
Form 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934**
For the fiscal year ended December 31, 2005

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934**
For the transition period from _____ to _____

Commission file number: 001-32136

Arbor Realty Trust, Inc.

(Exact name of registrant as specified in its charter)

Maryland
*(State or other jurisdiction
of incorporation)*

20-0057959
*(I.R.S. Employer
Identification No.)*

333 Earle Ovington Boulevard, Suite 900
Uniondale, NY
(Address of principal executive offices)

11553
(Zip Code)

(516) 832-8002

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark if the registrant is a well-known, seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. ☐

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the proceeding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one)

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The aggregate market value of the registrant's voting common stock held by non-affiliates of the registrant as of June 30, 2005 (computed based on the closing price on such date as reported on the NYSE) was \$459.4 million. As of March 10, 2006, the registrant had issued and outstanding 17,112,761 shares of common stock, par value \$0.01 per share.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the definitive proxy statement for the registrant's 2006 Annual Meeting of Stockholders (the "2006 Proxy Statement"), to be filed within 120 days after the end of the registrant's fiscal year ended December 31, 2005, are incorporated by reference into Part III of this Annual Report on Form 10-K.

INDEX

PART I

| | <u>Page</u> |
|--|-------------|
| <u>ITEM 1. BUSINESS</u> | 1 |
| <u>ITEM 1A. RISK FACTORS</u> | 13 |
| <u>ITEM 1B. UNRESOLVED STAFF COMMENTS</u> | 19 |
| <u>ITEM 2. PROPERTIES</u> | 19 |
| <u>ITEM 3. LEGAL PROCEEDINGS</u> | 19 |
| <u>ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS</u> | 19 |

PART II

| | |
|---|-----|
| <u>ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES</u> | 19 |
| <u>ITEM 6. SELECTED FINANCIAL DATA</u> | 22 |
| <u>ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u> | 26 |
| <u>ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK</u> | 51 |
| <u>ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA</u> | 54 |
| <u>ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE</u> | 107 |
| <u>ITEM 9A. CONTROLS AND PROCEDURES</u> | 107 |
| <u>ITEM 9B. OTHER INFORMATION</u> | 109 |

PART III

| | |
|--|-----|
| <u>ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT</u> | 109 |
| <u>ITEM 11. EXECUTIVE COMPENSATION</u> | 109 |
| <u>ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u> | 109 |
| <u>ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS</u> | 109 |
| <u>ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES</u> | 109 |

PART IV

| | |
|---|-----|
| <u>ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K</u> | 109 |
| <u>EX-31.1: CERTIFICATION</u> | 113 |
| <u>EX-31.2: CERTIFICATION</u> | 114 |
| <u>EX-32.1: CERTIFICATION</u> | 115 |
| <u>EX-32.2: CERTIFICATION</u> | 116 |
| <u>EX-3.2: ARTICLES OF AMENDMENT TO ARTICLES OF INCORPORATION OF THE REGISTRANT</u> | |
| <u>EX-10.20: INDENTURE</u> | |
| <u>EX-10.21: PURCHASE AGREEMENT</u> | |
| <u>EX-21.1: SUBSIDIARIES OF ARBOR REALTY TRUST INC.</u> | |
| <u>EX-23.1: CONSENT OF ERNST & YOUNG LLP</u> | |
| <u>EX-31.1: CERTIFICATION</u> | |
| <u>EX-31.2: CERTIFICATION</u> | |
| <u>EX-32.1: CERTIFICATION</u> | |
| <u>EX-32.2: CERTIFICATION</u> | |

FORWARD LOOKING STATEMENTS

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

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

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

PART I

ITEM 1. BUSINESS

Overview

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

We are organized to qualify as a real estate investment trust ("REIT") for federal income tax purposes. We commenced operations in July 2003 and conduct substantially all of our operations and investing activities through our operating partnership, Arbor Realty Limited Partnership, and its wholly-owned subsidiaries. We serve as the general partner of our operating partnership, and own an approximately 82% partnership interest in our operating partnership as of December 31, 2005.

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

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

Our Corporate History

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

In exchange for ACM's contribution of structured finance investments, our operating partnership issued approximately 3.1 million units of limited partnership interest, or operating partnership units, and approximately 0.6 million warrants to purchase additional operating partnership units at an initial exercise price of \$15.00 per operating partnership unit to ACM. Concurrently, we, our operating partnership and ACM entered into a pairing agreement. Pursuant to the pairing agreement, each operating partnership unit issued to ACM and issuable to ACM upon exercise of its warrants for additional operating partnership units in connection with the contribution of initial assets was paired with one share of the Company's special voting preferred stock. In October 2004, ACM exercised these warrants and currently holds approximately 3.8 million operating partnership units, constituting an approximately 18% limited partnership interest in our operating partnership. ACM may redeem each of these operating partnership units for cash or, at our election, one share of our common stock. We granted ACM certain demand and other registration rights with respect to the shares of common stock that may be issued upon redemption of these operating partnership units. Each of these operating partnership units is also paired with one share of our special voting preferred stock entitling ACM to one vote on all matters submitted to a vote of our stockholders. ACM currently holds approximately

18% of the voting power of our outstanding stock. If ACM redeems these operating partnership units, an equivalent number of shares of our special voting preferred stock will be redeemed and cancelled.

Concurrently with ACM's contribution of investments to our operating partnership, we sold approximately 1.6 million of our units, each consisting of five shares of our common stock and one warrant to purchase an additional share of common stock at an initial exercise price of \$15.00 per share, for \$75.00 per unit in a private placement and agreed to register the shares of common stock underlying these units and warrants for resale under the Securities Act of 1933. In July 2004, we registered approximately 9.6 million shares of common stock underlying these units and warrants. As of December 31, 2005, approximately 1.6 million warrants were exercised, of which 0.5 million were exercised "cashless", for a total of 1.3 million common shares issued pursuant to their exercise.

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

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

Subsequently, in January 2006, we completed our second non-recourse collateralized debt obligation ("CDO II") transaction, whereby \$412 million of real estate related and other assets were contributed to a newly-formed consolidated subsidiary, which issued \$356 million of investment grade-rated floating-rate notes in a private placement. These proceeds were used to repay outstanding debt and resulted in a decreased cost of funds relating to the CDO II assets.

Our Investment Strategy

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

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

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

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

Manage and Maintain Credit Quality. A critical component of our success in the real estate finance sector is our ability to manage the real estate risk that is underwritten by our manager and us. We

actively manage and maintain the credit quality of our portfolio by using the expertise of our asset management group, which has a proven track record of structuring and repositioning structured finance investments to improve credit quality and yield.

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

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

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

Our Targeted Investments

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

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

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

The bridge loans we make typically range in size from \$1 million to \$35 million and are predominantly secured by first mortgage liens on the property. The term of these loans typically is up to five years. Historically, interest rates have ranged from 3.00% to 9.00% over 30-day LIBOR, with fixed rates ranging from 6.00% to 11.00%. In 2005, interest rates have ranged from 3.00% to 6.00% over 30-day LIBOR, with fixed rates ranging from 5.00% to 11.00%. Additional yield enhancements may include origination fees, deferred interest, yield look-backs, and participating interests, which are equity interests in the borrower that share in a percentage of the underlying cash flows of the property. Borrowers generally use the proceeds of a conventional mortgage to repay a bridge loan.

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

Our mezzanine loans typically range in size from \$2 million to \$50 million and have terms of up to ten years. Historically, interest rates have ranged from 5.00% to 12.00% over 30-day LIBOR, with fixed rates ranging from 5.00% to 15.00%. In 2005, interest rates have ranged from 2.00% to 11.00% over 30-day LIBOR, with fixed rates ranging from 5.00% to 15.00%. As in the case with our bridge loans, the yield on these investments may be enhanced by prepaid and deferred interest payments, yield look-backs and participating interests.

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

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

Real Property Acquisitions. We may purchase existing domestic 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 three year time period, achieving a significant return on invested capital. In connection with these transactions, speed of execution is often the most critical component to success. We may seek to finance a portion of the acquisition price through short term financing. Repayment of the short term financing will either come from the sale of the property or conventional permanent debt.

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

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

The rate of prepayments on the underlying mortgage loans affect the price and volatility of mortgage-related securities and may have the effect of shortening or extending the effective maturity of the security beyond what was anticipated at the time of our investment in such securities. The yield and maturity characteristics of mortgage-related securities differ from conventional fixed-income securities in that the principal amount of mortgage-related securities may be prepaid at any time because the underlying mortgage loans may be prepaid at any time. Therefore, some mortgage-related securities may have less potential for growth in value than conventional fixed-income securities with comparable maturities. In addition, the rate of prepayments tends to increase in periods of falling interest rates. During such periods, the reinvestment of prepayment proceeds by us will generally be at lower rates than the rates that were carried by the obligations that have been prepaid. To the extent that we purchase mortgage-related securities at a premium, prepayments (which may be made without penalty) may result in loss of our principal investment to the extent of the premium paid.

Our Structured Finance Investments

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

At December 31, 2005, we had 72 loans and investments in our portfolio, totaling \$1.3 billion. These loans and investments were for 14 multi-family properties, 15 condominium properties, 21 office properties, eight hotels, six commercial properties, four retail properties, and four other properties. There are no loans or investments in the portfolio that are non-performing. We continue to actively manage all loans and investments in the portfolio and believe that our strict underwriting and active asset management enable us to maintain the credit quality of our portfolio.

The overall yield on our portfolio in 2005 was 10.40%, excluding the impact from a second quarter distribution that was recorded as interest income totaling approximately \$17.2 million, on average assets of \$979 million. This yield was computed by dividing the interest income earned during the year by the average assets during the year. Our cost of funds in 2005 was 6.20% on average borrowings of \$718 million. This cost of funds was computed by dividing the interest expense incurred during the year by the average borrowings during the year.

Our average net investment (average assets less average borrowings) in 2005 was \$261 million, resulting in average leverage (average borrowings divided by average assets) of 73%. The net interest income earned in 2005 yielded a 21.92% return on our average net investment during the year. This yield was computed by dividing the net interest (interest income less interest expense) earned in 2005 by the average equity (computed as average assets minus average borrowings) invested during the year. Our business plan contemplates that our leverage ratio will be approximately 65% to 75%. However, our leverage will not exceed 80% of the value of our assets in the aggregate unless approval to exceed the 80% limit is obtained from our board of directors.

STRUCTURED FINANCE INVESTMENT PORTFOLIO
As of December 31, 2005

The following tables set forth information regarding our bridge and mezzanine loans, preferred equity investments and other real estate-related assets as of December 31, 2005.

| Type | Asset Class | Number | Unpaid Principal (Dollars in thousands) | Weighted Average Pay Rate | Weighted Average Remaining Maturity (Months) |
|------------------|-------------|--------|---|---------------------------------|--|
| Bridge Loans | MultiFamily | 5 | \$ 57,386 | 8.0% | 18.1 |
| | Office | 2 | 47,000 | 7.8% | 7.7 |
| | Hotel | 3 | 69,530 | 8.3% | 21.0 |
| | Condo | 7 | 161,855 | 8.3% | 13.6 |
| | Commercial | 4 | 76,331 | 8.4% | 28.1 |
| | Other | 1 | 1,350 | 10.0% | 4.0 |
| | | 22 | 413,452 | 8.2% | 17.4 |
| Mezzanine Loans | MultiFamily | 8 | 53,394 | 8.8% | 28.5 |
| | Office | 18 | 403,011 | 9.4% | 34.5 |
| | Condo | 6 | 187,655 | 11.3% | 25.0 |
| | Hotel | 4 | 85,461 | 8.4% | 15.5 |
| | Retail | 4 | 56,733 | 12.0% | 4.4 |
| | Commercial | 2 | 35,200 | 7.8% | 25.0 |
| | | 42 | 821,454 | 9.8% | 27.5 |
| Preferred Equity | Condo | 2 | 7,294 | 9.2% | 16.0 |
| | MultiFamily | 1 | 561 | 11.6% | 3.0 |
| | Office | 1 | 11,000 | 9.8% | 34.0 |
| | | 4 | 18,855 | 9.6% | 26.1 |
| Other | Other | 3 | 12,000 | 5.3% | 28.0 |
| | Hotel | 1 | 1,891 | 7.4% | 213.0 |
| | | 4 | 13,891 | 5.6% | 53.2 |
| Total | | 72 | \$ 1,267,652 | 9.2% | 24.5 |

| Geographic Location | Unpaid Principal (Dollars in thousands) | Percentage(1) |
|---------------------|---|---------------|
| New York | \$ 726,184 | 57% |
| Florida | 106,439 | 8% |
| California | 95,461 | 8% |
| Massachusetts | 35,000 | 3% |
| Diversified | 161,886 | 13% |
| Other(2) | 142,682 | 11% |
| Total | \$ 1,267,652 | 100% |

- (1) Based on a percentage of the total unpaid principal balance of the underlying loans.
- (2) No other individual state makes up more than 3% of the total.

Our Investments in Mortgage-Related Securities

In 2004, we invested \$57.4 million (including \$0.1 million of purchased interest) in agency-sponsored whole pool certificates. \$20.6 million of these securities were issued by FNMA and \$36.7 million were issued by FHLMC. Pools of FNMA and FHLMC adjustable rate residential mortgage loans underlie these securities. The underlying mortgage loans bear interest at a weighted average fixed rate for three years and adjusts annually thereafter and have a weighted average coupon rate of 3.8%. We receive monthly payments of interest and principal on these securities based on the monthly interest and principal payments that are made on the underlying mortgage loans. At December 31, 2005, these securities were financed under a \$100 million repurchase agreement, maturing July 2006, at a rate of one-month LIBOR plus 0.20%. At December 31, 2005, the amortized cost of these securities was \$30.5 million and the amount outstanding on the repurchase agreement related to the financing of these securities was \$28.4 million. These investments had a weighted average balance of \$38.7 million for the year with an average yield of 2.14%, net of amortization of premiums. These assets were financed by borrowings with a weighted average balance of \$36.6 million and an average cost of funds of 3.46%.

The table below sets forth information regarding our investments in mortgage-related securities as of December 31, 2005. These securities have a fixed interest rate until March 2007, and adjust annually thereafter.

| | Amortized Cost | Unrealized Loss | Market Value | Maturity | Initial Interest Rate |
|----------------|------------------------|--------------------|------------------|----------|-----------------------------|
| | (Dollars in thousands) | | | | |
| FHLMC Security | \$ 15,455 | \$ (441) | \$ 15,014 | 3/1/2034 | 3.80% |
| FHLMC Security | 4,848 | (157) | 4,691 | 3/1/2034 | 3.76% |
| FNMA Security | 10,208 | (297) | 9,911 | 3/1/2034 | 3.80% |
| Total | <u>\$ 30,511</u> | <u>\$ (895)</u> | <u>\$ 29,616</u> | | |

Regulatory Aspects of Our Investment Strategy

Real Estate Exemption from Investment Company Act. We believe that we conduct and we intend to conduct our business at all times in a manner that avoids registration as an investment company under the Investment Company Act of 1940. There is an exemption from registration for entities that are primarily engaged in the business of purchasing or otherwise acquiring "mortgages and other liens on and interests in real estate." This exemption generally requires us to maintain at least 55% of our assets directly in qualifying real estate assets. Assets that qualify for purposes of this 55% test include, among other things, real estate, mortgage loans and agency-sponsored whole loan pool certificates. Our bridge loans secured by first mortgage liens on the underlying properties, loans secured by second mortgage liens on the underlying properties and agency-sponsored whole loan pool certificates generally qualify for purposes of this 55% test. We believe that these assets and certain of our mezzanine loans are in excess of 55% of our assets as of December 31, 2005 and qualify for purposes of the 55% test. The percentage of our assets that we invest in agency-sponsored whole loan pool certificates may decrease if we determine that we do not need to purchase such certificates for purposes of meeting the 55% test. If the Securities and Exchange Commission ("SEC") takes a position or makes an interpretation more favorable to us, we may have greater flexibility in the investments we make. Our investments in mortgage-related securities are limited to agency-sponsored whole loan pool certificates which qualify for purposes of the 55% test. Our investment guidelines provide that no more than 15% of our assets may consist of any type of the mortgage-related securities and that the percentage of our investments in mortgage-related securities as compared to our structured finance investments be monitored on a regular basis.

Management Agreement

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

Operations

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

Origination. Our manager sources the origination of most of our investments. ACM has a network of ten sales offices located in Bloomfield Hills, Michigan; Boston, Massachusetts; Charlotte, North Carolina; Chicago, Illinois; Dallas, Texas; Kinderhook, New York; Los Angeles, California; New York, New York; Uniondale, New York; and Woodland Hills, California. These offices are staffed by approximately 16 loan originators who solicit property owners, developers and mortgage loan brokers. In some instances, the originators accept loan applications meeting our underwriting criteria from a select group of mortgage loan brokers. While a large portion of ACM's marketing effort occurs at the branch level, ACM also markets its products in industry publications and targeted direct mailings. ACM markets structured finance products and our product offerings using the same methods. Once potential borrowers have been identified, ACM determines which financing products best meet the borrower's needs. Loan originators in every branch office are able to offer borrowers the full array of ACM's and our structured finance products. After identifying a suitable product, ACM works with the borrower to prepare a loan application. Upon completion by the borrower, the application is forwarded to ACM's underwriters for due diligence.

Underwriting. ACM's loan originators work in conjunction with its underwriters who perform due diligence on all proposed transactions prior to loan approval and commitment. The underwriters analyze each loan application in accordance with the guidelines set forth below in order to determine the loan's conformity with respect to such guidelines. In general, ACM's underwriting guidelines require it to evaluate the following: the historic and in place property revenues and expenses; the potential for near-term revenue growth and opportunity for expense reduction and increased operating efficiencies; the property's location, its attributes and competitive position within its market; the proposed ownership structure, financial strength and real estate experience of the borrower and property management; third party appraisal, environmental and engineering studies; market assessment, including property inspection, review of tenant lease files, surveys of property comparables and an analysis of area economic and demographic trends; review of an acceptable mortgagee's title policy and an "as built" survey; construction quality of the property to determine future maintenance and capital expenditure requirements; and the requirements for any reserves, including those for immediate repairs or rehabilitation, replacement reserves, tenant improvement and leasing commission costs, real estate taxes and property casualty and liability insurance. Key factors considered in credit decisions include, but are not limited to, debt service coverage, loan to value ratios and property, financial and operating performance. Consideration is also given to other factors, such as additional forms of collateral and identifying likely

strategies to effect repayment. ACM will refine its underwriting criteria based upon actual loan portfolio experience and as market conditions and investor requirements evolve.

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

Servicing. ACM services our loans and investments through its internal servicing operations. Our manager currently services an expanding portfolio, consisting of approximately 513 loans with outstanding balances of \$3.2 billion through its loan administration department in Buffalo, New York. ACM's loan servicing operations are designed to provide prompt customer service and accurate and timely information for account follow up, financial reporting and management review. Following the funding of an approved loan, all pertinent loan data is entered into ACM's data processing system, which provides monthly billing statements, tracks payment performance and processes contractual interest rate adjustments on variable rate loans. Our manager utilizes the operations of its loan administration department to service our portfolio with the same efficiency, accuracy and promptness. ACM also works closely with our asset management group to ensure the appropriate level of customer service and monitoring of these loans.

Our Asset Management Operations. Our asset management group is comprised of 16 of our employees. Prior to our formation, the asset management group successfully managed numerous transactions, including complex restructurings, refinancings and asset dispositions for ACM.

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

Timely and accurate identification of an investment's operational and financial issues and each borrower's objectives is essential to implementing an executable loan workout and restructuring process, if required. Since existing property management may not have the requisite expertise to manage the workout process effectively, the asset management group determines current operating and financial status of an asset or portfolio and performs liquidity analysis of properties and ownership entities and then, if appropriate, identifies and evaluates alternatives in order to maximize the value of an investment.

Our asset management group continues to provide its services to ACM on a limited basis pursuant to an asset management services agreement between ACM and us. The asset management services agreement will

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

Operating Policies and Strategies

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

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

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

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

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

We may enter into hedging transactions to protect our investment portfolio from interest rate fluctuations and other changes in market conditions. These transactions may include interest rate swaps, the purchase or sale of interest rate collars, caps or floors, options, mortgage derivatives and other hedging instruments. These instruments may be used to hedge as much of the interest rate risk as ACM determines is in the best interest of our stockholders, given the cost of such hedges and the need to maintain our status as a REIT. In general, income from hedging transactions does not constitute qualifying income for purposes of the REIT gross income requirements. To the extent, however, that a hedging contract reduces interest rate risk on indebtedness incurred to acquire or carry real estate assets, any income that is derived from the hedging contract, while comprising non-qualifying income for purposes of the REIT 75% gross income test, would not

give rise to non-qualifying income for purposes of the 95% gross income test. ACM may elect to have us bear a level of interest rate risk that could otherwise be hedged when it believes, based on all relevant facts, that bearing such risk is advisable.

To date, we have entered into various interest rate swaps in connection with the issuance of floating rate secured notes, the issuance of variable rate junior subordinate notes, and to hedge the interest risk on forecasted outstanding Libor based debt. The notional amount of each interest rate swap agreement and the related terms have been designed to protect our investment portfolio from interest rate risk and to match the payment and receipts of interest on the underlying debt instruments, where applicable.

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

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

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

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

- Our charter requires that a majority of our board of directors be independent directors and that only our independent directors make any determination on our behalf with respect to the relationships or transactions that present a conflict of interest for our directors or officers.
- Our board of directors has adopted a policy that decisions concerning our management agreement with ACM, including termination, renewal and enforcement thereof or our participation in any transactions with ACM or its affiliates outside of the management agreement, including our ability to purchase securities and mortgages or other assets from ACM, or our ability to sell securities and assets to ACM, must be reviewed and approved by a majority of our independent directors.
- Our management agreement provides that our determinations to terminate the management agreement for cause or because the management fees are unfair to us or because of a change in control of our manager, will be made by a majority vote of our independent directors.
- Our independent directors will periodically review the general investment standards established by ACM under the management agreement.

[Table of Contents](#)

- Our management agreement with ACM provides that ACM may not assign duties under the management agreement, except to certain affiliates of ACM, without the approval of a majority of our independent directors.
- Our management agreement provides that decisions to approve or reject investment opportunities rejected by our credit committee that ACM or Mr. Kaufman wish to pursue will be made by a majority of our independent directors.

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

Compliance with Federal, State and Local Environmental Laws

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

Competition

Our net income depends, in large part, on our manager's ability to originate structured finance investments with spreads over our borrowing costs. In originating these investments, our manager competes with other mortgage REITs, specialty finance companies, savings and loan associations, banks, mortgage bankers, insurance companies, mutual funds, institutional investors, investment banking firms, other lenders, governmental bodies and other entities, some of which may have greater financial resources and lower costs of capital available to them. In addition, there are numerous mortgage REITs with asset acquisition objectives similar to ours, and others may be organized in the future. The effect of the existence of additional REITs may be to increase competition for the available supply of structured finance assets suitable for purchase by us. Competitive variables include market presence and visibility, size of loans offered and underwriting standards. To the extent that a competitor is willing to risk larger amounts of capital in a particular transaction or to

employ more liberal underwriting standards when evaluating potential loans, our origination volume and profit margins for our investment portfolio could be impacted. Our competitors may also be willing to accept lower returns on their investments and may succeed in buying the assets that we have targeted for acquisition. Although management believes that we are well positioned to continue to compete effectively in each facet of our business, there can be no assurance that we will do so or that we will not encounter further increased competition in the future that could limit its ability to compete effectively.

Employees

We currently have 23 employees, including Mr. Kovarik, our chief credit officer, Mr. Weber, our executive vice president of structured finance, Mr. Horn, our secretary, general counsel, and director of compliance, Mr. Fogel, our senior vice president of asset management and Mr. Kilgore, our executive vice president of securitization. In addition, Mr. Kaufman, our chief executive officer and Mr. Elenio, our chief financial officer are full time employees of our manager, who perform the duties required pursuant to the management agreement with our manager.

Corporate Governance and Internet Address

We have adopted corporate governance guidelines and a code of business conduct and ethics, which delineate our standards for our officers and directors, and employees of our manager. We emphasize the importance of professional business conduct and ethics through our corporate governance initiatives.

As a result of the resignation of Mr. Bernstein, one of our independent directors, on February 8, 2006, our board of directors does not presently consist of a majority of independent directors. We are currently in the process of replacing Mr. Bernstein and anticipate that our board of directors will again consist of a majority of independent directors in the near future. The audit, nominating/corporate governance, and compensation committees of our board of directors are composed exclusively of independent directors.

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

ITEM 1A. RISK FACTORS

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

Risks Related to Our Business

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 and mortgage-related security investments consistent with our investment criteria, any excess equity capital may be used to repay borrowings under our warehouse credit facility, bridge loan warehouse 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 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.

The majority of our investments as of December 31, 2005 are mezzanine loans which are subject to a greater risk of loss than loans with a first priority lien on the underlying real estate.

We invest in 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.

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

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 form 10-K. 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:

- 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, and a portion of our distributions may constitute a return of capital. Debt service on any borrowings for this purpose will reduce our cash available for distribution.

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 in cash. Our warehouse credit facility, bridge loan warehouse 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. Any required debt service will reduce cash and net income available for operations or distribution to our stockholders.

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

cash available in the future, we may be required to borrow additional funds, which would reduce the amount of cash available for other purposes, or sell assets in order to meet our REIT distribution requirements.

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

We believe that we conduct and we intend to 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 entities that directly or indirectly own the underlying real property, rather than a mortgage on the underlying property itself, and ownership of equity interests in owners of real property may not qualify for purposes of the 55% test depending on the type of entity. Mortgage-related securities that do not represent all of the certificates issued with respect to an underlying pool of mortgages may also not qualify for purposes of the 55% test. Therefore, our ownership of these types of debt instruments and equity interests may be limited by the provisions of the Investment Company Act. To the extent that we do not comply with the SEC staff’s 55% test or another exemption or exclusion from registration under the Investment Company Act or other interpretations under the Investment Company Act, we may be deemed to be an investment company. If we fail to maintain an exemption or other exclusion from registration as an investment company we could, among other things, be required either (a) to substantially 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. If we were required to register as an investment company under the Investment Company Act, we would become subject to substantial regulation with respect to our capital structure (including our ability to use leverage), management, operations, transactions with affiliated persons (as defined in the Investment Company Act), portfolio composition, including restrictions with respect to diversification and industry concentration and other matters.

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 90% of the outstanding membership interests of Arbor Commercial Mortgage. Arbor Commercial Mortgage owns approximately 3.8 million operating partnership units, representing a 18% limited partnership interest in our operating partnership and we own the remaining 82%. The operating partnership units are redeemable for cash or, 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. Arbor Commercial Mortgage is currently entitled to approximately 3.8 million votes, or 18% 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. 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.

Our charter as amended generally does not permit ownership in excess of 8.3% of our capital stock, and attempts to acquire our capital stock in excess of this limit 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 8.3% (by value or by number of shares, whichever is more restrictive) of the outstanding shares of our common stock or 8.3% (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.

Risks Related to Conflicts of Interest

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

We have only 23 employees, including Mr. Fred Weber, Mr. Mark Fogel, Mr. John C. Kovarik, Mr. Walter Horn, Mr. Gene Kilgore, a two-person securitization group and a 16-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. Paul Elenio, is the chief financial officer of our manager, and our secretary, general counsel, and director of compliance, Mr. Walter Horn, is the general counsel of our manager. In addition, Mr. Kaufman and the Kaufman entities together beneficially own approximately 90% of the outstanding membership interests of Arbor Commercial Mortgage and Messrs. Elenio, Weber, Fogel, Martello and Horn, also hold an 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 an 18% limited partnership interest in our operating partnership which as a result has 18% 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.

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 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.

Risk Related to Our Status as a REIT

If we fail to remain qualified as a REIT, we will be subject to tax as a regular corporation and could face substantial tax liability.

We conduct our operations 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 an 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.

ITEM 1B. *UNRESOLVED STAFF COMMENTS*

Not applicable.

ITEM 2. *PROPERTIES*

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

ITEM 3. *LEGAL PROCEEDINGS*

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

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

No matters were submitted to a vote of our security holders during the fourth quarter of 2005.

PART II

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

Market Information

Our common stock has been listed on the New York Stock Exchange under the symbol "ABR" since our initial public offering in April 2004. The following table sets forth for the indicated periods the high, low and

[Table of Contents](#)

last sales prices for our common stock, as reported on the New York Stock Exchange, and the dividends declared and paid with respect to such periods:

| | High | Low | Last | Dividends Declared |
|-----------------------------------|----------|----------|----------|--------------------|
| 2004 | | | | |
| First Quarter(1) | N/A | N/A | N/A | \$ 0.38 |
| April 1, 2004 to April 6, 2004(2) | N/A | N/A | N/A | \$ 0.02 |
| April 7, 2004 to June 30, 2004(3) | \$ 21.00 | \$ 18.40 | \$ 19.95 | \$ 0.33 |
| Third Quarter | \$ 22.21 | \$ 18.05 | \$ 22.20 | \$ 0.43 |
| Fourth Quarter(4) | \$ 24.85 | \$ 20.25 | \$ 24.54 | \$ 0.47 |
| 2005 | | | | |
| First Quarter | \$ 27.00 | \$ 23.52 | \$ 24.75 | \$ 0.55 |
| Second Quarter | \$ 29.20 | \$ 24.25 | \$ 28.70 | \$ 0.57 |
| Third Quarter | \$ 31.20 | \$ 26.68 | \$ 28.10 | \$ 0.65 |
| Fourth Quarter(5) | \$ 29.42 | \$ 24.55 | \$ 25.92 | \$ 0.70 |

- (1) We were formed in June 2003 as a Maryland corporation and became a publicly traded company after the pricing of our public offering on April 6, 2004.
- (2) Represents the portion of the second quarter of 2004 prior to our initial public offering.
- (3) When combined with the \$0.02 paid for the period April 1 through April 6, represents a regular quarterly dividend of \$0.35 per share.
- (4) On January 13, 2005, we declared distributions of \$0.47 per share of common stock, payable with respect to the three months ended December 31, 2004 to stockholders of record at the close of business on January 31, 2005.
- (5) On January 11, 2006, we declared distributions of \$0.70 per share of common stock, payable with respect to the three months ended December 31, 2005 to stockholders of record at the close of business on January 23, 2006.

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

On March 10, 2006, the closing sale price for our common stock, as reported on the NYSE, was \$26.70. As of March 10, 2006, there were 5,500 record holders of our common stock. This figure does not reflect the beneficial ownership of shares held in nominee name.

Equity Compensation Plan Information

Information regarding securities authorized for issuance under our equity compensation plans which are set forth under the caption "Equity Compensation Plan Information" of the 2006 Proxy Statement is incorporated herein by reference.

Recent Issuances of Unregistered Securities

In 2005, we issued a total of 282,776 shares of common stock upon the exercise of 287,141 warrants to purchase shares of our common stock and received a total of approximately \$4.2 million in proceeds as a result of the exercise of such warrants. These warrants were originally issued and sold as part of units, each consisting of five shares of common stock and one warrant. Pursuant to the terms of the warrant agreement, dated as of July 1, 2003, each of the warrants were exercisable from July 13, 2004 to July 1, 2005 for one share of common stock at an initial exercise price of \$15 in cash or a number of shares of common stock or warrants

deemed to have a fair market value equivalent to the cash exercise price. Of the total number of shares of common stock issued upon the exercise of such warrants, 279,457 shares were issued in consideration of the payment of the cash exercise price and 3,319 shares were issued in consideration of the holder of the related warrant surrendering shares of common stock or additional warrants in lieu of the cash exercise price. Funds received from the exercise of warrants were initially used to pay down debt outstanding under our credit facilities.

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

In 2005, we issued 191,342 shares of common stock to ACM as payment of the incentive compensation earned by ACM for the quarters ending December 31, 2004, March 31, 2005, June 30, 2005, and September 30, 2005. The issuance of these 191,342 shares as payment for ACM's incentive compensation was not registered under the Securities Act in reliance on the exemption from registration provided by Section 4(2) thereof.

In February 2005, 1,000 restricted shares were issued to each of four independent members of the board of directors under the stock incentive plan. One third of the restricted stock granted to each of these directors were vested as of the date of grant, another one third vested on January 31, 2006 and the remaining third will vest on January 31, 2007. In May 2005, we issued 41,000 shares of restricted common stock under the stock incentive plan to certain of our employees and employees of our manager, ACM. One fifth of the restricted stock granted to each of these employees were vested as of the date of grant and recognized currently in earnings, the second one-fifth will vest in May 2006, the third one-fifth will vest in May 2007, the fourth one-fifth will vest in May 2008, and the remaining one-fifth will vest in May 2009. In July 2005, we issued 77,500 shares of restricted common stock under the stock incentive plan to certain of our employees and employees of ACM. One fifth of the restricted stock granted to each of these employees were vested as of the date of grant and is recognized currently in earnings, the second one-fifth will vest in May 2006, the third one-fifth will vest in May 2007, the fourth one-fifth will vest in May 2008, and the remaining one-fifth will vest in May 2009. In August 2005, the Company issued 2,000 shares of restricted common stock under the stock incentive plan to two of our directors. One third of the restricted stock granted to each of these employees were vested as of the date of grant and is recognized currently in earnings, the second one-third will vest in August 2006, the third one-third will vest in August 2007. The issuance of these 124,500 shares was not registered under the Securities Act in reliance on the exemption from registration provided by Section 4(2) thereof.

ITEM 6. SELECTED FINANCIAL DATA
**SELECTED CONSOLIDATED FINANCIAL INFORMATION OF
ARBOR REALTY TRUST, INC. AND SUBSIDIARIES**

The following tables present selected historical consolidated financial information as of December 31, 2005, 2004, and 2003, and for the years ended December 31, 2005, 2004, and for the period from June 24, 2003 (inception) to December 31, 2003. The selected historical consolidated financial information presented below under the captions "Consolidated Income Statement Data" and "Consolidated Balance Sheet Data" have been derived from our audited consolidated financial statements and include all adjustments, consisting only of normal recurring accruals, which management considers necessary for a fair presentation of the historical consolidated financial statements for such period. The information presented under the caption "Consolidated Income Statement Data" for the period ended December 31, 2003 is not necessarily indicative of any other interim period. In addition, since the information presented below is only a summary and does not provide all of the information contained in our historical consolidated financial statements, including the related notes, you should read it in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries" and our historical consolidated financial statements, including the related notes, included elsewhere in this report.

| | Year Ended December 31, 2005 | Year Ended December 31, 2004 | Period from June 24, 2003 (Inception) to December 31, 2003 |
|--|---------------------------------|---------------------------------|--|
| Consolidated Income Statement Data: | | | |
| Interest income | \$ 121,109,157 | \$ 57,927,230 | \$ 10,012,449 |
| Other income | 498,250 | 42,265 | 156,502 |
| Total revenue | 121,607,407 | 57,969,495 | 10,168,951 |
| Management fees — related party | 12,430,546 | 3,614,830 | 587,734 |
| Total expenses | 68,392,843 | 27,545,997 | 5,452,865 |
| Income from equity affiliates | 8,453,440 | 525,000 | — |
| Net income | 50,387,023 | 25,072,682 | 3,407,919 |
| Earnings per share, basic | 2.99 | 1.81 | 0.42 |
| Earnings per share, diluted(1)(2) | 2.98 | 1.78 | 0.42 |
| Dividends declared per common share(3) | 2.24 | 1.16 | 0.50 |
| Consolidated Balance Sheet Data | | | |
| | At December 31, 2005 | At December 31, 2004 | At December 31, 2003 |
| Loans and investments, net | \$ 1,246,825,906 | \$ 831,783,364 | \$ 286,036,610 |
| Related party loans, net | 7,749,538 | 7,749,538 | 35,940,881 |
| Total assets | 1,396,075,357 | 912,295,177 | 338,164,432 |
| Repurchase agreements | 413,624,385 | 409,109,372 | 113,897,845 |
| Collateralized debt obligations | 299,319,000 | — | — |
| Junior subordinated notes to subsidiary trust issuing preferred securities | 155,948,000 | — | — |
| Notes payable | 115,400,377 | 165,771,447 | 58,630,626 |
| Notes payable — related party | 30,000,000 | — | — |
| Total liabilities | 1,044,775,284 | 589,292,273 | 183,416,716 |
| Minority interest | 63,691,556 | 60,249,731 | 43,631,602 |
| Total stockholders' equity | 287,608,517 | 262,753,173 | 111,116,114 |

| | Year Ended December 31, 2005 | Year Ended December 31, 2004 | Period from June 24, 2003 (Inception) to December 31, 2003 |
|---|---------------------------------|---------------------------------|--|
| Other Data | | | |
| Total originations(4) | \$ 953,937,330 | \$ 782,301,133 | \$ 186,289,922 |
| <p>(1) In 2005, ACM, the manager of our Company, earned incentive management fees totaling \$9.9 million. Based on the terms of the management agreement, ACM elected to be paid its 2005 incentive management fees partially in cash totaling \$4.4 million and partially in common shares totaling 205,069, of which 57,370 were issued in 2006.</p> <p>(2) The warrants underlying the units issued in the private placement at \$75.00 per unit have an initial exercise price of \$15.00 per share and expired on July 1, 2005. This exercise price is equal to the price per share of common stock underlying the units and approximates the market value of our common stock at December 31, 2003. Therefore, the assumed exercise of the warrants was not considered to be dilutive for purposes of calculating diluted earnings per share.</p> <p>(3) On January 11, 2006, our board of directors authorized and we declared a distribution to our stockholders of \$0.70 per share of common stock, payable with respect to the quarter ended December 31, 2005, to stockholders of record at the close of business on January 23, 2006. We made this distribution on February 6, 2006.</p> <p>(4) Year ended December 31, 2005 originations are net of a \$59.4 million participation in one of our loans.</p> | | | |

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

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

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

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

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

Consolidated Statement of Revenue and Direct Operating Expenses Data:

| | Six Months Ended June 30, | | Year Ended December 31, | |
|---|---------------------------|--------------|-------------------------|---------------------|
| | 2003 | 2002 | 2002 | 2001 ⁽¹⁾ |
| | | (Unaudited) | | |
| Interest Income | \$ 7,688,465 | \$ 7,482,750 | \$ 14,532,504 | \$ 14,667,916 |
| Other income | 1,552,414 | 553,625 | 1,090,106 | 1,668,215 |
| Total revenue | 9,240,879 | 8,036,375 | 15,622,610 | 16,336,131 |
| Total direct operating expenses | 5,737,688 | 8,344,302 | 13,639,755 | 10,997,800 |
| 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 |
| Gain on sale of loans and real estate | 1,024,268 | 7,006,432 | 7,470,999 | 3,226,648 |
| Income from equity affiliates | — | 601,100 | 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 | 7,299,605 | 10,086,204 | 9,967,993 |

Consolidated Statement of Assets and Liabilities Data:

| | At December 31, | |
|---|-----------------|----------------|
| | 2002 | 2001 |
| 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 |
| Total assets | 200,563,236 | 183,713,747 |
| Notes payable and repurchase agreements | 141,836,477 | 132,409,735 |
| Total liabilities | 144,280,806 | 134,086,301 |
| Net assets | 56,282,430 | 49,627,446 |

Other Data (Unaudited):

| | Six Months Ended June 30, | | Year Ended December 31, | |
|--------------------|---------------------------|---------------|-------------------------|---------------|
| | 2003 | 2002 | 2002 | 2001 |
| Total Originations | \$ 117,965,000 | \$ 30,660,000 | \$ 130,043,000 | \$ 86,700,000 |

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

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

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

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

Overview

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

Our operating performance is primarily driven by the following factors:

- *Net interest income earned on our investments* — Net interest income represents the amount by which the interest income earned on our assets exceeds the interest expense incurred on our borrowings. If the yield earned on our assets increases or the cost of borrowings decreases, this will have a positive impact on earnings. Net interest income is also directly impacted by the size of our asset portfolio.
- *Credit quality of our assets* — Effective asset and portfolio management is essential to maximizing the performance and value of a real estate/mortgage investment. Maintaining the credit quality of our loans and investments is of critical importance. Loans that do not perform in accordance with their terms may have a negative impact on earnings.
- *Cost control* — We seek to minimize our operating costs, which consist primarily of employee compensation and related costs, management fees and other general and administrative expenses. As the size of the portfolio increases, certain of these expenses, particularly employee compensation expenses, may increase.

We are organized and conduct our operations to qualify as a real estate investment trust, or a REIT and to comply with the provisions of the Internal Revenue Code of 1986, as amended, or the Code with respect thereto. A REIT is generally not subject to federal income tax on that portion of its REIT-taxable income which is distributed to its stockholders provided that at least 90% of its REIT-taxable income is distributed and provided that certain other requirements are met. Certain of our assets that produce non-qualifying income may be held in taxable REIT subsidiaries. Unlike other subsidiaries of a REIT, the income of a taxable REIT subsidiary is subject to Federal and state income taxes. The provision for income taxes related to these taxable subsidiaries has not been material as they have had minimal activity.

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

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

combined with the concurrent equity contribution by ACM totaled approximately \$164.1 million in equity capital.

On April 13, 2004, we sold 6,750,000 shares of our common stock at a price to the public of \$20.00 per share, for net proceeds of approximately \$124.4 million after deducting the underwriting discount and the other estimated offering expenses. On May 11, 2004, we issued and sold 524,200 additional shares of common stock, for net proceeds of approximately \$9.8 million after deducting the underwriting discount pursuant to the exercise of a portion of the over-allotment option granted to the underwriters of our initial public offering. Additionally, as of December 31, 2005, we issued 1,256,130 shares of common stock from the exercise of warrants originally issued as a component of units on July 1, 2003, for proceeds of \$17.1 million.

Changes in Financial Condition

In 2005, we originated 54 loans and investments totaling \$1.0 billion (net of a \$59.4 million participation in one of our loans), of which \$792.1 million was funded as of December 31, 2005. Of the new loans and investments, 24 were mezzanine loans totaling \$431.1 million, 15 were bridge loans totaling \$322.9 million, nine were junior participating interests totaling \$168.0 million, three were preferred equity loans totaling \$18.8 million, and three were other loans totaling \$13.0 million. We have received full satisfaction of 38 loans totaling \$549.4 million and partial repayment on seven loans totaling \$25.0 million. Also, we had \$5.4 million of capital returned to us on three of our equity investments.

Since December 31, 2005, we have originated ten loans totaling approximately \$108.1 million. In addition, we have received \$75.1 million for the repayment in full of three loans and \$14.0 million for the partial repayment of five loans.

Our loan portfolio balance at December 31, 2005 was \$1.3 billion, with a weighted average current interest pay rate of 9.24%, as compared to \$842.5 million, with a weighted average current interest pay rate of 8.87%, at December 31, 2004. At December 31, 2005, advances on financing facilities totaled \$1.0 billion, with a weighted average funding cost of 6.57% (6.36% excluding a \$59.4 million participation in one of our loans), as compared to \$530.7 million, with a weighted average funding cost of 5.05%, at December 31, 2004. Additionally, our joint venture investment portfolio at December 31, 2005 was \$18.1 million as compared to \$5.3 million at December 31, 2004.

In January 2005, we completed a non-recourse collateralized debt obligation ("CDO") transaction, whereby a portfolio of real estate-related assets were contributed to a consolidated subsidiary which issued \$305 million of investment grade-rated floating-rate notes in a private placement. The subsidiary retained the equity interest in the portfolio with a value of approximately \$164 million. The notes are secured by a portfolio of real estate-related assets with a face value of approximately \$441 million, consisting primarily of bridge loans, mezzanine loans and junior participating interests in first mortgages, and by approximately \$28 million of cash available for acquisitions of loans and other permitted investments. The notes have an initial weighted average spread of approximately 77 basis points over three-month LIBOR. The facility has a four-year replenishment period that allows the principal proceeds from repayments of the collateral assets to be reinvested in qualifying replacement assets, subject to certain conditions. We intend to own the portfolio of real estate-related assets until its maturity and have accounted for this transaction on our balance sheet as a financing. These proceeds were used to repay outstanding debt with higher costs of funds. In connection with the CDO, we entered into an interest rate swap agreement to hedge its exposure to the risk of changes in the difference between three-month LIBOR and one-month LIBOR.

On January 11, 2006, we completed our second non-recourse collateralized debt obligation ("CDO II") transaction, whereby a portfolio of real estate-related assets were contributed to a consolidated subsidiary which issued \$356 million of investment grade-rated floating-rate notes in a private placement. The subsidiary retained an equity interest in the portfolio with a value of approximately \$119 million. The notes are secured by a portfolio of real estate-related assets with a face value of approximately \$412 million, consisting primarily of bridge loans, mezzanine loans and junior participating interests in first mortgages, and by approximately \$63 million of cash available for acquisitions of loans and other permitted investments. The notes have an initial weighted average spread of approximately 74 basis points over three-month LIBOR. The facility has a

five-year replenishment period that allows the principal proceeds from repayments of the collateral assets to be reinvested in qualifying replacement assets, subject to certain conditions. We intend to own the portfolio of real estate-related assets until its maturity and will account for this transaction on our balance sheet as a financing. These proceeds were used to repay outstanding debt with higher costs of funds. In connection with CDO II, we entered into an interest rate swap agreement to hedge our exposure to the risk of changes in the difference between three-month LIBOR and one-month LIBOR as well as interest rate swaps on current and future projected LIBOR-based debt relating to certain fixed rate loans in our portfolio.

Sources of Operating Revenues

We derive our operating revenues primarily through interest received from making real estate-related bridge and mezzanine loans and preferred equity investments. Interest income earned on these loans and investments represented approximately 83%, 96% and 98% of our total revenues in 2005, 2004, and for the period ended December 31, 2003, respectively.

Interest income is also derived from profits of equity participation interests. In 2005 and 2004, interest income from participation interests represented approximately \$19.7 million and \$1.2 million, or 16% and 2% of total revenues, respectively. No income was derived from this source in 2003.

We also derive interest income from our investments in mortgage related securities. In 2005 and 2004, interest on these investments represented approximately 1% and 2% of our total revenues, respectively. No income was derived from this source in 2003.

Additionally, we derive operating revenues from other income that represents loan structuring and miscellaneous asset management fees associated with our loans and investments portfolio. Revenue from other income represented less than 1%, less than 1% and 2% of our total revenues in 2005, 2004 and the period ended December 31, 2003, respectively.

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

We derive income from equity affiliates relating to joint ventures that were formed with equity partners to acquire, develop and/or sell real estate assets. These joint ventures are not majority owned or controlled by us, and are not consolidated in our financial statements. These investments are recorded under the equity method of accounting. We record our share of the net income and losses from the underlying properties on a single line item in the consolidated income statements as income from equity affiliates. The Company is not required to fund losses incurred by the joint venture. Therefore, the Company only recognizes its share of losses to the extent of its capital investment. In 2005 and 2004, income from equity affiliates totaled \$8.5 million and \$0.5 million, respectively.

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

Significant Accounting Estimates and Critical Accounting Policies

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

particularly important for an understanding of the financial position and results of operations presented in the historical consolidated financial statements included in this report and require the application of significant judgment by management and, as a result, are subject to a degree of uncertainty.

Loans and Investments

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

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

Specific valuation allowances are established for impaired loans based on the fair value of collateral on an individual loan basis. The fair value of the collateral is determined by an evaluation of operating cash flow from the property during the projected holding period, and estimated sales value computed by applying an expected capitalization rate to the stabilized net operating income of the specific property, less selling costs, discounted at market discount rates. If upon completion of the valuation, the fair value of the underlying collateral securing the impaired loan is less than the net carrying value of the loan, an allowance is created with a corresponding charge to the provision for loan losses. An allowance for each loan would be maintained at a level believed adequate by management to absorb probable losses. As of December 31, 2005, and 2004, no impairment has been identified and no valuation allowances have been established.

Repurchase Obligations

In certain circumstances, we have financed the purchase of investments from counterparty through a repurchase agreement with that same counterparty. We currently record these investments in the same manner as other investments financed with repurchase agreements, with the investment recorded as an asset and the related borrowing under any repurchase agreement as a liability on our consolidated balance sheet. Interest income earned on the investments and interest expense incurred on the repurchase obligations are reported separately on the consolidated income statement. There is discussion, based upon a technical interpretation of Statement of Financial Accounting Standards No. 140 "Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities a Replacement of FASB Statement No. 125" ("SFAS 140"), that these transactions may not qualify as a purchase by us. We believe, and it is industry practice, that we are accounting for these transactions in an appropriate manner, however, if these investments do not qualify as a purchase under SFAS 140, we would be required to present the net investment on our balance sheet as a derivative with the corresponding change in fair value of the derivative being recorded in the income statement. The value of the derivative would reflect not only changes in the value of the underlying investment, but also changes in the value of the underlying credit provided by the counterparty. As of December 31, 2005 we had entered into eight such transactions, with a book value of the associated assets of \$176.7 million financed with repurchase obligations of \$124.6 million. As of December 31, 2004, we had entered into eleven such transactions, with a book value of the associated assets of \$310.4 million financed with repurchase obligations of \$180.4 million. Adoption of the aforementioned treatment would result in these assets and liabilities being recorded net on our balance sheets.

Available-For-Sale Securities

We invest in agency-sponsored whole pool mortgage related securities. Pools of Federal National Mortgage Association, or FNMA, and Federal Home Loan Mortgage Corporation, or FHLMC, adjustable

rate residential mortgage loans underlie these mortgage related securities. We receive payments from the payments that are made on these underlying mortgage loans, which have a fixed rate of interest for three years and adjust annually thereafter. These securities are carried at their estimated fair value with unrealized gains and losses excluded from earnings and reported in other comprehensive income pursuant to SFAS No. 115 "Accounting for Certain Investments in Debt and Equity Securities." Unrealized losses other than temporary losses are recognized currently in income.

Capitalized Interest

The Company capitalizes interest in accordance with Statement of Financial Accounting Standards ("SFAS") No. 58 "Capitalization of Interest Costs in Financial Statements that Include Investments Accounted for by the Equity Method." This statement amended SFAS No. 34 "Capitalization of Interest Costs" to include investments (equity, loans and advances) accounted for by the equity method as qualifying assets of the investor while the investee has activities in progress necessary to commence its planned principal operations, provided that the investee's activities include the use of funds to acquire qualifying assets for its operations. An investee, in one of the Company's joint ventures accounted for using the equity method, is in the process of using funds to acquire qualifying assets for its planned principal operations. During the year ended December 31, 2005 the Company capitalized \$0.5 million of interest relating to this investment, there was no capitalization of interest during the year ended December 31, 2004, or in the period June 24, 2003 to December 31, 2003.

Revenue Recognition

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

Variable Interest Entities

In December 2003, the FASB issued Interpretation No. 46R, "Consolidation of Variable Interest Entities" ("FIN 46R") as a revision to FIN No. 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.

We have evaluated our loans and investments and investments in equity affiliates to determine whether they are variable interests in a VIE. This evaluation resulted in us determining that our mezzanine loans, preferred equity investments and investments in equity affiliates were potential variable interests. For each of these investments, we have evaluated (1) the sufficiency of the fair value of the entities' equity investments at risk to absorb losses, (2) that as a group the holders of the equity investments at risk have (a) the direct or indirect ability through voting rights to make decisions about the entities' significant activities, (b) the obligation to absorb the expected losses of the entity and their obligations are not protected directly or

indirectly, (c) the right to receive the expected residual return of the entity and their rights are not capped, (3) the voting rights of some of these investors are not proportional to their obligations to absorb the expected losses of the entity, their rights to receive the expected returns of the equity, or both, and that substantially all of the entities' activities do not involve or are not conducted on behalf of an investor that has disproportionately few voting rights. As of December 31, 2005, we have identified thirteen loans and investments which were made to entities determined to be VIE's. A summary of our identified VIE's is presented in Note 2 of our consolidated financial statements, which appear in "Financial Statements and Supplementary Data". However, for the thirteen VIE's identified, we have determined that we are not the primary beneficiaries and as such the VIE's should not be consolidated in our financial statements. For all other investments, we have determined they are not VIE's. As such, we have continued to account for these loans and investments as a loan or joint venture, as appropriate.

Derivatives and Hedging Activities

In accordance with Financial Accounting Statement ("FAS") 133, the carrying values of interest rate swaps and the underlying hedged liabilities are reflected at their fair value. We rely on quotations from a third party to determine these fair values. Changes in the fair value of these derivatives are either offset against the change in the fair value of the hedged liability through earnings or recognized in other comprehensive income until the hedged item is recognized in earnings. The ineffective portion of a derivative's change in fair value is immediately recognized in earnings. Derivatives that do not qualify for cash flow hedge accounting treatment are adjusted to fair value through income.

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

Recently Issued Accounting Pronouncements

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

In June 2005, the FASB ratified the consensus in EITF Issue No. 04-5, "Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights" ("Issue 04-5"), which provides guidance in determining whether a general partner controls a limited partnership. Issue 04-5 states that the general partner in a limited partnership is presumed to control that limited partnership. The presumption may be overcome if the limited partners have either (1) the substantive ability to dissolve the limited partnership or otherwise remove the general partner without cause or (2) substantive participating rights, which provide the limited partners with the ability to effectively participate in significant decisions that would be expected to be made in the ordinary course of the limited partnership's business and thereby preclude the general partner from exercising unilateral control over the partnership. The adoption of Issue 04-5 by us for new or modified limited partnership arrangements is effective June 30, 2005 and for existing limited partnership arrangements effective January 1, 2006. We do not expect that we will be required to consolidate our current unconsolidated joint venture investments nor do we expect Issue 04-5 to have a material effect on our consolidated financial statements.

In November 2005, the FASB issued FASB Staff Position (FSP) FAS 115-1 and 124-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*. The FASB addresses the determination of when an investment is considered impaired, whether that impairment is other than temporary, and the measurement of an impairment loss. The FSP also includes accounting considerations subsequent to the recognition of an other-than-temporary impairment and requires certain disclosures about unrealized losses that have not been recognized as other-than-temporary impairments. The FSP amends FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, FASB

Statement No. 124, *Accounting for Certain Investments Held by Not-for-Profit Organizations* and APB Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*. The FSP nullifies certain requirements of EITF Issue No. 03-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments* and supersedes EITF Abstracts, Topics D-44, *Recognition of Other-Than-Temporary Impairment upon the Planned Sale of a Security Whose Cost Exceeds Fair Value*. The FSP is required to be applied to reporting periods beginning after December 15, 2005. We do not expect adoption to have a material impact on the consolidated financial statements.

Results of Operations

The following table sets forth our results of operations for the years ended December 31, 2005 and 2004:

| | Year Ended December 31, | | Increase/(Decrease) | |
|---|-------------------------|---------------|---------------------|---------|
| | 2005 | 2004 | Amount | Percent |
| Revenue: | | | | |
| Interest income | \$ 121,109,157 | \$ 57,927,230 | \$ 63,181,927 | 109% |
| Other income | 498,250 | 42,265 | 455,985 | 1079% |
| Total revenue | 121,607,407 | 57,969,495 | 63,637,912 | 110% |
| Expenses: | | | | |
| Interest expense | 45,745,424 | 19,372,575 | 26,372,849 | 136% |
| Employee compensation and benefits | 4,274,609 | 2,325,727 | 1,948,882 | 84% |
| Stock based compensation | 1,590,898 | 324,343 | 1,266,555 | 390% |
| Selling and administrative | 4,351,366 | 1,908,522 | 2,442,844 | 128% |
| Management fee — related party | 12,430,546 | 3,614,830 | 8,815,716 | 244% |
| Total expenses | 68,392,843 | 27,545,997 | 40,846,846 | 148% |
| Income before minority interest and income from equity affiliates | 53,214,564 | 30,423,498 | 22,791,066 | 75% |
| Income from equity affiliates | 8,453,440 | 525,000 | 7,928,440 | 1510% |
| Income before minority interest | 61,668,004 | 30,948,498 | 30,719,506 | 99% |
| Income allocated to minority interest | 11,280,981 | 5,875,816 | 5,405,165 | 92% |
| Net income | \$ 50,387,023 | \$ 25,072,682 | \$ 25,314,341 | 101% |

Revenue

Interest income increased \$63.2 million, or 109%, to \$121.1 million in 2005 from \$57.9 million in 2004. This increase was due in part to a distribution of \$17.2 million in 2005 representing a 16.7% carried profits interest in a \$30.1 million mezzanine loan that we have outstanding. This distribution was a result of excess proceeds from the refinance of a portfolio of properties securing the loan. Excluding this transaction, interest income increased \$46.0 million, or 79%, over the same period. This increase was due to a 50% increase in the average balance of the loan and investment portfolio from \$653.1 million in 2004 to \$978.8 million in 2005 due to increased loan and investment originations, as well as an 18% increase in the average yield on the assets from 8.8% in 2004 to 10.4% in 2005 primarily due to increased market interest rates, partially offset by an increased average balance of our fixed rate loan portfolio. Interest income from available for sale securities decreased \$0.3 million, or 25%, to \$0.8 million in 2005 from \$1.1 million in 2004. This decrease is due to a lower average balance in 2005 as a result of prepayments received on our investment.

Other income totaled \$0.5 million in 2005, up from \$42,265 in 2004. This is primarily due to increased structuring fees received for services rendered in arranging loan facilities in 2005.

Expenses

Interest expense increased \$26.4 million, or 136%, to \$45.7 million in 2005 from \$19.4 million in 2004. This increase was due to an 87% increase in the average debt financing on our loan and investment portfolio from \$383.8 million in 2004 to \$717.5 million in 2005 due to increased loan and portfolio originations, a 29% increase in the average cost of borrowings from 4.8% to 6.2% as a result of increased market interest rates, as well as the cost of interest rate swaps on our variable rate debt associated with certain of our fixed rate loans. In addition, interest expense on debt financing of our available-for-sale securities portfolio increased \$0.6 million, or 100%, to \$1.3 million in 2005 from \$0.6 million in 2004. This increase is due to a higher cost of borrowings in 2005 as a result of increased market interest rates, partially offset by a lower average balance in 2005 as a result of prepayments received on our investment.

Employee compensation and benefits expense increased \$1.9 million or 84%, to \$4.3 million in 2005 from \$2.3 million in 2004. This increase was primarily due to the expansion of staffing needs associated with the growth of the business and increased size of our portfolio. These expenses represent salaries, benefits, and incentive compensation for those employed by us during these periods.

Stock-based compensation expense totaled \$1.6 million in 2005, up from \$0.3 million in 2004. These expenses represent the cost of restricted stock granted to certain of our employees, directors and executive officers, and employees of our manager. The increase was primarily due to the initial one-fifth vesting of 118,500 shares granted in 2005 combined with the initial one-third vesting of 6,000 shares granted in 2005, partially offset by a decrease in the ratable portion of the 2003 unvested restricted stock grants in 2005 as compared to 2004.

Selling and administrative expense increased \$2.4 million, or 128%, to \$4.4 million in 2005 from \$1.9 million in 2004. This increase is directly attributable to professional fees, including legal, accounting services, and consulting fees relating to investor relations and Sarbanes-Oxley compliance, marketing costs, insurance expense and director's fees.

Management fees totaled \$12.4 million in 2005, up from \$3.6 million in 2004. These amounts represent compensation in the form of base management fees and incentive management fees as provided for in the management agreement with our manager. The base management fees increased by \$0.5 million, or 27%, to \$2.5 million in 2005 from \$2.0 million in 2004. This increase was primarily due to increased stockholder's equity directly attributable to increased profits and contributed capital over the same period in 2004. The incentive management fees totaled \$9.9 million in 2005, up from \$1.6 million in 2004. This increase was primarily due to increased profitability.

Income From Equity Affiliates

Income from equity affiliates totaled \$8.5 million in 2005, up from \$0.5 million in 2004. This increase was primarily due to excess proceeds received from the refinance of properties in the portfolio of one of our investments in equity affiliates in 2005.

Income Allocated to Minority Interest

Income allocated to minority interest increased \$5.4 million, or 92%, to \$11.3 million in 2005 from \$5.9 million in 2004. These amounts represent the portion of our income allocated to our manager. This increase was due to a 99% increase in income before minority interest, partially offset by a decrease in our manager's limited partnership interest in us. Our manager had a weighted average limited partnership interest of 18.3% and 20.1% in our operating partnership in 2005 and 2004, respectively.

[Table of Contents](#)

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

| | | Period June 24, 2003 (Inception) to December 31, | Increase/(Decrease) | |
|--|----------------------------|---|---------------------|---------|
| | Year Ended December 31, | | | |
| | 2004 | 2003 | Amount | Percent |
| Revenue: | | | | |
| Interest income | \$ 57,927,230 | \$ 10,012,449 | \$ 47,914,781 | 479% |
| Other income | 42,265 | 156,502 | (114,237) | (73)% |
| Total revenue | 57,969,495 | 10,168,951 | 47,800,544 | 470% |
| Expenses: | | | | |
| Interest expense | 19,372,575 | 1,669,731 | 17,702,844 | 1060% |
| Employee compensation and benefits | 2,325,727 | 940,336 | 1,385,391 | 147% |
| Stock based compensation | 324,343 | 1,721,367 | (1,397,024) | (81)% |
| Selling and administrative | 1,908,522 | 533,697 | 1,374,825 | 258% |
| Management fee — related party | 3,614,830 | 587,734 | 3,027,096 | 515% |
| Total expenses | 27,545,997 | 5,452,865 | 22,093,132 | 405% |
| Income before minority interest and income from equity affiliates | 30,423,498 | 4,716,086 | 25,707,412 | 545% |
| Income from equity affiliates | 525,000 | — | 525,000 | n/m |
| Income before minority interest | 30,948,498 | 4,716,086 | 26,232,412 | 556% |
| Income allocated to minority interest | 5,875,816 | 1,308,167 | 4,567,649 | 349% |
| Net income | \$ 25,072,682 | \$ 3,407,919 | \$ 21,664,763 | 636% |

Revenue

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

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

Expenses

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

portfolio in 2004 was \$0.6 million, with an average debt financing on our available for sale securities balance of \$50.3 million and an average yield of 1.24%. There was no interest expense recorded from available for sale securities during the period ended December 31, 2003.

