquisition thereof, which origination or acquisition, pursuant to the Seller's request, is financed with the Purchase Price and paid directly to a title company or other settlement agent, in each case, approved by the Purchaser in its sole discretion, for disbursement to the parties entitled thereto in connection with such origination or acquisition. A Purchased Asset shall cease to be a Table Funded Purchased Asset after the Custodian has delivered a Trust Receipt to the Purchaser certifying its receipt of the Mortgage Asset File therefor.

"Table Funded Trust Receipt": A Trust Receipt in the form of Annex 2-B to the Custodial Agreement.

"Tangible Net Worth": As of a particular date:

(a) all amounts that would be included under capital on a balance sheet of the Seller or the Guarantor, as applicable, at such date determined in accordance with GAAP, less

(b)(i) amounts owing to the Seller or the Guarantor, as applicable, from Affiliates, or from officers, employees, partners, members, directors, shareholders or other Persons similarly affiliated with the Seller or the Guarantor, as applicable, or their respective Affiliates, (ii) intangible assets of the Seller or the Guarantor, as applicable, and (iii) the value of REO Property and Foreclosed Loans of the Seller or the Guarantor, as applicable.

"Taxes": Any present or future taxes, levies, imposts, duties, charges, assessments or fees of any nature (including interest, penalties, and additions thereto) that are imposed by any Governmental Authority.

"Termination Event": Defined in Section 10.1.

"Test Period": The most recent calendar quarter.

"Title Exception": Defined in Schedule 1, Part I.

"Total Indebtedness": With respect to any Person, for any period, the aggregate consolidated Indebtedness of such Person during such period maintained in accordance with GAAP.

"Transaction": Defined in Section 2.1.

"Transaction Request": Defined in Subsection 2.2(a).

"Transfer Documents" The documents executed by the Seller with respect to a Purchased Asset which transfer title to such Purchased Asset to the Purchaser, including, without limitation, an Assignment and any Assignment of Mortgage and UCC-3 assignments.

"Transferee": Defined in Subsection 13.16(a).

"Transferor": The seller of mortgage assets under a Purchase Agreement.

"True Sale Opinion": A "true sale" opinion of outside counsel to the Seller in form and substance satisfactory to the Purchaser.

"Trust Receipt": Defined in the Custodial Agreement.

"Type": With respect to a Mortgaged Property, such Mortgaged Property's classification as one of the following: multifamily, retail, office, industrial, hotel or self-storage facility.

"UCC-9 Policy": Defined in Schedule I, Part II.

"UCC Financing Statement": A financing statement on Form UCC-1 or the proper national UCC form, naming the Purchaser as the "Secured Party" and the Seller as the "Debtor" and describing the Purchased Items.

"Underlying Mortgaged Property": (a) In the case of a Whole Loan, the Mortgaged Property securing the Whole Loan, (b) in the case of a Junior Interest, the Mortgaged Property securing such Junior Interest (if the Junior Interest is of the type described in clause (a) of the definition thereof), or the Mortgaged Property securing the Mortgage Loan in which such Junior Interest represents a junior participation (if the Junior Interest is of the type described in clause (b) of the definition thereof), and, (c) in the case of a Mezzanine Loan, the Mortgaged Property that is held by the Person the Capital Stock of which is pledged as collateral security for such Mezzanine Loan.

"Underwriting Package": Any internal document prepared by the Seller for its evaluation of a Mortgage Asset, to include at a minimum the data required in the relevant Confirmation. In addition, with respect to any Mortgage Asset, the Underwriting Package shall include, to the extent applicable, (i) a copy of the appraisal, (ii) the current rent roll, (iii) a minimum of two (2) years of property level financial statements to the extent available, (iv) the current financial statement of the Borrower on the Commercial Mortgage Loan, (vi) the complete Mortgage Asset File, (vii) any financial analysis, site inspection, market studies and any other diligence conducted by the Seller, and (viii) such further documents or information as the Purchaser may request.

"Uniform Commercial Code" or "UCC": The Uniform Commercial Code as in effect on the date hereof in the State of New York; provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interest in any Purchased Items is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, "Uniform Commercial Code" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection.

"United States": The United States of America.

"Unmatured Termination Event": Any event that, with the giving of notice or the lapse of time, or both, would become a Termination Event.

"Unused Fee": The "Unused Fee" payable under the Fee Letter.

"Wachovia": Wachovia Bank, National Association, a national banking association in its individual capacity, and its successors and assigns.

"Wachovia Assets": Any Mortgage Asset issued or extended by Wachovia Corporation or an Affiliate of Wachovia Corporation.

"Warehouse Lender's Release Letter": Defined in Subsection 3.2(l).

"Whole Loan": A performing Commercial Real Estate whole loan secured by a first priority security interest in the Underlying Mortgaged Property.

SECTION 1.2 OTHER TERMS.

All accounting terms used but not specifically defined herein shall be construed in accordance with GAAP. All terms used in Article 9 of the UCC in the State of New York, and used but not specifically defined herein, are used herein as defined in such Article 9.

SECTION 1.3 COMPUTATION OF TIME PERIODS.

Unless otherwise stated in this Agreement, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding."

SECTION 1.4 INTERPRETATION.

In each Repurchase Document, unless a contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the Repurchase Documents;

(iii) reference to any gender includes each other gender;

(iv) reference to day or days without further qualification means calendar days;

(v) reference to any time means Charlotte, North Carolina time;

(vi) reference to any agreement (including any Repurchase Document), document or instrument means such agreement, document or instrument as amended, supplemented or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of the other Repurchase Documents, and reference to any promissory note includes any promissory note that is an extension or renewal thereof or a substitute or replacement therefor; and

(vii) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any Section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such Section or other provision.

ARTICLE II

PURCHASE OF ELIGIBLE ASSETS

SECTION 2.1 PURCHASE AND SALE.

Subject to the terms and conditions hereof, from time to time during the Facility Period and at the written request of the Seller, the parties hereto shall enter into transactions in which the Seller transfers Eligible Assets to the Purchaser in a sales transaction against the transfer of funds by the Purchaser representing the Purchase Price for such Purchased Assets, with a simultaneous agreement by the Purchaser to transfer to the Seller and the Seller to repurchase such Purchased Assets in a repurchase transaction at a date certain not later than the Facility Maturity Date, against the transfer of funds by the Seller representing the Repurchase Price for such Purchased Assets. Each such transaction shall be referred to herein as a "Transaction" and shall be governed by this Agreement, unless otherwise agreed in writing.

SECTION 2.2 TRANSACTION MECHANICS; RELATED MATTERS.

(a) From time to time during the Facility Period but no more frequently than once per week, in the sole and absolute discretion of the Purchaser, the Purchaser will purchase from the Seller the Seller's rights and interests (but none of its obligations) under certain Eligible Assets; provided, however, at no time shall the Seller have more than twenty (20) Transactions outstanding under this Agreement and at no time shall the aggregate Purchase Price of the outstanding Transactions and any proposed Transactions exceed the Maximum Amount. The Seller shall request a Transaction by delivering to the Purchaser (with a copy to the Custodian), via Electronic Transmission, an executed request in the form of Exhibit IV attached hereto (a "Transaction Request"), a Seller Asset Schedule and an Underwriting Package. The Transaction Request shall set forth, among other things, (i) the proposed Purchase Date, that, except with respect to the initial Transaction, shall be at least, (A) in the case of Non-Wachovia Assets, twelve (12) Business Days (in the case of each individual Eligible Asset identified in a Transaction Request plus twelve (12) additional Business Days for each additional Eligible Asset in excess thereof identified in a Transaction Request), and, (B) in the case of Wachovia Assets, seven (7) Business Days (in the case of each individual Eligible Asset identified in a Transaction Request plus seven (7) additional Business Days for each additional Eligible Asset in excess thereof identified in a Transaction Request) after the delivery of the Transaction Request, the Seller Asset Schedule, the complete Underwriting Package and any supplemental requests (requested orally or in writing) relating to the proposed Eligible Assets, (ii) the proposed Purchase Price, which shall be in a minimum amount of $1,000,000, (iii) the proposed Repurchase Date, (iv) the applicable Class and Type for each Mortgage Asset for which the Seller is requesting the Transaction, and (v) additional terms or conditions not inconsistent with this Agreement. The Purchaser shall have, (1) in the case of Non-Wachovia Assets, ten (10) Business Days (in the case of each individual Eligible Asset identified in a Transaction Request plus ten (10) additional Business Days for each additional Eligible Asset in excess thereof identified in a Transaction Request), and, (2) in the case of Wachovia Assets, five (5) Business

Days (in the case of each individual Eligible Asset identified in a Transaction Request plus five (5) additional Business Days for each additional Eligible Asset in excess thereof identified in a Transaction Request) from the receipt thereof to review the Transaction Request, the Seller Asset Schedule, the Underwriting Package and any supplemental requests (requested orally or in writing) relating to the proposed Eligible Assets.

(b) The Purchaser shall notify the Seller of the Purchaser's tentative approval (and the proposed Purchase Price for each Eligible Asset) or final disapproval of each proposed Eligible Asset within, (i) in the case of Non-Wachovia Assets, ten (10) Business Days (in the case of each individual Eligible Asset identified in a Transaction Request plus ten (10) additional Business Days for each additional Eligible Asset in excess thereof identified in a Transaction Request) and, (ii) in the case of Wachovia Assets, five (5) Business Days (in the case of each individual Eligible Asset identified in a

Transaction Request plus five (5) additional Business Days for each additional Eligible Asset in excess thereof identified in a Transaction Request) after its receipt of the Transaction Request, the Seller Asset Schedule, the complete Underwriting Package and any supplemental requests (requested orally or in writing) relating to such proposed Eligible Asset. Unless the Purchaser notifies the Seller of the Purchaser's approval of such proposed Eligible Asset within the applicable period, the Purchaser shall be deemed not to have approved such proposed Eligible Asset.

(c) Provided that the Purchaser has tentatively agreed to purchase the Eligible Assets described in the Transaction Request and the proposed Purchase Price is acceptable to the Seller, the Seller shall forward to the Purchaser, via Electronic Transmission, at least two (2) Business Days prior to the requested Purchase Date an executed confirmation of each Transaction, substantially in the form of Exhibit II attached hereto (a "Confirmation"). The Confirmation shall specify any additional terms or conditions of the Transaction not inconsistent with this Agreement. The Confirmation shall be irrevocable and shall be deemed to be a certification by the Seller that all conditions precedent to such Transaction set forth in Article III have been satisfied (except the Purchaser's consent). Unless otherwise agreed in writing, upon receipt of the Confirmation, the Purchaser may, in its sole and absolute discretion, agree to enter into the requested Transaction with respect to an Eligible Asset, and such agreement shall be evidenced by the Purchaser's signature on the Confirmation. Any Confirmation executed by the Purchaser shall be deemed to have been received by the Seller on the date actually received by the Seller.

(d) Upon receipt of the Confirmation executed by the Purchaser, (i) the Seller shall release or cause to be released to the Custodian in accordance with the Custodial Agreement (1) in the case of a Non-Table Funded Purchased Asset, no later than 11:00 a.m. two (2) Business Days prior to the requested Purchase Date, and, (2) in the case of a Table Funded Purchased Asset, no later than 1:00 p.m. three (3) Business Days following the applicable Purchase Date, the Mortgage Asset File pertaining to each Eligible Asset to be purchased by the Purchaser, and (ii) the Seller shall deliver to the Custodian, in connection with the applicable delivery under clause (i) above, a Custodial Identification Certificate and a Mortgage Asset File Checklist required under Section 3.2 of the Custodial Agreement.

(e) Except as set forth in Section 2.3, each Confirmation, together with this Agreement, shall constitute conclusive evidence of the terms agreed between the Purchaser and

the Seller with respect to the Transaction to which the Confirmation relates, and the Seller's acceptance of the related proceeds shall constitute the Seller's agreement to the terms of such Confirmation. It is the intention of the parties that each Confirmation shall not be separate from this Agreement but shall be made a part of this Agreement.

(f) Subject to the terms and conditions of this Agreement, during the term of this Agreement, the Seller may sell to the Purchaser, repurchase from the Purchaser and resell to the Purchaser Eligible Assets hereunder.

(g) In no event shall a Transaction be entered into when any Unmatured Termination Event or Termination Event has occurred and is continuing or when the Repurchase Date for such Transaction would be later than the Facility Maturity Date.

(h) Pursuant to the Custodial Agreement, the Custodian shall deliver to the Purchaser and the Seller by 11:00 a.m. on the Purchase Date for each Non-Table Funded Purchased Asset a Trust Receipt and an Asset Schedule and Exception Report with respect to the Eligible Assets that the Seller has requested Purchaser purchase on such Purchase Date. With respect to each Table Funded Purchased Asset, the Seller shall cause the Bailee to deliver to the Custodian with a copy to the Purchaser no later than 10:00 a.m. on the Purchase Date by facsimile the related Basic Mortgage Asset Documents, the insured closing letter (if any), the escrow instructions (if any), a fully executed Bailee Agreement, a Bailee's Trust Receipt issued by the Bailee thereunder and such other evidence satisfactory to the Purchaser in its discretion that all documents necessary to effect a transfer of the Purchased Assets to the Purchaser have been delivered to Bailee. With respect to each Table Funded Purchased Asset, the Custodian shall deliver to the Purchaser a Table Funded Trust Receipt no later than 1:00 p.m. on the Purchase Date, which documents shall be acceptable to the Purchaser in its sole discretion. In the case of a Table Funded Purchased Asset, on the second (2nd) Business Day following the Custodian's receipt of the related Mortgage Loan Documents comprising the Mortgage Asset File, the Custodian shall deliver to the Purchaser a Trust Receipt certifying its receipt of the documents required to be delivered pursuant to the Custodial Agreement, together with an Asset Schedule and Exception Report relating to the Basic Mortgage Asset Documents, with any Exceptions identified by the Custodian as of the date and time of delivery of such Asset Schedule and Exception Report. The Custodian shall deliver to the Purchaser an Asset Schedule and Exception Report relating to all of the Mortgage Loan Documents within five (5) Business Days of its receipt of the Mortgage Asset Files. Subject to the provisions of this Article II and Article V of the Custodial Agreement, the Purchase Price for each Eligible Asset will be made available to the Seller in accordance with Subsection 2.2(i).

(i) On each Purchase Date, the Purchaser shall, upon satisfaction of the applicable conditions set forth in this Section 2.2 and Article III, make available to the Seller in same day funds to the Operating Account an amount equal to the least of (i) the Purchase Price for such Transaction(s), (ii) an amount equal to the Availability on such Purchase Date, or (iii) the Maximum Amount.

(j) In the case of individual Transactions terminable upon demand (if any), such demand shall be made by the Purchaser or the Seller no later than such time as is customary in

accordance with market practice, by telephone or otherwise, on or prior to the Business Day on which such termination will be effective. The Seller shall repurchase the Purchased Assets by no later than 3:00 p.m. on the Repurchase Date. On a Repurchase Date, termination of a Transaction will be effected by transfer to the Seller or its designee of the Purchased Assets after the Purchaser receives the Repurchase Price for the Purchased Asset. In connection with the termination of a Transaction, any Income in respect of any Purchased Assets received by the Purchaser and not previously credited or transferred to, or applied to the obligations of, the Seller pursuant to Section 2.8 shall be netted against the Repurchase Price by the Purchaser. To the extent a net amount is owed to one party, the other party shall pay such amount to such party.

(k) Notwithstanding anything contained in this Agreement or any Repurchase Document to the contrary, in no event may the Seller sell or the Purchaser purchase a Wachovia Asset if less than thirty (30) Business Days have elapsed since the Seller acquired such asset from Wachovia or its Affiliates (direct or indirect).

SECTION 2.3 REDUCTION OF MAXIMUM AMOUNT; OPTIONAL REPURCHASES.

(a) Prior to the Facility Maturity Date (as it may be extended from time to time in accordance with Section 2.4), the Seller shall have the right on an annual basis, upon at least two (2) Business Days' prior written notice to the Purchaser, to terminate in whole or reduce in part the portion of the Maximum Amount that exceeds the sum of the aggregate Purchase Price for all Transactions outstanding, accrued Price Differential and Breakage Costs; provided, however, that each partial reduction of the Maximum Amount shall be in an aggregate amount equal to $1,000,000 or an integral multiple thereof. Each notice of reduction or termination pursuant to this Subsection 2.3(a) shall be irrevocable.

(b) The Seller may repurchase Purchased Assets or pay a portion of the Purchase Price outstanding without penalty or premium (but subject to Subsection 2.5(b)) on any date. If the Seller intends to make such a repurchase or payment, the Seller shall give two (2) Business Days' prior written notice thereof to the Purchaser, designating the Purchased Assets to be repurchased or to which such payment is to be applied. If such notice is given, on receipt of the Repurchase Price (or portion thereof) for the Purchased Assets specified in such notice, such amount shall be applied to the Purchase Price for the designated Purchased

Assets. The amount of the Purchase Price of the Purchased Assets thus repurchased shall be available for subsequent Transactions subject to the terms of this Agreement.

SECTION 2.4 EXTENSION OF FACILITY MATURITY DATE.

At the written request of the Seller delivered to the Purchaser no earlier than sixty (60) days and no later than forty-five (45) days prior to the Facility Maturity Date, the Purchaser may in its sole discretion grant one extension of the Facility Maturity Date for a period not to exceed one (1) year by giving written notice of such extension and the final Facility Maturity Date (the "Final Maturity Date") to the Seller no later than fifteen (15) days before the expiration of the Facility Maturity Date. Any failure by the Purchaser to deliver such notice of extension shall be deemed to be the Purchaser's determination not to extend the original Facility Maturity Date. An extension of the Facility Maturity Date is subject to the following requirements: (i) no

Unmatured Termination Event or Termination Event shall have occurred and be continuing on the date of the request to extend or thereafter to and including the original Facility Maturity Date, (ii) the Seller shall pay to the Purchaser an extension fee ("Extension Fee"), payable in quarterly installments over the term of the extension commencing with the original Facility Termination Date (or, if such day is not a Business Day, the next Business Day) and on the twenty-third (23rd) day (or, if such day is not a Business Day, the next Business Day) (the "Extension Fee Payment Date") of every third (3rd) month thereafter, calculated as the sum of the products of (A) 1/8%, and (B) the Purchase Price outstanding on the Extension Fee Payment Date; provided, however, if the Facility Maturity Date is extended for less than a one (1) year period, the Extension Fee will be calculated in the same manner except that the period of time over and the dates on which the Extension Fee is payable shall be adjusted accordingly, (iii) no additional Transactions shall be permitted to be entered into after the original Facility Maturity Date, (iv) the Seller must amortize and pay to the Purchaser the aggregate Repurchase Price for all Transactions then outstanding in equal quarterly installments over the term of the extension commencing with the first (1st) Payment Date after the original Facility Maturity Date and on the Payment Date for each quarter thereafter, and, (v) not later than the Final Maturity Date, the Seller shall pay to Purchaser an amount equal to the aggregate Repurchase Price then outstanding, together with the other Aggregate Unpaids and any other amounts then owing to the Purchaser by the Seller pursuant to this Agreement or any other Repurchase Document. The Seller confirms that the Purchaser, in its sole and absolute discretion, without regard to the value or performance of the Purchased Assets or any other factor, may elect not to extend the Facility Maturity Date.

SECTION 2.5 PAYMENT OF PRICE DIFFERENTIAL.

(a) Notwithstanding that the Purchaser and the Seller intend that the Transactions hereunder be sales to the Purchaser of the Purchased Assets, the Seller shall pay to the Purchaser the accreted value of the Price Differential of each Transaction (each such payment, a "Periodic Advance Repurchase Payment") on each Payment Date. The Purchaser shall deliver to the Seller, via Electronic Transmission, notice of the required Periodic Advance Repurchase Payment (along with the calculation of the Unused Fee, if any, and other amounts owed and to be paid under Section 2.8) on or prior to the second (2nd) Business Day preceding each Payment Date. If the Seller fails to make all or part of the Periodic Advance Repurchase Payment and the other amounts due by 3:00 p.m. on the Payment Date, the Seller shall be obligated to pay to the Purchaser (in addition to, and together with, the Periodic Advance Repurchase Payment and the other amounts due) interest on the unpaid amounts at a rate per annum equal to the Post-Default Rate (the "Late Payment Fee") until the unpaid amounts are received in full by the Purchaser. If the Periodic Advance Repurchase Payment includes any estimated Price Differential, the Purchaser shall recalculate such Price Differential after the Payment Date and, if necessary, make adjustments to the Periodic Advance Repurchase Payment amount due on the following Payment Date.

(b) If the Seller repurchases Purchased Assets on any day prior to the last day of the Eurodollar Period or if the Seller repurchases Purchased Assets on any day that is not a Repurchase Date for such Purchased Assets, the Seller shall indemnify the Purchaser and hold the Purchaser harmless from any losses, costs and/or expenses that the Purchaser may sustain or

incur arising from the reemployment of funds obtained by the Purchaser hereunder or from fees payable to terminate the deposits from which such funds were obtained ("Breakage Costs"), in each case for the remainder of the Eurodollar Period. The Purchaser shall deliver to the Seller a statement setting forth the amount and basis of determination of any Breakage Costs in such detail as determined in good faith by the Purchaser to be adequate, it being agreed that such statement and the method of its calculation shall be conclusive and binding upon the Seller absent manifest error. This Subsection 2.5(b) shall survive termination of this Agreement and the repurchase of all Purchased Assets subject to Transactions hereunder.

SECTION 2.6 REQUEST FOR ADDITIONAL TRANSACTION FOR EXCESS MARGIN.

(a) If, at any time during the Facility Period, the Margin Base exceeds the aggregate Purchase Price of all Transactions then outstanding, so long as no Unmatured Termination Event or Termination Event has occurred and is continuing, the Seller may request an additional Transaction for Excess Margin by delivering to the Purchaser, via Electronic Transmission, at least two (2) Business Days prior to the requested Purchase Date, an executed Request for Additional Transaction for Excess Margin in the form of Exhibit IX attached hereto ("Request for Additional Transaction for Excess Margin"); provided, however, that the Purchase Price of the outstanding Transactions and the Purchase Price set forth in the proposed Request for Additional Transaction for Excess Margin shall not exceed the Maximum Amount. The Request for Additional Transaction for Excess Margin shall, among other things, (A) specify (i) the amount of the additional Purchase Price to be paid by Purchaser in respect of the outstanding Transactions, (ii) the requested Purchase Date, (iii) the Excess Margin with respect to all outstanding Transactions before giving effect to the requested Transaction, (iv) the remaining Excess Margin after giving effect to the requested Transaction, (v) the aggregate Purchase Price of all Transactions outstanding after giving effect to the requested Transaction, and (vi) the Request for Additional Transaction for Excess Margin equals or exceeds $1,000,000, and (B) include a certification that, (x) upon the consummation of the additional Transaction, the Margin Base will be equal to or greater than the aggregate Purchase Price of all outstanding Transactions, and (y) all conditions precedent to such Transaction set forth in Articles II and III have been satisfied. Each Request for Additional Transaction for Excess Margin shall be irrevocable. For the purposes of this Section 2.6, "Excess Margin" shall be the excess of the Margin Base over the aggregate Purchase Price of all outstanding Transactions as of the date of such determination.

(b) Upon confirming that the Request for Additional Transaction for Excess Margin correctly reflects the information set forth in Subsection 2.6(a) and that, after giving effect to the requested Transaction, the amount of the Margin Base would be equal to or greater than the aggregate Purchase Price of all outstanding Transactions, within two (2) Business Days the Purchaser shall remit in accordance with Subsection 2.2(i) an amount equal to the lesser of (i) the additional Purchase Price set forth in such Request for Additional Transaction for Excess Margin and (ii) the Availability, and the Purchaser shall send a revised Confirmation with respect to such Purchased Assets. In the event that the Purchaser's assessment of the Margin Base would alter the information set forth in any Request for Additional Transaction for Excess Margin, the Purchaser shall promptly notify the Seller in writing of such assessment.

(c) The Purchaser shall not be obligated to remit the additional Purchase Price requested pursuant to a Request for Additional Transaction for Excess Margin where the Purchaser reasonably determines the Margin Base as calculated by the Seller (i) is based on erroneous information or would result in a Transaction other than in accordance with the terms of this Agreement, or (ii) does not reflect the Purchaser's current determination of Market Value as provided in the definition thereof.

SECTION 2.7 MARGIN ACCOUNT MAINTENANCE.

(a) If at any time the Purchaser determines (based on such factors as the Purchaser determines to rely on its sole discretion, including but not limited to a credit analysis of the Underlying Mortgaged Properties and the current market conditions for the Mortgage Asset) that the Margin Base is less than the aggregate Purchase Price for all outstanding Transactions (a "Margin Deficit"), then the Purchaser may by notice to the Seller in the form of Exhibit XII (as such notice is more particularly set forth below, a "Margin Deficit Notice") require the Seller to transfer to the Purchaser or its designee (including the Custodian) cash or Eligible Assets so that the aggregate Asset Value of the Purchased Assets will thereupon equal or exceed the aggregate Purchase Price for all outstanding Transactions, provided that, prior to or contemporaneously with the delivery of such Margin Deficit Notice, the Purchaser has informed the Seller of the methodology (in reasonable detail) utilized by the Purchaser to determine such Margin Deficit. Notwithstanding anything to the contrary in this Agreement, the Seller shall transfer such cash or Eligible Assets to the Purchaser's Account no later than twenty-four (24) hours after such Margin Deficit Notice shall be deemed to have been received under Section 13.2. All cash transferred to the Purchaser pursuant to this Section 2.7 shall be deposited in the Purchaser's Account and shall be attributed to such Transaction as the Purchaser shall determine in its sole discretion. Eligible Assets shall be transferred to the Purchaser in the same manner as Eligible Assets are transferred under Section 2.2.

(b) To the extent any such Margin Deficit is the result of a reduction in the Market Value of any Mortgage Asset, the Seller may dispute the determination of such Market Value by the Purchaser pursuant to the provisions of Section 2.10 of this Agreement, provided that no such dispute shall relieve, waive or delay the Seller's obligation to timely satisfy the Margin Deficit in accordance with this Section 2.7. The failure of the Seller to satisfy the Margin Deficit on a timely basis shall constitute a Termination Event and the Seller shall be precluded from disputing the Margin Base determined by the Purchaser. If (i) the Seller satisfies the Margin Deficit on a timely basis, (ii) the Seller timely satisfies the provisions set forth in Section 2.10 of this Agreement with respect to a dispute of the determination of the Market Value of any Purchased Asset, and, (iii) pursuant to the terms of such Section 2.10, a revised Market Value for such Mortgage Asset is determined that (if used in lieu of the Market Value used by the Purchaser in determining the Margin Base) would have resulted in a reduction of the Margin Deficit paid by the Seller, then the Purchaser shall promptly remit the difference to the Seller without any interest or other amounts due thereon.

(c) The Purchaser's election, in its sole and absolute discretion, not to deliver a Margin Deficit Notice at any time there is a Margin Deficit shall not in any way limit or impair its right to deliver a Margin Deficit Notice at any time a Margin Deficit exists.

SECTION 2.8 INCOME PAYMENTS.

The Purchaser shall be entitled to receive an amount equal to all Income paid or distributed on or in respect of the Purchased Items, which amount shall be deposited by the Seller and any Servicer or PSA Servicer under a Pooling and Servicing Agreement into the Collection Account. The Seller hereby agrees to instruct each applicable Servicer to transfer within two (2) Business Days of receipt thereof, and each applicable PSA Servicer under a Pooling and Servicing Agreement to deposit within two (2) Business Days of the date on which such Person is obligated under the applicable Pooling and Servicing Agreement to disburse such funds, all Income with respect to the Purchased Items directly into the Collection Account. On each Payment Date, any amounts on deposit in the Collection Account shall be withdrawn by the Purchaser and shall be applied as follows:

FIRST, to the payment of all fees, expenses, and other obligations then due to the Purchaser pursuant to this Agreement (including, without limitation, the Unused Fee and the Commitment Fee), other than the Price Differential and Purchase Price on the Purchased Assets;

SECOND, to the extent not paid by the Seller, to the payment of fees and expenses owed to the Custodian under the Custodial Agreement or Custodial Fee Letter;

THIRD, to the payment of accrued and unpaid Price Differential on the Purchased Assets and Late Payment Fees outstanding;

FOURTH, to the extent not previously paid pursuant to Section 2.3, to pay the Repurchase Price for Purchased Assets then subject to a request to repurchase in accordance with the terms of Section 2.3;

FIFTH, without limiting the Seller's obligations to cure Margin Deficits in a timely manner in accordance with Section 2.7, to the Purchaser for the payment of any Margin Deficit outstanding;

SIXTH, to the extent any Income includes payments or prepayments of principal on the underlying Mortgaged Asset (including, without limitation, insurance or condemnation proceeds or recoveries from any foreclosures), such payments shall be applied to reduce the aggregate Purchase Price outstanding for the related Transaction;

SEVENTH, to the payment of Breakage Costs, Indemnified Amounts, Increased Costs, Additional Amounts and all other amounts then due and owing to the Purchaser pursuant to this Agreement and the other Repurchase Documents; and

EIGHTH, to the Operating Account, for such purposes as the Seller shall determine in its sole discretion.

provided, however, that if a Margin Deficit is outstanding or an Unmatured Termination Event or Termination Event has occurred and is continuing, such amounts shall not be transferred to the

Operating Account but shall remain in the Collection Account and applied in reduction of the Aggregate Unpaids.

Notwithstanding anything to the contrary contained herein, in the event any Borrower Reserve Payments are deposited into the Collection Account, such Borrower Reserve Payments shall, upon written request of the Seller, be promptly transferred from the Collection Account to the Operating Account for the Seller to transfer into the appropriate escrow or reserve accounts.

SECTION 2.9 PAYMENT, TRANSFER AND CUSTODY.

(a) Unless otherwise expressly provided herein, all amounts to be paid or deposited by the Seller hereunder shall be paid or deposited in accordance with the terms hereof no later than 3:00 p.m. on the day when due in lawful money of the United States, in immediately available funds and without deduction, set-off or counterclaim to the Purchaser's Account and if not received before such time shall be deemed to be received on the next Business Day. The Seller shall, to the extent permitted by Applicable Law, pay to the Purchaser interest on any amounts not paid when due hereunder or under the Repurchase Documents at the Post Default Rate, payable on demand; provided, however, that such interest rate shall not at any time exceed the maximum rate permitted by Applicable Law. Such interest shall be for the account of, and distributed to, the Purchaser. All computations of interest and all computations of the Price Differential and other fees hereunder shall be made on the basis of a year consisting of 360 days (other than calculations with respect to the Base Rate which shall be based on a year consisting of 365 or 366 days, as applicable) for the actual number of days (including the first but excluding the last day) elapsed. The Seller acknowledges that it has no rights of withdrawal from the foregoing Purchaser's Account or from the Collection Account.

(b) Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of the payment of the Price Differential or any fee payable hereunder, as the case may be.

(c) If any Transaction requested by the Seller and approved by the

Purchaser, pursuant to Section 2.2, 2.3 or Section 2.6, is not, for any reason, made or effectuated, as the case may be, on the date specified therefor, the Seller shall indemnify the Purchaser against any reasonable loss, cost or expense incurred by the Purchaser including, without limitation, any loss (including loss of anticipated profits, net of anticipated profits, if any, in the reemployment of such funds in the manner determined by the Purchaser in its sole discretion), or reasonable cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by the Purchaser to fund or maintain such Transaction.

(d) On the Purchase Date for each Transaction, ownership of the Purchased Assets shall be transferred to the Purchaser or its designee (including the Custodian) against the simultaneous transfer of the Purchase Price to the Seller not later than 3:00 p.m. simultaneously with the delivery to the Custodian of the Purchased Assets relating to each Transaction in accordance with and subject to the provisions of Subsection 2.2(h). The Seller hereby sells, transfers, conveys and assigns to the Purchaser or its designee (including the Custodian) all the

right, title and interest of the Seller in and to the Purchased Items together with all right, title and interest in and to the proceeds of any related Purchased Items.

(e) In connection with such sale, transfer, conveyance and assignment, (i) in the case of a Non-Table Funded Purchased Asset, on or prior to each Purchase Date, and (ii) in the case of a Table Funded Purchased Asset, on or prior to the date and time specified in Subsection 2.2(d), the Seller shall deliver or cause to be delivered and released to the Purchaser or its designee (including the Custodian) (x) the Custodial Identification Certificate and (y) the documents identified in Section 3.1 of the Custodial Agreement.

(f) Any Mortgage Asset Files not delivered to the Purchaser or its designee (including the Custodian) are and shall be held in trust by the Seller or its designee for the benefit of the Purchaser as the owner thereof. The Seller or its designee shall maintain a copy of the Mortgage Asset File and the originals of the Mortgage Asset File not delivered to the Purchaser or its designee (including the Custodian). The possession of the Mortgage Asset File by the Seller or its designee is at the will of the Purchaser for the sole purpose of servicing the related Purchased Asset, and such retention and possession by the Seller or its designee is in a custodial capacity only. Each Mortgage Asset File retained or held by the Seller or its designee shall be segregated on the Seller's books and records from the other assets of the Seller or its designee, and the books and records of the Seller or its designee shall be marked appropriately to reflect clearly the sale of the related Purchased Asset to the Purchaser. The Seller or its designee shall release its custody of the Mortgage Asset File only in accordance with written instructions from the Purchaser, unless such release is required as incidental to the servicing of the Purchased Assets or is in connection with a repurchase of any Purchased Asset by the Seller.

SECTION 2.10 DISPUTES REGARDING MARKET VALUE DETERMINATION.