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

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

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

Management fees totaled \$3.6 million in 2004, up from \$0.6 million for the period ended December 31, 2003. This increase was directly attributable to a full year's results in 2004 as compared to a partial year's results in 2003, combined with \$1.6 million in incentive management fees recorded in 2004 not earned during the period ended December 31, 2003 due to the requirements for incentive compensation not satisfied, as well as an increase in the average base management fees associated with increased stockholder's equity directly attributable to greater profits and contributed capital.

Income From Equity Affiliates

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

Income Allocated to Minority Interest

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

Liquidity and Capital Resources

Sources of Liquidity

Liquidity is a measurement of the ability to meet potential cash requirements, including ongoing commitments to repay borrowings, pay dividends, fund loans and investments and other general business needs. Our primary sources of funds for liquidity consist of funds raised from our private equity offering in July 2003, net proceeds from our initial public offering of our common stock in April 2004, the issuance of floating

[Table of Contents](#)

rate notes resulting from our CDO's (described below) in January 2005 and January 2006, the issuance of junior subordinated notes to subsidiary trusts issuing preferred securities (described below) in 2005, borrowings under credit agreements, net cash provided by operating activities including cash from equity participation interests, repayments of outstanding loans and investments, funds from junior loan participation arrangements and the future issuance of common, convertible and/or preferred equity securities.

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

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

We also maintain liquidity through four master repurchase agreements, one warehouse credit facility and one bridge loan warehousing credit agreement with five different financial institutions. In addition, we have issued two collateralized debt obligations and five separate junior subordinated notes. London interbank offered rate, or LIBOR, refers to one-month LIBOR unless specifically stated.

We have a \$350.0 million master repurchase agreement with Wachovia Bank National Association, dated as of December 23, 2003, with a term of three years and bears interest at LIBOR plus pricing of 0.94% to 3.50%, varying on the type of asset financed. In July 2004, this repurchase agreement was amended increasing the amount of available financing from \$250 million to \$350 million and amending certain terms of this agreement. In December 2005, we amended this facility on a temporary basis which provided for an increase in the amount of financing available under this facility from \$350 million to \$500 million. This increase expired in January of 2006 in conjunction with the close of CDO II. At December 31, 2005, the outstanding balance under this facility was \$380.5 million with a current weighted average note rate of 6.37%. Subsequent to December 31, 2005, \$203 million of this facility was paid down in connection with the CDO II closing (see below). In addition, we have a \$100 million repurchase agreement with the same financial institution that we entered into for the purpose of financing our securities available for sale. This agreement expires in July 2006 and has an interest rate of LIBOR plus 0.20%. At December 31, 2005, the outstanding balance under this facility was \$28.4 million with a current weighted average note rate of 4.48%.

We have a \$100.0 million master repurchase agreement with a second financial institution, effective in December 2005, that has a term expiring in December 2006 and bears interest at LIBOR plus pricing of 1.00% to 3.00%, varying on the type of asset financed. At December 31, 2005, the outstanding balance under this facility was \$4.7 million with a current weighted average note rate of 5.37%.

We have a \$50.0 million master repurchase agreement with a third financial institution, dated as of July 1, 2003, which matures in July 2006 and bears interest at LIBOR plus pricing of 1.75% to 3.50%, varying on the type of asset financed. This facility has not yet been utilized.

We have a \$50.0 million bridge loan warehousing credit agreement with a fourth financial institution, to provide financing for bridge loans. This agreement expires in June 2006 and bears a variable rate of interest, payable monthly, based on Prime plus 0% or 1,2,3 or 6-month LIBOR plus 1.75%, at the Company's option. At December 31, 2005, the outstanding balance under this facility was \$46.5 million with a current weighted average note rate of 6.32%.

We have a \$50.0 million warehousing credit facility with a fifth financial institution, effective in December 2005, that has a term expiring in December 2007 and bears interest at LIBOR plus pricing of 2.00% to 2.50%, varying on the type of asset financed. At December 31, 2005, the outstanding balance under this facility was \$2.6 million with a current weighted average note rate of 6.68%.

[Table of Contents](#)

We had a \$50.0 million warehouse credit facility with a sixth financial institution, who beneficially owned approximately 2% of our outstanding common stock as of December 31, 2005 which was subsequently terminated in January 2006. This agreement had a term of one year with two six-month extension periods and bore interest at LIBOR plus 6.00%. At December 31, 2005, the outstanding balance under this facility was \$30.0 million with a current weighted average note rate of 10.29%.

We had a \$50.0 million unsecured revolving credit agreement with a seventh financial institution, which was terminated in December 2005. This agreement had a term of one year with two one-year extension options and an interest rate of LIBOR plus 7.00%.

We have a non-recourse collateralized debt obligation transaction or CDO, which closed on January 19, 2005, whereby \$469 million of real estate related and other assets were contributed to a newly-formed consolidated subsidiary which issued \$305 million of investment grade-rated floating-rate notes in a private placement. These notes are secured by the portfolio of assets and pay interest quarterly at a weighted average rate of approximately 77 basis points over a floating rate of interest based on three-month LIBOR. The CDO may be replenished with substitute collateral for loans that are repaid during the first four years. Thereafter, the outstanding debt balance will be reduced as loans are repaid. Proceeds from the CDO were used to repay outstanding debt under our existing facilities totaling \$267 million. By contributing these real estate assets to the CDO, this transaction resulted in a decreased cost of funds relating to the CDO assets and created capacity in our existing credit facilities. At December 31, 2005, the outstanding balance under this facility was \$299.3 million with a weighted average current note rate of 4.93%. Proceeds from the repayment of assets which serve as collateral for our CDO must be retained in the CDO structure until such collateral can be replaced or used to paydown the secured notes and therefore not available to fund current cash needs. If such cash is not used to replenish collateral, it could have a negative impact on our anticipated returns. For accounting purposes, CDO is consolidated in our financial statements.

On January 11, 2006, we completed our second non-recourse collateralized debt obligation transaction, or CDO II, whereby \$475 million of real estate related and other assets were contributed to a newly-formed consolidated subsidiary which issued \$356 million of investment grade-rated floating-rate notes in a private placement. These notes are secured by the portfolio of assets and pay interest quarterly at a weighted average rate of approximately 74 basis points over a floating rate of interest based on three-month LIBOR. CDO II may be replenished with substitute collateral for loans that are repaid during the first five years. Thereafter, the outstanding debt balance will be reduced as loans are repaid. Proceeds from CDO II were used to repay outstanding debt under our existing facilities totaling \$301 million. By contributing these real estate assets to CDO II, this transaction resulted in a decreased cost of funds relating to CDO II's assets and created capacity in our existing credit facilities. Proceeds from the repayment of assets which serve as collateral for CDO II must be retained in its structure until such collateral can be replaced and therefore not available to fund current cash needs. If such cash is not used to replenish collateral, it could have a negative impact on our anticipated returns. For accounting purposes, CDO II is consolidated in our financial statements.

In 2005, we, through newly-formed wholly-owned subsidiaries of our operating partnership, issued a total of \$155.9 million of junior subordinated notes in five separate private placements, described in Note 6 "Debt Obligations" of our consolidated financial statements, which appears in "Financial Statements and Supplementary Data — Consolidated Financial Statements of Arbor Realty Trust, Inc. and Subsidiaries." These securities are unsecured, have a maturity of 29 to 30 years, pay interest quarterly at a floating rate of interest based on three-month LIBOR and, absent the occurrence of special events, are not redeemable during the first five years. At December 31, 2005, the outstanding balance under these facilities was \$155.9 million with a current weighted average note rate of 7.53%.

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

The warehouse credit agreement, bridge loan warehousing credit agreement, and the 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.

As of December 31, 2005, these facilities had an aggregate capacity of \$1.4 billion and borrowings were approximately \$1.0 billion.

Each of the credit facilities contains various financial covenants and restrictions, including minimum net worth and debt-to-equity ratios. In addition to the financial terms and capacities described above, our credit facilities generally contain covenants that prohibit us from effecting a change in control, disposing of or encumbering assets being financed and restrict us from making any material amendment to our underwriting guidelines without approval of the lender. If we violate these covenants in any of our credit facilities, we could be required to repay all or a portion of our indebtedness before maturity at a time when we might be unable to arrange financing for such repayment on attractive terms, if at all. Violations of these covenants may result in our being unable to borrow unused amounts under our credit facilities, even if repayment of some or all borrowings is not required. As of December 31, 2005, we are in compliance with all covenants and restrictions under these credit facilities.

We have a junior loan participation with a total outstanding balance at December 31, 2005 of \$6.8 million. This participation borrowing has a maturity date equal to the corresponding mortgage loan and is secured by the participant's interest in the mortgage loan. Interest expense is based on a portion of the interest received from the loan.

In 2005, we have entered into two junior loan participations with a total outstanding balance at December 31, 2005 of \$59.5 million. These participation borrowings have maturity dates equal to the corresponding mortgage loan and are secured by the participant's interest in the mortgage loan. Interest expense is based on a portion of the interest received from the loan.

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

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

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

Contractual Commitments

As of December 31, 2005, we had the following material contractual obligations (payments in thousands):

| Contractual Obligations | Payments Due by Period(1) | | | | |
|---|---------------------------|-------------------|-------------------|-------------------|---------------------|
| | 2006 | 2007-2008 | 2009-2010 | Thereafter | Total |
| Notes payable | \$ 8,255 | \$ 59,966 | \$ 10,903 | \$ — | \$ 79,124 |
| Collateralized debt obligations(2) | — | — | 299,319 | — | 299,319 |
| Repurchase agreements(3) | 69,675 | 247,221 | 37,355 | 59,374 | 413,625 |
| Trust preferred securities | — | — | — | 155,948 | 155,948 |
| Loan participations | 6,878 | 59,400 | — | — | 66,278 |
| Outstanding unfunded commitments(4) | 11,442 | 34,329 | 4,110 | — | 49,881 |
| Interest rate swaps, treated as hedges(5) | N/A | N/A | N/A | N/A | N/A |
| Non-hedge derivative obligations(5) | N/A | N/A | N/A | N/A | N/A |
| Management fee(6) | N/A | N/A | N/A | N/A | N/A |
| Totals | <u>\$ 96,250</u> | <u>\$ 400,916</u> | <u>\$ 351,687</u> | <u>\$ 215,322</u> | <u>\$ 1,064,175</u> |

- (1) Represents amounts due based on contractual maturities.
- (2) Comprised of \$299,319,000 of CDO I debt with a weighted average remaining maturity of 3.7 years as of December 31, 2005.
- (3) In connection with the CDO II transaction in January 2006, \$31 million of a notes payable facility scheduled to mature in 2007, \$29 million of the repurchase agreement scheduled to mature in 2006, \$139 million of the repurchase agreements scheduled to mature in 2007-2008, \$37 million of the repurchase agreements scheduled to mature in 2009-2010, and \$59 million of the repurchase agreements scheduled to mature after 2010 were repaid. CDO II has a five-year replenishment period.
- (4) In accordance with certain of our loans and investments, we have outstanding unfunded commitments of \$49.9 million as of December 31, 2005, that we are obligated to fund as the borrowers meet certain requirements. Specific requirements include but are not limited to property renovations, building construction, and building conversions based on criteria met by the borrower in accordance with the loan agreements.
- (5) These contracts do not have fixed and determinable payments.
- (6) This contract does not have fixed and determinable payments; refer to section entitled "Management Agreement" below.
- (7) We have contractual obligations to make future payments in connection with short-term and long-term debt described in the section entitled "Liquidity and Capital Resources."

Management Agreement

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

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

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

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

The base management fee is not calculated based on the manager's performance or the types of assets its selects for investment on our behalf, but it is affected by the performance of these assets because it is based on the value of our operating partnership's equity. We incurred \$2.5 million and \$2.0 million in base management fees for services rendered in 2005 and 2004, respectively.

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

(1) 25% of the amount by which:

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

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

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

In 2005, our manager earned a total of \$9.9 million of incentive compensation and elected to receive it partially in cash totaling \$4.4 million and partially in 205,069 shares of common stock. In 2004, our manager earned \$1.6 million of incentive compensation which was paid in 66,141 shares of common stock.

We pay the annual incentive compensation in four installments, each within 60 days of the end of each fiscal quarter. The calculation of each installment is based on results for the 12 months ending on the last day of the fiscal quarter for which the installment is payable. These installments of the annual incentive compensation are subject to recalculation and potential reconciliation at the end of such fiscal year. Subject to the ownership limitations in our charter, at least 25% of this incentive compensation is payable to our manager in shares of our common stock having a value equal to the average closing price per share for the last 20 days of the fiscal quarter for which the incentive compensation is being paid.

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

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

Term and Termination. The management agreement has an initial term of two years and is renewable automatically for an additional one year period every year thereafter, unless terminated with six months' prior written notice. If we terminate or elect not to renew the management agreement in order to manage our portfolio internally, we are required to pay a termination fee equal to the base management fee and incentive

compensation for the 12-month period preceding the termination. If, without cause, we terminate or elect not to renew the management agreement for any other reason, including a change of control of us, we are required to pay a termination fee equal to two times the base management fee and incentive compensation paid for the 12-month period preceding the termination.

Inflation

In our two most recent fiscal years, inflation and changing prices have not had a material effect on our net income and revenue. Changes in the general level of interest rates prevailing in the economy in response to changes in the rate of inflation generally have little effect on our income because the majority of our interest-earning assets and interest-bearing liabilities have floating rates of interest. Additionally, we also have various fixed rate loans in our portfolio which are financed with variable rate LIBOR borrowings. In connection with these loans, we have entered into various interest swaps to hedge our exposure to the interest rate risk on our variable rate LIBOR borrowings as it relates to certain fixed rate loans in our portfolio. However, the value of our interest-earning assets, our ability to realize gains from the sale of assets, and the average life of our interest-earning assets, among other things, may be effected. See Item 7A — “Quantitative and Qualitative Disclosures about Market Risk.”

Related Party Transactions

Related Party Loans

As of December 31, 2005 and 2004, we had a \$7.75 million first mortgage loan receivable that bore interest at a variable rate of one month LIBOR plus 4.25% and was scheduled to mature in March 2005. In March 2005, this loan was extended for one year with no other change in terms. This loan was made to a not-for-profit corporation that holds and manages investment property from the endowment of a private academic institution. Two of our directors are members of the board of trustees of the borrower and the private academic institution. Interest income recorded from this loan for the year ended December 31, 2005 and 2004, was approximately \$0.6 million and \$0.9 million, respectively.

ACM had a 50% non-controlling interest in a joint venture, which was formed to acquire, develop and/or sell real estate assets. In 2005, ACM received all of the invested capital and retained its interest in the joint venture. All loans outstanding to this joint venture were repaid in full in 2004. In 2003, we had a \$16.0 million bridge loan outstanding to the joint venture, which was collateralized by a first lien position on a commercial real estate property. This loan was funded by ACM in June 2003 and was purchased by us in July 2003. The loan required monthly interest payments based on one month LIBOR and was repaid in full in 2004. We had agreed to provide the borrower with additional mezzanine financing in the amount of up to \$8.0 million. The mezzanine financing required interest payments based on one month LIBOR and was repaid in full in 2004.

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

At the time of ACM's origination of three of the structured finance assets that it contributed to us on July 1, 2003 at book value, which approximates fair value, each of the property owners related to these contributed assets granted ACM participating interests that share in a percentage of the cash flows of the underlying properties. Upon contribution of the structured finance assets, ACM retained these participating interests and its 50% non-controlling interest in the joint venture to which it had made the \$16.0 million bridge loan. ACM agreed that if any portion of the outstanding amount of any of these four contributed assets is not paid at its maturity or repurchase date, ACM will pay to us, subject to the limitation described below, the portion of the unpaid amount of the contributed asset up to the total amount then received by ACM due to the realization of any profits on its retained interests associated with any of the four contributed assets (which had an aggregate balance of \$22.3 million and \$48.3 million as of December 31, 2004 and 2003, respectively). However, ACM will no longer be obligated to make such payments to us when the remaining accumulated

principal amount of the four contributed assets, collectively, falls below \$5 million and none of the four contributed assets were in default. In 2004 and 2005, these four investments matured, the borrowers paid the amounts due in full and ACM's guarantee on these investments have been satisfied.

In 2005, ACM received a brokerage fee for services rendered in arranging a loan facility for a borrower. We provided a portion of the loan facility. We were credited \$0.4 million of this brokerage fee, which was included in other income.

As of December 31, 2005 and 2004, \$0.2 million and \$0.6 million, respectively of escrows received at loan closings were due to ACM and included in due to related party. These payments were remitted in January 2005 and January 2006, respectively. In addition, as of December 31, 2005, approximately \$0.1 million of net expenses due from ACM were included in due to related party. These payments were remitted in January 2006. Also, as of December 31, 2004, approximately \$0.3 million of interest payments from borrowers due from ACM were included in due to related party. These payments were remitted in January 2005.

Other Related Party Transactions

ACM contributed the majority of its structured finance portfolio to our operating partnership pursuant to a contribution agreement. The contribution agreement contains representations and warranties concerning the ownership and terms of the structured finance assets it contributed and other customary matters. ACM has agreed to indemnify us and our operating partnership against breaches of those representations and warranties. In exchange for ACM's asset contribution, we issued to ACM approximately 3.1 million operating partnership units, each of which ACM may redeem for one share of our common stock or an equivalent amount in cash, at our election, and approximately 629,000 warrants, each of which entitled ACM to purchase one additional operating partnership unit at an initial exercise price of \$15.00. The operating partnership units and warrants for additional operating partnership units issued to ACM were valued at approximately \$43.9 million at July 1, 2003, based on the price offered to investors in our units in the private placement, adjusted for the initial purchaser's discount. We also granted ACM certain demand and other registration rights with respect to the shares of common stock issuable upon redemption of its operating partnership units. In 2004, ACM exercised all of its warrants for a total of 629,345 operating partnership units and proceeds of \$9.4 million.

Each of the approximately 3.8 million operating partnership units owned by ACM is paired with one share of our special voting preferred stock that entitles the holder to one vote on all matters submitted to a vote of our stockholders. As operating partnership units are redeemed for shares of our common stock or cash an equivalent number of shares of special voting preferred stock will be redeemed and cancelled. As a result of the ACM asset contribution and the related formation transactions, ACM owns approximately an 18% limited partnership interest in our operating partnership and the remaining 82% interest in our operating partnership is owned by us. In addition, ACM has approximately 18% of the voting power of our outstanding stock.

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

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

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

We are dependent upon our manager, ACM, to provide services to us that are vital to our operations with whom we have conflicts of interest. Our chairman, chief executive officer and president, Mr. Ivan Kaufman, is

[Table of Contents](#)

also the chief executive officer and president of our manager, and, our chief financial officer, Mr. Paul Elenio, is the chief financial officer of our manager. In addition, Mr. Kaufman and the Kaufman entities together beneficially own approximately 90% of the outstanding membership interests of ACM and certain of our employees and directors, also hold an ownership interest in ACM. Furthermore, one of our directors also serves as the trustee of one of the Kaufman entities that holds a majority of the outstanding membership interests in ACM and co-trustee of another Kaufman entity that owns an equity interest in our manager. ACM currently holds an 18% limited partnership interest in our operating partnership and 18% of the voting power of our outstanding stock.

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

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

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

Overview and Basis of Presentation

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

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

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

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

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

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

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.

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.

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

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

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

Significant Accounting Estimates and Critical Accounting Policies

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

Real Estate Owned

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

Loans and Investments

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

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

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

Revenue Recognition

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

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

Results of Operations

Six Months Ended June 30, 2003 and 2002

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

| | Six Months Ended June 30, | | Increase | |
|-----------------|------------------------------|---------------------|---------------------|------------|
| | 2003 | 2002 (Unaudited) | 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 | <u>\$ 9,240,879</u> | <u>\$ 8,036,375</u> | <u>\$ 1,204,504</u> | <u>15%</u> |

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

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

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

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

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

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

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

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

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

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

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

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

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

We were formed in June 2003 to operate as a real estate investment trust and to expand the structured finance business of ACM. On July 1, 2003, we completed a private placement of our units, each consisting of five shares of our common stock and one warrant to purchase one share of our common stock. Gross proceeds from the private placement totaled \$120.2 million. In exchange for a commensurate equity ownership in our operating subsidiary, ACM contributed \$213.1 million of structured finance assets subject to \$169.2 million of borrowings supported by \$43.9 million of equity. These assets and liabilities were contributed at book value,

which approximates fair value, and represent 88% of the assets and 98% of the liabilities of ACM's structured finance business as of June 30, 2003. In addition, certain employees of ACM were transferred to us.

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

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

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

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

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

contribution of structured finance assets to Arbor Realty Trust, but were in the portfolio of assets of the structured finance business of ACM during the reporting period are also included in these statements.

Liquidity and Capital Resources

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

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

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

Related Party Transactions

Related Party Loans

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

In June 2003, ACM invested approximately \$0.8 million in exchange for a 12.5% non-controlling interest in a joint venture, which were formed to acquire, develop and/or sell real estate assets. This investment is accounted for under the equity method. In June, 2003, ACM made two mezzanine loans secured by a second lien position in the ownership interests of the borrower and the property to these joint ventures totaling \$6.0 million outstanding. The loans require monthly interest payments based on one month LIBOR and mature in May 2006. Interest income recorded from these loans was approximately \$8,000 for the period ended June 30, 2003.

Related Party Formation Transactions

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

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

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

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

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

Quantitative and Qualitative Disclosures about Market Risk

Since the consummation of the private placement and the related formation transactions, substantially all of the operations of the structured finance business of ACM have been conducted by us. Therefore, quantitative and qualitative disclosures about market risk relating to the structured finance business of ACM are not presented. A description of market risks relating to our business is presented in this Item 7A of this report under "Quantitative and Qualitative Disclosures about Market Risk."

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

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

Real Estate Risk

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

Interest Rate Risk

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

Our operating results will depend in large part on differences between the income from our loans and our borrowing costs. Most of our loans and borrowings are variable-rate instruments, based on LIBOR. The objective of this strategy is to minimize the impact of interest rate changes on our net interest income. In addition, we have various fixed rate loans in our portfolio, which are financed with variable rate LIBOR borrowings. We have entered into various interest swaps (as discussed below) to hedge our exposure to interest rate risk on our variable rate LIBOR borrowings as it relates to our fixed rate loans. Many of our loans and borrowings are subject to various interest rate floors. As a result, the impact of a change in interest rates may be different on our interest income than it is on our interest expense.

Based on the loans and liabilities as of December 31, 2005, and assuming the balances of these loans and liabilities remain unchanged for the subsequent twelve months, a 1% increase in LIBOR would increase our annual net income and cash flows by approximately \$2.0 million primarily due to the fact that the principal amount of loans subject to interest rate adjustment exceeds the liabilities that would be subject to an interest rate adjustment. This is primarily due to our interest rate swaps that effectively convert a portion of the variable rate LIBOR based debt, as it relates to certain fixed rate assets, to a fixed basis that is not subject to a 1% increase. Based on the loans and liabilities as of December 31, 2005, and assuming the balances of these loans and liabilities remain unchanged for the subsequent twelve months, a 1% decrease in LIBOR would decrease our annual net income and cash flows by approximately \$1.1 million. This is primarily due to our interest rate swaps that effectively convert a portion of the variable rate LIBOR based debt, as it relates to certain fixed rate assets, to a fixed basis that is not subject to a 1% decrease, partially offset by loans currently subject to interest rate floors (and, therefore, not be subject to the full downward interest rate adjustment).

As of December 31, 2004, a 1% increase in LIBOR would have increased our annual net income and cash flows in the subsequent twelve months by approximately \$2.3 million as the principal amount of loans subject to interest rate adjustment exceeds the liabilities that would be subject to an interest rate adjustment. As of December 31, 2004, a 1% decrease in LIBOR would have decreased our annual net income and cash flows in the subsequent twelve months by approximately \$1.7 million as the principal amount of loans subject to interest rate adjustment exceeds the liabilities that would be subject to an interest rate adjustment, partially

offset by loans currently subject to interest rate floors (and, therefore, not be subject to the full downward interest rate adjustment).

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

We invest in securities, which are designated as available-for-sale. These securities are adjustable rate securities that have a fixed component for three years and, thereafter, generally reset annually. These securities are financed with a repurchase agreement that bears interest at a rate of one month LIBOR plus .20%. Since the repricing of the debt obligations occurs more quickly than the repricing of the securities, on average, our cost of borrowings will rise more quickly in response to an increase in market interest rates than the earnings rate on the securities. This will result in a reduction to our net interest income and cash flows related to these securities. Based on the securities and borrowings as of December 31, 2005, and assuming the balances of these securities and borrowings remain unchanged for the subsequent twelve months, a 1% increase in LIBOR would reduce our annual net income and cash flows by approximately \$0.3 million. A 1% decrease in LIBOR would increase our annual net income and cash flows by approximately \$0.3 million. As of December 31, 2004, assuming the balances of these securities and borrowings remained unchanged for the subsequent twelve months, a 1% increase in LIBOR would have reduced our annual net income and cash flows by approximately \$0.4 million. A 1% decrease in LIBOR would have increased our annual net income and cash flows by approximately \$0.4 million.

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

These swaps were executed on December 21, 2004 and December 22, 2005 having notional values of \$469.0 million and \$288.3 million, respectively, as described in Note 2 "Summary of Significant Accounting Policies" of our consolidated financial statements, which appears in "Financial Statements and Supplementary Data — Consolidated Financial Statements of Arbor Realty Trust, Inc. and Subsidiaries." The market value of these interest rate swaps is dependent upon existing market interest rates and swap spreads, which change over time. As of December 31, 2005, if there were a 50 basis point increase in forward interest rates, the value of these interest rate swaps would have decreased by slightly more than \$0.1 million, if there were a 50 basis point decrease in forward interest rates, the value of these interest rate swaps would have increased by slightly less than \$0.1 million. As of December 31, 2004, if there had been a 50 basis point increase in forward interest rates, the value of these interest rate swaps would have decreased by approximately \$25,000, if there had been a 50 basis point decrease in forward interest rates, the value of these interest rate swaps would have increased by approximately \$21,000.

In connection with the issuance of variable rate junior subordinate notes during 2005 as described in Note 6 "Debt Obligations" of ART's consolidated financial statements, we entered into two interest rate swap agreements in June 2005 with total notional values of \$50 million as described in Note 2 "Summary of Significant Accounting Policies" of our consolidated financial statements, which appears in "Financial Statements and Supplementary Data — Consolidated Financial Statements of Arbor Realty Trust, Inc. and Subsidiaries." The market value of these interest rate swaps is dependent upon existing market interest rates and swap spreads, which change over time. As of December 31, 2005 if there had been a 50 basis point increase in forward interest rates, the fair market value of these interest rate swaps would have increased by approximately \$0.9 million. If there were a 50 basis point decrease in forward interest rates, the fair market value of these interest rate swaps would have decreased by approximately \$0.9 million.

In December 2005, we entered into two interest rate swap agreements having notional values of \$134.1 million and \$6.0 million, as described in Note 2 "Summary of Significant Accounting Policies" of

ART's consolidated financial statements, to hedge current and outstanding LIBOR based debt relating to certain fixed rate loans within our portfolio. The fair market value of these interest rate swaps is dependent upon existing market interest rates and swap spreads, which change over time. As of December 31, 2005 if there had been a 50 basis point increase in forward interest rates, the fair market value of these interest rate swaps would have increased by approximately \$4.7 million. If there were a 50 basis point decrease in forward interest rates, the fair market value of these interest rate swaps would have decreased by approximately \$4.7 million.

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

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

Market Value Risk

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

Prepayment Risk

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

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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

| | <u>Page</u> |
|---|-------------|
| Report of Independent Registered Public Accounting Firm | 55 |
| Consolidated Balance Sheets at December 31, 2005 and 2004 | 56 |
| Consolidated Income Statements for the years ended December 31, 2005, 2004, and for the period June 24, 2003 (Inception) to December 31, 2003 | 57 |
| Consolidated Statements of Stockholders' Equity for the years ended December 31, 2005, 2004 and for the period June 24, 2003 (Inception) to December 31, 2003 | 58 |
| Consolidated Statements of Cash Flows for the years ended December 31, 2005, 2004 and for the period June 24, 2003 (Inception) to December 31, 2003 | 59 |
| Notes to Consolidated Financial Statements | 60 |
| Schedule IV — Loans and Other Lending Investments | 95 |

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

Report of Independent Registered Public Accounting Firm

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

We have audited the accompanying consolidated balance sheets of Arbor Realty Trust, Inc. and Subsidiaries (the "Company") as of December 31, 2005 and 2004, and the related consolidated statements of income, stockholders' equity, and cash flows for each of the two years in the period ended December 31, 2005, and for the period from June 24, 2003 (Inception) to December 31, 2003. Our audits also included the financial statement schedule listed in the Index to Consolidated Financial Statements and Schedules. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. 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.

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, 2005 and 2004, and the consolidated results of their operations and their cash flows for each of the two years in the period ended December 31, 2005, and for the period from June 24, 2003 (Inception) to December 31, 2003, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the financial statement schedule referred to above, when considered in relation to the basic financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

We also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of the Company's internal control over financial reporting as of December 31, 2005, based on the criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 15, 2006 expressed an unqualified opinion thereon.

/s/ Ernst & Young

New York, New York
March 15, 2006

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

| | December 31, 2005 | December 31, 2004 |
|---|-------------------------|-----------------------|
| ASSETS: | | |
| Cash and cash equivalents | \$ 19,427,309 | \$ 6,401,701 |
| Restricted cash | 35,496,276 | — |
| Loans and investments, net | 1,246,825,906 | 831,783,364 |
| Related party loans, net | 7,749,538 | 7,749,538 |
| Available-for-sale securities, at fair value | 29,615,420 | 46,582,592 |
| Investment in equity affiliates | 18,094,242 | 5,254,733 |
| Other assets | 38,866,666 | 14,523,249 |
| Total Assets | \$ 1,396,075,357 | \$ 912,295,177 |
| LIABILITIES AND STOCKHOLDERS' EQUITY: | | |
| Repurchase agreements | \$ 413,624,385 | \$ 409,109,372 |
| Collateralized debt obligations | 299,319,000 | — |
| Junior subordinated notes to subsidiary trust issuing preferred securities | 155,948,000 | — |
| Notes payable | 115,400,377 | 165,771,447 |
| Notes payable — related party | 30,000,000 | — |
| Due to related party | 1,777,412 | 1,484,485 |
| Due to borrowers | 10,691,355 | 8,587,070 |
| Other liabilities | 18,014,755 | 4,339,899 |
| Total liabilities | 1,044,775,284 | 589,292,273 |
| Minority interest | 63,691,556 | 60,249,731 |
| Stockholders' equity: | | |
| Preferred stock, \$0.01 par value: 100,000,000 shares authorized; 3,776,069 shares issued and outstanding | 37,761 | 37,761 |
| Common stock, \$0.01 par value: 500,000,000 shares authorized; 17,051,391 and 16,467,218 shares issued and outstanding at December 31, 2005 and December 31, 2004, respectively | 170,514 | 164,672 |
| Additional paid-in capital | 266,386,267 | 254,427,982 |
| Retained earnings | 21,452,789 | 8,813,138 |
| Deferred compensation | (1,694,336) | (160,780) |
| Accumulated other comprehensive income (loss) | 1,255,522 | (529,600) |
| Total stockholders' equity | 287,608,517 | 262,753,173 |
| Total liabilities and stockholders' equity | \$ 1,396,075,357 | \$ 912,295,177 |

See notes to consolidated financial statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
CONSOLIDATED INCOME STATEMENTS

| | For the Year Ended December 31, 2005 | For the Year Ended December 31, 2004 | Period June 24, 2003 (Inception) to December 31, 2003 |
|---|--|--|---|
| Revenue: | | | |
| Interest income | \$ 121,109,157 | \$ 57,927,230 | \$ 10,012,449 |
| Other income | 498,250 | 42,265 | 156,502 |
| Total revenue | <u>121,607,407</u> | <u>57,969,495</u> | <u>10,168,951</u> |
| Expenses: | | | |
| Interest expense | 45,745,424 | 19,372,575 | 1,669,731 |
| Employee compensation and benefits | 4,274,609 | 2,325,727 | 940,336 |
| Stock based compensation | 1,590,898 | 324,343 | 1,721,367 |
| Selling and administrative | 4,351,366 | 1,908,522 | 533,697 |
| Management fee — related party | 12,430,546 | 3,614,830 | 587,734 |
| Total expenses | <u>68,392,843</u> | <u>27,545,997</u> | <u>5,452,865</u> |
| Income before minority interest and income from equity affiliates | 53,214,564 | 30,423,498 | 4,716,086 |
| Income from equity affiliates | 8,453,440 | 525,000 | — |
| Income before minority interest | 61,668,004 | 30,948,498 | 4,716,086 |
| Income allocated to minority interest | 11,280,981 | 5,875,816 | 1,308,167 |
| Net income | <u>\$ 50,387,023</u> | <u>\$ 25,072,682</u> | <u>\$ 3,407,919</u> |
| Basic earnings per common share | <u>\$ 2.99</u> | <u>\$ 1.81</u> | <u>\$ 0.42</u> |
| Diluted earning per common share | <u>\$ 2.98</u> | <u>\$ 1.78</u> | <u>\$ 0.42</u> |
| Dividends declared per common share | <u>\$ 2.24</u> | <u>\$ 1.16</u> | <u>\$ 0.50</u> |
| Weighted average number of shares of common stock outstanding: | | | |
| Basic | <u>16,867,466</u> | <u>13,814,199</u> | <u>8,199,567</u> |
| Diluted | <u>20,672,502</u> | <u>17,366,015</u> | <u>11,346,291</u> |

See notes to consolidated financial statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
FOR THE PERIOD JUNE 24, 2003 (INCEPTION) TO DECEMBER 31, 2003
AND FOR THE YEARS ENDED DECEMBER 31, 2005, AND 2004

| | Comprehensive Income | Preferred Stock Shares | Preferred Stock Par Value | Common Stock Shares | Common Stock Par Value | Additional Paid- In Capital | Retained Earnings (Distributions in Excess of Earnings) | Deferred Compensation | Accumulated Other Comprehensive Income/(Loss) | Total |
|--|-------------------------|------------------------------|------------------------------------|------------------------|------------------------------|--------------------------------|---|--------------------------|--|-----------------------|
| Initial capitalization | | — | — | 67 | \$ 1 | \$ 1,004 | \$ — | \$ — | \$ — | \$ 1,005 |
| Issuance of preferred stock | | 3,146,724 | 31,467 | | | | | | | 31,467 |
| Issuance of common stock, net | | | | 8,050,000 | 81,980 | 109,972,160 | | | | 110,054,140 |
| Deferred compensation | | | | 149,500 | 15 | 2,242,485 | | (2,242,500) | | — |
| Stock based compensation | | | | | | | | 1,721,367 | | 1,721,367 |
| Distributions—common stock | | | | | | | (4,099,784) | | | (4,099,784) |
| Net income | 3,407,919 | | | | | | 3,407,919 | | | 3,407,919 |
| Balance—December 31, 2003 | <u>\$ 3,407,919</u> | <u>3,146,724</u> | <u>\$ 31,467</u> | <u>8,199,567</u> | <u>\$ 81,996</u> | <u>\$ 112,215,649</u> | <u>\$ (691,865)</u> | <u>\$ (521,133)</u> | <u>\$ —</u> | <u>\$ 111,116,114</u> |
| Issuance of preferred stock | | 629,345 | 6,294 | | | | | | | 6,294 |
| Issuance of common stock, net | | | | 7,274,200 | 72,742 | 134,115,399 | | | | 134,188,141 |
| Issuance of common stock from warrant exercise | | | | 973,354 | 9,733 | 12,862,937 | | | | 12,872,670 |
| Issuance of common stock from incentive compensation | | | | 22,498 | 225 | 499,234 | | | | 499,459 |
| Stock based compensation | | | | | | | | 324,343 | | 324,343 |
| Distributions—common stock | | | | | | | (15,567,679) | | | (15,567,679) |
| Forfeited unvested restricted stock | | | | (2,401) | (24) | (35,986) | | 36,010 | | — |
| Adjustment to minority interest from increased ownership in ARLP | | | | | | (5,229,251) | | | | (5,229,251) |
| Net income | 25,072,682 | | | | | | 25,072,682 | | | 25,072,682 |
| Net unrealized loss on securities available for sale | (529,600) | | | | | | | | (529,600) | (529,600) |
| Balance—December 31, 2004 | <u>\$ 24,543,082</u> | <u>3,776,069</u> | <u>\$ 37,761</u> | <u>16,467,218</u> | <u>\$ 164,672</u> | <u>\$ 254,427,982</u> | <u>\$ 8,813,138</u> | <u>\$ (160,780)</u> | <u>\$ (529,600)</u> | <u>\$ 262,753,173</u> |
| Issuance of common stock | | | | 191,342 | 1,913 | 5,265,142 | | | | 5,267,055 |
| Issuance of common stock from exercise of warrants | | | | 282,776 | 2,828 | 4,189,027 | | | | 4,191,855 |
| Deferred compensation | | | | 124,500 | 1,245 | 3,530,870 | | (3,532,115) | | — |
| Stock based compensation | | | | | | | | 1,590,898 | | 1,590,898 |
| Distributions — common stock | | | | | | | (37,747,372) | | | (37,747,372) |

| | | | | | | | | | | |
|---|----------------------|------------------|------------------|-------------------|-------------------|-----------------------|----------------------|-----------------------|---------------------|-----------------------|
| Forfeited unvested restricted stock | | | | (14,445) | (144) | (407,517) | | 407,661 | | — |
| Adjustment to minority interest from decreased ownership in ARLP | | | | | | (619,237) | | | | (619,237) |
| Net income | 50,387,023 | | | | | | | 50,387,023 | | 50,387,023 |
| Net unrealized loss on securities available for sale | | (365,698) | | | | | | | (365,698) | (365,698) |
| Unrealized gain on derivative financial instruments | 2,150,820 | | | | | | | | 2,150,820 | 2,150,820 |
| Balance- December 31, 2005 | <u>\$ 52,172,145</u> | <u>3,776,069</u> | <u>\$ 37,761</u> | <u>17,051,391</u> | <u>\$ 170,514</u> | <u>\$ 266,386,267</u> | <u>\$ 21,452,789</u> | <u>\$ (1,694,336)</u> | <u>\$ 1,255,522</u> | <u>\$ 287,608,517</u> |

See notes to consolidated financial statements.

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

| | For the Year Ended December 31, 2005 | For the Year Ended December 31, 2004 | Period June 24, 2003 (Inception) to December 31, 2003 |
|--|---|---|---|
| Operating activities: | | | |
| Net income | \$ 50,387,023 | \$ 25,072,682 | \$ 3,407,919 |
| Adjustments to reconcile net income to cash provided by operating activities | | | |
| Stock based compensation | 1,590,898 | 324,343 | 1,721,367 |
| Minority interest | 11,280,981 | 5,875,816 | 1,308,167 |
| Amortization and accretion of interest | (165,906) | (1,431,146) | (553,990) |
| Non-cash incentive compensation to manager | 5,545,506 | 1,623,106 | — |
| Income from equity affiliates | — | (525,000) | — |
| Changes in operating assets and liabilities: | | | |
| Others assets | (7,771,987) | (6,192,238) | (2,405,470) |
| Other liabilities | 12,207,088 | 838,159 | 1,557,884 |
| Deferred origination fees | (130,560) | 1,163,039 | 627,734 |
| Due to related party | 292,927 | 1,324,901 | 159,583 |
| Net cash provided by operating activities | <u>\$ 73,235,970</u> | <u>\$ 28,073,662</u> | <u>\$ 5,823,194</u> |
| Investing activities: | | | |
| Loans and investments originated and purchased, net | (989,797,797) | (733,136,131) | (186,382,155) |
| Payoffs and paydowns of loans and investments | 574,393,425 | 221,425,780 | 75,940,655 |
| Due to borrowers | 2,104,285 | 177,125 | 8,409,945 |
| Securities available for sale | — | (57,228,552) | — |
| Prepayments on securities available for sale | 15,999,968 | 9,722,630 | — |
| Change in restricted cash | (35,496,276) | — | — |
| Contributions to equity affiliates | (18,280,824) | (9,562,190) | (7,667,542) |
| Distributions from equity affiliates | 5,441,315 | 3,525,000 | 1,750,000 |
| Net cash used in investing activities | <u>\$ (445,635,904)</u> | <u>\$ (565,076,338)</u> | <u>\$ (107,949,097)</u> |
| Financing activities: | | | |
| Proceeds from notes payable and repurchase agreements | 759,168,998 | 605,600,178 | 71,047,671 |
| Payoffs and paydowns of notes payable and repurchase agreements | (775,025,055) | (203,247,830) | (67,699,042) |
| Proceeds from issuance of collateralized debt obligation | 305,319,000 | — | — |
| Payoffs and paydowns of collateralized debt obligation | (6,000,000) | — | — |
| Proceeds from issuance of junior subordinated notes | 155,948,000 | — | — |
| Issuance of common stock | 5,381,172 | 158,356,670 | 120,200,978 |
| Exercise of warrants from minority interest | — | 9,440,175 | 31,467 |
| Distributions paid to minority interest | (8,458,394) | (3,920,819) | (1,573,362) |
| Offering expenses paid | — | (11,236,483) | (9,385,000) |
| Distributions paid on common stock | (37,747,372) | (15,567,679) | (4,099,784) |
| Payment of deferred financing costs | (13,160,807) | (2,135,360) | (281,500) |
| Net cash provided by financing activities | <u>\$ 385,425,542</u> | <u>\$ 537,288,852</u> | <u>\$ 108,241,428</u> |
| Net increase in cash | <u>\$ 13,025,608</u> | <u>\$ 286,176</u> | <u>\$ 6,115,525</u> |
| Cash at beginning of period | <u>6,401,701</u> | <u>6,115,525</u> | <u>—</u> |
| Cash at end of period | <u><u>\$ 19,427,309</u></u> | <u><u>\$ 6,401,701</u></u> | <u><u>\$ 6,115,525</u></u> |
| Supplemental cash flow information: | | | |
| Cash used to pay interest, net of capitalized interest | <u>\$ 41,376,179</u> | <u>\$ 18,547,842</u> | <u>\$ 1,378,637</u> |
| Supplemental schedule of non-cash financing and investing activities: | | | |
| Accrued offering expenses | <u>\$ —</u> | <u>\$ 59,377</u> | <u>\$ 760,833</u> |
| Conversion of investment in equity affiliates to loan | <u>\$ —</u> | <u>\$ 6,700,000</u> | <u>\$ —</u> |
| Loans and investments, net contributed | <u>\$ —</u> | <u>\$ —</u> | <u>\$ 213,076,639</u> |
| Notes payable and repurchase agreements contributed | <u>\$ —</u> | <u>\$ —</u> | <u>\$ 169,179,843</u> |

See notes to consolidated financial statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2005

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 and direct equity and, in limited cases, mortgage backed securities, discounted mortgage notes and other real estate related assets. The Company has not invested in any discounted mortgage notes for the periods presented. The Company conducts substantially all of its operations through its operating partnership, Arbor Realty Limited Partnership (“ARLP”), and its wholly owned subsidiaries.

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, and its wholly owned subsidiaries.

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

On April 13, 2004, the Company sold 6,750,000 shares of its common stock in a public offering at a price of \$20.00 per share, for net proceeds of approximately \$124.4 million after deducting the underwriting discount and the other estimated offering expenses. The Company used the proceeds to pay down indebtedness. After giving effect to this offering, the Company had 14,949,567 shares of common stock outstanding. In May 2004, the underwriters exercised a portion of their over-allotment option, which resulted in the issuance of 524,200 additional shares. The Company received net proceeds of approximately \$9.8 million after deducting the underwriting discount. In October 2004, ARLP received proceeds of approximately \$9.4 million from the exercise of warrants for a total of 629,345 operating partnership units. Additionally, in 2004 and 2005, the Company issued 973,354 and 282,776 shares of common stock respectively from the exercise of warrants under its Warrant Agreement dated July 1, 2003, the (“Warrant Agreement”). As of December 31, 2005, the Company had 17,051,391 shares of common stock outstanding.

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

Note 2 — Summary of Significant Accounting Policies

Use of Estimates

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

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

Reclassifications

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

Cash and Cash Equivalents

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

Restricted Cash

For the years ended December 31, 2005 and 2004, the Company had restricted cash of \$35.5 million and \$0 million, respectively, on deposit with the trustee for the Collateralized Debt Obligation ("CDO") see Note 6 "Debt Obligations," primarily representing the proceeds of loan repayments which will be used to purchase replacement loans as collateral for the CDO and interest payments received from loans in the CDO which are remitted to the Company quarterly in the month following the quarter.

Loans and Investments

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

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

Specific valuation allowances are established for impaired loans based on the fair value of collateral on an individual loan basis. The fair value of the collateral is determined by an evaluation of operating cash flow from the property during the projected holding period, and estimated sales value computed by applying an expected capitalization rate to the stabilized net operating income of the specific property, less selling costs, discounted at market discount rates. As of December 31, 2005 and 2004, no impairment has been identified and no valuation allowances have been established.

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

Capitalized Interest

The Company capitalizes interest in accordance with Statement of Financial Accounting Standards ("SFAS") No. 58 "Capitalization of Interest Costs in Financial Statements that Include Investments Accounted for by the Equity Method". This statement amended SFAS No. 34 "Capitalization of Interest Costs" to include investments (equity, loans and advances) accounted for by the equity method as qualifying

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

assets of the investor while the investee has activities in progress necessary to commence its planned principal operations, provided that the investee's activities include the use of funds to acquire qualifying assets for its operations. One of the Company's joint ventures accounted for using the equity method, is in the process of using funds to acquire qualifying assets for its planned principal operations. During the year ended December 31, 2005 the Company capitalized \$0.5 million of interest relating to this investment, there was no capitalization of interest during the year ended December 31, 2004.

Available-For-Sale Securities

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

Revenue Recognition

Interest Income — Interest income is recognized on the accrual basis as it is earned from loans, investments and available-for-sale securities. In many instances, the borrower pays an additional amount of interest at the time the loan is closed, an origination fee, and deferred interest upon maturity. In some cases interest income may also include the amortization or accretion of premiums and discounts arising at the purchase or origination. This additional income, net of any direct loan origination costs incurred, is deferred and accreted into interest income on an effective yield or "interest" method adjusted for actual prepayment activity over the life of the related loan or available-for-sale security as a yield adjustment. Income recognition is suspended for loans when in the opinion of management a full recovery of income and principal becomes doubtful. Income recognition is resumed when the loan becomes contractually current and performance is demonstrated to be resumed. Several of the loans provide for accrual of interest at specified rates, which differ from current payment terms. Interest is recognized on such loans at the accrual rate subject to management's determination that accrued interest and outstanding principal are ultimately collectible, based on the underlying collateral and operations of the borrower. If management cannot make this determination regarding collectibility, interest income above the current pay rate is recognized only upon actual receipt. Additionally, interest income is recorded when earned from equity participation interests, referred to as equity kickers. These equity kickers have the potential to generate additional revenues to the Company as a result of excess cash flows being distributed and/or as appreciated properties are sold or refinanced. For the years ended December 31, 2005 and 2004, the Company recorded \$19.7 million and \$1.2 million of interest on such loans and investments, respectively. These amounts represent interest collected in accordance with the contractual agreement with the borrower.

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

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

Gain on Sale of Loans and Real Estate

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

Income from Equity Affiliates

The Company invests in joint ventures that are formed to acquire, develop and/or sell real estate assets. These joint ventures are not majority owned or controlled by us, and are not consolidated in our financial statements. These investments are recorded under the equity method of accounting. The Company records its share of the net income and losses from the underlying properties on a single line item in the consolidated income statements as income from equity affiliates. The Company is not required to fund losses incurred by the joint ventures. Therefore, the Company only recognizes its share of losses to the extent of its capital investment.

Other Comprehensive Income (Loss)

SFAS No. 130 "Reporting comprehensive income", divides comprehensive income into net income and other comprehensive income (loss), which includes unrealized gains and losses on available for sale securities. In addition, to the extent the Company's derivative instruments qualify as hedges under SFAS No. 133, net unrealized gains or losses are reported as a component of accumulated other comprehensive income, see "Derivatives and Hedging Activities" below.

Income Taxes

The Company is organized and conducts its operations to qualify as a real estate investment trust ("REIT") and to comply with the provisions of the Internal Revenue Code with respect thereto. A REIT is generally not subject to federal income tax on that portion of its REIT taxable income ("Taxable Income") which is distributed to its stockholders, provided that at least 90% of Taxable Income is distributed and provided that certain other requirements are met. Certain assets of the Company that produce non-qualifying income are held in taxable REIT subsidiaries. Unlike other subsidiaries of a REIT, the income of a taxable REIT subsidiary is subject to federal and state income taxes. During the year ended December 31, 2005 the Company recorded a \$0.1 million provision for income taxes related to these assets that are held in taxable REIT subsidiaries. This provision is included in selling and administrative expense on the income statement. During the year ended December 31, 2004 no such provision was recorded.

Earnings Per Share

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

Derivatives and Hedging Activities

The Company accounts for derivative financial instruments in accordance with Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS 133"), as amended by Statement of Financial Accounting Standards No. 138, "Accounting for Certain Derivative Instruments and Certain Hedging Activities" ("SFAS 138"). SFAS 133, as amended by SFAS 138, requires an entity to recognize all derivatives as either assets or liabilities in the consolidated

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

balance sheets and to measure those instruments at fair value. Additionally, the fair value adjustments will affect either shareholders' equity in other comprehensive income until the hedged item is recognized in earnings or net income depending on whether the derivative instrument qualifies as a hedge for accounting purposes and, if so, the nature of the hedging activity.

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

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

The following is a summary of derivative financial instruments held by the Company as of: December 31, 2005

| <u>Date Executed</u> | <u>Notional Value</u> | <u>Expiration Date</u> | <u>Hedge</u> | <u>Designation</u> |
|----------------------|-----------------------|------------------------|--------------------|--------------------------------|
| | (In thousands) | | | |
| December 21, 2004 | \$ 289,261 | January 2012 | Interest Rate Swap | Non-Qualifying Cash Flow Hedge |
| December 21, 2004 | 179,765 | January 2009 | Interest Rate Swap | Non-Qualifying Cash Flow Hedge |
| June 16, 2005 | 25,000 | April 2010 | Interest Rate Swap | Qualifying Cash Flow Hedge |
| June 22, 2005 | 25,000 | March 2010 | Interest Rate Swap | Qualifying Cash Flow Hedge |
| December 22, 2005 | 119,171 | July 2015 | Interest Rate Swap | Non-Qualifying Cash Flow Hedge |
| December 22, 2005 | 111,000 | July 2013 | Interest Rate Swap | Non-Qualifying Cash Flow Hedge |
| December 22, 2005 | 58,085 | January 2013 | Interest Rate Swap | Non-Qualifying Cash Flow Hedge |
| December 22, 2005 | 134,050 | October 2015 | Interest Rate Swap | Qualifying Cash Flow Hedge |
| December 22, 2005 | 5,922 | November 2010 | Interest Rate Swap | Qualifying Cash Flow Hedge |

The following is a summary of derivative financial instruments held by the Company as of: December 31, 2004

| <u>Date Executed</u> | <u>Notional Value</u> | <u>Expiration Date</u> | <u>Hedge</u> | <u>Designation</u> |
|----------------------|-----------------------|------------------------|--------------------|--------------------------------|
| | (In thousands) | | | |
| December 21, 2004 | \$ 289,261 | January 2012 | Interest Rate Swap | Non-Qualifying Cash Flow Hedge |
| December 21, 2004 | 179,765 | January 2009 | Interest Rate Swap | Non-Qualifying Cash Flow Hedge |

In connection with two CDO's described in Note 6 "Debt Obligations" the Company entered into interest rate swap agreements, with total notional values of \$469.0 million and \$288.3 million, to hedge its exposure to the risk of changes in the difference between three-month LIBOR and one-month LIBOR interest rates. These interest rate swaps became necessary due to the investor's return being paid based on a three-month LIBOR index while the assets contributed to the CDO's are yielding interest based on a one-month LIBOR index. The market value of these interest rate swaps is dependent upon existing market interest rates and swap spreads, which change over time. These swaps do not qualify for cash flow hedge accounting in accordance with SFAS 133, as amended by SFAS 138, and therefore changes in fair value are reflected in net income. At December 31, 2005 the estimated fair value of these swaps was approximately \$0.2 million and a negative \$0.1 million and was recorded in other assets and other liabilities, respectively. For the year ended December 31, 2005, interest expense relating to these swaps was \$0.3 million and \$0.1 million, respectively. There was no material adjustment relating to these swaps recorded for the year ended December 31, 2004.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

The Company issued variable rate junior subordinate notes in 2005 as described in Note 6 “Debt Obligations” and has entered into two interest rate swap agreements, each with notional amounts of \$25.0 million, to hedge its exposure to the risk of increases in the three-month LIBOR interest rate. The market value of these interest rate swaps is dependent upon existing market interest rates and swap spreads, which change over time. These swaps are 100% effective in accordance with SFAS 133, as amended by SFAS 138, and as such are marked to market through other comprehensive income. At December 31, 2005, the estimated value of these swaps, included in other comprehensive income and other assets on the balance sheet, was approximately \$0.6 million and \$0.7 million, respectively, and represents the amount that would be received if the agreements were terminated, based on current market rates on that date. The Company would expect to reclassify approximately \$0.1 million of these amounts to earnings over the next twelve months assuming interest rates at December 31, 2005 are held constant.

The Company entered into two interest rate swap agreements with notional amounts of \$134.0 million and \$5.9 million, to hedge its exposure to interest risk on its variable rate current and future forecasted LIBOR based debt relating to a certain fixed rate loans in its portfolio. The market value of these interest rate swaps is dependent upon existing market interest rates and swap spreads, which change over time. These swaps are cash flow hedges that were determined to be 100% effective upon execution as the underlying terms and conditions including reset dates and interest calculation periods match exactly. Periodic fair value adjustments are marked to market through other comprehensive income in accordance with SFAS 133, as amended by SFAS 138. At December 31, 2005 the estimated negative value of these two swaps, included in other comprehensive income and other liabilities on the balance sheet, was approximately \$0.8 million and \$14,000, respectively, and represents the amount that would be paid if the agreements were terminated, based on current market rates on that date. The Company would expect to reclassify approximately \$0.8 million and \$14,000 of these amounts to earnings over the next twelve months, respectively, assuming interest rates at December 31, 2005 are held constant.

The following six interest rate swap agreements designated as hedging the Company’s exposure on current and future forecasted outstanding LIBOR based debt were entered into at various times during 2005 and were subsequently terminated on December 22, 2005.

| <u>Date Executed</u> | <u>Notional Value</u> | <u>Expiration Date</u> | <u>Hedge</u> | <u>Designation</u> |
|----------------------|-----------------------|------------------------|--------------------|----------------------------|
| | (In thousands) | | | |
| May 2, 2005 | \$ 9,860 | April 2015 | Interest Rate Swap | Qualifying Cash Flow Hedge |
| May 27, 2005 | 37,537 | March 2015 | Interest Rate Swap | Qualifying Cash Flow Hedge |
| June 24, 2005 | 23,500 | August 2010 | Interest Rate Swap | Qualifying Cash Flow Hedge |
| August 9, 2005 | 6,382 | November 2009 | Interest Rate Swap | Qualifying Cash Flow Hedge |
| August 9, 2005 | 7,973 | November 2009 | Interest Rate Swap | Qualifying Cash Flow Hedge |
| August 9, 2005 | 7,032 | July 2015 | Interest Rate Swap | Qualifying Cash Flow Hedge |

The Company had accounted for these derivatives as cash flow hedges. As a result of terminating the derivatives at market value, an unrealized deferred hedging gain was recorded in other comprehensive income and is being amortized to income over the original life of the hedging instruments as the hedged item was designated as current and future outstanding LIBOR based debt, and has an indeterminate life. As of December 31, 2005, \$1.8 million of such gains are deferred through other comprehensive income and the Company expects to accrete approximately \$0.3 million to earnings over the next twelve months. For the year ended December 31, 2005 the Company recorded less than \$0.1 million as interest expense relating to the inefficiency of these interest swaps.

Variable Interest Entities

Financial Accounting Standards Board (“FASB”) issued FASB Interpretation No. 46R, “Consolidation of Variable Interest Entities” (“FIN 46”), which requires a variable interest entity (“VIE”) to be

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

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.

The Company has evaluated its loans and investments and investments in equity affiliates to determine whether they are variable interests in a VIE. This evaluation resulted in the Company determining that its bridge loans, mezzanine loans, preferred equity investments and investments in equity affiliates were potential variable interests. For each of these investments, the Company has evaluated (1) the sufficiency of the fair value of the entities' equity investments at risk to absorb losses, (2) that as a group the holders of the equity investments at risk have (a) the direct or indirect ability through voting rights to make decisions about the entities' significant activities, (b) the obligation to absorb the expected losses of the entity and their obligations are not protected directly or indirectly, (c) the right to receive the expected residual return of the entity and their rights are not capped, (3) the voting rights of these investors are not proportional to their obligations to absorb the expected losses of the entity, their rights to receive the expected returns of the equity, or both, and that substantially all of the entities' activities do not involve or are not conducted on behalf of an investor that has disproportionately few voting rights. As of December 31, 2005, the Company has identified thirteen loans and investments which were made to entities determined to be VIE's.

The following is a summary of the identified VIE's as of December 31, 2005 (in thousands):

| Type | Carrying Amount | Property | Location |
|---------------------|-----------------|------------------------------|------------|
| Loan and investment | \$ 47,710,938 | Office | New York |
| Loan and investment | 40,100,001 | Retail | Various |
| Loan | 30,653,000 | Hotel | Various |
| Loan | 27,432,500 | Office | Sacramento |
| Loan and investment | 25,781,166 | Condo | New York |
| Loan | 25,000,000 | Multifamily | Various |
| Loan | 17,050,000 | Office | New York |
| Loan | 7,749,538 | Multifamily | Indiana |
| Investment | 1,550,000 | Junior subordinated notes(1) | N/A |
| Investment | 820,000 | Junior subordinated notes(1) | N/A |
| Investment | 780,000 | Junior subordinated notes(1) | N/A |
| Investment | 774,000 | Junior subordinated notes(1) | N/A |
| Investment | 774,000 | Junior subordinated notes(1) | N/A |

- (1) These entities that issued the junior subordinated notes are VIE's, it is not appropriate to consolidate these entities under the provisions of FIN 46 as equity interests are variable interests only to the extent that the investment is considered to be at risk. Since the Company's investments were funded by the entities that issued the junior subordinated notes, it is not considered to be at risk.

For the thirteen VIE's identified, the Company has determined that they are not the primary beneficiaries of the VIE's and as such the VIE's should not be consolidated in the Company's financial statements. The Company's maximum exposure to loss would not exceed the carrying amount of such investments. For all other investments, the Company has determined they are not VIE's. As such, the Company has continued to account for these loans and investments as a loan or investment in equity affiliate, as appropriate.

Recently Issued Accounting Pronouncements

In December 2004, the FASB published SFAS 123(R) entitled "Share-Based Payment." It requires all public companies to report share-based compensation expense at the grant date fair value of the related share-

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

based awards. We are required to adopt the provisions of the standard effective for periods beginning after June 15, 2005. The Company believes that our current method of accounting for share-based payments is consistent with SFAS 123(R).

In June 2005, the FASB ratified the consensus in EITF Issue No. 04-5, "Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights" ("Issue 04-5"), which provides guidance in determining whether a general partner controls a limited partnership. Issue 04-5 states that the general partner in a limited partnership is presumed to control that limited partnership. The presumption may be overcome if the limited partners have either (1) the substantive ability to dissolve the limited partnership or otherwise remove the general partner without cause or (2) substantive participating rights, which provide the limited partners with the ability to effectively participate in significant decisions that would be expected to be made in the ordinary course of the limited partnership's business and thereby preclude the general partner from exercising unilateral control over the partnership. The adoption of Issue 04-5 by us for new or modified limited partnership arrangements is effective June 30, 2005 and for existing limited partnership arrangements effective January 1, 2006. The Company does not expect that it will be required to consolidate its current unconsolidated joint venture investments nor does the Company expect Issue 04-5 to have a material effect on its consolidated financial statements.

In November 2005, the FASB issued FASB Staff Position (FSP) FAS 115-1 and 124-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*. The FASB addresses the determination of when an investment is considered impaired, whether that impairment is other than temporary, and the measurement of an impairment loss. The FSP also includes accounting considerations subsequent to the recognition of an other-than-temporary impairment and requires certain disclosures about unrealized losses that have not been recognized as other-than-temporary impairments. The FSP amends FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, FASB Statement No. 124, *Accounting for Certain Investments Held by Not-for-Profit Organizations* and APB Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*. The FSP nullifies certain requirements of EITF Issue No. 03-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments* and supersedes EITF Abstracts, Topics D-44, *Recognition of Other-Than-Temporary Impairment upon the Planned Sale of a Security Whose Cost Exceeds Fair Value*. The FSP is required to be applied to reporting periods beginning after December 15, 2005. The Company does not expect adoption to have a material impact on the consolidated financial statements.

Note 3 — Loans and Investments

| | Unpaid Principal | | | December 31, 2005 | |
|------------------------------|-------------------------|-----------------------|-----------|-------------------|--------------------------|
| | 2005 December 31, | 2004 | | Loan Count | Wtd. Avg. Pay Rate |
| Bridge loans | \$ 405,702,234 | \$ 274,307,422 | 21 | 8.21% | 17.7 |
| Mezzanine loans | 821,454,043 | 523,672,333 | 42 | 9.81% | 27.5 |
| Preferred equity investments | 18,855,388 | 34,791,297 | 4 | 9.64% | 26.1 |
| Other | 13,891,005 | 1,932,899 | 4 | 5.63% | 53.2 |
| | <u>1,259,902,670</u> | <u>834,703,951</u> | <u>71</u> | <u>9.25%</u> | <u>24.6</u> |
| Unearned revenue | (13,076,764) | (2,920,587) | | | |
| Loans and investments, net | <u>\$ 1,246,825,906</u> | <u>\$ 831,783,364</u> | | | |

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

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

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

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

Concentration of Credit Risk

Loans and investments can potentially subject the Company to concentrations of credit risk. The Company is subject to concentration risk in that, as of December 31, 2005, the unpaid principal balance related to 32 loans with five unrelated borrowers represented approximately 31% of total assets, and as of December 31, 2004, the unpaid principal balance related to 16 loans with five unrelated borrowers represented approximately 38% of total assets. As of December 31, 2005 and 2004, the Company had 72 and 61 loans and investments, respectively.

In addition, in 2005 and 2004, no single loan or investment represented at least 10% of the Company's total assets. In 2005, the Company generated approximately 12% and 19% of revenue from the Chetrit Group L.L.C. and Prime Outlet Acquisition Group L.L.C. two of the Company's borrowers, respectively. In 2004, revenue from any single borrower did not account for more than 10% of the Company's total revenues.

Geographic Concentration Risk

As of December 31, 2005, 57%, 8%, and 8% of the outstanding balance of the Company's loans and investments portfolio had underlying properties in New York, Florida and California, respectively. As of December 31, 2004, 55%, 13%, and 8% of the outstanding balance of the Company's loans and investments portfolio had underlying properties in New York, Florida, and New Jersey, respectively.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

Note 4 — Available-For-Sale Securities

The following is a summary of the Company's available-for-sale securities at December 31, 2005.

| | <u>Face Value</u> | <u>Amortized Cost</u> | <u>Unrealized Loss</u> | <u>Estimated Fair Value</u> |
|---|----------------------|---------------------------|----------------------------|---------------------------------|
| Federal Home Loan Mortgage Corporation, variable rate security, fixed rate of interest for three years at 3.797% and adjustable rate interest thereafter, due March 2034 (including unamortized premium of \$226,895) | \$ 15,228,360 | \$ 15,455,255 | \$ (441,044) | \$ 15,014,211 |
| Federal Home Loan Mortgage Corporation, variable rate security, fixed rate of interest for three years at 3.758% and adjustable rate interest thereafter, due March 2034 (including unamortized premium of \$83,967) | 4,763,621 | 4,847,588 | (156,909) | 4,690,679 |
| Federal National Mortgage Association, variable rate security, fixed rate of interest for three years at 3.800% and adjustable rate interest thereafter, due March 2034 (including unamortized premium of \$181,415) | 10,026,460 | 10,207,875 | (297,345) | 9,910,530 |
| | <u>\$ 30,018,441</u> | <u>\$ 30,510,718</u> | <u>\$ (895,298)</u> | <u>\$ 29,615,420</u> |

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

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

As of December 31, 2005, all available-for-sale securities were carried at their estimated fair market value based on current market quotes received from financial sources that trade such securities. These securities were purchased in March 2004 and have been in an unrealized loss position for more than twelve months. The estimated fair value of these securities fluctuate primarily due to changes in interest rates and other factors; however, given that these securities are guaranteed as to principal and/or interest by an agency of the U.S. Government, such fluctuations are generally not based on the creditworthiness of the mortgages securing these securities.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

During the years ended December 31, 2005 and 2004, the Company received prepayments of \$16.0 million and \$9.7 million on these securities and amortized \$0.6 million and \$0.4 million, respectively, of the premium paid for these securities against interest income.

These securities are pledged as collateral for borrowings under a repurchase agreement — (See Note 6 “Debt Obligations”).

Note 5 — Investment in Equity Affiliates

As of December 31, 2005 and 2004, the Company had approximately \$18.1 million and \$5.3 million of investments in equity affiliates, respectively, which are described below.

In 2005, the Company invested \$4.7 million for 100% of the common shares of five affiliate entities of the Company which were formed to facilitate the issuance of \$155.9 million of junior subordinate notes. These entities pay dividends on both the common shares and preferred securities on a quarterly basis at a variable rate based on LIBOR. The financing terms of these junior subordinate notes are presented in the notes payable table of Note 6. The impact of these entities in accordance with FIN 46R “Consolidation of Variable Interest Entities” is discussed in Note 2.

In December 2003, the Company invested approximately \$2.1 million in exchange for a 50% non-controlling interest in Prime Outlets Member, LLC “POM,” which owns 15% of a real estate holding company that owns and operates factory outlet shopping centers. The Company accounts for this investment under the equity method. As of December 31, 2005 and 2004, the Company had a mezzanine loan outstanding to an affiliate entity of the joint venture for \$30.1 million and \$32.4 million, respectively. In addition, the Company had a \$10.0 million junior loan participation interest outstanding to an affiliate entity of the joint venture as of December 31, 2005 and 2004. The loans require monthly interest payments based on one month LIBOR and mature in January 2006. Additionally, the Company has a 16.7% carried profits interest in the borrowing entity. The Company received \$1.2 million of distributions from this investment in 2004 as a result of the 16.7% carried profits interest which was recorded in interest income. In addition, The Company received \$0.5 million from its 50% non-controlling interest in this joint venture, which was recorded as income from equity affiliates. In June 2005, POM refinanced the debt on a portion of the assets in its portfolio, receiving proceeds in excess of the amount of the previously existing debt. The excess proceeds were distributed to each of the partners in accordance with POM’s operating agreement of which the Company received \$36.5 million. In accordance with this transaction, the joint venture members of POM agreed to guarantee \$38 million of the new debt. The guarantee expires at the earlier of maturity or prepayment of the debt and would require performance by the members if not repaid in full. This guarantee was allocated to the members in accordance with their ownership percentages. Of the distribution received by the Company, \$17.2 million was recorded as interest income, representing the portion attributable to the 16.7% carried profits interest, \$2.1 million was recorded as a return of the Company’s equity investment, \$8.0 million was recorded as income from equity affiliates, representing the portion attributable to the 7.5% equity interest, and \$9.2 million was recorded as deferred revenue, representing the Company’s portion of the \$38 million guarantee. In January 2006, POM refinanced the debt on a portion of the assets in its portfolio and repaid in full the debt that was added in June 2005 and the \$30.1 million mezzanine loan and the \$10.0 million junior loan participating interest that the Company had outstanding as of December 31, 2005. As a result, the \$38 million guarantee was removed and the Company recorded the \$9.2 million of deferred revenue, \$6.3 million as interest income and \$2.9 million as income from equity affiliates.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

Summarized consolidated financial information of POM (amounts in thousands):

| | December 31, | | |
|--------------------------------------|---|---|--|
| | 2005 | 2004 | |
| Balance Sheets | | | |
| Assets: | | | |
| Cash and cash equivalents | \$ 14,551 | \$ 53,016 | |
| Real estate assets | 638,452 | 612,680 | |
| Other assets | 74,546 | 48,616 | |
| Total assets | \$ 727,549 | \$ 714,312 | |
| Liabilities: | | | |
| Notes payable | \$ 855,902 | \$ 602,718 | |
| Other liabilities | 22,842 | 19,850 | |
| Total liabilities | 878,744 | 622,568 | |
| Shareholders' equity Arbor | — | 2,100 | |
| Shareholders' (deficit)/equity | (151,195) | 89,644 | |
| Total shareholders' (deficit)/equity | (151,195) | 91,744 | |
| Total liabilities and equity | \$ 727,549 | \$ 714,312 | |
| | | | |
| | For the Year Ended December 31, 2005 | For the Year Ended December 31, 2004 | Period December 12, 2003 to December 31, 2003 |
| Income Statements: | | | |
| Revenue: | | | |
| Rental income | \$ 82,759 | \$ 68,447 | \$ 2,302 |
| Reimbursement income | 42,978 | 37,305 | 992 |
| Other income | 11,353 | 18,440 | 460 |
| Total revenues | \$ 137,090 | \$ 124,192 | \$ 3,754 |
| Expenses: | | | |
| Operating expenses | 73,173 | 40,665 | 1,039 |
| Interest expense | 28,055 | 30,332 | 584 |
| Depreciation and amortization | 31,211 | 24,207 | 751 |
| Other expenses | 11,972 | 17,031 | 416 |
| Total expenses | 144,411 | 112,235 | 2,790 |
| Net (loss)/income | \$ (7,321) | \$ 11,957 | \$ 964 |

During the first quarter 2005, the Company invested \$6.1 million in a joint venture, which as part of an investor group, used these proceeds to make a deposit on the potential purchase of a property in New York City. In April 2005, this joint venture closed on the purchase of the property and the Company invested additional capital that, combined with its deposit, represented a \$10 million equity investment, in exchange for a 20% ownership interest in a limited liability corporation of this joint venture (200 Fifth LLC). It is intended that the property, with over one million square feet of space, will be converted from an office property into condominium units. In addition, the Company provided loans to three partners in the investor group totaling

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

\$13 million, of which \$12 million is outstanding as of December 31, 2005. The loans are secured by their ownership interest in the joint venture and mature in April 2008. In 2005, the Company purchased three mezzanine loans totaling \$137 million from the primary lender. These loans are secured by the property, require monthly interest payments based on one month LIBOR and mature in April 2008. The Company sold a participating interest in one of the loans for \$59 million which was recorded as a financing and is included in notes payable. In 2005, the Company capitalized \$0.5 million of interest on its equity investment which was approximately \$10.5 million as of December 31, 2005.

Summarized consolidated financial information of 200 Fifth LLC (amounts in thousands):

| | December 31, 2005 |
|-------------------------------------|----------------------|
| Balance Sheets | |
| Assets: | |
| Cash and cash equivalents | \$ 61,122 |
| Real estate assets | 355,177 |
| Other assets | 50,672 |
| Total assets | \$ 466,971 |
| Liabilities: | |
| Notes payable | \$ 415,864 |
| Other liabilities | 1,107 |
| Total liabilities | 416,971 |
| Shareholders' equity Arbor | 10,000 |
| Shareholders' equity | 40,000 |
| Total shareholders' equity | 50,000 |
| Total liabilities and equity | \$ 466,971 |

In October 2004, the Company invested \$0.5 million in exchange for an 8.7% non-managing preferred interest in a joint venture that was formed to operate as a real estate business, to acquire, own, manage, develop, and sell real estate assets. The Company accounts for this investment under the equity method. In December 2005, the joint venture issued new debt on an existing property. The proceeds were distributed to each of the partners in accordance with the operating agreement of which the Company received \$0.5 million which was recorded as a return of the Company's equity investment.

As of December 31, 2004, the Company had two mezzanine loans outstanding, totaling \$45 million, to 450 Partners Mezz III LLC, a wholly-owned subsidiary of 450 Westside Partners, LLC and the owner of 100% of the outstanding membership interests in 450 Partners Mezz II LLC, who used the proceeds to acquire and renovate an office building. In addition, as of December 31, 2004, the Company had a \$1.5 million equity interest in an affiliate of the borrower. The Company also has participating profits interests in several affiliates of the borrower aggregating approximately 29%. During the quarter ended March 31, 2005, the property was refinanced with new debt and the Company's loans totaling \$45 million were repaid in full. In accordance with the refinancing, the Company was repaid its \$1.5 million investment, including approximately \$0.4 million of a preferred return which was recorded in income from equity affiliates. In addition, the Company received a structuring fee of \$0.4 million for arranging the financing which was recorded in other income. The Company participated in \$45 million of new debt in the form of a mezzanine loan that matures in March 2015 with a fixed rate of 8.17%. In addition, the Company invested \$2.7 million in an affiliate of the borrower which entitles the Company to a preferred return of 12.5% in this limited liability corporation.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

In June 2003, ACM invested approximately \$0.8 million in exchange for a 12.5% preferred interest in a joint venture, which owns and operates two commercial properties. The Company purchased this investment from ACM in August 2003. The Company subsequently contributed an additional \$0.3 million and \$0.4 million in 2004 and 2005, respectively. The Company accounts for this investment under the equity method. 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 one month LIBOR and mature in November 2006 and June 2006, respectively. In August 2005, the joint venture refinanced one of these properties with a \$25 million bridge loan that the Company provided which matures in August 2010 with a fixed rate of 6.45%. Proceeds from this loan were used to pay off senior debt as well as the Company's \$3.5 million mezzanine loan. Excess proceeds were distributed to each of the members in accordance with the operating agreement of which the Company received \$1.3 million. The Company recorded this amount as a return of its equity investment, which as of December 31, 2005 had a balance of approximately \$0.2 million.

The condensed combined balance sheets for the unconsolidated investments in equity affiliates that are individually not greater than 10% of total assets at December 31, 2005 and 2004, are as follows (amounts in thousands):

| | December 31, | |
|--|--------------------------|--------------------------|
| | 2005 | 2004 |
| Condensed Combined Balance Sheets | | |
| Assets: | | |
| Cash and cash equivalents | \$ 7,281 | \$ 3,599 |
| Real estate assets | 331,713 | 331,885 |
| Other assets | 39,181 | 37,471 |
| Total assets | <u>\$ 378,175</u> | <u>\$ 372,955</u> |
| Liabilities: | | |
| Notes payable | \$ 413,800 | \$ 339,000 |
| Other liabilities | 5,071 | 5,085 |
| Total liabilities | 418,871 | 344,085 |
| Shareholders' equity Arbor | 2,920 | 3,155 |
| Shareholders' (deficit)/equity | (43,616) | 25,715 |
| Total shareholders' (deficit)/equity | (40,696) | 28,870 |
| Total liabilities and equity | <u>\$ 378,175</u> | <u>\$ 372,955</u> |

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

The condensed combined statements of operations for the unconsolidated investments in equity affiliates that are individually not greater than 10% of total income for the years ended December 31, 2005 and 2004, are as follows (amounts in thousands):

| | <u>2005</u> | <u>2004</u> |
|--|--------------------|-----------------|
| Condensed Combined Statements of Operations | | |
| Revenue: | | |
| Rental income | \$ 40,865 | \$ 34,304 |
| Reimbursement income | 13,510 | 6,726 |
| Other income | 24 | 2,098 |
| Total revenues | \$ 54,399 | \$ 43,128 |
| Expenses: | | |
| Operating expenses | 22,791 | 19,516 |
| Interest expense | 36,367 | 20,893 |
| Depreciation and amortization | 8,275 | 387 |
| Other expenses | 477 | 475 |
| Total expenses | 67,910 | 41,271 |
| Net (loss)/income | \$ (13,511) | \$ 1,857 |

Note 6 — Debt Obligations

Repurchase Agreements

The Company utilizes repurchase agreements, warehouse lines of credit, loan participations, collateralized debt obligations and junior subordinated notes to finance certain of its loans and investments. Borrowings underlying these arrangements are primarily secured by a significant amount of the Company's loans and investments.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

The following table outlines borrowings under the Company's repurchase agreements as of December 31, 2005 and 2004:

| | December 31, 2005 | | December 31, 2004 | |
|--|-----------------------|---------------------------|-----------------------|---------------------------|
| | Debt Carrying Value | Collateral Carrying Value | Debt Carrying Value | Collateral Carrying Value |
| Repurchase agreement, Wachovia Bank National Association, \$500 million committed line, expiration December 2006, interest is variable based on one-month LIBOR; the weighted average note rate was 6.37% and 4.63%, respectively | \$ 380,544,323 | \$ 554,322,023 | \$ 324,388,739 | \$ 493,071,885 |
| Repurchase agreement, financial institution, \$100 million committed line, expiration July 2006, interest is variable based on one-month LIBOR; the weighted average note rate was 4.48% and 2.36%, respectively | 28,425,062 | 29,615,420 | 44,189,436 | 46,582,592 |
| Repurchase agreement, financial institution, \$100 million committed line, expiration December 2006, interest is variable based on one-month LIBOR; the weighted average note rate was 5.37% | 4,655,000 | 4,834,000 | — | — |
| Repurchase agreement, financial institution, \$21 million committed line, expiration April 2005, interest is variable based on one-month LIBOR; the weighted average note rate was 3.79% as of December 31, 2004. This facility was terminated in January 2005 | — | — | 21,000,000 | 30,000,000 |
| Repurchase agreement, financial institution, \$100 million committed line, expiration June 2005, interest is variable based on one-month LIBOR; the weighted average note rate was 5.43% as of December 31, 2004. This facility was terminated in June 2005 | — | — | 19,531,197 | 28,430,000 |
| Repurchase agreement, financial institution, \$50 million committed line, expiration July 2006, interest rate variable based on one-month LIBOR | — | — | — | — |
| Total repurchase agreements | \$ 413,624,385 | \$ 588,771,443 | \$ 409,109,372 | \$ 598,084,477 |

In December 2005, the Wachovia Bank National Association repurchase agreement was amended which temporarily increased the committed amount of this facility to \$500 million from \$350 million until January 2006 in conjunction with the close of the Company's second collateralized debt obligation at which time approximately \$269.1 million was repaid. In addition, the \$100 million repurchase agreement with the same financial institution entered into for the purpose of financing securities available for sale was extended in July 2005 for one year. The current borrowings equate to 98% of the estimated fair value of the securities (net of principal payment receivables of approximately \$730,000) and bear interest at a rate of one month LIBOR

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

plus .20%. If the estimated fair value of the securities decreases, the Company may be required to pay down borrowings from the repurchase agreement due to such a decline in the estimated fair value of the securities collateralizing the repurchase agreement.

The Company had a \$100.0 million master repurchase agreement with a financial institution, as amended in December 2004, which expired in June 2005.

On October 31, 2005, the Company entered into a \$100.0 million repurchase agreement with a financial institution, which effective December 21, 2005, has a term of one year and bears interest at a spread over LIBOR.

In certain circumstances, the Company has financed the purchase of investments from counterparty through a repurchase agreement with that same counterparty. The Company currently records these investments in the same manner as other investments financed with repurchase agreements, with the investment recorded as an asset and the related borrowing under any repurchase agreement as a liability on our consolidated balance sheet. Interest income earned on the investments and interest expense incurred on the repurchase obligations are reported separately on the consolidated income statement. There is discussion, based upon a technical interpretation of SFAS 140, that these transactions may not qualify as a purchase by the Company. The Company believes, and it is industry practice, that the accounting for these transactions is recorded in an appropriate manner, however, if these investments do not qualify as a purchase under SFAS 140, the Company would be required to present the net investment on the balance sheet as a derivative with the corresponding change in fair value of the derivative being recorded in the income statement. The value of the derivative would reflect not only changes in the value of the underlying investment, but also changes in the value of the underlying credit provided by the counterparty. As of December 31, 2005 the Company had entered into eight such transactions, with a book value of the associated assets of \$176.7 million financed with repurchase obligations of \$124.6 million. As of December 31, 2004, the Company had entered into eleven such transactions, with a book value of the associated assets of \$310.4 million financed with repurchase obligations of \$180.4 million. Adoption of the aforementioned treatment would result in the Company recording these assets and liabilities net on its balance sheets.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

Junior Subordinated Notes

The following table outlines borrowings under the Company's junior subordinated notes as of December 31, 2005 and 2004:

| | December 31, 2005 | | December 31, 2004 | |
|---|------------------------------------|--|------------------------------------|--|
| | Debt Carrying Value | Collateral Carrying Value | Debt Carrying Value | Collateral Carrying Value |
| Junior subordinated notes, maturity March 2034, unsecured, face amount of \$27.1 million, interest rate variable based on three-month LIBOR, the weighted average note rate was 8.28% as of December 31, 2005 | \$ 27,070,000 | \$ — | \$ — | \$ — |
| Junior subordinated notes, maturity March 2034, unsecured, face amount of \$25.8 million, interest rate variable based on three-month LIBOR, the weighted average note rate was 7.49% as of December 31, 2005 | 25,780,000 | — | — | — |
| Junior subordinated notes, maturity April 2035, unsecured, face amount of \$25.8 million, interest rate variable based on three-month LIBOR, the weighted average note rate was 7.44% as of December 31, 2005 | 25,774,000 | — | — | — |
| Junior subordinated notes, maturity July 2035, unsecured, face amount of \$25.8 million, interest rate variable based on three-month LIBOR, the weighted average note rate was 7.49% as of December 31, 2005 | 25,774,000 | — | — | — |
| Junior subordinated notes, maturity January 2036, unsecured, face amount of \$51.6 million, interest rate variable based on three-month LIBOR, the weighted average note rate was 7.21% as of December 31, 2005 | 51,550,000 | — | — | — |
| Total junior subordinated notes | <u>\$ 155,948,000</u> | <u>\$ —</u> | <u>\$ —</u> | <u>\$ —</u> |

In 2005, the Company, through newly-formed wholly-owned subsidiaries of the Company's operating partnership, issued a total of \$155.9 million of junior subordinated notes in five separate private placements. These securities are unsecured, have a maturity of 29 to 30 years, pay interest quarterly at a floating rate of interest based on three-month LIBOR and, absent the occurrence of special events, are not redeemable during the first five years. At December 31, 2005, the outstanding balance under these facilities was \$155.9 million with a current weighted average note rate of 7.53%. The impact of these entities in accordance with FIN 46R "Consolidation of Variable Interest Entities" is discussed in Note 2.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

Notes Payable

The following table outlines borrowings under the Company's notes payable as of December 31, 2005 and 2004:

| | December 31, 2005 | | December 31, 2004 | |
|--|---------------------------|---------------------------------|---------------------------|---------------------------------|
| | Debt Carrying Value | Collateral Carrying Value | Debt Carrying Value | Collateral Carrying Value |
| Bridge loan warehouse, financial institution, \$50 million committed line, expiration June 2006, interest rate variable based on Prime or LIBOR, the weighted average note rate was 6.32% as of December 31, 2005 | \$ 46,490,512 | \$ 55,244,721 | \$ — | \$ — |
| Secured term credit facility — Related Party, financial institution, \$50 million committed line, expiration January 2006 with two six-month renewal options, interest rate variable based on one-month LIBOR, the weighted average note rate was 10.29% as of December 31, 2005. This facility was terminated in January 2006 | 30,000,000 | 48,419,907 | — | — |
| Warehousing credit facility, financial institution, \$50 million committed line, expiration December 2007, interest is variable based on one-month LIBOR; the weighted average note rate was 6.68% on December 31, 2005 | 2,632,365 | 3,096,900 | — | — |
| Junior loan participation, maturity April 2008, secured by Company's interest in a second mortgage loan with a principal balance of \$60 million, participation interest is based on a portion of the interest received from the loan, the loan's interest is variable based on one-month LIBOR | 59,400,000 | 59,400,000 | — | — |
| Junior loan participation, maturity July 2006, secured by Company's interest in a second mortgage loan with a principal balance of \$35 million, participation interest is based on a portion of the interest received from the loan, the loan's interest is variable based on one-month LIBOR | 6,752,500 | 6,752,500 | 6,152,500 | 6,152,500 |
| Junior loan participation, maturity April 2006, secured by Company's interest in a first mortgage loan with a principal balance of \$1.4 million, participation interest is based on a portion of the interest received from the loan, the loan has a fixed rate of interest | 125,000 | 125,000 | — | — |

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

| | December 31, 2005 | | December 31, 2004 | |
|---|---------------------------|---------------------------------|---------------------------|---------------------------------|
| | Debt Carrying Value | Collateral Carrying Value | Debt Carrying Value | Collateral Carrying Value |
| Junior loan participation, maturity March 2006, secured by Company's interest in a second mortgage loan with a principal balance of \$25 million, participation interest is based on a portion of the interest received from the loan, the loan's interest is variable based on one-month LIBOR. This facility was terminated in April 2005 | — | — | 4,419,500 | 4,419,500 |
| Senior loan participation, maturity August 2005, secured by Company's interest in a first mortgage loan with a principal balance of \$25 million, participation interest is based on 50% of the net spread of the loan, the loan is variable based on one-month LIBOR. This facility was terminated in January, 2005 | — | — | 3,000,000 | 3,000,000 |
| Unsecured credit facility, financial institution, \$50 million committed line, expiration December 2005, interest is variable based on one-month LIBOR; the weighted average note rate was 9.37% on December 31, 2004. This facility was terminated in December 2005 | — | — | 15,000,000 | — |
| Structured transaction facility, financial institution, \$250 million committed line, expiration June 2006, interest rate variable based on one-month LIBOR; the weighted average note rate was 4.87% on December 31, 2004. This facility was terminated in March 2005 | — | — | 137,199,447 | 185,254,895 |
| Total notes payable | \$ 145,400,377 | \$ 173,039,028 | \$ 165,771,447 | \$ 198,826,895 |

On January 31, 2005, the Company entered into a \$50.0 million secured term credit facility with a shareholder who beneficially owned approximately 2% of the Company's outstanding common stock as of December 31, 2005. At December 31, 2005, the outstanding balance under this facility was \$30.0 million and is reflected in Notes payable — related party on the accompanying balance sheet. In January 2006, this facility was terminated.

In June 2005, the Company entered into a \$50.0 million bridge loan warehousing credit agreement with a financial institution to provide financing for bridge loans. This agreement expires in June 2006 and bears a variable rate of interest, payable monthly, based on Prime plus 0% or 1,2,3 or 6 month LIBOR plus 1.75%, at the Company's option.

In 2005, the Company entered into two junior loan participations with a total outstanding balance at December 31, 2005 of \$59.5 million. These participation borrowings have maturity dates equal to the corresponding mortgage loan and are secured by the participant's interest in the mortgage loan. Interest expense is based on a portion of the interest received from the loan.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

In December 2005, the Company terminated its \$50.0 million unsecured revolving credit agreement. In addition, the Company entered into a \$50.0 million warehousing credit agreement with a financial institution, which has a term of two years and bears interest at a spread over LIBOR.

Collateralized Debt Obligations

On January 19, 2005, the Company issued to third party investors four tranches of investment grade collateralized debt obligations, CDO, through a newly-formed wholly-owned subsidiary, Arbor Realty Mortgage Securities Series 2004-1, Ltd. ("the Issuer"). The Issuer holds assets, consisting primarily of bridge loans, mezzanine loans and cash totaling approximately \$469 million, which serve as collateral for the CDO. The Issuer issued investment grade rated notes with a principal amount of approximately \$305 million and a wholly-owned subsidiary of the Company purchased the preferred equity interests of the Issuer. The four investment grade tranches were issued with floating rate coupons with a combined weighted average rate of three-month LIBOR plus 0.77%. The combined weighted average rate was 4.93% at December 31, 2005. The CDO may be replenished with substitute collateral for loans that are repaid during the first four years of the CDO. Thereafter, the outstanding debt balance will be reduced as loans are repaid. The Company incurred approximately \$7.2 million of issuance costs which is being amortized on a level yield basis over the average estimated life of the CDO. The Company intends to own the portfolio of real estate-related assets until its maturity and accounts for this transaction on its balance sheet as a financing facility. For accounting purposes, CDO is consolidated in the Company's financial statements. The four investment grade tranches are treated as a secured financing, and are non-recourse to the Company. Proceeds from the CDO are distributed quarterly with approximately \$2.0 million being paid to investors as a reduction of their capital invested. In 2005, \$6.0 million of proceeds were distributed and recorded as a reduction of the CDO liability which had a balance of approximately \$299.3 million at December 31, 2005.

On January 11, 2006, the Company completed its second collateralized debt obligation issuing to third party investors nine tranches of investment grade collateralized debt obligations, ("CDO II"), through a newly-formed wholly-owned subsidiary, Arbor Realty Mortgage Securities Series 2005-1, Ltd. ("the Issuer II"). The Issuer II holds assets, consisting primarily of bridge loans, mezzanine loans and cash totaling approximately \$475 million, which serve as collateral for CDO II. The Issuer II issued investment grade rated notes with a principal amount of approximately \$356 million and a wholly-owned subsidiary of the Company purchased the preferred equity interests of the Issuer II. The nine investment grade tranches were issued with floating rate coupons with an initial combined weighted average rate of three-month LIBOR plus 0.74%. CDO II may be replenished with substitute collateral for loans that are repaid during the first five years. Thereafter, the outstanding debt balance will be reduced as loans are repaid. The Company incurred approximately \$6.5 million of issuance costs which is being amortized on a level yield basis over the average life of CDO II. The Company intends to own the portfolio of real estate-related assets until its maturity and accounts for this transaction on its balance sheet as a financing facility. For accounting purposes, CDO II is consolidated in the Company's financial statements. The nine investment grade tranches are treated as a secured financing, and are non-recourse to the Company. Proceeds from CDO II are distributed quarterly with approximately \$1.2 million being paid to investors as a reduction of their capital invested.

Proceeds from the sale of the 13 investment grade tranches issued in CDO and CDO II were used to repay outstanding debt under the Company's repurchase agreements and notes payable. The assets pledged as collateral were contributed from the Company's existing portfolio of assets.

Each of the credit facilities contains various financial covenants and restrictions, including minimum net worth and debt-to-equity ratios. In 2005, the Company had four institutions permanently amend the interest expense coverage ratio covenant. As amended, the Company is required to have an interest expense coverage

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

ratio of no less than 2.0 to 1.0, calculated on the preceding twelve months. The Company was in compliance with all financial covenants and restrictions at December 31, 2005 and 2004.

Note 7 — Minority Interest

On July 1, 2003, ACM contributed \$213.1 million of structured finance assets and \$169.2 million of borrowings supported by \$43.9 million of equity in exchange for a commensurate equity ownership in ARLP, the Company's operating partnership. This transaction was accounted for as minority interest and entitled ACM to a 28% interest in ARLP. In April 2004, the Company issued 6,750,000 shares of its common stock in an initial public offering and a concurrent offering to one of the Company's directors. In May 2004, the underwriters of the initial public offering exercised a portion of their over-allotment option, which resulted in the issuance of 524,200 additional shares,

In 2005, the Company issued 0.6 million shares of common stock, of which approximately 0.3 million shares were issued upon the exercise of approximately 0.3 million warrants, 0.2 million shares were issued as payment to its manager, ACM, for the incentive management fee and 0.1 million shares were issued by means of restricted stock grants issued to certain employees of the company and of ACM. As a result, minority interest was reduced by \$0.6 million to properly reflect ACM's 18% limited partnership interest in ARLP and its wholly-owned subsidiaries at December 31, 2005.

Note 8 — Commitments and Contingencies

As of December 31, 2005, the Company had the following material contractual obligations (payments in thousands):

| Contractual Obligations | Payments Due by Period(1) | | | | Total |
|---|---------------------------|-------------------|-------------------|-------------------|---------------------|
| | 2006 | 2007-2008 | 2009-2010 | Thereafter | |
| Notes payable | \$ 8,255 | \$ 59,966 | \$ 10,903 | \$ — | \$ 79,124 |
| Collateralized debt obligations(2) | — | — | 299,319 | — | 299,319 |
| Repurchase agreements(3) | 69,675 | 247,221 | 37,355 | 59,374 | 413,625 |
| Trust preferred securities | — | — | — | 155,948 | 155,948 |
| Loan participations | 6,878 | 59,400 | — | — | 66,278 |
| Outstanding unfunded commitments(4) | 11,442 | 34,329 | 4,110 | — | 49,881 |
| Interest rate swaps, treated as hedges(5) | N/A | N/A | N/A | N/A | N/A |
| None-hedge derivative obligations(5) | N/A | N/A | N/A | N/A | N/A |
| Management fee(6) | N/A | N/A | N/A | N/A | N/A |
| Totals | <u>\$ 96,250</u> | <u>\$ 400,916</u> | <u>\$ 351,687</u> | <u>\$ 215,322</u> | <u>\$ 1,064,175</u> |

(1) Represents amounts due based on contractual maturities.

(2) Comprised of \$299,319,000 of CDO I debt with a weighted average remaining maturity of 3.7 years as of December 31, 2005.

(3) In connection with the CDO II transaction in January 2006, \$31 million of a notes payable facility scheduled to mature in 2007, \$29 million of the repurchase agreement scheduled to mature in 2006, \$139 million of the repurchase agreements scheduled to mature in 2007-2008, \$37 million of the repurchase agreements scheduled to mature in 2009-2010, and \$59 million of the repurchase agreements scheduled to mature after 2010 were repaid. CDO II has a five-year replenishment period.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

- (4) In accordance with certain of our loans and investments, we have outstanding unfunded commitments of \$49.9 million as of December 31, 2005, that we are obligated to fund as the borrowers meet certain requirements. Specific requirements include but are not limited to property renovations, building construction, and building conversions based on criteria met by the borrower in accordance with the loan agreements.
- (5) These contracts do not have fixed and determinable payments.
- (6) This contract does not have fixed and determinable payments; refer to note 13 entitled "Management Agreement".
- (7) The Company has contractual obligations to make future payments in connection with short-term and long-term debt described in note 6 "Debt Obligations".

Litigation

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

Note 9 — Stockholders' Equity

Common Stock

The Company's charter provides for the issuance of up to 500 million shares of common stock, par value \$0.01 per share, and 100 million shares of preferred stock, par value \$0.01 per share. The Company was incorporated in June 2003 and was initially capitalized through the sale of 67 shares of common stock for \$1,005.

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

On April 13, 2004, the Company issued 6,750,000 shares of its common stock in a public offering at a price to the public of \$20.00 per share, for net proceeds of approximately \$125.4 million after deducting the underwriting discount and the other estimated offering expenses. The Company used the proceeds to pay down indebtedness. In May, 2004, the underwriters exercised a portion of their over-allotment option, which resulted in the issuance of 524,200 additional shares. The Company received net proceeds of approximately \$9.8 million after deducting the underwriting discount. Additionally in 2004, ACM was paid its third quarter incentive management fee in shares of common stock totaling 22,498. The Company issued 973,354 shares of common stock from the exercise of warrants under the Warrant Agreement and received net proceeds of \$12.9 million. After giving effect to these transactions, the Company had approximately 16.5 million shares of common stock issued and outstanding at December 31, 2004.

On February 2, 2005, the Company issued 4,000 shares of restricted common stock under the stock incentive plan to its independent directors. Additionally, ACM elected to be paid its fourth quarter 2004 incentive management fee in shares of common stock totaling 43,643. On May 25, 2005, ACM elected to be paid its first quarter 2005 incentive management fee in 40,697 shares of common stock. In addition, the Company issued 41,000 shares of restricted common stock under the stock incentive plan to certain employees of the Company and of ACM, the manager of the Company. On July 21, 2005, ACM elected to be paid a portion of its second quarter 2005 incentive management fee in 83,082 shares of common stock. In addition, the Company issued 77,500 shares of restricted common stock under the stock incentive plan to certain

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

employees of the Company and of ACM. In August 2005, the Company issued 2,000 shares of restricted common stock under the stock incentive plan to certain employees of the Company. In the fourth quarter of 2005, ACM was paid its third quarter 2005 incentive management fee in 23,920 shares of common stock.

During the year ended December 31, 2005, the Company issued 282,776 shares of common stock from the exercise of warrants under the July 1, 2003 warrant agreement and received net proceeds of \$4.2 million. After giving effect to these transactions, the Company had 17,051,391 shares issued and outstanding.

In February 2006, 1,000 restricted shares were issued to each of three independent members of the board of directors under the stock incentive plan. One third of the restricted stock granted to each of these directors were vested as of the date of grant, another one third will vest on January 31, 2007 and the remaining third will vest on January 31, 2008.

In February 2006, upon the resignation of a member of the Company's board of directors, 445 shares of restricted stock were forfeited. In addition, the Company issued 1,445 shares of common stock to this individual in conjunction with an advisory role taken with the Company.

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 as amended in 2005, 685,000 shares of common stock were reserved for issuance pursuant to restricted stock awards. As of December 31, 2004, 149,500 shares of restricted stock were awarded and were outstanding. Of the shares awarded, two-thirds vested immediately and the remaining one-third will vest ratably over three years on the anniversary date of the initial award.

In February 2005, 1,000 restricted shares were issued to each of four independent members of the board of directors under the stock incentive plan. One third of the restricted stock granted to each of these directors were vested as of the date of grant, another one third vested on January 31, 2006 and the remaining third will vest on January 31, 2007. In May 2005, the Company issued 41,000 shares of restricted common stock under the stock incentive plan to certain employees of the Company and of ACM. One fifth of the restricted stock granted to each of these employees were vested as of the date of grant and recognized currently in earnings, the second one-fifth will vest in May 2006, the third one-fifth will vest in May 2007, the fourth one-fifth will vest in May 2008, and the remaining one-fifth will vest in May 2009. In July 2005, the Company issued 77,500 shares of restricted common stock under the stock incentive plan to certain employees of the Company and of ACM. One fifth of the restricted stock granted to each of these employees were vested as of the date of grant and is recognized currently in earnings, the second one-fifth will vest in May 2006, the third one-fifth will vest in May 2007, the fourth one-fifth will vest in May 2008, and the remaining one-fifth will vest in May 2009. In August 2005, the Company issued 2,000 shares of restricted common stock under the stock incentive plan to two of the Company's directors. One third of the restricted stock granted to each of these directors were vested as of the date of grant and is recognized currently in earnings, the second one-third will vest in August 2006, the third one-third will vest in August 2007. Additionally, in 2005, 14,445 shares of unvested restricted stock were forfeited.

Dividends were paid on the restricted shares as dividends were paid on shares of the Company's common stock whether or not they are vested. For accounting purposes, the Company measures the compensation costs for these shares as of the date of the grant, with subsequent remeasurement for any unvested shares granted to non-employees of the Company with such amounts expensed against earnings, at the grant date (for the portion that vest immediately) or ratably over the respective vesting periods. The Company accounts for the stock incentive plan to employees of the Company and employees of ACM under the fair value method. For the years ended December 31, 2005, 2004 and for the period from June 24, 2003 compensation expense

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

related to this plan totaled \$1.6 million, \$0.3 million and \$1.7 million, respectively. Such amounts appear on the Company's Consolidated Income Statement under "stock-based compensation expense."

In February 2006, 1,000 restricted shares were issued to each of three independent members of the board of directors under the stock incentive plan. One third of the restricted stock granted to each of these directors was vested as of the date of grant, another one third will vest in February 2007 and the remaining third will vest in February 2008.

In February 2006, upon the resignation of a member of the Company's board of directors, 445 shares of restricted stock were forfeited.

Warrants

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

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

For the year ended December 31, 2005, 287,144 common stock warrants were exercised for a total amount of \$4.2 million and 282,766 common shares were issued. As of December 31, 2005, there were no outstanding common stock warrants, as they expired July 1, 2005, under the Company's July 1, 2003 warrant agreement.

Preferred Stock

Concurrent with the formation of the Company, ACM contributed a portfolio of structured finance investments and related debt to ARLP, the operating partnership of the Company, in exchange for 3,146,724 units of limited partnership interest in ARLP and warrants to purchase an additional 629,345 operating partnership units. Concurrently, the Company, ARLP and ACM entered into a pairing agreement. Pursuant to the pairing agreement, each operating partnership unit issued to ACM and issuable to ACM upon exercise of its warrants for additional operating partnership units in connection with the contribution of initial assets was paired with one share of the Company's special voting preferred stock. The preferred stock was issued to ACM by the Company in exchange for a capital contribution in the amount of \$31,467. Each share of special voting preferred stock entitles the holder to one vote on all matters submitted to a vote of the Company's stockholders. A holder of special voting preferred stock will not be entitled to any regular or special dividend payments or other distributions, other than a \$0.01 per share liquidation preference. The Company has classified and designated 5,000,000 shares of its 100,000,000 authorized shares of preferred stock as special voting preferred stock. In 2004, ACM exercised 629,345 warrants in exchange for operating partnership units resulting in the issuance of 629,345 shares of preferred stock. As of December 31, 2004 and 2005, the Company had 3,776,069 shares issued and outstanding.

Note 10 — Earnings Per Share

Earnings per share ("EPS") is computed in accordance with SFAS No. 128, Earnings Per Share. Basic earnings per share is calculated by dividing net income by the weighted average number of shares of common

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

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

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

The following is a reconciliation of the numerator and denominator of the basic and diluted net earnings per share computations for the years ended December 31, 2005, 2004, and for the period June 24, 2003 (inception) to December 31, 2003, respectively.

| | For the Year Ended December 31, 2005 | | For the Year Ended December 31, 2004 | | For the Period Ended December 31, 2003 | |
|--|---|----------------------|---|----------------------|---|---------------------|
| | Basic | Diluted | Basic | Diluted | Basic | Diluted |
| Net income | \$ 50,387,023 | \$ 50,387,023 | \$ 25,072,682 | \$ 25,072,682 | \$ 3,407,919 | \$ 3,407,919 |
| Add: Income allocated to minority interest | | 11,280,981 | | 5,875,816 | | 1,308,167 |
| Earnings per EPS calculation | <u>\$ 50,387,023</u> | <u>\$ 61,668,004</u> | <u>\$ 25,072,682</u> | <u>\$ 30,948,498</u> | <u>\$ 3,407,919</u> | <u>\$ 4,716,086</u> |
| Weighted average number of common shares outstanding | 16,867,466 | 16,867,466 | 13,814,199 | 13,814,199 | 8,199,567 | 8,199,567 |
| Weighted average number of operating partnership units | | 3,776,069 | | 3,286,387 | | 3,146,724 |
| Dilutive effect of incentive management fee shares | | 10,934 | | — | | — |
| Dilutive effect of warrants | | 18,033 | | 265,429 | | — |
| Total weighted average common shares outstanding | <u>16,867,466</u> | <u>20,672,502</u> | <u>13,814,199</u> | <u>17,366,015</u> | <u>8,199,567</u> | <u>11,346,291</u> |
| Earnings per common share | <u>\$ 2.99</u> | <u>\$ 2.98</u> | <u>\$ 1.81</u> | <u>\$ 1.78</u> | <u>\$ 0.42</u> | <u>\$ 0.42</u> |

Note 11 — Related Party Transactions

As of December 31, 2005 and 2004, the Company had a \$7.75 million first mortgage loan receivable that bore interest at a variable rate of one month LIBOR plus 4.25% and was scheduled to mature in March 2005. In March 2005, this loan was extended for one year with no other change in terms. This loan was made to a not-for-profit corporation that holds and manages investment property from the endowment of a private academic institution. Two of the Company's directors are members of the board of trustees of the borrower

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

and the private academic institution. Interest income recorded from this loan for the year ended December 31, 2005 and 2004, was approximately \$0.6 million and \$0.9 million, respectively.

ACM had a 50% non-controlling interest in a joint venture, which was formed to acquire, develop and/or sell real estate assets. In 2005, ACM received all of its investment in this joint venture and retained its interest in the joint venture. All loans outstanding to this joint venture were repaid in full in 2004. In 2003, the Company had a \$16.0 million bridge loan outstanding to the joint venture, which was collateralized by a first lien position on a commercial real estate property. This loan was funded by ACM in June 2003 and was purchased by the Company in July 2003. The loan required monthly interest payments based on one month LIBOR and was repaid in full in 2004. The Company had agreed to provide the borrower with additional mezzanine financing in the amount of up to \$8.0 million. The mezzanine financing required interest payments based on one month LIBOR and was repaid in full in 2004.

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 \$22.3 million and \$48.3 million as of December 31, 2004 and 2003, respectively). 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 were in default. In 2004 and 2005, these four investments matured, the borrowers paid the amounts due in full and ACM's guarantee on these investments have been satisfied.

In 2005, ACM received a brokerage fee for services rendered in arranging a loan facility for a borrower. The Company provided a portion of the loan facility. The Company was credited \$0.4 million of this brokerage fee, which was included in other income.

As of December 31, 2005 and 2004, \$0.2 million and \$0.6 million, respectively of escrows received at loan closings were due to ACM and included in due to related party. These payments were remitted in January 2006 and January 2005, respectively. In addition, as of December 31, 2005, approximately \$0.1 million of net expenses payments due from ACM were included in due to related party. These payments were remitted in January 2006. Also as of December 31, 2004, approximately \$0.3 million of interest payments from borrowers due from ACM were included in due to related party. These payments were remitted in January 2005.

The Company is dependent upon its manager, ACM, to provide services to the Company that are vital to its operations with whom it has conflicts of interest. The Company's chairman, chief executive officer and president, Mr. Ivan Kaufman, is also the chief executive officer and president of ACM, and, the Company's chief financial officer, Mr. Paul Elenio, is the chief financial officer of ACM. In addition, Mr. Kaufman and the Kaufman entities together beneficially own approximately 90% of the outstanding membership interests of

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

ACM and certain of the Company's employees and directors, also hold an ownership interest in ACM. Furthermore, one of the Company's directors also serves as the trustee of one of the Kaufman entities that holds a majority of the outstanding membership interests in ACM and co-trustee of another Kaufman entity that owns an equity interest in ACM. ACM currently holds an 18% limited partnership interest in the Company's operating partnership and 18% of the voting power of its outstanding stock.

Note 12 — Distributions

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

During the year ended December 31, 2005 the Company paid distributions totaling \$37.7 million, or \$2.24 per share. During the year ended December 31, 2004 the Company declared and paid distributions totaling \$15.6 million, or \$1.16 per share. For the period of June 24, 2003 (inception) to December 31, 2003, the Company declared and paid distributions totaling \$4.1 million, or \$0.50 per share.

For tax purposes, 70.44% or \$1.58 per share of dividends declared in 2005 were classified as ordinary income with 29.56% or \$0.66 per share of dividends represented a return of capital. Of the ordinary taxable dividend, approximately 0.65% represents "qualified dividend income" and will be eligible for reduced dividend rates. In 2004 and 2003, 100% of dividends declared were classified as ordinary income.

On January 11, 2006 the Company declared distributions of \$0.70 per share of common stock, payable with respect to the three months ended December 31, 2005, to stockholders of record at the close of business on January 23, 2006. These distributions were subsequently paid on February 6, 2006.

Note 13 — Management Agreement

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

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

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

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

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

The incentive compensation is measured annually in arrears; provided, however, ACM shall receive quarterly installments thereof in advance. The quarterly installments are calculated based on the results for the period of twelve months ending on the last day of the fiscal quarter with respect to which such installment is payable. Each quarterly installment payment is deemed to be an advance of a portion of the incentive fee payable for the year. At least 25% of this incentive compensation fee is paid to ACM in shares of the Company's common stock, subject to ownership limitations in the Company's charter. For purposes of determining the number of shares that are paid to ACM to satisfy the common stock portion of the incentive management fee from and after the date the Company's common shares are publicly traded, each common share shall have a value equal to the average closing price per common share based on the last twenty days of the fiscal quarter with respect to which the incentive fee is being paid. The incentive compensation fee is accrued as it is earned. In accordance with Issue 4(b) of EITF 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services," the expense incurred for incentive fee paid in common stock is determined using the amount of stock calculated as noted above and the quoted market price of the stock on the last day of each quarter. At December 31, the Company remeasures the incentive fee expense paid to ACM in shares of the company's common stock in accordance with the guidance provided by Issue 4(a) of EITF 96-18, which discusses how to measure at the measurement date when certain terms are not known prior to the measurement date. Accordingly, expense recorded related to common stock issued as a portion of incentive fee was adjusted to reflect the fair value of the stock on the measurement date when the final calculation of total incentive fee was determined. In the event the calculated incentive compensation for the full year is an amount less than the total of the installment payments made to ACM for the year, ACM will refund to the Company the amount of such overpayment in cash regardless of whether such installments were paid in cash or common stock. In such case, the Company would record a negative incentive fee expense in the quarter when such overpayment is determined. In 2005 and 2004, the full year incentive fee was greater than the sum of the quarterly installments.

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

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

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.

In 2005, ACM earned incentive compensation installments totaling \$9.9 million, of which \$5.5 million was elected by ACM to be paid in 205,069 shares of common stock. As of December 31, 2005, ACM's fourth quarter installment of \$1.5 million was included in due to related party. As provided for in the management agreement, ACM elected to receive this entire incentive compensation fee in common stock, which was subsequently paid in February 2006 in common shares totaling 57,370. In 2004, ACM earned incentive compensation installments totaling \$1.6 million. No incentive compensation was earned or paid in the period June 24, 2003 (inception) to December 31, 2003.

For the year ended December 31, 2005, 2004 and for the period ended December 31, 2003 ACM earned \$2.5 million, \$2.0 million, and \$0.6 million, respectively in base management fees, of which approximately \$0.2 million and \$0.2 million in 2004 and 2005, respectively was included in due to related party. These amounts were subsequently paid in January 2005 and 2006, respectively.

Note 14 — Due to Borrowers

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

Note 15 — Fair Value of Financial Instruments

SFAS No. 107 requires disclosure of the estimated fair value of an entity's assets and liabilities considered to be financial instruments. The following table summarizes the carrying values and the estimated fair values of financial instruments as of December 31, 2005 and 2004. Fair value estimates are dependent

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

upon subjective assumptions and involve significant uncertainties resulting in variability in estimates with changes in assumptions.

| | December 31, 2005 | | December 31, 2004 | |
|--|-------------------|----------------------|-------------------|----------------------|
| | Carrying Value | Estimated Fair Value | Carrying Value | Estimated Fair Value |
| Financial assets: | | | | |
| Loans and investments, net | \$ 1,246,825,906 | \$ 1,256,126,306 | \$ 831,783,364 | \$ 831,783,364 |
| Related party loans, net | 7,749,538 | 7,749,538 | 7,749,538 | 7,749,538 |
| Available-for-sale securities | 29,615,420 | 29,615,420 | 46,582,592 | 46,582,592 |
| Derivative financial instruments | 1,440,783 | 1,440,783 | — | — |
| Financial liabilities: | | | | |
| Repurchase agreements | \$ 413,624,385 | \$ 413,624,385 | \$ 409,109,372 | \$ 409,109,372 |
| Collateralized debt obligations | 299,319,000 | 299,319,000 | — | — |
| Junior subordinated notes to subsidiary trust issuing preferred securities | 155,948,000 | 155,948,000 | — | — |
| Notes payable | 115,400,377 | 115,400,377 | 165,771,447 | 165,771,447 |
| Notes payable — related party | 30,000,000 | 30,000,000 | — | — |
| Derivative financial instruments | 925,525 | 925,525 | — | — |

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.

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

Derivative financial instruments: Fair values are approximated on current market quotes received from financial sources that trade such securities. These items are included in other assets and other liabilities on the balance sheet.

Financial Liabilities: Financial liabilities bear interest at rates that are similar to those available in the market currently. Therefore, fair values approximate the carrying values reported in the balance sheets.

Note 16 — Subsequent Events

On January 11, 2006, the Company completed its second non-recourse collateralized debt obligation ("CDO II") transaction, whereby a portfolio of real estate related assets was contributed to a consolidated subsidiary which issued \$356 million of investment grade-rated floating-rate notes in a private placement. The

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

subsidiary retained the equity interest in the issuer with a value of approximately \$119 million. The notes are secured by a portfolio of real estate-related assets with a face value of approximately \$412 million, consisting primarily of bridge loans, mezzanine loans and junior participating interests in first mortgages, and by approximately \$63 million of cash available for acquisitions of loans and other permitted investments. The notes have an initial weighted average spread of approximately 74 basis points over three-month LIBOR. The facility has a five-year replenishment period that allows the principal proceeds from repayments of the collateral assets to be reinvested in qualifying replacement assets, subject to certain conditions. The Company intends to own the portfolio of real estate-related assets until its maturity and will account for this transaction on its balance sheet as a financing facility. For accounting purposes, CDO II is consolidated in the Company's financial statements. In connection with CDO II, the Company entered into interest rate swap agreements to hedge its exposure to the risk of changes in the difference between three-month LIBOR and one-month LIBOR. The interest rate swaps became necessary due to the investor's return being paid based on a three-month LIBOR index while the assets contributed to CDO II are yielding interest based on a one-month LIBOR index. These swaps were executed on December 22, 2005 with notional amounts totaling \$288.3 million and expire in 2013. As of December 31, 2005, the market value of these swaps was insignificant to the financial statements.

In order for the Company's wholly-owned private REIT, ARSR, Inc., to qualify as a REIT under the Internal Revenue Code for the taxable year ending December 31, 2005, it was required to have at least 100 stockholders by January 2006. Accordingly, the Company's wholly-owned private REIT issued 116 shares of preferred stock in a private offering to approximately 116 investors and certain employees of the Company and ACM for \$1,000 per share in January 2006. These shares have a par value of \$0.01 and yield a preferred annual return of 12.5%.

On February 28, 2006 the Company entered into an interest rate swap agreement with a notional amount of \$5.0 million, that expires in September 2010, to hedge its exposure to interest risk on its variable rate current and future forecasted LIBOR based debt relating to a certain fixed rate loans in its portfolio.

On March 2, 2006 the Company entered into an interest rate swap agreement with a notional amount of \$20.0 million, that expires in November 2012, to hedge its exposure to interest risk on its variable rate current and future forecasted LIBOR based debt relating to a certain fixed rate loans in its portfolio.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

Note 17 — Summary Quarterly Consolidated Financial Information — Unaudited

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

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

| For the Year Ended December 31, 2005: | For the Three Months Ended | | | |
|---|----------------------------|-----------------------|----------------------|----------------------|
| | December 31, 2005 | September 30, 2005 | June 30, 2005 | March 31, 2005 |
| Revenue: | | | | |
| Interest income | \$ 31,619,614 | \$ 27,073,076 | \$ 39,295,309 | \$ 23,121,158 |
| Other income | 74,676 | 35,730 | 46 | 387,798 |
| Total revenue | <u>\$ 31,694,290</u> | <u>\$ 27,108,806</u> | <u>\$ 39,295,355</u> | <u>\$ 23,508,956</u> |
| Expenses: | | | | |
| Interest expense | 15,266,253 | 12,462,458 | 9,690,559 | 8,326,154 |
| Employee compensation and benefits | 1,215,401 | 948,312 | 956,687 | 1,154,209 |
| Stock based compensation | 317,356 | 808,687 | 372,828 | 92,027 |
| Selling and administrative | 1,363,703 | 1,213,889 | 927,895 | 845,879 |
| Management fee — related party | 2,116,638 | 1,322,643 | 7,360,947 | 1,630,318 |
| Total expenses | <u>\$ 20,279,351</u> | <u>\$ 16,755,989</u> | <u>\$ 19,308,916</u> | <u>\$ 12,048,587</u> |
| Income before minority interest and income from equity affiliates | 11,414,939 | 10,352,817 | 19,986,439 | 11,460,369 |
| Income from equity affiliates | — | — | 8,006,443 | 446,997 |
| Income before minority interest | <u>\$ 11,414,939</u> | <u>\$ 10,352,817</u> | <u>\$ 27,992,882</u> | <u>\$ 11,907,366</u> |
| Income allocated to minority interest | 2,071,691 | 1,881,055 | 5,126,510 | 2,201,725 |
| Net Income | <u>\$ 9,343,248</u> | <u>\$ 8,471,762</u> | <u>\$ 22,866,372</u> | <u>\$ 9,705,641</u> |
| Basic earnings per common share | <u>0.55</u> | <u>0.50</u> | <u>1.36</u> | <u>0.58</u> |
| Diluted earnings per common share | <u>0.55</u> | <u>0.50</u> | <u>1.36</u> | <u>0.58</u> |

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

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

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued
December 31, 2005

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

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
SCHEDULE IV — LOANS AND OTHER LENDING INVESTMENTS
DECEMBER 31, 2005

| Type | Location | Periodic Payment Terms | Maturity Date | Interest Pay Rate Index(1) | Interest Accrual Rate Index | Prior Liens | Face Amount | Carrying Amount(2) |
|------------------------|-----------------------|------------------------------|------------------|-------------------------------|--|----------------|----------------|-----------------------|
| Bridge Loans | | | | | | | | |
| Co-op(3) | New York, NY | Interest Only | Apr-06 | Fixed 10% | N/A | \$ — | \$ 1,350,000 | \$ 1,350,000 |
| Multifamily(3) | Indiana | Interest Only | Mar-06 | Libor + 4.25% | N/A | — | 7,749,538 | 7,749,538 |
| Commercial | Brooklyn, NY | Interest Only | Oct-06 | Libor + 4.75% | N/A | — | 4,663,944 | 4,649,569 |
| Condo Conversion | Tarzana, CA | Interest Only | Feb-07 | Libor + 3.50% | N/A | — | 13,697,304 | 13,629,278 |
| Office | San Francisco, CA | Interest Only | Dec-06 | Libor Floor 2.58% | N/A | — | 27,000,000 | 27,084,855 |
| Hotel | New York, NY | Interest Only | Mar-06 | Libor + 5.50% | Libor + 9.00% | — | 26,600,000 | 26,568,835 |
| Hotel | Miami Beach, Florida | Interest Only | Mar-09 | Libor + 4.00% (Yr 1-2) | N/A | — | 30,000,000 | 29,987,264 |
| Multifamily | Altamonte Springs, FL | Interest Only | May-07 | Libor + 3.50% | N/A | — | 25,592,000 | 25,472,890 |
| Condo Conversion | New York, NY | Interest Only | Apr-07 | Floor 4.75% | N/A | — | 37,121,721 | 37,121,721 |
| Office Condo Conv(3) | New York, NY | Interest Only | Apr-07 | Libor + 4.00% | N/A | — | 7,903,744 | 7,903,744 |
| Multifamily | Miami Beach, FL | Interest Only | Jun-06 | Libor Floor 1.19% | N/A | — | 12,010,667 | 11,945,680 |
| Office(3) | Clearwater, FL | Interest Only | Jul-07 | Libor Floor 1.10% | N/A | — | 20,000,000 | 20,000,000 |
| Multifamily | New York, NY | Interest Only | Feb-06 | Libor + 4.00% | N/A | — | 7,200,000 | 7,170,404 |
| Hotel | Marion, IN | Interest Only | Dec-09 | Libor Floor 2.42% | N/A | — | 12,929,945 | 12,885,932 |
| | Los Angeles, CA | Interest Only | Apr-07 | 5.00% fixed | Libor + 5.00% Libor FI 2.87% Libor cap 4.00% | — | 35,224,781 | 34,858,776 |
| Condo | New York, NY | Interest Only | May-07 | Libor + 3.95% | N/A | — | 27,000,000 | 26,896,961 |
| Commercial | Brooklyn, NY | Interest Only | Aug-07 | Libor FI 3.09% | N/A | — | 25,000,000 | 25,000,000 |
| Commercial | Brooklyn, NY | Interest Only | Aug-10 | Libor + 4.5% Libor | N/A | — | 30,707,258 | 30,451,066 |
| Condo | Brooklyn, NY | Interest Only | Aug-10 | FI 3.38% | N/A | — | 19,666,667 | 19,408,077 |
| Other | Charlottesville, VA | Interest Only | Aug-07 | 6.45% fixed | N/A | — | 18,123,000 | 16,760,654 |
| Condo Conversion | New York, NY | Interest Only | Aug-06 | Libor + 4.50% | N/A | — | 19,077,204 | 18,749,948 |
| Condo Conversion | New York, NY | Interest Only | Oct-07 | Libor FI 2.25% | N/A | — | 4,834,000 | 4,786,935 |
| Condo Conversion | New York, NY | Interest Only | Oct-07 | Libor + 4.0% | N/A | — | \$ 413,451,773 | \$ 410,432,127 |
| Condo Conversion | New York, NY | Interest Only | Oct-07 | Libor FL 4.03% | N/A | — | | |
| Condo Conversion | New York, NY | Interest Only | Oct-07 | Libor + 3.50% | N/A | — | | |
| Condo Conversion | New York, NY | Interest Only | Oct-07 | Libor FL 4.32% | N/A | — | | |
| Multifamily | Miami, FL | Interest Only | Jul-06 | Libor + 2.50% | N/A | — | | |
| Multifamily | Columbia, SC | Interest Only | Jan-08 | Libor FI 4.37% | N/A | — | | |
| Mezzanine Loans | | | | | | | | |
| Office | Washington D.C. | Interest Only | Nov-06 | Libor + 6.99% | N/A | \$ 120,000,000 | \$ 25,000,000 | \$ 25,011,745 |
| Retail | Various | Interest Only | Jan-06 | Libor + 8.50% | N/A | 336,000,000 | 30,100,001 | 30,100,001 |
| Hotel | Chicago, IL | Interest Only | Feb-06 | Floor 9.50% | N/A | 47,128,145 | 13,855,643 | 13,855,643 |
| Office | New York, NY | Interest Only | Feb-09 | Libor + 5.00% | N/A | 5,942,925 | 10,529,394 | 10,529,394 |
| Office | New York, NY | Interest Only | Jan-06 | Libor Floor 2.59% | N/A | 150,000,000 | 35,000,000 | 35,000,000 |
| Office | New York, NY | Interest Only | May-06 | Libor + 5.75% | N/A | 166,000,000 | 2,000,000 | 1,998,989 |
| Office | New York, NY | Interest Only | May-06 | Libor Floor 2.00% | N/A | 168,000,000 | 25,000,000 | 24,987,574 |
| Retail | Various | Interest Only | Aug-06 | Libor + 9.00% | N/A | 108,626,171 | 13,632,813 | 13,630,947 |
| | | | | Libor + 4.75% | N/A | | | |
| | | | | Libor Floor 1.25% | N/A | | | |

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES**SCHEDULE IV — LOANS AND OTHER LENDING INVESTMENTS — (Continued)****DECEMBER 31, 2005**

| | | Periodic Payment Terms | Maturity Date | Interest Pay Rate Index(1) | Interest Accrual Rate Index | | | Carrying Amount(2) |
|---------------------|--------------------------|------------------------------|------------------|---|-----------------------------------|---------------|----------------|-----------------------|
| Type | Location | | | | | Prior Liens | Face Amount | |
| Retail | Various | Interest Only | Jan-06 | Libor + 10% Libor Floor 1.17% | N/A | 300,000,000 | 10,000,000 | 10,000,000 |
| Mixed Use | | | | Libor + 4.00% Less Scvg Fee - .015% | | | | |
| | Cambridge, MA | Interest Only | Jan-07 | Libor + 7.25% | N/A | 95,000,000 | 35,000,000 | 35,001,397 |
| Multifamily | Altamonte Springs, FL | Interest Only | May-07 | Floor 8.50% | N/A | 25,592,000 | 2,867,000 | 2,853,346 |
| Office | New York, NY | Interest Only | Jun-06 | Libor + 6.50% | N/A | 135,000,000 | 30,000,000 | 30,002,631 |
| Condo | Brooklyn, NY | Interest Only | Jul-06 | Libor + 5.00% | Libor + 9.00% Fixed 14.0% | 16,225,222 | 4,723,612 | 4,723,612 |
| Condo | | New York, NY | Interest Only | Feb-07 | | Libor + 7.00% | 53,398,898 | 25,781,165 |
| Office | New York, NY | Interest Only | Jul-06 | Libor + 9.00% | N/A | 235,000,000 | 35,000,000 | 34,977,308 |
| Office | New York, New York | Interest Only | Jun-06 | Libor + 6.90% | N/A | 79,000,000 | 29,000,000 | 28,769,047 |
| Multifamily | | | | Libor Floor 1.75% | | | | |
| | Tampa, FL | Interest Only | Dec-09 | Libor Floor 1.50% | N/A | 7,645,000 | 4,000,000 | 3,966,192 |
| Hotel | Kapaa, Kaunai, HI | Interest Only | Apr-07 | Libor Floor 2.85% | N/A | 30,370,649 | 12,952,292 | 12,952,292 |
| Office | New York, NY | Interest Only | Mar-15 | Fixed 8.17% | N/A | 265,000,000 | 45,000,000 | 43,949,992 |
| Office | Various | Interest Only | Apr-15 | Fixed 9.39% | N/A | 127,500,000 | 12,500,000 | 12,484,041 |
| Hotel | New York, NY | Interest Only | Apr-07 | Fixed 9.00% | N/A | 36,995,000 | 28,000,000 | 28,000,000 |
| Multifamily | Vpsilanti, MI | Interest Only | Jan-08 | Libor + 6.00% | N/A | 32,178,923 | 7,967,831 | 7,986,034 |
| Retail | Richmond, KY | Interest Only | Oct-08 | Libor + 5.00% | N/A | 15,246,645 | 3,000,000 | 2,972,312 |
| Condo | | | | | | | | |
| | New York, NY | Interest Only | Apr-08 | Libor + 6.75% | N/A | 278,614,075 | 49,000,000 | 49,048,293 |
| Condo | New York, NY | Interest Only | Apr-08 | Libor FI 2.50% | N/A | 387,614,076 | 28,000,000 | 28,000,000 |
| | | | | | | | | |
| Office | New York, NY | Interest Only | Apr-08 | Libor FI 2.50% | N/A | 31,500,000 | 25,632,500 | 25,656,129 |
| Office | Sacramento, CA | Interest Only | Feb-07 | Libor + 4.89% | N/A | 31,500,000 | 25,632,500 | 25,656,129 |
| Office | Manhasset, NY | Interest Only | Jun-15 | 10.00% fixed | N/A | 50,595,000 | 9,000,000 | 8,828,775 |
| Multifamily | Alameda, CA | Interest Only | Sep-08 | 9.00% fixed | N/A | 56,897,188 | 7,107,157 | 7,107,157 |
| Multifamily | Various | Interest Only | Aug-07 | Libor + 3.25% | N/A | 420,000,000 | 25,000,000 | 24,799,364 |
| Office | New York, NY | Interest Only | Nov-09 | 5.397% fixed | N/A | 238,450,000 | 9,500,000 | 8,698,313 |
| Office | New York, NY | Interest Only | Nov-09 | 5.397% fixed | N/A | 246,000,000 | 7,550,000 | 6,949,104 |
| Office | St. Louis, MO | Interest Only | Aug-15 | Fixed 5.32% | N/A | 125,500,000 | 25,500,000 | 18,839,708 |
| Condo | New York, NY | Interest Only | Nov-07 | Libor + 5.85% Libor FI 3.9456% | N/A | 150,000,000 | 20,150,000 | 19,925,382 |
| | | | | Fixed 9.0 % | | | | |
| Office | Sacramento, CA | Interest Only | Feb-07 | Libor + 2.75% | N/A | 29,700,000 | 1,800,000 | 1,800,000 |
| Multifamily | Salt Lake City, UT | Interest Only | Oct-08 | Libor FL 2.0% | N/A | 16,752,337 | 2,600,000 | 2,563,730 |
| Hotels | Various | Interest Only | Sep-07 | Libor + 8.00% | N/A | 1,293,695,000 | 30,653,000 | 30,672,761 |
| Multifamily | Winter Springs, FL | Interest Only | Dec-10 | Libor + 4.07% | N/A | 30,612,100 | 3,096,900 | 3,096,900 |
| Multifamily | Las Vegas, NV | Principal and Interest | Jan-14 | Fixed 8.21% | N/A | 4,745,000 | 755,000 | 755,000 |
| Other Office | | New York, NY | Interest Only | Aug-06 | Fixed 10.0 % | Fixed 15.0% | 19,666,667 | 5,199,734 |
| | Various | Interest Only | Oct-07 | Libor + 2.75% | N/A | 215,000,000 | 40,000,000 | 40,002,401 |
| | | | | Libor FI 4.375% | | | | |
| Residential/ Retail | New York, NY | Interest Only | Apr-08 | Libor + 6.20% | N/A | 327,614,076 | 60,000,000 | 60,018,422 |
| Residential/ Retail | | | | | | | | |
| | New York, NY | Interest Only | Apr-08 | Libor + 3.00% Libor FI 2.50% | N/A | 327,614,076 | 30,000,000 | 30,000,000 |
| | | | | | | | \$ 821,454,042 | \$ 811,432,650 |

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
SCHEDULE IV — LOANS AND OTHER LENDING INVESTMENTS — (Continued)
DECEMBER 31, 2005

| Type | Location | Periodic Payment Terms | Maturity Date | Interest Pay Rate Index(1) | Interest Accrual Rate Index | Prior Liens | Face Amount | Carrying Amount(2) |
|--------------------------|---------------|------------------------|---------------|-------------------------------------|-----------------------------|-------------|--------------------------------|--------------------------------|
| Preferred Equity: | | | | | | | | |
| Multifamily(3)(4) | Texas | Interest Only | Mar-06 | 6M Libor +7.00% Floor 9.56% | N/A | 9,580,474 | 561,487 | 561,487 |
| Condo | San Diego, CA | Interest Only | Apr-07 | Libor + 5.00% | N/A | 10,898,735 | 5,293,901 | 5,258,175 |
| Condo | San Diego, CA | Interest Only | Apr-07 | Fixed 9.00% | N/A | 64,995,000 | 2,000,000 | 2,000,000 |
| Office | New York, NY | Interest Only | Oct-08 | Libor + 5.50% Libor FI 4.037% | N/A | 13,000,000 | 11,000,000 | 11,000,000 |
| | | | | | | | <u>\$ 18,855,388</u> | <u>\$ 18,819,662</u> |
| Other: | | | | | | | | |
| Hotel | Miami, FL | Principal and Interest | Sep-23 | 7.39% Fixed | N/A | 9,074,875 | 1,891,005 | 1,891,005 |
| Cond Conv | New York, NY | Interest Only | Apr-08 | 5% Fixed | N/A | — | 9,000,000 | 9,000,000 |
| Cond Conv | New York, NY | Interest Only | Apr-06 | Libor + 4.0% | N/A | — | 1,500,000 | 1,500,000 |
| Cond Conv | New York, NY | Interest Only | Apr-08 | 4.475% Fixed | N/A | — | 1,500,000 | 1,500,000 |
| | | | | | | | <u>\$ 13,891,005</u> | <u>\$ 13,891,005</u> |
| TOTAL | | | | | | | <u><u>\$ 1,267,652,208</u></u> | <u><u>\$ 1,254,575,444</u></u> |

- (1) References to LIBOR are to one-month LIBOR unless specifically stated otherwise.
- (2) The carrying amounts approximate the federal income tax basis. Also, as of December 31, 2005, there were no loans delinquent.
- (3) Reflects loans that have been extended during the period.
- (4) LIBOR for this loan refers to six-month LIBOR.