Subject to Section 2.7, if the Seller has a good faith basis to dispute any determination of the Market Value by the Purchaser, the Seller may notify the Purchaser of such dispute within three (3) Business Days after any such determination thereof by Purchaser. The Seller may, at its sole cost and expense, (A) if the dispute involves the appraised value of an Underlying Mortgaged Property used by the Purchaser in determining the Market Value of a Purchased Asset, within forty-five (45) calendar days of the date of the notice to the Purchaser deliver a new FIRREA Appraisal of such Underlying Mortgaged Property, in which case the appraised value set forth in such new FIRREA Appraisal shall be used in lieu of the disputed appraised value in the determining the Market Value of such Purchased Asset, and, (B) if the dispute involves the price at which a Purchased Asset could readily be sold used by the Purchaser in determining the Market Value of such Purchased Asset, within three (3) Business Days (or, in the case of Mezzanine Loans, fifteen (15) calendar days) of the date of the notice to the Purchaser deliver up to three (3) written Alternative Market Price Quotes, in which case the average of the Alternative Market Price Quotes on the one hand and the market price used by the Purchaser on the other shall be used in lieu of the disputed market price in the determination of the Market Value of such Purchased Asset. Notwithstanding anything to the contrary herein, in the event that the Seller fails to timely deliver to the Purchaser any notice of dispute within such three (3) Business Day period or fails to deliver such appraisal within forty-five (45) calendar days or such Alternative Market Price Quotes within such three (3) Business Days (or, in the

case of Mezzanine Loans, fifteen (15) calendar days), respectively, the Purchaser's determination of the Market Value shall be final and conclusive.

SECTION 2.11 HYPOTHECATION OR PLEDGE OF PURCHASED ASSETS.

Title to all Purchased Items shall pass to the Purchaser, and the Purchaser shall have free and unrestricted use of all Purchased Assets and Purchased Items. Nothing in this Agreement shall preclude the Purchaser from engaging in repurchase transactions with the Purchased Items or otherwise pledging, repledging, transferring, hypothecating, or rehypothecating the Purchased Items, all on terms that the Purchaser may determine in its sole discretion. Nothing contained in this Agreement shall obligate the Purchaser to segregate any Purchased Items delivered to the Purchaser by the Seller.

SECTION 2.12 FEES.

(a) On or prior to the Closing Date, the Seller shall pay to the Purchaser the Commitment Fee agreed to by the Seller and the Purchaser in the Fee Letter.

(b) To the extent not paid by the Seller under the Fee Letter, the Pricing Differential and the Unused Fee shall be paid to the Purchaser from the Collection Account to the extent funds are available on each Payment Date pursuant to Section 2.8.

(c) To the extent not paid by the Seller, the Custodian's fees and expenses shall be paid to the Custodian from the Collection Account to the extent funds are available on each Payment Date pursuant to Section 2.8.

(d) The Seller shall pay to Moore & Van Allen PLLC, as counsel to the Purchaser, on the Closing Date, its reasonable estimated fees and out-of-pocket expenses in immediately available funds and shall pay all additional reasonable fees and out-of-pocket expenses of Moore & Van Allen PLLC within ten (10) days after receiving an invoice for such amounts.

SECTION 2.13 INCREASED COSTS; CAPITAL ADEQUACY; ILLEGALITY.

(a) If either (i) the introduction of or any change (including, without limitation, any change by way of imposition or increase of reserve requirements) in or in the interpretation of any law or regulation, or (ii) the compliance by the Purchaser with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) shall (a) subject the Purchaser to any Tax (except for Taxes on the overall net income of the Purchaser), duty or other charge with respect to any ownership interest in the Purchased Items, or any right to enter into Transactions hereunder, or on any payment made hereunder, (b) impose, modify or deem applicable any reserve requirement (including, without limitation, any reserve requirement imposed by the Board of Governors of the Federal Reserve System, but excluding any reserve requirement, if any, included in the determination of the Price Differential), special deposit or similar requirement against assets of, deposits with or for the amount of, or credit extended by, the Purchaser or (c) impose any other condition affecting the ownership interest in the Purchased Items conveyed to the Purchaser hereunder or the Purchaser's rights hereunder,

the result of which is to increase the cost to the Purchaser or to reduce the amount of any sum received or receivable by the Purchaser under this Agreement, then within ten (10) days after demand by the Purchaser (which demand shall be accompanied by a statement setting forth the basis for such demand), the Seller shall pay directly to the Purchaser such additional amount or amounts as will compensate the Purchaser for such additional or increased cost incurred or such reduction suffered.

(b) If either (i) the introduction of or any change in or in the interpretation of any law, guideline, rule, regulation, directive or request or (ii) compliance by the Purchaser with any law, guideline, rule, regulation, directive or request from any central bank or other Governmental Authority or agency (whether or not having the force of law), including, without limitation, compliance by the Purchaser with any request or directive regarding capital adequacy, has or would have the effect of reducing the rate of return on the capital of the Purchaser as a consequence of its obligations hereunder or arising in connection herewith to a level below that which the Purchaser could have achieved but for such introduction, change or compliance (taking into consideration the policies of the Purchaser with respect to capital adequacy) by an amount deemed by the Purchaser to be material, then from time to time, within ten (10) days after demand by the Purchaser (which demand shall be accompanied by a statement setting forth the basis for such demand), the Seller shall pay directly to the Purchaser such additional amount or amounts as will compensate the Purchaser for such reduction. For the avoidance of doubt, any interpretation of Accounting Research Bulletin No. 51 by the Financial Accounting Standards Board shall constitute an adaptation, change, request or directive subject to this Subsection 2.13(b).

(c) If as a result of any event or circumstance similar to those described in clause (a) or (b) of this Section 2.13, the Purchaser is required to compensate a bank or other financial institution providing liquidity support, credit enhancement or other similar support to the Purchaser in connection with this Agreement or the funding or maintenance of Purchased Items hereunder, then within ten (10) days after demand by the Purchaser, the Seller shall pay to the Purchaser such additional amount or amounts as may be necessary to reimburse the Purchaser for any amounts payable or paid by it.

(d) In determining any amount provided for in this Section 2.13, the Purchaser may use any reasonable averaging and attribution methods. The Purchaser making a claim under this Section 2.13 shall submit to the Seller a written description as to such additional or increased cost or reduction and the calculation thereof, which written description shall be conclusive absent demonstrable error.

(e) If the Purchaser shall notify the Purchaser that a Eurodollar Disruption Event as described in clause (a) of the definition of "Eurodollar Disruption Event" has occurred, the Purchaser shall in turn so notify the Seller, whereupon all Transactions in respect of which the Price Differential accrues at the Adjusted Eurodollar Rate shall immediately be converted into Transactions in respect of which the Price Differential accrues at the Base Rate.

(f) If, as a result of any event or circumstance described in clause (a), (b) or (c) of this Section 2.13, the Seller is required to make payments to the Purchaser, the Seller shall have

the right to elect, by written notice to the Purchaser, to convert the Rate at which the Price Differential accrues from the Eurodollar Rate to the Base Rate.

SECTION 2.14 TAXES.

(a) All payments made by a Borrower in respect of a Purchased Item and all payments made by the Seller under this Agreement will be made free and clear of and without deduction or withholding for or on account of any Taxes. If any Taxes are required to be withheld from any amounts payable to the Purchaser, then the amount payable to such Person will be increased (such increase, the "Additional Amount") such that every net payment made under this Agreement after withholding for or on account of any Taxes (including, without limitation, any Taxes on such increase) is not less than the amount that would have been paid had no such deduction or withholding been deducted or withheld. The foregoing obligation to pay Additional Amounts, however, will not apply with respect to net income or franchise taxes imposed on the Purchaser, with respect to payments required to be made by the Seller under this Agreement, by a taxing jurisdiction in which the Purchaser is organized, conducts business or is paying taxes (as the case may be).

(b) The Seller will indemnify the Purchaser for the full amount of Taxes payable by such Person in respect of Additional Amounts and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. All payments in respect of this indemnification shall be made within ten (10) days from the date a written invoice therefor is delivered to the Seller.

(c) Within thirty (30) days after the date of any payment by the Seller of any Taxes, the Seller will furnish to the Purchaser, at its address set forth under its name on the signature pages hereof, appropriate evidence of payment thereof.

(d) If the Purchaser is created or organized under the laws of the United States or a political subdivision thereof, the Purchaser shall deliver to the Seller, within fifteen (15) days after the date hereof, two (or such other number as may from time to time be prescribed by Applicable Laws) duly completed copies of IRS Form W-9 (or any successor forms of other certificates or statements that may be required from time to time by the relevant United States taxing authorities or Applicable Laws). If the Purchase is not created or organized under the laws of the United States or a political subdivision thereof, the Purchaser shall deliver to the Seller, (i) within fifteen (15) days after the date hereof, two (or such other number as may from time to time be prescribed by Applicable Laws) duly completed copies of IRS Form W-8BEN or Form W-8ECI (or any successor forms or other certificates or statements that may be required from time to time by the relevant United States taxing authorities or Applicable Laws), as appropriate, to permit the Seller to make payments hereunder for the account of the Purchaser without deduction or withholding of United States federal income or similar Taxes, and (ii) upon the obsolescence of, or after the occurrence of any event requiring a change in, any form or certificate previously delivered pursuant to this Subsection 2.14(d), copies (in such numbers as may from time to time be prescribed by Applicable Laws or regulations) of such additional, amended or successor forms, certificates or statements as may be required under Applicable

Laws or regulations to permit the Seller to make payments hereunder for the account of the Purchaser without deduction or withholding of United States federal income or similar Taxes.

(e) Without prejudice to the survival of any other agreement of the Seller hereunder, the agreements and obligations of the Seller contained in Section 2.13 and this Section 2.14 shall survive the termination of this Agreement.

ARTICLE III

CONDITIONS TO TRANSACTIONS

SECTION 3.1 CONDITIONS TO CLOSING AND INITIAL PURCHASE.

The Purchaser shall not be obligated to enter into any Transaction hereunder nor shall the Purchaser be obligated to take, fulfill or perform any other action hereunder until the following conditions have been satisfied, in the sole discretion of, or waived in writing by, the Purchaser:

(a) Each Repurchase Document shall have been duly executed by, and delivered to, the parties thereto, and the Purchaser shall have received such other documents, instruments, agreements and legal opinions as the Purchaser shall reasonably request in connection with the Transactions contemplated by this Agreement, each in form and substance satisfactory to the Purchaser;

(b) The Purchaser shall have received (i) satisfactory evidence that the Seller and the Guarantor have obtained all required consents and approvals of all Persons, including all requisite Governmental Authorities, to the execution, delivery and performance of this Agreement and the other Repurchase Documents to which each is a party and the consummation of the transactions contemplated hereby or thereby or (ii) an Officer's Certificate from each of the Seller and the Guarantor in form and substance reasonably satisfactory to the Purchaser affirming that no such consents or approvals are required; it being understood that the acceptance of such evidence or Officer's Certificate shall in no way limit the recourse of the Purchaser against the Seller or the Guarantor for a breach of the Seller's or the Guarantor's representation or warranty that all such consents and approvals have, in fact, been obtained;

(c) The Seller, the Guarantor and the Pledgor shall each be in compliance in all material respects with all Applicable Laws and Contractual Obligations and shall have delivered to the Purchaser as to this and other closing matters certification in the form of Exhibit I-1, I-2 and I-3, respectively;

(d) The Seller shall have delivered to the Purchaser a duly executed Power of Attorney in the form of Exhibit III;

(e) The Seller and the Pledgor shall have delivered to the Purchaser a perfection certificate in the form of Exhibit VI-1 and VI-2, respectively;

(f) Any and all consents and waivers applicable to the Seller, the Guarantor or to the Purchased Items shall have been obtained;

(g) The UCC Financing Statements described in Subsection 4.1(n)(v) shall have been filed in the appropriate filing offices;

(h) The Purchaser shall be in receipt of such Opinions of Counsel from the counsel to the Seller, the Guarantor and the Custodian as the Purchaser may require, each in form and substance satisfactory to the Purchaser in its sole discretion, including, without limitation, corporate opinions and perfection opinions (filing and possession);

(i) The Purchaser shall be in receipt of a good standing certificate and certified copies of the Governing Documents and applicable resolutions of the Seller, the Guarantor and the Custodian evidencing the corporate or other authority for the Seller, the Guarantor and the Custodian with respect to the execution, delivery and performance of the Repurchase Documents and each of the other documents to be delivered by the Seller, the Guarantor and the Custodian from time to time in connection herewith;

(j) The Purchaser shall be in receipt of the Servicing Agreements, the Pooling and Servicing Agreements (if any) and Purchase Agreements, certified as true, correct and complete copies of the originals, together with the Servicer Notices, fully executed by the Seller and Servicer;

(k) The Purchaser shall be in receipt of a Certified copy of each Pooling and Servicing Agreement in effect for any Eligible Asset;

(l) The Purchaser shall have received payment from the Seller of the Commitment Fee and the amount of actual costs and expenses, including, without limitation, the fees and expenses of counsel to the Purchaser as contemplated by Section 13.9, incurred by the Purchaser in connection with the development, preparation and execution of this Agreement, the other Repurchase Documents and any other documents prepared in connection herewith or therewith;

(m) The Purchaser shall have completed to its satisfaction such due diligence as it may require in its sole and absolute discretion; and

(n) The Purchaser shall have received all such other and further documents, certifications, reports, approvals and legal opinions as the Purchaser may reasonably require.

SECTION 3.2 CONDITIONS PRECEDENT TO ALL TRANSACTIONS.

The Purchaser's agreement to enter into each Transaction (including the initial Transaction) is subject to the satisfaction of the following further conditions precedent, both immediately prior to entering into such Transaction and also after giving effect to the consummation thereof and the intended use of the proceeds of the sale:

(a) no Applicable Law shall prohibit or render it unlawful, and no order, judgment or decree of Governmental Authority shall prohibit, enjoin or render it unlawful, to enter into such Transaction by the Purchaser in accordance with the provisions hereof or any other transaction contemplated herein;

(b) the Seller, the Guarantor, the Pledgor and each Servicer and PSA Servicer shall have delivered to the Purchaser all reports and other information required to be delivered as of the date of such Transaction;

(c) the Seller shall have delivered a Confirmation, via Electronic Transmission, in accordance with the procedures set forth in Section 2.2, and the Purchaser shall have determined that the Mortgage Asset described in such Confirmation is an Eligible Asset, shall have approved the purchase of the Mortgage Asset to be included in such Transaction in its sole and absolute discretion and shall have obtained all necessary internal credit and other approvals for such Transaction;

(d) no Unmatured Termination Event or Termination Event shall have occurred and be continuing;

(e) the Purchaser shall have received a Compliance Certificate in the form of Exhibit X attached hereto ("Compliance Certificate") from a Responsible Officer of the Seller and Guarantor that, among other things: (i) shows in detail the calculations demonstrating that, after giving effect to the requested Transaction, the aggregate Purchase Price of the Transactions outstanding shall not exceed the Maximum Amount, (ii) the Seller and the Guarantor have observed or performed all of their covenants and other agreements, and satisfied every condition, contained in this Agreement, the Repurchase Documents and the related documents to be observed, performed or satisfied by them, and that such Responsible Officer has obtained no knowledge of any Unmatured Termination Event or Termination Event except as specified in such certificate, (iii) states that all representations and warranties contained in this Agreement are true and correct on and as of such day as though made on and as of such day and shall be deemed to be made on such day, and (iv) the Guarantor is in compliance with the Financial Covenants;

(f) after giving effect to the requested Transaction, the aggregate outstanding Purchase Price of the Transactions outstanding shall not exceed the Asset Value of all the Purchased Assets subject to outstanding Transactions or the Maximum Amount;

(g) subject to the Purchaser's right to perform one or more Due Diligence Reviews pursuant to Section 13.21, the Purchaser shall have completed in accordance with Section 2.2 its due diligence review of the Mortgage Asset File and the Underwriting Package for each Purchased Asset and such other documents, records, agreements, instruments, mortgaged properties or information relating to such Mortgage Asset as the Purchaser in its sole discretion deems appropriate to review and such review shall be satisfactory to the Purchaser in its sole discretion;

(h) with respect to any Eligible Asset to be purchased hereunder on the related Purchase Date that is not serviced by the Seller, the Seller shall have provided to the Purchaser

copies of the related Servicing Agreements and the Pooling and Servicing Agreements, certified as true, correct and complete copies of the originals, together with Servicer Notices fully executed by the Seller and the Servicer;

(i) the Purchaser shall have received all fees and expenses of the

Purchaser and counsel to the Purchaser as contemplated by Section 13.9 and the Fee Letter and, to the extent the Seller is required hereunder to reimburse the Purchaser for such amounts the Purchaser shall have received the reasonable costs and expenses incurred by them in connection with the entering into of any Transaction hereunder, including, without limitation, costs associated with due diligence recording or other administrative expenses necessary or incidental to the execution of any Transaction hereunder, which amounts, at the Purchaser's option, may be withheld from the sale proceeds of any Transaction hereunder;

(j) none of the following shall have occurred and/or be continuing:

(i) an event or events shall have occurred in the good faith determination of the Purchaser resulting in the effective absence of a "repo market" or related "lending market" for purchasing (subject to repurchase) or financing debt obligations secured by commercial mortgage loans or securities, or an event or events shall have occurred resulting in the Purchaser not being able to finance Mortgage Assets through the "repo market" or "lending market" with traditional counterparties at rates that would have been reasonable prior to the occurrence of such event or events;

(ii) an event or events shall have occurred resulting in the effective absence of a "securities market" for securities backed by Mortgage Assets, or an event or events shall have occurred resulting in the Purchaser not being able to sell securities backed by Mortgage Assets at prices that would have been reasonable prior to such event or events; or

(iii) there shall have occurred a material adverse change in the financial condition of the Purchaser that affects (or can reasonably be expected to affect) materially and adversely the ability of the Purchaser to fund its obligations under this Agreement.

(k) for each Non-Table Funded Purchased Asset, the Purchaser shall have received from the Custodian on each Purchase Date a Trust Receipt and an Asset Schedule and Exception Report with respect to each Eligible Asset, each dated the Purchase Date, duly completed and, in the case of the Asset Schedule and Exception Report, with exceptions acceptable to the Purchaser in its sole discretion in respect of Eligible Assets to be purchased hereunder on such Business Day. In the case of a Table Funded Purchased Asset, the Purchaser shall have received on the related Purchase Date the Table Funded Trust Receipt and all other items described in the second (2nd) sentence of Subsection 2.2(h), each in form and substance satisfactory to the Purchaser in its sole discretion, provided that the Purchaser subsequently receives the items described in Subsections 2.2(d) and (h) and the other delivery requirements under the Custodial Agreement on or before the date and time specified herein and therein, which items shall be in form and substance satisfactory to the Purchaser in its sole discretion;

(l) the Purchaser shall have received from the Seller a Warehouse Lender's Release Letter substantially in the form of Exhibit VII-B hereto (or such other form acceptable to the Purchaser) ("Warehouse Lender's Release Letter"), if applicable, or a Seller's Release Letter substantially in the form of Exhibit VII-A hereto (or such other form acceptable to the Purchaser) ("Seller's Release Letter") covering each Eligible Asset to be sold to the Purchaser;

(m) prior to the purchase of any Eligible Asset acquired (by purchase or otherwise) by the Seller from any Affiliate of the Seller, the Purchaser shall have received certified copies of the applicable Purchase Agreements and a True Sale Opinion;

(n) the Purchase Price specified in a Confirmation for a Transaction shall not be less than $1,000,000;

(o) on and as of such day, the Seller, the Guarantor and the Custodian shall have performed all of the covenants and agreements contained in the Repurchase Documents to be performed by such Person at or prior to such day;

(p) the Repurchase Date for such Transaction is not later than the Facility Maturity Date;

(q) the Purchaser shall have received evidence satisfactory to the Purchaser that the Seller has delivered an irrevocable instruction to each Servicer or PSA Servicer under a Pooling and Servicing Agreement, as applicable, to pay Income with respect to the Purchased Items directly to the Collection Account as provided herein, which instructions may not be modified without the prior written consent of the Purchaser;

(r) both immediately prior to the requested Transaction and also after giving effect thereto and to the intended use thereof, the representations and warranties made by the Seller and the Guarantor in Section 4.1 shall be true, correct and complete on and as of such Purchase Date in all material respects with the same force and effect as if made on and as of such date (or, if any such representation or warranty is expressly stated to have been made only as of a specific date, as of such specific date);

(s) the Purchaser shall be in receipt of the evidence of insurance required by Section 9.1 of the Custodial Agreement;

(t) the Seller shall have delivered any other opinion or closing item required by Section 3.1 that was not delivered on the Closing Date (including, without limitation, the filing of UCC financing statements against the Seller and the Pledgor, an opinion regarding perfection by possession, perfection by filing and other matters delivered on behalf of the Seller and acceptable to the Purchaser in its discretion, the Guarantor's resolution duly executed, an opinion on behalf of the Guarantor acceptable to the Purchaser in its discretion, a fully executed Servicing Agreement and the establishment of the Collection Account);

(u) a certification of good standing for the Seller for the Seller in each jurisdiction where the Mortgaged Property is located;

(v) other conditions to such Purchase set forth in this Agreement or the Custodial Agreement are satisfied; and

(w) to the extent applicable, the Seller shall have delivered the opinions required by Section 3.3; and

(x) the Purchaser shall have received all such other and further documents, reports, certifications, approvals and legal opinions as the Purchaser in its sole discretion shall reasonably require.

Each Confirmation delivered by the Seller hereunder shall constitute a certification by the Seller that all the conditions set forth in Section 3.1 and this Section 3.2 have been satisfied (both as of the date of such notice or request and as of the date of such purchase).

The failure of the Seller or Guarantor, as applicable, to satisfy any of the foregoing conditions precedent in respect of any Transaction shall, unless such failure was expressly waived in writing by the Purchaser on or prior to the related Purchase Date, give rise to a right of the Purchaser, which right may be exercised at any time on the demand of the Purchaser, to rescind the related Transaction and direct the Seller to pay to the Purchaser for the benefit of the Purchaser an amount equal to the Purchase Price, the Price Differential, Breakage Costs and other amounts due in connection therewith during any such time that any of the foregoing conditions precedent were not satisfied.

SECTION 3.3 ADDITIONAL OPINIONS.

To the extent required by any Rating Agency at any time, the Seller shall (i) amend its Governing Documents to require two (2) Independent Directors and add any other provision that may be required by any such Rating Agency in its sole and absolute discretion or by the Purchaser in its reasonable discretion, (ii) provide to the Purchaser a non-consolidation opinion regarding the Seller, the Pledgor and the Guarantor, which opinion shall be satisfactory to the Purchaser in its reasonable discretion and the Rating Agencies in their sole and absolute discretion, (iii) provide the Purchaser with one (1) or more legal opinions addressing the single-member limited liability company structure of the Seller, which opinions shall be satisfactory to the Purchaser in its reasonable discretion and the Rating Agencies in their sole and absolute discretion, and (iv) any additional opinions or requirements that any Rating Agency may require, which opinions shall be satisfactory to the Purchaser in its reasonable discretion and the Rating Agencies in their sole and absolute discretion.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

SECTION 4.1 REPRESENTATIONS AND WARRANTIES OF THE SELLER.

Each of the Seller and the Guarantor represents and warrants, as of the date of this Agreement and any Transaction hereunder and at all times while any Repurchase Document and any Transaction hereunder is in full force and effect, as follows:

(a) Organization and Good Standing. Each of the Seller's and the Guarantor's exact legal name is set forth on the signature pages to this Agreement. The Seller has been duly organized, and is validly existing as a limited liability company in good standing, under the laws of the State of Delaware, with all requisite limited liability company power and authority to own or lease its Properties and conduct its business as such business is presently conducted, and had, at all relevant times, and now has, all necessary power, authority and legal right to acquire, own and sell the Purchased Items. The Guarantor has been duly organized, and is validly existing as a corporation in good standing, under the laws of the State of Maryland, with all requisite corporate power and authority to own or lease its Properties and conduct its business as such business is presently conducted.

(b) Due Qualification. Each of the Seller and the Guarantor is duly qualified to do business and is in good standing as a limited liability company and corporation, respectively, and has obtained all necessary licenses and approvals, in all jurisdictions in which the ownership or lease of Property or the conduct of its business requires such qualification, licenses or approvals.

(c) Power and Authority; Due Authorization; Execution and Delivery. Each of the Seller and the Guarantor (i) has all necessary power, authority and legal right (A) to execute and deliver the Repurchase Documents to which it is a party, (B) to carry out the terms of the Repurchase Documents to which it is a party, (C) with respect to the Seller, to sell and assign an ownership interest in the Purchased Items, and (D) with respect to the Seller, to sell the Purchased Items on the terms and conditions provided herein, and (ii) has duly authorized by all necessary corporate action (A) the execution, delivery and performance of the Repurchase Documents to which it is a party, and (B) with respect to the Seller, the sale and assignment of an ownership interest in the Purchased Items on the terms and conditions herein provided. The Repurchase Documents to which each of the Seller and the Guarantor is a party have been duly executed and delivered by the Seller and the Guarantor, as applicable.

(d) Binding Obligation. Each of the Repurchase Documents to which each of the Seller and the Guarantor is a party constitutes a legal, valid and binding obligation of the Seller and the Guarantor, as applicable, enforceable against the Seller and the Guarantor in accordance with its respective terms, except as such enforceability may be limited by Insolvency Laws and by general principles of equity (whether considered in a suit at law or in equity).

(e) No Violation. The consummation of the transactions contemplated by the Repurchase Documents to which each of the Seller and the Guarantor is a party and the fulfillment of the terms hereof and thereof will not (i) conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time or both) a default under, the Seller's or the Guarantor's, as applicable, Governing Documents or any material Contractual Obligation of the Seller or the Guarantor, as applicable, (ii) result in the creation or imposition of any Lien (other than Permitted Liens) upon any of the Seller's or the Guarantor's, Properties pursuant to the terms of any such Contractual Obligation, other than this Agreement, or (iii) violate any Applicable Law.

(f) No Proceedings. There is no material litigation, proceeding or investigation pending or, to the best knowledge of each of the Seller or the Guarantor, threatened against the Seller or the Guarantor, before any Governmental Authority (i) asserting the invalidity of the Repurchase Documents to which each of the Seller and the Guarantor is a party, (ii) seeking to prevent the consummation of any of the transactions contemplated by the Repurchase Documents to which each of the Seller and the Guarantor is a party, or (iii) seeking any determination or ruling that could reasonably be expected to have Material Adverse Effect.

(g) All Consents Required. All approvals, authorizations, consents, orders or other actions of any Person or of any Governmental Authority (if any) required for the due execution, delivery and performance by the Seller and the Guarantor of the Repurchase Documents to which each of the Seller and the Guarantor is a party (including the transfer of and the grant of a security interest in the Purchased Items) have been obtained, effected or given and are in full force and effect.

(h) Bulk Sales. The execution, delivery and performance of this Agreement and the transactions contemplated hereby do not require compliance with any "bulk sales" act or similar law by the Seller or the Guarantor.

(i) Solvency. Neither the Seller nor the Guarantor is the subject of any Insolvency Proceedings or Insolvency Event. The Transactions under this Agreement and any other Repurchase Document to which each of the Seller and the Guarantor is a party do not and will not render the Seller or the Guarantor not Solvent.

(j) Selection Procedures. No procedures believed by the Seller or the Guarantor to be adverse to the interests of the Purchaser were utilized by the Seller or the Guarantor in identifying and/or selecting the Purchased Assets. In addition, each Purchased Asset shall have been underwritten in accordance with and satisfy any applicable standards that have been established by the Seller, the Guarantor and any of their Affiliates and are then in effect.

(k) Taxes. Each of the Seller and the Guarantor has filed or caused to be filed all tax returns that are required to be filed by it. Each of the Seller and the Guarantor has paid or made adequate provisions for the payment of all Taxes and all assessments made against it or any of its Property (other than any amount of Tax the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in accordance with GAAP have been provided on the books of the Seller), and no tax Lien has been filed and, to each of the Seller's and the Guarantor's knowledge, no claim is being asserted, with respect to any such Tax, fee or other charge.

(l) Exchange Act Compliance; Regulations T, U and X. None of the transactions contemplated herein (including, without limitation, the use of the proceeds from the sale of the Purchased Items) will violate or result in a violation of Section 7 of the Exchange Act, or any regulations issued pursuant thereto, including, without limitation, Regulations T, U and X. Neither the Seller nor the Guarantor owns or intends to carry or purchase, and no proceeds from the Transactions will be used to carry or purchase, any "margin stock" within the meaning of Regulation U or to extend "purpose credit" within the meaning of Regulation U.

(m) Environmental Matters.

(i) No Properties owned or leased by the Seller or the

Guarantor and, to the knowledge of each of the Seller and the Guarantor, no Properties formerly owned or leased by the Seller or the Guarantor, or any Subsidiaries thereof, contain, or have previously contained, any Materials of Environmental Concern in amounts or concentrations that constitute or constituted a violation of, or reasonably could be expected to give rise to liability under, Environmental Laws;

(ii) Each of the Seller and the Guarantor is in compliance, and has in the last five (5) years (or such shorter period as the Seller and/or the Guarantor shall have been in existence) been in compliance, with all applicable Environmental Laws, and, to the knowledge of the Seller and the Guarantor, there is no violation of any Environmental Laws that reasonably could be expected to interfere with the continued operations of the Seller or the Guarantor;

(iii) Neither the Seller nor the Guarantor has received any notice of violation, alleged violation, non-compliance, liability or potential liability under any Environmental Law, nor does the Seller or the Guarantor have knowledge that any such notice will be received or is being threatened;

(iv) Materials of Environmental Concern have not been transported or disposed of by the Seller or the Guarantor in violation of, or in a manner or to a location that reasonably could be expected to give rise to liability under, any applicable Environmental Law, nor has any of them generated, treated, stored or disposed of at, on or under any of the Properties in violation of, or in a manner that reasonably could be expected to give rise to liability under, any applicable Environmental Law;

(v) No judicial proceedings or governmental or administrative action is pending, or, to the knowledge of each of the Seller and the Guarantor, threatened, under any Environmental Law to which Seller or the Guarantor is or will be named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements arising out of judicial proceedings or governmental or administrative actions, outstanding under any Environmental Law to which the Seller or the Guarantor is a party;

(vi) There has been no release or, to the best knowledge of each of the Seller and the Guarantor, threat of release of Materials of Environmental Concern in violation of or in amounts or in a manner that reasonably could be expected to give rise to liability under any Environmental Law for which the Seller or the Guarantor may become liable; and

(vii) To the best knowledge of each of the Seller and the Guarantor, each of the representations and warranties set forth in the preceding clauses (i) through (vi) is true and correct with respect to each parcel of real property owned or operated by the Seller and the Guarantor.

(n) Security Interest.

(i) This Agreement and the applicable Transfer Documents constitute a valid transfer to the Purchaser of all right, title and interest of the Seller in, to and under all Purchased Items, free and clear of any Lien of any Person claiming through or under the Seller, the Guarantor or any of their Affiliates, except for Permitted Liens and the Seller's repurchase rights described in Article II, and is enforceable against creditors of and purchasers from the Seller. If the conveyances contemplated by this Agreement are determined to be transfers for security, then this Agreement constitutes a grant of a security interest in all Purchased Items to the Purchaser, that, upon the delivery of the Transfer Documents and Mortgage Asset Files to the Custodian and the filing of the financing statements described in Subsection 4.1(n)(v), shall be a first priority perfected security interest in all Purchased Items to the extent such Purchased Items can be perfected by possession or by filing, subject only to Permitted Liens. Neither the Seller nor any Person claiming through or under the Seller shall have any claim to or interest in the Collection Account, except for the interest of the Seller in such property as a debtor for purposes of the UCC;

(ii) The Purchased Items constitute either a "general intangible," an "instrument," an "account," "investment property," a "security," a "deposit account" and/or "chattel paper" within the meaning of the applicable UCC;

(iii) Other than the Lien and transfers contemplated hereunder, the Seller has not sold, assigned, pledged, encumbered or otherwise conveyed any of the Purchased Items to any Person, and, immediately prior to the sale to the Purchaser, the Seller was the sole owner of such Purchased Items, and the Seller owns and has good and marketable title to the Purchased Items free and clear of any Lien (other than Permitted Liens);

(iv) The Seller has received all consents and approvals, if any, required by the terms of any Purchased Items to the sale and granting of a security interest in the Purchased Items hereunder to the Purchaser;

(v) Upon the filing of the UCC Financing Statements describing the Purchased Items, in the jurisdictions and recording offices listed on Schedule 7 attached hereto, the security interests granted hereunder in the Purchased Items shall constitute

fully perfected first priority security interests under the Uniform Commercial Code in all right, title and interest of the Seller in, to and under such Purchased Items that can be perfected by filing under the UCC;

(vi) Upon execution and delivery of the Account Agreement, the Purchaser shall either be the owner of, or have a valid and fully perfected first priority security interest in, the Collection Account and the deposits and investment property therein;

(vii) The Seller has not authorized the filing of and is not aware of any financing statements against the Seller that include a description of collateral covering the Purchased Items other than any financing statement (A) relating to the security interests granted to the Seller under the Purchase Agreements (if any), (B) that has been terminated, or (C) pursuant hereto. The Seller is not aware of the filing of any judgment or tax Lien filings against the Seller;

(viii) Upon receipt by Custodian of each Mortgage Note, Mezzanine Note or Junior Interest Note, as applicable, endorsed in blank by a duly authorized officer of the Seller and payment by the Purchaser of the applicable Purchase Price, either a purchase shall have been completed by the Purchaser of each Mortgage Note or Junior Interest Note, as applicable, or the Purchaser shall have a valid and fully perfected first priority security interest in each Mortgage Note or Junior Interest Note, as applicable;

(ix) All original Mortgage Notes, Mezzanine Notes and Junior Interest Notes have been, or, subject to the delivery requirements contained herein, will be delivered to the Custodian; and

(x) None of the Mortgage Notes, Mezzanine Notes or Junior Interest Notes has any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any Person other than the Purchaser.