The following table reconciles the Company's loans and investments carrying amounts from January 1, 2005 to December 31, 2005:

| | |
|---|--------------------------------|
| Balance — January 1, 2005 | \$ 839,532,902 |
| Additions during period: | |
| New loan originations | 1,013,337,330 |
| Funding of unfunded loan commitments(1) | 44,546,639 |
| Accretion of unearned revenue | 4,217,110 |
| Deductions during period: | |
| Loan payoffs | (549,374,602) |
| Loan partial payoffs | (25,018,823) |
| Unfunded loan commitments(1) | (58,291,827) |
| Unearned revenue | (14,373,285) |
| Balance — December 31, 2005 | <u><u>\$ 1,254,575,444</u></u> |

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

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

| | <u>Page</u> |
|--|-------------|
| Report of Independent Registered Public Accounting Firm | 99 |
| Financial Statements: | |
| Consolidated Statement of Revenue and Direct Operating Expenses for the Six Months Ended June 30, 2003 | 100 |
| Notes to Consolidated Financial Statement | 101 |

Report of Independent Registered Public Accounting Firm

To the Members of
Arbor Commercial Mortgage, LLC

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

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

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

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

/s/ ERNST & YOUNG LLP

February 27, 2004
New York, New York

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

| | Six Months Ended June 30, 2003 |
|---|--------------------------------------|
| Revenue: | |
| Interest income | \$ 7,688,465 |
| Other income | 1,552,414 |
| Total revenue | <u>9,240,879</u> |
| Direct operating expenses: | |
| Interest expense | 3,468,275 |
| Employee compensation and benefits | 1,751,147 |
| Selling and administrative | 458,266 |
| Provision for loan losses | 60,000 |
| Total direct operating expenses | <u>5,737,688</u> |
| Revenue in excess of direct operating expenses before gain on sale of loans and real estate | <u>3,503,191</u> |
| Gain on sale of loans and real estate | 1,024,268 |
| Income from equity affiliates | <u>—</u> |
| Revenue, gain on sale of loans and real estate | <u><u>\$ 4,527,459</u></u> |

See notes to consolidated financial statement.

**THE STRUCTURED FINANCE BUSINESS OF
ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENT
For the Six Months Ended June 30, 2003**

Note 1 — Description of Business and Basis of Presentation

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

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

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

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

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

**THE STRUCTURED FINANCE BUSINESS OF
ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES**
NOTES TO CONSOLIDATED FINANCIAL STATEMENT — (Continued)
For the Six Months Ended June 30, 2003

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

Note 2 — Summary of Significant Accounting Policies

Use of Estimates

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

Real Estate Owned

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

Loans and Investments

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

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

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

Revenue Recognition

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

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

**THE STRUCTURED FINANCE BUSINESS OF
ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENT — (Continued)
For the Six Months Ended June 30, 2003**

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-alone unit and no allocation of ACM's income tax provision/benefit has been made to the SF Business. ACM is a limited liability company (which is taxed as a partnership), and accordingly, the taxable income or loss of ACM is included in the federal and state income tax returns of ACM's individual members.

**THE STRUCTURED FINANCE BUSINESS OF
ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES**
NOTES TO CONSOLIDATED FINANCIAL STATEMENT — (Continued)
For the Six Months Ended June 30, 2003

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 |
|---|------------------|
| Cash flows from investing activities: | |
| Loans and investments originated | \$ (117,176,849) |
| Payoffs and paydowns of loans and investments | 76,106,055 |
| Cash flows from financing activities: | |
| Proceeds from notes payable and repurchase agreements | 93,228,860 |
| Payoffs and paydowns of notes payable and repurchase agreements | (64,019,933) |

Note 4 — Loans and Investments

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

Note 5 — 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 6 — Related Party Transactions

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

Note 7 — 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.

**THE STRUCTURED FINANCE BUSINESS OF
ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENT — (Continued)
For the Six Months Ended June 30, 2003**

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

Note 8 — 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 for the six months ended June 30, 2003, 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 for the six months ended June 30, 2003.

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

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

**THE STRUCTURED FINANCE BUSINESS OF
ARBOR COMMERCIAL MORTGAGE, LLC AND SUBSIDIARIES**
NOTES TO CONSOLIDATED FINANCIAL STATEMENT — (Continued)
For the Six Months Ended June 30, 2003

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 than 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.

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

Not applicable.

ITEM 9A. CONTROLS AND PROCEDURES

Under the direction of our Chief Executive Officer and Chief Financial Officer, we have evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2005. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of December 31, 2005.

No change in internal control over financial reporting occurred during the quarter ended December 31, 2005 that has materially affected, or is reasonably likely to materially affect, such internal control over financial reporting.

Management's Report on Internal Control Over Financial Reporting

Management of Arbor Realty Trust, Inc. is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended, as a process designed by, or under the supervision of, the company's principal executive and principal financial officers and effected by the Company's Board of Directors, management and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with the authorization of management and directors of the Company; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting can provide only reasonable assurance with respect to financial statement preparation and presentation. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2005. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in Internal Control-Integrated Framework.

Based on this assessment, management concluded that, as of December 31, 2005, the Company's internal control over financial reporting is effective.

The Company's independent registered public accounting firm has issued a report on management's assessment of the Company's internal control over financial reporting. This report appears on the following page of this annual report on Form 10-K.

Report of Independent Registered Public Accounting Firm

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

We have audited management's assessment, included in the accompanying Management's Report on Internal Control over Financial Reporting, that Arbor Realty Trust, Inc. and Subsidiaries (the "Company") maintained effective internal control over financial reporting as of December 31, 2005, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that the Company maintained effective internal control over financial reporting as of December 31, 2005, is fairly stated, in all material respects, based on the COSO criteria. Also, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2005, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Arbor Realty Trust, Inc. and Subsidiaries (the "Company") as of December 31, 2005 and 2004, and the related consolidated statements of income, stockholders' equity, and cashflows for each of the two years in the period ended December 31, 2005 and for the period from June 24, 2003 (Inception) to December 31, 2003 and our report dated March 15, 2006 expressed an unqualified opinion thereon.

/S/ ERNST & YOUNG LLP

New York, New York
March 15, 2006

ITEM 9B. OTHER INFORMATION

Not applicable.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information regarding our directors and executive officers set forth under the captions “Board of Directors” and “Executive Officers” of the 2006 Proxy Statement is incorporated herein by reference.

The information regarding compliance with Section 16(a) of the Securities Exchange Act of 1934 set forth under the caption “Security Ownership of Certain Beneficial Owners and Management” in the 2006 Proxy Statement is incorporated herein by reference.

The information regarding our code of ethics for our chief executive and other senior financial officers under the caption “Senior Officer Code of Ethics and Code of Business Conduct and Ethics” in the 2006 Proxy Statement is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

The information contained in the section captioned “Executive Compensation” of the 2006 Proxy Statement is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information contained in the section captioned “Security Ownership of Certain Beneficial Owners & Management” of the 2006 proxy Statement is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information contained in the section captioned “Certain Relationships and Related Transactions” of the 2006 proxy Statement is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information regarding our independent accountant’s fees and services in the sections captioned “Independent Accountants’ Fees” and “Audit Committee Pre-Approval Policy” of the 2006 proxy Statement is incorporated herein by reference.

PART IV

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

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

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

(b) Exhibits.

See the Index to Exhibits on the following page.

[Table of Contents](#)

| Exhibit Number | Description |
|-------------------|--|
| 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 of Amendment to Articles of Incorporation of the Registrant. |
| 3.3 | Articles Supplementary of the Registrant* |
| 3.4 | Bylaws of the Registrant* |
| 4.1 | Form of Certificate for Common Stock* |
| 4.2 | Form of Global Units Certificate* |
| 4.3 | Registration Rights Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and JMP Securities, LLC* |
| 10.1 | Amended and Restated Management Agreement, dated January 19, 2005, by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC, Arbor Realty Limited Partnership and Arbor Realty SR, Inc.† |
| 10.2 | Services Agreement, dated July 1, 2003, by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC and Arbor Realty Limited Partnership* |
| 10.3 | Non-Competition Agreement, dated July 1, 2003, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership and Ivan Kaufman* |
| 10.4 | Second Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated January 19, 2005, by and among Arbor Commercial Mortgage, LLC, Arbor Realty Limited Partnership, Arbor Realty LPOP, Inc. and Arbor Realty GPOP, Inc. † |
| 10.5 | Warrant Agreement, dated July 1, 2003, between Arbor Realty Limited Partnership, Arbor Realty Trust, Inc. and Arbor Commercial Mortgage Commercial Mortgage, LLC* |
| 10.6 | Registration Rights Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and Arbor Commercial Mortgage, LLC* |
| 10.7 | Pairing Agreement, dated July 1, 2003, by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC Arbor Realty Limited Partnership, Arbor Realty LPOP, Inc. and Arbor Realty GPOP, Inc.* |
| 10.8 | 2003 Omnibus Stock Incentive Plan, (as amended and restated on July 29, 2004)* |
| 10.81 | Amendment No. 1 to the 2003 Omnibus Stock Incentive Plan (as amended and restated)* |
| 10.9 | Form of Restricted Stock Agreement* |
| 10.10 | Benefits Participation Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and Arbor Management, LLC* |
| 10.11 | Form of Indemnification Agreement* |
| 10.12 | Structured Facility Warehousing Credit and Security Agreement, dated July 1, 2003, between Arbor Realty Limited Partnership and Residential Funding Corporation* |
| 10.13 | Amended and Restated Loan Purchase and Repurchase Agreement, dated July 12, 2004, by and among Arbor Realty Funding LLC, as seller, Wachovia Bank, National Association, as purchaser, and Arbor Realty Trust, Inc., as guarantor.** |

- 10.14 Master Repurchase Agreement, dated as of November 18, 2002, by and between Nomura Credit and Capital, Inc. and Arbor Commercial Mortgage, LLC*
- 10.15 Assignment and Assumption Agreement, dated as of July 1, 2003, by and between Arbor Commercial Mortgage, LLC and Arbor Realty Limited Partnership*
- 10.16 Subscription Agreement between Arbor Realty Trust, Inc. and Kojaian Ventures, L.L.C.*

[Table of Contents](#)

| Exhibit Number | Description |
|-------------------|--|
| 10.17 | Revolving Credit Facility Agreement, dated as of December 7, 2004, by and between Arbor Realty Trust, Inc., Arbor Realty Limited Partnership and Watershed Administrative LLC and the lenders named therein. † |
| 10.18 | Indenture, dated January 19, 2005, by and between Arbor Realty Mortgage Securities Series 2004-1, Ltd., Arbor Realty Mortgage Securities Series 2004-1 LLC, Arbor Realty SR, Inc. and Lasalle Bank National Association. † |
| 10.19 | Note Purchase Agreement, dated January 19, 2005, by and between Arbor Realty Mortgage Securities Series 2004-1, Ltd., Arbor Realty Mortgage Securities Series 2004-1 LLC and Wachovia Capital Markets, LLC. † |
| 10.20 | Indenture, dated January 11, 2006, by and between Arbor Realty Mortgage Securities Series 2005-1, Ltd., Arbor Realty Mortgage Securities Series 2005-1 LLC, Arbor Realty SR, Inc. and Lasalle Bank National Association. |
| 10.21 | Note Purchase Agreement, dated January 11, 2006, by and between Arbor Realty Mortgage Securities Series 2005-1, Ltd., Arbor Realty Mortgage Securities Series 2005-1 LLC and Wachovia Capital Markets, LLC. |
| 21.1 | Subsidiaries of Arbor Realty Trust, Inc. |
| 23.1 | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm. |
| 31.1 | Certification of Chief Executive Officer pursuant to Exchange Act Rule 13a-14 |
| 31.2 | Certification of Chief Financial Officer pursuant to Exchange Act Rule 13a-14 |
| 32.1 | Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |
| 32.2 | Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |

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

** Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2004.

† Incorporated by reference to the Registrant's Annual Report of Form 10-K for the year ended December 31, 2004.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized on March 15, 2006.

ARBOR REALTY TRUST, INC.

By: /s/ Ivan Kaufman

Name: Ivan Kaufman
Title: Chief Executive Officer

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

| Signature | Title | Date |
|------------------------|---|----------------|
| /s/ Ivan Kaufman | Chairman of the Board of Directors, Chief Executive Officer and President (Principal Executive Officer) | March 15, 2006 |
| Ivan Kaufman | | |
| /s/ Paul Elenio | Chief Financial Officer (Principal Financial Officer) | March 15, 2006 |
| Paul Elenio | | |
| /s/ William Helmreich | Director | March 15, 2006 |
| William Helmreich | | |
| /s/ C. Michael Kojaian | Director | March 15, 2006 |
| C. Michael Kojaian | | |
| /s/ Melvin F. Lazar | Director | March 15, 2006 |
| Melvin F. Lazar | | |
| /s/ Walter K. Horn | Director | March 15, 2006 |
| Walter K. Horn | | |
| /s/ Joseph Martello | Director | March 15, 2006 |
| Joseph Martello | | |
| /s/ Karen Edwards | Director | March 15, 2006 |
| Karen Edwards | | |
| /s/ Kyle Permut | Director | March 15, 2006 |
| Kyle Permut | | |

ARBOR REALTY TRUST, INC.

ARTICLES OF AMENDMENT

Arbor Realty Trust, Inc., a Maryland corporation (the "Corporation"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

FIRST: The charter of the Corporation is hereby amended by deleting the definition of "Aggregate Stock Ownership Limit" in Section 7.1 of Article Seventh in its entirety and inserting the following in lieu thereof:

Aggregate Stock Ownership Limit. The term "Aggregate Stock Ownership Limit" shall mean not more than 8.3 percent in value of the aggregate of the outstanding shares of Capital Stock. The value of the outstanding shares of Capital Stock shall be determined by the Board of Directors of the Corporation in good faith, which determination shall be conclusive for all purposes hereof.

SECOND: The charter of the Corporation is hereby further amended by deleting the definition of "Common Stock Ownership Limit" in Section 7.1 of Article Seventh in its entirety and inserting the following in lieu thereof:

Common Stock Ownership Limit. The term "Common Stock Ownership Limit" shall mean not more than 8.3 percent (in value or in number of shares, whichever is more restrictive) of the aggregate of the outstanding shares of Common Stock of the Corporation. The number and value of outstanding shares of Common Stock of the Corporation shall be determined by the Board of Directors of the Corporation in good faith, which determination shall be conclusive for all purposes hereof.

THIRD: The amendments to the charter of the Corporation as set forth above have been duly advised by the Board of Directors and approved by the stockholders of the Corporation as required by law.

FOURTH: There has been no change in the authorized stock of the Corporation effected by the amendments to the charter of the Corporation as set forth above.

FIFTH: These Articles of Amendment shall become effective at 12:01 a.m. on January 1, 2006.

SIXTH: The undersigned officer acknowledges these Articles of Amendment to be the corporate act of the Corporation and as to all matters of facts required to be verified under oath, the undersigned officer acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties of perjury.

IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to be executed under seal in its name and on its behalf by the undersigned officer, and attested to by its Secretary, on this day of December, 2005.

ATTEST:

ARBOR REALTY TRUST, INC.

/s/ Walter K. Horn

Walter K. Horn
Secretary

By: /s/ Ivan Kaufman (SEAL)

Name: Ivan Kaufman
Title: Chairman

=====

ARBOR REALTY MORTGAGE SECURITIES SERIES 2005-1, LTD.,
as Issuer,

ARBOR REALTY MORTGAGE SECURITIES SERIES 2005-1 LLC,
as Co-Issuer,

ARBOR REALTY SR, INC.,
as Advancing Agent

AND

LASALLE BANK NATIONAL ASSOCIATION,
as Trustee, Paying Agent, Calculation Agent, Transfer Agent,
Custodial Securities Intermediary, Backup Advancing Agent and Notes Registrar

INDENTURE

Dated as of January 11, 2006

=====

TABLE OF CONTENTS

| | Page |
|---|---|
| | ---- |
| ARTICLE 1 | |
| DEFINITIONS | |
| Section 1.1 | Definitions..... 2 |
| Section 1.2 | Assumptions as to Pledged Obligations..... 80 |
| Section 1.3 | Interest Calculation Convention..... 81 |
| Section 1.4 | Rounding Convention..... 81 |
| ARTICLE 2 | |
| THE NOTES | |
| Section 2.1 | Forms Generally..... 82 |
| Section 2.2 | Forms of Notes and Certificate of Authentication..... 82 |
| Section 2.3 | Authorized Amount; Stated Maturity; and Denominations..... 83 |
| Section 2.4 | Execution, Authentication, Delivery and Dating..... 84 |
| Section 2.5 | Registration, Registration of Transfer and Exchange..... 85 |
| Section 2.6 | Mutilated, Defaced, Destroyed, Lost or Stolen Note..... 92 |
| Section 2.7 | Payment of Principal and Interest and Other Amounts; Principal and Interest Rights Preserved..... 93 |
| Section 2.8 | Persons Deemed Owners..... 102 |
| Section 2.9 | Cancellation..... 103 |
| Section 2.10 | Global Securities; |
| Temporary Notes..... | 103 |
| Section 2.11 | U.S. Tax Treatment of Notes and the Issuer..... 104 |
| Section 2.12 | Authenticating Agents..... 105 |
| Section 2.13 | Forced Sale on Failure to Comply with Restrictions..... 105 |
| ARTICLE 3 | |
| CONDITIONS PRECEDENT; PLEDGED OBLIGATIONS | |
| Section 3.1 | General Provisions..... 106 |

| | | |
|-------------|--------------------------------------|-----|
| Section 3.2 | Security for Notes..... | 109 |
| Section 3.3 | Transfer of Pledged Obligations..... | 111 |

ARTICLE 4

SATISFACTION AND DISCHARGE

| | | |
|-------------|--|-----|
| Section 4.1 | Satisfaction and Discharge of Indenture..... | 117 |
|-------------|--|-----|

-i-

| | | |
|-------------|---|-----|
| Section 4.2 | Application of Trust Money..... | 118 |
| Section 4.3 | Repayment of Monies Held by Paying Agent..... | 118 |

ARTICLE 5

REMEDIES

| | | |
|--------------|---|-----|
| Section 5.1 | Events of Default..... | 119 |
| Section 5.2 | Acceleration of Maturity; Rescission and Annulment..... | 121 |
| Section 5.3 | Collection of Indebtedness and Suits for Enforcement by Trustee..... | 124 |
| Section 5.4 | Remedies..... | 127 |
| Section 5.5 | Preservation of Assets..... | 129 |
| Section 5.6 | Trustee May Enforce Claims Without Possession of Notes..... | 130 |
| Section 5.7 | Application of Money Collected..... | 130 |
| Section 5.8 | Limitation on Suits..... | 130 |
| Section 5.9 | Unconditional Rights of Noteholders to Receive Principal and Interest.... | 131 |
| Section 5.10 | Restoration of Rights and Remedies..... | 131 |
| Section 5.11 | Rights and Remedies Cumulative..... | 132 |
| Section 5.12 | Delay or Omission Not Waiver..... | 132 |
| Section 5.13 | Control by the Controlling Class..... | 132 |
| Section 5.14 | Waiver of Past Defaults..... | 132 |
| Section 5.15 | Undertaking for Costs..... | 133 |
| Section 5.16 | Waiver of Stay or Extension Laws..... | 133 |
| Section 5.17 | Sale of Assets..... | 134 |
| Section 5.18 | Action on the Notes..... | 135 |

ARTICLE 6

THE TRUSTEE

| | | |
|--------------|---|-----|
| Section 6.1 | Certain Duties and Responsibilities..... | 135 |
| Section 6.2 | Notice of Default..... | 137 |
| Section 6.3 | Certain Rights of Trustee..... | 137 |
| Section 6.4 | Not Responsible for Recitals or Issuance of Notes..... | 139 |
| Section 6.5 | May Hold Notes..... | 139 |
| Section 6.6 | Money Held in Trust..... | 139 |
| Section 6.7 | Compensation and Reimbursement..... | 139 |
| Section 6.8 | Corporate Trustee Required; Eligibility..... | 141 |
| Section 6.9 | Resignation and Removal; Appointment of Successor..... | 141 |
| Section 6.10 | Acceptance of Appointment by Successor..... | 143 |
| Section 6.11 | Merger, Conversion, Consolidation or Succession to Business of Trustee... | 143 |
| Section 6.12 | Co-Trustees and Separate Trustee..... | 144 |
| Section 6.13 | Certain Duties of Trustee Related to Delayed Payment of Proceeds..... | 145 |
| Section 6.14 | Representations and Warranties of the Trustee..... | 145 |
| Section 6.15 | Requests for Consents..... | 146 |

-ii-

ARTICLE 7

COVENANTS

| | | |
|-------------|--|-----|
| Section 7.1 | Payment of Principal and Interest..... | 147 |
| Section 7.2 | Maintenance of Office or Agency..... | 147 |

| | | |
|--------------|--|-----|
| Section 7.3 | Money for Note Payments to be Held in Trust..... | 148 |
| Section 7.4 | Existence of the Issuer and Co-Issuer..... | 150 |
| Section 7.5 | Protection of Assets..... | 151 |
| Section 7.6 | Notice of Any Amendments..... | 153 |
| Section 7.7 | Performance of Obligations..... | 153 |
| Section 7.8 | Negative Covenants..... | 153 |
| Section 7.9 | Statement as to Compliance..... | 155 |
| Section 7.10 | Issuer and Co-Issuer May Consolidate or Merge Only on Certain Terms..... | 156 |
| Section 7.11 | Successor Substituted..... | 159 |
| Section 7.12 | No Other Business..... | 159 |
| Section 7.13 | Reporting..... | 159 |
| Section 7.14 | Calculation Agent..... | 160 |
| Section 7.15 | Certain Tax Forms and Treatment..... | 161 |
| Section 7.16 | Maintenance of Listing..... | 161 |
| Section 7.17 | Purchase of Assets..... | 162 |
| Section 7.18 | Effective Date Actions..... | 162 |

ARTICLE 8

SUPPLEMENTAL INDENTURES

| | | |
|-------------|---|-----|
| Section 8.1 | Supplemental Indentures Without Consent of Securityholders..... | 163 |
| Section 8.2 | Supplemental Indentures with Consent of Securityholders..... | 165 |
| Section 8.3 | Execution of Supplemental Indentures..... | 168 |
| Section 8.4 | Effect of Supplemental Indentures..... | 168 |
| Section 8.5 | Reference in Notes to Supplemental Indentures..... | 168 |

ARTICLE 9

REDEMPTION OF SECURITIES; REDEMPTION PROCEDURES

| | | |
|-------------|--|-----|
| Section 9.1 | Clean-up Call; Tax Redemption and Optional Redemption..... | 169 |
| Section 9.2 | Auction Call Redemption..... | 170 |
| Section 9.3 | Notice of Redemption..... | 171 |
| Section 9.4 | Notice of Redemption or Maturity by the Issuer..... | 172 |
| Section 9.5 | Notes Payable on Redemption Date..... | 172 |
| Section 9.6 | Mandatory Redemption..... | 173 |
| Section 9.7 | Special Amortization..... | 173 |

-iii-

ARTICLE 10

ACCOUNTS, ACCOUNTINGS AND RELEASES

| | | |
|---------------|---|-----|
| Section 10.1 | Collection of Money; Custodial Account..... | 174 |
| Section 10.2 | Collection Accounts..... | 174 |
| Section 10.3 | Payment Account..... | 176 |
| Section 10.4 | Unused Proceeds Account..... | 177 |
| Section 10.5 | Delayed Funding Obligations Account..... | 178 |
| Section 10.6 | Expense Account..... | 179 |
| Section 10.7 | Defeased Collateral Accounts..... | 180 |
| Section 10.8 | Interest Advances..... | 181 |
| Section 10.9 | Reports by Parties..... | 185 |
| Section 10.10 | Reports; Accountings..... | 185 |
| Section 10.11 | Release of Pledged Collateral Debt Securities; Release of Assets..... | 194 |
| Section 10.12 | Reports by Independent Accountants..... | 195 |
| Section 10.13 | Reports to Rating Agencies..... | 196 |
| Section 10.14 | Certain Procedures..... | 197 |

ARTICLE 11

APPLICATION OF MONIES

| | | |
|--------------|---|-----|
| Section 11.1 | Disbursements of Monies from Payment Account..... | 198 |
| Section 11.2 | Trust Accounts..... | 209 |

ARTICLE 12

SALE OF COLLATERAL DEBT SECURITIES

| | | |
|--------------|--|-----|
| Section 12.1 | Sales of Collateral Debt Securities..... | 209 |
| Section 12.2 | Reinvestment Criteria and Trading Restrictions..... | 213 |
| Section 12.3 | Conditions Applicable to all Transactions Involving Sale or Grant..... | 213 |
| Section 12.4 | Sale of Collateral Debt Securities with respect to an Auction Call | |

| | | |
|--------------|--|-----|
| | Redemption..... | 214 |
| Section 12.5 | Modifications to Collateral Quality Tests or Coverage Tests..... | 217 |
| Section 12.6 | ARMS Equity Contributions..... | 218 |

ARTICLE 13

NOTEHOLDERS' RELATIONS

| | | |
|--------------|--------------------------|-----|
| Section 13.1 | Subordination..... | 219 |
| Section 13.2 | Standard of Conduct..... | 223 |

-iv-

ARTICLE 14

MISCELLANEOUS

| | | |
|---------------|---|-----|
| Section 14.1 | Form of Documents Delivered to the Trustee..... | 223 |
| Section 14.2 | Acts of Securityholders..... | 224 |
| Section 14.3 | Notices, etc., to the Trustee, the Issuer, the Co-Issuer, the Advancing Agent, the Collateral Manager, the Initial Purchaser, each Hedge Counterparty and each Rating Agency..... | 225 |
| Section 14.4 | Notices to Noteholders; Waiver..... | 227 |
| Section 14.5 | Effect of Headings and Table of Contents..... | 228 |
| Section 14.6 | Successors and Assigns..... | 228 |
| Section 14.7 | Severability..... | 228 |
| Section 14.8 | Benefits of Indenture..... | 228 |
| Section 14.9 | Governing Law..... | 228 |
| Section 14.10 | Submission to Jurisdiction..... | 229 |
| Section 14.11 | Counterparts..... | 229 |
| Section 14.12 | Liability of Co-Issuers..... | 229 |

ARTICLE 15

ASSIGNMENT OF COLLATERAL DEBT SECURITIES PURCHASE AGREEMENTS AND COLLATERAL MANAGEMENT AGREEMENT

| | | |
|--------------|--|-----|
| Section 15.1 | Assignment of Collateral Debt Securities Purchase Agreement and the Collateral Management Agreements..... | 229 |
|--------------|--|-----|

ARTICLE 16

HEDGE AGREEMENT; CURE RIGHTS; PURCHASE RIGHTS; SUBSEQUENT COLLATERAL DEBT SECURITIES

| | | |
|--------------|---|-----|
| Section 16.1 | Issuer's Obligations under Hedge Agreement..... | 232 |
| Section 16.2 | Collateral Debt Securities Purchase Agreements..... | 236 |
| Section 16.3 | Cure Rights..... | 236 |
| Section 16.4 | Purchase Right; Holder of a Majority of the Preferred Shares..... | 237 |
| Section 16.5 | Representations and Warranties Related to Subsequent Collateral Debt Securities..... | 238 |
| Section 16.6 | Operating Advisor; Additional Debt..... | 239 |

ARTICLE 17

ADVANCING AGENT

| | | |
|--------------|---|-----|
| Section 17.1 | Liability of the Advancing Agent..... | 240 |
| Section 17.2 | Merger or Consolidation of the Advancing Agent..... | 240 |

-v-

| | | |
|--------------|--|-----|
| Section 17.3 | Limitation on Liability of the Advancing Agent and Others..... | 240 |
| Section 17.4 | Representations and Warranties of the Advancing Agent..... | 241 |
| Section 17.5 | Resignation and Removal; Appointment of Successor..... | 242 |

-vi-

INDENTURE, dated as of January 11, 2006, by and between ARBOR REALTY MORTGAGE SECURITIES SERIES 2005-1, LTD., an exempted company incorporated with limited liability under the laws of the Cayman Islands (the "Issuer"), ARBOR REALTY MORTGAGE SECURITIES SERIES 2005-1 LLC, a limited liability company formed under the laws of Delaware (the "Co-Issuer"), LASALLE BANK NATIONAL ASSOCIATION, a national banking association, as trustee, paying agent, calculation agent, transfer agent, custodial securities intermediary, backup advancing agent and notes registrar (herein, together with its permitted successors and assigns in the trusts hereunder, called the "Trustee"), and ARBOR REALTY SR, INC. (the "Arbor Parent"), a Maryland corporation, as advancing agent (herein, together with its permitted successors and assigns in the trusts hereunder, called the "Advancing Agent").

PRELIMINARY STATEMENT

Each of the Issuer and the Co-Issuer is duly authorized to execute and deliver this Indenture to provide for the Notes issuable as provided in this Indenture. All covenants and agreements made by the Issuer and Co-Issuer herein are for the benefit and security of the Secured Parties. The Issuer, the Co-Issuer, LaSalle Bank National Association, in its capacities other than as Trustee, and the Advancing Agent are entering into this Indenture, and the Trustee is accepting the trusts created hereby, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

All things necessary to make this Indenture a valid agreement of the Issuer and Co-Issuer in accordance with this Indenture's terms have been done.

GRANTING CLAUSES

The Issuer hereby Grants to the Trustee, for the benefit and security of the Secured Parties, all of its right, title and interest in, to and under, in each case, whether now owned or existing, or hereafter acquired or arising (other than Excepted Assets), (a) the Collateral Debt Securities listed in the Schedule of Closing Date Collateral Debt Securities which the Issuer purchases on the Closing Date and causes to be delivered to the Trustee (directly or through an agent or bailee) herewith, all payments thereon or with respect thereto and all Collateral Debt Securities which are delivered to the Trustee (directly or through an agent or bailee) after the Closing Date pursuant to the terms hereof (including the Collateral Debt Securities listed, as of the Effective Date, on the Schedule of Closing Date Collateral Debt Securities delivered by the Issuer pursuant to Section 7.17) and all payments thereon or with respect thereto, (b) the rights of the Issuer under each Hedge Agreement, (c) the Collection Accounts, the Payment Account, the Expense Account, the Unused Proceeds Account, the Delayed Funding Obligations Account, the Custodial Account, each Hedge Termination Account, each Hedge Collateral Account and the related security entitlements and all income from the investment of funds in any of the foregoing, (d) the Eligible Investments, (e) the rights of the Issuer under the Collateral Management Agreement, each Collateral Debt Securities Purchase Agreement (including any Collateral Debt Securities Purchase Agreement entered into after the Closing Date) and the Servicing Agreement, (f) all Cash or Money delivered to the Trustee (or its bailee) (directly or through a securities intermediary) (g) all other investment

property, accounts, instruments and general intangibles in which the Issuer has an interest, other than the Excepted Assets and (h) all proceeds with respect to the foregoing clauses (a)-(g). The collateral described in the foregoing clauses (a)-(h) is referred to herein as the "Assets." Such Grants are made, however, in trust, to secure the Notes and each Hedge Agreement, subject to the Priority of Payments, equally and ratably without prejudice, priority or distinction between any Note and any other Note by reason of difference in time of issuance or

otherwise, except as expressly provided in this Indenture, and to secure (i) the payment of all amounts due on and in respect of the Notes and each Hedge Agreement in accordance with their terms, (ii) the payment of all other sums payable under this Indenture and (iii) compliance with the provisions of this Indenture, all as provided in this Indenture. For the avoidance of doubt, the Assets shall not include the Excepted Assets. The foregoing Grant shall, for the purpose of determining the property subject to the lien of this Indenture (but not for the purpose of determining compliance with any of the Coverage Tests or compliance by the Issuer with any of the other provisions hereof), be deemed to include any securities and any investments granted by or on behalf of the Issuer to the Trustee for the benefit of the Secured Parties, whether or not such securities or such investments satisfy the criteria set forth in the definitions of "Collateral Debt Security" or "Eligible Investment," as the case may be.

Except to the extent otherwise provided in this Indenture, this Indenture shall constitute a security agreement under the laws of the State of New York applicable to agreements made and to be performed therein, for the benefit of the Noteholders and each Hedge Counterparty. Upon the occurrence and during the continuation of any Event of Default hereunder, and in addition to any other rights available under this Indenture or any other Assets held for the benefit and security of the Noteholders and each Hedge Counterparty or otherwise available at law or in equity but subject to the terms hereof, the Trustee shall have all rights and remedies of a secured party on default under the laws of the State of New York and other applicable law to enforce the assignments and security interests contained herein and, in addition, shall have the right, subject to compliance with any mandatory requirements of applicable law and the terms of this Indenture, to sell or apply any rights and other interests assigned or pledged hereby in accordance with the terms hereof at public and private sale.

The Trustee acknowledges such Grants, accepts the trusts hereunder in accordance with the provisions hereof, and agrees to perform the duties herein in accordance with, and subject to, the terms hereof, in order that the interests of the Noteholders and each Hedge Counterparty, as applicable, may be adequately and effectively protected in accordance with this Indenture.

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions.

Except as otherwise specified herein or as the context may otherwise require, the following terms have the respective meanings set forth below for all purposes of this Indenture, and the definitions of such terms are equally applicable both to the singular and plural forms of such terms and to the masculine, feminine and neuter genders of such terms. The word

-2-

"including" and its variations shall mean "including without limitation." Whenever any reference is made to an amount the determination of which is governed by Section 1.2 hereof, the provisions of Section 1.2 shall be applicable to such determination or calculation, whether or not reference is specifically made to Section 1.2, unless some other method of calculation or determination is expressly specified in the particular provision. All references in this Indenture to designated "Articles," "Sections," "Subsections" and other subdivisions are to the designated Articles, Sections, Subsections and other subdivisions of this Indenture as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section, Subsection or other subdivision.

"10% Limit": The meaning specified in Section 12.1(b) hereof.

"A Note": A promissory note secured by a mortgage on commercial real estate property that is not subordinate in right of payment to any separate promissory note secured by a direct or beneficial interest in the same property.

"Above Cap Security": Any Collateral Debt Security, which initially bore interest based upon a floating rate index subject to a cap (which, if exceeded, would cause such Collateral Debt Security to bear interest at a fixed rate) and which currently bears interest at a fixed rate as a result of such cap being exceeded, but only for so long as such cap is exceeded.

"Account": Any of the Interest Collection Account, the Principal Collection Account, the Unused Proceeds Account, the Delayed Funding Obligations Account, the Payment Account, the Expense Account, the Custodial Account, each Defeased Collateral Account, each Hedge Termination Account, the Preferred Shares Distribution Account and each Hedge Collateral Account, and any subaccount thereof that the Trustee deems necessary or appropriate.

"Accountants' Report": A report of a firm of Independent certified public accountants of recognized national reputation appointed by the Issuer pursuant to Section 10.12(a), which may be the firm of independent accountants that reviews or performs procedures with respect to the financial reports prepared by the Issuer or the Collateral Manager.

"Accounts Receivable": The meaning specified in Section 3.3(a)(vi) hereof.

"Act" or "Act of Securityholders": The meaning specified in Section 14.2 hereof.

"Advancing Agent": Arbor Realty SR, Inc., unless a successor Person shall have become the Advancing Agent pursuant to the applicable provisions of this Indenture, and thereafter "Advancing Agent" shall mean such successor Person.

"Advancing Agent Fee": The fee payable quarterly in arrears on each Payment Date to the Advancing Agent in accordance with the Priority of Payments, equal to 0.07% per annum on the Aggregate Outstanding Amount of the Class A Notes and the Class B Notes on such Payment Date prior to giving effect to distributions with respect to such Payment Date.

"Advisers Act": The Investment Advisers Act of 1940, as amended.

-3-

"Advisory Committee": The meaning specified in the Collateral Management Agreement.

"Affiliate" or "Affiliated": With respect to a Person, (i) any other Person who, directly or indirectly, is in control of, or controlled by, or is under common control with, such Person or (ii) any other Person who is a director, Officer or employee (a) of such Person, (b) of any subsidiary or parent company of such Person or (c) of any Person described in clause (i) above. For the purposes of this definition, control of a Person shall mean the power, direct or indirect, (i) to vote more than 50% of the securities having ordinary voting power for the election of directors of such Persons, or (ii) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise; provided that neither the Company Administrator nor any other company, corporation or person to which the Company Administrator provides directors and/or administrative services and/or acts as share trustee shall be an Affiliate of the Issuer or Co-Issuer and provided, further, that neither the Collateral Manager, the Arbor Parent nor any of the Arbor Parent's subsidiaries shall be deemed to be Affiliates of the Issuer.

"Agent Members": Members of, or participants in, the Depository, Clearstream, Luxembourg or Euroclear.

"Aggregate Collateral Balance": The aggregate Principal Balance of (i) Collateral Debt Securities, (ii) Eligible Investments purchased with Principal Proceeds and (iii) Eligible Investments purchased with monies on deposit in the Unused Proceeds Account that have not been designated as Interest Proceeds by the Collateral Manager pursuant to Section 10.4(c) hereof.

"Aggregate Outstanding Amount": With respect to any Class or Classes of the Notes, the aggregate principal balance (excluding any Class C Capitalized Interest, Class D Capitalized Interest, Class E Capitalized Interest, Class F Capitalized Interest, Class G Capitalized Interest and Class H Capitalized Interest, as applicable) of such Class or Classes Outstanding at the date of determination.

"Aggregate Principal Balance": When used with respect to any Pledged Collateral Debt Securities as of any date of determination, the sum of the Principal Balances on such date of determination of all such Pledged Collateral Debt Securities.

"Applicable Recovery Rate": The lowest of the Moody's Recovery Rate, the Fitch Applicable Recovery Rate and the S&P Recovery Rate, as applicable; provided that the Applicable Recovery Rate for any Collateral Debt Security with respect to which substitute or additional collateral (in the form of Cash or Eligible Investments) in an amount at least equal to the sum of the principal amount of such Collateral Debt Security and the aggregate of all remaining scheduled interest payments thereon through the earliest permissible prepayment date has been delivered by or on behalf of the related obligor to the Trustee and deposited into a Defeased Collateral Account (or to the Servicer in accordance with the Servicing Agreement and deposited into an Eligible Account) (by defeasance or otherwise) shall be 100%.

"Arbor Parent": The meaning specified in the first paragraph of this Agreement.

-4-

"ARD Loan": A Loan with an anticipated repayment date, after which (if not repaid in full by such anticipated repayment date) the loan provides for changes in payments and accrual of interest.

"ARMS Equity": ARMS 2005-1 Equity Holdings LLC, a Delaware limited liability company and a wholly-owned subsidiary of the Arbor Parent which is disregarded as an entity separate from the Arbor Parent for U.S. federal income tax purposes.

"ARMS Equity Cash Contribution": Any Cash contributed by ARMS Equity to the Issuer during the Reinvestment Period pursuant to Section 12.6 hereof.

"ARMS Equity CDS Contribution": Any loan, security or other obligation (other than Eligible Investments) contributed by ARMS Equity to the Issuer during the Reinvestment Period in accordance with Section 12.6 hereof.

"ARMS Equity Contribution": ARMS Equity Cash Contribution, ARMS Equity EI Contribution and/or ARMS Equity CDS Contribution, as the context may require.

"ARMS Equity EI Contribution": Any Eligible Investments contributed by ARMS Equity to the Issuer during the Reinvestment Period pursuant to Section 12.6 hereof.

"Article 15 Agreement": The meaning specified in Section 15.1(a) hereof.

"Asset Specific Hedge": Any agreement, in the form of an interest rate exchange agreement, between the Issuer and a Hedge Counterparty that is entered into by the Issuer in connection with the purchase or holding of (i) a Fixed

Rate Security or (ii) a Floating Rate Security that bears interest upon a floating rate index other than LIBOR, and which, in each case, entitles the Issuer to receive from the related Hedge Counterparty payments based on LIBOR at prevailing market rates, as determined by the Collateral Manager at the date of execution of such agreement. In addition to the foregoing, each Asset Specific Hedge will be subject to the following conditions:

(a) the notional balance of each Asset Specific Hedge shall be equal to the scheduled principal amount of the Collateral Debt Security to which it is related;

(b) each Asset Specific Hedge (A) will amortize according to the same schedule as, and terminate no earlier than the Initial Maturity Date (or, in the case of an ARD Loan, on the anticipated repayment date) of, the Collateral Debt Security to which it is related and (B) any such amounts so payable shall be paid in accordance with the Priority of Payments;

(c) the payment dates of the Asset Specific Hedge must match the payment dates of the Collateral Debt Security to which it is related or correspond to the Payment Dates for the Notes;

(d) if the Collateral Debt Security related to an Asset Specific Hedge (i) is a Defaulted Security, or (ii) is sold by the Issuer, such Asset Specific Hedge shall be terminated; provided that if any unscheduled Hedge Payment Amount is payable by the Issuer under the related Hedge Agreement solely as a result of the early termination of such Asset Specific Hedge

-5-

and is not offset by any amount payable by the relevant Hedge Counterparty, (A) such Asset Specific Hedge may only be terminated if the Rating Agency Condition with respect to Moody's and S&P shall have been satisfied in connection with such termination and if Fitch shall have been given notice of such termination; and (B) such Hedge Payment Amount shall be paid in accordance with the Priority of Payments;

(e) if the Collateral Debt Security related to such Asset Specific Hedge is not a Defaulted Obligation and such Collateral Debt Security is called or prepaid, such Asset Specific Hedge shall be terminated; provided that if any unscheduled Hedge Payment Amount is payable by the Issuer solely as a result of the early termination of such Asset Specific Hedge and is not offset by any amount payable by the relevant Hedge Counterparty, (A) such Asset Specific Hedge may only be terminated if the Rating Agency Condition with respect to Moody's and S&P shall have been satisfied in connection with such termination and if Fitch shall have been given notice of such termination, (B) any such Hedge Payment Amount shall first be paid from any call, redemption and prepayment premiums received from such Collateral Debt Security, and (C) any remaining amount so payable shall be paid in accordance with the Priority of Payments; and

(f) each Asset Specific Hedge will contain appropriate limited recourse and non-petition provisions equivalent (*mutatis mutandis*) to those contained in this Indenture.

"Assets": The meaning specified in the first paragraph of the Granting Clause of this Indenture.

"Assumed Portfolio": The portfolio with characteristics developed in accordance with the Eligibility Criteria and Collateral Quality Tests for purposes of determining the Class A-1 Break-Even Loss Rate, the Class A-2 Break-Even Loss Rate, the Class B Break-Even Loss Rate, the Class C Break-Even Loss Rate, the Class D Break-Even Loss Rate, the Class E Break-Even Loss Rate, the Class F Break-Even Loss Rate, the Class G Break-Even Loss Rate and the Class H Break-Even Loss Rate.

"Auction": Any auction conducted in connection with an Auction Call

Redemption.

"Auction Bid Date": The meaning specified in Section 12.4(b)(ii) hereof.

"Auction Call Period": The meaning specified in Section 9.2(a) hereof.

"Auction Call Redemption": The meaning specified in Section 9.2(a) hereof.

"Auction Call Redemption Date": The meaning specified in Section 9.2(a) hereof.

"Auction Date": The meaning specified in Section 12.4(a)(i) hereof.

"Auction Procedures": The required procedures with respect to an Auction set forth in Section 12.4(b) hereof.

-6-

"Auction Purchase Agreement": The meaning specified in Section 12.4(a)(iii) hereof.

"Auction Purchase Closing Date": The meaning specified in Section 12.4(b)(v) hereof.

"Authenticating Agent": With respect to the Notes or a Class of the Notes, the Person designated by the Trustee to authenticate such Notes on behalf of the Trustee pursuant to Section 2.12 hereof.

"Authorized Officer": With respect to the Issuer or Co-Issuer, any Officer (or attorney-in-fact appointed by the Issuer or the Co-Issuer) who is authorized to act for the Issuer or Co-Issuer in matters relating to, and binding upon, the Issuer or Co-Issuer. With respect to the Collateral Manager, the persons listed on Schedule K hereto. With respect to the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any person to act, and such certification may be considered as in full force and effect until receipt by such other party of written notice to the contrary.

"Average Life": On any Measurement Date with respect to any Collateral Debt Security (other than a Defaulted Security), the quotient obtained by dividing (i) the summing of the products of (a) the number of years (rounded to the nearest one tenth thereof) from such Measurement Date to the respective dates of each successive expected distribution of principal of such Collateral Debt Security and (b) the respective amounts of such expected distributions of principal by (ii) the sum of all successive expected distributions of principal on such Collateral Debt Security, calculated by the Collateral Manager.

"B Note": A promissory note secured by a mortgage on commercial real estate property that is subordinate in right of payment to one or more separate promissory notes secured by a direct or beneficial interest in the same property.

"Backup Advancing Agent": LaSalle Bank National Association, a national banking association, solely in its capacity as Backup Advancing Agent hereunder, or any successor Backup Advancing Agent; provided that any such successor Backup Advancing Agent must be a financial institution having a (i) long-term debt rating from S&P at least equal to "A-" and a short-term debt rating from S&P at least equal to "A-1," (ii) long-term debt rating from Moody's at least equal to "A2" and a short-term debt rating from Moody's at least equal to "P-1," and (iii) long-term debt rating from Fitch at least equal to "A-" and a short-term debt rating from Fitch at least equal to "F1."

"Backup Advancing Agent Fee": The fee payable quarterly in arrears on each Payment Date to the Trustee, in its capacity as Backup Advancing Agent, in accordance with the Priority of Payments, equal to 0.00125% per annum on the Aggregate Outstanding Amount of the Class A Notes and the Class B Notes on such Payment Date prior to giving effect to distributions with respect to such Payment Date.

"Bailee Letter": The meaning specified in Section 12.4(b) (v) hereof.

-7-

"Bank": LaSalle Bank National Association, a national banking association, in its individual capacity and not as Trustee and, if any Person is appointed as a successor Trustee, such Person in its individual capacity and not as Trustee.

"Bankruptcy Code": The federal Bankruptcy Code, Title 11 of the United States Code, as amended.

"Bearer Securities": The meaning specified in Section 3.3(a) (iv) hereof.

"Benefit Plan": The meaning specified in Section 2.5(g) (vi) hereof.

"Board of Directors": With respect to the Issuer, the directors of the Issuer duly appointed in accordance with the Governing Documents of the Issuer and, with respect to the Co-Issuer, the LLC Managers duly appointed by the sole member of the Co-Issuer or otherwise.

"Board Resolution": With respect to the Issuer, a resolution of the Board of Directors of the Issuer and, with respect to the Co-Issuer, a resolution or unanimous written consent of the LLC Managers or the sole member of the Co-Issuer.

"Business Day": Any day other than (i) a Saturday or Sunday and (ii) a day on which commercial banks are authorized or required by applicable law, regulation or executive order to close in New York, New York or the location of the Corporate Trust Office; provided that, if any action is required of the Irish Paying Agent, then, for purposes of determining when such Irish Paying Agent action is required, Dublin, Ireland will be considered in determining "Business Day."

"Calculation Agent": The meaning specified in Section 7.14(a) hereof.

"Calculation Amount": With respect to any Collateral Debt Security, at any time, the lesser of (a) the Market Value of such Collateral Debt Security and (b) the Applicable Recovery Rate multiplied by the Principal Balance of such Collateral Debt Security.

"Cash": Such coin or currency of the United States of America as at the time shall be legal tender for payment of all public and private debts.

"Cash Flow Swap Agreement": Any Hedge Agreement entered into by the Issuer with a Hedge Counterparty to manage potential mismatches between the timing of receipts of interest on the Collateral Debt Securities and Eligible Investments and the timing of interest payments due on the Notes, including an agreement to convert the periodicity of payments on Collateral Debt Securities, pursuant to which the Issuer shall be entitled to receive payments from the related Hedge Counterparty on a certain date in exchange for the Issuer's obligation to make payments to such Hedge Counterparty on one or more Payment Dates to the extent that funds are available therefor pursuant to Section 11.1(a).

"Cash Flow Swap Counterparty": Any Hedge Counterparty with whom the Issuer enters into a Cash Flow Swap Agreement.

"Certificate of Authentication": The meaning specified in Section 2.1 hereof.

-8-

"Certificated Notes": The meaning specified in Section 2.10(b) hereof.

"Certificated Security": A "certificated security" as defined in Section 8-102(a)(4) of the UCC.

"Class": The Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes or the Class H Notes, as applicable.

"Class A Notes": The Class A-1 Notes and the Class A-2 Notes, collectively.

"Class A-1 Break-Even Loss Rate": At any time, the maximum percentage of defaults that the Assumed Portfolio should be able to sustain, which after giving effect to S&P's assumptions on recoveries and timing and to the Priority of Payments, will result in sufficient funds remaining for the timely payment of interest on and the ultimate payment of principal of the Class A-1 Notes.

"Class A-1 Defaulted Interest Amount": With respect to the Class A-1 Notes as of each Payment Date, the accrued and unpaid amount due to holders of the Class A-1 Notes on account of any shortfalls in the payment of the Class A-1 Interest Distribution Amount with respect to any preceding Payment Date or Payment Dates, together with interest accrued thereon (to the extent lawful).

"Class A-1 Interest Distribution Amount": On each Payment Date, the amount due to Holders of the Class A-1 Notes on account of interest equal to the product of (i) the Aggregate Outstanding Amount of the Class A-1 Notes with respect to the related Interest Accrual Period, (ii) the actual number of days in such Interest Accrual Period divided by 360 and (iii) the Class A-1 Rate.

"Class A-1 Loss Differential": At any time, the rate calculated by subtracting the Class A-1 Scenario Loss Rate from the Class A-1 Break-Even Loss Rate at such time.

"Class A-1 Notes": The Class A-1 Senior Secured Floating Rate Term Notes Due 2038, issued by the Issuer and the Co-Issuer pursuant to this Indenture.

"Class A-1 Rate": With respect to any Class A-1 Note, the per annum rate at which interest accrues on such Note for any Interest Accrual Period, which shall be equal to (a) LIBOR for the related Interest Accrual Period plus (b) 0.37% per annum.

"Class A-1 Scenario Loss Rate": At any time, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with the then current rating of the Class A-1 Notes by S&P, determined by application of the S&P CDO Monitor at such time (which rate, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix).

"Class A-2 Break-Even Loss Rate": At any time, the maximum percentage of defaults that the Assumed Portfolio should be able to sustain, which after giving effect to S&P's assumptions on recoveries and timing and to the Priority of Payments, will result in sufficient

-9-

funds remaining for the timely payment of interest on and the ultimate payment of principal of the Class A-2 Notes.

"Class A-2 Defaulted Interest Amount": With respect to the Class A-2 Notes as of each Payment Date, the accrued and unpaid amount due to holders of the Class A-2 Notes on account of any shortfalls in the payment of the Class A-2 Interest Distribution Amount with respect to any preceding Payment Date or Payment Dates, together with interest accrued thereon (to the extent lawful).

"Class A-2 Interest Distribution Amount": On each Payment Date, the amount due to Holders of the Class A-2 Notes on account of interest equal to the product of (i) the Aggregate Outstanding Amount of the Class A-2 Notes with respect to the related Interest Accrual Period, (ii) the actual number of days in such Interest Accrual Period divided by 360 and (iii) the Class A-2 Rate.

"Class A-2 Loss Differential": At any time, the rate calculated by subtracting the Class A-2 Scenario Loss Rate from the Class A-2 Break-Even Loss Rate at such time.

"Class A-2 Notes": The Class A-2 Second Priority Senior Secured Floating Rate Term Notes Due 2038, issued by the Issuer and the Co-Issuer pursuant to this Indenture.

"Class A-2 Rate": With respect to any Class A-2 Note, the per annum rate at which interest accrues on such Note for any Interest Accrual Period, which shall be equal to (a) LIBOR for the related Interest Accrual Period plus (b) 0.45% per annum.

"Class A-2 Scenario Loss Rate": At any time, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with the then current rating of the Class A-2 Notes by S&P, determined by application of the S&P CDO Monitor at such time (which rate, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix).

"Class A-2 Subordinate Interests": The meaning specified in Section 13.1(a) hereof.

"Class A/B Coverage Tests": The Class A/B Par Value Test and the Class A/B Interest Coverage Test.

"Class A/B Interest Coverage Ratio": The meaning specified in the definition of "Interest Coverage Ratio."

"Class A/B Interest Coverage Test": The test that is met as of any Measurement Date on which any Class A Notes or any Class B Notes remain Outstanding if the Class A/B Interest Coverage Ratio as of such Measurement Date is equal to or greater than 209.5%.

"Class A/B Par Value Ratio": As of any Measurement Date, the number (expressed as a percentage) calculated by dividing (a) the Net Outstanding Portfolio Balance on such Measurement Date by (b) the sum of the Aggregate Outstanding Amount of the Class A Notes and the Class B Notes and the amount of any unreimbursed Interest Advances.

-10-

"Class A/B Par Value Test": The test that will be met as of any Measurement Date on which any Class A Notes or Class B Notes remain Outstanding if the Class A/B Par Value Ratio on such Measurement Date is equal to or greater than 169.5%.

"Class B Break-Even Loss Rate": At any time, the maximum percentage of defaults that the Assumed Portfolio should be able to sustain, which after

giving effect to S&P's assumptions on recoveries and timing and to the Priority of Payments, will result in sufficient funds remaining for the timely payment of interest on and the ultimate payment of principal of the Class B Notes.

"Class B Defaulted Interest Amount": With respect to the Class B Notes as of each Payment Date, the accrued and unpaid amount due to holders of the Class B Notes on account of any shortfalls in the payment of the Class B Interest Distribution Amount with respect to any preceding Payment Date or Payment Dates, together with interest accrued thereon (to the extent lawful).

"Class B Interest Distribution Amount": On each Payment Date, the amount due to Holders of the Class B Notes on account of interest equal to the product of (i) the Aggregate Outstanding Amount of the Class B Notes with respect to the related Interest Accrual Period, (ii) the actual number of days in such Interest Accrual Period divided by 360 and (iii) the Class B Rate.

"Class B Loss Differential": At any time, the rate calculated by subtracting the Class B Scenario Loss Rate from the Class B Break-Even Loss Rate at such time.

"Class B Notes": The Class B Third Priority Floating Rate Term Notes Due 2038, issued by the Issuer and the Co-Issuer pursuant to this Indenture.

"Class B Rate": With respect to any Class B Note, the per annum rate at which interest accrues on such Note for any Interest Accrual Period, which shall be equal to (a) LIBOR for the related Interest Accrual Period plus (b) 0.55% per annum.

"Class B Scenario Loss Rate": At any time, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with the then current rating of the Class B Notes by S&P, determined by application of the S&P CDO Monitor at such time (which rate, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix).

"Class B Subordinate Interests": The meaning specified in Section 13.1(b) hereof.

"Class C Break-Even Loss Rate": At any time, the maximum percentage of defaults that the Assumed Portfolio should be able to sustain, which after giving effect to S&P's assumptions on recoveries and timing and to the Priority of Payments, will result in sufficient funds remaining for the ultimate payment of interest on and principal of the Class C Notes.

"Class C Capitalized Interest": The meaning specified in Section 2.7(d) hereof.

-11-

"Class C Defaulted Interest Amount": With respect to the Class C Notes on or after any Payment Date on which no Class A Notes or Class B Notes are Outstanding, any interest on the Class C Notes (other than Class C Capitalized Interest) that is due and payable but is not punctually paid or duly provided for on or prior to the due date therefor and which remains unpaid, together with interest accrued thereon (to the extent lawful).

"Class C Interest Distribution Amount": On each Payment Date, the amount due to Holders of the Class C Notes on account of interest equal to the product of (i) the Aggregate Outstanding Amount (including the current balance of any Class C Capitalized Interest) of the Class C Notes with respect to the related Interest Accrual Period, (ii) the actual number of days in such Interest Accrual Period divided by 360 and (iii) the Class C Rate.

"Class C Loss Differential": At any time, the rate calculated by subtracting the Class C Scenario Loss Rate from the Class C Break-Even Loss Rate

at such time.

"Class C Notes": The Class C Fourth Priority Floating Rate Capitalized Interest Term Notes Due 2038, issued by the Issuer and the Co-Issuer pursuant to this Indenture.

"Class C Rate": With respect to any Class C Note, the per annum rate at which interest accrues on such Note for any Interest Accrual Period, which shall be equal to (a) LIBOR for the related Interest Accrual Period plus (b) 0.85% per annum.

"Class C Scenario Loss Rate": At any time, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with the then current rating of the Class C Notes by S&P, determined by application of the S&P CDO Monitor at such time (which rate, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix).

"Class C Subordinate Interests": The meaning specified in Section 13.1(c) hereof.

"Class C/D/E Coverage Tests": The Class C/D/E Par Value Test and the Class C/D/E Interest Coverage Test.

"Class C/D/E Interest Coverage Ratio": The meaning specified in the definition of "Interest Coverage Ratio."

"Class C/D/E Interest Coverage Test": The test that is met as of any Measurement Date on which any Class C Notes, Class D Notes or Class E Notes remain Outstanding if the Class C/D/E Interest Coverage Ratio as of such Measurement Date is equal to or greater than 175.3%.

"Class C/D/E Par Value Ratio": As of any Measurement Date, the number (expressed as a percentage) calculated by dividing (a) the Net Outstanding Portfolio Balance on such Measurement Date by (b) the sum of the Aggregate Outstanding Amount (including any Class C Capitalized Interest, Class D Capitalized Interest and Class E Capitalized Interest) of the Class A Notes, the Class B Notes, the Class C Notes, the Class D and the Class E Notes and the amount of any unreimbursed Interest Advances.

-12-

"Class C/D/E Par Value Test": The test that is met as of any Measurement Date on which any Class C Notes, Class D Notes or Class E Notes remain Outstanding if the Class C/D/E Par Value Ratio on such Measurement Date is equal to or greater than 145.3%.

"Class D Break-Even Loss Rate": At any time, the maximum percentage of defaults that the Assumed Portfolio should be able to sustain, which after giving effect to S&P's assumptions on recoveries and timing and to the Priority of Payments, will result in sufficient funds remaining for the ultimate payment of interest on and principal of the Class D Notes.

"Class D Capitalized Interest": The meaning specified in Section 2.7(e) hereof.

"Class D Defaulted Interest Amount": With respect to the Class D Notes on or after any Payment Date on which no Class A Notes, Class B Notes or Class C Notes are Outstanding, any interest on the Class D Notes (other than Class D Capitalized Interest) that is due and payable but is not punctually paid or duly provided for on or prior to the due date therefor and which remains unpaid, together with interest accrued thereon (to the extent lawful).

"Class D Interest Distribution Amount": On each Payment Date, the amount due to Holders of the Class D Notes on account of interest equal to the

product of (i) the Aggregate Outstanding Amount (including the current balance of any Class D Capitalized Interest) of the Class D Notes with respect to the related Interest Accrual Period, (ii) the actual number of days in such Interest Accrual Period divided by 360 and (iii) the Class D Rate.

"Class D Loss Differential": At any time, the rate calculated by subtracting the Class D Scenario Loss Rate from the Class D Break-Even Loss Rate at such time.

"Class D Notes": The Class D Fifth Priority Floating Rate Capitalized Interest Term Notes Due 2038, issued by the Issuer and the Co-Issuer pursuant to this Indenture.

"Class D Rate": With respect to any Class D Note, the per annum rate at which interest accrues on such Note for any Interest Accrual Period, which shall be equal to (a) LIBOR for the related Interest Accrual Period plus (b) 0.95% per annum.

"Class D Scenario Loss Rate": At any time, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with the then current rating of the Class D Notes by S&P, determined by application of the S&P CDO Monitor at such time (which rate, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix).

"Class D Subordinate Interests": The meaning specified in Section 13.1(d) hereof.

"Class E Break-Even Loss Rate": At any time, the maximum percentage of defaults that the Assumed Portfolio should be able to sustain, which after giving effect to S&P's assumptions on recoveries and timing and to the Priority of Payments, will result in sufficient funds remaining for the ultimate payment of interest on and principal of the Class E Notes.

"Class E Capitalized Interest": The meaning specified in Section 2.7(f) hereof.

-13-

"Class E Defaulted Interest Amount": With respect to the Class E Notes on or after any Payment Date on which no Class A Notes, Class B Notes, Class C Notes or Class D Notes are Outstanding, any interest on the Class E Notes (other than Class E Capitalized Interest) that is due and payable but is not punctually paid or duly provided for on or prior to the due date therefor and which remains unpaid, together with interest accrued thereon (to the extent lawful).

"Class E Interest Distribution Amount": On each Payment Date, the amount due to Holders of the Class E Notes on account of interest equal to the product of (i) the Aggregate Outstanding Amount (including the current balance of any Class E Capitalized Interest) of the Class E Notes with respect to the related Interest Accrual Period, (ii) the actual number of days in such Interest Accrual Period divided by 360 and (iii) the Class E Rate.

"Class E Loss Differential": At any time, the rate calculated by subtracting the Class E Scenario Loss Rate from the Class E Break-Even Loss Rate at such time.

"Class E Notes": The Class E Sixth Priority Floating Rate Capitalized Interest Term Notes due 2038, issued by the Issuer and the Co-Issuer pursuant to this Indenture.

"Class E Rate": With respect to any Class E Note, the per annum rate at which interest accrues on such Note for any Interest Accrual Period, which shall be equal to (a) LIBOR for the related Interest Accrual Period plus (b) 1.05% per annum.

"Class E Scenario Loss Rate": At any time, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with the then current rating of the Class E Notes by S&P, determined by application of the S&P CDO Monitor at such time (which rate, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix).

"Class E Subordinate Interests": The meaning specified in Section 13.1(e) hereof.

"Class F Break-Even Loss Rate": At any time, the maximum percentage of defaults that the Assumed Portfolio should be able to sustain, which after giving effect to S&P's assumptions on recoveries and timing and to the Priority of Payments, will result in sufficient funds remaining for the ultimate payment of interest on and principal of the Class F Notes.

"Class F Capitalized Interest": The meaning specified in Section 2.7(g) hereof.

"Class F Defaulted Interest Amount": With respect to the Class F Notes on or after any Payment Date on which no Class A Notes, Class B Notes, Class C Notes, Class D Notes or Class E Notes are Outstanding, any interest on the Class F Notes (other than Class F Capitalized Interest) that is due and payable but is not punctually paid or duly provided for on or prior to the due date therefor and which remains unpaid, together with interest accrued thereon (to the extent lawful).

"Class F Interest Distribution Amount": On each Payment Date, the amount due to Holders of the Class F Notes on account of interest equal to the product of (i) the Aggregate Outstanding Amount (including the current balance of any Class F Capitalized Interest) of the

-14-

Class F Notes with respect to the related Interest Accrual Period, (ii) the actual number of days in such Interest Accrual Period divided by 360 and (iii) the Class F Rate.

"Class F Loss Differential": At any time, the rate calculated by subtracting the Class F Scenario Loss Rate from the Class F Break-Even Loss Rate at such time.

"Class F Notes": The Class F Seventh Priority Floating Rate Capitalized Interest Term Notes due 2038, issued by the Issuer and the Co-Issuer pursuant to this Indenture.

"Class F Rate": With respect to any Class F Note, the per annum rate at which interest accrues on such Note for any Interest Accrual Period, which shall be equal to (a) LIBOR for the related Interest Accrual Period plus (b) 2.00% per annum.

"Class F Scenario Loss Rate": At any time, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with the then current rating of the Class F Notes by S&P, determined by application of the S&P CDO Monitor at such time (which rate, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix).

"Class F Subordinate Interests": The meaning specified in Section 13.1(f) hereof.

"Class F/G/H Coverage Tests": The Class F/G/H Par Value Test and the Class F/G/H Interest Coverage Test.

"Class F/G/H Interest Coverage Ratio": The meaning specified in the definition of "Interest Coverage Ratio."

"Class F/G/H Interest Coverage Test": The test that is met as of any Measurement Date on which any Class F Notes, Class G Notes or Class H Notes remain Outstanding if the Class F/G/H Interest Coverage Ratio as of such Measurement Date is equal to or greater than 147.3%.

"Class F/G/H Par Value Ratio": As of any Measurement Date, the number (expressed as a percentage) calculated by dividing (a) the Net Outstanding Portfolio Balance on such Measurement Date by (b) the sum of the Aggregate Outstanding Amount (including any Class C Capitalized Interest, Class D Capitalized Interest, Class E Capitalized Interest, Class F Capitalized Interest, Class G Capitalized Interest and Class H Capitalized Interest) of the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes and the amount of any unreimbursed Interest Advances.

"Class F/G/H Par Value Test": The test that is met as of any Measurement Date on which any Class F Notes, Class G Notes or Class H Notes remain Outstanding if the Class F/G/H Par Value Ratio on such Measurement Date is equal to or greater than 127.3%.

"Class G Break-Even Loss Rate": At any time, the maximum percentage of defaults that the Assumed Portfolio should be able to sustain, which after giving effect to S&P's

-15-

assumptions on recoveries and timing and to the Priority of Payments, will result in sufficient funds remaining for the ultimate payment of interest on and principal of the Class G Notes.

"Class G Capitalized Interest": The meaning specified in Section 2.7(h) hereof.

"Class G Defaulted Interest Amount": With respect to the Class G Notes on or after any Payment Date on which no Class A Notes, Class B Notes, Class C Notes, Class D Notes, Class E Notes or Class F Notes are Outstanding, any interest on the Class G Notes (other than Class G Capitalized Interest) that is due and payable but is not punctually paid or duly provided for on or prior to the due date therefor and which remains unpaid, together with interest accrued thereon (to the extent lawful).

"Class G Interest Distribution Amount": On each Payment Date, the amount due to Holders of the Class G Notes on account of interest equal to the product of (i) the Aggregate Outstanding Amount (including the current balance of any Class G Capitalized Interest) of the Class G Notes with respect to the related Interest Accrual Period, (ii) the actual number of days in such Interest Accrual Period divided by 360 and (iii) the Class G Rate.

"Class G Loss Differential": At any time, the rate calculated by subtracting the Class G Scenario Loss Rate from the Class G Break-Even Loss Rate at such time.

"Class G Notes": The Class G Eighth Priority Floating Rate Capitalized Interest Term Notes due 2038, issued by the Issuer and the Co-Issuer pursuant to this Indenture.

"Class G Rate": With respect to any Class G Note, the per annum rate at which interest accrues on such Note for any Interest Accrual Period, which shall be equal to (a) LIBOR for the related Interest Accrual Period plus (b) 2.30% per annum.

"Class G Scenario Loss Rate": At any time, an estimate of the

cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with the then current rating of the Class G Notes by S&P, determined by application of the S&P CDO Monitor at such time (which rate, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix).

"Class G Subordinate Interests": The meaning specified in Section 13.1(g), hereof.

"Class H Break-Even Loss Rate": At any time, the maximum percentage of defaults that the Assumed Portfolio should be able to sustain, which after giving effect to S&P's assumptions on recoveries and timing and to the Priority of Payments, will result in sufficient funds remaining for the ultimate payment of interest on and principal of the Class H Notes.

"Class H Capitalized Interest": The meaning specified in Section 2.7(i) hereof.

"Class H Defaulted Interest Amount": With respect to the Class H Notes on or after any Payment Date on which no Class A Notes, Class B Notes, Class C Notes, Class D Notes, Class E Notes, Class F Notes or Class G Notes are Outstanding, any interest on the Class H Notes (other than Class H Capitalized Interest) that is due and payable but is not punctually

-16-

paid or duly provided for on or prior to the due date therefor and which remains unpaid, together with interest accrued thereon (to the extent lawful).

"Class H Interest Distribution Amount": On each Payment Date, the amount due to Holders of the Class H Notes on account of interest equal to the product of (i) the Aggregate Outstanding Amount (including the current balance of any Class H Capitalized Interest) of the Class H Notes with respect to the related Interest Accrual Period, (ii) the actual number of days in such Interest Accrual Period divided by 360 and (iii) the Class H Rate.

"Class H Loss Differential": At any time, the rate calculated by subtracting the Class H Scenario Loss Rate from the Class H Break-Even Loss Rate at such time.

"Class H Notes": The Class H Ninth Priority Floating Rate Capitalized Interest Term Notes due 2038, issued by the Issuer and the Co-Issuer pursuant to this Indenture.

"Class H Rate": With respect to any Class H Note, the per annum rate at which interest accrues on such Note for any Interest Accrual Period, which shall be equal to (a) LIBOR for the related Interest Accrual Period plus (b) 2.60% per annum.

"Class H Scenario Loss Rate": At any time, an estimate of the cumulative default rate for the Current Portfolio or the Proposed Portfolio, as applicable, consistent with the then current rating of the Class H Notes by S&P, determined by application of the S&P CDO Monitor at such time (which rate, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix).

"Class H Subordinate Interests": The meaning specified in Section 13.1(h) hereof.

"Clean-up Call": The meaning specified in Section 9.1 hereof.

"Clean-up Call Date": The meaning specified in Section 9.1 hereof.

"Clearing Agency": An organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

"Clearing Corporation": The meaning specified in Section 8-102(a) (5) of the UCC.

"Clearing Corporation Security": A security subject to book-entry transfers and pledges deposited with the Clearing Agency.

"Clearstream, Luxembourg": Clearstream Banking, societe anoyne, a limited liability company organized under the laws of the Grand Duchy of Luxembourg.

"Closing": The transfer of any Note to the initial registered Holder of such Note.

"Closing Date": January 11, 2006.

-17-

"CMBS Conduit Securities": Collateral Debt Securities (A) issued by a single-seller or multi-seller conduit under which the holders of such Collateral Debt Securities have recourse to a specified pool of assets (but not other assets held by the conduit that support payments on other series of securities) and (B) that entitle the holders thereof to receive payments that depend (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) on the cash flow from a pool of commercial mortgage loans generally having the following characteristics: (i) the commercial mortgage loans have varying contractual maturities; (ii) the commercial mortgage loans are secured by real property purchased or improved with the proceeds thereof (or to refinance an outstanding loan the proceeds of which were so used); (iii) the commercial mortgage loans are obligations of a relatively limited number of obligors (with the creditworthiness of individual obligors being less material than for CMBS Large Loan Securities) and accordingly represent a relatively undiversified pool of obligor credit risk; (iv) upon original issuance of such Collateral Debt Securities no five commercial mortgage loans account for more than 20% of the aggregate principal balance of the entire pool of commercial mortgage loans supporting payments on such securities; and (v) repayment thereof can vary substantially from the contractual payment schedule (if any), with early prepayment of individual loans depending on numerous factors specific to the particular obligors and upon whether, in the case of loans bearing interest at a fixed rate, such loans or securities include an effective prepayment premium.

"CMBS Large Loan Securities": Collateral Debt Securities (other than CMBS Conduit Securities) that entitle the holders thereof to receive payments that depend (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) on the cash flow from a pool of commercial mortgage loans made to finance the acquisition, construction and improvement of properties. They generally have the following characteristics: (i) the commercial mortgage loans have varying contractual maturities; (ii) the commercial mortgage loans are secured by real property purchased or improved with the proceeds thereof (or to refinance one or more outstanding loans the proceeds of which were so used); (iii) the commercial mortgage loans are obligations of a relatively limited number of obligors and accordingly represent a relatively undiversified pool of obligor credit risk; (iv) repayment thereof can vary substantially from the contractual payment schedule (if any), with early prepayment of individual loans depending on numerous factors specific to the particular obligors and upon whether, in the case of loans bearing interest at a fixed rate, such loans or securities include an effective prepayment premium; and (v) the valuation of individual properties securing the commercial mortgage loans is the primary factor in any decision to invest in those securities.

"CMBS Security": A CMBS Conduit Security or a CMBS Large Loan Security, as the case may be, but excluding any Single Asset Mortgage Security, Single Borrower Mortgage Security or Rake Bond.

"Co-Issuer": Arbor Realty Mortgage Securities Series 2005-1 LLC, a limited liability company organized under the laws of the State of Delaware, until a successor Person shall have become the Co-Issuer pursuant to the applicable provisions of this Indenture, and thereafter "Co-Issuer" shall mean such successor Person.

"Co-Issuers": The Issuer and the Co-Issuer.

-18-

"Code": The United States Internal Revenue Code of 1986, as amended.

"Collateral Debt Securities Purchase Agreements": Any collateral debt securities purchase agreements entered into on or about the Closing Date and any other collateral debt securities purchase agreements entered into after the Closing Date if a purchase agreement is necessary to comply with this Indenture, which agreement is assigned to the Trustee pursuant to this Indenture.

"Collateral Debt Security" and "Collateral Debt Securities": (i) Any loan, security or other obligation (other than Eligible Investments) purchased by the Issuer (including those acquired after the Closing Date) that complied with the Eligibility Criteria at the time the Issuer entered into the commitment to acquire such loan, security or obligation or (ii) any ARMS Equity CDS Contribution.

"Collateral Manager": Arbor Realty Collateral Management, LLC, each of Arbor Realty Collateral Management, LLC's permitted successors and assigns or any successor Person that shall have become the Collateral Manager pursuant to the provisions of the Collateral Management Agreement and thereafter "Collateral Manager" shall mean such successor Person.

"Collateral Management Agreement": The Collateral Management Agreement, dated as of the Closing Date, by and between the Issuer and the Collateral Manager, as amended, supplemented or otherwise modified from time to time in accordance with its terms.

"Collateral Management Fee": The Senior Collateral Management Fee and the Subordinate Collateral Management Fee.

"Collateral Manager Servicing Standard": With respect to the Collateral Manager, to manage the Collateral Debt Securities that such Person is obligated to service and administer pursuant to this Indenture and the Collateral Management Agreement (i) in accordance with (A) the higher of the following standards of care: (1) customary and usual standards of practice of prudent institutional commercial mortgage lenders servicing their own mortgage loans and (2) the same manner in which, and with the same care, skill, prudence and diligence with which, the Arbor Parent manages securities comparable to the Collateral Debt Securities for its own account, (B) applicable law and (C) the terms of this Indenture, the Collateral Management Agreement and the terms of the Collateral Debt Security and the related Underlying Instruments and (ii) without regard to (A) any relationship, including as lender on any other debt, that the Collateral Manager or any Affiliate of the Collateral Manager, may have with the underlying borrower, or any Affiliate of the borrower, or any other party to this Indenture (or any agreements relating to the Indenture); (B) the obligation of the Collateral Manager to make Cure Advances; (C) the right of the Collateral Manager or any Affiliate thereof, to receive compensation or reimbursement of costs hereunder generally or with respect to any particular transaction (including, without limitation, any transaction related to the Collateral Management Agreement); and (D) the ownership, servicing or management for others of any security not subject to this Indenture by the Collateral Manager or any Affiliate thereof or the obligation of any Affiliate of the Collateral Manager to repurchase the Collateral Debt Security.

"Collateral Quality Test Modification": The meaning specified in Section 12.5 hereof.

"Collateral Quality Tests": The tests that are satisfied if, as of any Measurement Date, in the aggregate, the Collateral Debt Securities purchased or irrevocably committed to be purchased (and not sold) comply with all of the requirements set forth below:

(i) not more than 5% of the Aggregate Collateral Balance of Collateral Debt Securities with payments less frequently than quarterly are not covered by a Cash Flow Swap Agreement obtained by the Collateral Manager for the Issuer;

(ii) not more than 20% of the Aggregate Collateral Balance consists of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) backed or otherwise invested in properties located in any single U.S. state, except that (A) up to 60% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) backed or otherwise invested in properties located in the State of New York, (B) up to 45% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) backed or otherwise invested in properties located in the State of California, (C) up to 35% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) backed or otherwise invested in properties located in the northern region of the State of California, (D) up to 35% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) backed or otherwise invested in properties located in the southern region of the State of California, (E) up to 25% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) backed or otherwise invested in properties located in the District of Columbia and (F) up to 25% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) backed or otherwise invested in properties located in the State of Florida; provided that, for purposes of this clause (ii), any Collateral Debt Security described in the proviso to the definition of "Applicable Recovery Rate" shall be treated as if such Collateral Debt Security were Cash or an Eligible Investment, as applicable, and not as a Collateral Debt Security backed or otherwise invested in properties;

(iii) not more than 10% of the Aggregate Collateral Balance consists of CMBS Securities;

(iv) not more than 5% of the Aggregate Collateral Balance consists of CRE CDO Securities;

(v) not more than 10% of the Aggregate Collateral Balance consists of CMBS Securities and CRE CDO Securities;

(vi) not more than 5% of the Aggregate Collateral Balance consists of REIT Debt Securities;

(vii) the Aggregate Principal Balance of all Collateral Debt Securities issued by any single issuer does not exceed the greater of (A) \$57,000,000 or (B) 12% of the Aggregate Collateral Balance

(provided that, for avoidance of doubt, with respect to any Loan, the issuer of such Loan shall be deemed to be the borrower of such Loan);

(viii) no more than 75% of the Aggregate Collateral Balance consists of CMBS Securities issued in any single calendar year;

(ix) (A) not more than 50% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) that are collateralized or backed by interests on any Urban Office Properties or Suburban Office Properties; (B) not more than 40% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) that are collateralized or backed by interests on any Multi-Family Properties; (C) not more than 40% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) that are collateralized or backed by interests on Retail Properties; (D) not more than 40% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) that are collateralized or backed by interests on Industrial Properties; (E) not more than 20% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) that are collateralized or backed by interests on Hospitality Properties; (F) not more than 35% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) that are collateralized or backed by interests on Condo Conversion Properties; (G) not more than 20% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) that are collateralized or backed by interest on Condo Conversion Properties with respect to which the aggregate purchase price relating to signed contracts is less than the outstanding principal amount of the related Collateral Debt Securities; (H) not more than 15% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) that are collateralized or backed by interests in Mixed-Use Properties; (I) not more than 10% of the Aggregate Collateral Balance may consist of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) that are collateralized or backed by interests in Warehouse Properties; and (J) not more than 10% of the Aggregate Collateral Balance consists of Collateral Debt Securities (other than CRE CDO Securities and REIT Debt Securities) that are collateralized or backed by interests on all Property Types not specifically listed in clauses (A) through (I) above; provided that, for purposes of this clause (ix), any Collateral Debt Security described in the proviso to the definition of "Applicable Recovery Rate" shall be

-21-

treated as if such Collateral Debt Security were Cash or an Eligible Investment, as applicable, and not as a Collateral Debt Security collateralized or backed by any particular Property Type;

(x) not more than 10% of the Aggregate Collateral Balance consists of Floating Rate Securities that bear interest based upon a floating rate index other than LIBOR and that are not subject to Asset Specific Hedges;

(xi) not more than 15% of the Aggregate Collateral Balance consists of Fixed Rate Securities that are not subject to Asset Specific Hedges;

(xii) not more than 5% of the Aggregate Collateral Balance consists of CMBS Securities and CRE CDO Securities that have a stated

maturity later than the Stated Maturity; provided that such 5% limitation may be increased after the Closing Date if the Rating Agency Condition has been satisfied with respect thereto;

(xiii) not more than 5% of the Aggregate Collateral Balance consists of CMBS Securities that have a stated maturity later than the Stated Maturity;

(xiv) not more than 2% of the Aggregate Collateral Balance consists of CRE CDO Securities that have a stated maturity later than the Stated Maturity;

(xv) not more than 3% of the Aggregate Collateral Balance consists of CRE CDO Securities for which the Collateral Manager or an affiliate thereof acts as a collateral manager for the related issuer;

(xvi) the Moody's Maximum Tranching Factor Test is satisfied;

(xvii) the Moody's Weighted Average Extended Maturity Test is satisfied;

(xviii) the Herfindahl Diversity Test is satisfied;

(xix) the Minimum Weighted Average Coupon Test is satisfied;

(xx) the Minimum Weighted Average Spread Test is satisfied;

(xxi) the Weighted Average Life Test is satisfied;

(xxii) the S&P CDO Monitor Test is satisfied;

(xxiii) the S&P Recovery Test is satisfied;

(xxiv) the Fitch Loan Diversity Index Test is satisfied; and

(xxv) the Fitch Poolwide Expected Loss Test is satisfied.

-22-

Notwithstanding the foregoing, during the Ramp-Up Period, the Collateral Quality Tests need not be met.

"Collection Accounts": The trust accounts so designated and established pursuant to Section 10.2(a) hereof.

"Company Administration Agreement": The administration agreement dated on or about the Closing Date by and among the Issuer and the Company Administrator, as modified and supplemented and in effect from time to time.

"Company Administrative Expenses": All fees, expenses and other amounts due or accrued with respect to any Payment Date and payable by the Issuer or the Co-Issuer to (i) the Trustee pursuant to Section 6.7 hereof or any co-trustee appointed pursuant to this Indenture (including amounts payable by the Issuer as indemnification pursuant to this Indenture), (ii) the Company Administrator under the Company Administration Agreement (including amounts payable by the Issuer as indemnification pursuant to the Company Administration Agreement) and to provide for the costs of liquidating the Issuer following redemption of the Notes, (iii) the LLC Managers (including indemnification), (iv) the Independent accountants, agents and counsel of the Issuer for reasonable fees and expenses (including amounts payable in connection with the preparation of tax forms on behalf of the Issuer and the Co-Issuer) and any registered office and government filing fees, (v) the Rating Agencies for fees and expenses in connection with any rating (including the annual fee payable with respect to the monitoring of any rating) of the Notes, including fees and

expenses due or accrued in connection with any credit estimate or rating of the Collateral Debt Securities, (vi) the Collateral Manager under this Indenture and the Collateral Management Agreement, (vii) the Collateral Manager or other Persons as indemnification pursuant to the Collateral Management Agreement, (viii) the Advancing Agent or other Persons as indemnification pursuant to Section 17.3, (ix) each member of the Advisory Committee (including amounts payable as indemnification) under each agreement between such Advisory Committee member and the Issuer (and the amounts payable by the Issuer to each member of the Advisory Committee as indemnification pursuant to each such agreement); (x) the Preferred Shares Paying Agent and the Shares Registrar pursuant to the Preferred Shares Paying Agency Agreement, (xi) any other Person in respect of any governmental fee, charge or tax in relation to the Issuer or the Co-Issuer (in each case as certified by an Authorized Officer of the Issuer or the Co-Issuer to the Trustee), and (xii) any other Person in respect of any other fees or expenses (including indemnifications) permitted under this Indenture and the documents delivered pursuant to or in connection with this Indenture and the Notes and any amendment or other modification of any such documentation, in each case unless expressly prohibited under this Indenture (including, without limitation, the payment of all transaction fees and all legal and other fees and expenses required in connection with the purchase of any Collateral Debt Securities or any other transaction authorized by this Indenture and any amounts due in respect of the listing of any Notes on the Irish Stock Exchange); provided that Company Administrative Expenses shall not include (a) amounts payable in respect of the Notes, (b) amounts payable under any Hedge Agreement and (c) any Collateral Management Fee payable pursuant to the Collateral Management Agreement.

"Company Administrator": Maples Finance Limited, as administrator pursuant to the Company Administration Agreement, unless a successor Person shall have become

-23-

administrator pursuant to the Company Administration Agreement, and thereafter, Company Administrator shall mean such successor Person.

"Controlling Class": The Class A-1 Notes, so long as any Class A-1 Notes are Outstanding, then the Class A-2 Notes, so long as any Class A-2 Notes are Outstanding, then the Class B Notes, so long as Class B Notes are Outstanding, then the Class C Notes, so long as any Class C Notes are Outstanding, then the Class D Notes, so long as any Class D Notes are Outstanding, then the Class E Notes, so long as any Class E Notes are Outstanding, then the Class F Notes, so long as any Class F Notes are Outstanding, then the Class G Notes, so long as any Class G Notes are Outstanding, then the Class H Notes, so long as any Class H Notes are Outstanding, and then the Preferred Shares.

"Corporate Trust Office": The principal corporate trust office of the Trustee, currently located at 135 South LaSalle Street, Suite 1511, Chicago, IL 60603, Attention: CDO Trust Services Group, Arbor Realty Mortgage Securities Series 2005-1, or such other address as the Trustee may designate from time to time by notice to the Noteholders, the Holder of the Preferred Shares, the Collateral Manager, the Rating Agencies, the Issuer and each Hedge Counterparty or the principal corporate trust office of any successor Trustee.

"Coverage Test Modification": The meaning specified in Section 12.5 hereof.

"Coverage Tests": The Class A/B Coverage Tests, the Class C/D/E Coverage Tests and the Class F/G/H Coverage Tests.

"Covered Fixed Rate Security": Any Fixed Rate Security (other than any Fixed Rate Security included in the Initial Collateral Debt Securities) (including any Above Cap Security) (i) for which the Issuer has entered into one or more Interest Rate Swap Agreements (either individually or together with

other Collateral Debt Securities), which (A) is a market rate swap that does not require the related Hedge Counterparty to make any upfront payments, (B) has a term which is at least as long as the Initial Maturity Date of such Fixed Rate Security, (C) requires the related Hedge Counterparty to make floating rate payments to the Issuer based on the related notional amount based on the London interbank offered rate for U.S. Dollar deposits in Europe and (D) requires the Issuer to make fixed rate payments to the related Hedge Counterparty or (ii) that is subject to an Asset-Specific Hedge. For the avoidance of doubt, any Fixed Rate Security with respect to which the Issuer has entered into an Interest Rate Swap Agreement that has a term expiring prior to the Initial Maturity Date of such Fixed Rate Security will not be a Covered Fixed Rate Security.

"CRE CDO Securities": Collateralized debt obligations, collateralized bond obligations or collateralized loan obligations (including, without limitation, any synthetic collateralized debt obligations or synthetic collateralized loan obligations) that entitle the holders thereof to receive payments that depend (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of such CRE CDO Securities) on the cash flow from (and not the market value of) a portfolio of securities related to commercial mortgage property.

-24-

"Credit Risk/Defaulted Security Cash Purchase": The meaning specified in Section 12.1(b) hereof.

"Credit Risk Security": Any Collateral Debt Security that, in the Collateral Manager's reasonable business judgment, has a significant risk of declining in credit quality or, with a lapse of time, becoming a Defaulted Security.

"Cure Advance": An advance by the Collateral Manager, in connection with the exercise of a cure right by the Issuer, as controlling holder or directing holder or other similar function, with respect to a Collateral Debt Security.

"Current Portfolio": The portfolio of Collateral Debt Securities and Eligible Investments prior to giving effect to a proposed reinvestment in a Substitute Collateral Debt Security.

"Custodial Account": An account at the Custodial Securities Intermediary in the name of the Trustee pursuant to Section 10.1(b) hereof.

"Custodial Securities Intermediary": The meaning specified in Section 3.3(a) hereof.

"Default": Any Event of Default or any occurrence that is, or with notice or the lapse of time or both would become, an Event of Default.

"Defaulted Interest Amount": The Class A-1 Defaulted Interest Amount, the Class A-2 Defaulted Interest Amount, the Class B Defaulted Interest Amount, the Class C Defaulted Interest Amount, the Class D Defaulted Interest Amount, the Class E Defaulted Interest Amount, the Class F Defaulted Interest Amount, the Class G Defaulted Interest Amount and/or the Class H Defaulted Interest Amount, as the context requires.

"Defaulted Security": Any Collateral Debt Security or any other security included in the Assets:

(1) with respect to a Preferred Equity Security (i) with respect to which there has occurred and is continuing a payment default (after giving effect to any applicable grace period but without giving effect to any waiver); provided, however, that notwithstanding the foregoing, a Preferred Equity Security shall not

be deemed to be a Defaulted Security as a result of (A) the related issuer's failure to pay dividends or distributions on the initial due date therefor, if the Collateral Manager, on behalf of the Issuer, (subject to the applicable provisions of the Servicing Agreement) consents to extend the due date when such dividend or distribution is due and payable, and such dividend or distribution is paid on or before such extended due date (provided that such dividend or distribution is paid not more than 60 days (or 30 days if such dividend or distribution was previously paid 60 days after the initial date that it was due as a result of the Collateral Manager, on behalf of the Issuer, previously consenting to extend such due date) after the initial date that it was due), or (B) the failure of the issuer or affiliate of the issuer of the Preferred Equity Security to redeem or

-25-

purchase such Preferred Equity Security on the date when such redemption or purchase is required pursuant to the terms of the agreement setting forth the rights of the holder of that Preferred Equity Security (after giving effect to all extensions of such redemption or purchase date that the issuer or affiliate of the issuer of the Preferred Equity Security had the right to elect and did elect under the terms of the agreement setting forth the rights of the holder of that Preferred Equity Security), if the Collateral Manager, on behalf of the Issuer, (subject to the applicable provisions of the Servicing Agreement) consents to extend such redemption or purchase date; provided that such consent does not extend the redemption or purchase date by more than two (2) years after the redemption or purchase date required under such agreement (that is, the original redemption or purchase date under such agreement as extended by all extensions of such date that the issuer or affiliate of the issuer of the Preferred Equity Security had the right to elect and did elect under the terms of such agreement) and the amount required to be paid in connection with such redemption or purchase is paid on or before such extended redemption or purchase date, or (ii) with respect to which there is known to the Issuer or the Collateral Manager a default (other than any payment default) which default entitles the holders thereof to accelerate the maturity of all or a portion of the principal amount of such obligation; provided, however, that, in each case, if such default is cured or waived then such asset shall no longer be a Defaulted Security or (iii) with respect to which it is known to the Collateral Manager that (A) any bankruptcy, insolvency or receivership proceeding has been initiated in connection with the issuer of such Preferred Equity Security, or (B) there has been proposed or effected any distressed exchange or other debt restructuring where the issuer of such Preferred Equity Security has offered the debt holders a new security or package of securities that either (x) amounts to a diminished financial obligation or (y) has the purpose of helping the issuer to avoid default, or (iv) that has been rated "CC," "D" or "SD" or below by S&P or "CC" or below by Fitch, or (v) there is known to the Collateral Manager that the issuer of such Preferred Equity Security is in default (without giving effect to any applicable grace period or waiver) as to payment of principal and/or interest on another obligation (and such default has not been cured or waived) which is senior or pari passu in right of payment to such Preferred Equity Security, except that a Preferred Equity Security will not constitute a "Defaulted Security" under this clause (v) if each of the Rating Agencies has confirmed in writing that such event shall not result in the reduction, qualification or withdrawal of any rating of the Notes;

(2) with respect to a Loan (other than a Single Asset Mortgage Security, a Single Borrower Mortgage Security or a Rake Bond), if a foreclosure or default (whether or not declared) with respect to the related commercial mortgage loan has occurred;

provided, however, that notwithstanding the foregoing, a Loan shall not be deemed to be a Defaulted Security as a result of (i) the related borrower's failure to pay interest on such Loan or on the related commercial mortgage loan on the initial due date therefor, if the related lender or holder of such Loan or of the related commercial mortgage loan consents to extend the due date when such interest is due and payable, and such interest is

-26-

paid on or before such extended due date (provided that such interest is paid not more than 60 days (or 30 days if such interest was previously paid 60 days after the initial date that it was due as a result of the Collateral Manager, on behalf of the Issuer, (subject to the applicable provisions of the Servicing Agreement) previously consenting to extend such due date after the initial date that it was due) after the initial date that it was due), or (ii) the related borrower's failure to pay principal on such Loan or the related commercial mortgage loan on the original maturity date thereof (as defined below), if the related lender or holder of such Loan or of the related commercial mortgage loan consents to extend such maturity date (so long as the Maturity Extension Requirements are met) and such principal is paid on or before such extended maturity date, or (iii) the occurrence of any default other than a payment default with respect to such Loan or the related commercial mortgage loan, unless and until the earlier of (A) the declaration of default and acceleration of the maturity of the Loan by the lender or holder thereof and (B) the continuance of such default uncured for 60 days after such default became known to the Collateral Manager or the Servicer or, subject to the satisfaction of the Rating Agency Condition, such longer period as the Collateral Manager (subject to the applicable provisions of the Servicing Agreement) determines. As used above, the term "original maturity date" means the maturity date of a Loan or the related commercial mortgage loan as extended by all extensions thereof which the related borrower had the right to elect and did elect under the terms of the instruments and agreements relating to such Loan or to the related commercial mortgage loan, but before taking into account any additional extensions thereof that are consented to by the lender or holder of such Loan or of the related commercial mortgage loan; and

(3) with respect to a CMBS Security, a CRE CDO Security, a REIT Debt Security, a Single Asset Mortgage Security, a Single Borrower Mortgage Security or a Rake Bond (i) as to which there has occurred and is continuing a principal payment default (without giving effect to any applicable grace period or waiver) or (ii) as to which there is known to the Collateral Manager a default (other than any payment default) which default entitles the holders thereof to accelerate the maturity of all or a portion of the principal amount of such obligation; provided, however, that, in each case, if such default is cured or waived then such asset shall no longer be a Defaulted Security, or (iii) as to which it is known to the Collateral Manager that (A) any bankruptcy, insolvency or receivership proceeding has been initiated in connection with the issuer of such security, or (B) there has been proposed or effected any distressed exchange or other debt re-structuring where the issuer of such security has offered the debt holders a new security or package of securities that either (x) amounts to a diminished financial obligation or (y) has the purpose of helping the issuer to avoid default, or (iv) that has been rated "CC," "D" or "SD" or below by S&P, "CC" or below by Fitch, or "Ca" or "C" by Moody's, or with respect to REIT Debt Securities, the issuer of which has a credit rating of "D" or "SD" or as to which S&P has withdrawn its rating, or (v) as to which it is known to the Collateral Manager that the issuer thereof is in default (without giving effect to any applicable grace period or waiver) as to payment

of principal and/or interest

-27-

on another obligation (and such default has not been cured or waived) which is senior or pari passu in right of payment to such security, except that any such security will not constitute a "Defaulted Security" under this clause (v) if each of the Rating Agencies has confirmed in writing that such event shall not result in the reduction, qualification or withdrawal of any rating of the Notes, or (vi) (A) as to which there has been a failure to pay interest in whole or in part for the lesser of (x) six months or (y) three payment periods (if such security is rated (or privately rated for purposes of the issuance of the Securities) below "Baa3" by Moody's or "BBB-" by S&P or Fitch); provided, however, that if the Rating Agency Condition for such security is satisfied with respect to S&P and Moody's, the Collateral Manager may choose not to treat such security as a Defaulted Security or (B) as to which there has been a failure to pay interest in whole or in part for the lesser of (x) one year or (y) six consecutive payment periods (if such security is rated (or privately rated for purposes of the issuance of the Securities) "BBB-" or higher by S&P or Fitch, or "Baa3" or higher by Moody's) even if by its terms it provides for the deferral and capitalization of interest thereon.

provided that any Collateral Debt Security which has sustained a write-down of Principal Balance in accordance with its terms will not necessarily be considered a Defaulted Security solely due to such writedown; provided, further, that, for purposes of calculating the Par Value Ratios, any Collateral Debt Security that has sustained an implied reduction of principal balance due to an appraisal reduction will not necessarily be considered a Defaulted Security solely due to such implied reduction.

For purposes of calculating the Par Value Ratios, an appraisal reduction of a Collateral Debt Security will be assumed to result in an implied reduction of principal balance for such Collateral Debt Security only if such appraisal reduction is intended to reduce the interest payable on such Collateral Debt Security and only in proportion to such interest reduction. The Collateral Manager shall notify the Trustee of any appraisal reductions of Collateral Debt Securities if the Collateral Manager has actual knowledge thereof.

For purposes of the definition of "Defaulted Security," the "Maturity Extension Requirements" will be satisfied with respect to any extension if the maturity date is extended (i) in the case of Loans other than ARD Loans, to a new maturity date that is (A) not more than two years after the original maturity date and (B) not less than 10 years prior to the Stated Maturity and (ii) in the case of ARD Loans, such that (A) the anticipated repayment date will not be less than 20 years prior to the Stated Maturity and (B) the new maturity date is not less than three years prior to the Stated Maturity; provided, however, that notwithstanding the requirements in the foregoing clauses (i) and (ii), "Maturity Extension Requirements" will be deemed satisfied with respect to any extensions as to which the Rating Agency Condition has been satisfied.

For the avoidance of doubt, the parties hereto understand and agree that any initial permissible 60 day extension period described in paragraphs (1) and (2) of this definition shall in no event be combined with any subsequent permissible 30 day extension period described in paragraphs (1) and (2) of this definition.

-28-

"Deafeased Collateral Accounts": The trust accounts so designated and established pursuant to Section 10.7(a) hereof.

"Delayed Draw Term Loan": Any Loan that is fully committed on the initial funding date of such Loan but is required to be fully funded in one or more installments and which, once all such installments have been made, has the characteristics of a term loan; provided that no Loan with respect to which the additional funding obligation is held separately outside the Issuer by the Seller or an affiliate of the Seller or by an unaffiliated third party shall be deemed to be a "Delayed Draw Term Loan" under this Indenture; provided, further, that for purposes of the Coverage Tests and the Collateral Quality Tests, the principal balance of a Delayed Draw Term Loan, as of any date of determination, refers to the sum of (i) the outstanding principal balance of such Delayed Draw Term Loan and (ii) the amounts on deposit in the Delayed Funding Obligations Account in respect of the unfunded portion of such Delayed Draw Term Loan.

"Delayed Funding Obligations Account": The account established pursuant to Section 10.5(a) hereof.

"Deposit": Any Cash or money deposited with the Trustee by the Issuer on the Closing Date for inclusion as Assets and deposited by the Trustee in the Unused Proceeds Account on the Closing Date, which shall be equal to \$62,693,342.

"Deposit Accounts": The meaning specified in Section 3.3(e)(xii) hereof.

"Depository" or "DTC": The Depository Trust Company, its nominees, and their respective successors.

"Determination Date": With respect to the initial Payment Date, April 15, 2006, and thereafter quarterly on each July 15, October 15, January 15, and April 15 (or if such date is not a Business Day, then the next succeeding Business Day).

"Disqualified Transferee": The meaning specified in Section 2.5(1) hereof.

"Dollar," "U.S. \$" or "\$": A U.S. dollar or other equivalent unit in Cash.

"Downgraded Indemnitor": Any Person providing the indemnification described in subclause (c)(i) of clause (xxxiv) of the definition of "Eligibility Criteria" or any bank or other financial institution providing a Qualified Letter of Credit described in subclause (c)(ii) of clause (xxxiv) of the definition of "Eligibility Criteria" who, in either case, is downgraded to below "Baa3" by Moody's.

"Due Date": Each date on which a Scheduled Distribution is due on a Pledged Obligation.

"Due Period": With respect to any Payment Date, the period commencing on the day immediately succeeding the second preceding Determination Date (or commencing on the Closing Date, in the case of the Due Period relating to the first Payment Date) and ending on and including the Determination Date immediately preceding such Payment Date.

-29-

"Effective Date": The date which is the earlier of (i) the 270th day after the Closing Date and (ii) the first date on which the Aggregate Principal Balance of the Pledged Collateral Debt Securities is at least equal to the Minimum Ramp-Up Amount.

"Eligibility Criteria": The criteria set forth below, which if satisfied with respect to a loan, security or other obligation at the time it is purchased (or, in the case of any ARMS Equity CDS Contribution, contributed), as evidenced by an Officer's Certificate of the Collateral Manager delivered to the

Trustee as of the date of such acquisition (or contribution), will make such loan, security or other obligation eligible for purchase by (or contribution to) the Issuer as a Collateral Debt Security:

(i) it is a Loan or security related to commercial real estate;

(ii) it is issued by an issuer incorporated or organized under the laws of the United States or a commonwealth, territory or possession of the United States;

(iii) with respect to each CMBS Security, substantially all the loans backing such Collateral Debt Security are secured by collateral substantially all of which is located in the United States or a commonwealth, territory or possession of the United States and with respect to each REIT Debt Security, the issuer of such Collateral Debt Security is incorporated or organized under the laws of the United States or a commonwealth, territory or possession of the United States;

(iv) it provides for periodic payments of interest (or, in the case of Preferred Equity Securities, dividends or other distributions) no less frequently than semi-annually;

(v) it has a Moody's Rating, a Fitch Rating (except for Loans and Preferred Equity Securities) and a S&P Rating (and, unless otherwise agreed by S&P, such S&P Rating does not include the subscript "t");

(vi) its acquisition would not cause the Issuer, the Co-Issuer or the pool of Pledged Obligations to be required to register as an investment company under the Investment Company Act; and if the issuer of such Collateral Debt Security is excepted from the definition of an "investment company" solely by reason of Section 3(c)(1) of the Investment Company Act, then either (a) such Collateral Debt Security does not constitute a "voting security" for purposes of the Investment Company Act or (b) the aggregate amount of such Collateral Debt Security held by the Issuer is less than 10% of the entire issue of such Collateral Debt Security;

(vii) (a) if it is a Loan (including a Mezzanine Loan and a Rake Bond but excluding an ARD Loan), no commercial mortgage loan underlying, securing or constituting such Collateral Debt Security has a maturity date (including any extension option) that is later than 10 years prior to the Stated Maturity, (b) if it is a REIT Debt Security, such REIT Debt Security (without regard to the maturities of any collateral underlying such REIT Debt Security) does not have a stated final maturity later than the Stated Maturity, (c) if it is an ARD Loan, (i) the anticipated

-30-

repayment date of such ARD Loan is not later than 20 years prior to the Stated Maturity and (ii) the new maturity date is not less than three years prior to the Stated Maturity and (d) if it is a Preferred Equity Security, the date (after giving effect to all permissible extensions thereof) by which all distributions on such Preferred Equity Security attributable to the return of capital by its governing documents are required to be made is not later than the Stated Maturity (after giving effect to all anticipated settlement concerns in connection with such return of capital);

(viii) it is not prohibited under its Underlying Instruments from being purchased by the Issuer and pledged to the Trustee;

(ix) it is not, and does not provide for conversion or exchange into, "margin stock" (as defined under Regulations T, U or X by the

Board of Governors of the Federal Reserve System) at any time over its life;

(x) it is not the subject of (a) any Offer by the issuer of such security or by any other person made to all of the holders of such security to purchase or otherwise acquire such security (other than pursuant to any redemption in accordance with the terms of the related Underlying Instruments) or to convert or exchange such security into or for Cash, securities or any other type of consideration or (b) any solicitation by an issuer of such security or any other person to amend, modify or waive any provision of such security or any related Underlying Instruments, and has not been called for redemption;

(xi) it is not an Equity Security, Principal Only Security, Interest Only Security, Step-Up Security, Market Value Collateralized Debt Obligation security or any security the repayment of which is subject to substantial non-credit related risk, as determined by the Collateral Manager in its reasonable business judgment;

(xii) except with respect to Preferred Equity Securities, it is not a security that by the terms of its Underlying Instruments provides for conversion or exchange (whether mandatory or at the option of the issuer or the holder thereof) into an Equity Security at any time prior to its maturity;

(xiii) it is not a financing by a debtor-in-possession in any insolvency proceeding;

(xiv) except with respect to Delayed Draw Term Loans, it will not require the Issuer to make any future payments after the initial purchase thereof;

(xv) if it is a Delayed Draw Term Loan, an amount equal to the aggregate amount of the Issuer's remaining commitments with respect to such Delayed Draw Term Loan is deposited into the Delayed Draw Funding Obligations Account on the date such Delayed Draw Term Loan is acquired by the Issuer;

-31-

(xvi) its acquisition will be in compliance with Section 206 of the Advisers Act;

(xvii) except with respect to Partially Deferred Loans, it does not have any outstanding deferred or capitalized interest; (xviii) it is not a security that, in the Collateral Manager's reasonable business judgment, has a significant risk of declining in credit quality or, with lapse of time or notice, becoming a Defaulted Security;

(xix) it is not a Defaulted Security (as determined by the Collateral Manager after reasonable inquiry);

(xx) if it is a Participation, (a) it is a real estate related Participation, that is subject to the Servicing Agreement, (b) either (i) the Underlying Term Loan, A Note or B Note has been included in a transaction that would be classified as a CMBS Conduit Security or a CMBS Large Loan Security or (ii) the Underlying Term Loan is serviced pursuant to a commercial mortgage servicing arrangement, which includes the standard servicing provisions found in CMBS Securities transactions, (c) the requirements regarding the representations and warranties with respect to the Underlying Term Loan, the Underlying Mortgage Property (as applicable) and the Participation set forth in Section 16.5 hereof have been met, (d) the terms of the Underlying Instruments are consistent with the terms of similar Underlying

Instruments in the CMBS Securities industry and (e) except in the case of the Initial Collateral Debt Securities, the related Participating Institution is either "a special purpose entity" or it qualifies as a "qualified institutional lender" as typically defined in the Underlying Instruments related to Participations; provided that a securitization trust, a CDO issuer or a similar securitization vehicle and Arbor Realty Participation, LLC, a Delaware limited liability company, will be deemed a "special purpose entity" for purposes of the Eligibility Criteria for so long as the separateness provisions of its organizational documents have not been amended (unless the Rating Agency Condition was satisfied in connection with any such amendment);

(xxi) if it is a B Note, (a) it is a real estate related B Note that is subject to the Servicing Agreement, (b) either (i) the related A Note has been included in a transaction that would be classified as a CMBS Conduit Security or a CMBS Large Loan Security or (ii) the B Note is serviced pursuant to a commercial mortgage servicing arrangement, which includes the standard servicing provisions found in CMBS Securities transactions, (c) the requirements regarding the representations and warranties with respect to the Underlying Term Loan, the Underlying Mortgage Property (as applicable) and the B Note set forth in Section 16.5 hereof have been met and (d) the terms of the Underlying Instruments are consistent with the terms of similar Underlying Instruments in the CMBS Securities industry;

-32-

(xxii) if it is a Mezzanine Loan, (a) it is serviced pursuant to the Servicing Agreement, (b) the requirements regarding the representations and warranties with respect to the Underlying Term Loan, the Underlying Mortgage Property (as applicable) and the Mezzanine Loan set forth in Section 16.5 hereof have been met and (c) the terms of the Underlying Instruments are consistent with the terms of similar Underlying Instruments in the CMBS Securities industry with respect to Mezzanine Loans;

(xxiii) if it is a Whole Loan, (a) it is a real estate related Whole Loan that is serviced pursuant to the Servicing Agreement and (b) the requirements regarding the representations and warranties with respect to the Loan and the Underlying Mortgage Property (as applicable) set forth in Section 16.5 hereof have been met;

(xxiv) it is U.S. Dollar denominated and may not be converted into a security payable in any other currencies;

(xxv) it is one of the Specified Types;

(xxvi) if it is a Loan or CMBS Security, the principal balance of the Loan or CMBS Security has not been reduced by a realized loss, expected loss, appraisal event, appraisal reduction or similar item since initial issuance, other than a Loan as to which a workout or other restructuring has occurred but as to which no such reduction has occurred since the completion of such workout or restructuring;

(xxvii) any requirements regarding opinions with respect to certain purchases of Collateral Debt Securities as provided in this Indenture have been met;

(xxviii) if it is a CMBS Security or a CRE CDO Security, at the time of its acquisition by the Issuer, it was rated investment grade by at least one Rating Agency;

(xxix) except with respect to CMBS Securities, CRE CDO Securities and REIT Debt Securities, it may not be collateralized or backed by interests on Healthcare Properties;

(xxx) its acquisition will not cause the Issuer to fail to be a "qualified REIT subsidiary" (within the meaning of Section 856(i)(2) of the Code);

(xxxi) if it is a CMBS Security or a CRE CDO Security, it does not have a stated maturity or a rated final distribution date scheduled to occur more than five (5) years later than the Stated Maturity; provided that, with respect to any such security that has a stated maturity or a rated final distribution date scheduled to occur later than the Stated Maturity, (a) if it is a CMBS Security, such CMBS Security is rated at least "A3" by Moody's (and, if rated "A3," it is not on credit watch with negative implications), and (b) if it is a CRE CDO Security, such CRE

-33-

CDO Security is rated at least "Aa2" by Moody's (and, if rated "Aa2," it is not on credit watch with negative implications);

(xxxii) if such Collateral Debt Security has attached reciprocal "buy/sell" rights as a dispute resolution mechanism, such rights in favor of the Issuer are freely assignable by the Issuer to any of its affiliates;

(xxxiii) if it is a CRE CDO Security, (a) it is rated at least "AA" by S&P (and, if rated "AA," it is not on credit watch with negative implications) and (b) the Underlying Instruments related to such CRE CDO Security do not (1) permit the payment of interest thereon to be deferred or capitalized or (2) allow for the issuance of identical securities in place of payments of interest in Cash; and

(xxxiv) if it is a Future Advance Loan, then either the Rating Agency Condition has been satisfied or all of the following conditions are satisfied: (a) the Issuer does not have any additional funding obligation under the related Other Loan by virtue of holding the Future Advance Loan; (b) the borrower under the Future Advance Loan has agreed (i) to request such advances from a Person other than the Issuer (so long as the Issuer does not own the related Other Loan) and (ii) not to assert any defense to, or any right of offset against, payment of the Future Advance Loan as the result of any breach by the maker or holder of the related Other Loan in connection with the future funding obligation, and unless the holder of the Future Advance Loan and the related Other Loan are then the same Person, not to assert any claim against the holder of the Future Advance Loan in connection with the future funding obligation under the related Other Loan; (c) an indemnitor has agreed to indemnify the Issuer with respect to any losses arising from the failure of such party to fulfill its future funding obligations under the related Other Loan; provided that such indemnitor (i) is rated at least "A-" by S&P and at least "A3" by Moody's, (ii) has obtained and delivered to the Issuer a Qualified Letter of Credit in an amount not less than the amount of the aggregate future funding obligation under the related Other Loan, or (iii) is the Arbor Parent; provided that, for so long as the Arbor Parent is not rated at least "A-" by S&P and at least "A3" by Moody's, the aggregate dollar amount of all such future funding obligations so indemnified by the Arbor Parent pursuant to clause (c) of this paragraph, which are then unfunded, shall be, as of any Measurement Date, equal to or less than 7.0% of the Aggregate Collateral Balance; and (d) the then remaining future funding obligations required under the related Other Loan is not required to finance ground-up construction. If, on any date (a "Downgrade Date") the Issuer (or the Collateral Manager on behalf of the Issuer) receives notice that an indemnitor providing the indemnification described in subclause (c)(i) above or a bank or other financial institution providing a Qualified

Letter of Credit described in subclause (c)(ii) above has become a Downgraded Indemnitor, and on such Downgrade Date the then unfunded future funding obligations with respect to which the Issuer is indemnified by all Downgraded Indemnitors exceeds 3.5% of the Aggregate Collateral Balance, then 60 days after such Downgrade Date the Issuer shall treat all of the Future Advance Loans related to each Downgraded Indemnitor as to whom any one of the related unfunded future

-34-

funding obligations for which such Downgraded Indemnitor has agreed to indemnify the Issuer or has provided a Qualified Letter of Credit as described in clauses (c)(i) or (c)(ii) above, as applicable, is not expected to be fully funded within 12 months after such Downgrade Date (each such Downgraded Indemnitor, a "Relevant Downgraded Indemnitor") as Defaulted Securities for purposes of determining compliance with the Moody's Maximum Tranching Factor Test, the Moody's Minimum Weighted Average Coupon Test, the Moody's Minimum Weighted Average Spread Test and the Moody's Weighted Average Extended Maturity Test unless, within such 60 day period, the Issuer shall have either (1) entered into an indemnification agreement or received a Qualified Letter of Credit (with respect to each of the future funding obligations for which the Issuer was indemnified by each Relevant Downgraded Indemnitor) that satisfies the requirements of either subclause (c)(i), (c)(ii) or (c)(iii) above or (2) otherwise satisfied the Rating Agency Condition with respect to Moody's.

Notwithstanding the foregoing provisions of this definition, with respect to any Collateral Debt Security acquired by the Issuer on or prior to the Closing Date, if any of the Eligibility Criteria above pertains to the subject matter of a representation and warranty under the related Collateral Debt Securities Purchase Agreement as to which an exception has been disclosed in the related exception schedule, such Collateral Debt Security shall be deemed to satisfy such criterion notwithstanding such exception.

"Eligible Account": The meaning given to such term in the Servicing Agreement.

"Eligible Investments": Any Dollar-denominated investment that, at the time it is Granted to the Trustee (directly or through a Securities Intermediary or bailee), is Registered and is one or more of the following obligations or securities:

(i) direct obligations of, and obligations the timely payment of principal of and interest on which is fully and expressly guaranteed by, the United States, or any agency or instrumentality of the United States, the obligations of which are expressly backed by the full faith and credit of the United States;

(ii) demand and time deposits in, certificates of deposit of, bankers' acceptances issued by, or federal funds sold by, any depository institution or trust company incorporated under the laws of the United States or any state thereof or the District of Columbia (including the Trustee or the commercial department of any successor Trustee, as the case may be; provided that such successor otherwise meets the criteria specified herein) and subject to supervision and examination by federal and/or state banking authorities so long as the commercial paper and/or the debt obligations of such depository institution or trust company (or, in the case of the principal depository institution in a holding company system, the commercial paper or debt obligations of such holding company) at the time of such investment or contractual commitment providing for such investment have a credit rating not less than "A1" by Moody's, "A+" by Fitch and "AA-" by S&P (or, in the case of LaSalle Bank National Association,

"A+" by S&P for so long as LaSalle Bank National Association is the Trustee hereunder), in the case of

-35-

long-term debt obligations, and "P-1" by Moody's, "F1" by Fitch and "A-1+" by S&P (or, in the case of LaSalle Bank National Association, "A-1" by S&P for so long as LaSalle Bank National Association is the Trustee hereunder) for Eligible Investments which have a maturity of 30 days or less;

(iii) unleveraged repurchase or forward purchase obligations with respect to (a) any security described in clause (i) above or (b) any other security issued or guaranteed by an agency or instrumentality of the United States of America, in either case entered into with a depository institution or trust company (acting as principal) described in clause (ii) above (including LaSalle Bank National Association or the commercial department of any successor Trustee, as the case may be; provided that such person otherwise meets the criteria specified herein) or entered into with a corporation (acting as principal) whose long-term rating is not less than "Aa2" by Moody's, "AA" by Fitch and "AAA" by S&P (for so long as any Notes rated by S&P are Outstanding) or whose short-term credit rating is not less than "P-1" by Moody's, "F1" by Fitch and "A-1+" by S&P for Eligible Investments which have a maturity of 30 days or less (for so long as any Notes rated by S&P are Outstanding); provided that the issuer thereof must also have at the time of such investment a long-term credit rating of not less than "Aa2" by Moody's, "A+" by Fitch and "AAA" by S&P (for so long as any Notes rated by S&P are Outstanding);

(iv) registered securities bearing interest or sold at a discount issued by any corporation incorporated under the laws of the United States or any state thereof or the District of Columbia that has a credit rating of not less than "Aa2" by Moody's, "AA" by Fitch and "AAA" by S&P (for so long as any Notes rated by S&P are Outstanding) at the time of such investment or contractual commitment providing for such investment;

(v) commercial paper or other similar short-term obligations (including that of the Trustee or the commercial department of any successor Trustee, as the case may be, or any affiliate thereof; provided that such person otherwise meets the criteria specified herein) having at the time of such investment a credit rating of "P-1" by Moody's, "F1+" by Fitch and "A-1+" by S&P (for so long as any Notes rated by S&P are Outstanding); provided that the issuer thereof must also have at the time of such investment a senior long-term debt rating of not less than "Aa3" by Moody's, "AA" by Fitch and "AA" by S&P (for so long as any Notes rated by S&P are Outstanding);

(vi) a reinvestment agreement issued by any bank (if treated as a deposit by such bank), or a Registered guaranteed investment or reinvestment agreement issued by an insurance company or other corporation or entity, in each case that has a credit rating of not less than "P-1" by Moody's, "F1+" by Fitch and "A-1+" by S&P or "A-1" by S&P for Eligible Investments which have a maturity of 30 days or less (for so long as any Notes rated by S&P are Outstanding); provided that the issuer thereof must also have at the time of such investment a long-term credit rating of not less than "Aa2" by Moody's, "AA" by

-36-

Fitch and "AAA" by S&P (for so long as any Notes rated by S&P are Outstanding); and

(vii) any other investment similar to those described in clauses (i) through (vi) above that (1) each of Moody's and S&P has confirmed may be included in the portfolio of Pledged Obligations as an Eligible Investment without adversely affecting its then-current ratings on the Notes and (2) has a long-term credit rating of not less than "Aa2" by Moody's, "AA" by Fitch and "AAA" by S&P (for so long as any Notes rated by S&P are Outstanding) or a credit rating of not less than "P-1" by Moody's, "F1" by Fitch and "A-1+" by S&P or "A-1" by S&P for Eligible Investments which have a maturity of 30 days or less (for so long as any Notes rated by S&P are Outstanding);

provided that mortgage-backed securities and Interest Only Securities shall not constitute Eligible Investments; and provided, further, that (a) Eligible Investments acquired with funds in the Collection Accounts shall include only such obligations or securities as mature no later than the Business Day prior to the next Payment Date succeeding the acquisition of such obligations or securities, (b) Eligible Investments shall not include obligations bearing interest at inverse floating rates, (c) Eligible Investments shall not include obligations the purchase of which would cause the Issuer to fail to be a "qualified REIT subsidiary" (within the meaning of Section 856(i)(2) of the Code), shall not have payments subject to foreign or United States withholding tax, shall not be purchased for a price in excess of par, shall not have an S&P rating which contains a subscript "r," "t," "p," "pi" or "q" and (iv) Eligible Investments shall not include Margin Stock.