(o) Location of Offices. The Seller's location (within the meaning of Article 9 of the UCC) is 333 Earle Ovington Boulevard, Uniondale, New York 11553. The office where the Seller keeps all the records (within the meaning of

Article 9 of the UCC) is at the address of the Seller referred to in Section 13.2 hereof (or at such other locations as to which the notice and other requirements specified in Subsection 5.1(n) shall have been satisfied). The Seller's organizational identification number is 3739319. The Seller has not changed its name, whether by amendment of its certificate of incorporation, by reorganization or otherwise, and has not changed its location within the four (4) months preceding the Closing Date.

(p) Tradenames. The Seller has no trade names, fictitious names, assumed names or "doing business as" names or other names under which it has done or is doing business.

(q) Value Given. The Seller shall have given reasonably equivalent value to each Transferor in consideration for the transfer to the Seller of the Purchased Items under the applicable Purchase Agreement, no such transfer shall have been made for or on account of an

antecedent debt owed by the Transferor thereunder to the Seller, and no such transfer is or may be voidable or subject to avoidance under any section of the Bankruptcy Code.

(r) [RESERVED].

(s) Compliance with Anti-Money Laundering Laws. Each of the Seller and the Guarantor has complied with all applicable anti-money laundering laws and regulations, including, without limitation, the USA Patriot Act of 2001 (collectively, the "Anti-Money Laundering Laws"). To the extent applicable, each of the Seller and the Guarantor has established an adequate anti-money laundering compliance program as required by the Anti-Money Laundering Laws, has conducted the requisite due diligence in connection with the origination or acquisition of each Mortgage Asset for purposes of the Anti-Money Laundering Laws, including with respect to the legitimacy of the applicable Borrower and the origin of the assets used by the said Borrower to purchase the property in question, and maintains, and will maintain, sufficient information to identify the applicable Borrower for purposes of the Anti-Money Laundering Laws. To the knowledge of the Seller and the Guarantor, no Mortgage Asset is subject to nullification pursuant to Executive Order 13224 (the "Executive Order") or the regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury (the "OFAC Regulations") or in violation of the Executive Order or the OFAC Regulations, and no Borrower is subject to the provisions of such Executive Order or the OFAC Regulations nor listed as a "blocked person" for purposes of the OFAC Regulations.

(t) Investment Company Act. Neither the Seller nor the Guarantor is, and neither is controlled by, an "investment company" within the meaning of the 40 Act, as amended, or is exempt from the provisions of the 40 Act.

(u) ERISA. The Seller, the Guarantor and each ERISA Affiliate have made all required contributions to each Benefit Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Benefit Plan. Neither the Seller, the Guarantor nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan, nor has there been a complete or partial withdrawal by the Seller, the Guarantor or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization. The present value of all benefits vested under all "employee pension benefit plans," as such term is defined in Section 3(2) of ERISA, maintained by each of the Seller and the Guarantor, or in which employees of the Seller or the Guarantor are entitled to participate, as from time to time in effect (herein called the "Pension Plans"), does not exceed the value of the assets of the Pension Plan allocable to such vested benefits (based on the value of such assets as of the last annual valuation date). No prohibited transactions, accumulated funding deficiencies, withdrawals or reportable events have occurred with respect to any Pension Plans that, in the aggregate, could subject the Seller or the Guarantor to any material tax, penalty or other liability. No Lien in favor of the PBGC or a Pension Plan has arisen or is likely to arise on account of any Pension Plan. No notice of intent to terminate a Pension Plan under Section 4041(b) of ERISA has been filed, nor has any Pension Plan been

terminated under Section 4041(c) of ERISA, nor has the PBGC instituted proceedings to terminate or appoint a trustee to administer a Pension Plan, and no event has occurred or condition exists that might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan.

(v) PUHCA. Neither the Seller nor the Guarantor is a "holding company" or a "subsidiary holding company" of a "holding company" within the meaning of the Public Utility Holding Company Act of 1935, as amended, or any successor statute.

(w) Compliance with Law. Each of the Seller and the Guarantor has complied in all respects with all Applicable Laws to which it may be subject, and no Purchased Item contravenes any Applicable Laws (including, without limitation, laws, rules and regulations relating to licensing, truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy).

(x) Income. The Seller acknowledges that all Income received by it or its Affiliates and the Servicers or PSA Servicer with respect to the Purchased Items sold hereunder are held and shall be held for the benefit of the Purchaser until deposited into the Collection Account as required herein.

(y) Set-Off, etc. No Purchased Item has been compromised, adjusted, extended, satisfied, subordinated, rescinded, set-off or modified by the Seller, the Transferor or the Borrower thereof, and no Purchased Item is subject to compromise, adjustment, extension (except as set forth in the related Mortgage Asset File), satisfaction, subordination, rescission, set-off, counterclaim, defense, abatement, suspension, deferment, deduction, reduction, termination or modification, whether arising out of transactions concerning the Purchased Item or otherwise, by the Seller, the Transferor or the Borrower with respect thereto, except for amendments to such Purchased Assets otherwise permitted under Section 6.10 of this Agreement.

(z) Full Payment. Neither the Seller nor the Guarantor has knowledge of any fact that should lead it to expect that any Purchased Asset will not be paid in full.

(aa) [RESERVED].

(bb) Assignments. The Assignments do not violate any provisions of the underlying Mortgage Asset Files or Mortgage Loan Documents, such documents do not contain any express or implied prohibitions on sales or assignments of such Purchased Assets, and such agreements are valid, binding and enforceable against the Seller.

(cc) Eligibility of Purchased Assets. With respect to each Purchased Asset, each representation and warranty on Schedule 1 is true and correct.

(dd) Acting as Principal. The Seller will engage in such Transactions as principal, or, if agreed in writing in advance of any Transaction by the other party hereto, as agent for a disclosed principal.

(ee) No Broker. The Seller has not dealt with any broker, investment banker, agent, or other Person, except for the Purchaser (or an Affiliate of the Purchaser), who may be entitled to any commission or compensation in connection with the sale of Purchased Assets pursuant to this Agreement.

(ff) Ability to Perform. Neither the Seller nor the Guarantor believes, nor does either have any reason or cause to believe, that it cannot perform each and every agreement and covenant contained in the Repurchase Documents applicable to it to which it is a party.

(gg) No Unmatured Termination Event. No Unmatured Termination Event or Termination Event has occurred and is continuing hereunder.

(hh) Financial Condition.

(i) The consolidated balance sheet of the Guarantor and its consolidated Subsidiaries provided to the Purchaser and the related consolidated statements of income and retained earnings and of cash flows, copies of which have heretofore been furnished to the Purchaser, are complete and correct and present fairly the consolidated financial condition of the Guarantor and its consolidated Subsidiaries as at such date, and the consolidated results of their operations and their consolidated cash flows as of the date of such financial statements and other information. All such financial statements, including the related schedules and notes thereto (if any), have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as disclosed therein). Except as set forth on Schedule 6 attached hereto, neither the Guarantor nor any of its consolidated Subsidiaries had, at the date of the most recent balance sheet referred to above, any material contingent liability or liability for taxes, or any long term lease or unusual forward or long term commitment, including, without limitation, any interest rate or foreign currency swap or exchange transaction or other financial derivative, that is not reflected in the foregoing statements or in the notes thereto. During the period from the date of the financial statements and other financial information delivered to the Purchaser, to and including the date hereof, there has been no sale, transfer or other disposition by the Guarantor or any of its consolidated Subsidiaries of any material part of its business or property and no purchase or other acquisition of any business or property (including any Capital Stock of any other Person) material in relation to the consolidated financial condition of the Guarantor and its consolidated Subsidiaries on the date hereof.

(ii) The operating forecast and cash flow projections of the Guarantor and its consolidated Subsidiaries, copies of which have heretofore been furnished to the Purchaser, have been prepared in good faith under the direction of a Responsible Officer of the Guarantor and in accordance with GAAP. The Guarantor has no reason to believe that as of the date of delivery thereof such operating forecast and cash flow projections are materially incorrect or misleading in any material respect or omit to state any material fact which would render them misleading in any material respect. The Guarantor shall

not be required to provide information in its projections if the disclosure of such information would violate Applicable Laws relating to insider trading.

(ii) Servicing Agreements. The Seller has delivered to the Purchaser all Servicing Agreements and all Pooling and Servicing Agreements with respect to the Purchased Assets, and, to the best of the Seller's knowledge, no material default or event of default exists thereunder.

(jj) Existing Financing Facilities. All credit facilities, repurchase facilities or substantially similar facilities of the Seller and the Guarantor that are presently in effect are listed under the definition of "Existing Financing Facilities." To the Seller's and the Guarantor's knowledge, no material defaults or events of default exist thereunder.

(kk) [RESERVED].

(ll) True and Complete Disclosure. To the Seller's and the Guarantor's actual knowledge, the information, reports, certificates, documents, financial statements, books, records, files, exhibits and schedules furnished in writing by or on behalf of each of the Seller and the Guarantor to the Purchaser in connection with the negotiation, preparation or delivery of this Agreement and the other Repurchase Documents or included herein or therein or delivered pursuant hereto or thereto, when taken as a whole, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading. All written information furnished after the date hereof by or on behalf of each of the Seller and the Guarantor to the Purchaser in connection with this Agreement and the other Repurchase Documents and the transactions contemplated hereby and thereby will be true, complete and accurate in every material respect, or (in the case of projections) based on reasonable estimates, on the date as of which such information is stated or certified. There is no fact known to a Responsible Officer of the Seller or the Guarantor, after due inquiry, that could reasonably be expected to have a Material Adverse Effect that has not been disclosed to the Purchaser. All projections furnished on behalf of the Seller or the Guarantor to the Purchaser were prepared and presented in good faith by or on behalf of the Seller or the Guarantor.

(mm) No Reliance. Each of the Seller and the Guarantor has made its own independent decisions to enter into the Repurchase Documents and each Transaction and as to whether such Transaction is appropriate and proper for it based upon its own judgment and upon advice from such advisors (including, without limitation, legal counsel and accountants) as it has deemed necessary. Each of the Seller and the Guarantor is not relying upon any advice from the Purchaser as to any aspect of the Transactions, including, without limitation, the legal, accounting or tax treatment of such Transactions.

(nn) [RESERVED].

(oo) Insurance. Each of the Seller and the Guarantor has and maintains, with respect to its Properties and business, insurance which meets the requirements of Subsection 5.1(ll). In

addition, the Seller shall maintain the insurance required by Section 5.7 of the Custodial Agreement.

(pp) Purchased Assets. (i) There are no outstanding rights, options, warrants or agreements for the purchase, sale or issuance of the Purchased Assets created by, through, or as a result of the Seller's or the Guarantor's actions or inactions; (ii) there are no agreements on the part of any Repurchase Party to issue, sell or distribute the Purchased Assets, other than this Agreement, and (iii) the Seller has no obligation (contingent or otherwise) to purchase, redeem or otherwise acquire any securities or any interest therein or to pay any dividend or make any distribution in respect of the Purchased Assets.

(qq) No Change. Since September 30, 2003 there has been no development or event, nor any prospective development or event, which has had or could reasonably be expected to have a Material Adverse Effect.

(rr) Subsidiaries. The Seller is a Subsidiary of the Guarantor and Schedule 8 sets forth the name of each direct or indirect Subsidiary of the Seller and the Guarantor, and, with respect to the Seller only, its form of organization, its jurisdiction of organization, the total number of issued and outstanding shares or other interests of Capital Stock thereof, the classes and number of issued and outstanding shares or other interests of Capital Stock of each such class, the name of each holder of Capital Stock thereof and the number of shares or other interests of such Capital Stock held by each such holder and the percentage of all outstanding shares or other interests of such class of Capital Stock held by such holders.

(ss) Labor Relations. Neither the Seller nor the Guarantor is engaged in any unfair labor practice which could reasonably be expected to have a Material Adverse Effect. There is (i) no unfair labor practice complaint pending or, to the best knowledge of each of the Seller and the Guarantor and each of the Subsidiaries, threatened against the Seller or the Guarantor before the National Labor Relations Board which could reasonably be expected to have a Material Adverse Effect and no grievance or arbitration proceeding arising out of or under a collective bargaining agreement is so pending or, to the knowledge of the Repurchase Parties, threatened, (ii) no strike, labor dispute, slowdown or stoppage pending or, to the best knowledge of each of the Seller and the Guarantor, threatened against the Seller or the Guarantor, and (iii) no union representation question existing with respect to the employees of a Repurchase Party and to the knowledge of the Repurchase Parties, no union organizing activities are taking place with respect to any thereof.

(tt) Separateness. As of the date hereof, the Seller (i) owns no assets, and does not engage in any business, other than the assets and transactions specifically contemplated by this Repurchase Agreement; (ii) has not incurred any indebtedness or obligation, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (W) with respect to Retained Interests, (X) commitments to make loans which may become Eligible Assets, and (Y) as permitted herein; (iii) has not made any loans or advances to any Affiliate other than loans to the Guarantor that have been disclosed in writing to and approved by the Purchaser, and has not acquired obligations or securities of its Affiliates; (iv) has paid its debts and liabilities (including, as applicable, shared personnel and overhead

expenses) only from its own assets; (v) complies with the provisions of its organizational documents; (vi) does all things necessary to observe organizational formalities and to preserve its existence, and has not amended, modified or otherwise changed its Governing Documents, or suffered same to be amended, modified or otherwise changed; (vii) maintains all of its books, records, financial statements and bank accounts separate from those of its Affiliates (except that such financial statements may be consolidated to the extent consolidation is required under the GAAP consistently applied or as a matter of Applicable Law); (viii) is, and at all times holds itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate), corrects any known misunderstanding regarding its status as a separate entity, conducts business in its own name, does not identify itself or any of its Affiliates as a division or part of the other; (ix) maintains adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; (x) does not engage in or suffer any change of ownership, dissolution, winding up, liquidation, consolidation or merger in whole or in part; (xi) does not commingle its funds or other assets with those of any Affiliate or any other Person; (xii) maintains its accounts separately from those of any Affiliate or any other Person; (xiii) does not hold itself out to be responsible for the debts or obligations of any other Person; (xiv) has not (A) filed or consented to the filing of any Insolvency Proceeding with respect to the Seller, instituted any proceedings under any applicable Insolvency Law or otherwise sought any relief under any laws relating to the relief from debts or the protection of debtors generally with respect to the Seller, (B) sought or consented to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Seller or a substantial portion of its properties or (C) made any assignment for the benefit of the Seller's creditors; (xv) has at least one (1) Independent Director or such greater number as required by the Purchaser or any Rating Agency; (xvi) shall maintain an arm's length relationship with its Affiliates; (xvii) maintain a sufficient number of employees in light of contemplated business operations; (xviii) use separate stationary, invoices and checks; and (xvix) allocate fairly and reasonably any overhead for shared office space.

ARTICLE V

COVENANTS

SECTION 5.1 COVENANTS OF THE SELLER.

From the date hereof until the Aggregate Unpaids are paid in full:

(a) Compliance with Laws. Each of the Seller and the Guarantor will comply in all material respects with all Applicable Laws (including Environmental Laws), including those with respect to the Purchased Items or any part thereof, and all Contractual Obligations.

(b) Preservation of Company Existence. Each of the Seller and the Guarantor will preserve and maintain its company existence, rights, franchises and privileges in the jurisdiction of its formation and will qualify and remain qualified in good standing as a corporation in each jurisdiction where the failure to preserve and maintain such existence, rights, franchises, privileges and qualification has had, or could reasonably be expected to have, a Material Adverse Effect.

(c) Performance and Compliance with Purchased Assets. The Seller will, at its expense, timely and fully perform and comply (or cause the Transferors to perform and comply pursuant to the Purchase Agreements) with all provisions, covenants and other promises required to be observed by it under the Purchased Items and all other agreements related to such Purchased Items.

(d) Keeping of Records and Books of Account. Each of the Seller and the Guarantor will maintain and implement administrative and operating procedures (including, without limitation, an ability to recreate records evidencing the Purchased Items in the event of the destruction of the originals thereof) and will keep and maintain all documents, books, records and other information reasonably necessary or advisable in which complete entries are made in accordance with GAAP and Applicable Laws.

(e) Perfection. The Seller will (i) acquire such Purchased Items pursuant to and in accordance with the terms of the Purchase Agreements, (ii) take all action necessary to perfect, protect and more fully evidence the Seller's ownership of such Mortgage Assets under the Purchase Agreements free and clear of any Lien other than the Lien created hereunder and Permitted Liens, including, without limitation, (A) file and maintain effective financing statements against the Transferors in all necessary or appropriate filing offices, and filing continuation statements, amendments or assignments with respect thereto in such filing offices, and (B) execute or cause to be executed such other instruments or notices as may be necessary or appropriate, and (iii) take all additional action that the Purchaser may reasonably request to perfect, protect and more fully evidence the respective interests of the parties to this Agreement in the Purchased Items.

(f) Delivery of Income. The Seller will deposit and cause all Servicers to deposit all Income received in respect of the Purchased Items into the Collection Account within two (2) Business Days of receipt thereof. The Seller shall instruct all PSA Servicers under the Pooling and Servicing Agreements to deposit into the Collection Account within two (2) Business Days of the date the PSA Servicer is obligated to disburse the same under the Pooling and Servicing Agreements all Income in respect of the Purchased Items and the Seller shall take reasonable steps necessary to enforce such instructions.

(g) Termination Events. Each of the Seller and the Guarantor will provide the Purchaser with immediate written notice of the occurrence of each Termination Event and each Unmatured Termination Event of which the Seller or the Guarantor has knowledge or has received notice. In addition, no later than two (2) Business Days following the Seller's or the Guarantor's knowledge or notice of the occurrence of any Termination Event or Unmatured Termination Event, the Seller or the Guarantor will provide to the Purchaser a written statement of a Responsible Officer of the Seller or the Guarantor setting forth the details of such event and the action that the Seller or the Guarantor proposes to take with respect thereto.

(h) Adverse Claims. The Seller will not create, or participate in the creation of, or permit to exist, any Liens in relation to each Purchased Item other than Permitted Liens or as disclosed to the Purchaser and existing as of the date of this Agreement.

(i) Seller's Assets. With respect to each Purchased Item acquired by the Purchaser, the Seller will (i) take all action necessary to perfect, protect and more fully evidence the Purchaser's ownership of such Purchased Item, including, without limitation, (A) filing and maintaining effective financing statements against the Seller in all necessary or appropriate filing offices, and filing continuation statements, amendments or assignments with respect thereto in such filing offices, and (B) executing or causing to be executed such other instruments or notices as may be necessary or appropriate and (ii) taking all additional action that the Purchaser may reasonably request to perfect, protect and more fully evidence the respective interests of the parties to this Agreement and the Repurchase Documents in such Purchased Items.

(j) Notices. Each of the Seller and the Guarantor will furnish notice to the Purchaser with respect to the following:

(i) Representations. Forthwith upon receiving knowledge of the same, the Seller or the Guarantor shall notify the Purchaser if any representation or warranty set forth in Section 4.1 or Schedule 1 was incorrect at the time it was given or deemed to have been given and at the same time shall deliver to the Purchaser a written notice setting forth in reasonable detail the nature of such facts and circumstances. In particular, but without limiting the foregoing, the Seller and the Guarantor shall notify the Purchaser in the manner set forth in the preceding sentence before any Purchase Date of any facts or circumstances within the knowledge of the Seller or the Guarantor that would render any of the said representations and warranties untrue at the date when such representations and warranties were made or deemed to have been made;

(ii) Proceedings. As soon as possible and in any event within three (3) Business Days after the Seller or the Guarantor receives notice or obtains knowledge thereof, notice of any settlement of, material judgment (including a material judgment with respect to the liability phase of a bifurcated trial) in or commencement of any labor controversy (of a material nature), litigation, action, suit, arbitration or proceeding before any court or governmental department, commission, board, bureau, agency, arbitrator, investigation or instrumentality, domestic or foreign, affecting (A) the Purchased Items, (B) the Repurchase Documents, (C) the Purchaser's interest in the Purchased Items, or (D) the Seller or the Guarantor or any of their Affiliates and, with respect to this clause (D) only, the amount in controversy exceeds $250,000;

(iii) Material Events. Promptly upon becoming aware thereof, notice of any other event or circumstances that, in the reasonable judgment of the Seller or the Guarantor, is likely to have a Material Adverse Effect;

(iv) Casualty. With respect to any Purchased Asset hereunder, promptly upon receipt of notice or knowledge that the Underlying Mortgaged Property has been

damaged by waste, fire, earthquake or earth movement, flood, tornado or other casualty, or otherwise damaged so as to affect adversely the Asset Value of such Purchased Asset;

(v) Liens. Promptly upon receipt of notice or knowledge of any Lien or security interest on, or claim asserted against, any Purchased Item other than Permitted Liens;

(vi) Assets. Promptly upon any material change in the market value of any or all of the Seller's or the Guarantor's assets that could reasonably be expected to have a Material Adverse Effect;

(vii) Defaults. (A) Any material default (beyond any applicable notice and cure period) related to any Purchased Item, or (B) any default (beyond any applicable notice and cure period) under any Contractual Obligation of the Seller or the Guarantor or any of their Subsidiaries, which, if not cured, could reasonably be expected to have a Material Adverse Effect;

(viii) Servicers. The resignation or termination of any Servicer under any Servicing Agreement with respect to any Purchased Asset or any PSA Servicer under a Pooling and Servicing Agreement;

(ix) Sales. The conveyance, sale, lease, assignment, transfer or other disposition (any such transaction, or related series of transactions, a "Sale") of any Property, business or assets of the Seller or the Guarantor whether now owned or hereafter acquired, with the exception of (A) this Agreement and (B) any Sale of Property by the Seller or the Guarantor that is not material to the conduct of its business and is effected in the ordinary course of business;

(x) Ratings. The establishment of a rating assigned to the long - term unsecured debt issued by the Guarantor by Moody's or S&P (or other rating agency acceptable to the Purchaser) and of any downgrade in such rating once established; and

(xi) Losses. Any loss or expected loss in respect of any Purchased Asset, or any other event or change in circumstances or expected event or change in circumstances that could be reasonably be expected to result in a material decline in value or cash flow of any Purchased Asset.

Each notice pursuant to this Subsection 5.1(j) shall be accompanied by a statement of a Responsible Officer of the Seller or the Guarantor, as applicable, setting forth details of the occurrence referred to therein and stating what action the Seller or the Guarantor, as applicable, has taken or proposes to take with respect thereto.

(k) Purchased Assets Not to be Evidenced by Instruments. Neither the Seller nor the Guarantor will take any action to cause any Purchased Item that is not, as of the applicable Purchase Date, evidenced by an Instrument to be so evidenced except in connection with the enforcement or collection of such Purchased Items.

(l) Security Interests. The Seller will not sell, pledge, assign or transfer to any other Person, or grant, create, incur, assume or suffer to exist any Lien on any Purchased Item other than Permitted Liens, whether now existing or hereafter transferred hereunder, or any interest therein, and the Seller will not sell, pledge, assign or suffer to exist any Lien on its interest, if any, hereunder. The Seller will promptly notify the Purchaser of the existence of any Lien other than Permitted Liens on any Purchased Item, and the Seller shall defend the right, title and interest of the Purchaser in, to and under the Purchased Items against all claims of third parties other than Permitted Liens.

(m) Deposits to Collection Account. Subject to Subsection 2.8(c), the Seller will not deposit or otherwise credit, or cause or permit to be so deposited or credited, to the Collection Account cash or cash proceeds other than Income in respect of Purchased Items.

(n) Change of Name or Location of Loan Files. The Seller shall not (i) change its name, organizational number, identity, structure or jurisdiction of formation, move the location of its principal place of business and chief executive office, or change the offices where it keeps the records (as defined in the UCC) from the location referred to in Section 13.2, or (ii) move, or consent to the Custodian moving, the Mortgage Asset Files from the location thereof on the Closing Date, unless the Seller has given at least thirty (30) days' prior written notice to the Purchaser and has taken all actions required under the UCC of each relevant jurisdiction in order to continue the first priority perfected security interest of the Purchaser in the Purchased Items.

(o) Exceptions. The Seller shall promptly correct any and all Exceptions set forth on any Asset Schedule and Exception Report.

(p) ERISA Matters. The Seller will not (i) engage or permit any ERISA Affiliate to engage in any prohibited transaction for which an exemption is not available or has not previously been obtained from the United States Department of Labor, (ii) permit to exist any accumulated funding deficiency, as defined in Section 302(a) of ERISA and Section 412(a) of the Code, or funding deficiency with respect to any Benefit Plan other than a Multiemployer Plan, (iii) fail to make any payments to a Multiemployer Plan that the Seller or any ERISA Affiliate may be required to make under the agreement relating to such Multiemployer Plan or any law pertaining thereto, (iv) terminate any Benefit Plan so as to result in any liability, (v) permit to exist any occurrence of any Reportable Event or (vi) otherwise violate the provisions of ERISA or the Code with respect to any Benefit Plan.

(q) Purchase Agreements; Servicing Agreements. The Seller will not materially amend, modify, waive or terminate any provision of any Purchase Agreement, Servicing Agreement or Pooling and Servicing Agreement without the prior written consent of the Purchaser. Notwithstanding the foregoing, but subject to the Purchaser's rights under Article VI, the Seller shall have the right to terminate any of the foregoing upon the occurrence of a material default (beyond any applicable notice and cure period) of the other party thereto.

(r) Compliance with Anti - Money Laundering Laws. The Seller shall comply with all applicable Anti - Money Laundering Laws. The Seller shall conduct the requisite due

diligence in connection with the origination or acquisition of each Mortgage Asset for purposes of the Anti - Money Laundering Laws, including with respect to the legitimacy of the applicable Borrower and the origin of the assets used by the said Borrower to purchase the property in question, and will maintain sufficient information to identify the applicable Borrower for purposes of the Anti-Money Laundering Laws.

(s) Financial Statements. The Seller and the Guarantor, as applicable, shall deliver to the Purchaser:

(i) as soon as available, and in any event within forty - five (45) calendar days after the end of each fiscal quarter of each of the Seller and the Guarantor, the unaudited consolidated balance sheets of the Seller, the Guarantor and their consolidated Subsidiaries as at the end of such period and the related unaudited consolidated statements of income and retained earnings and of cash flows for the Seller, the Guarantor and their consolidated Subsidiaries for such period and the portion of the fiscal year through the end of such period, accompanied by a certificate of a Responsible Officer of the Seller and Guarantor, which certificate shall state that said consolidated financial statements fairly present in all material respects the consolidated financial condition and results of operations of the Seller, the Guarantor and their consolidated Subsidiaries in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to normal year-end adjustments);

(ii) as soon as available, and in any event within ninety (90) days after the end of each fiscal year of each of the Seller and the Guarantor, the audited consolidated balance sheets of the Seller, the Guarantor and their consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of income and retained earnings and of cash flows for the Seller, the Guarantor and their consolidated Subsidiaries for such year, setting forth in each case in comparative form the figures for the previous year, accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall not be qualified as to scope of audit or going concern and shall state that said consolidated financial statements fairly present the consolidated financial condition and results of operations of the Seller, the Guarantor and their respective consolidated Subsidiaries as at the end of, and for, such fiscal year in accordance with GAAP;

(iii) with respect to each Purchased Asset, if provided to the Seller or any Servicer or PSA Servicer by the Borrower under any Purchased Asset, as soon as available, but in any event not later than forty - five (45) days after the end of each fiscal quarter of the Seller, the operating statement and rent roll for each Underlying Mortgaged Property; provided, however, the Purchaser reserves the right in its reasonable discretion to request such information on a monthly basis (to be provided no later than thirty (30) days after the end of each month);

(iv) with respect to each Purchased Asset, if provided to the Seller by the Borrower under any Purchased Asset, as soon as available, but in any event not later than

thirty (30) days after receipt thereof, the annual balance sheet with respect to such Borrower;

(v) with respect to each Purchased Asset, as soon as available but in any event not later than thirty (30) days after receipt thereof, (A) the related monthly securitization report, if any, and any other reports delivered under the Pooling and Servicing Agreements to the Seller, if any, and, (B) within forty - five (45) days after the end of each quarter, a copy of the standard monthly exception report, prepared by the Seller in the ordinary course of its business in respect of the related Purchased Asset or Underlying Mortgaged Property;

(vi) from time to time such other information regarding the financial condition, operations or business of the Seller and the Guarantor as the Purchaser may reasonably request;

(vii) as soon as reasonably possible, and in any event within thirty (30) days after a Responsible Officer of the Seller or Guarantor knows, or with respect to any Plan or Multiemployer Plan to which the Seller, the Guarantor or any ERISA Affiliate makes direct contributions, has reason to believe, that any of the events or conditions specified below with respect to any Plan or Multiemployer Plan has occurred or exists, a statement signed by a senior financial officer of the Seller or the Guarantor setting forth details respecting such event or condition and the action, if any, that the Seller, the Guarantor or their ERISA Affiliate proposes to take with respect thereto (and a copy of any report or notice required to be filed with or given to the PBGC by the Seller, the Guarantor or an ERISA Affiliate with respect to such event or condition):

(A) any Reportable Event (provided that a failure to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA or any successor provision thereof, including without limitation the failure to make on or before its due date a required installment under Section 412(m) of the Code or Section 302(e) of ERISA or any successor provision thereof, shall be a "Reportable Event" regardless of the issuance of any waivers in accordance with Section 412(d) of the Code or any successor provision thereof); and any request for a waiver under Section 412(d) of the Code or any successor provision thereof for any Plan;

(B) the distribution under Section 4041(c) of ERISA or any successor provision thereof of a notice of intent to terminate any Plan or any action taken by the Seller, the Guarantor or an ERISA Affiliate to terminate any Plan;

(C) the institution by the PBGC of proceedings under Section 4042 of ERISA or any successor provision thereof for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Seller, the Guarantor or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan;

(D) the complete or partial withdrawal from a Multiemployer Plan by the Seller, the Guarantor or any ERISA Affiliate that results in liability under Section 4201 or 4204 of ERISA or any successor provision thereof (including the obligation to satisfy secondary liability as a result of a purchaser default) that would have a Material Adverse Effect or the receipt by the Seller, the Guarantor or any ERISA Affiliate of notice from a Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or any successor provision thereof or that it intends to terminate or has terminated under Section 4041A of ERISA or any successor provision thereof;

(E) the institution of a proceeding by a fiduciary of any Multiemployer Plan against the Seller, the Guarantor or any ERISA Affiliate to enforce Section 515 of ERISA or any successor provision thereof, which proceeding is not dismissed within thirty (30) days; and

(F) the adoption of an amendment to any Plan that would result in the loss of tax exempt status of the trust of which such Plan is a part if the Seller, the Guarantor or an ERISA Affiliate fails to provide timely security to such Plan in accordance with the provisions of Section 401(a)(29) of the Code or Section 307 of ERISA or any successor provision thereof; and

(viii) all such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such accountants or officer, as the case may be, and disclosed therein); provided, that any financial statements delivered by the Seller with respect to the Borrower under any Underlying Mortgage Loan shall be delivered to the Purchaser in the form received by the Seller.

(t) Certificates; Other Information. The Seller and the Guarantor, as applicable, shall furnish to the Purchaser:

(i) concurrently with the delivery of the financial statements referred to in Subsections 5.1(s)(i) and (ii) above and in connection with the delivery of each Confirmation, a Compliance Certificate from a Responsible Officer of each of the Seller and the Guarantor, which Compliance Certificate shall, among other things, on a quarterly basis describe in detail the calculations supporting the Responsible Officer's certification of the Guarantor's compliance with the Financial Covenants;

(ii) as soon as available, but in any event not later than ninety (90) days after the end of each fiscal year of the Seller and Guarantor, respectively, and provided that the disclosure does not violate Applicable Laws relating to insider trading, a copy of the projections of the Seller and Guarantor of the operating budget and cash flow budget of Seller and Guarantor, respectively, for the succeeding fiscal year, such projections to be

accompanied by a certificate of a Responsible Officer certifying that such projections have been prepared in good faith based upon reasonable assumptions;

(iii) promptly upon receipt thereof, copies of all reports submitted to each of the Seller and the Guarantor by independent certified public accountants in connection with each annual, interim or special audit of the books and records of the Seller and the Guarantor made by such accountants, including, without limitation, any management letter commenting on the Seller's and the Guarantor's internal controls submitted by such accountants to management in connection with their annual audit;

(iv) within forty - five (45) days of the end of each calendar quarter, the Seller shall provide the Purchaser with a quarterly report, which report shall include, among other items, a summary of such Seller's delinquency and loss experience with respect to Purchased

Assets serviced by the Seller or any Servicer or PSA Servicer or any designee of the foregoing, the Seller's internal risk rating and/or surveillance on the Purchased Assets, and, to the extent provided to the Seller or any Servicer or PSA Servicer by the Borrowers under any Purchased Assets, operating statements, the occupancy status of such Purchased Property and other property level information plus any such additional reports as the Purchaser may reasonably request with respect to the Seller or any Servicer or PSA Servicer servicing portfolio or pending originations of Mortgage Assets;

(v) within thirty (30) days after the same are sent, copies of all financial statements, reports, notices and other documents that each of the Seller and the Guarantor sends to its stockholders and, within thirty (30) days after the same are filed, copies of all financial statements and reports that the Seller and the Guarantor may make to, or file with, the Securities and Exchange Commission or any successor or analogous Governmental Authority;

(vi) no later than the fifteenth (15th) day of each month, with respect to each Purchased Asset, a Purchased Asset Data Summary, substantially in the form of Exhibit XI ("Purchased Asset Data Summary"), properly completed;

(vii) to the extent not prohibited by Applicable Law, the Seller shall promptly provide the Purchaser with copies of all documents that the Seller, the Guarantor or any Subsidiary of the Seller or the Guarantor is required to file with any regulatory body in accordance with its regulations;

(viii) the Seller shall promptly deliver or cause to be delivered to the Purchaser (i) any report or material notice received by the Seller from any obligor under the Purchased Assets promptly following receipt thereof and (ii) any other such document or information relating to the Purchased Assets as the Purchaser may reasonably request in writing from time to time;

(ix) no later than sixty (60) days after the end of each fiscal quarter of the Seller and the Guarantor, an updated list of Subsidiaries as of such time; and

(x) promptly, such additional financial and other information as the Purchaser may from time to time reasonably request.