For the avoidance of doubt, all credit ratings by Fitch required under this definition shall be deemed to be Fitch Ratings for all purposes under this Indenture.

"Entitlement Order": The meaning specified in Section 8-102(a)(8) of the UCC.

"Equity Security": Any security (other than any Preferred Equity Security or any asset-backed security structured as a certificate or other form of beneficial interest) that does not entitle the holder thereof to receive periodic payments of interest and one or more installments of principal.

"ERISA": The United States Employee Retirement Income Security Act of 1974, as amended.

"Euroclear": Euroclear Bank S.A./N.V., as operator of the Euroclear System.

"Event of Default": The meaning specified in Section 5.1 hereof.

"Excepted Assets": (i) The U.S. \$250 proceeds of share capital contributed by ARMS Equity as the holder of the ordinary shares of the Issuer, and any interest earned thereon and the bank account in which such monies are held and the U.S. \$250 transaction fee paid to the Issuer and (ii) the Preferred Shares Distribution Account and all of the funds and other property from time to time deposited in or credited to the Preferred Shares Distribution Account.

-37-

"Exchange Act": The Securities Exchange Act of 1934, as amended.

"Exchange Security": The meaning specified in Section 12.1(b) hereof.

"Expense Account": The account established pursuant to Section 10.6(a) hereof.

"Extended Maturity Date": With respect to any Collateral Debt

Security, the maturity date of such Collateral Debt Security, assuming the exercise of all extension options (if any) that are exercisable at the option of the related borrower under the terms of such Collateral Debt Security.

"Extended Weighted Average Maturity": As of any Measurement Date with respect to the Collateral Debt Securities (other than Defaulted Securities), the number obtained by (i) summing the products obtained by multiplying (a) the remaining term to maturity (in years, rounded to the nearest one tenth thereof, and based on the Extended Maturity Date) of each Collateral Debt Security (other than Defaulted Securities) by (b) the outstanding Principal Balance at such time of such Collateral Debt Security and (ii) dividing the sum by the Aggregate Principal Balance at such time of all Collateral Debt Securities (other than Defaulted Securities).

"Financial Asset": The meaning specified in Section 8-102(a)(9) of the UCC.

"Financing Statements": Financing statements relating to the Assets naming the Issuer as debtor and the Trustee on behalf of the Noteholders and each Hedge Counterparty as secured party.

"Fitch": Fitch Ratings and any successor or successors thereto.

"Fitch Applicable Recovery Rate": With respect to any Collateral Debt Security that is a CMBS Security, a CRE CDO Security or a REIT Debt Security on any Measurement Date, an amount equal to the percentage corresponding to the domicile and seniority of such Collateral Debt Security, as set forth in Schedule H (the Fitch Recovery Matrix); provided that the applicable percentage shall be the percentage corresponding to the rating of the most senior Outstanding Class of Notes then rated by Fitch.

"Fitch Fixed Rate Excess": As of any Measurement Date, a fraction (expressed as a percentage) the numerator of which is equal to the product of (a) the greater of zero and the excess, if any, of the Fitch Weighted Average Coupon for such Measurement Date over the percentage set forth in the Fitch Weighted Average Coupon row in the applicable column of the Fitch Matrix (which percentage, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the Fitch Matrix) and (b) the Aggregate Principal Balance of all Collateral Debt Securities that are Fixed Rate Securities (excluding all Defaulted Securities and Written Down Securities) and the denominator of which is the Aggregate Principal Balance of all Collateral Debt Securities that are Floating Rate Securities (excluding all Defaulted Securities and Written Down Securities), multiplying the resulting figure by 360 and then dividing by 365. As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the Fitch Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

-38-

"Fitch Loan Diversity Index Score": Except as provided below, the amount, determined by the Collateral Manager on any Measurement Date, by adding the series of products obtained for each Collateral Debt Security, by squaring the quotient of (x) the Principal Balance on such Measurement Date of each such Collateral Debt Security and (y) the Aggregate Principal Balance of all Collateral Debt Securities on such Measurement Date, multiplied by 10,000. In the event that Cash has been received in respect of Principal Proceeds since the immediately preceding Measurement Date but has not been reinvested in additional Collateral Debt Securities as of the current Measurement Date, the aggregate amount then held in Cash will be divided into one or more "Cash Security Exposures." Each Cash Security Exposure will be sized in an amount equal to the result obtained by averaging the Principal Balance of all Collateral Debt Securities on such Measurement Date; provided that, if the Cash position as of such Measurement Date is less than such average, or if there is Cash remaining in an amount less than such average, the Cash Security Exposure or the

additional Cash Security Exposure, as applicable, represented thereby will be sized in the actual amount of such Cash position. "Fitch Loan Diversity Index Score" will then mean the amount, determined by the Collateral Manager on any Measurement Date, by adding the series of products obtained for each Collateral Debt Security, by squaring the quotient of (x) the Principal Balance on such Measurement Date of each such Collateral Debt Security and each Cash Security Exposure and (y) the Aggregate Principal Balance of all Collateral Debt Securities and all Cash Security Exposures on such Measurement Date, multiplied by 10,000.

"Fitch Loan Diversity Index Test": A test that will be satisfied if on any Measurement Date the Fitch Loan Diversity Index Score for the Collateral Debt Securities is less than or equal to 714.

"Fitch Matrix": The matrix set forth in Schedule G hereto.

"Fitch Minimum Weighted Average Coupon Test": A test that will be satisfied on any Measurement Date if the Fitch Weighted Average Coupon as of such Measurement Date is greater than or equal to the number set forth in the Fitch Weighted Average Coupon row in the applicable column of the Fitch Matrix (which number, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the Fitch Matrix). As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the Fitch Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"Fitch Minimum Weighted Average Spread Test": A test that will be satisfied as of any Measurement Date if the Fitch Weighted Average Spread as of such Measurement Date is greater than or equal to the number set forth in the Fitch Weighted Average Spread row in the applicable column of the Fitch Matrix (which number, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the Fitch Matrix). As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the Fitch Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"Fitch Poolwide Expected Loss": The output generated using Fitch's modified CMBS multi-borrower model as applied to all Collateral Debt Securities that are Loans.

-39-

"Fitch Poolwide Expected Loss Test": A test that will be satisfied on any Measurement Date if the Fitch Poolwide Expected Loss is equal to or less than the percentage set forth in the Fitch Poolwide Expected Loss row in the applicable column of the Fitch Matrix (which percentage, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the Fitch Matrix). As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the Fitch Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"Fitch Rating": With respect to any Collateral Debt Security,

(a) if such Collateral Debt Security is rated by Fitch, the Fitch Rating shall be such rating;

(b) if such Collateral Debt Security is not rated by Fitch and a rating is published by both S&P and Moody's, the Fitch Rating shall be the lower of such ratings; and, except with respect to any Loan, if a rating is published by only one of S&P and Moody's, the Fitch Rating shall be that published rating by S&P or Moody's, as the case may be; or

(c) if the Fitch Rating cannot be assigned in accordance with clauses (a) or (b) above, the Issuer (or the Collateral Manager on behalf of the Issuer) shall apply to Fitch for a credit assessment which thereafter shall be the Fitch Rating;

provided that (x) if such Collateral Debt Security has been put on rating watch negative for possible downgrade by any Rating Agency, then the rating used to determine the Fitch Rating under either of clauses (a) or (b) above shall be one rating subcategory below such rating by that Rating Agency, and (y) if such Collateral Debt Security has been put on rating watch positive for possible upgrade by any Rating Agency, then the rating used to determine the Fitch Rating under either of clauses (a) or (b) above shall be one rating subcategory above such rating by that Rating Agency, and (z) notwithstanding the rating definition described above, Fitch reserves the right to issue a rating estimate for any Collateral Debt Security at any time.

"Fitch Spread Excess": As of any Measurement Date, a fraction (expressed as a percentage), the numerator of which is equal to the product of (a) the greater of zero and the excess, if any, of the Fitch Weighted Average Spread for such Measurement Date over the percentage set forth in the Fitch Weighted Average Spread row in the applicable column of the Fitch Matrix (which percentage, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the Fitch Matrix) and (b) the Aggregate Principal Balance of all Collateral Debt Securities that are Floating Rate Securities (excluding all Defaulted Securities and Written Down Securities) and the denominator of which is the Aggregate Principal Balance of all Collateral Debt Securities that are Fixed Rate Securities (excluding all Defaulted Securities and Written Down Securities), multiplying the resulting figure by 365 and then dividing by 360. As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the Fitch Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

-40-

"Fitch Weighted Average Coupon": As of any Measurement Date, (a) the number obtained (rounded up to the next 0.001%) by (i) summing the products obtained by multiplying (x) the current interest rate on each Collateral Debt Security that is a Fixed Rate Security (excluding all Defaulted Securities and Written Down Securities) by (y) the Principal Balance of each such Collateral Debt Security and (ii) dividing such sum by the Aggregate Principal Balance of all Collateral Debt Securities that are Fixed Rate Securities (excluding all Defaulted Securities and Written Down Securities) plus (b) if the amount obtained pursuant to clause (a) is less than the percentage set forth in the Fitch Weighted Average Coupon row in the applicable column of the Fitch Matrix (which percentage, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the Fitch Matrix), the Fitch Spread Excess, if any, as of such Measurement Date. As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the Fitch Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"Fitch Weighted Average Spread": As of any Measurement Date, (a) the number obtained (rounded up to the next 0.001%), by (i) summing the products obtained by multiplying (x) the stated spread above LIBOR at which interest accrues on each Collateral Debt Security that is a Floating Rate Security (other than a Defaulted Security or Written Down Security) (or, in the case of any Floating Rate Security (other than a Defaulted Security or Written Down Security) which provides for a minimum interest rate payable thereunder, the excess, if any, of the minimum interest rate applicable to such Collateral Debt Security over LIBOR, if such result is greater than the related stated spread above LIBOR) as of such date by (y) the Principal Balance of such Collateral Debt Security as of such date, and (ii) dividing such sum by the Aggregate Principal Balance of all Collateral Debt Securities that are Floating Rate Securities (excluding all Defaulted Securities and Written Down Securities) plus

(b) if the amount obtained pursuant to clause (a) is less than the percentage set forth in the Fitch Weighted Average Spread row in the applicable column of the Fitch Matrix (which percentage, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the Fitch Matrix), the Fitch Fixed Rate Excess, if any, as of such Measurement Date. For purposes of this definition, a Fixed Rate Security that is a Covered Fixed Rate Security will be deemed to be a Floating Rate Security and the floating rate applicable thereto will be the rate payable taking into account the related Asset Specific Hedge. As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the Fitch Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"Fixed Rate Excess": The Moody's Fixed Rate Excess, the S&P Fixed Rate Excess or the Fitch Fixed Rate Excess, as the context requires.

"Fixed Rate Security": Any Collateral Debt Security (including, without limitation, an Above Cap Security) other than a Floating Rate Security.

"Floating Rate Security": Any Collateral Debt Security which bears interest based upon a floating rate index (including a floating rate index subject to a cap but other than an Above Cap Security); provided that, for purposes of calculating each Fixed Rate Excess, each Spread Excess, each Weighted Average Coupon and each Weighted Average Spread, any

-41-

Covered Fixed Rate Security will be deemed to be a Floating Rate Security and that, for purposes of calculating each Spread Excess and each Weighted Average Spread, such Covered Fixed Rate Security shall be assumed to have a spread above LIBOR equal to the spread over the London interbank offered rate for U.S. Dollar deposits in Europe for the related swap agreement.

"Future Advance Loan": Any Loan acquired by the Issuer by purchase or by contribution from ARMS Equity (referred to solely for purposes of this definition as the "Issuer's Loan") with respect to which, at the time of such acquisition and for so long as the Issuer owns such Loan, there is outstanding and owned by a Person other than the Issuer another Loan to the same borrower that was made by the maker of the Issuer's Loan (the "Other Loan") if with respect to the Other Loan both (i) either it (A) is secured by the same mortgage or deed of trust on the same Underlying Mortgage Property as the Issuer's Loan or (B) if the Issuer's Loan is a participation interest in a Mezzanine Loan, is secured by the same pledged collateral, and (ii) there exists a continuing obligation on the part of the holder of the Other Loan after the Closing Date to provide additional funding to the borrower under the Other Loan, upon the terms and conditions of the underlying loan documents for the Other Loan.

"General Intangible": The meaning specified in Section 9-102(a)(42) of the UCC.

"Global Securities": The Rule 144A Global Securities and the Regulation S Global Securities.

"Governing Documents": With respect to (i) the Issuer, the memorandum and articles of association of the Issuer, as amended and restated and/or supplemented and in effect from time to time and certain resolutions of its Board of Directors and (ii) all other Persons, the articles of incorporation, certificate of incorporation, by-laws, certificate of limited partnership, limited partnership agreement, limited liability company agreement, certificate of formation, articles of association and similar charter documents, as applicable to any such Person.

"Government Items": A security (other than a security issued by the Government National Mortgage Association) issued or guaranteed by the United States of America or an agency or instrumentality thereof representing a full

faith and credit obligation of the United States of America and, with respect to each of the foregoing, that is maintained in book-entry form on the records of a Federal Reserve Bank.

"Grant": To grant, bargain, sell, warrant, alienate, remise, demise, release, convey, assign, transfer, mortgage, pledge, create and grant a security interest in and right of set-off against, deposit, set over and confirm. A Grant of the Pledged Obligations or of any other security or instrument shall include all rights, powers and options (but none of the obligations) of the granting party thereunder, including without limitation the immediate continuing right to claim, collect, receive and take receipt for principal and interest payments in respect of the Pledged Obligations (or any other security or instrument), and all other Monies payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring Proceedings in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

-42-

"Hedge Agreement": Collectively, one or more interest rate cap agreements, interest rate floor agreements, interest rate basis swap agreements, Interest Rate Swap Agreements (including Asset Specific Hedges), Cash Flow Swap Agreements or similar agreements, including any related ISDA Master Agreement and hedge confirmations, entered into between the Issuer and one or more Hedge Counterparties from time to time and any additional or replacement interest rate cap or swap agreements or other agreements that address interest rate exposure, basis risk or payment frequency exposure entered into from time to time between the Issuer and each Hedge Counterparty in accordance with the terms hereof, as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

"Hedge Collateral Account": Each trust account established pursuant to Section 16.1(e) hereof.

"Hedge Counterparty": Any institution or institutions with whom the Issuer enters into any Hedge Agreements.

"Hedge Counterparty Collateral Threshold Rating": With respect to a person as an issuer or with respect to the debt of such person, as the case may be, (i) with respect to a Person as an issuer or with respect to the long-term senior unsecured debt of such Person, "A" and the short-term debt of such Person is rated at least "F1", in each case by Fitch (for so long as any Notes are Outstanding and are rated by Fitch); (ii) with respect to a Person as an issuer or with respect to the long-term senior unsecured debt of such Person, "A1" and not on "watch for downgrade" (and the short-term debt of such Person is rated "P-1" and not on "watch for downgrade") or "Aa3" and not on "watch for downgrade" (if only the long-term debt obligations of such Person are rated by Moody's) (for so long as any Notes are Outstanding and rated by Moody's); and (iii) a short-term debt rating of "A-1" by S&P, or, if such Person does not have a short-term debt rating, with respect to such Person as an issuer or with respect to the long-term senior unsecured debt of such Person, "A+" by S&P (for so long as any Notes are Outstanding and are rated by S&P); provided that, should a Rating Agency effect an overall downward adjustment of its short-term or long-term ratings, then the applicable Hedge Counterparty Collateral Threshold Rating shall be downwardly adjusted accordingly; provided, further, that any such adjustment to a rating shall be subject to the prior written consent of the applicable Rating Agency.

"Hedge Counterparty Credit Support": With respect to a Hedge Agreement, the agreement to provide collateral, if necessary, substantially in the form of the ISDA Credit Support Annex attached to the related Hedge Agreement.

"Hedge Counterparty Credit Support Provider": The meaning specified in

Section 16.1(a) hereof.

"Hedge Counterparty Required Rating": (i) with respect to a Person as an issuer or with respect to long-term senior unsecured debt of such Person, (a) "A1" by Moody's to the extent such Person has a long-term rating only (for so long as any Notes are Outstanding under this Indenture and are rated by Moody's); or (b) "A2" by Moody's to the extent such Person has both a long-term and short-term rating and the short-term rating is "P-1" (for so long as any

-43-

Notes are Outstanding and are rated by Moody's); and (ii) with respect to a Person as an issuer or with respect to long-term senior unsecured debt of such Person, "BBB+" by Fitch (for so long as any Notes are Outstanding and are rated by Fitch) and short-term rating of such Person, of at least "F2" (for so long as any Notes are Outstanding and are rated by Fitch); and (iii) with respect to a Person as an issuer or with respect to long-term senior unsecured debt of such Person, "BBB-" by S&P (for so long as any Notes are Outstanding and are rated by S&P), or short-term rating of such Person, of "A-3" by S&P (for so long as any Notes are Outstanding and are rated by S&P); provided that should a Rating Agency effect an overall downward adjustment of its short-term or long-term ratings, then the applicable Hedge Counterparty Required Rating shall be downwardly adjusted accordingly; provided, further, that any adjustment to a rating shall be subject to the prior written consent of the applicable Rating Agency.

"Hedge Payment Amount": With respect to each Asset Specific Hedge, the amount of any payment then due and payable thereunder by the Issuer to each Hedge Counterparty, including without limitation any payments due and payable upon a termination of such Hedge Agreement.

"Hedge Termination Account": Each trust account established pursuant to Section 16.1(g) hereof.

"Herfindahl Diversity Test": A test that will be satisfied on any Measurement Date if the Herfindahl Score for the Collateral Debt Securities on such Measurement Date is greater than 14.5. In the event that Cash has been received in respect of Principal Proceeds of the Collateral Debt Securities but has not been reinvested in additional Collateral Debt Securities as of the current Measurement Date, the Herfindahl Diversity Test also will be deemed satisfied on the current Measurement Date notwithstanding a Herfindahl Score of 14.5 or less if (i) the Herfindahl Test was satisfied or deemed satisfied on the Measurement Date immediately preceding the date on which such Cash was received and (ii) the reason for the failure on the current Measurement Date is the existence of such Cash. Similarly, if the Herfindahl Diversity Test was not satisfied or deemed satisfied on the immediately preceding Measurement Date and the Herfindahl Score has worsened as of the current Measurement Date, the Herfindahl Score as of the immediately preceding Measurement Date will be deemed to have been maintained on the current Measurement Date to the extent that the reason for such worsened Herfindahl Score is the existence of such Cash.

"Herfindahl Score": The amount determined by the Collateral Manager on any Measurement Date, by dividing (i) one by (ii) the sum of the series of products obtained for each Collateral Debt Security, by squaring the quotient of (x) the Principal Balance on such Measurement Date of each such Collateral Debt Security and (y) the Aggregate Principal Balance of all Collateral Debt Securities on such Measurement Date.

"Highest Auction Price": The meaning specified in Section 12.4(b) (iv) hereof.

"Holder" or "Securityholder": With respect to any Note, the Person in whose name such Note is registered in the Notes Register. With respect to any Preferred Share, the Person in whose name such Preferred Share is registered in the register maintained by the Share Registrar.

"Illinois Collateral": The meaning specified in Section 3.3(v) hereof.

"Indenture": This instrument as originally executed and, if from time to time supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, as so supplemented or amended.

"Independent": As to any Person, any other Person (including, in the case of an accountant, or lawyer, a firm of accountants or lawyers and any member thereof or an investment bank and any member thereof) who (i) does not have and is not committed to acquire any material direct or any material indirect financial interest in such Person or in any Affiliate of such Person, and (ii) is not connected with such Person as an Officer, employee, promoter, underwriter, voting trustee, partner, director or Person performing similar functions. "Independent" when used with respect to any accountant may include an accountant who audits the books of such Person if in addition to satisfying the criteria set forth above the accountant is independent with respect to such Person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants.

Whenever any Independent Person's opinion or certificate is to be furnished to the Trustee such opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning hereof.

"Initial Collateral Debt Securities": The Collateral Debt Securities listed on Schedule I hereto.

"Initial Maturity Date": With respect to any Collateral Debt Security, the maturity date of such Collateral Debt Security without giving effect to any extension options available under the terms of such Collateral Debt Security.

"Initial Purchaser": Wachovia Capital Markets, LLC, as initial purchaser of the Notes.

"Instrument": The meaning specified in Section 9-102(a)(47) of the UCC.

"Interest Accrual Period": With respect to the first Payment Date, the period from and including the Closing Date to but excluding the initial Payment Date in April 2006 and with respect to each successive Payment Date, the period from and including the immediately preceding Payment Date to but excluding such Payment Date.

"Interest Advance": The meaning specified in Section 10.8(a) hereof.

"Interest Collection Account": The trust account established pursuant to Section 10.2(a) hereof.

"Interest Coverage Ratio": With respect to the Class A Notes and the Class B Notes (the "Class A/B Interest Coverage Ratio"), the Class C Notes, the Class D Notes and the Class E Notes (the "Class C/D/E Interest Coverage Ratio") or the Class F Notes, the Class G Notes and the Class H Notes (the "Class F/G/H Interest Coverage Ratio") as of any Measurement Date, the ratio calculated by dividing:

- (1) (i) the sum of (A) Cash standing to the credit of the Expense

Account, plus (B) the Scheduled Distributions of interest due (or, in the case of the Preferred Equity Securities, the scheduled payments of dividends or other distributions not attributable to the return of capital by their governing documents) due (in each case regardless of whether the due date for any such interest (or dividend or other distribution) payment has yet occurred) in the Due Period in which such Measurement Date occurs on (x) the Collateral Debt Securities (excluding accrued and unpaid interest on Defaulted Securities); provided that no interest (or dividends or other distributions) will be included with respect to any Collateral Debt Security (including, without limitation, the deferred or capitalized interest component of a Partially Deferred Loan) to the extent that such Collateral Debt Security does not provide for the scheduled payment of interest (or dividends or other distributions) in Cash and (y) the Eligible Investments held in the Payment Account, the Collection Accounts, the Delayed Funding Obligations Account and the Expense Account (whether purchased with Interest Proceeds or Principal Proceeds), plus (C) any net amount (other than any termination payments) scheduled to be received by the Issuer from any Hedge Counterparty under any related Hedge Agreement on or before the following Payment Date, plus (D) Interest Advances, if any, advanced by the Advancing Agent or the Trustee, in its capacity as Backup Advancing Agent, with respect to the related Payment Date, minus (ii) the sum of (A) any net amount (other than any termination payments) scheduled to be paid by the Issuer to any Hedge Counterparty under any related Hedge Agreement on or before the following Payment Date, plus, without duplication, (B) any amounts scheduled to be paid pursuant to Section 11.1(a)(i)(1) through (5); by

- (2) (i) in the case of the Class A/B Interest Coverage Ratio, the sum of the scheduled interest on the Class A-1 Notes, the Class A-2 Notes and the Class B Notes payable on the Payment Date immediately following such Measurement Date plus any Class A-1 Defaulted Interest Amount, any Class A-2 Defaulted Interest Amount and any Class B Defaulted Interest Amount payable on the Payment Date immediately following such Measurement Date; (ii) in the case of the Class C/D/E Interest Coverage Ratio, the amount determined by the foregoing clause (i) plus the scheduled interest on the Class C Notes, the Class D Notes and the Class E Notes payable on the Payment Date immediately following such Measurement Date (including interest on the Class C Capitalized Interest, the Class D Capitalized Interest and the Class E Capitalized Interest) plus, without duplication, any Class C Defaulted Interest Amount, Class D Defaulted Interest Amount and Class E Defaulted Interest Amount payable on the Payment Date immediately following such Measurement Date; or (iii) in the case of the Class F/G/H Interest Coverage Ratio, the amount determined by the foregoing clause (ii) plus the scheduled interest on the Class F Notes, the Class G Notes and the Class H Notes payable on the Payment Date immediately following such Measurement Date

-46-

(including interest on the Class F Capitalized Interest, the Class G Capitalized Interest and the Class H Capitalized Interest) plus, without duplication, any Class F Defaulted Interest Amount, Class G Defaulted Interest Amount and Class H Defaulted Interest Amount payable on the Payment Date immediately following such Measurement Date.

"Interest Coverage Test": Each of the Class A/B Interest Coverage Test, the Class C/D/E Interest Coverage Test and the Class F/G/H Interest Coverage Test.

"Interest Distribution Amount": Each of the Class A-1 Interest Distribution Amount, Class A-2 Interest Distribution Amount, Class B Interest Distribution Amount, Class C Interest Distribution Amount, Class D Interest Distribution Amount, Class E Interest Distribution Amount, Class F Interest Distribution Amount, Class G Interest Distribution Amount and Class H Interest Distribution Amount.

"Interest Only Security": Any security that by its terms provides for periodic payments of interest on a notional amount and does not provide for the repayment of a principal amount.

"Interest Proceeds": With respect to any Payment Date, (A) the sum of (without duplication) (1) all Cash payments of interest (including any deferred interest and any amount representing the accreted portion of a discount from the face amount of an Eligible Investment) or dividends and other distributions (but excluding distributions on Preferred Equity Securities attributable to the return of capital by their governing documents) received during the related Due Period on all Collateral Debt Securities other than Defaulted Securities) (net of the Servicing Fee and other amounts payable in accordance with the Servicing Agreement) and Eligible Investments, including, in the Collateral Manager's commercially reasonable discretion (exercised as of the trade date), the accrued interest received in connection with a sale of such Collateral Debt Securities or Eligible Investments (to the extent such accrued interest was not applied to the purchase of Substitute Collateral Debt Securities), in each case, excluding any accrued interest included in Principal Proceeds pursuant to clause (A) (4), (5) or (7) of the definition of Principal Proceeds, (2) all make whole premiums, yield maintenance or any interest amount paid in excess of the stated interest amount of a Collateral Debt Security received during the related Due Period, (3) all amendment and waiver fees, late payment fees, commitment fees, exit fees, extension fees and other fees and commissions received during such Due Period in connection with such Collateral Debt Securities and Eligible Investments (other than, in each such case, fees and commissions received in connection with the restructuring of a Defaulted Security or default of Collateral Debt Securities and Eligible Investments), (4) all payments pursuant to any Hedge Agreement for the Payment Date immediately following such Due Period (excluding any amounts payable upon a termination under any Hedge Agreement during such Due Period), (5) funds in the Unused Proceeds Account designated as Interest Proceeds by the Collateral Manager pursuant to Section 10.4(c), (6) funds in the Expense Account designated as Interest Proceeds by the Collateral Manager pursuant to Section 10.6(a), (7) funds remaining on deposit in the Expense Account upon redemption of the Notes in whole, pursuant to Section 10.6(a), (8) except for distributions on Preferred Equity Securities attributable to the return of capital by their governing documents and other than as specified in item (1) above, all proceeds received in respect of equity features, if any, of the Collateral Debt Securities, (9) Interest

-47-

Advances, if any, advanced by the Advancing Agent or the Trustee, in its capacity as Backup Advancing Agent, with respect to such Payment Date, (10) all payments of principal on Eligible Investments purchased with proceeds of items (A) (1), (2) and (3) of this definition and (11) all amounts to be transferred by the Trustee from each Defeased Collateral Account to the Interest Collection Account in respect of such Payment Date as directed by the Issuer (or the Collateral Manager on the Issuer's behalf); provided that Interest Proceeds will in no event include any payment or proceeds specifically defined as "Principal Proceeds" in the definition thereof, minus (B) (x) the aggregate amount of any Nonrecoverable Interest Advances that were previously reimbursed to the Advancing Agent or the Trustee, in its capacity as Backup Advancing Agent, and the aggregate amount of any Nonrecoverable Cure Advances reimbursed to the Collateral Manager during the related Due Period from Interest Proceeds and (y) the aggregate amount of any Hedge Payment Amounts that were previously paid to the applicable Hedge Counterparty from Interest Proceeds during the related Due Period as a result of the early termination of the related Asset Specific Hedge

from any call, redemption and prepayment premiums in accordance with clause (e) of the definition of Asset Specific Hedge.

"Interest Rate Swap Agreement" means an interest rate swap agreement, including any related ISDA Master Agreement and hedge confirmations, for purposes of managing the Issuer's interest rate exposure related to the variable rate of interest applicable to the Notes.

"Interest Shortfall": The meaning set forth in Section 10.8(a) hereof.

"Investment Company Act": The United States Investment Company Act of 1940, as amended.

"Irish Paying Agent": J&E Davy, or any successor Irish Paying Agent under the Irish Paying Agent Agreement.

"Irish Paying Agent Agreement": The agreement between the Issuer and J&E Davy that will be entered into in the event that the listing of the Notes on the Irish Stock Exchange is obtained.

"Irish Stock Exchange": The Irish Stock Exchange Limited.

"ISDA": The International Swaps and Derivatives Association, Inc.

"ISDA Credit Support Annex": The credit support annex to the ISDA Master Agreement.

"ISDA Master Agreement": The 1992 ISDA Master Agreement (Multicurrency--Cross Border).

"Issuer": Arbor Realty Mortgage Securities Series 2005-1, Ltd., an exempted company incorporated with limited liability under the laws of the Cayman Islands, until a successor Person shall have become the Issuer pursuant to the applicable provisions of this Indenture, and thereafter "Issuer" shall mean such successor Person.

-48-

"Issuer Order" and "Issuer Request": A written order or request (which may be in the form of a standing order or request) dated and signed in the name of the Issuer and the Co-Issuer by an Authorized Officer of each of the Issuer and the Co-Issuer, or by an Authorized Officer of the Collateral Manager.

"LIBOR": The meaning set forth in Schedule J attached hereto.

"LIBOR Determination Date": The meaning set forth in Schedule J attached hereto.

"List": The meaning specified in Section 12.4(a)(ii) hereof.

"Listed Bidders": The meaning specified in Section 12.4(a)(ii) hereof.

"LLC Managers": The managers of the Co-Issuer duly appointed by the sole member of the Co-Issuer (or, if there is only one manager of the Co-Issuer so duly appointed, such sole manager).

"Loan": Any U.S. Dollar-denominated interest in a senior secured or senior unsecured or senior or junior subordinated term loan (including, without limitation, a mortgage loan, a Whole Loan, an ARD Loan, a Delayed Draw Term Loan, or a B Note (or other interest in a split loan structure)) or any Participation interest therein, or any Mezzanine Loan, Single Asset Mortgage Security, Single Borrower Mortgage Security or Rake Bond.

"London Banking Day": The meaning set forth in Schedule J attached hereto.

"Majority": With respect to:

(i) any Class of Notes, the Holders of more than fifty percent (50%) of the Aggregate Outstanding Amount of the Notes of such Class; and

(ii) the Preferred Shares, the Preferred Shareholders representing more than fifty percent (50%) of the aggregate Notional Amount of the outstanding Preferred Shares.

"Mandatory Redemption": The meaning specified in Section 9.6.

"Margin Stock": As defined under Regulation U issued by the Board of Governors of the Federal Reserve System.

"Market Value": With respect to any date of determination and any Collateral Debt Security or Eligible Investment, an amount equal to (i) the median of the bona fide bids for such Collateral Debt Security obtained by the Collateral Manager at such time from any three nationally recognized dealers, which dealers are Independent from one another and from the Collateral Manager, (ii) if the Collateral Manager is in good faith unable to obtain bids from three such dealers, the lesser of the bona fide bids for such Collateral Debt Security obtained by the Collateral Manager at such time from any two nationally recognized dealers chosen by the Collateral Manager, which dealers are Independent from each other and the Collateral Manager, or (iii) if the Collateral Manager is in good faith unable to obtain bids from two such dealers, the

-49-

bona fide bid for such Collateral Debt Security obtained by the Collateral Manager at such time from any nationally recognized dealer chosen by the Collateral Manager, which dealer is Independent from the Collateral Manager.

"Market Value Collateralized Debt Obligation": Any collateralized debt obligation that is valued on the basis of the market value of the underlying debt obligations rather than the cash flow related to the underlying debt obligations.

"Maturity": With respect to any Note, the date on which the unpaid principal of such Note becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration or otherwise.

"Measurement Date": Any of the following: (i) the Closing Date, (ii) the date of acquisition or disposition of any Collateral Debt Security, (iii) any date on which any Collateral Debt Security becomes a Defaulted Security, (iv) each Determination Date, (v) the last Business Day of each calendar month (other than any calendar month in which a Determination Date occurs) and (vi) with reasonable notice to the Issuer and the Trustee, any other Business Day that any Rating Agency or the Holders of at least 66-2/3% of the Aggregate Outstanding Amount of any Class of Notes requests be a "Measurement Date"; provided that if any such date would otherwise fall on a day that is not a Business Day, the relevant Measurement Date will be the immediately preceding Business Day.

"Mezzanine Loan": A Loan secured by one or more direct or indirect ownership interests in a company, partnership or other entity owning, operating or controlling, directly or through subsidiaries or affiliates, one or more commercial properties, including a participation interest therein.

"Minimum Ramp-Up Amount": An amount equal to \$475,000,000.

"Minimum Weighted Average Coupon Test": A test that will be satisfied on any Measurement Date if each of the Moody's Minimum Weighted Average Coupon Test, the S&P Minimum Weighted Average Coupon Test and the Fitch Minimum

Weighted Average Coupon Test is satisfied as of such Measurement Date.

"Minimum Weighted Average Spread Test": A test that will be satisfied as of any Measurement Date if each of the Moody's Minimum Weighted Average Spread Test, the S&P Minimum Weighted Average Spread Test and the Fitch Minimum Weighted Average Spread Test is satisfied as of such Measurement Date.

"Money": The meaning specified in Section 1-201(24) of the UCC.

"Monthly Report": The meaning specified in Section 10.10(c) hereof.

"Moody's": Moody's Investors Service, Inc., and its successors in interest.

"Moody's Fixed Rate Excess": As of any Measurement Date, a fraction (expressed as a percentage) the numerator of which is equal to the product of (a) the greater of zero and the excess, if any, of the Moody's Weighted Average Coupon for such Measurement

-50-

Date over the percentage set forth in the Moody's Weighted Average Coupon row in the applicable column of the Moody's Matrix (which percentage, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the Moody's Matrix) and (b) the Aggregate Principal Balance of all Collateral Debt Securities that are Fixed Rate Securities (excluding all Defaulted Securities and Written Down Securities) and the denominator of which is the Aggregate Principal Balance of all Collateral Debt Securities that are Floating Rate Securities (excluding all Defaulted Securities and Written Down Securities), multiplying the resulting figure by 360 and then dividing by 365. As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the Moody's Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"Moody's Matrix": The matrix set forth in Schedule A.

"Moody's Maximum Tranching Rating Factor Test": A test that will be satisfied on any Measurement Date if the Weighted Average Moody's Rating Factor does not exceed the number set forth in the Weighted Average Moody's Rating Factor row in the applicable column of the Moody's Matrix (which number, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the Moody's Matrix). As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the Moody's Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"Moody's Minimum Weighted Average Coupon Test": A test that will be satisfied on any Measurement Date if the Moody's Weighted Average Coupon is greater than or equal to the number set forth in the Moody's Weighted Average Coupon row in the applicable column of the Moody's Matrix (which number, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the Moody's Matrix). As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the Moody's Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"Moody's Minimum Weighted Average Spread Test": A test that will be satisfied as of any Measurement Date if the Moody's Weighted Average Spread as of such Measurement Date is greater than or equal to the number set forth in the Moody's Weighted Average Spread row in the applicable column of the Moody's Matrix (which number, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the Moody's Matrix). As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the Moody's Matrix, the use of the applicable numbers

or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"Moody's Rating": Of any Collateral Debt Security will be determined as follows:

(i) (x) if such Collateral Debt Security is publicly rated by Moody's, the Moody's Rating will be such rating, or, (y) if such Collateral Debt Security is not publicly rated by Moody's, but the Issuer has requested that Moody's assign a

-51-

rating to such Collateral Debt Security, the Moody's Rating will be the rating so assigned by Moody's;

(ii) with respect to a CMBS Security or REIT Debt Security, if such CMBS Security or REIT Debt Security is not rated by Moody's, then the Moody's Rating of such CMBS Security or REIT Debt Security may be determined using any one of the methods below:

(A) with respect to any REIT Debt Security not publicly rated by Moody's that is a REIT Debt Securities--Diversified; REIT Debt Securities--Health Care; REIT Debt Securities--Hotel; REIT Debt Securities--Industrial; REIT Debt Securities--Multi-Family; REIT Debt Securities--Office; REIT Debt Securities--Residential; REIT Debt Securities--Retail; or REIT Debt Securities--Storage, if such REIT Debt Security is publicly rated by S&P, then the Moody's Rating thereof will be (1) one subcategory below the Moody's equivalent rating assigned by S&P if the rating assigned by S&P is "BBB" or greater and (2) two rating subcategories below the Moody's equivalent rating assigned by S&P if the rating assigned by S&P is below "BBB-;"

(B) with respect to any CMBS Conduit Security not publicly rated by Moody's, (x) if Moody's has rated a tranche or class of CMBS Conduit Security senior to the relevant issue, then the Moody's Rating thereof will be one and one-half rating subcategories below the Moody's equivalent of the lower of the rating assigned by S&P and Fitch for purposes of determining the Moody's Rating Factor and one rating subcategory below the Moody's equivalent of the lower rating assigned by S&P and Fitch for all other purposes and (y) if Moody's has not rated any such tranche or class and S&P and Fitch have rated the subject CMBS Conduit Security, then the Moody's Rating thereof will be two rating subcategories below the Moody's equivalent of the lower of the rating assigned by S&P and Fitch;

(C) with respect to any CMBS Large Loan Security not rated by Moody's, the Issuer (or the Collateral Manager on behalf of the Issuer) will request Moody's to assign a rating to such CMBS Large Loan Security on a case-by-case basis; and

(D) with respect to any other type of CMBS Security or REIT Debt Securities of a Specified Type not referred to in clauses (A) through (C) above, will be determined pursuant to subclause (y) of clause (i) above;

(iii) with respect to corporate guarantees on REIT Debt Securities, if such corporate guarantees are not publicly rated by Moody's but another security or obligation of the guarantor or obligor (an "other security") is publicly rated by

-52-

Moody's, and no rating has been assigned in accordance with clause (i) above, the Moody's Rating of such Collateral Debt Security will be determined as follows:

(A) if the corporate guarantee is a senior secured obligation of the guarantor or obligor and the other security is also a senior secured obligation, the Moody's Rating of such Collateral Debt Security will be the rating of the other security;

(B) if the corporate guarantee is a senior unsecured obligation of the guarantor or obligor and the other security is a senior secured obligation, the Moody's Rating of such Collateral Debt Security will be one rating subcategory below the rating of the other security;

(C) if the corporate guarantee is a subordinated obligation of the guarantor or obligor and the other security is a senior secured obligation that is: (1) rated "Ba3" or higher by Moody's, the Moody's Rating of such corporate guarantee will be three rating subcategories below the rating of the other security; or (2) rated "B1" or lower by Moody's, the Moody's Rating of such corporate guarantee will be two rating subcategories below the rating of the other security;

(D) if the corporate guarantee is a senior secured obligation of the guarantor or obligor and the other security is a senior unsecured obligation that is: (1) rated "Baa3" or higher by Moody's, the Moody's Rating of such corporate guarantee will be the rating of the other security; or (2) rated "Ba1" or lower by Moody's, the Moody's Rating of such corporate guarantee will be one rating subcategory above the rating of the other security;

(E) if the corporate guarantee is a senior unsecured obligation of the guarantor or obligor and the other security is also a senior unsecured obligation, the Moody's Rating of such corporate guarantee will be the rating of the other security;

(F) if the corporate guarantee is a subordinated obligation of the guarantor or obligor and the other security is a senior unsecured obligation that is: (1) rated "B1" or higher by Moody's, the Moody's Rating of such corporate guarantee will be two rating subcategories below the rating of the other security; or (2) rated "B2" or lower by Moody's, the Moody's Rating of such corporate guarantee will be one rating subcategory below the rating of the other security;

(G) if the corporate guarantee is a senior secured obligation of the guarantor or obligor and the other security is a subordinated obligation that is: (1) rated "Baa3" or higher by Moody's, the Moody's Rating of such corporate guarantee will be one rating subcategory above the rating of the other security; (2) rated below "Baa3" but not rated "B3" by

-53-

Moody's, the Moody's Rating of such corporate guarantee will be two rating subcategories above the rating of the other security; or (3) rated "B3" by Moody's, the Moody's Rating of such corporate guarantee will be "B2;"

(H) if the corporate guarantee is a senior unsecured

obligation of the guarantor or obligor and the other security is a subordinated obligation that is: (1) rated "Baa3" or higher by Moody's, the Moody's Rating of such corporate guarantee will be one rating subcategory above the rating of the other security; or (2) rated "Ba1" or lower by Moody's, the Moody's Rating of such corporate guarantee will also be one rating subcategory above the rating of the other security; and

(I) if the REIT Debt Security is a subordinated obligation of the guarantor or obligor and the other security is also a subordinated obligation, the Moody's Rating of such corporate guarantee will be the rating of the other security; or

(iv) if such Collateral Debt Security is a Mezzanine Loan or CRE CDO Security, no notching is permitted and the Moody's Rating will be the rating so assigned by Moody's;

provided that (x) the rating of either S&P or Fitch used to determine the Moody's Rating pursuant to any of clauses (ii) or (iii) above will be (a) a public rating that addresses the obligation of the obligor (or guarantor, where applicable) to pay principal of and interest on the relevant Collateral Debt Security in full and is monitored on an ongoing basis by the relevant Rating Agency or (b) if no such public rating is available, a rating determined pursuant to a method determined by Moody's on a case-by-case basis and (y) the Aggregate Principal Balance of Collateral Debt Securities the Moody's Rating of which is based on an S&P rating or a Fitch rating may not exceed 20% of the Aggregate Principal Balance of all Collateral Debt Securities; provided, further, that the Moody's Rating of any Collateral Debt Security will be reduced one subcategory to the extent it is on credit watch with negative implications and increased one subcategory to the extent it is on credit watch with positive implications.

"Moody's Rating Factor": Relating to any Collateral Debt Security is the number set forth in the table below opposite the Moody's Rating of such Collateral Debt Security:

| MOODY'S RATING | MOODY'S RATING FACTOR | MOODY'S RATING | MOODY'S RATING FACTOR |
|----------------|-----------------------|----------------|-----------------------|
| Aaa | 1 | Ba1 | 940 |
| Aa1 | 10 | Ba2 | 1,350 |
| Aa2 | 20 | Ba3 | 1,766 |
| Aa3 | 40 | B1 | 2,220 |
| A1 | 70 | B2 | 2,720 |
| A2 | 120 | B3 | 3,490 |
| A3 | 180 | Caa1 | 4,770 |

-54-

| MOODY'S RATING | MOODY'S RATING FACTOR | MOODY'S RATING | MOODY'S RATING FACTOR |
|----------------|-----------------------|----------------|-----------------------|
| Baa1 | 260 | Caa2 | 6,500 |
| Baa2 | 360 | Caa3 | 8,070 |
| Baa3 | 610 | Ca or lower | 10,000 |

"Moody's Recovery Rate": With respect to any Collateral Debt Security on any Measurement Date, an amount equal to (A) if the Specified Type of Collateral Debt Security is included in the table attached as Schedule B (the Moody's Recovery Rate Assumptions) hereto, the percentage for such Collateral Debt Security set forth in Schedule B (the Moody's Recovery Rate Assumptions) hereto in (x) the table corresponding to the relevant Specified Type of Collateral Debt Security, (y) the column in such table setting forth the Moody's Rating of such Collateral Debt Security on such Measurement Date and (z) the row in such table opposite the percentage of the issue of which such Collateral Debt Security is a part relative to the total capitalization of (including both debt and equity securities issued by) the relevant issuer of or obligor on such Collateral Debt Security determined on the date on which such Collateral Debt Security was originally issued or (B) if the Specified Type of Collateral Debt Security is not included in the table set forth in Schedule B (the Moody's Recovery Rate Assumptions) hereto, the Recovery Rate set forth following such table with respect to the applicable Specified Type.

"Moody's Special Amortization Pro Rata Condition": A condition that will be satisfied with respect to any Payment Date if either (i) (a) the Aggregate Principal Balance of the Collateral Debt Securities as of the related Determination Date is greater than an amount equal to 50% of the Aggregate Principal Balance of the Collateral Debt Securities on the Effective Date and (b) the Collateral Quality Tests (other than the Minimum Weighted Average Coupon Test, the Minimum Weighted Average Spread Test and the S&P CDO Monitor Test) are satisfied as of the related Determination Date or (ii) the Rating Agency Condition has been satisfied with respect to Moody's.

"Moody's Spread Excess": As of any Measurement Date, a fraction (expressed as a percentage), the numerator of which is equal to the product of (a) the greater of zero and the excess, if any, of the Moody's Weighted Average Spread for such Measurement Date over the percentage set forth in the Moody's Weighted Average Spread row in the applicable column of the Moody's Matrix (which percentage, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the Moody's Matrix) and (b) the Aggregate Principal Balance of all Collateral Debt Securities that are Floating Rate Securities (excluding all Defaulted Securities and Written Down Securities) and the denominator of which is the Aggregate Principal Balance of all Collateral Debt Securities that are Fixed Rate Securities (excluding all Defaulted Securities and Written Down Securities), multiplying the resulting figure by 365 and then dividing by 360. As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the Moody's Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

-55-

"Moody's Weighted Average Coupon": As of any Measurement Date, (a) the number obtained (rounded up to the next 0.001%) by (i) summing the products obtained by multiplying (x) the current interest rate on each Collateral Debt Security that is a Fixed Rate Security (excluding all Defaulted Securities and Written Down Securities) by (y) the Principal Balance of each such Collateral Debt Security and (ii) dividing such sum by the Aggregate Principal Balance of all Collateral Debt Securities that are Fixed Rate Securities (excluding all Defaulted Securities and Written Down Securities) plus (b) if the amount obtained pursuant to clause (a) is less than the percentage set forth in the Moody's Weighted Average Coupon row in the applicable column of the Moody's Matrix (which percentage, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the Moody's Matrix), the Moody's Spread Excess, if any, as of such Measurement Date. As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the Moody's Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"Moody's Weighted Average Extended Maturity Test": A test that will be satisfied on any Measurement Date if the Extended Weighted Average Maturity of the Collateral Debt Securities as of such Measurement Date is six years or less.

"Moody's Weighted Average Spread": As of any Measurement Date, (a) the number obtained (rounded up to the next 0.001%), by (i) summing the products obtained by multiplying (x) the stated spread above LIBOR at which interest accrues on each Collateral Debt Security that is a Floating Rate Security (other than a Defaulted Security or Written Down Security) (or, in the case of any Floating Rate Security (other than a Defaulted Security or Written Down Security) which provides for a minimum interest rate payable thereunder, the excess, if any, of the minimum interest rate applicable to such Collateral Debt Security over LIBOR, if such result is greater than the related stated spread above LIBOR) as of such date by (y) the Principal Balance of such Collateral Debt Security as of such date, and (ii) dividing such sum by the Aggregate Principal Balance of all Collateral Debt Securities that are Floating Rate Securities (excluding all Defaulted Securities and Written Down Securities) plus (b) if the amount obtained pursuant to clause (a) is less than the percentage set forth in the Moody's Weighted Average Spread row in the applicable column of the Moody's Matrix (which percentage, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the Moody's Matrix), the Moody's Fixed Rate Excess, if any, as of such Measurement Date. For purposes of this definition, a Fixed Rate Security that is a Covered Fixed Rate Security will be deemed to be a Floating Rate Security and the floating rate applicable thereto will be the rate payable taking into account the related Asset Specific Hedge. As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the Moody's Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"Net Outstanding Portfolio Balance": On any Measurement Date, the sum of (without duplication):

(i) the Aggregate Principal Balance on such Measurement Date of the Collateral Debt Securities (other than Defaulted Securities);

-56-

(ii) the Aggregate Principal Balance of all Principal Proceeds held as Cash and Eligible Investments, all Cash and Eligible Investments held in the Unused Proceeds Account that have not been designated as Interest Proceeds by the Collateral Manager with respect to the Effective Date and all Cash and Eligible Investments held in the Delayed Funding Obligations Account; and

(iii) with respect to each Defaulted Security, the Calculation Amount of such Defaulted Security;

provided, however, for purposes of any Par Value Test, any deferred or capitalized interest component of a Partially Deferred Loan shall be excluded from such calculation.

"Non-Advancing Collateral Debt Security": Any Collateral Debt Security, other than a CMBS Security, a CRE CDO Security or a REIT Debt Security, with respect to which no servicer or other party is required under the terms of the Underlying Instruments governing such Collateral Debt Security to make any liquidity advances to ensure the timely receipt of interest by and for the benefit of the holder of such Collateral Debt Security.

"Non-Permitted Holder": The meaning specified in Section 2.13(b) hereof.

"Nonrecoverable Interest Advance": Any Interest Advance previously made or proposed to be made pursuant to Section 10.8 hereof that the Advancing

Agent or the Trustee, in its capacity as Backup Advancing Agent, as applicable, has determined in its sole discretion, exercised in good faith, that the amount so advanced or proposed to be advanced plus interest expected to accrue thereon, will not be ultimately recoverable from subsequent payments or collections with respect to the Collateral Debt Securities.

"Nonrecoverable Cure Advance": Any Cure Advance previously made or proposed to be made pursuant to Section 16.3 hereof with respect to any Collateral Debt Security, which in the judgment of the Collateral Manager, subject to the Collateral Manager Servicing Standard and to the applicable provisions of the Servicing Agreement, will not be ultimately recoverable from collections from such Collateral Debt Security.

"Note Liquidation Event": The meaning specified in Section 12.1(f) hereof.

"Noteholder": The Person in whose name such Note is registered in the Notes Register.

"Note Interest Rate": With respect to the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes, the Class A-1 Rate, the Class A-2 Rate, the Class B Rate, the Class C Rate, the Class D Rate, the Class E Rate, the Class F Rate, the Class G Rate and the Class H Rate, respectively.

"Notes": The Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes, collectively, authorized by, and authenticated and delivered under, this Indenture or any supplemental indenture.

-57-

"Notes Register" and "Notes Registrar": The respective meanings specified in Section 2.5(a) hereof.

"Notes Valuation Report": The meaning specified in Section 10.10(e) hereof.

"Notional Amount": In respect of the Preferred Shares, the per share notional amount of \$1.00. The aggregate Notional Amount of the Preferred Shares on the Closing Date will be \$118,750,000.

"Offer": With respect to any security, (i) any offer by the issuer of such security or by any other person or entity made to all of the holders of such security to purchase or otherwise acquire such security (other than pursuant to any redemption in accordance with the terms of the related Underlying Instruments) or to convert or exchange such security into or for Cash, securities or any other type of consideration or (ii) any solicitation by the issuer of such security or any other person or entity to amend, modify or waive any provision of such security or any related Underlying Instrument.

"Officer": With respect to any corporation or limited liability company, including the Issuer, the Co-Issuer and the Collateral Manager, any Director, the Chairman of the Board of Directors, the President, any Senior Vice President any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, General Partner of such entity; and with respect to the Trustee, any Trust Officer.

"Officer's Certificate": With respect to the Issuer, the Co-Issuer and the Collateral Manager, any certificate executed by an Officer thereof.

"Operating Statement Analysis Report": The year-end report prepared by the Issuer (or the Collateral Manager on behalf of the Issuer) for each Collateral Debt Security.

"Opinion of Counsel": A written opinion addressed to the Trustee and each Rating Agency in form and substance reasonably satisfactory to the Trustee, each Rating Agency and each Hedge Counterparty of an attorney at law admitted to practice before the highest court of any state of the United States or the District of Columbia (or the Cayman Islands, in the case of an opinion relating to the laws of the Cayman Islands), which attorney may, except as otherwise expressly provided in this Indenture, be counsel for the Issuer, and which attorney shall be reasonably satisfactory to the Trustee. Whenever an Opinion of Counsel is required hereunder, such Opinion of Counsel may rely on opinions of other counsel who are so admitted and so satisfactory which opinions of other counsel shall accompany such Opinion of Counsel and shall either be addressed to the Trustee and each Rating Agency or shall state that the Trustee and each Rating Agency shall be entitled to rely thereon.

"Optional Redemption": The meaning specified in Section 9.1(c) hereof.

"Optional Redemption Date": Any Payment Date occurring on or after the Payment Date occurring in April, 2009, where the Issuer and the Co-Issuer may redeem the Notes and the Issuer may redeem the Preferred Shares in accordance with Section 9.1(c) hereof.

"Other Loan": The meaning specified in the definition of Future Advance Loan.

-58-

"Outstanding": With respect to the Notes, as of any date of determination, all of the Notes or any Class of Notes, as the case may be, theretofore authenticated and delivered under this Indenture except:

(i) Notes theretofore canceled by the Notes Registrar or delivered to the Notes Registrar for cancellation;

(ii) Notes or portions thereof for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee or the Paying Agent in trust for the Holders of such Notes pursuant to Section 4.1(a)(ii); provided that, if such Notes or portions thereof are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

(iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, unless proof satisfactory to the Trustee is presented that any such Notes are held by a holder in due course; and

(iv) Notes alleged to have been mutilated, destroyed, lost or stolen for which replacement Notes have been issued as provided in Section 2.6;

provided that in determining whether the Noteholders of the requisite Aggregate Outstanding Amount have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (x) Notes owned by the Issuer, the Co-Issuer or any Affiliate thereof shall be disregarded and deemed not to be Outstanding and (y) in relation to (1) any amendment or other modification of, or assignment or termination of, any of the express rights or obligations of the Collateral Manager under the Collateral Management Agreement or this Indenture (including the exercise of any rights to remove the Collateral Manager or terminate the Collateral Management Agreement or approve or object to a replacement for the Collateral Manager except as specifically provided in the Collateral Management Agreement with respect to the termination of the Collateral Manager without cause and with respect to the replacement of the Collateral Manager in instances where the Collateral Manager has not been terminated for cause or where such replacement is not an Affiliate of the

Collateral Manager) and (2) the exercise by the Noteholders of their right, in connection with certain Events of Default, to accelerate amounts due under the Notes, Notes owned by the Collateral Manager or any of its Affiliates, or by any accounts managed by them, shall be disregarded and deemed not to be Outstanding. In determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes that the Trustee knows to be so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not the Issuer, the Collateral Manager or any other obligor upon the Notes or any Affiliate of the Issuer, the Collateral Manager or such other obligor.

"Par Value Ratio": Each of the Class A/B Par Value Ratio, the Class C/D/E Par Value Ratio and the Class F/G/H Par Value Ratio.

-59-

"Par Value Test": Each of the Class A/B Par Value Test, the Class C/D/E Par Value Test and the Class F/G/H Par Value Test.

"Partially Deferred Loan": A Loan which by its terms provides for the payment of interest in two components, one of which is payable currently on each due date under the Loan and the other of which is either deferred or capitalized until maturity.

"Participating Institution": An entity that creates a Participation.

"Participation": An interest in all or part of a Loan acquired by a participant from a Participating Institution, which participation may be subordinate to other interests in such Loan and may be further participated into sub-participations.

"Paying Agent": Any Person authorized by the Issuer and the Co-Issuer to pay the principal of or interest on any Notes on behalf of the Issuer and the Co-Issuer as specified in Section 7.2 hereof.

"Payment Account": The payment account of the Trustee in respect of the Notes established pursuant to Section 10.3 hereof.

"Payment Date": With respect to each Class of Notes, April 21, 2006, and thereafter quarterly on each July 21, October 21, January 21 and April 21 (or if such day is not a Business Day, the next succeeding Business Day) to and including the Stated Maturity related to such Class unless redeemed or repaid prior thereto.

"Person": An individual, corporation (including a business trust), partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

"Plan Assets": The meaning specified in Section 2.5(g)(vi) hereof.

"Pledged Collateral Debt Security": On any date of determination, any Collateral Debt Security that has been Granted to the Trustee and not been released from the lien of this Indenture pursuant to Section 10.11 hereof.

"Pledged Obligations": On any date of determination, any Pledged Collateral Debt Securities and the Eligible Investments that have been Granted to the Trustee for the benefit of the Noteholders and each Hedge Counterparty and which form part of the Assets.

"Preferred Equity Security": A security, providing for regular payments of dividends or other distributions, representing an equity interest in an entity (including, without limitation, a partnership or a limited liability

company) that is a borrower under a mortgage loan secured by commercial properties (or in an entity operating or controlling, directly or through affiliates, such commercial properties), which is generally senior with respect to the payments of dividends and other distributions, redemption rights and rights upon liquidation to such entity's common equity.

-60-

"Preferred Shareholder": A registered owner of Preferred Shares.

"Preferred Shares": The preferred shares issued by the Issuer concurrently with the issuance of the Notes.

"Preferred Shares Distribution Account": A segregated account for the benefit of the Issuer established and designated as such by the Preferred Shares Paying Agent pursuant to the Preferred Shares Paying Agency Agreement.

"Preferred Shares Paying Agency Agreement": The Preferred Shares Paying Agency Agreement, dated as of the Closing Date, between the Issuer and the Preferred Shares Paying Agent relating to the Preferred Shares, as amended from time to time in accordance with the terms thereof.

"Preferred Shares Paying Agent": The Bank, solely in its capacity as Preferred Shares Paying Agent under the Preferred Shares Paying Agency Agreement and not individually, unless a successor Person shall have become the Preferred Shares Paying Agent pursuant to the applicable provisions of the Preferred Shares Paying Agency Agreement, and thereafter Preferred Shares Paying Agent shall mean such successor Person.

"Principal Balance" or "par": With respect to any Collateral Debt Security or Eligible Investment, as of any date of determination, the outstanding principal amount of such Collateral Debt Security or Eligible Investment; provided that:

(i) the Principal Balance of a Collateral Debt Security received upon acceptance of an Offer for another Collateral Debt Security, which Offer expressly states that failure to accept such Offer may result in a default under the Underlying Instruments, will be deemed to be the Calculation Amount of such other Collateral Debt Security until such time as Interest Proceeds and Principal Proceeds, as applicable, are received when due with respect to such other Collateral Debt Security;

(ii) the Principal Balance of any Eligible Investment that does not pay Cash interest on a current basis will be the accreted value thereof;

(iii) the Principal Balance of any Preferred Equity Security will be equal to the component of the liquidation price thereof that is attributable to the return of capital by its governing documents; and

(iv) the Principal Balance of any Written Down Security will exclude any portion of the principal balance of such security that (a) has been written down as a result of a "realized loss," "collateral support deficit," "additional trust fund expense" or other event that under the terms of such security results in a write-down of principal balance or (b) would be affected by an appraisal reduction.

"Principal Collection Account": The trust account established pursuant to Section 10.2(a) hereof.

-61-

"Principal Only Security": Any security (other than a Step-Up Security) that does not provide for payment of interest or provides that all payments of interest will be deferred until the final maturity thereof.

"Principal Proceeds": With respect to any Payment Date, (A) the sum (without duplication) of (1) all principal payments (including prepayments and Unscheduled Principal Payments) received during the related Due Period (excluding those previously reinvested or designated by the Collateral Manager for reinvestment in Collateral Debt Securities) on (a) Eligible Investments (other than Eligible Investments purchased with Interest Proceeds, Eligible Investments in the Expense Account, Eligible Investments in the Unused Proceeds Account designated as Interest Proceeds by the Collateral Manager with respect to the Effective Date and Eligible Investments in the Delayed Funding Obligations Account and any amount representing the accreted portion of a discount from the face amount of an Eligible Investment) and (b) Collateral Debt Securities as a result of (i) a maturity, scheduled amortization, mandatory prepayment or mandatory sinking fund payment on a Collateral Debt Security, (ii) optional redemptions, prepayments, exchange offers or tender offers made at the option of the issuer thereof, (iii) recoveries on Defaulted Securities or (iv) any other principal payments with respect to Collateral Debt Securities (not included in Sale Proceeds), (2) all distributions on Preferred Equity Securities attributable to the return of capital by their governing documents, (3) all fees and commissions received during such Due Period in connection with Defaulted Securities and Eligible Investments and the restructuring or default of such Defaulted Securities and Eligible Investments, (4) any interest received during such Due Period on such Collateral Debt Securities or Eligible Investments to the extent such interest constitutes proceeds from accrued interest purchased with Principal Proceeds other than accrued interest purchased by the Issuer on or prior to the Closing Date and interest included in clause (A)(1) of the definition of Interest Proceeds, (5) Sale Proceeds received during such Due Period in respect of sales (excluding those previously reinvested or currently being reinvested in Collateral Debt Securities in accordance with the Transaction Documents and excluding accrued interest included in Sale Proceeds (unless such accrued interest was purchased with Principal Proceeds) that are designated by the Collateral Manager as Interest Proceeds in accordance with clause (A)(1) of the definition of Interest Proceeds), (6) all Cash payments of interest or dividends received during such Due Period on Defaulted Securities, (7) any interest received during such Due Period on a Written Down Security to the extent such interest constitutes accrued interest on the excess of the principal amount of such Written Down Security over the Principal Balance of such Written Down Security, (8) any proceeds resulting from (a) the termination (in whole or in part) of any Hedge Agreement during such Due Period to the extent such proceeds are received from the related Hedge Counterparty and, to the extent such proceeds exceed the cost of entering into a replacement Hedge Agreement in accordance with the requirements set forth in Section 16.1(a) hereof, (b) payments received from a replacement Hedge Counterparty to the extent such proceeds exceed the amount owed to a previous Hedge Counterparty in connection with the termination of the related Hedge Agreement and (c) all amounts transferred from each Hedge Termination Account pursuant to Section 16.1(g) hereof, (9) during the Reinvestment Period, the Special Amortization Amount, if any, (10) on the first Payment Date following the Effective Date, if a Rating Confirmation Failure has not occurred, funds in the Unused Proceeds Account to the extent the Collateral Manager has not designated such amounts as Interest Proceeds pursuant to Section 10.4(c) hereof, (11) funds transferred to the Principal Collection Account from the Delayed Funding Obligations Account in respect of amounts previously held on deposit

in respect of unfunded commitments for Delayed Draw Term Loans that have been sold or otherwise disposed before such commitments thereunder have been drawn or as to which excess funds remain; (12) all ARMS Equity Cash Contributions and ARMS Equity EI Contributions (excluding, in each case, those previously reinvested or designated by the Collateral Manager for reinvestment in

Collateral Debt Securities), (13) all other payments received in connection with the Collateral Debt Securities and Eligible Investments that are not included in Interest Proceeds and (14) all amounts to be transferred by the Trustee from each Defeased Collateral Account to the Principal Collection Account in respect of such Payment Date as directed by the Issuer (or the Collateral Manager on the Issuer's behalf); provided that in no event will Principal Proceeds include any proceeds from the Excepted Assets minus (B) (x) the aggregate amount of any Nonrecoverable Interest Advances that were previously reimbursed to the Advancing Agent or the Trustee, in its capacity as Backup Advancing Agent, and the aggregate amount of any Nonrecoverable Cure Advances reimbursed to the Collateral Manager during the related Due Period from Principal Proceeds and (ii) the aggregate amount of any Hedge Payment Amounts that were previously paid to the applicable Hedge Counterparty from Principal Proceeds during the related Due Period as a result of the early termination of the related Asset Specific Hedge from any call, redemption and prepayment premiums in accordance with clause (e) of the definition of Asset Specific Hedge.

"Priority of Payments": The meaning specified in Section 11.1(a) hereof.

"Proceeding": Any suit in equity, action at law or other judicial or administrative proceeding.

"Property Type": Each of the following types of mortgaged property (each of which, for the avoidance of doubt, shall be considered commercial real estate property for purposes of this Indenture):

(i) "Condo Conversion Properties" means properties that have been, or are expected to be, converted to condominium form of ownership for the purpose of re-development as, in whole or in part, residential condominium apartments or time share units;

(ii) "Diversified Properties" means properties used by businesses for diverse purposes and other similar property interests;

(iii) "Healthcare Properties" means hospitals, clinics, sports clubs, spas and other health care facilities and other similar real property interests used in one or more similar businesses (but excluding medical offices);

(iv) "Hospitality Properties" means hotels, motels, youth hostels, bed and breakfasts and other similar real property interests used in one or more similar businesses;

(v) "Industrial Properties" means factories, refinery plants, breweries and other similar real property interests used in one or more similar businesses;

-63-

(vi) "Mixed Use Properties" means real estate property used by businesses for diverse business purposes and any similar property interests;

(vii) "Multi-Family Properties" means multi-family dwellings such as apartment blocks, condominiums and cooperative owned buildings;

(viii) "Retail Properties" means retail stores, restaurants, bookstores, clothing stores and other similar real property interests used in one or more similar businesses;

(ix) "Self-Storage Properties" means self-storage facilities and other similar real property interests used in one or more similar businesses;

(x) "Suburban Office Properties" means office buildings (including medical offices), conference facilities and other similar real property interests used in the commercial real estate business in suburban areas;

(xi) "Urban Office Properties" means office buildings (including medical offices), conference facilities and other similar real property interests used in the commercial real estate business in urban areas;

(xii) "Warehouse Properties" means warehouse facilities and other similar real property interests; and

(xiii) "Other Properties" means any other property other than Diversified Properties, Hospitality Properties, Industrial Properties, Multi-Family Properties, Urban Office Properties, Suburban Office Properties, Retail Properties, Self-Storage Properties, Healthcare Properties, Mixed Use Properties, Warehouse Properties and Condo Conversion Properties.

"Proposed Portfolio": The portfolio of Collateral Debt Securities and Eligible Investments resulting from the disposition of a Collateral Debt Security or a proposed reinvestment of Principal Proceeds in a Substitute Collateral Debt Security, as the case may be.

"PTCE": The meaning specified in Section 2.5(g)(vi) hereof.

"Purchase Agreement": The purchase agreement relating to the Notes dated on or about the Closing Date by and among the Issuer, the Co-Issuer and the Initial Purchaser.

"Purchase Option Purchase Price": The meaning specified in Section 16.4 hereof.

"Purchase Price": The purchase price identified for each Collateral Debt Security against its name in Schedule I.

"QIB": A qualified institutional buyer as defined in Rule 144A.

"Qualified Hedge Party": A party that:

-64-

(a) (i) at the time it becomes a Hedge Counterparty, will have with respect to itself as an issuer or with respect to its debt obligations ratings by Moody's, Fitch and S&P at least equal to the requirements set forth in the definition of "Hedge Counterparty Collateral Threshold Rating";

(ii) legally and effectively accepts the rights and obligations of a Hedge Counterparty in respect of the related Hedge Agreement pursuant to a written agreement reasonably acceptable to the Issuer and the Trustee; and

(iii) is a recognized dealer in over-the-counter derivatives organized under the laws of the United States of America or a jurisdiction located in the United States of America (or another jurisdiction reasonably acceptable to the Issuer, the Trustee and the Rating Agencies); or

(b) (i) has, with respect to becoming a Hedge Counterparty, satisfied the Rating Agency Condition with respect to Moody's and S & P; and

(ii) for so long as any Class of Notes is Outstanding under this Indenture and is rated by Fitch, (A) has posted collateral in an

amount and manner that satisfies the Rating Agency Condition with respect to Fitch or (B) has caused an entity that satisfies the ratings criteria set forth in clause (a) of this definition to guarantee its obligations under the applicable Hedge Agreement.

"Qualified Purchaser": A "qualified purchaser" within the meaning of Section 2(a)(51) of the Investment Company Act.

"Qualified Letter of Credit": A letter of credit issued by a bank or other financial institution with a long term senior unsecured debt rating of at least (i) "A-" by S&P, meeting S&P's published criteria found in Section One of S&P's "U.S. CMBS Legal and Structured Finance Criteria," dated as of May 1, 2003 and (ii) "A3" by Moody's.

"Rake Bond": A loan-specific commercial mortgage pass-through certificate or similar security backed by only one of the mortgage loans included in a pooled securitization transaction, typically representing a non-pooled component of the related mortgage loan that is subordinate to the pooled component with respect to the right to receive distributions of collections on such mortgage loan.

"Ramp-Up Period": The period commencing on the Closing Date and ending on the Effective Date.

"Rating Agency": Each of Moody's, Fitch and S&P and any successor thereto, or, with respect to Pledged Obligations generally, if at any time Moody's, Fitch or S&P or any such successor ceases to provide rating services with respect to the Notes or certificates similar to the Notes, any other nationally recognized investment rating agency selected by the Issuer and reasonably satisfactory to each Hedge Counterparty and a Majority of the Notes voting as a single Class.

-65-

"Rating Agency Condition": With respect to any proposed action or matter, the receipt by the Trustee of confirmation in writing from the applicable Rating Agencies that the then current ratings on the Notes, as applicable, shall not be reduced, qualified or withdrawn as a result of such action or matter; provided, however, that, for purposes of this definition, "Rating Agencies" shall be deemed not to include Fitch unless the proposed action or matter relates to any amendment or modification, or any proposed amendment or modification, to any Transaction Document, and in any such case notification shall be made to Fitch within 30 days following such amendment or modification.

"Rating Confirmation Failure": The meaning specified in Section 7.18(b) hereof.

"Record Date": The date on which the Holders of Notes entitled to receive a payment in respect of principal or interest on the succeeding Payment Date is determined, such date as to any Payment Date being the 15th day (whether or not a Business Day) prior to the applicable Payment Date.

"Redemption Date": Any Payment Date specified for a redemption of the Securities pursuant to Section 9.1 or 9.2 hereof.

"Redemption Date Statement": The meaning specified in Section 10.10(i) hereof.

"Redemption Price": The Redemption Price of each Class of Notes and the Preferred Shares will be calculated as follows:

Class A-1 Notes. The redemption price of the Class A-1 Notes will be calculated on the related Determination Date and will be equal to the Aggregate Outstanding Amount of the Class A-1 Notes to be redeemed, together with the

Class A-1 Interest Distribution Amount (plus any Class A-1 Defaulted Interest Amount) due on the applicable Redemption Date;

Class A-2 Notes. The redemption price of the Class A-2 Notes will be calculated on the related Determination Date and will be equal to the Aggregate Outstanding Amount of the Class A-2 Notes to be redeemed, together with the Class A-2 Interest Distribution Amount (plus any Class A-2 Defaulted Interest Amount) due on the applicable Redemption Date;

Class B Notes. The redemption price of the Class B Notes will be calculated on the related Determination Date and will be equal to the Aggregate Outstanding Amount of the Class B Notes to be redeemed, together with the Class B Interest Distribution Amount (plus any Class B Defaulted Interest Amount) due on the applicable Redemption Date;

Class C Notes. The redemption price of the Class C Notes will be calculated on the related Determination Date and will be equal to the Aggregate Outstanding Amount of the Class C Notes to be redeemed, together with the Class C Interest Distribution Amount (plus any Class C Capitalized Interest and any Class C Defaulted Interest Amount) due on the applicable Redemption Date;

Class D Notes. The redemption price of the Class D Notes will be calculated on the related Determination Date and will be equal to the Aggregate Outstanding Amount of the Class D Notes to be redeemed, together with the Class D Interest Distribution Amount (plus any

-66-

Class D Capitalized Interest and any Class D Defaulted Interest Amount) due on the applicable Redemption Date;

Class E Notes. The redemption price of the Class E Notes will be calculated on the related Determination Date and will be equal to the Aggregate Outstanding Amount of the Class E Notes to be redeemed, together with the Class E Interest Distribution Amount (plus any Class E Capitalized Interest and any Class E Defaulted Interest Amount) due on the applicable Redemption Date;

Class F Notes. The redemption price of the Class F Notes will be calculated on the related Determination Date and will be equal to the Aggregate Outstanding Amount of the Class F Notes to be redeemed, together with the Class F Interest Distribution Amount (plus any Class F Capitalized Interest and any Class F Defaulted Interest Amount) due on the applicable Redemption Date;

Class G Notes. The redemption price of the Class G Notes will be calculated on the related Determination Date and will be equal to the Aggregate Outstanding Amount of the Class G Notes to be redeemed, together with the Class G Interest Distribution Amount (plus any Class G Capitalized Interest and any Class G Defaulted Interest Amount) due on the applicable Redemption Date;

Class H Notes. The redemption price of the Class H Notes will be calculated on the related Determination Date and will be equal to the Aggregate Outstanding Amount of the Class H Notes to be redeemed, together with the Class H Interest Distribution Amount (plus any Class H Capitalized Interest and any Class H Defaulted Interest Amount) due on the applicable Redemption Date; and

Preferred Shares. The redemption price for the Preferred Shares will be calculated on the related Determination Date and will be equal to the sum of all net proceeds from the sale of the Collateral Debt Securities in accordance with Article 12 hereof and Cash and proceeds from Eligible Investments (other than the Issuer's rights, title and interest in the property described in clause (i) of the definition of "Excepted Assets"), if any, remaining after payments of all amounts and expenses, including payments made in respect of the Notes, described under subclauses (1) through (23), (26), (27), and (28) of Section 11.1(a)(i) and subclauses (1) through (12) of Section 11.1(a)(ii); provided that, if there are no such net proceeds, Cash or proceeds from Eligible

Investments remaining, the redemption price for the Preferred Shares shall be equal to \$0.

"Reference Banks": The meaning set forth in Schedule J attached hereto.

"Registered": With respect to any debt obligation, a debt obligation that is issued after July 18, 1984, and that is in registered form for purposes of the Code.

"Registered Security": The meaning specified in Section 3.3(a)(iii) hereof.

"Regulation S": Regulation S under the Securities Act.

-67-

"Regulation S Global Security": The meaning specified in Section 2.2(b)(ii) hereof.

"Reimbursement Interest": Interest accrued on the amount of any Interest Advance made by the Advancing Agent or the Trustee, in its capacity as Backup Advancing Agent, for so long as it is outstanding, at the Reimbursement Rate.

"Reimbursement Rate": A rate per annum equal to the "prime rate" as published in the "Money Rates" section of the Wall Street Journal, as such "prime rate" may change from time to time. If more than one "prime rate" is published in The Wall Street Journal for a day, the average of such "prime rates" will be used, and such average will be rounded up to the nearest one eighth of one percent (0.125%). If the "prime rate" contained in The Wall Street Journal is not readily ascertainable, the Collateral Manager will select an equivalent publication that publishes such "prime rate," and if such "prime rates" are no longer generally published or are limited, regulated or administered by a governmental authority or quasigovernmental body, then the Collateral Manager will select, in its reasonable discretion, a comparable interest rate index.

"Reinvestment Criteria": The meaning specified in Section 12.2(a) hereof.

"Reinvestment Income": Any interest or other earnings on the funds on deposit in the Unused Proceeds Account that have not been designated as Interest Proceeds by the Collateral Manager with respect to the Effective Date.

"Reinvestment Period": The period beginning on the Closing Date and ending on and including the first to occur of the following events or dates: (i) the end of the Due Period related to the Payment Date in April, 2011; (ii) the end of the Due Period related to the Payment Date immediately following the date on which the Collateral Manager (with the written consent of Holders of the Majority of the Preferred Shares) notifies the Trustee that, in light of the composition of Collateral Debt Securities, general market conditions and other factors, investments in additional Collateral Debt Securities within the foreseeable future would be either impractical or not beneficial to the Holder of the Preferred Shares; (iii) the end of the Due Period related to the date on which all of the Securities are redeemed as described herein under Section 9.1 and (iv) the date on which the principal of and accrued and unpaid interest on the Notes are declared immediately due and payable following the occurrence of an Event of Default which is neither cured nor waived.

"REIT": A real estate investment trust under the Code.

"REIT Debt Securities": REIT Debt Securities--Diversified, REIT Debt Securities--Health Care, REIT Debt Securities--Hotel, REIT Debt Securities--Industrial, REIT Debt Securities--Mortgage, REIT Debt

Securities--Multi-Family, REIT Debt Securities--Office, REIT Debt Securities--Retail and REIT Debt Securities--Storage.

"REIT Debt Securities--Diversified": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of mortgages on a portfolio of diverse real property interests, provided that (a) any Collateral Debt Security falling within

-68-

this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security and (b) any Collateral Debt Security falling within any other REIT Debt Security description set forth herein will be excluded from this definition.

"REIT Debt Securities--Health Care": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of mortgages on hospitals, clinics, sport clubs, spas and other health care facilities and other similar real property interests used in one or more similar businesses, provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"REIT Debt Securities--Hotel": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of mortgages on hotels, motels, youth hostels, bed and breakfasts and other similar real property interests used in one or more similar businesses, provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"REIT Debt Securities--Industrial": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of mortgages on factories, refinery plants, breweries and other similar real property interests used in one or more similar businesses, provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"REIT Debt Securities--Mortgage": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of mortgages, commercial mortgage backed securities, collateralized mortgage obligations and other similar mortgage related securities (including Collateral Debt Securities issued by a hybrid form of such trust that invests in both commercial real estate and commercial mortgages), provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"REIT Debt Securities--Multi-Family": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of residential mortgages on

multi-family dwellings such as apartment blocks, condominiums and co-operative owned buildings, provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

-69-

"REIT Debt Securities--Office": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of mortgages on office buildings, conference facilities and other similar real property interests used in the commercial real estate business, provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"REIT Debt Securities--Retail": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of mortgages on retail stores, restaurants, bookstores, clothing stores and other similar real property interests used in one or more similar businesses, provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"REIT Debt Securities--Storage": Collateral Debt Securities issued by a real estate investment trust (as defined in Section 856 of the Code or any successor provision) whose assets consist (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of the Collateral Debt Securities) of storage facilities and other similar real property interests used in one or more similar businesses, provided that any Collateral Debt Security falling within this definition will be excluded from the definition of each other Specified Type of Collateral Debt Security.

"Repurchase Price": The meaning specified in Section 16.5(c) hereof.

"Rule 144A": Rule 144A under the Securities Act.

"Rule 144A Global Security": The meaning specified in Section 2.2(b) (i) hereof.

"Rule 144A Information": The meaning specified in Section 7.13 hereof.

"S&P": Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors in interest.

"S&P CDO Monitor": A dynamic, analytical computer model provided prior to the initial Payment Date by S&P to the Collateral Manager and the Trustee, with written instructions and assumptions to be applied when running such computer model, for the purpose of estimating the default risk of a pool of Collateral Debt Securities.

"S&P CDO Monitor Test": A test that will be satisfied on any Measurement Date if, after giving effect to any purchase or sale of a Collateral Debt Security (or both), as the case may be, (i) the Class A-1 Loss Differential, the Class A-2 Loss Differential, the Class B Loss Differential, the Class C Loss Differential, the Class D Loss Differential, the Class E Loss Differential, the Class F Loss Differential, the Class G Loss Differential or the Class H Loss Differential, as the case may be, of the Proposed Portfolio is equal to or greater than zero or (ii) the Class A-1 Loss Differential, the Class A-2 Loss Differential, the Class B Loss Differential, the Class C Loss Differential, the Class D Loss Differential, the Class E Loss Differential, the

the Class F Loss Differential, the Class G Loss Differential or the Class H Loss Differential, as the case may be, of the Proposed Portfolio is greater than or equal to the Class A-1 Loss Differential, the Class A-2 Loss Differential, the Class B Loss Differential, the Class C Loss Differential, the Class D Loss Differential, the Class E Loss Differential, the Class F Loss Differential, the Class G Loss Differential or the Class H Loss Differential, as the case may be, of the Current Portfolio.

"S&P Fixed Rate Excess": As of any Measurement Date, a fraction (expressed as a percentage) the numerator of which is equal to the product of (a) the greater of zero and the excess, if any, of the S&P Weighted Average Coupon for such Measurement Date over the percentage set forth in the S&P Weighted Average Coupon row in the applicable column of the S&P Matrix (which percentage, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix) and (b) the Aggregate Principal Balance of all Collateral Debt Securities that are Fixed Rate Securities (excluding all Defaulted Securities and Written Down Securities) and the denominator of which is the Aggregate Principal Balance of all Collateral Debt Securities that are Floating Rate Securities (excluding all Defaulted Securities and Written Down Securities), multiplying the resulting figure by 360 and then dividing by 365. As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the S&P Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"S&P Matrix": The matrix set forth in Schedule C.

"S&P Minimum Weighted Average Coupon Test": A test that will be satisfied on any Measurement Date if the S&P Weighted Average Coupon is greater than or equal to the number set forth in the S&P Weighted Average Coupon row in the applicable column of the S&P Matrix (which number, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix). As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the S&P Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"S&P Minimum Weighted Average Spread Test": A test that will be satisfied as of any Measurement Date if the S&P Weighted Average Spread as of such Measurement Date is greater than or equal to the number set forth in the S&P Weighted Average Spread row in the applicable column of the S&P Matrix (which number, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix). As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the S&P Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"S&P Rating": Of any Collateral Debt Security will be determined as follows:

(i) if S&P has assigned a rating to such Collateral Debt Security either publicly or privately (in the case of a private rating, with the appropriate consents for the use of such private rating), the S&P Rating shall be the rating assigned thereto by S&P (or, in the case of a REIT Debt Security, the issuer credit rating assigned by S&P), provided that, notwithstanding the foregoing, if any Collateral

Debt Security shall, at the time of its purchase by the Issuer, be listed for a possible upgrade or downgrade on S&P's then current credit rating watch list, then the S&P Rating of such Collateral Debt Security shall be one subcategory above or below, respectively, the rating then assigned to such item by S&P, as applicable; provided that, if such Collateral Debt Security is removed from such list at any time, it shall be deemed to have its actual rating by S & P;

(ii) if such Collateral Debt Security is not rated by S&P but the Issuer (or the Collateral Manager on behalf of the Issuer) has requested that S&P assign a rating to such Collateral Debt Security, the S&P Rating shall be the rating so assigned by S & P; provided that, pending receipt from S&P of such rating, if such Collateral Debt Security is of a type listed on Schedule E hereto or is not eligible for notching in accordance with Schedule D hereto, such Collateral Debt Security shall have an S&P Rating of "CCC-," otherwise such S&P Rating shall be the rating assigned according to Schedule F hereto until such time as S&P shall have assigned a rating thereto; or

(iii) if any Collateral Debt Security is a Collateral Debt Security that has not been assigned a rating by S&P and is not a Collateral Debt Security listed in Schedule E hereto, as identified by the Collateral Manager, the S&P Rating shall be the rating assigned according to Schedule F hereto; provided that, if any Collateral Debt Security shall, at the time of its purchase by the Issuer, be listed for a possible upgrade or downgrade on either Moody's or Fitch's then current credit rating watch list, then the S&P Rating of such Collateral Debt Security shall be one subcategory above or below, respectively, the rating then assigned to such item in accordance with Schedule F hereto; provided, further, that the Aggregate Principal Balance that may be given a rating based on this paragraph (c) may not exceed 20%, of the Aggregate Principal Balance of all Collateral Debt Securities.

"S&P Recovery Rate": With respect to any Collateral Debt Security on any Measurement Date, an amount equal to the percentage for such Collateral Debt Security set forth in Schedule D (the S&P Recovery Matrix) hereto (or, in the case of a Defaulted Security under Clause A of Schedule D (the S&P Recovery Matrix) hereto, corresponding to the S&P Rating at the time of issuance of such Collateral Debt Security) or such lower percentage as may be expressly agreed to by S&P and the Issuer (or the Collateral Manager on behalf of the Issuer) with respect to such Collateral Debt Security; provided that, if the Issuer owns one or more B Notes and the related A Note also is included in the Assets, the "S&P Recovery Rate" for such B Note(s) shall be the rate applicable to the related A Note, but only if S&P modeled such B Note(s) as a Whole Loan and provided to the Issuer a private rating with respect to such B Note(s) on the basis thereof; provided, further, that the S&P Recovery Rate for any Collateral Debt Security with respect to which substitute or additional collateral (in the form of Cash or Eligible Investments) in an amount at least equal to the sum of the principal amount of such Collateral Debt Security and the aggregate of all remaining scheduled interest payments thereon through the earliest permissible prepayment date has been delivered by or on behalf of the related obligor to the Trustee and deposited into a Defeased Collateral Account (or to the Servicer in accordance with the Servicing Agreement and deposited into an Eligible Account) (by defeasance or otherwise) shall be 100%.

-72-

"S&P Recovery Test": A test that will be satisfied on any Measurement Date if the S&P Weighted Average Recovery Rate (based upon the Principal Balance of the Collateral Debt Securities) for each Class of Notes falls within one of the permissible scenarios (which scenarios, for the avoidance of doubt, will vary depending on the then current levels of the variables included in the S&P Matrix) for each such Class; provided that, in the event Cash has been received in respect of Principal Proceeds of any Collateral Debt Security in connection

with a prepayment or sale of such Collateral Debt Security, but such Cash has not been reinvested in additional Collateral Debt Securities as of such Measurement Date, such Cash will be included in calculating the S&P Weighted Average Recovery Rate and the Principal Balance and Recovery Rate associated with such Cash will be the Principal Balance and Recovery Rate of such Collateral Debt Security immediately prior to prepayment or sale, as applicable; provided, further, that, with respect to any such Collateral Debt Security that was sold for less than its outstanding principal balance, the "Principal Balance" associated with such Cash will equal the amount of Sale Proceeds received by the Issuer in connection with such sale.

"S&P Special Amortization Pro Rata Condition": A condition that will be satisfied with respect to any Payment Date if either (i) (a) the Aggregate Principal Balance of the Collateral Debt Securities as of the related Determination Date is greater than an amount equal to 50% of the Aggregate Principal Balance of the Collateral Debt Securities on the Effective Date and the S&P CDO Monitor Test is satisfied as of such Determination Date and (b) no Par Value Test has failed to be satisfied on more than two Determination Dates, unless, subsequent to such failure, the Par Value Ratio related to such Par Value Test has equaled or exceeded the Par Value Ratio in existence on the Effective Date or (ii) the Rating Agency Condition has been satisfied with respect to S&P.

"S&P Spread Excess": As of any Measurement Date, a fraction (expressed as a percentage), the numerator of which is equal to the product of (a) the greater of zero and the excess, if any, of the S&P Weighted Average Spread for such Measurement Date over the percentage set forth in the S&P Weighted Average Spread row in the applicable column of the S&P Matrix (which percentage, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix) and (b) the Aggregate Principal Balance of all Collateral Debt Securities that are Floating Rate Securities (excluding all Defaulted Securities and Written Down Securities) and the denominator of which is the Aggregate Principal Balance of all Collateral Debt Securities that are Fixed Rate Securities (excluding all Defaulted Securities and Written Down Securities), multiplying the resulting figure by 365 and then dividing by 360. As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the S&P Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"S&P Weighted Average Coupon": As of any Measurement Date, (a) the number obtained (rounded up to the next 0.001%) by (i) summing the products obtained by multiplying (x) the current interest rate on each Collateral Debt Security that is a Fixed Rate Security (excluding all Defaulted Securities and Written Down Securities) by (y) the Principal Balance of each such Collateral Debt Security and (ii) dividing such sum by the Aggregate Principal Balance of all Collateral Debt Securities that are Fixed Rate Securities (excluding all Defaulted Securities and Written Down Securities) plus (b) if the amount obtained pursuant to clause (a) is

-73-

less than the percentage set forth in the S&P Weighted Average Coupon row in the applicable column of the S&P Matrix (which percentage, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix), the S&P Spread Excess, if any, as of such Measurement Date. As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the S&P Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"S&P Weighted Average Recovery Rate": With respect to the Collateral Debt Securities, as of any Measurement Date, the number obtained by summing the products obtained by multiplying the Principal Balance of each Collateral Debt Security, other than a Defaulted Security, by its S&P Recovery Rate, and

dividing such sum by the Aggregate Principal Balance of all such Collateral Debt Securities and rounding up to the first decimal place.

"S&P Weighted Average Spread": As of any Measurement Date, (a) the number obtained (rounded up to the next 0.001%), by (i) summing the products obtained by multiplying (x) the stated spread above LIBOR at which interest accrues on each Collateral Debt Security that is a Floating Rate Security (other than a Defaulted Security or Written Down Security) (or, in the case of any Floating Rate Security (other than a Defaulted Security or Written Down Security) which provides for a minimum interest rate payable thereunder, the excess, if any, of the minimum interest rate applicable to such Collateral Debt Security over LIBOR, if such result is greater than the related stated spread above LIBOR) as of such date by (y) the Principal Balance of such Collateral Debt Security as of such date, and (ii) dividing such sum by the Aggregate Principal Balance of all Collateral Debt Securities that are Floating Rate Securities (excluding all Defaulted Securities and Written Down Securities) plus (b) if the amount obtained pursuant to clause (a) is less than the percentage set forth in the S&P Weighted Average Spread row in the applicable column of the S&P Matrix (which percentage, for the avoidance of doubt, will vary depending on the then current levels of the other variables included in the S&P Matrix), the S&P Fixed Rate Excess, if any, as of such Measurement Date. For purposes of this definition, a Fixed Rate Security that is a Covered Fixed Rate Security will be deemed to be a Floating Rate Security and the floating rate applicable thereto will be the rate payable taking into account the related Asset Specific Hedge. As used in this definition, "applicable column" means the column corresponding to the numbered scenario in the S&P Matrix, the use of the applicable numbers or percentages set forth in which would result in satisfaction of the related Collateral Quality Tests.

"Sale": The meaning specified in Section 5.17(a) hereof.

"Sale Proceeds": All proceeds (including accrued interest) received with respect to Collateral Debt Securities and Eligible Investments as a result of sales of such Collateral Debt Securities and Eligible Investments, net of any reasonable out-of-pocket expenses of the Collateral Manager or the Trustee in connection with any such sale.

"Schedule of Closing Date Collateral Debt Securities": The Collateral Debt Securities listed on Schedule I hereto, which Schedule shall include the Principal Balance, interest rate (if the security bears interest at a fixed rate) or the spread and the relevant floating

-74-

reference rate (if the security bears interest at a floating rate), the maturity date, the Moody's Rating, S&P Rating and Fitch Rating, if any, of each Collateral Debt Security.

"Scheduled Distribution": With respect to any Pledged Obligation, for each Due Date, the scheduled payment of principal, interest or fee or any dividend or premium payment due on such Due Date or any other distribution with respect to such Pledged Obligation, determined in accordance with the assumptions specified in Section 1.2 hereof.

"Secured Parties": Collectively, the Trustee, the Noteholders, each Hedge Counterparty and the Collateral Manager, each as their interests appear in applicable Transaction Documents.

"Securities": Collectively, the Notes and the Preferred Shares.

"Securities Account": The meaning specified in Section 8-501(a) of the UCC.

"Securities Account Control Agreement": The meaning specified in Section 3.3(a) hereof.

"Securities Act": The Securities Act of 1933, as amended.

"Securities Intermediary": The meaning specified in Section 8-102(a)(14) of the UCC.

"Security Entitlement": The meaning specified in Section 8-102(a)(17) of the UCC.

"Seller": The meaning specified in the applicable Collateral Debt Securities Purchase Agreement.

"Senior Collateral Management Fee": The fee payable quarterly in arrears on each Payment Date to the Collateral Manager pursuant to this Indenture and the Collateral Management Agreement, equal to 0.10% per annum of the Net Outstanding Portfolio Balance for such Payment Date, to the extent funds are available for such purpose in accordance with the Priority of Payments.

"Senior Tranche": (i) With respect to a Participation or B Note, any senior interest in the same Underlying Term Loan as a Participation or any senior debt secured by the same Underlying Mortgage Property as a B Note or Participation and (ii) with respect to a Mezzanine Loan, any commercial mortgage loan related to the same Underlying Mortgage Property or Properties as the Mezzanine Loan.

"Servicer": Arbor Commercial Mortgage, LLC, each of Arbor Commercial Mortgage, LLC's permitted successors and assigns or any successor Person that shall have become the Servicer pursuant to the provisions of the Servicing Agreement.

-75-

"Servicing Agreement": The Servicing Agreement, dated as of the Closing Date, by and among the Issuer, the Trustee, the Collateral Manager and the Servicer, as amended, supplemented or otherwise modified from time to time in accordance with its terms.

"Servicing Fee": With respect to each Due Period, the aggregate amount of all servicing fees payable to the Servicer under the Servicing Agreement during such Due Period.

"Share Registrar": Maples Finance Limited, unless a successor Person shall have become the Share Registrar pursuant to the applicable provisions of the Preferred Shares Paying Agency Agreement, and thereafter "Share Registrar" shall mean such successor Person.

"Similar Law": The meaning specified in Section 2.5(g)(vi) hereof.

"Single Asset Mortgage Security": A commercial mortgage pass-through certificate or similar security backed primarily by a single mortgage loan on one or more commercial properties included in a property-specific securitization transaction.

"Single Borrower Mortgage Security": A commercial mortgage pass-through certificate or similar security backed primarily by one or more mortgage loans to the same borrower (or affiliated borrowers) on one or more commercial properties included in a securitization.

"Special Amortization": The meaning specified in Section 9.7 hereof.

"Special Amortization Amount": The meaning specified in Section 9.7 hereof.

"Specified Person": The meaning specified in Section 2.6(a) hereof.

"Specified Type": Each of a Loan, CMBS Security, CRE CDO Security, REIT Debt Security, and Preferred Equity Security.

"Spread Excess": The Moody's Spread Excess, the S&P Spread Excess or the Fitch Spread Excess, as the context requires.

"Stated Maturity": The Payment Date occurring in April, 2038.

"Step-Down Bond": A security which by the terms of the related Underlying Instruments provides for a decrease, in the case of a Fixed Rate Security, in the per annum interest rate on such security or, in the case of a Floating Rate Security, in the spread over the applicable index or benchmark rate, solely as a function of the passage of time; provided that, for purposes of measuring compliance with the Collateral Quality Tests, the interest rate or spread, as applicable, associated with any Step-Down Bond included in the Assets shall be the lowest possible applicable interest rate or spread, as applicable, as set forth in the related Underlying Instruments; provided, further, that the term Step-Down Bond shall not include any such security providing for payment of a constant rate of interest at all times after the date of acquisition by the Issuer or any Loan or Preferred Equity Security.

-76-

"Step-Up Security": A security with a current interest rate of zero percent per annum at the time of purchase but which increases to predetermined levels on specific dates; provided that the term Step-Up Security shall not include any Loan or Preferred Equity Security.

"Subordinate Collateral Management Fee": The fee payable quarterly in arrears on each Payment Date to the Collateral Manager pursuant to this Indenture and the Collateral Management Agreement, in an amount equal to 0.15% per annum of the Net Outstanding Portfolio Balance, to the extent funds are available for such purpose in accordance with the Priority of Payments.

"Subordinate Interests": The Class A-2 Subordinate Interests, the Class B Subordinate Interests, the Class C Subordinate Interests, the Class D Subordinate Interests, the Class E Subordinate Interests, the Class F Subordinate Interests, the Class G Subordinate Interests and the Class H Subordinate Interests, as the context may require.

"Subsequent Collateral Debt Security": Any Collateral Debt Security that is acquired after the Closing Date.

"Substitute Collateral Debt Security": A Collateral Debt Security that is acquired by the Issuer in substitution for Collateral Debt Securities previously pledged to the Trustee in accordance herewith.

"Successful Auction": (i) An Auction which is conducted in accordance with Section 9.2(b) or (ii) the purchase of Collateral Debt Securities by the Holder of the Preferred Shares or its Affiliates for a price equal to the Total Redemption Price pursuant to Section 12.4(c).

"Tax Event": Means (i) any obligor is, or on the next scheduled payment date under any Collateral Debt Security, will be, required to deduct or withhold from any payment under any Collateral Debt Security to the Issuer for or on account of any tax for whatever reason and such obligor is not required to pay to the Issuer such additional amount as is necessary to ensure that the net amount actually received by the Issuer (free and clear of taxes, whether assessed against such obligor or the Issuer) will equal the full amount that the Issuer would have received had no such deduction or withholding been required, (ii) any jurisdiction imposes net income, profits, or similar tax on the Issuer, (iii) the Issuer is required to deduct or withhold from any payment under any Hedge Agreement for or on account of any tax and the Issuer is obligated to make a gross up payment (or otherwise pay additional amounts) to any Hedge Counterparty, (iv) any Hedge Counterparty is required to deduct or withhold from

any payment under any Hedge Agreement for or on account of any tax for whatever reason and such Hedge Counterparty is not required to pay to the Issuer such additional amount as is necessary to ensure that the net amount actually received by the Issuer (free and clear of taxes, whether assessed against such obligor or the Issuer) will equal the full amount that the Issuer would have received had no such deduction or withholding been required or (v) the Issuer fails to maintain its status as a qualified REIT subsidiary (within the meaning of Section 856(i)(2) of the Code).

"Tax Materiality Condition": The condition that will be satisfied if either (i) as a result of the occurrence of a Tax Event, a tax or taxes are imposed on the Issuer or withheld from

-77-

payments to the Issuer and with respect to which the Issuer receives less than the full amount that the Issuer would have received had no such deduction occurred and such amount exceeds, in the aggregate, U.S. \$1 million during any 12-month period or (ii) the Issuer fails to maintain its status as a qualified REIT subsidiary (within the meaning of Section 856(i)(2) of the Code).

"Tax Redemption": The meaning specified in Section 9.1(b) hereof.

"Total Redemption Price": The amount equal to funds sufficient to pay all amounts and expenses described under clauses (1) through (5), (26), (27) and (28) of Section 11.1(a)(i) and to redeem all Notes at their applicable Redemption Prices.

"Transaction Documents": This Indenture, the Collateral Management Agreement, the Collateral Debt Securities Purchase Agreements, the Company Administration Agreement, the Preferred Shares Paying Agency Agreement and each Hedge Agreement.

"Transfer Agent": The Person or Persons, which may be the Issuer, authorized by the Issuer to exchange or register the transfer of Notes.

"Treasury Regulations": Temporary or final regulations promulgated under the Code by the United States Treasury Department.

"Trust Officer": When used with respect to the Trustee, any officer within the CDO Trust Services Group of the Corporate Trust Office (or any successor group of the Trustee) including any vice president, assistant vice president or officer of the Trustee customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the CDO Trust Services Group of the Corporate Trust Office because of his knowledge of and familiarity with the particular subject.

"Trustee": LaSalle Bank National Association, a national banking association organized and existing under the laws of the United States of America, unless a successor Person shall have become the Trustee pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean such successor Person.

"Trustee Fee Proposal": The letter dated as of November 28, 2005, to Arbor Commercial Mortgage, LLC, as revised to date.

"UCC": The applicable Uniform Commercial Code.

"UCC Account": "Account," as such term is defined in Section 9-102(a)(2) of the UCC.

"Uncertificated Security": The meaning specified in Section 3.3(a)(ii) hereof.

"Underlying Instruments": The indenture, loan agreement, note, mortgage, intercreditor agreement, pooling and servicing agreement, participation agreement or other agreement pursuant to which a Collateral Debt Security or Eligible Investment has been issued or created and each other agreement that governs the terms of or secures the obligations represented

-78-

by such Collateral Debt Security or Eligible Investment or of which holders of such Collateral Debt Security or Eligible Investment are the beneficiaries.

"Underlying Mortgage Property": With respect to (i) a Loan (other than a Participation or Mezzanine Loan), the commercial mortgage property or properties securing the Loan, (ii) a Participation, the commercial mortgage property or properties securing the Underlying Term Loan, or (iii) a Mezzanine Loan, the commercial mortgage property or properties related to the Mezzanine Loan.

"Underlying Term Loan": With respect to (i) a Loan (other than a Participation or a Mezzanine Loan), such Loan or (ii) a Participation, the underlying commercial mortgage loan.

"United States": The United States of America, including any state and any territory or possession administered thereby.

"Unregistered Securities": The meaning specified in Section 5.17(c) hereof.

"Unscheduled Principal Payments": Any proceeds received by the Issuer from an unscheduled prepayment or redemption (in whole but not in part) by the obligor of a Collateral Debt Security prior to the stated maturity date of such Collateral Debt Security.

"Unused Proceeds Account": The trust account established pursuant to Section 10.4(a) hereof.

"U.S. Person": The meaning specified in Regulation S.

"Weighted Average Coupon": The Moody's Weighted Average Coupon, the S&P Weighted Average Coupon or the Fitch Weighted Average Coupon, as the context requires.

"Weighted Average Life": As of any Measurement Date with respect to the Collateral Debt Securities (other than Defaulted Securities), the number obtained by (i) summing the products obtained by multiplying (a) the Average Life at such time of each Collateral Debt Security (other than Defaulted Securities) by (b) the outstanding Principal Balance of such Collateral Debt Security and (ii) dividing such sum by the Aggregate Principal Balance at such time of all Collateral Debt Securities (other than Defaulted Securities).

"Weighted Average Life Test": With respect to any Collateral Debt Securities, a test that will be satisfied as of any Measurement Date if the Weighted Average Life of such Collateral Debt Securities as of such Measurement Date is less than or equal to eight years.

"Weighted Average Moody's Rating Factor": The amount determined by summing the products obtained by multiplying the Principal Balance of each Collateral Debt Security (excluding Defaulted Securities) by its Moody's Rating Factor, dividing such sum by the Aggregate Principal Balance of all such obligations and rounding the result up to the nearest whole number.

"Weighted Average Spread": The Moody's Weighted Average Spread, the S&P Weighted Average Spread or the Fitch Weighted Average Spread, as the context requires.

"Whole Loan": A whole loan (including, without limitation, an A Note) secured by a mortgage on multi-family or commercial real estate property or a senior interest therein.

"Written Down Security": As of any date of determination, any Collateral Debt Security as to which the aggregate par amount of the entire issue of such Collateral Debt Security and all other securities secured by the same pool of collateral and that rank senior in priority of payment to such issue exceeds the aggregate par amount of all collateral (giving effect to any appraisal reductions) securing such issue (excluding defaulted collateral).

Section 1.2 Assumptions as to Pledged Obligations.

(a) In connection with all calculations required to be made pursuant to this Indenture with respect to Scheduled Distributions on any Pledged Obligation, or any payments on any other assets included in the Assets, and with respect to the income that can be earned on Scheduled Distributions on such Pledged Obligations and on any other amounts that may be received for deposit in the applicable Collection Account, the provisions set forth in this Section 1.2 shall be applied.

(b) All calculations with respect to Scheduled Distributions on the Pledged Obligations securing the Notes shall be made on the basis of information as to the terms of each such Pledged Obligation and upon report of payments, if any, received on such Pledged Obligation that are furnished by or on behalf of the issuer of such Pledged Obligation and, to the extent they are not manifestly in error, such information or report may be conclusively relied upon in making such calculations.

(c) For each Due Period, the Scheduled Distribution on any Pledged Obligation (other than a Defaulted Security, which, except as otherwise provided herein, shall be assumed to have a Scheduled Distribution of zero) shall be the sum of (i) the total amount of payments and collections in respect of such Pledged Obligation (including all Sales Proceeds received during the Due Period and not reinvested in Substitute Collateral Debt Securities or retained in the Principal Collection Account for subsequent reinvestment) that, if paid as scheduled, will be available in the Collection Accounts at the end of such Due Period for payment on the Notes and of expenses of the Issuer and the Co-Issuer pursuant to the Priority of Payments and (ii) any such amounts received in prior Due Periods that were not disbursed on a previous Payment Date and do not constitute amounts which have been used as reimbursement with respect to a prior Interest Advance pursuant to the terms of this Indenture.

(d) With respect to any Collateral Debt Security as to which any interest or other payment thereon is subject to withholding tax of any relevant jurisdiction, each Scheduled Distribution thereon shall, for purposes of the Coverage Tests and the Collateral Quality Tests, be deemed to be payable net of such withholding tax unless the issuer thereof or obligor thereon is required to make additional payments to fully compensate the Issuer for such withholding taxes (including in respect of any such additional payments). On any date of determination, the amount of any Scheduled Distribution due on any future date shall be assumed to be made net of any such uncompensated withholding tax based upon withholding tax rates in effect on such date of determination.

(e) For purposes of calculating any Interest Coverage Ratio, the expected interest income on floating rate Collateral Debt Securities and Eligible Investments and under each Hedge Agreement and the expected interest payable on the Notes shall be calculated using the (i) interest rates applicable

thereto on the applicable Measurement Date and (ii) accrued original issue discount on Eligible Investments shall be deemed to be Scheduled Distributions of interest due on the date such original issue discount is scheduled to be paid. Notwithstanding the foregoing, for the purposes of calculating any Interest Coverage Ratio, there shall be excluded all scheduled or deferred payments of interest on or principal of Collateral Debt Securities and any payment, including any amount payable to the Issuer by each Hedge Counterparty, which the Collateral Manager has determined in its reasonable judgment shall not be made in Cash or received when due.

(f) Each Scheduled Distribution receivable with respect to a Pledged Obligation shall be assumed to be received on the applicable Due Date, and each such Scheduled Distribution shall be assumed to be immediately deposited in the applicable Collection Account except to the extent the Collateral Manager has a reasonable expectation that such Scheduled Distribution will not be received on the applicable Due Date. All such funds shall be assumed to continue to earn interest until the date on which they are required to be available in the applicable Collection Account for transfer to the Payment Account for application, in accordance with the terms hereof, to payments of principal of or interest on the Notes or other amounts payable pursuant to this Indenture.

(g) All calculations required to be made and all reports which are to be prepared pursuant to this Indenture with respect to the Pledged Obligations, shall be made on the basis of the date on which the Issuer makes a commitment to purchase or sell an asset (the "trade date"), not the settlement date.

(h) For purposes of calculating the Par Value Ratio, an appraisal reduction of a Collateral Debt Security will be assumed to result in an implied reduction of Principal Balance for such Collateral Debt Security only if such appraisal reduction is intended to reduce the interest payable on such Collateral Debt Security and only in proportion to such interest reduction. For purposes of the Par Value Ratio, any Collateral Debt Security that has sustained an implied reduction of Principal Balance due to an appraisal reduction will not be considered a Defaulted Security solely due to such implied reduction. The Collateral Manager will notify the Trustee of any appraisal reductions of Collateral Debt Securities if the Collateral Manager has actual knowledge thereof.

Section 1.3 Interest Calculation Convention.

All calculations of interest hereunder that are made with respect to the Notes shall be made on the basis of the actual number of days during the related Interest Accrual Period divided by 360.

Section 1.4 Rounding Convention.

Unless otherwise specified herein, test calculations that evaluate to a percentage will be rounded to the nearest ten thousandth of a percentage point and test calculations that

-81-

evaluate to a number or decimal will be rounded to the nearest one hundredth of a percentage point.

ARTICLE 2

THE NOTES

Section 2.1 Forms Generally.

The Notes and the Trustee's or Authenticating Agent's certificate of authentication thereon (the "Certificate of Authentication") shall be in substantially the forms required by this Article 2, with such appropriate insertions, omissions, substitutions and other variations as are required or

permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be consistent herewith, determined by the Authorized Officers of the Issuer and the Co-Issuer, executing such Notes as evidenced by their execution of such Notes. Any portion of the text of any Note may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

Section 2.2 Forms of Notes and Certificate of Authentication.

(a) Form. The form of each Class of Notes including the Certificate of Authentication, shall be substantially as set forth in Exhibits A-1, A-2, B, C, D, E, F, G and H hereto.

(b) Global Securities.

(i) The Notes initially offered and sold in the United States to (or to U.S. Persons who are) QIBs shall be represented by one or more permanent global notes in definitive, fully registered form without interest coupons with the applicable legend set forth in Exhibits A-1, A-2, B, C, D, E, F, G and H hereto added to the form of such Notes (each, a "Rule 144A Global Security"), which shall be registered in the name of the nominee of the Depository and deposited with the Trustee, at its Corporate Trust Office, as custodian for the Depository, duly executed by the Issuer and the Co-Issuer and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(ii) The Notes initially sold in offshore transactions in reliance on Regulation S shall be represented by one or more permanent global notes in definitive, fully registered form without interest coupons with the applicable legend set forth in Exhibits A-1, A-2, B, C, D, E, F, G and H, hereto added to the form of such Notes (each, a "Regulation S Global Security"), which shall be deposited on behalf of the subscribers for such Notes represented thereby with the Trustee as custodian for the Depository and registered in the name of a nominee of the Depository for the respective accounts of Euroclear and Clearstream, Luxembourg or their respective depositories, duly executed

-82-

by the Issuer and the Co-Issuer and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee or the Depository or its nominee, as the case may be, as hereinafter provided.

(c) Book-Entry Provisions. This Section 2.2(c) shall apply only to Global Securities deposited with or on behalf of the Depository.

Each of the Issuer and Co-Issuer shall execute and the Trustee shall, in accordance with this Section 2.2(c), authenticate and deliver initially one or more Global Securities that shall be (i) registered in the name of the nominee of the Depository for such Global Security or Global Securities and (ii) delivered by the Trustee to such Depository or pursuant to such Depository's instructions or held by the Trustee's agent as custodian for the Depository.

Agent Members shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Trustee, as custodian for the Depository or under the Global Security, and the Depository may be treated by the Issuer, the Co-Issuer, the Trustee, and any agent of the Issuer, the Co-Issuer or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Co-Issuer, the Trustee, or any agent of the Issuer, the

Co-Issuer or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any Global Security.

(d) Delivery of Certificated Notes in Lieu of Global Securities. Except as provided in Section 2.10 hereof, owners of beneficial interests in a Class of Global Securities shall not be entitled to receive physical delivery of a Certificated Note.

Section 2.3 Authorized Amount; Stated Maturity; and Denominations.

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to \$356,250,000, except for Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Notes pursuant to Sections 2.5, 2.6 or 8.5 hereof.

Such Notes shall be divided into nine (9) Classes having designations and original principal amounts as follows:

| DESIGNATION ----- | ORIGINAL PRINCIPAL AMOUNT ----- |
|---|--|
| Class A-1 Senior Secured Floating Rate Term Notes Due 2038 | \$161,500,000 |
| Class A-2 Second Priority Senior Secured Floating Rate Term Notes Due 2038 | \$ 40,375,000 |

-83-

| DESIGNATION ----- | ORIGINAL PRINCIPAL AMOUNT ----- |
|--|--|
| Class B Third Priority Senior Secured Floating Rate Term Notes Due 2038 | \$ 57,000,000 |
| Class C Fourth Priority Floating Rate Capitalized Interest Term Notes Due 2038 | \$ 29,687,500 |
| Class D Fifth Priority Floating Rate Capitalized Interest Term Notes Due 2038 | \$ 10,212,500 |
| Class E Sixth Priority Floating Rate Capitalized Interest Term Notes Due 2038 | \$ 9,025,000 |
| Class F Seventh Priority Floating Rate Capitalized Interest Term Notes Due 2038 | \$ 17,575,000 |
| Class G Eighth Priority Floating Rate Capitalized Interest Term Notes Due 2038 | \$ 13,062,500 |
| Class H Ninth Priority Floating Rate Capitalized Interest Term Notes Due 2038 | \$ 17,812,500 |

(b) The Notes shall be issuable in minimum denominations of \$500,000 and integral multiples of \$500 in excess thereof (plus any residual amount).

Section 2.4 Execution, Authentication, Delivery and Dating.

The Notes shall be executed on behalf of the Issuer and the Co-Issuer by an Authorized Officer of the Issuer and the Co-Issuer, respectively. The signature of such Authorized Officers on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at any time the Authorized Officers of the Issuer or the Co-Issuer shall bind the Issuer or the Co-Issuer, as the case may be, notwithstanding the fact that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of issuance of such Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Issuer and the Co-Issuer may deliver Notes executed by the Issuer and the Co-Issuer to the Trustee or the Authenticating Agent for authentication and the Trustee or the Authenticating Agent, upon Issuer Order, shall authenticate and deliver such Notes as provided in this Indenture and not otherwise.

Each Note authenticated and delivered by the Trustee or the Authenticating Agent upon Issuer Order on the Closing Date shall be dated as of the Closing Date. All other Notes that are authenticated after the Closing Date for any other purpose under this Indenture shall be dated the date of their authentication.

Notes issued upon transfer, exchange or replacement of other Notes shall be issued in authorized denominations reflecting the original aggregate principal amount of the Notes so transferred, exchanged or replaced, but shall represent only the current outstanding principal amount of the

-84-

Notes so transferred, exchanged or replaced. In the event that any Note is divided into more than one Note in accordance with this Article 2, the original principal amount of such Note shall be proportionately divided among the Notes delivered in exchange therefor and shall be deemed to be the original aggregate principal amount of such subsequently issued Notes.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Note a Certificate of Authentication, substantially in the form provided for herein, executed by the Trustee or by the Authenticating Agent by the manual signature of one of their Authorized Officers, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

Section 2.5 Registration, Registration of Transfer and Exchange.

(a) The Issuer and the Co-Issuer shall cause to be kept a register (the "Notes Register") in which, subject to such reasonable regulations as it may prescribe, the Issuer and the Co-Issuer shall provide for the registration of Notes and the registration of transfers of Notes. The Trustee is hereby initially appointed "Notes Registrar" for the purpose of registering Notes and transfers of such Notes with respect to the Notes Register as herein provided. Upon any resignation or removal of the Notes Registrar, the Issuer and the Co-Issuer shall promptly appoint a successor or, in the absence of such appointment, assume the duties of Notes Registrar.

If a Person other than the Trustee is appointed by the Issuer and the Co-Issuer as Notes Registrar, the Issuer and the Co-Issuer shall give the Trustee prompt written notice of the appointment of a successor Notes Registrar and of the location, and any change in the location, of the Notes Registrar, and the Trustee shall have the right to inspect the Notes Register at all reasonable

times and to obtain copies thereof and the Trustee shall have the right to rely upon a certificate executed on behalf of the Notes Registrar by an Officer thereof as to the names and addresses of the Holders of the Notes and the principal amounts and numbers of such Notes.

Subject to this Section 2.5, upon surrender for registration of transfer of any Notes at the office or agency of the Issuer to be maintained as provided in Section 7.2, the Issuer and the Co-Issuer shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denomination and of a like aggregate principal amount.

At the option of the Holder, Notes may be exchanged for Notes of like terms, in any authorized denominations and of like aggregate principal amount, upon surrender of the Notes to be exchanged at such office or agency. Whenever any Note is surrendered for exchange, the Issuer and the Co-Issuer shall execute, and the Trustee shall authenticate and deliver, the Notes that the Noteholder making the exchange is entitled to receive.

All Notes issued and authenticated upon any registration of transfer or exchange of Notes shall be the valid obligations of the Issuer and the Co-Issuer, evidencing the same debt,

-85-

and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Notes Registrar duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made to a Holder for any registration of transfer or exchange of Notes, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

None of the Notes Registrar, the Issuer or the Co-Issuer shall be required (i) to issue, register the transfer of or exchange any Note during a period beginning at the opening of business 15 days before any selection of Notes to be redeemed and ending at the close of business on the day of the mailing of the relevant notice of redemption, or (ii) to register the transfer of or exchange any Note so selected for redemption.

(b) No Note may be sold or transferred (including, without limitation, by pledge or hypothecation) unless such sale or transfer is exempt from the registration requirements of the Securities Act and is exempt from the registration requirements under applicable state securities laws.

(c) No Note may be offered, sold, resold or delivered, within the United States or to, or for the benefit of, U.S. Persons except in accordance with Section 2.5(e) below and in accordance with Rule 144A to QIBs who are Qualified Purchasers purchasing for their own account or for the accounts of one or more QIBs who are Qualified Purchasers, for which the purchaser is acting as fiduciary or agent. The Notes may be offered, sold, resold or delivered, as the case may be, in offshore transactions to non-U.S. Persons in reliance on Regulation S under the Securities Act. None of the Issuer, the Co-Issuer, the Trustee or any other Person may register the Notes under the Securities Act or any state securities laws.

(d) Upon final payment due on the Stated Maturity of a Note, the Holder thereof shall present and surrender such Note at the Corporate Trust Office of the Trustee or at the office of the Paying Agent (outside the United States if then required by applicable law in the case of a Note in definitive

form issued in exchange for a beneficial interest in a Regulation S Global Security pursuant to Section 2.10).

(e) Transfers of Global Securities. Notwithstanding any provision to the contrary herein, so long as a Global Security remains outstanding and is held by or on behalf of the Depository, transfers of a Global Security, in whole or in part, shall only be made in accordance with Section 2.2(c) and this Section 2.5(e).

(i) Subject to clauses (ii) through (iv) of this Section 2.5(e), transfers of a Global Security shall be limited to transfers of such Global Security in whole, but not in part, to nominees of the Depository or to a successor of the Depository or such successor's nominee.

-86-

(ii) Regulation S Global Security to Rule 144A Global Security. If a holder of a beneficial interest in a Regulation S Global Security wishes to transfer all or a part of its interest in such Regulation S Global Security to a Person who wishes to take delivery thereof in the form of a Rule 144A Global Security, such holder may, subject to the terms hereof and the rules and procedures of Euroclear, Clearstream, Luxembourg or the Depository, as the case may be, exchange or cause the exchange of such interest for an equivalent beneficial interest in a Rule 144A Global Security of the same Class. Upon receipt by the Trustee, as Notes Registrar, of (A) instructions from Euroclear, Clearstream, Luxembourg or the Depository, as the case may be, directing the Trustee, as Notes Registrar, to cause such Rule 144A Global Security to be increased by an amount equal to such beneficial interest in such Regulation S Global Security but not less than the minimum denomination applicable to the related Class of Notes, and (B) a certificate substantially in the form of Exhibit J hereto given by the prospective transferee of such beneficial interest and stating, among other things, that such transferee acquiring such interest in a Rule 144A Global Security is a QIB and a Qualified Purchaser, is obtaining such beneficial interest in a transaction pursuant to Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other applicable jurisdiction, then Euroclear, Clearstream, Luxembourg or the Trustee, as Notes Registrar, as the case may be, shall approve the instruction at the Depository to reduce such Regulation S Global Security by the aggregate principal amount of the interest in such Regulation S Global Security to be transferred and increase the Rule 144A Global Security specified in such instructions by an Aggregate Outstanding Amount equal to such reduction in such principal amount of the Regulation S Global Security.

(iii) Rule 144A Global Security to Regulation S Global Security. If a holder of a beneficial interest in a Rule 144A Global Security wishes to transfer all or a part of its interest in such Rule 144A Global Security to a Person who wishes to take delivery thereof in the form of a Regulation S Global Security, such holder may, subject to the terms hereof and the rules and procedures of Euroclear, Clearstream, Luxembourg or the Depository, as the case may be, exchange or cause the exchange of such interest for an equivalent beneficial interest in a Regulation S Global Security of the same Class. Upon receipt by the Trustee, as Notes Registrar, of (A) instructions from Euroclear, Clearstream, Luxembourg or the Depository, as the case may be, directing the Trustee, as Notes Registrar, to cause such Regulation S Global Security to be increased by an amount equal to the beneficial interest in such Rule 144A Global Security but not less than the minimum denomination applicable to the related Class of Notes to be exchanged, and (B) a certificate substantially in the form of Exhibit I hereto given by the prospective transferee of such beneficial interest and stating, among other things, that such transferee acquiring such interest in a Regulation S Global Security is not a U.S. Person and that such transfer is being made pursuant to Rule 903 or 904 under Regulation S, then Euroclear, Clearstream, Luxembourg or the Trustee, as Notes Registrar, as

the case may be, shall approve the instruction at the Depository to reduce such Rule 144A Global Security by the aggregate principal amount of the interest in such Rule 144A Global Security to be transferred and increase the Regulation S Global Security specified in such instructions by an Aggregate Outstanding Amount equal to such reduction in the principal amount of the Rule 144A Global Security.

-87-

(iv) Other Exchanges. In the event that, pursuant to Section 2.10 hereof, a Global Security is exchanged for Certificated Notes, such Notes may be exchanged for one another only in accordance with such procedures as are substantially consistent with the provisions above (including certification requirements intended to ensure that such transfers are to a QIB who is also a Qualified Purchaser or are to a non-U.S. Person, or otherwise comply with Rule 144A or Regulation S, as the case may be) and as may be from time to time adopted by the Issuer, the Co-Issuer and the Trustee.

(f) Removal of Legend. If Notes are issued upon the transfer, exchange or replacement of Notes bearing the applicable legends set forth in Exhibits A-1, A-2, B, C, D, E, F, G and H hereto, and if a request is made to remove such applicable legend on such Notes, the Notes so issued shall bear such applicable legend, or such applicable legend shall not be removed, as the case may be, unless there is delivered to the Issuer and the Co-Issuer such satisfactory evidence, which may include an Opinion of Counsel of an attorney at law licensed to practice law in the State of New York (and addressed to the Issuer and the Trustee), as may be reasonably required by the Issuer and the Co-Issuer, if applicable, to the effect that neither such applicable legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A or Regulation S, as applicable, the Investment Company Act or ERISA. So long as the Issuer or the Co-Issuer is relying on an exemption under or promulgated pursuant to the Investment Company Act, the Issuer or the Co-Issuer shall not remove that portion of the legend required to maintain an exemption under or promulgated pursuant to the Investment Company Act. Upon provision of such satisfactory evidence, as confirmed in writing by the Issuer and the Co-Issuer, if applicable, to the Trustee, the Trustee, at the direction of the Issuer and the Co-Issuer, if applicable, shall authenticate and deliver Notes that do not bear such applicable legend.

(g) Each beneficial owner of Rule 144A Global Securities shall be deemed to represent and agree as follows (terms used in this paragraph that are defined in Rule 144A are used herein as defined therein):

(i) In the case of a Rule 144A Global Security, the owner is (1) a QIB and a Qualified Purchaser, (2) is aware that the sale of the Notes to it (other than the initial sale by the Issuer and the Co-Issuer, as applicable,) is being made in reliance on the exemption from registration provided by Rule 144A, and (3) is acquiring the Notes for its own account or for one or more accounts, each of which is a QIB and a Qualified Purchaser, and as to each of which the owner exercises sole investment discretion, (4) in a principal amount of not less than \$100,000, for each such account.

(ii) The owner understands that the Notes are being offered only in a transaction not involving any public offering in the United States within the meaning of the Securities Act, the Notes have not been and shall not be registered under the Securities Act, and, if in the future the owner decides to offer, resell, pledge or otherwise transfer the Notes, such Notes may only be offered, resold, pledged or otherwise transferred in accordance with this Indenture and the applicable legend on such Notes set forth in Exhibits A-1, A-2, B, C, D, E, F, G and H. The owner acknowledges that no representation is made by the Issuer, the Co-Issuer, or the Initial Purchaser, as the case

may be, as to the availability of any exemption under the Securities Act or any state securities laws for resale of the Notes.

(iii) The owner is not purchasing the Notes with a view to the resale, distribution or other disposition thereof in violation of the Securities Act. The owner understands that an investment in the Notes involves certain risks, including the risk of loss of all or a substantial part of its investment under certain circumstances. The owner has had access to such financial and other information concerning the Issuer, the Co-Issuer and the Notes as it deemed necessary or appropriate in order to make an informed investment decision with respect to its purchase of the Notes, including an opportunity to ask questions of and request information from the Collateral Manager, the Issuer and the Co-Issuer.