(u) Existence, etc. Each of the Seller and the Guarantor shall:

(i) continue to engage in business of the same general type as now conducted by it and maintain and preserve its legal existence and all of its material rights, privileges, licenses and franchises necessary for the operation of its business; provided, however, that nothing in this Subsection 5.1(u) shall prohibit any transaction expressly permitted under Subsection 5.1(v);

(ii) pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its Property prior to the date on which penalties attach thereto, except for any such tax, assessment, charge or levy the payment of which is being contested in good faith and by proper proceedings and against which adequate reserves are being maintained in accordance with GAAP; and

(iii) permit representatives of the Purchaser, upon reasonable notice (unless a Unmatured Termination Event or Termination Event shall have occurred and is continuing, in which case, no prior notice shall be required) during normal business hours and at the expense of the Seller and the Guarantor, to examine, copy and make extracts from the Seller's, the Guarantor's or any of their Subsidiaries' books and records, to inspect any of their Properties, and to discuss its business and affairs with their officers, employees and independent accountants, all to the extent reasonably requested by the Purchaser.

(v) Prohibition of Fundamental Changes. Neither the Seller nor the Guarantor shall enter into any transaction of merger or consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation, winding up or dissolution) or sell all or substantially all of its assets; provided, however, that each of the Seller and the Guarantor may merge or consolidate with (i) any wholly owned Subsidiary of the Seller or the Guarantor, respectively, or (ii) any other Person if the Seller or the Guarantor, as applicable, is the surviving entity; and provided, further, that, if after giving effect thereto, no Unmatured Termination Event or Termination Event would exist hereunder.

(w) Margin Deficit. If at any time there exists a Margin Deficit, the Seller shall cure such Margin Deficit in accordance with Section 2.7.

(x) Transactions with Affiliates. Each of the Seller and the Guarantor may enter into any transaction with an Affiliate, provided that such transaction is upon fair and reasonable terms no less favorable to the Seller or the Guarantor than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate; provided, further, that in no event shall the Seller transfer to the Purchaser hereunder any Eligible Asset acquired by the Seller from an Affiliate of the Seller unless the Seller shall have delivered a certified copy of the related Purchase Agreement and a True Sale Opinion has been delivered to the Purchaser prior to such sale.

(y) Limitations on Guarantees. The Seller shall not create, incur, assume or suffer to exist any Guarantees.

(z) Sub-Limits. The Seller shall not sell to the Purchaser any Eligible Assets if, after giving effect to such Transactions, a Sub - Limit would be exceeded, unless waived in writing by the Purchaser in its sole and absolute discretion.

(aa) Limitation on Distributions. The Seller shall not declare or make any payment on account of, or set apart assets for, a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of any equity or partnership interest of the Seller, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of Seller, except that the Seller may declare and pay dividends so long as no Unmatured Termination Event or Termination Event shall have occurred and be continuing, in an amount necessary to comply with any Applicable Laws governing real estate investment trusts.

(bb) Maintenance of Liquidity. The Guarantor shall not permit, for any calendar quarter, Liquidity for such Test Period to be less than the greater of (i) $15,000,000 and (ii) an amount equal to the amount necessary to cover the debt service and any protective advances on the Mortgaged Assets for a period of not less than six (6) months, as reasonably determined by the Guarantor and confirmed by the Purchaser.

(cc) Maintenance of Tangible Net Worth. The Guarantor shall not permit, for any Test Period, Tangible Net Worth at any time to be less than the sum of (i) $75,000,000 plus, (ii) an amount equal to 75% of the aggregate proceeds received by the Guarantor in connection with the offering or issuance of any Capital Stock of the Guarantor after the Closing Date, plus (iii) an amount equal to 80% of the consolidated retained earnings of the Guarantor accrued after the Closing Date.

(dd) Maintenance of Ratio of Total Indebtedness to Tangible Net Worth. The Guarantor shall not permit the ratio of Total Indebtedness to Tangible Net Worth at any time to be greater than 4:0 to 1:0 for the Seller.

(ee) Interest Coverage. The Guarantor shall not permit, for any Test Period, the ratio of (i) the sum of Consolidated Adjusted EBITDA of the Guarantor for such Test Period to (ii) the Consolidated Interest Expense of the Guarantor for such Test Period to be less than 2:0 to 1:0.

(ff) Servicer; Servicing Tape. The Seller shall cause each Servicer and

PSA Servicer to provide to the Purchaser and to the Custodian, via Electronic Transmission, promptly upon request by the Purchaser a remittance report containing servicing information, including, without limitation, those fields reasonably requested by the Purchaser from time to time, on a loan-by-loan basis and in the aggregate, with respect to the Purchased Items serviced hereunder by the Seller or any Servicer or PSA Servicer for the month (or any portion thereof) prior to the date of the Purchaser's request (such remittance report, an "Asset Tape"). The Seller shall not cause the Purchased Items to be serviced by a third party other than pursuant to the Servicing Agreements

or the Pooling and Servicing Agreements or, if not serviced thereunder, by any Servicer other than a Servicer expressly approved in writing by the Purchaser, which approval shall be deemed granted by the Purchaser with respect to each Servicer listed on Schedule 4 attached hereto, as such schedule may be amended or supplemented from time to time, after the execution of this Agreement.

(gg) Extension or Amendment of Purchased Assets. The Seller will not, except as otherwise permitted in Section 6.10, extend, amend, waive or otherwise modify, or permit any Servicer to extend, amend, waive or otherwise modify, the material terms of any Purchased Item, provided that the foregoing shall not prohibit the Seller, a Servicer or a PSA Servicer from permitting, prior to a default thereunder, any Borrower to exercise an extension option contained in any Mortgage Loan Documents.

(hh) Remittance of Prepayments. The Seller shall remit or cause to be remitted to the Purchaser with sufficient detail, via Electronic Transmission, to enable the Purchaser to appropriately identify the Purchased Item to which any amount remitted applies, all full or partial principal prepayments (regardless of the source of repayment) on any Purchased Item that the Seller, a Servicer or a PSA Servicer has received or that have been deposited into the Collection Account no later than one (1) Business Days following the date such prepayment was received or deposited.

(ii) Custodial Agreement and Account Agreement. The Seller shall maintain each of the Custodial Agreement and the Account Agreement in full force and effect and shall not amend or modify either of the Custodial Agreement or the Account Agreement or waive compliance with any provisions thereunder without the prior written consent of the Purchaser.

(jj) Inconsistent Agreements. Each of the Seller and the Guarantor shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into any agreement containing any provision that would be violated or breached by any Transaction hereunder or by the performance by the Seller or the Guarantor of its obligations under any Repurchase Document.

(kk) Escrow Imbalance. The Seller shall (to the extent it is acting as a servicer) or shall cause the Servicer to, no later than five (5) Business Days after learning (from any source) of any material imbalance in any escrow account, fully and completely correct and eliminate such imbalance, including, without limitation, depositing its own funds into such account to eliminate any overdrawal or deficit, to the extent required by the applicable Servicing Agreement (in the case of a Servicer).

(ll) Maintenance of Property; Insurance. The Seller and the Guarantor shall keep all Property useful and necessary in its business in good working order and condition, shall maintain with financially sound and reputable insurance companies insurance on all its Property in at least such amounts and against at least such risks as are usually insured against in the same general area by companies engaged in the same or a similar business, and furnish to the Purchaser, upon written request, full information as to the insurance carried.

(mm) Interest Rate Protection Agreements. The Seller shall perform its duties and obligations under and shall otherwise maintain any existing Interest

Rate Protection Agreements.

(nn) Payment of Obligations. Each of the Seller and the Guarantor shall pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the Seller, the Guarantor or any of their Subsidiaries, as the case may be.

(oo) Distributions in Respect of Purchased Assets. If the Seller shall receive any rights, whether in addition to, in substitution of, as a conversion of, or in exchange for any Purchased Assets, or otherwise in respect thereof, the Seller shall accept the same as the Purchaser's agent, hold the same in trust for the Purchaser and deliver the same forthwith to the Purchaser (or its designee) in the exact form received, together with duly executed instruments of transfer or assignment in blank and such other documentation as the Purchaser shall reasonably request. If any sums of money or property are paid or distributed in respect of the Purchased Assets and received by the Seller (other than the Borrower Reserve Payments), the Seller shall promptly pay or deliver such money or property to the Purchaser and, until such money or property is so paid or delivered to the Purchaser, hold such money or property in trust for the Purchaser, segregated from other funds of the Seller.

(pp) Limitation on Indebtedness. The Seller shall not create, incur, assume or suffer to exist any Indebtedness of the Seller, except Indebtedness of the Seller permitted under this Agreement.

(qq) Unrelated Activities. The Seller shall not engage in any activity other than activities specifically permitted by this Section 5.1, including, but not limited to, investment in real estate related assets and the purchasing, financing and holding of commercial mortgage - backed securities and activities incident thereto.

(rr) Governing Documents. The Seller shall not amend its Governing Documents without the prior written consent of the Purchaser.

(ss) Separateness. The Seller shall (i) own no assets, and shall not engage in any business, other than the assets and transactions specifically contemplated by this Agreement; (ii) not incur any indebtedness or obligation, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (A) pursuant hereto and under the agreements and documents evidencing, securing or in any other way related to the Purchased Assets, (B) customary representations, warranties, indemnities and other agreements in connection with the origination, acquisition, servicing, collection, enforcement, financing, participation, securitization, sale or other disposition of the Purchased Assets, and (C) obligations under zoning and other governmental regulations, rules, prohibitions and ordinances and proposed restrictions, covenants, conditions, limitations, easements, rights - of - way and other matters existing of public record or proposed to be recorded or filed in the future governing or affecting mortgaged real property or that may otherwise require the consent of or

joinder by a mortgagee; (iii) not make any loans or advances to any Affiliate other than loans to the Guarantor which are disclosed in writing to and approved by the Purchaser, and shall not acquire obligations or securities of its Affiliates; (iv) pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) only from its own assets; (v) comply with the provisions of its Governing Documents; (vi) do all things necessary to observe organizational formalities and to preserve its existence, and will not amend, modify or otherwise change its Governing Documents; (vii) maintain all of its books, records, financial statements and bank accounts separate from those of its Affiliates (except that such financial statements may be consolidated to the extent consolidation is required under the GAAP consistently applied or as a matter of Applicable Law) and file its own tax returns (except to the extent consolidation is required or permitted under Applicable Law); (viii) be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, and shall not identify itself or any of its Affiliates as a division of the other; (ix) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; (x) not engage in or suffer any change of ownership, dissolution, winding up, liquidation, consolidation or merger in whole or in part; (xi) not commingle its funds or other assets with those of any Affiliate or any other Person; (xii) maintain its accounts separate from those of any Affiliate or any other Person; (xiii) shall not hold itself out to be responsible for the debts or obligations of any other Person; (xiv) shall not, without the vote of its Independent Director, (A) file or consent to the filing of any Insolvency Proceeding with respect to the Seller, institute any proceedings under any applicable Insolvency Law or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally with respect to the Seller, (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Seller or a substantial portion of its properties, or (C) make any assignment for the benefit of the Seller's creditors; (xv) shall have at all times at least one (1) Independent Director (or such greater number as required by the Purchaser or the Rating Agencies); (xvi) shall maintain an arm's length relationship with its Affiliates; (xvii) maintain a sufficient number of employees in light of contemplated business operations; (xviii) use separate stationary, invoices and checks; and (xvix) allocate fairly and reasonably any overhead for shared office space.

(tt) Pledge Agreement. Neither the Seller nor the Guarantor shall take any direct or indirect action inconsistent with the Pledge Agreement or the security interest granted thereunder to the Purchaser in the Equity Interests.

(uu) Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of an Unmatured Termination Event or Termination Event if such action is taken or condition exists.

ARTICLE VI

ADMINISTRATION AND SERVICING

SECTION 6.1 SERVICING.

(a) Appointment. The Purchaser hereby appoints the Seller as its agent to service the Purchased Items and enforce its rights in and under such Purchased Items. The Seller hereby accepts such appointment and agrees to perform the duties and obligations with respect thereto as set forth herein.

(b) The Seller covenants to maintain or cause the servicing of the Purchased Items to be maintained in conformity with Accepted Servicing Practices and in a manner at least equal in quality to the servicing Seller provides for Mortgage Assets that it owns. In the event that the preceding language is interpreted as constituting one or more servicing contracts, each such servicing contract shall terminate automatically upon the earliest of (i) a Termination Event, (ii) the date on which this Agreement terminates, or (iii) the transfer of servicing approved by the Purchaser.

SECTION 6.2 SELLER AS SERVICER.

If the Purchased Items are serviced by the Seller, the Seller agrees that, until the repurchase of a Purchased Item on a Repurchase Date, the Purchaser is the owner of all servicing records for the period that the Purchaser owns the Purchased Items, including, but not limited to, any and all servicing agreements, files, documents, records, data bases, computer tapes, copies of computer tapes, computer programs, proof of insurance coverage, insurance policies, appraisals, other closing documentation, payment history records, and any other records relating to or evidencing the servicing of such Purchased Items (the "Servicing Records"). The Seller covenants to safeguard such Servicing Records and to deliver them promptly to Purchaser or its designee (including the Custodian) at the Purchaser's request.

SECTION 6.3 THIRD PARTY SERVICER.

If the Purchased Items are serviced by a Servicer or a PSA Servicer pursuant to a Servicing Agreement or Pooling and Servicing Agreement, as applicable, the Seller (i) shall, in accordance with Subsection 3.2(h), provide a copy of each Servicing Agreement and Pooling and Servicing Agreement to the Purchaser, which shall be in form and substance acceptable to the Purchaser, and, in connection with each Servicing Agreement, shall provide a Servicer Notice to the Purchaser substantially in the form of Exhibit VIII hereto, fully executed by the Seller and the Servicer; and (ii) hereby irrevocably assigns to the Purchaser and the Purchaser's successors and assigns all right, title and interest of the Seller in, to and under, and the benefits of, each Servicing Agreement and each Pooling and Servicing Agreement with respect to the Purchased Items. Notwithstanding the fact that the Seller has contracted with the Servicers to service the Purchased Items, the Seller shall remain liable to the Purchaser for the acts of the Servicers and for the performance of the duties and obligations set forth herein. The Seller agrees that no Person shall assume the servicing obligations with respect to the Purchased Items as successor to

a Servicer unless such successor is approved in writing by the Purchaser (which approval shall not be unreasonably withheld or delayed) prior to such assumption of servicing obligations.

SECTION 6.4 DUTIES OF THE SELLER.

(a) Duties. The Seller shall take or cause to be taken all such actions as may be necessary or advisable to collect the Purchased Items from time to time, all in accordance with Applicable Laws, with reasonable care and diligence, and in accordance with the standard set forth in Subsection 6.1(b). Without limiting the foregoing, the duties of the Seller shall include the following:

(i) preparing and submitting claims to, and post - billing liaison with, Borrowers on each Purchased Item;

(ii) maintaining all necessary servicing records with respect to the Purchased Items and providing such reports to the Purchaser in respect of the servicing of the Purchased Items (including information relating to its performance under this Agreement) as may be required hereunder or as the Purchaser may reasonably request;

(iii) maintaining and implementing administrative and operating procedures (including, without limitation, an ability to recreate Servicing Records evidencing the Purchased Items in the event of the destruction of the originals thereof) and keeping and maintaining all documents, books, records and other information reasonably necessary or advisable for the collection of the Purchased Items;

(iv) promptly delivering to the Purchaser or the Custodian, from time to time, such information and servicing records (including information relating to its performance under this Agreement) as the Purchaser or the Custodian may from time to time reasonably request;

(v) identifying each Purchased Item clearly and unambiguously in its Servicing Records to reflect that such Purchased Item is owned by the Purchaser pursuant to this Agreement;

(vi) notifying the Purchaser of any material action, suit, proceeding, dispute, offset, deduction, defense or counterclaim of which it has knowledge or has received notice (A) that is or is threatened to be asserted by a Borrower with respect to any Purchased Item (or portion thereof); or (B) that is reasonably expected to have a Material Adverse Effect;

(vii) notifying the Purchaser of any proposed changes in its collection policies that could have an adverse effect on the collectibility of the Purchased Items, on the Seller or on the interests of the Purchaser;

(viii) maintaining the perfected security interest of the Purchaser in the Purchased Items;

(ix) maintaining, in substantially the same manner as the Custodian holds the Underlying Mortgaged Asset Documents, all Servicing Records and Servicing Files relating to each Purchased Item; and

(x) remitting and causing all Servicers and the PSA Servicers under Servicing Agreements and the Pooling and Servicing Agreements, if applicable, to remit all Income to the Collection Account as required by Subsection 5.1(f).

(b) Purchaser's Rights. Notwithstanding anything to the contrary contained herein, the exercise by the Purchaser of its rights hereunder shall not release the Seller from any of its duties or responsibilities with respect to the Purchased Items. The Purchaser shall not have any obligation or liability with respect to any Purchased Items, nor shall any of them be obligated to perform any of the obligations of the Seller hereunder.

(c) Servicing Programs. In the event that the Seller or the Servicers use any software program in servicing the Purchased Items that are licensed from a third party, the Seller shall use its best reasonable efforts to obtain, either before the Closing Date or as soon as possible thereafter, whatever licenses or approvals are necessary to allow the Purchaser to use such programs.

SECTION 6.5 AUTHORIZATION OF THE SELLER.

(a) The Purchaser hereby authorizes the Seller (including any successor thereto) to take any and all reasonable steps in its name and on its behalf necessary or desirable and not inconsistent with the sale of the Purchased Items to the Purchaser, in the determination of the Seller, to collect all amounts due under any and all Purchased Items, including, without limitation, endorsing any of their names on checks and other instruments representing Income, executing and delivering any and all instruments of satisfaction or cancellation, or of partial or full release or discharge, and all other comparable instruments, with respect to the Purchased Items and, after the delinquency of any Purchased Item and to the extent permitted under and in compliance with Applicable Law, to commence proceedings with respect to enforcing payment thereof, to the same extent as the Seller could have done if it had continued to own such Purchased Items. The Purchaser shall furnish the Seller (and any successors thereto) with any powers of attorney and other documents necessary or appropriate to enable the Seller to carry out its servicing and administrative duties hereunder and shall cooperate with the Seller to the fullest extent in order to ensure the collectibility of the Purchased Items. In no event shall the Seller be entitled to make the Purchaser a party to any litigation without the Purchaser's express prior written consent.

(b) The Seller shall take such action as the Purchaser may deem necessary or advisable to enforce collection of the Purchased Items; provided, however, subject to all other rights of the Purchaser contained herein, that the Purchaser may, at any time that a Termination Event or Unmatured Termination Event has occurred and is continuing, notify any Borrower with respect to any Purchased Items of the assignment of such Purchased Items to the Purchaser and direct that payments of all amounts due or to become due be made directly to the Purchaser

or any servicer, collection agent or lock - box or other account designated by the Purchaser and, upon such notification and at the expense of the Seller, the Purchaser may enforce collection of any such Purchased Items and adjust, settle or compromise the amount or payment thereof.

SECTION 6.6 COLLECTION OF PAYMENTS.

(a) Collection Efforts, Modification of Purchased Items. The Seller will, consistent with the standard set forth in Subsection 6.1(b), collect all payments called for under the terms and provisions of the Purchased Items and when the same become due and shall follow those collection procedures that it follows with respect to all comparable Purchased Items that it services for itself or others.

(b) Acceleration. To the extent consistent with the standard set forth in Subsection 6.1(b), the Seller shall accelerate the maturity of all or any scheduled payments and other amounts due under any Purchased Asset in which a default under the terms thereof has occurred and is continuing (after the lapse of any applicable grace period) promptly after such Purchased Item becomes a Defaulted Mortgage Asset.

(c) Taxes and Other Amounts. To the extent provided for in any Purchased Item, the Seller shall, consistent with the standard set forth in Subsection 6.1(b), collect all payments with respect to amounts due for taxes, assessments and insurance premiums relating to such Purchased Item and remit such amounts to the appropriate Governmental Authority or insurer on or prior to the date such payments are due.

SECTION 6.7 REALIZATION UPON DEFAULTED PURCHASED ITEMS.

The Seller shall, to the extent consistent with the standard set forth in Subsection 6.1(b), use reasonable efforts to repossess or otherwise comparably convert the ownership of any Underlying Mortgaged Property relating to a Defaulted Mortgage Asset and will act as sales and processing agent for such Underlying Mortgaged Property that it repossesses. Consistent with Subsection 6.1(b), the Seller shall follow such other practices and procedures that it deems necessary or advisable and as are customary and usual in its servicing of contracts and other actions by the Seller in order to realize upon such Underlying Mortgaged Property, which practices and procedures may include reasonable efforts to enforce all obligations of Borrowers and repossessing and selling such Underlying Mortgaged Property at public or private sale in circumstances other than those described in the preceding sentence. In any case in which any such Underlying Mortgaged Property has suffered damage, the Seller shall not, unless required by the applicable Mortgage Loan Documents, expend funds in connection with any repair or toward the repossession of such Underlying Mortgaged Property unless it reasonably determines that such repair and/or repossession shall increase the recoveries by an amount greater than the amount of such expenses. The Seller shall remit to the Collection Account the recoveries received in connection with the sale or disposition of Underlying Mortgaged Property relating to a Defaulted Mortgage Asset. The Seller shall consult with the Purchaser prior to taking any action under this Section 6.7 and shall take only those actions as the Purchaser may approve in its sole discretion,

SECTION 6.8 MAINTENANCE OF INSURANCE POLICIES.

The Seller shall consistent with the standard set forth in Subsection 6.1(b) ensure that each Borrower maintains an insurance policy with respect to any Underlying Mortgaged Property in an amount at least equal to the sum of the Purchase Price of the related Purchased Item and shall ensure that each such insurance policy names the Purchaser as loss payee and as an insured thereunder and that all of the Seller's right, title and interest therein is fully assigned to the Purchaser. Additionally, the Seller shall require that each Borrower maintain property damage liability insurance during the term of each Purchased Item in amounts and against risks customarily insured against by the Borrower on property owned by it. If a Borrower fails to maintain property damage insurance, the Seller may, in its discretion, purchase and maintain such insurance on behalf of, and at the expense of, the Borrower. In connection with its activities as the Seller, the Seller agrees to present, on behalf of the Purchaser, claims to the insurer under each insurance policy and any such liability policy, and to settle, adjust and compromise such claims, in each case, consistent with the terms of each Purchased Item. The Seller's insurance policies with respect to the Underlying Mortgaged Property shall insure against liability for physical damage relating to such property in accordance with the requirements of Subsection 6.1(b). Until the Purchased Items are repurchased by the Seller, the Seller hereby disclaims any and all right, title and interest in and to any insurance policy and insurance proceeds with respect to any Underlying Mortgaged Property, including any insurance policy with respect to which it is named as loss payee and as an insured, and agrees that it has no equitable, beneficial or other interest in the insurance polices and insurance proceeds other than being named as loss payee and as an insured. The Seller acknowledges that, with respect to the insurance policies and insurance proceeds thereof, it is acting solely in the capacity as agent for the Purchaser.

SECTION 6.9 TERMINATION EVENT.

If the servicer of the Purchased Items is the Seller, upon the occurrence of a Termination Event, the Purchaser shall have the right to terminate the Seller as the servicer of the Purchased Items and transfer servicing to its designee, at no cost or expense to the Purchaser, at any time thereafter. If the servicer of the Purchased Items is not the Seller, the Purchaser shall have the right, as contemplated in the applicable Servicer Notice, upon the occurrence of a Termination Event, to terminate any applicable Servicing Agreement and transfer servicing to its designee, at no cost or expense to the Purchaser, it being agreed that the Seller will pay any and all fees required to terminate such Servicing Agreement and to effectuate the transfer of servicing to the designee of the Purchaser. The Seller shall fully cooperate and shall cause all Servicers to fully cooperate with the Purchaser in transferring the servicing of the Purchased Items to the Purchaser's designee.

SECTION 6.10 MODIFICATION.

Unless otherwise agreed to by the Purchaser in its reasonable discretion until the repurchase of any Purchased Item, the Seller and the Servicers shall have no right to waive, amend, modify or alter the material terms of such Purchased Item and the Seller shall have no

obligation or right to repossess such Purchased Item or substitute another Purchased Item, in each case except as provided in the Custodial Agreement.

SECTION 6.11 INSPECTION.

In the event the Seller or its Affiliate is servicing the Purchased Items, the Seller shall permit the Purchaser to inspect the Seller's or its Affiliate's servicing facilities, as the case may be, for the purpose of satisfying the Purchaser that that Seller or its Affiliate, as the case may be, has the ability to service the Purchased Items as provided in this Agreement.

SECTION 6.12 SERVICING COMPENSATION.

As compensation for its servicing activities hereunder and reimbursement for its expenses, the Seller shall be entitled to receive a servicing fee to the extent of funds available therefor in the amount of 25 basis points per annum to be paid monthly (the "Servicing Fee").

SECTION 6.13 PAYMENT OF CERTAIN EXPENSES BY SERVICER.

The Seller and any Servicer will be required to pay all expenses incurred by them in connection with their activities under this Agreement, including fees and disbursements of independent accountants, Taxes imposed on the Seller or the Servicers, expenses incurred in connection with payments and reports pursuant to this Agreement, and all other fees and expenses not expressly stated under this Agreement for the account of the Seller. The Seller shall be required to pay all reasonable fees and expenses owing to any bank or trust company in connection with the maintenance of the Collection Account and the Operating Account. The Seller shall be required to pay such expenses for its own account and shall not be entitled to any payment therefor other than the Servicing Fee.

SECTION 6.14 POOLING AND SERVICING AGREEMENTS.

Notwithstanding the provisions of this Article VI, to the extent the Purchased Items are serviced by a PSA Servicer (other than the Seller or any Servicer) under a Pooling and Servicing Agreement, (a) the standards for servicing those Purchased Items shall be those set forth in the applicable

Pooling and Servicing Agreement, (b) the Seller shall enforce its rights and interests under such agreements for and on behalf of the Purchaser, (c) the Seller shall instruct the applicable PSA Servicer to deposit all Income received in respect of the Purchased Items into the Collection Account within one (1) Business Day of the date the PSA Servicer is obligated to make payments under the applicable Pooling and Servicing Agreement, (d) prior to a Termination Event, the Seller shall not take any action or fail to take any action or consent to any action or inaction under any Pooling and Servicing Agreement where the effect of such action or inaction would prejudice the interests of the Purchaser, (e) the Seller will not consent to any change or modification to any payment dates, interests rates, fees, payments of principal or interest, maturity dates, restrictions on Indebtedness or any monetary term or release any Borrowers, guarantors or collateral without the consent of the Purchaser, and, (f) following a Termination Event, the Purchaser shall be entitled to exercise any and all rights of the Seller under such Pooling and Servicing Agreements as such rights relate to the Purchased Items.

SECTION 6.15 SERVICER DEFAULT.

Any material breach by the Seller, any of its Servicers or the PSA Servicer of the obligations contained in this Article VI or in Subsections 2.9(f) and 5.1(gg) shall constitute a "Servicer Default".

ARTICLE VII

[RESERVED]

ARTICLE VIII

SECURITY INTEREST

SECTION 8.1 SECURITY INTEREST.

(a) Each of the following items or types of property, whether now owned or hereafter acquired, now existing or hereafter created and wherever located, is hereinafter referred to as the Purchased Items (the "Purchased Items"): all Purchased Assets, the Equity Interests, all rights and security interests under each Purchase Agreement (but not the obligations thereunder) to the extent those rights relate to the Purchased Assets, all Mortgage Loan Documents, all Mortgage Asset Files, including, without limitation, all promissory notes, all Security Agreements relating to the Purchased Assets and any other collateral pledged or otherwise relating to such Purchased Assets, together with all files, documents, instruments, surveys, certificates, correspondence, appraisals, computer programs, computer storage media, accounting records and other books and records relating thereto, all mortgage guaranties and insurance (issued by governmental agencies or otherwise) and any mortgage insurance certificate or other document evidencing such mortgage guaranties or insurance relating to any Purchased Asset, all servicing fees to which such Seller is entitled and servicing and other rights relating to the Purchased Assets, all Servicing Agreements, Servicing Records, Servicing Files and Servicer Accounts established pursuant to any Servicing Agreement, Pooling and Servicing Agreement or otherwise and all amounts on deposit therein, from time to time, all rights of the Seller under any Pooling and Servicing Agreements relating to the Purchased Assets, all other agreements or contracts relating to, constituting, or otherwise governing, any or all of the foregoing to the extent they relate to the Purchased Assets, including the right to receive principal and interest payments and any related fees, breakage fees, late fees and penalties with respect to the Purchased Assets and the right to enforce such payments, insurance policies and the rights to any insurance proceeds, the Collection Account and all monies, cash, deposits, securities or investment property from time to time on deposit in the Collection Account, or any collection account, escrow account, collateral account or lock - box account related to the Purchased Items, rights of the Seller under any letter of credit, guarantee, or other credit support or enhancement related to the Purchased Items, any Interest Rate Protection Agreements relating to the Purchased Assets, all "general intangibles", "accounts", "chattel paper", "deposit accounts", "instruments", "securities" and "investment property" as defined in the Uniform Commercial Code as in effect from time to time relating to or constituting any and all of the foregoing, and any and all replacements, substitutions, distributions on or proceeds of any and all of the foregoing.

(b) The Purchaser and the Seller intend that the Transactions hereunder be sales to the Purchaser of the Purchased Assets and not loans from the Purchaser to the Seller secured by the Purchased Assets. However, in order to preserve the Purchaser's rights under this Agreement in the event that a court or other forum recharacterizes the Transactions hereunder as loans and as security for the repayment of the Aggregate Unpaids and performance by the Seller of all of the Seller's obligations to the Purchaser hereunder and under the Repurchase Documents and the Transactions entered into hereunder (collectively, the "Repurchase Obligations") and Seller - Related Obligations, the Seller hereby assigns, pledges and grants a security interest in all of its right, title and interest in, to and under the Purchased Items to the Purchaser to secure the Repurchase Obligations and Seller - Related Obligations, including, without limitation, the repayment of all amounts owing to the Purchaser hereunder. The assignment, pledge and grant of security interest contained herein shall be, and the Seller hereby represents and warrants to the Purchaser that it is, a first priority perfected security interest. The Seller agrees to mark its computer records and tapes to evidence the interests granted to the Purchaser hereunder. All Purchased Items shall secure the payment of all obligations of the Seller now or hereafter existing under this Agreement and the other Repurchase Documents, including, without limitation, the Seller's obligation to repurchase Purchased Assets, or if such obligation is so recharacterized as a loan, to repay such loan for the Repurchase Price and to pay the Aggregate Unpaids and any and all other amounts owing to the Purchaser hereunder.

(c) Pursuant to the Custodial Agreement, the Custodian shall hold the Mortgage Asset Files as exclusive bailee pursuant to the terms of the Custodial Agreement and shall deliver the Trust Receipts to the Purchaser, each such Trust Receipt to reflect that the Custodian has reviewed such Mortgage Asset Files in the manner and to the extent required by the Custodial Agreement and identifying any deficiencies in such Mortgage Asset Files as so reviewed.

(d) The assignment under this Section 8.1 does not constitute and is not intended to result in a creation or an assumption by the Purchaser of any obligation of the Seller or any other Person in connection with any or all of the Purchased Items or under any agreement or instrument relating thereto. Anything herein to the contrary notwithstanding, (i) the Seller shall remain liable under the Purchased Assets to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Purchaser of any of its rights in the Purchased Assets shall not release the Seller from any of its duties or obligations under the Purchased Assets, and (iii) the Purchaser shall not have any obligations or liability under the Purchased Assets by reason of this Agreement, nor shall the Purchaser be obligated to perform any of the obligations or duties of the Seller thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

SECTION 8.2 RELEASE OF LIEN ON PURCHASED ASSETS.

At such time as any Purchased Asset is repurchased in accordance with this Agreement, and the Repurchase Price and all other amounts due with respect thereto have been paid in full, the Purchaser will, to the extent requested by the Seller, release its interest in such Purchased Asset and any related Purchased Items; provided, that, the Purchaser will make no representation or warranty, express or implied, with respect to any such Purchased Asset or Purchased Items in connection with such release, except that the Purchaser shall represent and warrant that it has not assigned, conveyed, pledged or otherwise transferred such Purchased Asset or Purchased Items to any other Person.

SECTION 8.3 FURTHER ASSURANCES.

The provisions of Section 13.12 shall apply to the security interest granted under Section 8.1 as well as to the Transactions hereunder.

SECTION 8.4 REMEDIES.

Upon the occurrence of a Termination Event, the Purchaser shall have, with respect to the security interest in the Purchased Items granted pursuant to Section 8.1, and in addition to all other rights and remedies available to the Purchaser under this Agreement or other Applicable Law, all rights and remedies of a secured party upon default under the UCC.

SECTION 8.5 WAIVER OF CERTAIN LAWS.

The Seller agrees, to the full extent that it may lawfully so agree, that neither it nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption law now or hereafter in force in any locality where any Purchased Items may be situated in order to prevent, hinder or delay the enforcement or foreclosure of this Agreement, or the absolute sale of any of the Purchased Items or any part thereof, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and each of the Seller, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may be lawful so to do, the benefit of all such laws and any and all right to have any of the properties or assets constituting the Purchased Items marshaled upon any such sale, and agrees that the Purchaser or any court having jurisdiction to foreclose the security interests granted in this Agreement may sell the Purchased Items as an entirety or in such parcels as the Purchaser or such court may determine.

ARTICLE IX

POWER OF ATTORNEY

SECTION 9.1 PURCHASER'S APPOINTMENT AS ATTORNEY - IN - FACT.

(a) Following the occurrence and during the continuance of a Termination Event, the Seller hereby irrevocably constitutes and appoints the Purchaser and any officer or agent thereof, with full power of substitution, as its true and lawful attorney - in - fact with full irrevocable power and authority in the place and stead of the Seller and in the name of the Seller or in its own name, from time to time in the Purchaser's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be reasonably necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, the Seller hereby gives the Purchaser the power and right, on behalf of the Seller, without assent by, but with notice to, the Seller, to do the following (in each case to the extent the Seller is not prohibited by Applicable Law or any applicable Contractual Obligation):

(i) in the name of the Seller, or in its own name, or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any mortgage insurance or with respect to any other Purchased Items and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Purchaser for the purpose of collecting any and all such moneys due under any such mortgage insurance or with respect to any other Purchased Items whenever payable;

(ii) to pay or discharge taxes and Liens levied or placed on or threatened against the Purchased Items;

(iii) (A) to direct any party liable for any payment under any Purchased Items to make payment of any and all moneys due or to become due thereunder directly to the Purchaser or as the Purchaser shall direct; (B) to ask or demand for, collect, receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Purchased Items; (C) to sign and endorse any invoices, assignments, verifications, notices and other documents in connection with any Purchased Items; (D) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Purchased Items or any proceeds thereof and to enforce any other right in respect of any Purchased Items; (E) to defend any suit, action or proceeding brought against the Seller with respect to any Purchased Items; (F) to settle, compromise or adjust any suit, action or proceeding described in clause (E) above and, in connection therewith, to give such discharges or releases as the Purchaser may deem appropriate, provided that same does not impose any civil or criminal liability on the Seller or the Guarantor; and (G) generally, to sell, transfer, pledge and make any agreement with respect to or otherwise deal with any Purchased Items as fully and completely as though the Purchaser were the absolute owner thereof for all purposes, and to do, at the Purchaser's option and

the Seller's expense, at any time, and from time to time, all acts and things that the Purchaser deems necessary to protect, preserve or realize upon the Purchased Items and the Purchaser's Liens thereon and to effect the intent of this Agreement, all as fully and effectively as such Seller might do;

(iv) to direct the actions of the Custodian with respect to the Purchased Items under the Custodial Agreement; and

(v) to execute, from time to time, in connection with any sale provided for in Section 10.2, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Purchased Items.

The Seller hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

(b) The powers conferred on the Purchaser hereunder are solely to protect the Purchaser's interests in the Purchased Items and shall not impose any duty upon it to exercise any such powers. The Purchaser shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Purchaser nor any of its officers, directors, employees or agents shall be responsible to the Seller for any act or failure to act hereunder.

ARTICLE X

TERMINATION EVENTS

SECTION 10.1 TERMINATION EVENTS.

The following events shall be Termination Events ("Termination Events") hereunder:

(a) the aggregate Repurchase Price for all Transactions outstanding on any day exceeds the Maximum Amount and the same continues unremedied for two (2) Business Days after notice from the Purchaser; provided, however, during the period of time that such event remains unremedied, no additional Transaction will be made under this Agreement; or

(b) a Servicer Default occurs and is continuing; or

(c) the Facility Maturity Date shall have occurred; or

(d) an Insolvency Event relating to the Seller, the Guarantor or any Affiliate of the Seller or the Guarantor shall have occurred; or

(e) the Seller or the Guarantor shall become required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended (the

"40 Act") or the arrangements contemplated by the Repurchase Documents shall require registration as an "investment company" within the meaning of the 40 Act; or

(f) a regulatory, tax or accounting body has ordered that the activities of the Seller or the Guarantor of the Seller or Guarantor contemplated in the Repurchase Documents be terminated or, as a result of any other event or circumstance, the activities of the Seller or the Guarantor contemplated in the Repurchase Documents may reasonably be expected to cause the Seller or the Guarantor to suffer materially adverse regulatory, accounting or tax consequences; or

(g) there shall exist any event or occurrence that has caused a Material Adverse Effect; or

(h) (i) the Internal Revenue Service shall file notice of a Lien pursuant to Section 6323 of the Code with regard to any assets of the Seller, the Guarantor or the Pledgor, and such Lien shall not have been released within five (5) Business Days; or

(i) any material adverse change in the credit quality of the Seller or the Guarantor shall occur; or

(j) [RESERVED]; or

(k) (i) any Repurchase Document, or any Lien or security interest granted thereunder, shall (except in accordance with its terms), in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of the Seller, the Guarantor or the Pledgor, or

(ii) the Seller, the Guarantor, the Pledgor or any other party shall, directly or indirectly, contest in any manner the effectiveness, validity, binding nature or enforceability of any Repurchase Document or any Lien or security interest thereunder, or

(iii) the Purchased Items shall not have been sold to the Purchaser, or the Liens contemplated under the Repurchase Documents shall cease or fail to be first priority perfected Liens on any Purchased Items or the Equity Interests in favor of the Purchaser or shall be Liens in favor of any Person other than the Purchaser; or

(l) the Seller, the Guarantor or the Pledgor shall have failed to observe or perform in any material respect any of the covenants or agreements of the Seller, the Guarantor or the Pledgor set forth in this Agreement or the other Repurchase Documents to which the Seller, the Guarantor or the Pledgor is a party and the same continues unremedied for a period of twenty (20) days after the earlier to occur of (i) the date on which written notice of such failure requiring the same to be remedied shall have been given to the Seller, the Guarantor or the Pledgor by the Purchaser, and (ii) the date on which the Seller, the Guarantor or the Pledgor becomes aware thereof (provided, however, in the case of a failure which is capable of cure but cannot reasonably be cured within such twenty (20) day period (other than the payment of

money), and provided the Seller or the Guarantor shall have timely commenced to cure such failure within such twenty (20) day period (with evidence of same delivered to the Purchaser) and thereafter diligently and expeditiously proceeds to cure the same, such twenty (20) day period shall be extended for an additional twenty (20) day period); or

(m) any representation, warranty or certification made by the Seller, the Guarantor or the Pledgor in this Agreement or any Repurchase Document or in any certificate delivered pursuant to this Agreement or any Repurchase Document shall prove to have been incorrect in any material respect when made and that continues to be unremedied for a period of twenty (20) Business Days after the earlier to occur of (i) the date on which written notice of such incorrectness requiring the same to be remedied shall have been given to the Seller, the Guarantor or the Pledgor by the Purchaser, and (ii) the date on which the Seller, the Guarantor or the Pledgor becomes aware thereof; or

(n) the Seller shall have failed to give instructions or notice to the Purchaser as required by this Agreement, or to deliver any required reports hereunder, on or before the date such instruction, notice or report is required to be made or given, as the case may be, under the terms of this Agreement and such failure continues unremedied for a period of two (2) Business Days after the earlier to occur of (i) the date on which written notice of such failure requiring the same to be remedied shall have been given to the Seller by the Purchaser and (ii) the date on which the Seller becomes aware thereof; or

(o) the Seller shall have failed to make any payment due with respect to recourse debt or other obligations or an event or condition shall have occurred that would permit acceleration of such recourse debt or other obligations whether or not such event or condition has been waived; or

(p) the Seller shall default in the payment of any Repurchase Price due or any amount due under Section 2.8 or any other provision of this Agreement or the Repurchase Documents when due (whether at stated maturity, upon acceleration or at mandatory or optional prepayment) or the Seller's, any Servicer's or any PSA Servicer's failure to deposit to the Collection Account all Income as required by Subsection 5.1(f); or

(q) the Seller shall default in the payment of any other amount payable by it hereunder or under any other Repurchase Document after notification by the Purchaser of such default, and such default shall have continued unremedied for two (2) Business Days; or

(r) a final judgment or judgments for the payment of money in excess of $750,000 in the aggregate shall be rendered against the Seller, the Guarantor or any of their Affiliates by one (1) or more courts, administrative tribunals or other bodies having jurisdiction, and the same shall not be satisfied, discharged (or provision shall not be made for such discharge) or bonded, or a stay of execution thereof shall not be procured, within thirty (30) days from the date of entry thereof; or

(s) the Seller shall grant, or suffer to exist, any Lien on any Purchased Item (except Permitted Liens) or the Pledgor shall grant, permit or suffer to exist any Lien on any portion of the Equity Interests; or

(t) the Seller, the Guarantor or any of their Affiliates shall be in default under (i) any Indebtedness or Guarantee Obligation of the Seller, the Guarantor or of their Affiliates, which default (A) involves the failure to pay a matured obligation, or (B) permits the acceleration of the maturity of obligations by any other party to or beneficiary with respect to such Indebtedness, (ii) any other material Contractual Obligation to which the Seller, the Guarantor or any of their Affiliates is a party, which default (A) involves the failure to pay a matured obligation, or (B) permits the acceleration of the maturity of obligations by any other party to or beneficiary of such contract, or (iii) any Seller - Related Obligation; or

(u) [RESERVED]; or

(v) (i) the Seller, the Guarantor or an ERISA Affiliate shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Benefit Plan, (ii) any material "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan, or any Lien in favor of the PBGC or a Plan shall arise on the assets of the Seller, the Guarantor or any ERISA Affiliate, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Purchaser, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Plan shall terminate for purposes of Title IV of ERISA, (v) the Seller, the Guarantor or any ERISA Affiliate shall, or in the reasonable opinion of the Purchaser is likely to, incur any liability in connection with a withdrawal from, or the insolvency or reorganization of, a Multiemployer Plan, or (vi) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect; or

(w) the Seller fails to transfer Purchased Assets on the applicable Purchase Date or fails to repurchase Purchased Assets on the applicable Repurchase Date; or

(x) the Pledgor shall cease to own directly 100% of the issued and outstanding Capital Stock of the Seller and/or the Guarantor shall cease to own indirectly 72% of the issued and outstanding Capital Stock of the Pledgor; or

(y) the Seller, the Guarantor or the Pledgor shall admit its inability to, or its intentions not to, perform its obligations, covenants or agreements under any Repurchase Document.

For the purposes of Subsections 10.1(d), (r) and (t) and the next sentence and not with respect to any other provision of this Agreement, the percentage used in the term Affiliate shall be 50% instead of 20%. Subject to the preceding sentence, upon the occurrence of any event described in Subsections 10.1(d), (r) or (t) with respect to any Affiliate, including any Person that

becomes an Affiliate of the Seller, the Pledgor or the Guarantor as a result of an exercise by the Seller, the Pledgor or the Guarantor of its remedies in connection with a pledge to the Seller, the Pledgor or the Guarantor of interests in such Person, the Seller shall promptly notify the Purchaser of same in writing and the Purchaser will make a determination in its reasonable discretion and within a reasonable period of time as to whether such event shall constitute a Termination Event.

SECTION 10.2 REMEDIES.

(a) If a Termination Event occurs, the following rights and remedies are available to the Purchaser; provided, that a Termination Event shall be deemed to be continuing unless expressly waived by the Purchaser in writing.

(i) At the option of the Purchaser, exercised by written notice to the Seller (which option shall be deemed to have been exercised, even if no notice is given, immediately upon the occurrence of an Insolvency Event of the Seller, the Guarantor or any of their Affiliates), the Repurchase Date for each Transaction hereunder, if it has not already occurred, shall be deemed immediately to occur (except that, in the event that the Purchase Date for any Transaction has not yet occurred as of the date of such exercise or deemed exercise, such Transaction shall be deemed immediately cancelled). The Purchaser shall (except upon the occurrence of an Insolvency of the Seller, the Guarantor or any of their Affiliates) give notice to the Seller of the exercise of such option as promptly as practicable.

(ii) If the Purchaser exercises or is deemed to have exercised the option referred to in Subsection 10.2(a)(i),

(A) (1) the Seller's obligations in such Transactions to repurchase all Purchased Items, at the Repurchase Price therefor on the Repurchase Date, and, without duplication, to pay the Aggregate Unpaids and all other amounts owed by the Seller hereunder and under the other Repurchase Documents, shall thereupon become immediately due and payable, (2) all Income paid after such exercise or deemed exercise shall be retained by the Purchaser and applied to the aggregate unpaid Repurchase Price, the Aggregate Unpaids and any other amounts owed by the Seller hereunder and under the other Repurchase Documents, and (3) the Seller shall immediately deliver to the Purchaser any Purchased Items subject to such Transactions then in the Seller's possession or control; and

(B) all Income actually received by the Purchaser pursuant to Section 2.8 (excluding any Late Payment Fees paid pursuant to Subsection 2.5(a)) shall be applied to the aggregate unpaid Repurchase Price and Aggregate Unpaids and any other amounts owed by the Seller hereunder or the other Repurchase Documents.

(iii) Upon the occurrence of one or more Termination Events, and subject to Section 6.14, the Purchaser shall have the right to obtain physical possession of the

Servicing Records (subject to the provisions of the Custodial Agreement), the Servicing Files and all other files of the Seller relating to the Purchased Items and all documents relating to the Purchased Items which are then or may thereafter come into the possession of the Seller or any third party acting for the Seller, and the Seller shall deliver to the Purchaser such assignments as the Purchaser shall request, and the Purchaser shall have the right to appoint any Person to act as the Servicer for the Purchased Assets. The Purchaser shall be entitled to specific performance of all agreements of the Seller contained in the Repurchase Documents.

(iv) At any time after the second (2nd) Business Day following notice to the Seller (which notice may be the notice given under Subsection 10.2(a)(i)), in the event the Seller has not repurchased all Purchased Items, the Purchaser may (A) immediately sell, without demand or further notice of any kind, at a public or private sale and at such price or prices as the Purchaser may deem reasonably satisfactory any or all Purchased Items subject to such Transactions hereunder and apply the proceeds thereof to the aggregate unpaid Repurchase Price, the Aggregate Unpaids and any other amounts owed by the Seller hereunder and under the other Repurchase Documents, or (B) in its sole discretion, elect, in lieu of selling all or a portion of such Purchased Items, to give the Seller credit for such Purchased Items in an amount equal to the Market Value of the Purchased Items against the aggregate unpaid Repurchase Price, the Aggregate Unpaids and any other amounts owing by the Seller hereunder and under the other Repurchase Documents. The proceeds of any disposition of Purchased Items shall be applied first to the costs and expenses incurred by the Purchaser in connection with the Seller's default; second to the costs of related covering and/or related hedging transactions; third to the Repurchase Price; fourth to the Aggregate Unpaids and any other amounts owed by the Seller hereunder or under the other Repurchase Documents; and fifth to the Seller.

(v) The Seller agrees that the Purchaser may obtain an injunction or an order of specific performance to compel the Seller to fulfill any of its obligations as set forth in Article X if the Seller fails or refuses to perform its obligations as set forth therein.

(vi) The Seller shall be liable to the Purchaser, payable as and when incurred by the Purchaser, for (A) the amount of all reasonable actual out-of-pocket expenses, including legal or other expenses incurred by the Purchaser in connection with or as a consequence of a Termination Event, and (B) all reasonable costs incurred in connection with hedging or covering transactions.

(vii) The Purchaser shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or Applicable Law.

(b) The Purchaser may exercise one or more of the remedies available to the Purchaser immediately upon the occurrence of a Termination Event and, except to the extent provided in Subsections 10.2(a)(i) and 10.2(a)(iv), at any time thereafter without notice to the Seller. All rights and remedies arising under this Agreement, as amended from time to time, are cumulative and not exclusive of any other rights or remedies that the Purchaser may have.

(c) The Purchaser may enforce its rights and remedies hereunder without prior judicial process or hearing, and the Seller hereby expressly waives any defenses the Seller might otherwise have to require the Purchaser to enforce its rights by judicial process. The Seller also waives any defense (other than a defense of payment or performance) the Seller might otherwise have arising from the use of nonjudicial process, enforcement and sale of all or any portion of the Purchased Items, or from any other election of remedies. The Seller recognizes that nonjudicial remedies are consistent with the usages of the trade, are responsive to commercial necessity and are the result of a bargain at arm's-length.

(d) To the extent permitted by Applicable Law, the Seller shall be liable to the Purchaser for interest on any amounts owing by the Seller hereunder, from the date the Seller becomes liable for such amounts hereunder until such amounts are (i) paid in full by the Seller or (ii) satisfied in full by the exercise of the Purchaser's rights hereunder. Interest on any sum payable by the Seller to the Purchaser under this Subsection 10.2(d) shall accrue interest from and after the date of the Termination Event at a rate equal to the Post-Default Rate.

(e) In addition to the rights under this Section 10.2, upon a Termination Event the Purchaser shall no longer be obligated to enter into any additional Transactions pursuant to any outstanding Confirmation and the Purchaser shall have the following additional rights if a Termination Event occurs:

(i) The Purchaser and the Seller agree and acknowledge that the Purchased Assets constitute collateral that may decline rapidly in value. Accordingly, notwithstanding anything to the contrary in this Agreement, the Purchaser shall not be required to give notice to the Seller or any other Repurchase Party prior to exercising any remedy in respect of a Termination Event. If no prior notice is given, the Purchaser shall give notice to the Seller of the remedies effected by the Purchaser promptly thereafter. The Purchaser shall act in good faith in exercising its rights pursuant to this section.

(ii) The Purchaser may, in its sole discretion, elect to hold any Purchased Asset for its own account and earn the related interest on the full face amount thereof.

(f) The Purchaser shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or Applicable Law.

SECTION 10.3 DETERMINATION OF TERMINATION EVENTS.

In making a determination as to whether a Termination Event has occurred, the Purchaser shall be entitled to rely on reports published or broadcast by media sources believed by the Purchaser to be generally reliable and on information provided to it by any other sources believed by it to be generally reliable, provided that (i) the Purchaser reasonably and in good faith believes such information to be accurate and has taken such steps as may be reasonable in the circumstances (including consulting with the Seller, the Pledgor and/or the Guarantor) to attempt to verify such information.

ARTICLE XI

INDEMNIFICATION

SECTION 11.1 INDEMNITIES BY THE SELLER.

(a) The Seller agrees to hold the Purchaser and its Affiliates and the Purchaser and its Affiliates' officers, directors, shareholders, employees, agents, Affiliates and advisors (each an "Indemnified Party" and collectively the "Indemnified Parties") harmless from and indemnify any Indemnified Party against all liabilities, losses, damages, judgments, costs and expenses of any kind that may be imposed on, incurred by or asserted against such Indemnified Party (collectively, the "Indemnified Amounts") relating to or arising out of this Agreement, the Repurchase Documents or any transaction contemplated hereby or thereby, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the Repurchase Documents or any transaction contemplated hereby or thereby, that, in each case, results from anything other than any Indemnified Party's gross negligence or willful misconduct or, with respect to any Purchased Item that is a Wachovia Asset, for or in connection with any matters arising from events that occurred prior to the Original Purchase Date. Without limiting the generality of the foregoing, the Seller agrees to hold any Indemnified Party harmless from and indemnify such Indemnified Party against all Indemnified Amounts with respect to all Purchased Items relating to or arising out of any violation or alleged violation of, noncompliance with or liability under any law, rule or regulation (including, without limitation, Environmental Laws) that, in each case, results from anything other than such Indemnified Party's gross negligence or willful misconduct. In any suit, proceeding or action brought by an Indemnified Party in connection with any Purchased Item for any sum owing thereunder, or to enforce any provisions of any Purchased Item, the Seller will save, indemnify and hold such Indemnified Party harmless from and against all expense, loss or damage suffered by reason of any defense, set - off, counterclaim, recoupment or reduction of liability whatsoever of the account debtor or obligor thereunder arising out of a breach by the Seller of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such account debtor or obligor or its successors from the Seller. The Seller also agrees to reimburse an Indemnified Party as and when billed by such Indemnified Party for all such Indemnified Party's costs, expenses and fees incurred in connection with the enforcement or the preservation of such Indemnified Party's rights under this Agreement, the Repurchase Documents and any transaction contemplated hereby or thereby, including, without limitation, the reasonable fees and disbursements of its counsel.

(b) Any amounts subject to the indemnification provisions of this Section 11.1 shall be paid by the Seller to the Indemnified Party within five (5) Business Days following such Person's demand therefor.

(c) The obligations of the Seller under this Section 11.1 shall survive the resignation or removal of the Purchaser and the termination of this Agreement.

ARTICLE XII

[RESERVED]

ARTICLE XIII

MISCELLANEOUS

SECTION 13.1 AMENDMENTS AND WAIVERS.

Except as provided in this Section 13.1, no amendment, waiver or other modification of any provision of this Agreement shall be effective without the written agreement of the Seller, the Purchaser and the Guarantor. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 13.2 NOTICES, ETC.

All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing (including telex communication and communication by facsimile copy) and mailed, telexed, transmitted or delivered, as to each party hereto, at its address set forth under its name on the signature pages hereof or at such other address as shall be designated by such party in a written notice to the other parties hereto. All such notices and communications shall be effective, upon receipt, or in the case of (a) notice by mail, five (5) days after being deposited in the United States mail, first class postage prepaid, (b) notice by telex, when telexed against receipt of answer back, or (c) notice by facsimile copy, when verbal communication of receipt is obtained.

SECTION 13.3 SET-OFFS.

In addition to any rights and remedies of the Purchaser provided by this Agreement and by Applicable Law, the Purchaser shall have the right, without prior notice to Seller or the Guarantor, any such notice being expressly waived by Seller and the Guarantor to the extent permitted by Applicable Law, upon any amount becoming due and payable by Seller or the Guarantor to the Purchaser hereunder, under the Repurchase Documents or otherwise (whether at the stated maturity, by acceleration or otherwise) to set - off and appropriate and apply against such amount any and all monies and other property of Seller or the Guarantor, any and all deposits (general or special, time or demand, provisional or final), in any currency, and any and all other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, and in each case at any time held or owing by the Purchaser or any Affiliate thereof to or for the credit or the account of Seller or the Guarantor. The Purchaser agrees promptly to notify the Seller and the Guarantor after any such set - off and application made by the Purchaser, provided that the failure to give such notice shall not affect the validity of such set-off and application.

SECTION 13.4 NO WAIVER; REMEDIES.

No failure on the part of the Purchaser to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any further exercise thereof or the exercise of any other right. The rights and remedies herein provided are cumulative and not exclusive of any rights and remedies provided by law.

SECTION 13.5 BINDING EFFECT.

This Agreement shall be binding upon and inure to the benefit of the Seller, the Purchaser, the Guarantor and their respective successors and permitted assigns.

SECTION 13.6 TERM OF THIS AGREEMENT.

(a) This Agreement, including, without limitation, the Seller's and the Guarantor's representations, covenants and duties set herein, create and constitute the continuing obligation of the parties hereto in accordance with its terms and shall remain in full force and effect until the Aggregate Unpaids are paid in full; provided, however, that the indemnification and payment provisions of Article XI, the provisions of Sections 2.5(b), 2.13, 2.14, 13.9, 13.11 and 13.13 and any other provision that by its terms expressly survives termination, shall be continuing and shall survive any termination of this Agreement.

(b) Subject to Subsection 13.6(a), this Agreement may be terminated by the Purchaser or the Seller upon giving written notice to the other and to the Guarantor, except that this Agreement shall, notwithstanding such notice, remain applicable to any Transaction then outstanding.

SECTION 13.7 GOVERNING LAW; CONSENT TO JURISDICTION; WAIVER OF OBJECTION TO VENUE.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF). EACH OF THE PARTIES HERETO HEREBY AGREES TO THE NON - EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO HEREBY WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS AND ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER IN ANY OF THE AFOREMENTIONED COURTS AND CONSENTS TO THE GRANTING OF SUCH LEGAL OR

EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

SECTION 13.8 WAIVER OF JURY TRIAL.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO HEREBY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN

RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE BETWEEN THE PARTIES HERETO ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP BETWEEN ANY OF THEM IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. INSTEAD, ANY SUCH DISPUTE RESOLVED IN COURT WILL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

SECTION 13.9 COSTS, EXPENSES AND TAXES.

(a) The Seller agrees to pay as and when billed by the Purchaser all of the reasonable out - of - pocket costs and expenses incurred by the Purchaser in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement, the Repurchase Documents or any other documents and agreements prepared in connection herewith or therewith. The Seller agrees to pay as and when billed by the Purchaser all of the out - of - pocket costs and expenses incurred in connection with the consummation and administration of the transactions contemplated hereby and thereby including, without limitation, (i) all the reasonable fees, disbursements and expenses of counsel to the Purchaser and (ii) all the due diligence, inspection, testing and review costs and expenses incurred by the Purchaser with respect to the Purchased Assets under this Agreement, including, but not limited to, those costs and expenses incurred by the Purchaser and reimbursable by the Seller pursuant to Subsection 11.1(a) of this Agreement.

(b) The Seller shall pay on demand any and all stamp, sales, excise and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement, the Repurchase Documents or the other documents to be delivered hereunder or thereunder or the funding or maintenance of Transactions hereunder.

SECTION 13.10 LEGAL MATTERS.

(a) In the event of any conflict between the terms of this Agreement, any other Repurchase Document and any Confirmation, the documents shall control in the following order of priority: first, the terms of the Confirmation shall prevail, then the terms of this Agreement shall prevail, and then the terms of the other Repurchase Documents shall prevail.

(b) Each of the Seller and the Guarantor hereby acknowledges that:

(i) it has been advised by counsel in the negotiation, execution and delivery of the Repurchase Documents;

(ii) it has no fiduciary relationship with the Purchaser; and

(iii) no joint venture exists with the Purchaser.

SECTION 13.11 RECOURSE AGAINST CERTAIN PARTIES.

No recourse under or with respect to any obligation, covenant or agreement (including, without limitation, the payment of any fees or any other obligations) of the Purchaser or the Guarantor as contained in this Agreement, the Repurchase Documents or any other agreement, instrument or document entered into by the Purchaser or the Guarantor any such party pursuant hereto or thereto or in connection herewith or therewith shall be had against any administrator of the Purchaser or the Guarantor or any incorporator, Affiliate (direct or indirect), owner, member, partner, stockholder, officer, director, employee, agent or attorney of the Purchaser or the Guarantor or of any such administrator, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that the agreements of the Purchaser or the Guarantor contained in this Agreement, the Repurchase Documents and all of the other agreements, instruments and documents entered into by it pursuant hereto or thereto or in connection herewith or therewith are, in each case, solely the corporate obligations of the Purchaser or the Guarantor, and that no personal liability whatsoever shall attach to or be incurred by any administrator of the Purchaser or the Guarantor or any incorporator, owner, member, partner, stockholder, Affiliate (direct or indirect), officer, director, employee, agent or attorney of the Purchaser or the Guarantor, or of any such administrator, as such, or any other of them, under or by reason of any of the obligations, covenants or agreements of the Purchaser or the Guarantor contained in this Agreement or in any other such instruments, documents or agreements, or that are implied therefrom, and that any and all personal liability of every such administrator of the Purchaser or the Guarantor and each incorporator, owner, member, partner, stockholder, Affiliate (direct or indirect), officer, director, employee, agent or attorney of the Purchaser or the Guarantor, or of any such administrator, or any of them, for breaches by the Purchaser or the Guarantor of any such obligations, covenants or agreements, which liability may arise either at common law or at equity, by statute or constitution, or otherwise, is hereby expressly waived as a condition of and in consideration for the execution of this Agreement. The provisions of this Section 13.11 shall survive the termination of this Agreement.

SECTION 13.12 PROTECTION OF RIGHT, TITLE AND INTEREST IN THE PURCHASED ASSETS; FURTHER ACTION EVIDENCING TRANSACTIONS.

(a) The Seller shall cause this Agreement, all amendments hereto and/or all financing statements and continuation statements and any other necessary documents covering the right, title and interest of the Purchaser to the Purchased Items to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed, all in such manner and in such places as may be required by law fully to preserve and protect the right, title and interest of the Purchaser hereunder to all property comprising the Purchased Items. The Seller shall deliver to the Purchaser file - stamped copies of, or filing receipts for, any document recorded, registered or filed as provided above, as soon as available following such recording, registration or filing. The Seller shall execute any and all documents reasonably required to fulfill the intent of this Subsection 13.12(a).

(b) The Seller agrees that from time to time, at its expense, it will promptly execute and deliver all instruments and documents, and take all actions, that the Purchaser may

reasonably request in order to perfect, protect or more fully evidence the Transactions hereunder and the security interest granted in the Purchased Items, or to enable the Purchaser to exercise and enforce their rights and remedies hereunder or under any Repurchase Document.

(c) If the Seller fails to perform any of its obligations hereunder, the Purchaser may (but shall not be required to) perform, or cause performance of, such obligation; and the Purchaser's costs and expenses incurred in connection therewith shall be payable by the Seller. The Seller irrevocably appoints the Purchaser as its attorney - in - fact and authorizes the Purchaser to act on behalf of the Seller (i) to execute on behalf of the Seller as debtor and to file financing statements necessary or desirable in the Purchaser's sole discretion to perfect and to maintain the perfection and priority of the interest in the Purchased Items, and (ii) to file a carbon, photographic or other reproduction of this Agreement or any financing statement with respect to the Purchased Items as a financing statement in such offices as the Purchaser in its sole discretion deems necessary or desirable to perfect and to maintain the perfection and priority of the interests in the Purchased Items. This appointment is coupled with an interest and is irrevocable.

(d) Without limiting the generality of the foregoing, the Seller will not earlier than six (6) months and not later than three (3) months prior to the fifth anniversary of the date of filing of the financing statement referred to in Subsection 3.1(g) or any other financing statement filed pursuant to this Agreement or in connection with any Transaction hereunder, unless the Aggregate Unpaids have been paid in full:

(i) execute and deliver and file or cause to be filed an appropriate continuation statement with respect to such financing statement; and

(ii) deliver or cause to be delivered to the Purchaser an opinion of the counsel for the Seller, in form and substance reasonably satisfactory to the Purchaser, confirming and updating the opinion delivered pursuant to Subsection 3.1(h) with respect to perfection and otherwise to the effect that the security interest hereunder continues to be an enforceable and perfected security interest, subject to no other Liens of record except as provided herein or otherwise permitted hereunder, which opinion may contain usual and customary assumptions, limitations and exceptions.

SECTION 13.13 CONFIDENTIALITY.

(a) Each of the Purchaser, the Seller and the Guarantor shall maintain and shall cause each of its employees and officers to maintain the confidentiality of this Agreement and all information with respect to the other parties, including all information regarding the Purchased Items and each party's business obtained by it or them in connection with the structuring, negotiating and execution of the transactions contemplated herein, except that each such party and its officers and employees may (i) disclose such information to its external accountants, attorneys, investors, potential investors, Affiliates and the agents of such Persons ("Excepted Persons"); provided, however, that each Excepted Person shall, as a condition to any such disclosure, agree for the benefit of the Purchaser, the Seller and the Guarantor that such information shall be used solely in connection with such Excepted Person's evaluation of, or

relationship with, the Seller, the Guarantor and their Affiliates, (ii) disclose the existence of the Agreement and the Repurchase Documents, but not the financial terms thereof, (iii) disclose such information as is required by Applicable Law, and (iv) disclose the Agreement and such information in any suit, action, proceeding or investigation (whether in law or in equity or pursuant to arbitration) involving any of the Repurchase Documents for the purpose of defending itself, reducing its liability, or protecting or exercising any of its claims, rights, remedies or interests under or in connection with any of the Repurchase Documents. It is understood that the financial terms that may not be disclosed except in compliance with this Subsection 13.13(a) include, without limitation, all fees and other pricing terms and all Termination Events and priority of payment provisions.

(b) Anything herein to the contrary notwithstanding, each of the Seller and the Guarantor hereby consents to the disclosure of any nonpublic information with respect to it by the Purchaser to any prospective or actual assignee, participant or pledgee provided each such Person is informed of the confidential nature of such information and such Person agrees to be bound by the confidentiality provisions set forth herein.

(c) Notwithstanding anything herein to the contrary, the foregoing shall not be construed to prohibit (i) disclosure of any and all information that is or becomes publicly known; (ii) disclosure of any and all information (A) if required to do so by any Applicable Law, (B) to any Governmental Authority having or claiming authority to regulate or oversee any respects of the Purchaser's, the Seller's or the Guarantor's business or that of their respective Affiliates, (C) pursuant to any subpoena, civil investigative demand or similar demand or request of any court, regulatory authority, arbitrator or arbitration to which the Purchaser, the Seller or the Guarantor or an officer, director, employer, shareholder, owner, member, partner, agent, employee or Affiliate of any of the foregoing is a party, (D) in any preliminary or final offering circular, registration statement or contract or other document approved in writing in advance by the Seller and the Guarantor, or (E) to any Affiliate, independent or internal auditor, agent, employee or attorney of the Custodian having a need to know the same, provided that the Custodian advises such recipient of the confidential nature of the information being disclosed and such Person agrees to be bound by the confidentiality provisions set forth herein; or (iii) any other disclosure authorized by the Purchaser, the Seller or the Guarantor, as applicable.

(d) Notwithstanding anything to the contrary contained herein or in any related document, all Persons may disclose to any and all Persons, without limitation of any kind, the federal income tax treatment of any of the transactions contemplated by this Repurchase Agreement or any other related document, any fact relevant to understanding the federal tax treatment of such transactions and all materials of any kind (including opinions or other tax analyses) relating to such federal income tax treatment.

SECTION 13.14 EXECUTION IN COUNTERPARTS; SEVERABILITY; INTEGRATION.

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts (including by facsimile), each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. In case any provision in or obligation under this Agreement shall be invalid, illegal

or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. This Agreement and any other Repurchase Document executed in connection herewith contain the final and complete integration of all prior expressions by the parties hereto and thereto with respect to the subject matter hereof and thereof and shall constitute the entire agreement among the parties hereto and thereto with respect to the subject matter hereof and thereof, superseding all prior oral or written understandings.

SECTION 13.15 SELLER'S WAIVER OF SETOFF.

Each of the parties hereto (other than the Purchaser) hereby waives any right of setoff it may have or to which it may be entitled under this Agreement from time to time against the Purchaser or its assets.

SECTION 13.16 ASSIGNMENTS AND PARTICIPATIONS; HYPOTHECATION OF PURCHASED ASSETS.

(a) Neither the Seller nor the Guarantor may assign any of its rights or obligations under this Agreement without the prior written consent of the Purchaser and any attempt by the Seller or the Guarantor to assign any of its rights or obligations under this Agreement without the prior written consent of the Purchaser shall be null and void. The Purchaser may upon notice to the Seller and the Guarantor, and, (i) without the consent of the Seller or the Guarantor (A) in the case of a Pre - Approved Purchaser or (B) after a Termination Event, and (ii) with the prior written consent of the Seller and the Guarantor (not to be unreasonably withheld or delayed) in the case of a Person that is not a Pre - Approved Purchaser, sell, transfer, assign, pledge or grant participation interests to any Person in any Transaction, its interest in the Purchased Assets or any other interest of the Purchaser under this Agreement (any such entity, a "Transferee"), provided that any assignment effected pursuant to this Subsection 13.16(a) shall be in respect of Purchased Assets with a minimum Purchase Price of $5,000,000 (other than in the case of (i) an assignment of all of the interests then held by the Purchaser (or a Transferee) or (ii) a transfer to an Affiliate of the Purchaser (or a Transferee). Each of the Seller and the Guarantor agrees to cooperate with the Purchaser, at the Purchaser's expense, in connection with any such assignment, transfer, pledge, participation or sale, and to enter into such restatements of, and amendments, supplements and other modifications to this Agreement, in order to give effect to such assignment, transfer, pledge, participation or sale.

(b) The Purchaser shall have free and unrestricted use of all Purchased Assets and nothing in this Agreement shall preclude the Purchaser from engaging in repurchase transactions with the Purchased Assets or otherwise pledging, transferring, hypothecating, or rehypothecating the Purchased Assets; provided, however, that the Purchaser shall transfer the Purchased Assets to the Seller on the applicable Repurchase Date free and clear of any Lien on any of the

Purchased Assets. Nothing contained in this Agreement shall obligate the Purchaser to segregate any Purchased Assets transferred to the Purchaser by the Seller.

SECTION 13.17 HEADING AND EXHIBITS.

The headings herein are for purposes of references only and shall not otherwise affect the meaning or interpretation of any provision hereof. The schedules and exhibits attached hereto and referred to herein shall constitute a part of this Agreement and are incorporated into this Agreement for all purposes.

SECTION 13.18 SINGLE AGREEMENTS.

The Purchaser, the Seller and the Guarantor acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that all Transactions hereunder constitute a single business and contractual relationship and that each has been entered into in consideration of the other Transactions. Accordingly, each of the Purchaser, the Seller and the Guarantor agrees to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder.

SECTION 13.19 DISCLOSURE RELATING TO CERTAIN FEDERAL PROTECTIONS.

The parties acknowledge that they have been advised that:

(a) in the case of Transactions in which one of the parties is a broker or dealer registered with the Securities and Exchange Commission ("SEC") under Section 15 of the Exchange Act, the provisions of the Securities Investor Protection Act of 1970 ("SIPA") will not provide protection to the other parties with respect to any Transaction hereunder;

(b) in the case of Transactions in which one of the parties is a government securities broker or a government securities dealer registered with the SEC under Section 15C of the Exchange Act, SIPA will not provide protection to the other parties with respect to any Transaction hereunder;

(c) in the case of Transactions in which one of the parties is a financial institution, funds held by the financial institution pursuant to a Transaction hereunder are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, as applicable; and

(d) in the case of Transactions in which one of the parties is an "insured depository institution" as that term is defined in Section 1813(c)(2) of Title 12 of the Code, funds held by the financial institution pursuant to a Transaction hereunder are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund or the Bank Insurance Fund, as applicable.

SECTION 13.20 INTENT.

(a) The parties recognize that each Transaction is a "Repurchase Agreement" as that term is defined in Section 101 of Title 11 of the United States Code (except insofar as the type of

Purchased Assets subject to such Transaction or the term of such Transaction would render such definition inapplicable) and a "Securities Contract" as that term is defined in Section 741 of Title 11 of the United States Code (except insofar as the type of Purchased Assets subject to such Transaction would render such definition inapplicable).

(b) The parties agree and acknowledge that if a party hereto is an "Insured Depository Institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Transaction hereunder is a "Qualified Financial Contract," as that term is defined in FDIA and any rules, orders or policy statements thereunder (except insofar as the type of Purchased Assets subject to such Transaction would render such definition inapplicable).

(c) It is understood that this Agreement constitutes a "Netting Contract" as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") and each payment entitlement and payment obligation under any Transaction hereunder shall constitute a "Covered Contractual Payment Entitlement" or "Covered Contractual Payment Obligation", respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a "Financial Institution" as that term is defined in FDICIA or regulations promulgated thereunder).

(d) It is understood that any party's right to liquidate Purchased Assets delivered to it in connection with Transactions hereunder or to exercise any other remedies pursuant to Section 10.2 is a contractual right to liquidate such Transaction as described in Sections 555 and 559 of Title 11 of the United States Code, as amended.

SECTION 13.21 PERIODIC DUE DILIGENCE REVIEW.

Each of the Seller and the Guarantor acknowledges that the Purchaser has the right to perform continuing due diligence reviews with respect to the Purchased Items for purposes of verifying compliance with the representations, warranties, covenants, agreements and specifications made hereunder, or otherwise, and each of the Seller and the Guarantor agrees that upon reasonable (but no less than one (1) Business Day's) prior notice, unless a Termination Event shall have occurred, in which case no notice is required, to the Seller or the Guarantor, as applicable, the Purchaser or its authorized representatives shall be permitted during normal business hours to examine, inspect, and make copies and extracts of, the Mortgage Asset Files and any and all documents, records, agreements, instruments or information relating to such Purchased Items in the possession or under the control of the Seller, the Guarantor and/or the Custodian. Each of the Seller and the Guarantor also shall make available to the Purchaser a knowledgeable financial or accounting officer for the purpose of answering questions respecting the Mortgage Asset Files and the Purchased Items. Each of the Seller and the Guarantor shall also make available to the Purchaser any accountants or auditors of the Seller or the Guarantor to answer any questions or provide any documents as the Purchaser may require. The Seller will also cause each of the Servicers and PSA Servicers (to the extent permitted under the applicable Pooling and Servicing Agreement) to cooperate with the Purchaser by permitting the Purchaser to conduct due diligence reviews of files of each such Servicer and PSA Servicer. Without limiting the generality of the foregoing, the Seller acknowledges that the Purchaser may purchase Purchased Items from the Seller based solely upon the information provided by the Seller to the

Purchaser in the Seller Asset Schedule and the representations, warranties and covenants contained herein, and that the Purchaser, at its option, has the right at any time to conduct a partial or complete due diligence review on some or all of the Purchased Items purchased in a Transaction, including, without limitation, ordering new credit reports and new appraisals on the related Mortgaged Properties and otherwise re - generating the information used to originate such Purchased Assets. The Purchaser may underwrite such Purchased Assets itself or engage a mutually agreed upon third party underwriter to perform such underwriting. Each of the Seller and the Guarantor agrees to cooperate with the Purchaser and any third party underwriter in connection with such underwriting, including, but not limited to, providing the Purchaser and any third party underwriter with access to any and all documents, records, agreements, instruments or information relating to such Purchased Assets in the possession, or under the control, of the Seller or the Guarantor. The Purchaser shall pay all out - of - pocket costs and expenses incurred by the Purchaser not exceeding $2,500 per Underlying Mortgaged Property in connection with the Purchaser's activities pursuant to this Section 13.21 ("Due Diligence Costs"); provided that, in the event that an Unmatured Termination Event or Termination

Event shall have occurred, the Seller shall reimburse the Purchaser for all Due Diligence Costs (without regard to $2,500 cap) incurred by the Purchaser from and after the date of such Unmatured Termination Event or Termination Event in connection with the Purchaser's activities pursuant to this Section 13.21.

SECTION 13.22 USE OF EMPLOYEE PLAN ASSETS.

(a) If assets of an employee benefit plan subject to any provision ERISA are intended to be used by either party hereto (the "Plan Party") in a Transaction, the Plan Party shall so notify the other party prior to the Transaction. The Plan Party shall represent in writing to the other party that the Transaction does not constitute a prohibited transaction under ERISA or is otherwise exempt therefrom, and the other party may proceed in reliance thereon but shall not be required so to proceed.

(b) Subject to the last sentence of Subsection 13.22(a) above, any such Transaction shall proceed only if the Plan Party furnishes or has furnished to the other party its most recent available audited statement of its financial condition and its most recent subsequent unaudited statement of its financial condition.

(c) By entering into a Transaction pursuant to this Section 13.22, the Seller shall be deemed (i) to represent to the Purchaser that since the date of the Seller's latest such financial statements, there has been no material adverse change in the Seller's financial condition which Seller has not disclosed to the Purchaser, and (ii) to agree to provide the Purchaser with future audited and unaudited statements of its financial condition as they are issued, so long as it is a Seller in any outstanding Transaction involving a Plan Party.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

THE SELLER: ARBOR REALTY FUNDING LLC

By: /s/ Frederick Herbst

Name: Frederick Herbst
Title: Authorized Signatory

Arbor Realty Funding LLC
c/o Arbor Commercial Mortgage LLC
333 Earle Ovington Boulevard
Uniondale, New York 11553
Attention: Guy Milone, Esq.
Facsimile No.: (516) 832 - 6431
Confirmation No.: (516) 832 - 7431

[Signatures Continued on the Following Page]

THE PURCHASER: WACHOVIA BANK, NATIONAL ASSOCIATION

By:/s/ William J. Cohane

Name: _______________________________
Title: ______________________________

Wachovia Bank, National Association
One Wachovia Center, Mail Code: NC0166
301 South College Street
Charlotte, North Carolina 28288
Attention: Marianne Hickman

Facsimile No.: (704) 715 - 0066
Confirmation No.: (704) 715 - 7818

[Signatures Continued on the Following Page]

THE GUARANTOR:

ARBOR REALTY TRUST, INC.,
a Maryland corporation

By: /s/ Frederick Herbst

Name: Frederick Herbst
Title: Chief Financial Officer

Arbor Realty Trust, Inc.
c/o Arbor Commercial Mortgage LLC
333 Earle Ovington Boulevard
Uniondale, New York 11553
Attention: Guy Milone, Esq.
Facsimile No.: (516) 832 - 6431
Confirmation No.: (516) 832 - 7431

EXHIBIT 10.14

MASTER REPURCHASE AGREEMENT

Dated as of November 18, 2002

BETWEEN:

NOMURA CREDIT & CAPITAL, INC., as buyer ("Buyer", which term shall include any "Principal" as defined and provided for in Annex I), or as agent pursuant hereto ("Agent")

and

ARBOR COMMERCIAL MORTGAGE, LLC, as seller ("Seller").

1. APPLICABILITY.

Buyer may, from time to time, agree to enter into transactions in which Seller transfers to Buyer Purchased Assets against the transfer of funds by Buyer, with a simultaneous agreement by Buyer to transfer to Seller such Purchased Assets at a date certain, against the transfer of finds by Seller. Each such transaction shall be referred to herein as a "Transaction", and, unless otherwise agreed in writing, shall be governed by this Agreement.

2. DEFINITIONS AND INTERPRETATION.

a. Defined Terms.

"Additional Purchased Assets" shall have the meaning assigned thereto in Paragraph 6(a) hereof.

"Adjusted LIBOR" shall mean with respect to any period a rate per annum determined by Buyer in accordance with the following formula:

LIBOR

1.00 - Eurocurrency Reserve Requirement

"Affiliate" means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "control" means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting equity, by contract or otherwise.

"Agent" means Nomura Credit & Capital, Inc. or any successor.

"Agreement" means this Master Repurchase Agreement, as it may be amended, supplemented or otherwise modified from time to time.

"Bridge Loan" has the meaning given to it in Appendix A of the Custodial Agreement.

"Business Day" means any day other than (i) a Saturday or Sunday or (ii) a public or bank holiday in New York City.

"Buyer's Margin Amount" means, with respect to any Transaction as of any date of determination, the amount obtained by application of the Buyer's Margin Percentage to the Repurchase Price for such Transaction as of such date.

"Buyer's Margin Percentage" means, with respect to any Transaction as of any date of determination, a percentage agreed to by Buyer and Seller as set forth in the related Confirmation, or, in the absence of any such agreement, the percentage obtained by dividing the Market Value of the Purchased Assets on the Purchase Date by the Purchase Price on the Purchase Date for such Transaction.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Collateral" shall have the meaning assigned thereto in Paragraph 8 hereof.

"Collateral Receipt" means a document duly executed by Seller with respect to each delivery of documents relating to the Purchased Assets to Custodian in the form attached to the Custodial Agreement.

"Computer Tape" means a computer tape or other electronic medium generated by Seller and delivered to Buyer and Custodian which provides information relating to the Purchased Assets, including the information set forth in the Loan Schedule, in a format acceptable to Buyer.

"Confirmation" shall have the meaning assigned thereto in Paragraph 4(b) hereof.

"Custodian" means the entity acting as bailee of or agent for Buyer with respect to any item of a Purchased Asset.

"Custodial Agreement" means the Custody Agreement dated as of November 1, 2002, as amended, supplemented or otherwise modified from time to time, among Seller, Buyer and Custodian, with respect to any Purchased Asset.

"Custodian's Loan File" shall have the meaning assigned thereto or to "Loan File" in the Custodial Agreement.

"Default" means any event, that, with the giving of notice or the passage of time or both, would constitute an Event of Default.

"Default Rate" means, as of any date of determination, the Prime Rate as quoted in the Wall Street Journal plus 2%.

"Effective Date" means November 18, 2002.

"Eurocurrency Reserve Requirement" shall mean, for any day as applied to a Transaction, the aggregate (without duplication) of the rates (expressed as a decimal fraction) of reserve requirements applicable to the Buyer and in effect on such day (including without limitation basic, supplemental, marginal and emergency reserves under any regulations of the Board of Governors of the Federal Reserve System or other Governmental Authority having jurisdiction with respect thereto), dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as "Eurocurrency Liabilities in Regulation D of such Board) maintained by a member bank of such Governmental Authority.

"Event of Default" shall have the meaning assigned thereto in Paragraph 18 hereof.

"Final Repurchase Date" shall have the meaning assigned thereto in Paragraph 3 hereof.

"GAAP" shall mean generally accepted accounting principles in the United States of America in effect from time to time.

"Governmental Authority" shall mean any nation or government, any state or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions over Seller.

"Guarantee" means, as to any Person, any obligation of such Person directly or indirectly guaranteeing any Indebtedness of any other Person or in any manner providing for the payment of any Indebtedness of any other Person.

"Income" means, with respect to any Purchased Asset at any time, any principal thereof then payable and all interest, dividends or other distributions thereon.

"Indebtedness" shall mean, for any Person: (a) all obligations (other than nonrecourse obligations) for borrowed money; (b) obligations (other than nonrecourse obligations) of such Person to pay the deferred purchase or acquisition price of Property or services, other than trade accounts payable (other than for borrowed money) arising and accrued expenses incurred, in the ordinary course of business so long as such trade accounts payable are payable within ninety (90) days of the date the respective goods are delivered or the respective services are rendered; (c) Indebtedness of others secured by a lien on the Property of such Person, whether or not the respective Indebtedness so secured has been assumed by such Person; (d) obligations (contingent or otherwise) of such Person (other than nonrecourse obligations) in respect of letters of credit or similar instruments issued for account of such Person; (e) capital lease obligations (other than nonrecourse obligations) of such Person; (f) obligations (other than nonrecourse obligations) of such Person under repurchase agreements or like arrangements; (g) Indebtedness of others Guaranteed on a recourse basis by such Person; (h) all obligations (other than nonrecourse obligations) of such Person incurred in connection with the acquisition or carrying of fixed assets by such Person; and (i) Indebtedness of general partnerships of which such Person is a general partner.

"Investment Company Act" means the Investment Company Act of 1940, as amended, including all rules and regulations promulgated thereunder.

"LIBOR" shall mean the applicable 30-day London Inter-Bank Offered Rate for United States dollars as determined by Buyer from time to time based on page 12 of telerate at 10:00 am. (New York time) two (2) Business Days prior to each Purchase Date.

"Loan" means either (i) a commercial or multifamily mortgage Bridge Loan, commercial or multifamily Mezzanine Loan or any Note Acquisition by Seller, each as described in Appendix A to the Custodial Agreement (as amended with respect to any such loan or note), (ii) such other type of loan, lease or other receivable as shall be agreed upon by the parties as evidenced by Appendix A to the Custodial Agreement, as amended or supplemented by mutual agreement of the parties, or (iii) each of the Mezzobridge Assets.

"Loan Disposition" means the closing of a final sale or other transfer of a Loan by the Seller in connection with a securitization or otherwise.

"Loan Note" means, with respect to any Loan, the note together with all riders thereto and amendments thereof or other evidence of indebtedness.

"Loan Schedule" means a list of Loans by Loan Type attached to the Trust Receipt and setting forth as to each Loan the information specified by Buyer.

"Loan Type" means the categorization of a Loan on a Computer Tape and otherwise as a Mezzanine Loan, a Bridge Loan or a Note Acquisition.

"Lockbox Bank" means each entity acting as a lockbox bank maintaining an account on behalf of the Buyer pursuant to the Lockbox Agreement.

"Lockbox Agreement" means the agreement Demand Deposits Account Agreement among the Seller, the Buyer and the Lockbox Bank dated August 20, 2001.

"LTV" means the ratio of the outstanding principal balance of a Loan to the appraised value of the related secured property or collateral, if applicable, on the date of determination.

"Margin Call" As defined in Section 6(a).

"Margin Deficit" shall have the meaning assigned thereto in Paragraph 6(a) hereof.

"Market Value" means, as of any date with respect to any Purchased Asset, the price at which such Purchased Asset could readily be sold as determined by the Buyer in its good faith sole discretion. For the purposes of the foregoing the Purchaser may take into account prevailing market conditions and the financial condition of the Seller.

"Material Adverse Change" means, with respect to a Person, any material adverse change in the business, condition (financial or otherwise), operations, performance, properties or prospects of such Person.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, condition (financial or otherwise) or prospects of the Seller or the Seller and its

Affiliates taken as a whole; (b) a material impairment of the ability of the Seller or any Affiliate to perform under any Program Document and to avoid any Event of Default; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Seller or any Affiliate of any Program Document.

"Mezzanine Loan" has the meaning given to it in Appendix A of the Custodial Agreement.

"Mezzobridge Assets" means the Loans identified on the Mezzobridge Schedule.

"Mezzobridge Schedule" means the Schedule attached hereto as Schedule [A], setting forth the list of Loans which are in the circumstances set forth herein eligible for inclusion in Transactions hereunder under the terms and conditions set forth herein and therein.

"Mortgage" means a mortgage, deed of trust, or other instrument which creates a lien on a fee simple or leasehold interest in real property and secures a Loan Note.

"Netting Agreement" means the Master Collateral Security and Netting Agreement dated as of Effective Date among the Buyer and certain Affiliates and Seller.

"Note Acquisition" has the meaning given to it in Appendix A of the Custodial Agreement.

"Notice Date" shall have the meaning assigned thereto in Paragraph 4 hereof.

"Obligations" means (a) all of Seller's indebtedness, obligation to pay the Repurchase Price on the Repurchase Date, and other obligations and liabilities, to Buyer, its affiliates or Custodian arising under, or in connection with, the Program Documents, whether now existing or hereafter arising (b) any and all sums paid by Buyer or on behalf of Buyer in order to preserve any Purchased Asset or its interest therein; (c) in the event of any proceeding for the collection or enforcement of any of Seller's indebtedness, obligations or liabilities referred to in clause (a), the reasonable expenses of retaking, holding, collecting, preparing for sale, selling or otherwise disposing of or realizing on any Purchased Asset, or of any exercise by Buyer of its rights under the Program Documents, including without limitation, attorneys' fees and disbursements and court costs; and (d) all of Seller indemnity obligations to Buyer or Custodian or both pursuant to the Program Documents.

"Obligor" means the obligor on a Loan, including any guarantor of the obligation thereunder.

"Person" shall mean any legal person, including any individual, corporation, partnership, association, joint-stock company, trust, limited liability company, unincorporated organization, governmental entity or other entity of similar nature.

"Position Report" means the report defined as such in the related Custodial Agreement.

"Price Differential" means, with respect to each Transaction as of any date, the aggregate amount obtained by daily application of the Pricing Rate to the Purchase Price on a 360-day-per-year basis for the actual number of days during the period commencing on (and including) the Purchase Date and ending on (but excluding) the date of determination (reduced by any amount of such Price Differential in respect of such period previously paid by Seller to Buyer).

"Pricing Rate" means the per annum percentage rate for determination of the Price Differential.

"Prime Rate" means the daily prime loan rate as reported in The Wall Street Journal.

"Principal" shall have the meaning given to it in Annex I.

"Program Documents" means this Agreement, each Custodial Agreement, any Servicing Agreement, the Lockbox Agreement, the Netting Agreement, any Securities Account Control Agreement, the Limited Liability Company Agreement of and constituting the Seller and any other agreement entered into by Seller and Buyer in connection therewith.

"Property" means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

"Purchase Date" means the date on which Purchased Assets are to be transferred by Seller to Buyer.

"Purchase Price" means the price at which Purchased Assets are transferred by Seller to Buyer in a Transaction, which shall (unless otherwise agreed) be equal to the applicable Purchase Price Percentage times the lesser of (i) the Market Value of the related Purchased Assets and (ii) the outstanding principal balance of the related Purchased Assets.

"Purchase Price Percentage" means (a) with respect to Bridge Loans, 80% and (b) with respect to Mezzanine Loans, 65%; provided, however, that with respect to Mezzobridge Assets, the applicable Purchase Price Percentage shall be the percentage designated on the Mezzobridge Schedule.

"Purchased Assets" means, with respect to a Transaction, the related Loans, together with the related Records, Servicing Rights, Take-Out Commitments, if any, the Seller's rights under any agreement intended to hedge or reduce the risk of movements in

interest rates, and other Collateral, and such other property, rights, titles or interests as are specified on a related Transaction Notice or Position Report. The term "Purchased Assets" with respect to any Transaction at any time also shall include Additional Purchased Assets delivered pursuant to Paragraph 6(a) hereof.

"Records" means all instruments, agreements and other books, records, and other media for the storage of information maintained by Seller or any other person or entity with respect to a Purchased Asset. Records shall include the Loan Notes, any Mortgages and any other instruments necessary to document or service a Loan.

"Repurchase Date" shall have the meaning assigned thereto in Paragraph 3(b) and shall also include the date determined by application of Paragraph 19.

"Repurchase Price" means the price at which Purchased Assets are to be transferred from Buyer to Seller upon termination of a Transaction, which will be determined in each case (including Transactions terminable upon demand) as the sum of the Purchase Price and the Price Differential as of the date of such determination.

"Securities Account Control Agreement" means an agreement to be entered into among Seller, a financial intermediary and Agent in the event that interest rate risk with respect to a Purchased Asset is hedged with such intermediary.

"Servicing Agreement" means any agreement (other than the Custodial Agreement) giving rise or relating to Servicing Rights with respect to a Purchased Asset, including any assignment or other agreement relating to such agreement.

"Servicing Rights" means contractual, possessory or other rights of Seller or any other Person arising under a Servicing Agreement, Custodial Agreement or otherwise, to administer or service a Purchased Asset or to possess related Records.

"Subsidiary" means, with respect to any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more

Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

"Substitute Securities" has the meaning assigned thereto in Paragraph 16(a).

"Take-out Commitment" means, with respect to any Loan, an irrevocable commitment issued by a purchaser approved by Buyer in favor of the applicable originator, pursuant to which such approved purchaser agrees to purchase such than at a specific price.

"Termination Date" has the meaning assigned thereto in Paragraph 3(b).

"Transaction Notice" has the meaning assigned thereto in the Custodial Agreement.

"Trust Receipt" means an Initial Trust Receipt or a Trust Receipt as defined in the related Custodial Agreement.

"Underlying Guidelines" means the standards, procedures and guidelines of Seller for underwriting or for originating Loans of the applicable Loan Type, which are to be submitted by Seller to, and approved by, Buyer.

"Uniform Commercial Code" means the Uniform Commercial Code as in effect on the date hereof in the State of New York or the Uniform Commercial Code as in effect in the applicable jurisdiction.

b. Interpretation. Headings are for convenience only and do not affect interpretation. The following rules of this subparagraph (b) apply unless the context requires otherwise. The singular includes the plural and conversely. A gender includes all genders. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning. A reference to a Paragraph, Annex or Exhibit is a reference to a paragraph of, or annex or exhibit to, this Agreement. A reference to a party to this Agreement or another agreement or document includes the party's successors and permitted substitutes or assigns. A reference to an agreement or document is to the agreement or document as amended, novated, supplemented or replaced, except to the extent prohibited by any Program Document. A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it. A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form. A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing. An Event of Default subsists until it has been waived in writing by the Buyer or has been timely cured. The words "hereof', "herein", "hereunder" and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and subparagraph, Paragraph, Annex and Exhibit references are to this Agreement unless otherwise specified. The term "including" is not limiting and means "including without limitation." In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including" This Agreement may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms. Unless the context otherwise clearly requires, all

accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP, consistently applied. References herein to "fiscal year" and "fiscal quarter" refer to such fiscal periods of the Seller. Except where otherwise provided in this Agreement any determination, statement or certificate by the Buyer or an authorized officer of the Buyer provided for in this Agreement is conclusive and binds the parties in the absence of manifest error. A reference to an agreement includes a security interest, guarantee, agreement or legally enforceable arrangement whether or not in writing A reference to a document includes an agreement (as so defined) in writing or a certificate, notice, instrument or document, or any information recorded in computer disk form. Where the Seller is required to provide any document to the Buyer under the terms of this Agreement, the relevant document shall be provided in writing or printed form unless the Buyer requests otherwise. At the request of the Buyer, the document shall be provided in computer disk form or both printed and computer disk form. This Agreement is the result of negotiations among and have been reviewed by counsel to the Buyer and Seller, and are the products of both parties. In the interpretation of this Agreement, no rule of construction shall apply to disadvantage one party on the ground that such patty proposed or was involved in the preparation any particular provision of this Agreement or this Agreement itself. Except where otherwise expressly stated the Buyer may give or withhold, or give conditionally, approvals and consents, may be satisfied or unsatisfied, and may form opinions and make determinations at its absolute discretion. Any requirement of good faith or judgment by the Buyer shall not be construed to require Buyer to request or await receipt of information or documentation not immediately available from or with respect to the Seller, a servicer of the Purchased Assets, any other Person or the Purchased Assets themselves.

3. THE TRANSACTIONS.

a. Seller shall repurchase Purchased Assets from Buyer on each related Repurchase Date. Such obligation to repurchase subsists without regard to any prior or intervening liquidation or foreclosure with respect to each Purchased Assets (but liquidation or foreclosure proceeds received by Buyer shall be applied to reduce the Repurchase Price except as otherwise provided herein). Seller is obligated to obtain the Purchased Assets from Buyer or its designee (including the Custodian) at Seller's expense on (or after) the related Repurchase Date.

b. Provided that the applicable conditions in Paragraphs 9(a) and 9(b) have been satisfied, each Purchased Asset that is repurchased by Seller on the 15th day of each month (or the following Business Day if such day is not a Business Day) following the related initial Purchased Date (the day of the month so determined for each month, a "Repurchase Date", which term shall also include the date determined by application of Paragraph 19)

shall automatically become subject to a new Transaction unless Buyer is notified by Seller at least five(5) Business Days prior to any Repurchase Date, provided that (i) if the Repurchase Date so determined is later than the date which is 364 days later than the Effective Date (the "Final Repurchase Date"), the Repurchase Date for such Transaction shall automatically reset to the Final Repurchase Date, and the provisions of this sentence as it might relate to a new Transaction shall expire on such date. For each new Transaction, unless otherwise agreed, (x) the Buyer's Margin Percentage shall be equal in the case of a Bridge Loan to 125% and in the case of a Mezzanine Loan to 155%, (y) the Pricing Rate shall be equal to Adjusted Libor plus 200 basis points (2 in the case of a Bridge Loan and 275 basis points (2.75%) in the case of a Mezzanine Loan, and (z) the accrued and unpaid Price Differential shall be settled in cash on each related Repurchase Date; provided however, that with respect to the Mezzobridge Assets, (w) the Buyer's Margin Percentage, (x) the Pricing Rate, (y) the Purchase Price and (z) the Final Repurchase Date shall be calculated in accordance with the Mezzobridge Schedule.

4. ENTERING INTO TRANSACTIONS; TRANSACTION NOTICE, CONFIRMATIONS.

a. Unless otherwise agreed, Seller shall give Buyer and Custodian at least one (1) Business Day prior notice of any proposed Purchase

Date (the date on which such notice is given, the "Notice Date"). On the Notice Date, Seller shall (i) request that Buyer enter into a Transaction by furnishing to Buyer and Custodian (either orally or in writing) the information specified in the form of Transaction Notice, or by delivering a Position Report as such, (ii) deliver to Buyer and Custodian a Loan Schedule and Computer Tape and (iii) deliver to Custodian (a) the Custodian's Loan File and (b) the related Collateral Receipt for each Loan subject to such Transaction.

b. Unless otherwise agreed, upon receipt of the Transaction Notice, Buyer shall make an offer to Seller specifying the terms for such Transaction, including the Purchase Price, the Pricing Rate and the Repurchase Date in respect of such Transaction. Upon Seller agreeing to enter into a Transaction hereunder, Buyer shall promptly deliver to Seller a confirmation of such Transaction (a "Confirmation"). The terms of any Transaction Notice, if any, signed by Seller shall be deemed incorporated by reference into the Confirmation and if the terms of the Transaction Notice conflicts with the Confirmation, the terms of the Confirmation shall prevail.

c. Each Confirmation and Transaction Notice, together with this Agreement, shall constitute conclusive evidence of the terms agreed between Buyer and Seller with respect to the Transaction to which the Confirmation relates, and Seller's acceptance of the related proceeds shall constitute Seller's agreement to the terms of such Confirmation. It is the intention of

the parties that each Confirmation and Transaction Notice shall not be separate from this Agreement but shall be made a part of this Agreement. In the event of any conflict between this Agreement and a Confirmation, the terms of the Confirmation shall control with respect to the related Transaction.

5. PAYMENT AND TRANSFER.

Unless otherwise agreed, all transfers of funds hereunder shall be in immediately available funds and all Purchased Assets transferred shall be transferred to the Custodian pursuant to the Custodial Agreement. Any Repurchase Price received by Buyer after 2:00 p.m. New York City time shall be applied on the next succeeding Business Day, but such funds (absent an Event of Default) shall earn overnight interest at a rate established by Buyer.

6. MARGIN MAINTENANCE

a. Absent a Default, and at any time the aggregate Market Value of all Purchased Assets subject to all Transactions is less than the aggregate Buyer's Margin Amount for all such Transactions (a "Margin Deficit"), then Buyer may by notice to Seller require Seller in such Transactions, at Buyer's option, to transfer to Buyer cash or additional Purchased Assets acceptable to Buyer and (in the case of Loans) which conform in all respects to the applicable representations and warranties set forth in Appendix A to the Custodial Agreement ("Additional Purchased Assets"), so that the cash and aggregate Market Value of the Purchased Assets, including any such Additional Purchased Assets, will thereupon equal or exceed such aggregate Buyer's Margin Amount (such requirement, a "Margin Call"). In lieu of such a transfer, Seller may repurchase any Purchased Asset giving rise to a Margin Call if such repurchase timely satisfies the Margin Call. In the event that a Margin Call is satisfied, Seller shall, during the 30-day period following the Margin Call, be permitted to repurchase the Purchased Assets by payment of the Repurchase Price allocable to such assets (as determined by Buyer in good faith) net of any dollar amount of the Margin Call paid by Seller that is allocable to such assets (as so determined). Absent a Default, Buyer shall not make a Margin Call prior to a Repurchase Date solely by reason of accrued and unpaid Price Differential. Simultaneously with a Margin Call, Buyer shall identify the Purchased Assets giving rise to the Margin Call and provide Seller with any backup materials reasonably requested by Seller that explain the Margin Call.

b. Notice required pursuant to Paragraph 6 a) above may be given on a Business Day by any means. Any notice given on a Business Day shall be met by the close of business on the following Business Day. The failure of Buyer, on any one or more occasions, to exercise its rights hereunder, shall not change or alter the terms and conditions to which this Agreement

is subject or limit the right of Buyer to do so at a later date. Seller and Buyer each agree that a failure or delay by Buyer to exercise its rights hereunder shall not limit or waive Buyer's rights under this Agreement or otherwise existing by law or in any way create additional rights for Seller.

c. Absent a Default, and not more frequently than weekly, Buyer shall at the written request of Seller or any Member of Seller release to Seller any amount by which the Market Value of all Purchased Assets exceeds the aggregate Buyer's Margin Amount.

7. INCOME PAYMENTS.

Where a particular term of a Transaction extends over an Income payment date on the Purchased Assets subject to that Transaction, such Income shall be the property of Buyer. Notwithstanding the foregoing, and provided no Event of Default has occurred, Buyer agrees that Seller shall be entitled to receive an amount equal to all Income paid on the Purchased Assets that is not otherwise received by Seller, to the full extent it would be so entitled if the Purchased Assets had not been sold to Buyer. Provided no Event of Default has occurred, Buyer shall, as the parties may agree with respect to any Transaction (or, in the absence of any such agreement, as Buyer shall reasonably determine in its sole discretion), on the date such Income is paid either (i) transfer to Seller such Income with respect to any Purchased Assets sub to such Transaction or (ii) apply the Income payment to reduce the amount, if any, to be transferred to Buyer by Seller upon termination of such Transaction. Buyer shall not be obligated to take any action pursuant to the preceding sentences to the extent that such action would result in the creation of a Margin Deficit, unless prior thereto or simultaneously therewith Seller transfers to Buyer cash or Additional Purchased Assets sufficient to eliminate such Margin Deficit.

8. SECURITY INTEREST.

Seller and Buyer intend that the Transactions hereunder be sales to Buyer of the Purchased Assets and not loans from Buyer to Seller secured by the Purchased Assets. However, in order to present Buyer's rights under this Agreement in the event that a court or other forum recharacterizes the Transactions hereunder as other than sales, and as security for Seller's performance of all of its Obligations, Seller hereby grants Buyer a fully perfected first priority security interest in the Purchased Assets, the Records, and all related Servicing Rights, Property, insurance, Income, accounts (including any interest of Seller in escrow accounts) and any other contract rights, payments, rights to payment (including payments of interest or finance charges) general intangibles and other assets relating to the Purchased Assets (including, without limitation, furniture, fixtures and accounts) or any interest in the Purchased Assets, the servicing of the Purchased Assets, and any proceeds and distributions with respect to any of the foregoing and any other property, rights, titles a- interests as are specified on a Transaction Notice or Position Report (collectively, the "Collateral").

9. CONDITIONS PRECEDENT.

a. As conditions precedent to the initial Transaction, Buyer shall have received on or before the day of such initial Transaction the following, in form and substance satisfactory to Buyer and duly executed by Seller:

i. The Program Documents duly executed and delivered by the parties thereto.

ii. Evidence that all other actions necessary or, in the opinion of Buyer, desirable to perfect and protect Buyer's interest in the Purchased Assets and other Collateral have been taken, including, without limitation, duly executed and filed Uniform Commercial Code financing statements on Form UCC-l;

iii. A certified copy of Seller's corporate resolutions approving the Program Documents and Transactions thereunder (either specifically or by general resolution), and all documents evidencing other necessary corporate action or governmental approvals as may be required in connection with the Program Documents;

iv. An incumbency certificate of Seller's corporate secretary certifying the names, true signatures and titles of Seller's representatives duly authorized to request Transactions hereunder and to execute the Program Documents and the other documents to be delivered thereunder;

v. An opinion of Seller's counsel as to such matters as Buyer may reasonably request and in form and substance acceptable to Buyer;

vi. A copy of the Underwriting Guidelines certified by an officer of a Seller; and

vii. Any other documents reasonably requested by Buyer.

b. The obligation of Buyer to enter into each Transaction pursuant to this Agreement is subject to the following conditions precedent:

i. Buyer or its designee shall have received on or before the day of such Transaction (unless otherwise specified in this Agreement) the following, in form and substance satisfactory to Buyer and (if applicable) duly executed:

A. A Transaction Notice delivered pursuant to Paragraph 4(a);

B. The related Trust Receipt; and

C. Such certificates, opinions of counsel or other documents as Buyer may reasonably request.

ii. No Default shall have occurred and be continuing.

iii. No catastrophic event or events shall have been determined by Buyer to have occurred resulting in the effective absence of a "repo market" for a period of at least two (2) consecutive days respecting loans or mortgage- or asset-backed securities such that Buyer is or was unable to finance or fund purchases under this Agreement through the "repo market" or Buyer's customers.

iv. Buyer shall not have determined that the introduction of or a change in any requirement of law or in the interpretation or administration of any requirement of law applicable to Buyer has made it unlawful, and no Governmental Authority shall have asserted that it is unlawful, for Buyer to enter into Transactions with a Pricing Rate based on Adjusted LIBOR.

v. All representations and warranties in the Program Documents hereof shall be true and correct on the date of such Transaction.

vi. (A) The then aggregate outstanding Purchase Price for all Purchased Assets (including adjustable-rate Loans), when added to the Purchase Price for the requested Transaction, shall not exceed ONE HUNDRED MILLION DOLLARS ($100,000,000), and (B) if the Purchased Assets for the requested Transaction are Mezzanine Loans, the then aggregate outstanding Purchase Price for all Purchased Assets that are Mezzanine Loans (such calculation to be inclusive of Mezzanine Loans which are Mezzobridge Assets), when added to the Purchase Price for the requested Transaction, shall not exceed TWENTY-FIVE MILLION DOLLARS ($25,000,000) and (C) if the Purchased Assets for the requested Transaction are Mezzobridge Assets, the then aggregate outstanding Purchase Price for all Purchased Assets that are Mezzobridge Assets, when added to the Purchase Price for the requested Transaction, shall not exceed the amount determined in accordance with the Purchase Price formula set forth on the Mezzobridge Schedule (as reduced from time to time by any recoveries of principal thereon or disposition proceeds therefrom).

vii. In the event that Buyer requests at any time and from time to time with respect to any Purchased Asset which is a Loan that is in

default or otherwise requires a degree of active servicing as determined by Buyer, the Seller shall promptly organize a special purpose subsidiary for the purpose of holding such Purchased Asset and shall pledge 100% of the equity or ownership interests of such subsidiary to Buyer under agreements and circumstances acceptable to Buyer.

10. RELEASE OF COLLATERAL.

Upon timely payment in full of the Repurchase Price and all other Obligations owing with respect to a Purchased Asset, if no Default or Event of Default has occurred and is continuing, Buyer shall, and shall direct Custodian to, release such Purchased Asset unless such release would give rise to or perpetuate a Margin Deficit. Except as set forth in Paragraphs 6(a) and 16, Seller shall give at least five (5) Business Days' prior written notice to Buyer if such repurchase shall occur on other than a Repurchase Date.

If such a Margin Deficit is applicable, Buyer shall notify Seller of the amount thereof and Seller may thereupon satisfy the Margin Call in the manner specified in Section 6.

11. RELIANCE.

With respect to any Transaction, Buyer may conclusively rely upon, and shall incur no liability to Seller in acting upon, any request or other communication that Buyer reasonably believes to have been given or made by a person authorized to enter into a Transaction on Seller behalf, whether or not such person is listed on the certificate delivered pursuant to subparagraph 9(a)(iv) hereof. In each such case, Seller hereby waives the right to dispute Buyer's record of the terms of the Confirmation, request or other communication.

12. REPRESENTATIONS AND WARRANTIES.

Seller hereby represents and warrants, and shall on and as of the Purchase Date for any Transaction and on and as of each date thereafter through and including the related Repurchase Date be deemed to represent and warrant, that

a. Due Organization and Qualification. Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction under whose laws it is organized. Seller is duly qualified to do business, is in good standing and has obtained all necessary licenses, permits, charters, registrations and approvals necessary for the conduct of its business as currently conducted and the performance of its obligations under the Program Documents.

b. Power and Authority. Seller has all necessary power and authority to conduct its business as currently conducted, to execute, deliver and

perform its obligations under the Program Documents and to consummate the Transactions.

c. Due Authorization. The execution, delivery and performance of the Program Documents by Seller has been duly authorized by all necessary limited liability company action and do not require any additional approvals or consents or other action by or any notice to or filing with any Person.

d. Noncontravention. None of the execution and delivery of the Program Documents by Seller or the consummation of the Transactions and transactions thereunder:

   i. conflicts with, breaches or violates any provision of the certificate of formation or operating agreement of Seller or any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award currently in effect having applicability to Seller or its properties;

   ii. constitutes a material default by Seller under any loan or repurchase agreement, mortgage, indenture or other agreement or instrument to which Seller is a party or by which it or any of its properties is or may be bound or affected; or

   iii. results in or requires the creation of any lien upon or in respect of any of the assets of Seller except the lien relating to the Program Documents.

e. Legal Proceedings. There is no action, proceeding or investigation by or before any court, governmental or administrative agency or arbitrator affecting any of the Purchased Assets, Seller or any of their Affiliates, pending or threatened, which, if decided adversely, would have a material adverse change with respect to Seller or any Purchased Asset.

f. Valid and Binding Obligations. Each of the Program Documents to which Seller is a party when executed and delivered by Seller will constitute the legal, valid and binding obligations of Seller, enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equitable principles.

g. Financial Statements. The financial statements of Seller, copies of which have been furnished to Buyer, (i) are, as of the dates and for the periods referred to therein, complete and correct in all material respects, (ii) present fairly the financial condition and results of operations of Seller as of the dates and for the periods indicated and (iii) have been prepared in accordance with GAAP consistently applied, except as noted therein

(subject as to interim statements to normal year-end adjustments). Since the date of the most recent financial statements, there has been no material adverse change in such financial condition or results of operations. Except as disclosed in such financial statements, Seller is not subject to any contingent liabilities or commitments that, individually or in the aggregate, have a material possibility of causing a material adverse change in the business or operations of Seller.

h. Accuracy Information. None of the documents or information prepared by or on behalf of Seller and provided by Seller to Buyer relating to Seller or its financial condition contain any statement of a material fact with respect to Seller or the Transactions that was untrue or misleading in any material respect when made. Since the furnishing of such documents or information, there has been no change, nor any development or event involving a prospective change known too, that would render any of such documents or information untrue or misleading in any material respect.

i. No Consents. No consent, license, approval or authorization from, or registration, filing or declaration with, any regulatory body, administrative agency, or other governmental instrumentality, nor any consent, approval, waiver or notification of any creditor, lessor or other nongovernmental person, is required in connection with the execution, delivery and performance by Seller of this Agreement or the consummation by Seller of any other Program Document.

j. Compliance With Law, Etc. No practice, procedure or policy employed or proposed to be employed by Seller in the conduct of its businesses violates any law, regulation, judgment, agreement, order or decree applicable to it which, if enforced, would result in either a Material Adverse Change with respect to Seller or a Material Adverse Effect.

k. Solvency: Fraudulent Conveyance. Seller is solvent and will not be rendered insolvent by the Transaction and, after giving effect to such Transaction, Seller will not be left with an unreasonably small amount of capital with which to engage in its business. Seller does not intend to incur, or believe that it has incurred, debts beyond its ability to pay such debts as they mature. Seller is not contemplating the commencement of insolvency, bankruptcy, liquidation or consolidation proceedings or the appointment of a receiver, liquidator, conservator, trustee or similar official in respect of Seller or any of its assets. The amount of consideration being received by the Seller upon the sale of the Purchased Assets to Buyer constitutes reasonably equivalent value and fair consideration for such Purchased Assets. Seller is not transferring any Purchased Assets with any intent to hinder, delay or defraud any of its creditors.

l. Investment Company Act Compliance. Seller is not required to be registered as an "investment company" as defined under the Investment Company Act nor as an entity under the control of an "investment company" as defined under the Investment Company Act.

m. Taxes. Seller has filed all federal and state tax returns which are required to be filed and paid all taxes, including any assessments received by it, to the extent that such taxes have become due. Any taxes, fees and other governmental charges payable by Seller in connection with a Transaction and the execution and delivery of the Program Documents have been paid (other than for taxes that are being contested in good faith or for which it has established adequate reserves).

n. Additional Representations. With respect to each Loan, Seller hereby makes all of the applicable representations and warranties set forth (i) on App of the Custodial Agreement for the related loan Type, if applicable to any Purchased Asset, and (ii) in each Confirmation to which such Purchased Asset is or has been subject, in each case as of the date the documents related to such than are delivered to the Custodian, and continuously while such Loan is part of the Collateral and subject to a Transaction.

o. Hedging. Seller has entered into the interest rate hedging arrangements described in the related Transaction Notices, if applicable (as amended with the approval of Buyer), which are fully subject to a Securities Account Control Agreement. All hedging for the Loans shall be subject to a Securities Account Control Agreement.

p. No Broker. The Seller has not dealt with any broker, investment banker, agent, or other person, except for the Buyer, who may be entitled to any commission or compensation in connection with the sale of Purchased Assets pursuant to this Agreement; provided, that if Seller has dealt with any broker, investment banker, agent, or other person, except for the Buyer, who may be entitled to any commission or compensation in connection with the sale of Purchased Assets pursuant to this Agreement, such commission or compensation shall have been paid in full by Seller.

q. Corporate Separateness. Seller and Custodian each maintain wholly separate businesses and principal offices and have no interlocking offices or directors.

r. Construction Loans. If a Loan has not been fully disbursed as of the Purchase Date therefor, the Obligor thereunder has entered into a funding participant side letter approved by Buyer recognizing Buyer's right to make advances upon Seller's failure to do so.

The representations and warranties set forth in this Agreement shall survive transfer of the Purchased Assets to Buyer and shall continue for so long as the Purchased Assets are subject to this Agreement.

13. COVENANTS OF SELLER.

Seller hereby covenants with Buyer as follows:

a. Defense of Title. Seller warrants and will defend, and shall cause any servicer to defend, the right, title and interest of Buyer in and to all Collateral against all adverse claims and demands.

b. No Amendment or Compromise. Without Buyer's prior written consent, neither Seller, nor those acting on Seller's behalf, shall amend or modify, or waive any term or condition of, or settle or compromise any claim in respect of, any item of the Purchased Assets or any related rights.

c. No Assignment. Except as permitted herein, neither Seller nor any servicer shall sell, assign, transferor otherwise dispose of, or grant any option with respect to, or pledge, hypothecate or grant a security interest in or lien on or otherwise encumber (except pursuant to the Program Documents), any of the Purchased Assets or any interest therein, nor shall Seller permit or suffer to exist any such sale or encumbrance by Seller, provided that this paragraph shall not prevent any transfer of Purchased Assets in accordance with the Program Documents

d. Servicing of Loans. Seller shall service, or cause to be serviced, all Loans that are part of the Purchased Assets in accordance with the standard industry practices, pending delivery of such servicing to Buyer, employing at least the same procedures and exercising the same care that Seller customarily employs in servicing Loans for its own account- Seller shall notify servicers of Buyer's interest hereunder and Seller shall notify Buyer of the name and address of all servicers of Loans. Buyer shall have the right to approve each servicer and the form of all Servicing Agreements. Seller shall hold or cause to be held all escrow finds collected with respect to such Loans in trust accounts and shall apply the same for the purposes for which such finds were collected. The Seller shall cause the borrower under each Loan Note to remit all Loan Payments to the Lockbox Bank and not otherwise. Upon Buyer's request, Seller shall provide to Buyer a letter addressed to and agreed to by each servicer of Loans, in form and substance reasonably satisfactory to Buyer, advising such servicer of such matters as Buyer may reasonably request. If Seller should discover that, for any reason whatsoever, Seller or any entity responsible to Seller by contract for managing or servicing any such Loan has failed to perform fully Seller's obligations under the Program Documents or any of the obligations of such entities with respect to the Purchased Assets, Seller shall promptly notify Buyer.

e. Preservation of Collateral; Collateral Value. Seller shall do all things necessary to preserve the Collateral so that it remains subject to a first priority perfected security interest hereunder. Without limiting the foregoing, Seller will comply with all rules, regulations and other laws of any Governmental Authority and cause the Collateral to comply with all applicable rules, regulations and other laws. Seller will not allow any default for which Seller is responsible to occur under any Collateral, and Seller shall fully perform or cause to be performed when due all of its obligations under any Collateral or the Program Documents.

f. Maintenance of Papers, Records and Files. Seller shall acquire, and Seller or servicer of the Purchased Assets shall build, maintain and have available, a complete tile in accordance with lending industry custom and practice for each Purchased Asset. Seller or the servicer of the Purchased Assets will maintain alt such Records not in the possession of Custodian in good and complete condition in accordance with industry practices and preserve them against loss.

   i. Seller shall collect and maintain or cause to be collected and maintained all Records relating to the Purchased Assets in accordance with industry custom and practice, including those maintained pursuant to the preceding subparagraph, and all such Records shall be in Custodian's possession unless Buyer otherwise approves. Seller will not allow any such papers, records or files that are an original or an only copy to leave Custodian's possession, except for individual items removed in connection with servicing a specific Loan, in which event Seller will obtain or cause to be obtained a receipt thin a financially responsible person for any such paper, record or file.

   ii. For so long as Buyer has an interest in or lien on any Purchased Asset, Seller will hold or cause to be held all related Records in trust for Buyer, Seller shall notify, or cause to be notified, every other party holding any such Records of the interests and liens granted hereby.

   iii. Upon reasonable advance notice from Custodian or Buyer, Seller shall (x) make any and all such Records available to Custodian or Buyer to examine any such Records, either by its own officers or employees, or by agents or contractors, or both, and make copies of all or any portion thereof, (y) permit Buyer or its authorized agents to discuss the affairs, finances and accounts of Seller with its respective chief operating officer and chief financial officer and to discuss the affairs, finances and accounts of Seller with its independent certified public accountants.

g. Financial Statements: Accountants' Reports: Other Information. Seller shall keep or cause to be kept in reasonable detail books and records of account of its assets and business and shall clearly reflect therein the transfer of Purchased Assets to the Buyer. Seller shall furnish or cause to be furnished to Buyer promptly upon Buyer's request the following:

   i. Financial Statements. (x) As soon as available and in any event within 90 days after the end of each fiscal year, the consolidated, audited balance sheets of Seller as of the end of each fiscal year of Seller and the audited financial statements of income and changes in equity of Seller for such fiscal year and (y) as soon as available and in any event within 45 days after the end of each quarter, the consolidated, unaudited balance sheets of Seller as of the end of each quarter and the unaudited financial statements of income and changes in equity of Seller for the portion of the fiscal year then ended, all of which were prepared in accordance with GAAP.

   ii. Loan Performance Data. Monthly reports in form and scope satisfactory to Buyer, setting forth data regarding the performance of the Purchased Assets, and such other information as Buyer may reasonably request.

   iii. Monthly Servicing Diskettes. A computer tape and a diskette (or any other electronic transmission acceptable to Buyer) in a format acceptable to Buyer containing such information with respect to the Purchased Assets as Buyer may reasonably request.

h. Notice of Material Events. Seller shall promptly inform Buyer in writing of any of the following:

i. any Default, Event of Default or default or breach by Seller of any obligation under any Program Document, or the occurrence or existence of any event or circumstance that Seller reasonably expects will with the passage of time become a Default, Event of Default or such a default or breach by Seller;

ii. any change in the insurance coverage required of the Seller or any other Person pursuant to any Program Document, with copy of evidence of same attached;

iii. any financial or operational report or statement of Seller (regular, periodic or special) delivered to or filed with any Governmental Authority or other third party, with copy of same attached;

iv. any material dispute, litigation, investigation, proceeding or suspension between the Seller and any Governmental Authority or any other Person;

v. any material change in accounting policies or financial reporting practices of the Seller,

vi. the occurrence of any material employment dispute and a description of the strategy for resolving it; and

vii. any event, circumstance or condition that has resulted, or has a possibility of resulting in either a Material Adverse Change with respect to Seller or a Material Adverse Effect.

i. Maintenance of Licenses. Seller shall maintain all licenses, permits or other approvals necessary for Seller to conduct its business and to perform its obligations under the Program Documents.

j. No Withholdings for Taxes. Any payments made by Seller to Buyer shall be free and clear of, and without deduction or withholding for, any taxes; provided, however, that if Seller shall be required by law to deduct or withhold any taxes from any sums payable to Buyer, then Seller shall (A) make such deductions or withholdings and pay such amounts to the relevant authority in accordance with applicable law, (B) pay to Buyer the sum that would have been payable had such deduction or withholding not been made, and (C) at the time Price Differential is paid, pay to Buyer all additional amounts as specified by Buyer to preserve the after-tax yield the Buyer would have received if such tax had not been imposed.

k. Change in Nature of Business. Seller shall not make any material change in the nature of its business as carried on at the date hereof.

l. Voluntary Bankruptcy. Seller shall not commence or join voluntarily in any proceeding to adjudicate it a bankrupt or insolvent, or seek liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any laws relating to bankruptcy, insolvency, or relief or the appointment of a receiver, trustee or similar official for it or any substantial part of its property.

14. P&I REMITTANCE DATE PAYMENTS/COLLECTIONS.

On each Repurchase Date, Seller shall remit or shall cause to be remitted to Buyer:

a. All principal under the Purchased Assets received in the calendar month preceding the month in which such Repurchase Date occurs;

b. All principal prepayments received on the Purchased Assets in the calendar month in which such Repurchase Date occurs (provided that the date of receipt is prior to the Repurchase Date); and

c. That portion of the Price Differential that has accrued as d such date.

15. REPURCHASE OF PURCHASED ASSETS.

a. Upon discovery by Seller of a breach of any of the representations and warranties set forth in Appendix A to the Custodial Agreement, Seller shall give prompt written notice thereof to Buyer. Upon any such discovery by Buyer, Buyer will notify Seller. If Seller does not cure such breach on or before the 30th day following receipt of notice of such breach, then Seller shall repurchase the affected Purchased Asset (with the consent of Buyer) on the next succeeding Business Day.

b. If Buyer determines that the introduction of; any change in, or the interpretation or administration of any requirement of law has made it unlawful to engage in any Transactions with a Pricing Rate based on Adjusted LIBOR, then Seller (i) shall, upon its receipt of notice of such fact and demand from Buyer (with a copy of such notice to Custodian), repurchase the Purchased Assets subject to the Transaction on the next succeeding Business Day and concurrently enter into a new Transaction with Buyer with a Pricing Rate based on the Prime Rate plus a margin and (ii) may elect, by giving notice to Buyer and Custodian, that all new Transactions shall have Pricing Rates based on the Prime Rate plus a margin. The foregoing margins shall be solely determined and calculated by Buyer in good faith.

16. SUBSTITUTION.

a. Seller may, subject to agreement with and acceptance by Buyer, substitute other assets which are substantially be same as the Purchased Assets (the "Substitute Assets") for any Purchased Assets. Such substitution shall be made by transfer to Buyer of such Substitute Assets and transfer to Seller of such Purchased Assets. After substitution, the Substitute Assets shall be deemed to be Purchased Assets.

b. In the case of any Transaction for which the Repurchase Date is other than the Business Day immediately following the Purchase Date and with respect to which Seller does not have any existing right to substitute Substitute Assets for the Purchased Assets, Seller shall have the right, subject to the proviso to this sentence, upon notice to Buyer, which notice shall be given at or prior to 10 an. (New York City time) on the second preceding Business Day, to substitute Substitute Assets for any Purchased Assets; provided, however, that Buyer may elect, by the close of business on the Business Day following which such notice is received, or by the close of the next Business Day if notice is given after 10 a.m. (New York City time) on such thy, not to accept such substitution. In the event such substitution is accepted by Buyer, such substitution shall be made by Seller's transfer to Buyer of such Substitute Assets and Buyer's transfer to Seller of such Purchased Assets, and after such substitution, the Substitute Assets shall be deemed to be Purchased Assets. In the event Buyer elects

not to accept such substitution, Buyer shall offer Seller the right to terminate the Transaction.

c. In the event Seller exercises its right to substitute or terminate under subparagraph (b), Seller shall be obligated to pay to Buyer, by the close of the Business Day of such substitution, as the case may be, an amount equal to (A) Buyer's actual cost in bona tide third party transactions (including all fees, expenses and commissions) of (i) entering into replacement transactions; (ii) entering into or terminating hedge transactions; and/or (iii) terminating transactions or substituting securities in like transactions with third parties in connection with or as a result of such substitution or termination, and (B) to the extent Buyer determines not to enter into replacement transactions, the loss incurred by Buyer directly arising or resulting from such substitution or termination. The foregoing amounts shall be solely determined and calculated by Buyer in good faith, and such determination shall be binding upon the parties, absent manifest error.

17. REPURCHASE TRANSACTIONS.

Buyer may, in its sole election, engage in repurchase transactions with the Purchased Assets or otherwise pledge, hypothecate, assign, transfer or otherwise convey the Purchased Assets with a counterparty of Buyer's choice, in all cases subject to the Buyer's obligation to reconvey the Purchased Assets on the Repurchase Date. In the event Buyer engages in a repurchase transaction with any of the Purchased Assets or otherwise pledges or hypothecates any of the Purchased Assets, Buyer shall have the right to assign to Buyer's counterparty any of the applicable representations or warranties in App of the Custodial Agreement and the remedies for breach thereof, as they relate to the Purchased Assets that are subject to such repurchase transaction.

18. EVENTS OF DEFAULT.

With respect to any Transactions covered by or related to this Agreement, the occurrence of any of the following events shall constitute an "E of Default":

a. Seller fails to transfer the Purchased Assets to Buyer by the Business Day following the applicable Purchase Date;

b. Seller fails to repurchase the Purchased Assets by the Business Day following the applicable Repurchase Date;

c. Seller shall fail to perform, observe or comply with any other term, covenant or agreement contained in the Program Documents that is reasonably determined by Buyer to be material, and such failure is not cured within five Business Days of notice thereof to Seller (subject to extension for an additional five Business Days if such failure is reasonably

susceptible to cure during such period and Seller has evidenced good faith progress thereto);

d. Any representation or warranty made by Seller (or any of Seller's officers) in the Program Documents or in any other document (other than the representations or warranties in Appendix A to the Custodial Agreement) shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, subject to a fifteen Business Day cure period following discovery by or notice to Seller, but only if and to the extent that such breach is reasonably susceptible to cure and the Seller is evidencing good faith progress to cure it within such period;

e. Seller or any of Seller's Subsidiaries shall fail to pay any of Seller's or Seller's Subsidiaries' Indebtedness, or any interest or premium thereon when due (whether by scheduled maturity, requirement prepayment, acceleration, demand or otherwise), or shall fail to make any payment when due under Seller's or Seller's Subsidiaries' Guarantee of another person's Indebtedness for borrowed money, and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness or Guarantee and such failure shall cause the acceleration, of the maturity of such Indebtedness or Guarantee; or any other default under any agreement or instrument relating to any such Indebtedness or Guarantee, or any other event, shall occur and shall continue after the applicable grace period, if any, specified in such agreement, instrument or Guarantee and such failure shall cause the acceleration of the maturity of such Indebtedness or Guarantee, if the effect of such default or event is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness or Guarantee; or if any such Indebtedness or Guarantee shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof notwithstanding any other provision herein to the contrary for the purposes of this Section 18 e), the terms "Indebtedness" and "Guarantee" shall not include obligations which in the aggregate are less than $500,000.

f. A custodian, receiver, conservator, liquidator, trustee, sequestrator or similar official for Seller or any of Seller's Subsidiaries, or of any of Seller's Property, is appointed or takes possession of such property or Seller or any of Seller's Subsidiaries generally fails to pay Seller's, or Seller's Subsidiaries' debts as they become due; or Seller or any of Seller's Subsidiaries is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code, or any successor or similar applicable statute, or any administrative insolvency scheme, against Seller or any of Seller's Subsidiaries; or any of Seller's or Seller's Subsidiaries' Property is sequestered by court or administrative order; or a petition is filed against Seller or any of Seller's Subsidiaries under any

bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, moratorium, delinquency or liquidation law of any jurisdiction, whether now or subsequently in effect; provided that, if any event described in this subparagraph (f) is not voluntarily caused or consented to by Seller or an applicable Subsidiary, a 30-day cure period shall be applicable to stay or discharge such event;

g. Seller or any of Seller's Subsidiaries files a voluntary petition in bankruptcy seeks relief under any provision of any bankruptcy, reorganization, moratorium, delinquency, arrangement, insolvency, readjustment of debt, dissolution or Liquidation law of any jurisdiction whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, conservator, trustee, liquidator, sequestrator or similar official for Seller or any of Seller's Subsidiaries, or of all or any part of Seller's or Seller's Subsidiaries' Property; or makes an assignment for the benefit of Seller or Seller's Subsidiaries' creditors;

h. Either (i) any fatal, nonappealable judgment or order for the payment of money in excess of $1,000,000 is rendered against Seller or any of Seller's Subsidiaries or (ii) any such fatal, nonappealable judgment or order of less than $1,000,000 remains undischarged or unsatisfied after the passage of 60 days following the date on which it is entered;

i. Any Governmental Authority or any person, agency or entity acting or purporting to act under governmental authority shall have taken any action to condemn, seize or appropriate, or to assume custody or control of; all or any substantial part of the Property of Seller, or of any of Seller's Subsidiaries, or shall have taken any action to displace the management of Seller or of any of Seller's Subsidiaries or to curtail its authority in the conduct of the business of Seller or of any of Seller's Subsidiaries, or takes any action to remove, limit or restrict the approval of Seller or any of Seller's Subsidiaries as an issuer, buyer or a seller/servicer of Loans or securities backed thereby, and such action provided for in this subparagraph (1) shall not have been discontinued or stayed with in 30 days;

j. Seller or any of Seller's Subsidiaries shall default under, or fail to perform as requested under, or shall otherwise breach the material terms of any instrument, agreement or contract reasonably determined by Buyer to be material between Seller and Buyer or any of Buyer's Affiliates, and any applicable grace or cure period in such instrument, agreement or contract shall haw expired;

k. In the good faith judgment of Buyer any Material Adverse Change shall have occurred with respect to Seller or any of Seller's Subsidiaries, taken together as a whole;

l. Seller shall admit its inability to, or Seller's intention not to, perform any of Seller's Obligations hereunder;

m. Seller dissolves, merges or consolidates with another entity unless Seller is the surviving party, or sells, transfers, or otherwise disposes of a material portion of Seller's business or assets;

n. This Agreement shall for any reason cease to create a valid, first priority security interest in any of the Purchased Assets purported to be covered hereby;

o. Seller's audited annual financial statements or the notes thereto or other opinions or conclusions stated therein shall be qualified or limited by reference to the status of Seller as a "going concern" or a reference of similar import;

p. Any material amendment is made to the Underwriting Guidelines which was not previously approved in writing by Buyer;

q. Either (i) a change in Control (as such term is defined in Rule 1 2b-2 of the Securities Exchange Act of 1934, as amended) of Setter shall have occurred (other than a change in Control resulting from a public offering of Seller's stock following which Ivan Kaufman remains in Control) or (ii) Ivan Kaufman shall cease to be the chief executive officer of the Seller and to function in substantially the same capacity as be functions as of the date hereof, or

r. Either (the ratio of Seller's total liabilities to net worth exceeds 8:1 (or, 10:1 if so required in any other financing arrangement of Seller), or (ii) the net north of Seller is less than $45 million (increased by 75% of any additional equity or convertible debt issued beyond the amounts set forth in the most recent financial statements of Seller).

It is understood and agreed that any default, cure or notice period provided for in the Program Documents may be accelerated by Buyer unilaterally upon Buyer's or Agent's good faith determination that it is reasonable to do so under the circumstances, with due consideration to the volatility of markets, the seriousness of any Defaults and the perceived risk to Buyer of delay.

19. REMEDIES.

Upon the occurrence of an Event of Default, Buyer, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Event of Default pursuant to Paragraph 18(h) or (i) hereof), shall have any or all of the following rights and remedies, which may be exercised by Buyer:

a. The Repurchase Date for each Transaction hereunder shall be deemed immediately to occur.

b. Seller's obligations hereunder to repurchase all Purchased Assets at the Repurchase Price therefor on the Repurchase Date in such Transactions shall thereupon become immediately due and payable; all Income paid after such exercise or deemed exercise shall be retained by Buyer and applied to the aggregate Repurchase Prices and any other amounts owing by Seller hereunder; Seller shall immediately deliver to Buyer or its designee any and all original papers, records and files relating to the Purchased Assets subject to such Transaction then in Seller's possession and/or control; and all right, title and interest in and entitlement to such Purchased Assets and Servicing Rights thereon shall be deemed transferred to Buyer.

Buyer may (A) immediately sell, without notice or demand of any kind, at a public or private sale and at such price or prices as Buyer may reasonably deem satisfactory any or all Purchased Assets or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Assets, to give Seller credit for such Purchased Assets in an amount equal to the Market Value of the Purchased Assets against the aggregate unpaid Repurchase Price and any other amounts owing by Seller hereunder. The proceeds of any disposition of Purchased Assets shall be applied first to the reasonable costs and expenses incurred by Buyer in connection with or as a result of an Event of Default; second to consequential damages, including, but not limited to, costs of cover and/or related hedging transactions; third to the aggregate Repurchase Prices; and fourth to all other Obligations.

The parties recognize that it may not be possible to purchase or sell all of the Purchased Assets on a particular Business Day, or in a transaction with the same purchaser, or in the same manner because the market for such Purchased Assets may not be liquid. In view of the nature of the Purchased Assets, the parties agree that liquidation of a Transaction or the underlying Purchased Assets does not require a public purchase or sale and that a good faith private purchase or sale shall be deemed to have been made in a commercially reasonable manner. Accordingly, Buyer may elect the time and manner of liquidating any Purchased Asset and nothing contained herein shall obligate Buyer to liquidate any Purchased Asset on the occurrence of an Event of Default or to liquidate all Purchased Assets in the same manner or on the same Business Day or constitute a waiver of any right or remedy of Buyer.

In addition to its rights hereunder, Buyer shall have the right to proceed against any of Seller's assets which may be in the possession of Buyer or its designee (including the Custodian), including the right to liquidate such assets and to set-off the proceeds against monies owed by Seller to Buyer pursuant to this Agreement. Buyer may set off cash, the proceeds of the liquidation of the Purchased Assets and Additional Purchased Assets, any other Collateral or its proceeds and all other sums or obligations owed by Buyer to Seller hereunder against all of Seller's Obligations to Buyer, whether under this Agreement, under a Transaction, or under any other agreement between the parties, or otherwise,

whether or not such Obligations are then due, without prejudice to Buyer's right to recover any deficiency.

Buyer may direct all Persons servicing the Purchased Assets to take such action with respect to the Purchased Assets as Buyer determines appropriate.

Seller shall be liable to Buyer for the amount of all expenses (plus interest thereon at ante equal to the Default Rate), and consequential damages, including without limitation, all costs and expenses incurred in connection with hedging or covering transactions.

Seller shall cause all sums received by it with respect to the Purchased Assets to be deposited with Custodian (or such other Person as Buyer may direct) after receipt thereof.

Buyer shall without regard to the adequacy of the security for the Obligations, be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of and protect, collect, manage, liquidate, and sell the Purchased Assets and any other Collateral or any portion thereof, collect the payments due with respect to the Purchased Assets and any other Collateral or any portion thereof, and do anything that Buyer is authorized hereunder to do. Seller shall pay all costs and expenses incurred by Buyer in connection with the appointment and activities of such receiver.

Buyer may enforce its rights and remedies hereunder without prior judicial process or bearing, and Seller hereby expressly waive, to the extent permitted by law, any right Seller might otherwise have to require Buyer to enforce its rights by judicial process. Seller also waives, to the extent permitted by law, any defense Seller might otherwise have to the Obligations, arising from use of nonjudicial process, enforcement and sale of all or any portion of the or Purchased Assets and any other Collateral or from any other election of remedies, Seller recognizes that nonjudicial remedies are consistent with the usages of the trade, are responsive to commercial necessity and are the result of a bargain at arm's length.

Buyer shall have all the rights and remedies provided herein, provided by applicable federal, state, foreign, and local laws in equity, and under any other agreement between Seller and Buyer.

Upon the occurrence of an Event of Default, Buyer shall have the right to exercise any of its rights and/or remedies without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Seller.

20. DELAY NOT WAIVER; REMEDIES ARE CUMULATIVE.

No failure on the part of Buyer to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or

remedy. All rights and remedies of Buyer provided for herein are cumulative and in addition to any and all other rights and remedies provided bylaw, the Program Documents and the other instruments and agreements contemplated hereby and thereby, and are not conditional or contingent on any attempt by Buyer to exercise any of its rights under any other related document. Buyer may exercise at any time after the occurrence of an Event of Default one or more remedies, as it so desires, and may thereafter at any time and from time to time exercise any other remedy or remedies.

21. USE OF EMPLOYEE PLAN ASSETS.

If assets of an employee benefit plan subject to any provision of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), are intended to be used by either party hereto (the "Plan Party") in a Transaction, the Plan Party shall so notify the other party prior to the Transaction. The Plan Party shall represent in writing to the other party that the Transaction does not constitute a prohibited transaction under ERISA or is otherwise exempt therefrom, and the other party may proceed in reliance thereon but shall not be required so to proceed.

22. INDEMNITY.

The powers conferred on Buyer hereunder are solely for its protection and do not impose any duty on it to exercise any such powers. Following the occurrence of an Event of Default, Buyer shall have no duty of care to Seller as to any Purchased Asset or any other Collateral or with respect to the taking of any necessary steps to preserve rights against other parties, or any other obligation pertaining to such Purchased Asset or Collateral. Seller and Seller's successors and assigns waive all rights whatsoever against Buyer for any loss, expense, liability or damage Seller may suffer as a result of actions taken pursuant to the Program Documents, including those arising under any "mortgagee in possession" or similar doctrine. Seller agrees to, and shall, indemnify Buyer, Agent, their respective Affiliates and their respective officers, directors, partners, employees, representatives and agents (collectively, the "Indemnified Parties", each an "Indemnified Party") from, and hold each of them harmless against, (i) any and all losses, liabilities, claims, damages, judgments, penalties, suits, actions, costs, disbursements or expenses ("losses", including, but not limited to, attorneys' fees, legal expenses and the allocated cost of internal counsel) whether or not suit is brought and settlement costs imposed on, asserted against or incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of, any investigation, litigation or other proceeding (whether or not such Indemnified Party is a party thereto) relating to, resulting from or arising out of any of the Program Documents and all other documents related thereto, any breach of a representation or warranty of Seller or Seller's officer in this Agreement or any other Program Document, and all actions taken pursuant thereto (but excluding any such Losses to the extent incurred by reason of gross negligence or willful misconduct on the part of the h Party to be indemnified) and (ii) any imposition of taxes (excluding taxes based on net income of Buyer imposed by the jurisdiction under the laws of which Buyer is organized or maintains an office) for the frill amount of such taxes paid by Buyer or Agent and any liability (including penalties, interest, additions to tax and expenses) arising therefrom or with respect thereto, whether or not such taxes were correctly or legally asserted. Payment under this indemnification shall be made within 30 days after the date the Buyer makes written demand therefor. In addition, Seller shall compensate and indemnify Buyer and Agent for all reasonable costs, expenses, loss and other liabilities that Buyer may sustain in connection with the protection of Buyer's rights under or the enforcement of the Program Documents or any other documents received by Buyer or Custodian in connection therewith. Seller agrees to pay, and reimburse Buyer, Agent and Custodian for, (i) all fees and taxes in connection with the recording or filing of instruments and documents in public offices, payment or discharge of any taxes or liens upon or in respect of the Purchased Assets, (ii) any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any other Program Documents, and (iii) all other fees, costs and other expenses in connection with protecting, maintaining or preserving the Purchased Assets and Buyer's interest therein, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions, suits or proceedings arising out of or relating to the Purchased Assets. Seller's indemnity obligations contained in this Paragraph 22 shall continue in full force and effect notwithstanding the full payment of all Obligations and notwithstanding the discharge thereof or termination of this Agreement.

23. WAIVER OF REDEMPTION AND DEFICIENCY RIGHTS.

Seller hereby expressly waives, to the fullest extent permitted bylaw, every statute of limitation on a deficiency judgment, any reduction in the proceeds of any Purchased Assets as a result of restrictions upon Buyer or Custodian contained in the Program Documents or any other instrument delivered in connection therewith, and any right that it may have to direct the order in which any of the Purchased Assets shall be disposed of in the event of any disposition pursuant hereto.

24. REIMBURSEMENT.

All sums expended by Buyer in connection with the exercise of any right or remedy provided for herein shall be and remain Seller's obligation. Seller agrees to pay, with interest at the Default Rate to the extent that an Event of Default has occurred, the reasonable out-of-pocket expenses and reasonable attorneys' fees incurred by Buyer, Agent and Custodian in connection with the preparation, negotiation, administration and enforcement of the Program Documents, the taking of any action, including legal action, required or permitted to be taken by Buyer, Agent and/or Custodian pursuant thereto, any "due diligence" or Loan Agent reviews conducted by Agent or on its behalf or any refinancing or

restructuring in the nature of a "workout". If Buyer determines that, due to the introduction of, any change in, or the compliance by Buyer with (1) the Eurocurrency Reserve Requirement or (ii) the interpretation of any law, regulation or any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), there shall be an increase in the cost to Buyer in engaging in the present or any fixture Transactions, then Seller agrees to pay to Buyer, from time to time, upon demand by Buyer (with a copy to Custodian) the actual cost of additional amounts as specified by Buyer to compensate Buyer for such increased costs.

25. FURTHER ASSURANCES.

Seller agrees to do such further acts and things and to execute and deliver to Buyer such additional assignments, acknowledgments, agreements, powers and instruments as are reasonably required by Buyer to carry into effect the intent and purposes of this Agreement, to perfect the interests of Buyer in the Purchased Assets or to better assure and confirm unto Buyer its rights, powers and remedies hereunder.

26. ENTIRE AGREEMENT; PRODUCT OF NEGOTIATION.

This Agreement supersedes and integrates all previous negotiations, contracts, agreements and understandings between the parties relating to a sale and repurchase of Purchased Assets and Additional Purchased Assets thereto, and it, together with the other Program Documents, each Confirmation, and the other documents delivered pursuant hereto or thereto, contains the entire final agreement of the parties. No prior negotiation, agreement, understanding or prior contract shall have any validity hereafter.

27. TERMINATION.

This Agreement shall remain in effect until the earlier of (i) the Final Repurchase Date and (ii) at the Buyer's option, the occurrence of an Event of Default. However, no such termination shall affect Seller's outstanding obligations to Buyer at the time of such termination. Seller's obligations to indemnify Buyer pursuant to this Agreement shall survive the termination hereof. The Seller may request in writing a renewal of this Agreement no earlier than 150 days prior to the Termination Date. The Buyer shall respond to such request within 30 days as to whether the request has been approved. Any such renewal shall be determined by the Buyer in its sole discretion.

28. ASSIGNMENT.

The Program Documents are not assignable by Seller. Buyer may from time to time assign all or a portion of its rights and obligations under this Agreement and the Program Documents; provided, however that Buyer shall maintain, for review by Seller upon written request, a register of assignees and a copy of an executed

assignment and acceptance by Buyer and assignee ("Assignment and Acceptance"), specifying the percentage or portion of such rights and obligations assigned. Upon such assignment, (a) such assignee shall be a party hereto and to each Program Document to the extent of the percentage or portion set forth in the Assignment and Acceptance, and shall succeed to the applicable rights and obligations of Buyer hereunder, and (b) Buyer shall, to the extent that such rights and obligations have been so assigned by it to either (i) an Affiliate of Buyer which assumes the obligations of Buyer and is of equivalent creditworthiness (as determined by Seller in its sole discretion) or (ii) to another Person approved by Seller (such approval not to be unreasonably withheld) which assumes the obligations of Buyer, be released from its obligations hereunder and under the Program Documents. Unless otherwise stated in the Assignment and Acceptance, Seller shall continue to take directions solely from Buyer unless otherwise notified by Buyer in writing. Buyer may distribute to any prospective assignee any document or other information delivered to Buyer by Seller.

29. AMENDMENTS, ETC.

No amendment or waiver of any provision of this Agreement nor any consent to any failure to comply herewith or therewith shall in any event be effective unless the same shall be in writing and signed by Seller and Buyer, and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

30. SEVERABILITY.

If any provision of Program Document is declared invalid by any court of competent jurisdiction, such invalidity shall not affect any other prevision of the Program Documents, and each Program Document shall be enforced to the fullest extent permitted by law.

31. BINDING EFFECT; GOVERNING LAW.

This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns, except that Seller may not assign or transfer any of its rights or obligations under this Agreement, Confirmation or any other Program Document without the prior written consent of Buyer. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE

WITH, AND GOVERNED BY, THE LAW OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

32. CONSENT TO JURISDICTION.

SELLER HEREBY WAIVES TRIAL BY JURY. SELLER HEREBY IRREVOCABLY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF ANY COURT OF THE STATE OF NEW YORK, OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW

YORK, ARISING OUT OF OR RELATING TO THE PROGRAM DOCUMENTS IN ANY ACTION OR PROCEEDING. SELLER HEREBY SUBMITS TO, AND WAIVES ANY OBJECTION SELLER MAY HAVE TO, PERSONAL JURISDICTION AND VENUE EN THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK WITH RESPECT TO ANY DISPUTES ARISING OUT OF OR RELATING TO THE PROGRAM DOCUMENTS.

33. SINGLE AGREEMENT.

Seller and Buyer acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, Seller and Buyer each agree (i) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, and (ii) that payments, deliveries and other transfers made by either of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfer in respect of any other Transaction hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

34. INTENT.

Seller and Buyer recognize that each Transaction is a "repurchase agreement" as that term is defined in Section 101 of Title 11 of the United States Code, as amended ("USC") (except insofar as the Loans subject to such Transaction or the term of such Transaction would render such definition inapplicable), and a "securities contract" as that term is defined in Section 741 of Title 11 of the USC (except insofar as the Loans subject to such Transaction or the term of such Transaction would render such definition inapplicable).

It is understood that Buyer right to liquidate the Purchased Assets delivered to it in connection with the Transactions hereunder or to exercise any other remedies pursuant to Paragraph 20 hereof is a contractual right to liquidate such Transaction as described in Sections 555 and 559 of Title 112 of the USC.

Seller and Buyer agree and acknowledge that if Seller is an "insured deposit institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Transaction hereunder is a "qualified financial contract," as that term is defined in FDIA and any rules, order or policy statements thereunder (except insofar as the Loans subject such to such Transaction would render such definition inapplicable).

It is understood that this Agreement constitutes a "netting contract" as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"), and each payment entitlement and payment obligation under any Transaction hereunder shall constitute a "covered contractual payment entitlement" or "covered contractual payment obligation", respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a "financial institution" as that term is defined in FDICIA).

35. NOTICES AND OTHER COMMUNICATIONS.

Any notice required or permitted by this Agreement shall be in writing and shall be effective and deemed delivered only when received by the party to which it is sent; provided, however, that a facsimile transmission shall be deemed to be received when transmitted so long as the transmitting machine has provided an electronic confirmation of such transmission. Any such notice shall be sent to a party at the address or facsimile transmission number set forth in the signature page of the Custodial Agreement, as such address or number may be changed by.

IN WITNESS WHEREOF, Seller and Buyer have caused their names to be signed to this Master Repurchase Agreement by their respective officers thereunto duly authorized as of the date first above written.

ARBOR COMMERCIAL MORTGAGE, LLC,
AS SELLER

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

NOMURA CREDIT & CAPITAL, INC.,
AS BUYER AND AGENT, AS APPLICABLE

By: /s/ James. K. Lieblich
Name: James K. Lieblich
Title: President

ANNEX I

BUYER ACTING AS AGENT

This Annex I forms a part of the Master Repurchase Agreement dated as of _____________, 20__ (the "Agreement") between ____________________ and ________________. This Annex I sets forth the terms and conditions governing all transactions in which a party selling assets or buying assets, as the case may be ("Agent"), in a Transaction is acting as agent for one or more third parties (each, a "Principal"). Capitalized terms used but not defined in this Annex I shall have the meanings ascribed to them in the Agreement.

1. ADDITIONAL REPRESENTATIONS.

Agent hereby makes the following representations, which shall continue during the term of any Transaction: Principal has duly authorized Agent to execute and deliver the Agreement on its behalf, has the power to so authorize Agent and to enter into the Transactions contemplated by the Agreement and to perform the obligations of Seller or Buyer, as the case may be, under such Transactions, and has taken all necessary action to authorize such execution and delivery by Agent and such performance by it.

2. IDENTIFICATION OF PRINCIPALS.

Agent agrees (a) to provide the other party, prior to the date on which the parties agree to enter into any Transaction under the Agreement, with a written list of Principals for which it intends to act as Agent (which list may be amended in writing from time to time with the consent of the other party), and (b) to provide the other party, before the close of business on the next business day after orally agreeing to enter into a

Transaction, with notice of the specific Principal or Principals for whom it is acting in connection with such Transaction. If (1) Agent fails to identify such Principal or Principals prior to the close of business on such next business day or (ii) the other party shall determine in its sole discretion that any Principal or Principals identified by Agent are not acceptable to it, the other party may reject and rescind any Transaction with such Principal or Principals, return to Agent any Purchased Assets or portion of the Purchase Price, as the case may be, previously transferred to the other party and refuse any further performance under such Transaction, and Agent shall immediately return to the other party any portion of the Purchase Price or Purchased Assets, as the case may be, previously transferred to Agent in connection with such Transaction; provided, however, that (A) the other party shall promptly (and in any event within one business day) notify Agent of its determination to reject and rescind such Transaction and (B) to the extent that any performance was rendered by any party under any Transaction rejected by the other party, such party shall remain entitled to any Price Differential or other amounts that would have been payable to it with respect to such performance if such Transaction had not been rejected. The other party acknowledges that Agent shall not have any obligation to provide

it with confidential information regarding the financial status of its Principals; Agent agrees, however, that it will assist the other party in obtaining front Agent's Principals such information regarding the financial status of such Principals as the other party may reasonably request.

3. LIMITATION OF AGENT'S LIABILITY.

The parties expressly acknowledge that if the representations of Agent under the Agreement, including this Annex I, are true and correct in all material respects during the term of any Transaction and Agent otherwise complies with the provisions of this Annex I, then (a) Agent's obligations under the Agreement shall not include a guarantee of performance by its Principal or Principals and (b) the other part remedies shall not include a right of setoff in respect of rights or obligations, if any, of Agent arising in other transactions in which Agent is acting as principal.

4. MULTIPLE PRINCIPALS.

a. In the event that Agent proposes to act for more than one Principal hereunder, Agent and the other party shall elect whether (i) to treat Transactions under the Agreement as transactions entered into on behalf of separate Principals or (ii) to aggregate such Transactions as if they were transactions by a single Principal. Failure to make such an election in writing shall be deemed an election to treat Transactions under the Agreement as transactions on behalf of separate Principals.

b. In the event that Agent and the other party elect (or are deemed to elect) to treat Transactions under the Agreement as transactions on behalf of separate Principals, the parties agree that (i) Agent will provide the other party, together with the notice described in Paragraph 2(b) of this Annex I, notice specifying the portion of each Transaction allocable to the account of each of the Principals for which it is acting (to the extent that any such Transaction is allocable to the account of more than one Principal); (ii) the portion of any individual Transaction allocable to each Principal shall be deemed a separate Transaction under the Agreement (iii) the margin maintenance obligations of Seller under Paragraph 6(a) of the Agreement shall be determined on a Transaction-by-Transaction basis (unless the parties agree to determine such obligations on a Principal-by-Principal basis); and (iv) Buyer's and Seller's remedies under the Agreement upon the occurrence of an Event of Del nit shall be determined as if Agent had entered into a separate Agreement with the other party on behalf of each of its Principals.

c. In the event that Agent and the other party elect to treat Transactions under the Agreement as if they were transactions by a single Principal, the parties agree that (i) Agent's notice under Paragraph 2(b) of this Annex I need only identify the names of its Principals but not the portion of each

Transaction allocable to each Principal's account; (ii) the margin maintenance obligations of Seller under Paragraph 6(a) of the Agreement shall, subject to any greater requirement imposed by applicable law, be determined on an aggregate basis for alt Transactions entered into by Agent on behalf of any Principal; and (iii) Buyer's and Seller's remedies upon the occurrence of an Event of Default shall be determined as if all Principals were a single Seller or Buyer, as the case may be.

d. Notwithstanding any other provision of the Agreement (including, without limitation, this Annex I), the parties agree that any Transactions by Agent on behalf of an employee benefit plan under ERISA shall be treated as Transactions on behalf of separate Principals in accordance with Paragraph 4(b) of this Annex I (and all margin maintenance obligations of the parties shall be determined on a Transaction-by-Transaction basis).

5. INTERPRETATION OF TERMS.

All references to "Seller" or "Buyer", as the case may be, in the Agreement shall, subject to the provisions of this Annex I (including, among other provisions, the limitations on Agent's liability in Paragraph 3 of this Annex I be construed to reflect that (i) each Principal shall have, in connection with any Transaction or Transactions entered into by Agent on its behalf, the rights, responsibilities, privileges and obligations of a "Seller" or "Buyer", as the case may be, directly entering into such Transaction or Transactions with the other party under the Agreement, and (ii) Agent's Principal or Principals have designated Agent as their sole agent for performance of Seller's obligations to Buyer or Buyer's obligations to Seller, as the case may be, and for receipt of performance by Buyer of its obligations to Seller or Seller of its obligations to Buyer, as the case may be, in connection with any Transaction or Transactions under the Agreement (including, among other things, as Agent for each Principal in connection with transfers of Securities, cash or other property and as agent for giving and receiving all notices under the Agreement) Both Agent and its Principal or Principals shall be deemed "parties" to the Agreement and all references to a "party" or "either party" in the Agreement shall be deemed revised accordingly.

EXHIBIT 10.15

ASSIGNMENT AND ASSUMPTION

AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is made and entered into as of this 1st day of July, 2003 (the "Effective Date") by and between ARBOR COMMERCIAL MORTGAGE LLC (the "Assignor"), and Arbor Realty Limited Partnership (the "Assignee").

WHEREAS, the. Assignor and Nomura Credit & Capital, Inc. (the "Buyer") have entered into a Master Repurchase Agreement dated as of November 18, 2002, as amended as of July 1, 2003 (the "Repurchase Agreement") between the Assignor and the Buyer.

WHEREAS, the Repurchase Agreement permits the Assignor to assign its rights and obligations under the Repurchase Agreement as provided thereunder;

WHEREAS, the Assignor, the Buyer and U.S. Bank National Association (the "Custodian") have entered into a Custodial Agreement dated as of November 18, 2002 (the "Custodial Agreement") for the custody, administration and servicing of Loans underlying Purchased Assets;

WHEREAS, Section 7.7 of the Custodial Agreement permits the Assignor to assign its rights and obligations under the Custodial Agreement with the prior written consent of the other parties thereto; and

WHEREAS, on or prior to the Effective Date, the Assignor will contribute to the Assignee the portfolio of Loans listed in Schedule 1 hereto, which Loans have an aggregate principal balance of $86,603,234.00 on the Effective Date (the "Contributed Loans") and, (ii) the Assignor will assign to the Assignee all its rights and obligations under the Repurchase Agreement, the Custodial Agreement and the other Program Documents (other than its rights and obligations to act as Servicer for the Loans), and the Assignee has agreed to accept the pledge, assignment and transfer of the foregoing.

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

Capitalized terms used and not otherwise defined herein shall have the meaning assigned thereto in the Repurchase Agreement or the Custodial Agreement, as applicable.

Section 1. AGREEMENTS

1. Contribution, Assignment and Agreements. On or prior to the Effective Date, the Assignor shall contribute to the Assignee the Contributed Loans, and the Assignor shall assign to the Assignee all of its respective rights,

   privileges, and any other interests, and obligations, as Seller under the Repurchase Agreement, the Custodial Agreement and the other Program Documents; provided that (subject to the second proviso below) the Assignor shall not assign to the Assignee any interest in the loan on the Professional Tower (an office building located in Miami, Florida) (the "Tower Loan"), which Tower Loan has an outstanding principal balance of $10,584,492 on the Effective Date, and is collateralized by a $8,800,000 Bridge Loan and a $1,784,792 Mezzanine Loan; and provided further that the Repurchase Agreement shall be deemed to remain in effect with respect to the Tower Loan from the Effective Date through the date on which the repurchase transactions contemplated by the letter agreement dated July 1, 2003 (the "Letter Agreement") by the Assignor, the Assignee and certain of their Affiliates are consummated. So long as any Purchased Asset shall remain subject to the Repurchase Agreement, the Assignor shall continue to act as Servicer with respect to the Loans underlying such Purchased Asset for the benefit of Buyer pursuant to and in accordance with the terms of the Custodial Agreement, the Repurchase Agreement and the other Program Documents. Following the repurchase of a Purchased Asset by the Assignee from the Buyer on or after the Effective Date, and the termination of the Repurchase Agreement with respect to such Purchased Asset, the Servicer shall continue to act as Servicer with respect to the Loans underlying such Purchased Asset, pursuant to and in accordance with the terms of the Custodial Agreement. To the extent of any inconsistency between the Custodial Agreement and the Services Agreement dated as of July 1, 2003 among Arbor Realty Trust, Inc., the Assignee and the Assignor, the terms of the Custodial Agreement shall govern the servicing of Loans by the Assignor. The Buyer and the Custodian hereby consent to such assignment.

2. Purchased Assets. The Assignor hereby agrees to take all action necessary to amend any existing, or file any new, Uniform Commercial Code financing statements, necessary to maintain the first priority security interest of the Buyer to and in the Collateral. On and as of the Effective Date, the Assignee shall assume liability for any payment or other obligations under the Repurchase Agreement and the other Program Documents, including but not limited to, its obligations relating to Margin Calls, repurchase of Purchased Assets, and the payment of the expenses of the Custodian, and the Assignor, in its capacity as Servicer for the Loans. In addition, on and as of the Effective Date, the Assignee shall become entitled to any Income pursuant to, and as permitted by, the Repurchase Agreement and the other Program Documents.

3. Assumption. The Assignee hereby accepts the foregoing assignment, and hereby assumes and agrees to pay, perform or otherwise provide for any and all duties and obligations of the Assignor, as Seller, under and in accordance with the terms of the Repurchase Agreement, the Custodial Agreement and the other Program Documents.

4. Further Assurances and Agreements. The Assignor and the Assignee further agree that, upon the reasonable request of the other or the Buyer, each will execute, acknowledge and deliver all such additional documents and instruments as may be reasonably necessary to carry out the purposes of this Agreement.

   The Assignor and the Assignee further understand and agree that the Events of Default set forth in Sections 18(q) and (r) of the Repurchase Agreement relating to change in Control and net worth have been amended as of July 1, 2003, pursuant to and as provided by Amendment No. One to the Repurchase Agreement.

Section 2. REPRESENTATIONS AND WARRANTIES

Each of the Assignor and the Assignee represents as of the Effective Date as follows:

1. The Assignor and the Assignee each represents and warrants that the agreement attached hereto as Exhibit A is a true and accurate copy of the Repurchase Agreement. The Assignor represents and warrants that the Repurchase Agreement is in full force and effect as of the date hereof and the provisions of such Repurchase Agreement have not been waived, amended or modified (other than as therein provided), nor have notices of termination been given thereunder.

2. The Assignor and the Assignee each represents and warrants that the agreement attached hereto as Exhibit B is a true and accurate copy of the Custodial Agreement. The Assignor represents and warrants that the Custodial Agreement is in full force and effect as of the date hereof and the provisions of such Custodial Agreement have not been waived, amended or modified (other than as therein provided), nor have notices of termination been given thereunder.

3. Arbor Commercial Mortgage LLC, as Servicer, and the Assignee, as Seller pursuant to the Repurchase Agreement jointly and severally make, to the Buyer, Agent and each subsequent purchaser of the Loans, the representations and warranties set forth in Appendix A to the Custodial Agreement, and shall continue to make such representations as required under the Repurchase Agreement, the Custodial Agreement and the other Program Documents.

The Assignor further warrants and represents to, and covenants with, the Assignee as of the date hereof as follows:

1. The Assignor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

2. The Assignor has full power and authority to execute, deliver and perform its obligations under this Agreement, and to consummate the transactions set forth herein. The consummation of the transactions contemplated by this Agreement is in the ordinary course of the Assignor's business and will not conflict with, or result in a breach of, any of the terms, conditions or provisions of the Assignor's certificate of formation or operating agreement or any legal restriction, or any material agreement or instrument to which the Assignor is now a party or by which it is bound, or result in the violation of any law, rule, regulation, order, judgment or decree to which the Assignor or its property is subject. The execution, delivery and performance by the Assignor of this Agreement and the consummation by it of the transactions contemplated hereby, have been duly authorized by all necessary action on the part of the Assignor. This Agreement has been duly executed and delivered by the Assignor and, upon the due authorization, execution and delivery by the Assignor and the Assignee, will constitute the valid and legally binding obligation of the Assignor enforceable against the Assignor in accordance with its terms except as enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, and by general principles of equity regardless of whether enforceability is considered in a proceeding in equity or at law;

3. No material consent, approval, order or authorization of, or declaration, filing or registration with, any governmental entity is required to be obtained or made by the Assignor in connection with the execution, delivery or performance by the Assignor of this Agreement, or the consummation by it of the transactions contemplated hereby; and

4. There is no action, suit, proceeding, investigation or litigation pending or, to the Assignor's knowledge, threatened, which either in any instance or in the aggregate, if determined adversely to the Assignor, would adversely affect the Assignor's execution or delivery of, or the enforceability of, this Agreement, or the Assignor's ability to perform its obligation under this Agreement.

The Assignee further warrants and represents to, and covenants with, the Assignor as of the date hereof as follows:

1. The Assignee is a limited partnership duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to acquire, own, sell, repurchase and otherwise dispose of Purchased Assets;

2. The Assignee has full power and authority to execute, deliver and perform its obligations under this Agreement, and to consummate the transactions set forth herein. The consummation of the transactions contemplated by

   this Agreement is in the ordinary course of the Assignee's business and will not conflict with, or result in a breach of, any of the terms, conditions or provisions of the Assignee's limited partnership agreement or any legal restriction, or any material agreement or instrument to which the Assignee is now a party or by which it is bound, or result in the violation of any law, rule, regulation, order, judgment or decree to which the Assignee or its property is subject. The execution, delivery and performance by the Assignee of this Agreement and the consummation by it of the transactions contemplated hereby, have been duly authorized by all necessary limited partnership action on the part of the Assignee. This Agreement has been duly executed and delivered by the Assignee and, upon the due authorization, execution and delivery by the Assignor and the Assignee, will constitute the valid and legally binding obligation of the Assignee enforceable against the Assignee in accordance with its terms except as enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, and by general principles of equity regardless of whether enforceability is considered in a proceeding in equity or at law;

3. No material consent, approval, order or authorization of, or declaration, filing or registration with, any governmental entity is required to be obtained or made by the Assignee in connection with the execution, delivery or performance by the Assignee of this Agreement, or the consummation by it of the transactions contemplated hereby;

4. There is no action, suit, proceeding, investigation or litigation pending or, to the Assignee's knowledge, threatened, which either in any instance or in the aggregate, if determined adversely to the Assignee, would adversely affect the Assignee's execution or delivery of, or the enforceability of, this Agreement, or the Assignee's ability to perform its obligation under this Agreement;

5. The Assignee agrees to be bound by all of the terms, covenants and conditions of the Repurchase Agreement, the Custodial Agreement and the other Program Documents;

6. The Assignee is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement and after giving effect to such transactions, the Assignee will not be left with an unreasonably small amount of capital with which to engage in its business; and

7. The Assignee is not required to be registered as an "investment company" as defined under the Investment Company Act nor as an entity under the control of an "investment company" as defined under the Investment Company Act.

Section 3. CONDITIONS PRECEDENT

As conditions precedent to the execution and delivery of this Agreement and the issuance by the Buyer of its written consent to the assignment by the Assignor of all its rights and obligations as Seller under the Repurchase Agreement to the Assignee, the Buyer shall have received, in form satisfactory to the Buyer:

1. This Agreement, duly authorized and executed by the Assignor, the Assignee and the Custodian;

2. Evidence that all other actions necessary or, in the opinion of the Buyer, desirable to perfect and protect the Buyer's interest in the Purchased Assets and other Collateral have been taken, including, without limitation, the filing of new, or the amendment of existing, Uniform Commercial Code financing statements on Form UCC-1 or other applicable Form;

3. Written confirmation by the Assignee, which shall be accompanied by a certificate of an authorized officer of the Assignor that (i) the Assignor has made, and the Assignee has received, the Contributed Loans, (ii) the offering described in that Preliminary Offering Memorandum dated June 27, 2003 with respect to the stock offering by Arbor Realty Trust, Inc. has been completed, and that a portion of the proceeds thereof has been contributed by Arbor Realty Trust, Inc. in cash to the Assignee, and that such cash contribution has been deposited in that certain bank account no. 7424022551 at North Fork Bank and (iii) any other related required payments under paragraphs (i) and (ii) above have been made and received by the appropriate parties;

4. An opinion of Cullen and Dykman, counsel to the Assignee, as to the transactions contemplated by this Agreement, in a form satisfactory to the Buyer;

5. A certified copy of the Assignee's limited partnership resolutions approving this Agreement and the Program Documents and Transactions thereunder (either specifically or by general resolution), and all documents evidencing other necessary limited partnership action or governmental approvals as may be required in connection with this Agreement and the Program Documents;

6. An incumbency certificate of the Seller's general partner certifying the names, true signatures and titles of the Seller's

representatives duly authorized to request Transactions hereunder and to execute this Agreement and the Program Documents, as applicable, and the other documents to be delivered hereunder;

7. No Default or Event of Default shall have occurred, both immediately before and after the execution and delivery of this Agreement and the Program Documents by the Assignor and/or the Assignee, as applicable;

8. Arbor Realty Trust, Inc. shall have issued a Guaranty in the form attached hereto as Exhibit A to guarantee the Obligations of the Assignee under the Repurchase Agreement and any other obligations of the Assignee under this Agreement; and

9. As of the close of business on the Effective Date, the Assignee shall have a new worth of at least $140 million.

Section 4. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument, which may be sufficiently evidenced by one counterpart.

Section 5. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assignees.

Section 6. APPLICABLE LAW

This Agreement shall be governed by, interpreted under and construed in accordance with the laws of the state of New York, without regard to the conflicts of law principles thereof.

(Signature Page Follows)

IN WITNESS WHEREOF, the Assignor and the Assignee have executed and delivered this Agreement as of the day and year first above written.

ARBOR COMMERCIAL MORTGAGE LLC

By: /s/ John Natalone

Name: John Natalone

Title: Vice President, Treasurer

ARBOR REALTY LIMITED

PARTNERSHIP

By: /s/ Frederick C. Herbst

Name: Frederick C. Herbst

Title: Chief Financial Officer

Acknowledged and Agreed:

NOMURA CREDIT & CAPITAL, INC.

By: /s/ James K. Lieblich

Name: James K. Lieblich

Title: President

U.S. BANK NATIONAL ASSOCIATION

By: /s/ Charles F. Pedersen

Name: Charles F. Pedersen

Title: Vice President

Schedule 1

List of Assigned Loans

NOMURA ASSETS TRANSFERRING TO ART

PROPERTY	TYPE	UPB	AMOUNT FINANCED
CDS-Portfolio	Mezz	$4,991,001.00	$3,743,250.75
Schron	Mezz	$10,800,000.00	$8,468,177.40
Scron II	Mezz	$8,500,000.00	$6,664,769.25
Grand Plaza	Bridge	$25,382,233.00	$20,281,974.40
Tropical Gardens	Bridge	$8,800,000.00	$7,040,000.00
Dylan Hotel	Bridge	$14,000,000.00	$11,900,000.00
Concord & Henry	Bridge	$5,000,000.00	$4,000,000.00
Palmetto Village	Bridge	$9,130,000.00	$7,304,000.00
TOTAL		$86,603,234.00	$69,402,171.80

Exhibit 16.1

March 2, 2004

Securities and Exchange Commission
Washington, D.C. 20549

Re: Arbor Realty Trust, Inc.
Registration No. 333-110472

Dear Sir or Madam:

We have read the section entitled "Change in Accountants" in Amendment No. 3 of the registration statement on Form S-11 of Arbor Realty Trust, Inc. (Registration No. 333-110472) and agree with the statements concerning Grant Thornton LLP contained therein.

Very truly yours,

/s/ Grant Thornton LLP

GRANT THORNTON LLP

Exhibit 23.1

CONSENT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

We have issued 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 contained in Amendment No. 3 to the Registration Statement on Form S-11 (File No. 333-110472) of Arbor Realty Trust, Inc. We consent to the use of the aforementioned reports in the Registration Statement and to the use of our name as it appears under the caption "Experts."

/s/ GRANT THORNTON LLP

New York, New York
March 2, 2004

EXHIBIT 23.4

We consent to the reference to our firm under the caption "Experts" and to the use of our reports dated February 27, 2004 for 1) Arbor Realty Trust, Inc. and Subsidiaries and 2) the Structured Finance Business of Arbor Commercial Mortgage, LLC, and Subsidiaries in the Registration Statement (Form S-11 No. 333-110472) and related Prospectus of Arbor Realty Trust, Inc. and Subsidiaries.

/s/ Ernst & Young LLP

New York, New York
March 1, 2004