(iv) In connection with the purchase of the Notes (A) none of the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee is acting as a fiduciary or financial or investment adviser for the owner; (B) the owner is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee other than in a current offering memorandum for such Notes and any representations expressly set forth in a written agreement with such party; (C) none of the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee has given to the owner (directly or indirectly through any other person) any assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (including legal, regulatory, tax, financial, accounting, or otherwise) of its purchase, (D) the owner has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisers to the extent it has deemed necessary, and it has made its own investment decisions (including decisions regarding the suitability of any transaction pursuant to this Indenture) based upon its own judgment and upon any advice from such advisers as it has deemed necessary and not upon any view expressed by the Issuer, the Co-Issuer, the Initial Purchaser, the Collateral Manager or the Trustee; and (E) the owner is purchasing the Notes with a full understanding of all of the terms, conditions and risks thereof (economic and otherwise), and is capable of assuming and willing to assume (financially and otherwise) these risks.

(v) The owner understands that the Notes shall bear the applicable legend set forth in Exhibits A-1, A-2, B, C, D, E, F, G and H. The Rule 144A Global Securities may not at any time be held by or on behalf of any U.S. Person that is not a QIB who is a Qualified Purchaser. The owner must inform a prospective transferee of the transfer restrictions.

(vi) Unless a prospective Holder of a Note otherwise provides another representation acceptable to the Trustee, the Collateral Manager, the Issuer and the Co-Issuer, each Holder of a Global Security, by its acquisition thereof, shall be deemed to have represented to the Issuer, the Co-Issuer, the Collateral Manager and the Trustee that either (a) no part of the funds being used to pay the purchase price for such Notes constitutes an asset of any "employee benefit plan" (as defined in Section 3(3) of ERISA)

or "plan" (as defined in Section 4975(e)(1) of the Code) that is subject to ERISA or Section 4975 of the Code or any other plan which is subject to any

federal, state or local law ("Similar Law") that is substantially similar to Section 406 of ERISA or Section 4975 of the Code (each a "Benefit Plan" and funds of such a Benefit Plan, "Plan Assets"), or an entity whose underlying assets include Plan Assets of any such Benefit Plan, or (b) if the funds being used to pay the purchase price for such Notes include Plan Assets of any Benefit Plan, its purchase and holding are eligible for the exemptive relief from the prohibited transaction rules granted by Prohibited Transaction Class Exemption ("PTCE") 84-14, PTCE 90-1, PTCE 91-38, PTCE 95-60, PTCE 96-23, or a similar exemption, or in the case of any Benefit Plan subject to Similar Law, do not result in a non-exempt violation of Similar Law.

(vii) The owner shall not, at any time, offer to buy or offer to sell the Notes by any form of general solicitation or advertising, including, but not limited to, any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio or at a seminar or meeting whose attendees have been invited by general solicitations or advertising.

(viii) The owner is not a member of the public in the Cayman Islands, within the meaning of Section 194 of the Cayman Islands Companies Law (2004 Revision), unless the Issuer has been listed on the Cayman Islands Stock Exchange.

(ix) The owner understands that the Issuer, Co-Issuer, Trustee or Paying Agent shall require certification acceptable to it (A) as a condition to the payment of principal of and interest on any Notes without, or at a reduced rate of, U.S. withholding or backup withholding tax, and (B) to enable the Issuer, Co-Issuer, Trustee and Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to pay, deduct or withhold from payments in respect of such Notes or the Holder of such Notes under any present or future law or regulation of the Cayman Islands or the United States or any present or future law or regulation of any political subdivision thereof or taxing authority therein or to comply with any reporting or other requirements under any such law or regulation. Such certification may include U.S. federal income tax forms (such as IRS Form W-8BEN (Certification of Foreign Status of Beneficial Owner), IRS Form W-8IMY (Certification of Foreign Intermediary Status), IRS Form W-9 (Request for Taxpayer Identification Number and Certification), or IRS Form W-8ECI (Certification of Foreign Person's Claim for Exemption from Withholding on Income Effectively Connected with Conduct of a U.S. Trade or Business) or any successors to such IRS forms). In addition, the Issuer, Co-Issuer, Trustee or Paying Agent may require certification acceptable to it to enable the Issuer to qualify for a reduced rate of withholding in any jurisdiction from or through which the Issuer receives payments on its assets. Each owner agrees to provide any certification requested pursuant to this paragraph and to update or replace such form or certification in accordance with its terms or its subsequent amendments.

(x) The owner hereby agrees that, for purposes of U.S. federal, state and local income and franchise tax and any other income taxes, (A) the Notes will be treated as indebtedness, and (B) the Preferred Shares will be treated as equity; the owner agrees to

-90-

such treatment and agrees to take no action inconsistent with such treatment, unless required by law.

(xi) The owner, if not a "United States person" (as defined in Section 7701(a)(30) of the Code), either: (A) is not a bank (within the meaning of Section 881(c)(3)(A) of the Code); (B) is a bank (within the meaning of Section 881(c)(3)(A) of the Code) that has provided an IRS Form W-8ECI representing that all payments received or to be received by it from the

Issuer are effectively connected with the conduct of a trade or business in the United States; or (C) is a bank (within the meaning of Section 881(c)(3)(A) of the Code) and it is eligible for benefits under an income tax treaty with the United States that eliminates U.S. federal income taxation of U.S. source interest not attributable to a permanent establishment in the United States and the Issuer is treated as a fiscally transparent entity (as defined in Treasury Regulations section 1.894-1(d)(3)(ii)) under the laws of owner's jurisdiction with respect to payments made on the Collateral Debt Securities held by the owner.

(h) Each beneficial owner of Regulation S Global Securities shall be deemed to have made the representations set forth in clauses (ii), (iii), (iv), (vi), (vii), (viii), (ix), (x) and (xi) of Section 2.5(g) and shall be deemed to have further represented and agreed as follows:

(i) The owner is aware that the sale of such Notes to it is being made in reliance on the exemption from registration provided by Regulation S and understands that the Notes offered in reliance on Regulation S will bear the appropriate legend set forth in Exhibits A-1, A-2, B, C, D, E, F, G and H hereto, and be represented by one or more Regulation S Global Securities. The Notes so represented may not at any time be held by or on behalf of U.S. Persons. Each of the owner and the related Holder is not, and shall not be, a U.S. Person. Before any interest in a Regulation S Global Security may be offered, resold, pledged or otherwise transferred to a person who takes delivery in the form of a Rule 144A Global Security, the transferee shall be required to provide the Trustee with a written certification substantially in the form of Exhibits I and J (as applicable) hereto as to compliance with the transfer restrictions. The owner must inform a prospective transferee of the transfer restrictions.

(j) Any purported transfer of a Note not in accordance with this Section 2.5 shall be null and void and shall not be given effect for any purpose hereunder.

(k) Notwithstanding anything contained in this Indenture to the contrary, neither the Trustee nor the Notes Registrar (nor any other Transfer Agent) shall be responsible or liable for compliance with applicable federal or state securities laws (including, without limitation, the Securities Act or Rule 144A or Regulation S promulgated thereunder), the Investment Company Act, ERISA or the Code (or any applicable regulations thereunder); provided, however, that if a specified transfer certificate or Opinion of Counsel is required by the express terms of this Section 2.5 to be delivered to the Trustee or Notes Registrar prior to registration of transfer of a Note, the Trustee and/or Notes Registrar, as applicable, is required to request, as a condition for registering the transfer of the Note, such certificate or Opinion of Counsel and to examine the same to determine whether it conforms on its face to the

-91-

requirements hereof (and the Trustee or Notes Registrar, as the case may be, shall promptly notify the party delivering the same if it determines that such certificate or Opinion of Counsel does not so conform).

(l) If the Trustee determines or is notified by the Issuer, Co-Issuer or the Collateral Manager that (i) a transfer or attempted or purported transfer of any interest in any Note was consummated in compliance with the provisions of this Section 2.5 on the basis of a materially incorrect certification from the transferee or purported transferee, (ii) a transferee failed to deliver to the Trustee any certification required to be delivered hereunder or (iii) the holder of any interest in a Note is in breach of any representation or agreement set forth in any certification or any deemed representation or agreement of such holder, the Trustee shall not register such attempted or purported transfer and if a transfer has been registered, such transfer shall be absolutely null and void ab initio and shall vest no rights in the purported transferee (such purported transferee, a "Disqualified Transferee") and the last preceding holder

of such interest in such Note that was not a Disqualified Transferee shall be restored to all rights as a Holder thereof retroactively to the date of transfer of such Note by such Holder.

In addition, the Trustee may require that the interest in the Note referred to in (i), (ii) or (iii) in the preceding paragraph be transferred to any person designated by the Issuer or the Collateral Manager at a price determined by the Issuer or the Collateral Manager, as applicable, based upon its estimation of the prevailing price of such interest and each Holder, by acceptance of an interest in a Note, authorizes the Trustee to take such action. In any case, the Trustee shall not be held responsible for any losses that may be incurred as a result of any required transfer under this Section 2.5(1).

(m) Each Holder of Notes approves and consents to (i) the initial purchase of the Collateral Debt Securities by the Issuer from Affiliates of the Collateral Manager on or prior to the Closing Date and (ii) any other transaction between the Issuer and the Collateral Manager or its Affiliates that are permitted under the terms of this Indenture or the Collateral Management Agreement.

Section 2.6 Mutilated, Defaced, Destroyed, Lost or Stolen Note.

If (a) any mutilated or defaced Note is surrendered to a Transfer Agent, or if there shall be delivered to the Issuer, the Co-Issuer, the Trustee and the relevant Transfer Agent (each a "Specified Person") evidence to their reasonable satisfaction of the destruction, loss or theft of any Note, and (b) there is delivered to the Specified Person such security or indemnity as may be required by each Specified Person to save each of them and any agent of any of them harmless (an unsecured indemnity agreement delivered to the Trustee by an institutional investor with a net worth of at least \$200,000,000 being deemed sufficient to satisfy such security or indemnity requirement), then, in the absence of notice to the Specified Persons that such Note has been acquired by a bona fide purchaser, the Issuer and the Co-Issuer shall execute and, upon Issuer Request, the Trustee shall authenticate and deliver, in lieu of any such mutilated, defaced, destroyed, lost or stolen Note, a new Note, of like tenor (including the same date of issuance) and equal principal amount, registered in the same manner, dated the date of its authentication, bearing interest from the date to which interest has been paid on the mutilated, defaced, destroyed, lost or stolen Note and bearing a number not contemporaneously outstanding.

-92-

If, after delivery of such new Note, a bona fide purchaser of the predecessor Note presents for payment, transfer or exchange such predecessor Note, any Specified Person shall be entitled to recover such new Note from the Person to whom it was delivered or any Person taking therefrom, and each Specified Person shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by such Specified Person in connection therewith.

In case any such mutilated, defaced, destroyed, lost or stolen Note has become due and payable, the Issuer and the Co-Issuer, if applicable, in their discretion may, instead of issuing a new Note, pay such Note without requiring surrender thereof except that any mutilated or defaced Note shall be surrendered.

Upon the issuance of any new Note under this Section 2.6, the Issuer and the Co-Issuer, if applicable, may require the payment by the registered Holder thereof of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Note issued pursuant to this Section 2.6 in lieu of any mutilated, defaced, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Issuer and the Co-Issuer, if

applicable, and such new Note shall be entitled, subject to the second paragraph of this Section 2.6, to all the benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 2.6 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, defaced, destroyed, lost or stolen Notes.

Section 2.7 Payment of Principal and Interest and Other Amounts;
Principal and Interest Rights Preserved.

(a) The Class A-1 Notes shall accrue interest during each Interest Accrual Period at the Class A-1 Rate. Interest on each Class A-1 Note shall be due and payable on each Payment Date immediately following the related Interest Accrual Period in the proportion that the outstanding principal amount of such Class A-1 Note bears to the Aggregate Outstanding Amount of all Class A-1 Notes; provided, however, that the payment of interest on the Class A-1 Notes is subordinated to the payment on each Payment Date of certain amounts in accordance with the Priority of Payments.

(b) The Class A-2 Notes shall accrue interest during each Interest Accrual Period at the Class A-2 Rate. Interest on each Class A-2 Note shall be due and payable on each Payment Date immediately following the related Interest Accrual Period in the proportion that the outstanding principal amount of such Class A-2 Note bears to the Aggregate Outstanding Amount of all Class A-2 Notes; provided, however, that payment of interest on the Class A-2 Notes is subordinated to the payment on each Payment Date of the interest due and payable on the Class A-1 Notes (including any Class A-1 Defaulted Interest Amount) and certain other amounts in accordance with the Priority of Payments.

-93-

(c) The Class B Notes shall accrue interest during each Interest Accrual Period at the Class B Rate. Interest on each Class B Note shall be due and payable on each Payment Date immediately following the related Interest Accrual Period in the proportion that the outstanding principal amount of such Class B Note bears to the Aggregate Outstanding Amount of all Class B Notes; provided, however, that payment of interest on the Class B Notes is subordinated to the payment on each Payment Date of the interest due and payable on the Class A-1 Notes and the Class A-2 Notes (including any Class A-1 Defaulted Interest Amount and any Class A-2 Defaulted Interest Amount) and certain other amounts in accordance with the Priority of Payments.

(d) The Class C Notes shall accrue interest during each Interest Accrual Period at the Class C Rate. Interest on each Class C Note shall be due and payable on each Payment Date immediately following the related Interest Accrual Period in the proportion that the outstanding principal amount of such Class C Note bears to the Aggregate Outstanding Amount of all Class C Notes; provided, however, that payment of interest on the Class C Notes is subordinated to the payment on each Payment Date of the interest due and payable on the Class A-1 Notes, the Class A-2 Notes and the Class B Notes (including any Class A-1 Defaulted Interest Amount, any Class A-2 Defaulted Interest Amount and Class B Defaulted Interest Amount) and certain other amounts in accordance with the Priority of Payments.

For so long as any Class B Notes are Outstanding, any payment of interest due on the Class C Notes which is not available to be paid (the "Class C Capitalized Interest") in accordance with the Priority of Payments on any Payment Date shall not be considered "due and payable" for the purpose of Section 5.1(a) hereof (and the failure to pay such Class C Capitalized Interest shall not be an Event of Default) until the Payment Date on which funds are available to pay all or any portion of such Class C Capitalized Interest in accordance with the Priority of Payments. On or after such Payment Date, only such portion of any payment of Class C Capitalized Interest for which funds are available in accordance with the Priority of Payments shall be considered "due

and payable" and the failure to pay such portion of Class C Capitalized Interest shall be an Event of Default. Class C Capitalized Interest shall be added to the principal amount of the Class C Notes, shall bear interest thereafter at the Class C Rate (to the extent lawful) and shall be payable on the first Payment Date on which funds are permitted to be used for such purpose in accordance with the Priority of Payments. On or after the Payment Date on which the Class B Notes are no longer Outstanding, to the extent interest is due (excluding any previously deferred Class C Capitalized Interest) but not paid on the Class C Notes, the failure to pay such interest shall constitute an Event of Default hereunder.

(e) The Class D Notes shall accrue interest during each Interest Accrual Period at the Class D Rate. Interest on each Class D Note shall be due and payable on each Payment Date immediately following the related Interest Accrual Period in the proportion that the outstanding principal amount of such Class D Note bears to the Aggregate Outstanding Amount of all Class D Notes; provided, however, that payment of interest on the Class D Notes is subordinated to the payment on each Payment Date of the interest due and payable on the Class A-1 Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes (including any Class A-1 Defaulted Interest Amount, any Class A-2 Defaulted Interest Amount, Class B Defaulted Interest Amount, Class C Defaulted Interest Amount and Class C Capitalized Interest) and certain other amounts in accordance with the Priority of Payments.

-94-

For so long as any Class C Notes are Outstanding, any payment of interest due on the Class D Notes which is not available to be paid ("Class D Capitalized Interest") in accordance with the Priority of Payments on any Payment Date shall not be considered "due and payable" for the purpose of Section 5.1(a) hereof (and the failure to pay such Class D Capitalized Interest shall not be an Event of Default) until the Payment Date on which funds are available to pay all or any portion of such Class D Capitalized Interest in accordance with the Priority of Payments. On or after such Payment Date, only such portion of any payment of Class D Capitalized Interest for which funds are available in accordance with the Priority of Payments shall be considered "due and payable" and the failure to pay such portion of Class D Capitalized Interest shall be an Event of Default. Class D Capitalized Interest shall be added to the principal amount of the Class D Notes, shall bear interest thereafter at the Class D Rate (to the extent lawful) and shall be payable on the first Payment Date on which funds are permitted to be used for such purpose in accordance with the Priority of Payments. On or after the Payment Date on which the Class C Notes are no longer Outstanding, to the extent interest is due (excluding any previously deferred Class D Capitalized Interest) but not paid on the Class D Notes, the failure to pay such interest shall constitute an Event of Default hereunder.

(f) The Class E Notes shall accrue interest during each Interest Accrual Period at the Class E Rate. Interest on each Class E Note shall be due and payable on each Payment Date immediately following the related Interest Accrual Period in the proportion that the outstanding principal amount of such Class E Note bears to the Aggregate Outstanding Amount of all Class E Notes; provided, however, that payment of interest on the Class E Notes is subordinated to the payment on each Payment Date of the interest due and payable on the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes (including any Class A-1 Defaulted Interest Amount, any Class A-2 Defaulted Interest Amount, Class B Defaulted Interest Amount, Class C Defaulted Interest Amount, Class C Capitalized Interest, Class D Defaulted Interest Amount and Class D Capitalized Interest) and certain other amounts in accordance with the Priority of Payments.

For so long as any Class D Notes are Outstanding, any payment of interest due on the Class E Notes which is not available to be paid (the "Class E Capitalized Interest") in accordance with the Priority of Payments on any Payment Date shall not be considered "due and payable" for the purpose of

Section 5.1(a) hereof (and the failure to pay such Class E Capitalized Interest shall not be an Event of Default) until the Payment Date on which funds are available to pay all or any portion of such Class E Capitalized Interest in accordance with the Priority of Payments. On or after such Payment Date, only such portion of any payment of Class E Capitalized Interest for which funds are available in accordance with the Priority of Payments shall be considered "due and payable" and the failure to pay such portion of Class E Capitalized Interest shall be an Event of Default. Class E Capitalized Interest shall be added to the principal amount of the Class E Notes, shall bear interest thereafter at the Class E Rate (to the extent lawful) and shall be payable on the first Payment Date on which funds are permitted to be used for such purpose in accordance with the Priority of Payments. On or after the Payment Date on which the Class D Notes are no longer Outstanding, to the extent interest is due (excluding any previously deferred Class E Capitalized Interest) but not paid on the Class E Notes, the failure to pay such interest shall constitute an Event of Default hereunder.

-95-

(g) The Class F Notes shall accrue interest during each Interest Accrual Period at the Class F Rate. Interest on each Class F Note shall be due and payable on each Payment Date immediately following the related Interest Accrual Period in the proportion that the outstanding principal amount of such Class F Note bears to the Aggregate Outstanding Amount of all Class F Notes; provided, however, that payment of interest on the Class F Notes is subordinated to the payment on each Payment Date of the interest due and payable on the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes (including any Class A-1 Defaulted Interest Amount, any Class A-2 Defaulted Interest Amount, Class B Defaulted Interest Amount, Class C Defaulted Interest Amount, Class C Capitalized Interest, Class D Defaulted Interest Amount, Class D Capitalized Interest, Class E Defaulted Interest Amount and Class E Capitalized Interest) and certain other amounts in accordance with the Priority of Payments.

For so long as any Class E Notes are Outstanding, any payment of interest due on the Class F Notes which is not available to be paid ("Class F Capitalized Interest") in accordance with the Priority of Payments on any Payment Date shall not be considered "due and payable" for the purpose of Section 5.1(a) hereof (and the failure to pay such Class F Capitalized Interest shall not be an Event of Default) until the Payment Date on which funds are available to pay all or any portion of such Class F Capitalized Interest in accordance with the Priority of Payments. On or after such Payment Date, only such portion of any payment of Class F Capitalized Interest for which funds are available in accordance with the Priority of Payments shall be considered "due and payable" and the failure to pay such portion of Class F Capitalized Interest shall be an Event of Default. Class F Capitalized Interest shall be added to the principal amount of the Class F Notes, shall bear interest thereafter at the Class F Rate (to the extent lawful) and shall be payable on the first Payment Date on which funds are permitted to be used for such purpose in accordance with the Priority of Payments. On or after the Payment Date on which the Class E Notes are no longer Outstanding, to the extent interest is due (excluding any previously deferred Class F Capitalized Interest) but not paid on the Class F Notes, the failure to pay such interest shall constitute an Event of Default hereunder.

(h) The Class G Notes shall accrue interest during each Interest Accrual Period at the Class G Rate. Interest on each Class G Note shall be due and payable on each Payment Date immediately following the related Interest Accrual Period in the proportion that the outstanding principal amount of such Class G Note bears to the Aggregate Outstanding Amount of all Class G Notes; provided, however, that payment of interest on the Class G Notes is subordinated to the payment on each Payment Date of the interest due and payable on the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes and the Class F Notes (including any Class A-1 Defaulted Interest Amount, any Class A-2 Defaulted Interest Amount, Class B

Defaulted Interest Amount, Class C Defaulted Interest Amount, Class C Capitalized Interest, Class D Defaulted Interest Amount, Class D Capitalized Interest, Class E Defaulted Interest Amount, Class E Capitalized Interest, Class F Defaulted Interest Amount and Class F Capitalized Interest) and certain other amounts in accordance with the Priority of Payments.

For so long as any Class F Notes are Outstanding, any payment of interest due on the Class G Notes which is not available to be paid (the "Class G Capitalized Interest") in accordance with the Priority of Payments on any Payment Date shall not be considered "due and

-96-

payable" for the purpose of Section 5.1(a) hereof (and the failure to pay such Class G Capitalized Interest shall not be an Event of Default) until the Payment Date on which funds are available to pay all or any portion of such Class G Capitalized Interest in accordance with the Priority of Payments. On or after such Payment Date, only such portion of any payment of Class G Capitalized Interest for which funds are available in accordance with the Priority of Payments shall be considered "due and payable" and the failure to pay such portion of Class G Capitalized Interest shall be an Event of Default. Class G Capitalized Interest shall be added to the principal amount of the Class G Notes, shall bear interest thereafter at the Class G Rate (to the extent lawful) and shall be payable on the first Payment Date on which funds are permitted to be used for such purpose in accordance with the Priority of Payments. On or after the Payment Date on which the Class F Notes are no longer Outstanding, to the extent interest is due (excluding any previously deferred Class G Capitalized Interest) but not paid on the Class G Notes, the failure to pay such interest shall constitute an Event of Default hereunder.

(i) The Class H Notes shall accrue interest during each Interest Accrual Period at the Class H Rate. Interest on each Class H Note shall be due and payable on each Payment Date immediately following the related Interest Accrual Period in the proportion that the outstanding principal amount of such Class H Note bears to the Aggregate Outstanding Amount of all Class H Notes; provided, however, that payment of interest on the Class H Notes is subordinated to the payment on each Payment Date of the interest due and payable on the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes (including any Class A-1 Defaulted Interest Amount, any Class A-2 Defaulted Interest Amount, Class B Defaulted Interest Amount, Class C Defaulted Interest Amount, Class C Capitalized Interest, Class D Defaulted Interest Amount, Class D Capitalized Interest, Class E Defaulted Interest Amount, Class E Capitalized Interest, Class F Defaulted Interest Amount, Class F Capitalized Interest, Class G Defaulted Interest Amount and Class G Capitalized Interest) and certain other amounts in accordance with the Priority of Payments.

For so long as any Class G Notes are Outstanding, any payment of interest due on the Class H Notes which is not available to be paid ("Class H Capitalized Interest") in accordance with the Priority of Payments on any Payment Date shall not be considered "due and payable" for the purpose of Section 5.1(a) hereof (and the failure to pay such Class H Capitalized Interest shall not be an Event of Default) until the Payment Date on which funds are available to pay all or any portion of such Class H Capitalized Interest in accordance with the Priority of Payments. On or after such Payment Date, only such portion of any payment of Class H Capitalized Interest for which funds are available in accordance with the Priority of Payments shall be considered "due and payable" and the failure to pay such portion of Class H Capitalized Interest shall be an Event of Default. Class H Capitalized Interest shall be added to the principal amount of the Class H Notes, shall bear interest thereafter at the Class H Rate (to the extent lawful) and shall be payable on the first Payment Date on which funds are permitted to be used for such purpose in accordance with the Priority of Payments. On or after the Payment Date on which the Class G Notes are no longer Outstanding, to the extent interest is due (excluding any previously deferred Class H Capitalized Interest) but not paid on the Class H

Notes, the failure to pay such interest shall constitute an Event of Default hereunder.

-97-

(j) Upon any Optional Redemption, Tax Redemption, Auction Call Redemption or Clean-up Call, all net proceeds remaining after the sale of the Collateral Debt Securities in accordance with Article 12 hereof and Cash and proceeds from Eligible Investments (other than the Issuer's right, title and interest in the property described in clause (i) of the definition of "Excepted Assets"), after the payment of the amounts referred to in subclauses (1) through (23), (26), (27) and (28) of Section 11.1(a)(i) and subclauses (1) through (12) of Section 11.1(a)(ii) will be distributed by the Trustee to the Preferred Shares Paying Agent for distribution to the holders of the Preferred Shares, whereupon the Preferred Shares will be cancelled and deemed paid in full for all purposes.

(k) Interest shall cease to accrue on each Class of Notes, or in the case of a partial repayment, on such part, from the date of repayment or Stated Maturity unless payment of principal is improperly withheld or unless a Default has occurred with respect to such payments of principal.

(l) The principal of each Class of Notes matures at par and is due and payable on the Stated Maturity, unless the unpaid principal of such Class of Notes becomes due and payable at an earlier date by declaration of acceleration, call for redemption or otherwise; provided, however, that the payment of principal of the Class A-2 Notes (other than payment of principal pursuant to Section 9.6 or Section 9.7) may only occur after the principal of the Class A-1 Notes has been paid in full and is subordinated to the payment of each Payment Date of the principal and interest due and payable on the Class A-1 Notes and other amounts in accordance with the Priority of Payments and any payment of principal of the Class A-2 Notes which is not paid, in accordance with the Priority of Payments, on any Payment Date, shall not be considered "due and payable" solely for purposes of Section 5.1(b) until the Payment Date on which such principal may be paid in accordance with the Priority of Payments or all of the Class A-1 Notes have been paid in full; provided, further, that the payment of principal of the Class B Notes (other than payment of principal pursuant to Section 9.6 or Section 9.7) may only occur after the principal of the Class A-1 Notes and the Class A-2 Notes has been paid in full and is subordinated to the payment on each Payment Date of the principal and interest due and payable on the Class A-1 Notes, the Class A-2 Notes and other amounts in accordance with the Priority of Payments and any payment of principal of the Class B Notes which is not paid, in accordance with the Priority of Payments, on any Payment Date, shall not be considered "due and payable" solely for purposes of Section 5.1(b) until the Payment Date on which such principal may be paid in accordance with the Priority of Payments or all of the

-98-

Class A-1 Notes and the Class A-2 Notes have been paid in full; provided, further, that the payment of principal of the Class C Notes (other than payment of the amounts constituting Class C Capitalized Interest, notwithstanding that such Class C Capitalized Interest may be deemed to constitute additions to principal, and other than the payment of principal pursuant to Section 9.6 or Section 9.7) may only occur after the principal of the Class A-1 Notes, the Class A-2 Notes and the Class B Notes has been paid in full and is subordinated to the payment on each Payment Date of the principal and interest due and payable on the Class A-1 Notes, the Class A-2 Notes, the Class B Notes and other amounts in accordance with the Priority of Payments and any payment of principal of the Class C Notes which is not paid, in accordance with the Priority of Payments, on any Payment Date, shall not be considered "due and payable" solely for purposes of Section 5.1(b) until the Payment Date on which such principal

may be paid in accordance with the Priority of Payments or all of the Class A-1 Notes, the Class A-2 Notes and the Class B Notes have been paid in full; provided, further, that the payment of principal of the Class D Notes (other than payment of the amounts constituting Class D Capitalized Interest, notwithstanding that such Class D Capitalized Interest may be deemed to constitute additions to principal, and other than the payment of principal pursuant to Section 9.6 or Section 9.7) may only occur after the principal of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes has been paid in full and is subordinated to the payment on each Payment Date of the principal and interest due and payable on the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and other amounts in accordance with the Priority of Payments and any payment of principal of the Class D Notes which is not paid, in accordance with the Priority of Payments, on any Payment Date, shall not be considered "due and payable" solely for purposes of Section 5.1(b) until the Payment Date on which such principal may be paid in accordance with the Priority of Payments or all of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes have been paid in full; provided, further, that the payment of principal of the Class E Notes (other than payment of the amounts constituting Class E Capitalized Interest, notwithstanding that such Class E Capitalized Interest may be deemed to constitute additions to principal, and other than the payment of principal pursuant to Section 9.6 or Section 9.7) may only occur after the principal of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes has been paid in full and is subordinated to the payment on each Payment Date of the principal and interest due and payable on the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes and other amounts in accordance with the Priority of Payments and any payment of principal of the Class E Notes which is not paid, in accordance with the Priority of Payments, on any Payment Date, shall not be considered "due and payable" solely for purposes of Section 5.1(b) until the Payment Date on which such principal may be paid in accordance with the Priority of Payments or all of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes have been paid in full; provided, further, that the payment of principal of the Class F Notes (other than payment of the amounts constituting Class F Capitalized Interest, notwithstanding that such Class F Capitalized Interest may be deemed to constitute additions to principal, and other than the payment of principal pursuant to Section 9.6 or Section 9.7) may only occur after the principal of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes has been paid in full and is subordinated to the payment on each Payment Date of the principal and interest due and payable on the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes and other amounts in accordance with the Priority of Payments and any payment of principal of the Class F Notes which is not paid, in accordance with the Priority of Payments, on any Payment Date, shall not be considered "due and payable" solely for purposes of Section 5.1(b) until the Payment Date on which such principal may be paid in accordance with the Priority of Payments or all of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes have been paid in full; provided, further, that the payment of principal of the Class G Notes (other than payment of the amounts constituting Class G Capitalized Interest, notwithstanding that such Class G Capitalized Interest may be deemed to constitute additions to principal, and other than the payment of principal pursuant to Section 9.6 or Section 9.7) may only occur after the principal of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes and the Class F Notes has been

paid in full and is subordinated to the payment on each Payment Date of the principal and interest due and payable on the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and other amounts in accordance with the Priority of Payments and any payment of principal of the Class G Notes which is not paid, in accordance with the Priority of Payments, on any Payment Date, shall not be

considered "due and payable" solely for purposes of Section 5.1(b) until the Payment Date on which such principal may be paid in accordance with the Priority of Payments or all of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes and the Class F Notes have been paid in full; provided, further, that the payment of principal of the Class H Notes (other than payment of the amounts constituting Class H Capitalized Interest, notwithstanding that such Class H Capitalized Interest may be deemed to constitute additions to principal, and other than the payment of principal pursuant to Section 9.6 or Section 9.7) may only occur after the principal of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes has been paid in full and is subordinated to the payment on each Payment Date of the principal and interest due and payable on the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and other amounts in accordance with the Priority of Payments and any payment of principal of the Class H Notes which is not paid, in accordance with the Priority of Payments, on any Payment Date, shall not be considered "due and payable" solely for purposes of Section 5.1(b) until the Payment Date on which such principal may be paid in accordance with the Priority of Payments or all of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes have been paid in full.

(m) As a condition to the payment of principal of and interest on any Note without the imposition of U.S. withholding tax, the Issuer shall require certification acceptable to it to enable the Issuer, the Co-Issuer, the Trustee, the Preferred Shares Paying Agent and the Paying Agent to determine their duties and liabilities with respect to any taxes or other charges that they may be required to deduct or withhold from payments in respect of such Security under any present or future law or regulation of the United States or any present or future law or regulation of any political subdivision thereof or taxing authority therein or to comply with any reporting or other requirements under any such law or regulation.

(n) Payments in respect of interest on and principal of the Notes shall be payable by wire transfer in immediately available funds to a Dollar account maintained by the Holder or its nominee; provided that the Holder has provided wiring instructions to the Trustee on or before the related Record Date or, if wire transfer cannot be effected, by a Dollar check drawn on a bank in the United States, or by a Dollar check mailed to the Holder at its address in the Notes Register. The Issuer expects that the Depository or its nominee, upon receipt of any payment of principal or interest in respect of a Global Security held by the Depository or its nominee, shall immediately credit the applicable Agent Members' accounts with payments in amounts proportionate to the respective beneficial interests in such Global Security as shown on the records of the Depository or its nominee. The Issuer also expects that payments by Agent Members to owners of beneficial interests in such Global Security held through Agent Members will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers registered in the names of nominees

-100-

for such customers. Such payments will be the responsibility of the Agent Members. Upon final payment due on the Maturity of a Note, the Holder thereof shall present and surrender such Note at the Corporate Trust Office of the Trustee or at the office of the Paying Agent (outside of the United States if then required by applicable law in the case of a Certificated Note issued in exchange for a beneficial interest in the Regulation S Global Security) on or prior to such Maturity. None of the Issuer, the Co-Issuer, the Trustee or the Paying Agent will have any responsibility or liability with respect to any records maintained by the Holder of any Note with respect to the beneficial holders thereof or payments made thereby on account of beneficial interests held therein. In the case where any final payment of principal and interest is to be made on any Note (other than on the Stated Maturity thereof) the Issuer or, upon Issuer Request, the Trustee, in the name and at the expense of the Issuer shall,

not more than 30 nor fewer than five Business Days prior to the date on which such payment is to be made, mail to the Persons entitled thereto at their addresses appearing on the Notes Register, a notice which shall state the date on which such payment will be made and the amount of such payment per \$500,000 initial principal amount of Notes and shall specify the place where such Notes may be presented and surrendered for such payment.

(o) Subject to the provisions of Sections 2.7(a) through (l) and Section 2.7(t) hereof, Holders of Notes as of the Record Date in respect of a Payment Date shall be entitled to the interest accrued and payable in accordance with the Priority of Payments and principal payable in accordance with the Priority of Payments on such Payment Date. All such payments that are mailed or wired and returned to the Paying Agent shall be held for payment as herein provided at the office or agency of the Issuer and the Co-Issuer to be maintained as provided in Section 7.2 (or returned to the Trustee).

(p) Interest on any Note which is payable, and is punctually paid or duly provided for, on any Payment Date shall be paid to the Person in whose name that Note (or one or more predecessor Notes) is registered at the close of business on the Record Date for such interest.

(q) Payments of principal to Holders of the Notes of each Class shall be made in the proportion that the Aggregate Outstanding Amount of the Notes of such Class registered in the name of each such Holder on such Record Date bears to the Aggregate Outstanding Amount of all Notes of such Class on such Record Date.

(r) Interest accrued with respect to the Notes shall be calculated as described in the applicable form of Note attached hereto.

(s) All reductions in the principal amount of a Note (or one or more predecessor Notes) effected by payments of installments of principal made on any Payment Date, Redemption Date or upon Maturity shall be binding upon all future Holders of such Note and of any Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, whether or not such payment is noted on such Note.

(t) Notwithstanding anything contained in this Indenture to the contrary, the obligations of the Issuer and the Co-Issuer under the Notes and this Indenture are non-recourse obligations of the Issuer and the Co-Issuer payable solely from the Assets and following

-101-

realization of the Assets, any claims of the Noteholders or the Trustee shall be extinguished. No recourse shall be had for the payment of any amount owing in respect of the Notes against any Officer, director, employee, shareholder, limited partner or incorporator of the Issuer, the Co-Issuer or any of their respective successors or assigns for any amounts payable under the Notes or this Indenture. It is understood that the foregoing provisions of this paragraph shall not (i) prevent recourse to the Assets for the sums due or to become due under any security, instrument or agreement which is part of the Assets or (ii) constitute a waiver, release or discharge of any indebtedness or obligation evidenced by the Notes or secured by this Indenture (to the extent it relates to the obligation to make payments on the Notes) until such Assets have been realized, whereupon any outstanding indebtedness or obligation in respect of the Notes shall be extinguished. It is further understood that the foregoing provisions of this paragraph shall not limit the right of any Person to name the Issuer or the Co-Issuer as a party defendant in any Proceeding or in the exercise of any other remedy under the Notes or this Indenture, so long as no judgment in the nature of a deficiency judgment or seeking personal liability shall be asked for or (if obtained) enforced against any such Person or entity.

(u) Subject to the foregoing provisions of this Section 2.7, each Note delivered under this Indenture and upon registration of transfer of or in

exchange for or in lieu of any other Note shall carry the rights of unpaid interest and principal that were carried by such other Note.

(v) Notwithstanding any of the foregoing provisions with respect to payments of principal of and interest on the Notes (but subject to Sections 2.7(l) and (t)), if the Notes have become or been declared due and payable following an Event of Default and such acceleration of Maturity and its consequences have not been rescinded and annulled and the provisions of Section 5.5 are not applicable, then payments of principal of and interest on such Notes shall be made in accordance with Section 5.7 hereof.

(w) Payments in respect of the Preferred Shares as contemplated by Sections 11.1(a)(i)(29) and 11.1(a)(ii)(13) shall be made by the Trustee to the Preferred Shares Paying Agent.

Section 2.8 Persons Deemed Owners.

The Issuer, the Co-Issuer, the Trustee, and any agent of the Issuer, the Co-Issuer or the Trustee may treat as the owner of a Note the Person in whose name such Note is registered on the Notes Register on the applicable Record Date for the purpose of receiving payments of principal of and interest and other amounts on such Note and on any other date for all other purposes whatsoever (whether or not such Note is overdue), and none of the Issuer, the Co-Issuer or the Trustee nor any agent of the Issuer, the Co-Issuer or the Trustee shall be affected by notice to the contrary; provided, however, that the Depository, or its nominee, shall be deemed the owner of the Global Securities, and owners of beneficial interests in Global Securities will not be considered the owners of any Notes for the purpose of receiving notices. With respect to the Preferred Shares, on any Payment Date, the Trustee shall deliver to the Preferred Shares Paying Agent the distributions thereon for distribution to the Preferred Shareholders.

-102-

Section 2.9 Cancellation.

All Notes surrendered for payment, registration of transfer, exchange or redemption, or deemed lost or stolen, shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and shall be promptly canceled by the Trustee and may not be reissued or resold. No Notes shall be authenticated in lieu of or in exchange for any Notes canceled as provided in this Section 2.9, except as expressly permitted by this Indenture. All canceled Notes held by the Trustee shall be destroyed or held by the Trustee in accordance with its standard retention policy unless the Issuer and the Co-Issuer shall direct by an Issuer Order that they be returned to them.

Section 2.10 Global Securities; Temporary Notes.

(a) In the event that the Depository notifies the Issuer and the Co-Issuer that it is unwilling or unable to continue as Depository for a Global Security or if at any time such Depository ceases to be a "Clearing Agency" registered under the Exchange Act and a successor depository is not appointed by the Issuer within 90 days of such notice, the Global Securities deposited with the Depository pursuant to Section 2.2 hereof shall be transferred to the beneficial owners thereof subject to the procedures and conditions set forth in this Section 2.10.

(b) Any Global Security that is transferable to the beneficial owners thereof pursuant to Section 2.10(a) above shall be surrendered by the Depository to the Trustee's Corporate Trust Office together with necessary instruction for the registration and delivery of Class A-1 Notes, the Class A-2 Notes, Class B Notes, Class C Notes, Class D Notes, Class E Notes, Class F Notes, Class G Notes and Class H Notes in definitive registered form without interest coupons (each, a "Certificated Note") to the beneficial owners (or such owner's nominee) holding the ownership interests in such Global Security. Any such transfer shall

be made, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Security, an equal aggregate principal amount of Certificated Notes of the same Class and authorized denominations. Any Certificated Notes delivered in exchange for an interest in a Global Security shall, except as otherwise provided by Section 2.5(f), bear the applicable legend set forth in Exhibits A-1, A-2, B, C, D, E, F, G and H, and shall be subject to the transfer restrictions referred to in such applicable legend. The Holder of each such registered individual Global Security may transfer such Global Security by surrendering it at the Corporate Trust Office of the Trustee, or at the office of the Paying Agent or Irish Paying Agent.

(c) Subject to the provisions of Section 2.10(b) above, the registered Holder of a Global Security may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Notes.

(d) In the event of the occurrence of either of the events specified in Section 2.10(a) above, the Issuer and the Co-Issuer shall promptly make available to the Trustee a reasonable supply of Certificated Notes.

-103-

Pending the preparation of Certificated Notes pursuant to this Section 2.10, the Issuer and the Co-Issuer may execute and, upon Issuer Order, the Trustee shall authenticate and deliver, temporary Class A-1 Notes, Class A-2 Notes, Class B Notes, Class C Notes, Class D Notes, Class E Notes, Class F Notes, Class G Notes or Class H Notes that are printed, lithographed, typewritten, mimeographed or otherwise reproduced, in any authorized denomination, substantially of the tenor of the Certificated Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Officers executing such Certificated Notes may determine, as conclusively evidenced by their execution of such Certificated Notes.

If temporary Certificated Notes are issued, the Issuer and the Co-Issuer shall cause permanent Certificated Notes to be prepared without unreasonable delay. The Certificated Notes shall be printed, lithographed, typewritten or otherwise reproduced, or provided by any combination thereof, or in any other manner permitted by the rules and regulations of any applicable notes exchange, all as determined by the Officers executing such Certificated Notes. After the preparation of Certificated Notes, the temporary Notes shall be exchangeable for Certificated Notes upon surrender of the applicable temporary Class A-1 Notes, Class A-2 Notes, Class B Notes, Class C Notes, Class D Notes, Class E Notes, Class F Notes, Class G Notes or Class H Notes at the office or agency maintained by the Issuer and the Co-Issuer for such purpose, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Class A-1 Notes, Class A-2 Notes, Class B Notes, Class C Notes, Class D Notes, Class E Notes, Class F Notes, Class G Notes or Class H Notes, the Issuer and the Co-Issuer shall execute, and the Trustee shall authenticate and deliver, in exchange therefor the same aggregate principal amount of Certificated Notes of authorized denominations. Until so exchanged, the temporary Class A-1 Notes, Class A-2 Notes, Class B Notes, Class C Notes, Class D Notes, Class E Notes, Class F Notes, Class G Notes or Class H Notes shall in all respects be entitled to the same benefits under this Indenture as Certificated Notes.

Section 2.11 U.S. Tax Treatment of Notes and the Issuer.

(a) Each of the Issuer and the Co-Issuer intends that, for U.S. federal income tax purposes, the Notes be treated as debt and that the Issuer be treated as a "qualified REIT subsidiary" (within the meaning of Section 856(i) of the Code). Each prospective purchaser and any subsequent transferee of a Note or any interest therein shall, by virtue of its purchase or other acquisition of such Note or interest therein, be deemed to have agreed to treat such Note in a

manner consistent with the preceding sentence for U.S. federal income tax purposes.

(b) The Issuer and the Co-Issuer shall account for the Notes and prepare any reports to Noteholders and tax authorities consistent with the intentions expressed in Section 2.11(a) above.

Notwithstanding the foregoing, if the Holder of such Note so requests and such Holder informs the Issuer or its authorized representative of the par value of each Class of Notes held by such Holder during such taxable year (including, if any Notes were acquired or sold during such taxable year, the date such Notes were acquired or sold, and par value of such Notes), the Issuer or its authorized representative will inform such Holder of its pro rata share of the Issuer's ordinary earnings and net capital gain in a timely manner.

-104-

(c) Each Holder of Notes shall timely furnish to the Issuer, the Co-Issuer or its agents any U.S. federal income tax form or certification (such as IRS Form W-8BEN (Certification of Foreign Status of Beneficial Owner) (with Part III marked), IRS Form W-8IMY (Certification of Foreign Intermediary Status), IRS Form W-9 (Request for Taxpayer Identification Number and Certification), or IRS Form W-8ECI (Certification of Foreign Person's Claim for Exemption from Withholding on Income Effectively Connected with Conduct of a U.S. Trade or Business) or any successors to such IRS forms that the Issuer, the Co-Issuer or its agents may reasonably request and shall update or replace such forms or certification in accordance with its terms or its subsequent amendments.

Section 2.12 Authenticating Agents.

Upon the request of the Issuer and the Co-Issuer, the Trustee shall, and if the Trustee so chooses the Trustee may pursuant to this Indenture, appoint one or more Authenticating Agents with power to act on its behalf and subject to its direction in the authentication of Notes in connection with issuance, transfers and exchanges under Sections 2.4, 2.5, 2.6 and 8.5 hereof, as fully to all intents and purposes as though each such Authenticating Agent had been expressly authorized by such Sections to authenticate such Notes. For all purposes of this Indenture, the authentication of Notes by an Authenticating Agent pursuant to this Section 2.12 shall be deemed to be the authentication of Notes by the Trustee.

Any corporation or banking association into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation or banking association resulting from any merger, consolidation or conversion to which any Authenticating Agent shall be a party, or any corporation succeeding to the corporate trust business of any Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, without the execution or filing of any further act on the part of the parties hereto or such Authenticating Agent or such successor corporation. Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee, the Issuer and the Co-Issuer. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent, the Issuer and the Co-Issuer. Upon receiving such notice of resignation or upon such a termination, the Trustee shall promptly appoint a successor Authenticating Agent and shall give written notice of such appointment to the Issuer.

The Trustee agrees to pay to each Authenticating Agent appointed by it from time to time reasonable compensation for its services, and reimbursement for its reasonable expenses relating thereto and the Trustee shall be entitled to be reimbursed for such payments, subject to Section 6.7 hereof. The provisions of Sections 2.9, 6.4 and 6.5 hereof shall be applicable to any Authenticating Agent.

Section 2.13 Forced Sale on Failure to Comply with Restrictions.

(a) Notwithstanding anything to the contrary elsewhere in this Indenture, any transfer of a Note or interest therein to a U.S. Person who is determined not to have been both a QIB and a Qualified Purchaser at the time of acquisition of the Note or interest therein shall be null and void and any such proposed transfer of which the Issuer, the Co-Issuer or the

-105-

Trustee shall have notice may be disregarded by the Issuer, the Co-Issuer and the Trustee for all purposes.

(b) If the Issuer determines that any Holder of a Note has not satisfied the applicable requirement described in Section 2.13(a) above (any such person a "Non-Permitted Holder"), then the Issuer shall promptly after discovery that such Person is a Non-Permitted Holder by the Issuer, the Co-Issuer or the Trustee (and notice by the Trustee or the Co-Issuer to the Issuer, if either of them makes the discovery), send notice to such Non-Permitted Holder demanding that such Non-Permitted Holder transfer its interest to a Person that is not a Non-Permitted Holder within 30 days of the date of such notice. If such Non-Permitted Holder fails to so transfer its Note or interest therein, the Issuer shall have the right, without further notice to the Non-Permitted Holder, to sell such Note or interest therein to a purchaser selected by the Issuer that is not a Non-Permitted Holder on such terms as the Issuer may choose. The Issuer, or the Trustee acting on behalf of the Issuer, may select the purchaser by soliciting one or more bids from one or more brokers or other market professionals that regularly deal in securities similar to the Note, and selling such Note to the highest such bidder. However, the Issuer or the Trustee may select a purchaser by any other means determined by it in its sole discretion. The Holder of such Note, the Non-Permitted Holder and each other Person in the chain of title from the Holder to the Non-Permitted Holder, by its acceptance of an interest in the Note, agrees to cooperate with the Issuer and the Trustee to effect such transfers. The proceeds of such sale, net of any commissions, expenses and taxes due in connection with such sale shall be remitted to the Non-Permitted Holder. The terms and conditions of any sale under this Section 2.13(b) shall be determined in the sole discretion of the Issuer, and the Issuer shall not be liable to any Person having an interest in the Note sold as a result of any such sale of exercise of such discretion.

ARTICLE 3

CONDITIONS PRECEDENT; PLEDGED OBLIGATIONS

Section 3.1 General Provisions.

The Notes to be issued on the Closing Date shall be executed by the Issuer and the Co-Issuer upon compliance with Section 3.2 and shall be delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon Issuer Request and upon receipt by the Trustee of the items described below:

(a) an Officer's Certificate of the Issuer (i) evidencing the authorization by Board Resolution of the execution and delivery of this Indenture, the Collateral Management Agreement, each Hedge Agreement and related documents, the execution, authentication and delivery of the Notes and specifying the Stated Maturity of each Class of Notes, the principal amount of each Class of Notes and the applicable Note Interest Rate of each Class of Notes to be authenticated and delivered, and (ii) certifying that (A) the attached copy of the Board

-106-

Resolution is a true and complete copy thereof, (B) such resolutions have not been rescinded and are in full force and effect on and as of the Closing Date, (C) the Directors authorized to execute and deliver such documents hold the offices and have the signatures indicated thereon and (D) at least \$115,674,026 of proceeds on account of the sale on the Closing Date of the Preferred Shares shall have been received;

(b) an Officer's Certificate of the Co-Issuer (i) evidencing the authorization by Board Resolution of the execution and delivery of this Indenture and related documents, the execution, authentication and delivery of the Notes and specifying the Stated Maturity of each Class of Notes, the principal amount of each Class of Notes and the applicable Note Interest Rate of each Class of Notes to be authenticated and delivered, and (ii) certifying that (A) the attached copy of the Board Resolution is a true and complete copy thereof, (B) such resolutions have not been rescinded and are in full force and effect on and as of the Closing Date and (C) the Officers authorized to execute and deliver such documents hold the offices and have the signatures indicated thereon;

(c) (i) either (A) certificates of the Issuer or other official document evidencing the due authorization, approval or consent of any governmental body or bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Issuer that no other authorization, approval or consent of any governmental body is required for the valid issuance of such Notes, or (B) an Opinion of Counsel of the Issuer reasonably satisfactory in form and substance to the Trustee that no such authorization, approval or consent of any governmental body is required for the valid issuance of such Notes except as may have been given; and

(ii) either (A) certificates of the Co-Issuer or other official document evidencing the due authorization, approval or consent of any governmental body or bodies, at the time having jurisdiction in the premises, together with an Opinion of Counsel of the Co-Issuer that no other authorization, approval or consent of any governmental body is required for the valid issuance of such Notes, or (B) an Opinion of Counsel of the Co-Issuer reasonably satisfactory in form and substance to the Trustee that no such authorization, approval or consent of any governmental body is required for the valid issuance of such Notes except as may have been given;

(d) opinions of Cadwalader, Wickersham & Taft LLP, special U.S. counsel to the Issuer and the Co-Issuer (which opinions may be limited to the laws of the State of New York and the federal law of the United States and may assume, among other things, the correctness of the representations and warranties made or deemed made by the owners of Notes pursuant to Section 2.5(g) and (i)) dated the Closing Date, substantially in the form of Exhibit K attached hereto;

(e) an opinion of Maples and Calder, Cayman Islands counsel to the Issuer (which opinion shall be limited to the laws of the Cayman Islands), dated the Closing Date, substantially in the form of Exhibit L attached hereto;

-107-

(f) an opinion of Skadden, Arps, Slate, Meagher & Flom LLP, special tax counsel to the Arbor Parent regarding its qualification and taxation as a REIT in the form of Exhibit M attached hereto;

(g) an Officer's Certificate, given on behalf of the Issuer and without personal liability, stating that the Issuer is not in Default under this Indenture and that the issuance of the Notes will not result in a breach of any of the terms, conditions or provisions of, or constitute a Default under, the Governing Documents of the Issuer, any indenture or other agreement or instrument to which the Issuer is a party or by which it is bound, or any order

of any court or administrative agency entered in any Proceeding to which the Issuer is a party or by which it may be bound or to which it may be subject; that all conditions precedent provided in this Indenture relating to the authentication and delivery of the Notes applied for and all conditions precedent provided in the Preferred Shares Paying Agency Agreement relating to the issuance by the Issuer of the Preferred Shares have been complied with;

(h) an Officer's Certificate stating that the Co-Issuer is not in Default under this Indenture and that the issuance of the Securities will not result in a breach of any of the terms, conditions or provisions of, or constitute a Default under, the Governing Documents of the Co-Issuer, any indenture or other agreement or instrument to which the Co-Issuer is a party or by which it is bound, or any order of any court or administrative agency entered in any Proceeding to which the Co-Issuer is a party or by which it may be bound or to which it may be subject; that all conditions precedent provided in this Indenture relating to the authentication and delivery of the Notes applied for have been complied with; and that all expenses due or accrued with respect to the offering or relating to actions taken on or in connection with the Closing Date have been paid;

(i) an executed counterpart of each initial Collateral Debt Securities Purchase Agreement and the Collateral Management Agreement;

(j) an executed copy of each Hedge Agreement;

(k) an executed counterpart of the Preferred Shares Paying Agency Agreement;

(l) an opinion of counsel to each Hedge Counterparty dated the Closing Date, substantially in the form of Exhibit N attached hereto;

(m) (i) an opinion of Kronish Lieb Weiner & Hellman LLP, special counsel to the Collateral Manager, the Arbor Parent and the Advancing Agent, dated the Closing Date, substantially in the form of Exhibit O attached hereto and (ii) an opinion of Shearman & Sterling LLP, special counsel (regarding certain Investment Company Act issues) to the Arbor Parent, dated the Closing Date, substantially in the form of Exhibit P attached hereto;

(n) an opinion of counsel to the Trustee dated the Closing Date, substantially in the form of Exhibit Q attached hereto;

(o) an opinion of counsel to each Seller dated the Closing Date, substantially in the form of Exhibit R attached hereto;

-108-

(p) an Accountants' Report confirming the following information as of the Closing Date: (i) the information (other than the Principal Balance and the Purchase Price) with respect to each Collateral Debt Security set forth on the Schedule of Closing Date Collateral Debt Securities attached hereto as Schedule I by reference to such sources as shall be specified therein and (ii) specifying the procedures undertaken by the accountants to review data and computations relating to the foregoing;

(q) an Officer's Certificate from the Collateral Manager (i) confirming that each Collateral Debt Security set forth on the Schedule I attached hereto meets the Eligibility Criteria and that Schedule I correctly lists the Collateral Debt Securities to be Granted to the Trustee on the Closing Date, and (ii) stating the Aggregate Principal Amount of the Collateral Debt Securities;

(r) evidence of preparation for filing at the appropriate filing office in the District of Columbia of a financing statement executed on behalf of the Issuer relating to the perfection of the lien of this Indenture;

(s) an Issuer Order executed by the Issuer and the Co-Issuer directing the Trustee to (i) authenticate the Notes specified therein, in the amounts set forth therein and registered in the name(s) set forth therein and (ii) deliver the authenticated Notes as directed by the Issuer and the Co-Issuer; and

(t) such other documents as the Trustee may reasonably require.
Section 3.2 Security for Notes.

Prior to the issuance of the Notes on the Closing Date, the Issuer shall cause the following conditions to be satisfied:

(a) Grant of Security Interest; Delivery of Collateral Debt Securities. The Grant pursuant to the Granting clauses of this Indenture of all of the Issuer's right, title and interest in and to the Assets and the transfer of all Collateral Debt Securities acquired in connection therewith purchased by the Issuer on the Closing Date (as set forth in the Schedule of Closing Date Collateral Debt Securities) to the Trustee, without recourse (except as expressly provided in each applicable Collateral Debt Security Purchase Agreement), in the manner provided in Section 3.3(a) and the crediting to the Custodial Account by the Custodial Securities Intermediary of such Collateral Debt Securities shall have occurred;

(b) Certificate of the Issuer. A certificate of an Authorized Officer of the Issuer given on behalf of the Issuer and without personal liability, dated as of the Closing Date, delivered to the Trustee, to the effect that, in the case of each Collateral Debt Security pledged to the Trustee for inclusion in the Assets on the Closing Date and immediately prior to the delivery thereof on the Closing Date:

(i) the Issuer is the owner of such Collateral Debt Security free and clear of any liens, claims or encumbrances of any nature whatsoever except for those which are being released on the Closing Date;

-109-

(ii) the Issuer has acquired its ownership in such Collateral Debt Security in good faith without notice of any adverse claim, except as described in paragraph (i) above;

(iii) the Issuer has not assigned, pledged or otherwise encumbered any interest in such Collateral Debt Security (or, if any such interest has been assigned, pledged or otherwise encumbered, it has been released) other than interests Granted pursuant to this Indenture;

(iv) the Underlying Instrument with respect to such Collateral Debt Security does not prohibit the Issuer from Granting a security interest in and assigning and pledging such Collateral Debt Security to the Trustee;

(v) the information set forth with respect to such Collateral Debt Security in the Schedule of Closing Date Collateral Debt Securities is correct;

(vi) the Collateral Debt Securities included in the Assets satisfy the requirements of the definition of Eligibility Criteria and the requirements of Section 3.2(a); and

(vii) the Grant pursuant to the Granting Clauses of this Indenture shall result in a first priority security interest in favor of the Trustee for the benefit of the Holders of the Notes and each Hedge Counterparty in all of the Issuer's right, title and interest in and to the Collateral Debt Securities pledged to the Trustee for inclusion in the Assets on the Closing Date.

(c) Rating Letters. The Trustee's receipt of a letter signed by each Rating Agency and confirming that (i) the Class A-1 Notes have been rated "Aaa"

by Moody's and "AAA" by S&P and Fitch, (ii) the Class A-2 Notes have been rated "Aaa" by Moody's and "AAA" by S&P and Fitch, (iii) the Class B Notes have been rated at least "Aa2" by Moody's and "AA" by S&P and Fitch, (iv) the Class C Notes have been rated at least "A1" by Moody's and "A+" by S&P and Fitch, (v) the Class D Notes have been rated at least "A2" by Moody's and "A" by S&P and Fitch, (vi) the Class E Notes have been rated at least "A3" by Moody's and "A-" by S&P and Fitch, (vii) the Class F Notes have been rated at least "Baa1" by Moody's and "BBB+" by S&P and Fitch, (viii) the Class G Notes have been rated at least "Baa2" by Moody's and "BBB" by S&P and Fitch and (ix) the Class H Notes have been rated at least "Baa3" by Moody's and "BBB-" by S&P and Fitch and that such ratings are in full force and effect on the Closing Date.

(d) Accounts. Evidence of the establishment of the Payment Account, the Collection Account, the Unused Proceeds Account, the Delayed Funding Obligations Account, the Expense Account, each Defeased Collateral Account, each Hedge Collateral Account, each Hedge Termination Account, the Preferred Shares Distribution Account and the Custodial Account.

(e) Deposit to Expense Account. On the Closing Date, the Issuer shall deposit into the Expense Account from the gross proceeds of the offering of the Securities, approximately \$500,000.

-110-

(f) Deposit to Delayed Funding Obligations Account. On the Closing Date, the Issuer or the applicable Sellers shall deposit into the Delayed Funding Obligations Account an amount, which, in the aggregate is sufficient to fulfill the maximum funding obligations under all Delayed Draw Term Loans included in the Initial Collateral Debt Securities.

(g) Deposit to Unused Proceeds Account. On the Closing Date, the Issuer shall deposit into the Unused Proceeds Account, \$62,693,342.

(h) Issuance of Preferred Shares. The Issuer shall have delivered to the Trustee evidence that the Preferred Shares have been, or contemporaneously with the issuance of the Notes will be, (i) issued by the Issuer and (ii) acquired in their entirety by ARMS Equity.

Section 3.3 Transfer of Pledged Obligations.

(a) LaSalle Bank National Association is hereby appointed as Securities Intermediary (in such capacity, the "Custodial Securities Intermediary") to hold all Pledged Obligations delivered to it in physical form at its office in Chicago, Illinois. Any successor to such Securities Intermediary shall be a U.S. state or national bank or trust company that is not an Affiliate of the Issuer or the Co-Issuer and has capital and surplus of at least \$100,000,000. Subject to the limited right to relocate Pledged Obligations set forth in Section 7.5(b), the Custodial Securities Intermediary, as a Securities Intermediary, shall hold all Collateral Debt Securities in the Custodial Account, all Eligible Investments and other investments purchased in accordance with this Indenture in the respective Accounts in which the funds used to purchase such investments are held in accordance with Article 10 and, in respect of each Account (other than the Payment Account and the Preferred Shares Distribution Account), the Trustee shall have entered into an agreement with the Issuer and the Custodial Securities Intermediary (the "Securities Account Control Agreement") providing, inter alia, that the establishment and maintenance of such Account will be governed by a law satisfactory to the Issuer, the Trustee and the Custodial Securities Intermediary. To the maximum extent feasible, Pledged Obligations shall be transferred to the Trustee as Security Entitlements in the manner set forth in clause (i) below. In the event that the measures set forth in clause (i) below cannot be taken as to any Pledged Obligations, such Pledged Obligation may be transferred to the Trustee in the manner set forth in clauses (ii) through (vii) below, as appropriate. The security interest of the Trustee in Pledged Obligations shall be perfected and otherwise evidenced as follows:

(i) in the case of such Pledged Obligations consisting of Security Entitlements, by the Issuer (A) causing the Custodial Securities Intermediary, in accordance with the Securities Account Control Agreement, to indicate by book entry that a Financial Asset has been credited to the Custodial Account and (B) causing the Custodial Securities Intermediary to agree pursuant to the Securities Account Control Agreement that it will comply with Entitlement Orders originated by the Trustee with respect to each such Security Entitlement without further consent by the Issuer;

-111-

(ii) in the case of Pledged Obligations that are "uncertificated securities" (as such term is defined in the UCC), to the extent that any such uncertificated securities do not constitute Financial Assets forming the basis of Security Entitlements by the Trustee pursuant to clause (i) (the "Uncertificated Securities"), by the Issuer (A) causing the issuer(s) of such Uncertificated Securities to register on their respective books the Trustee as the registered owner thereof upon original issue or transfer thereof or (B) causing another Person, other than a Securities Intermediary, either to become the registered owner of such Uncertificated Securities on behalf of the Trustee, or such Person having previously become the registered owner, to acknowledge that it holds such Uncertificated Securities for the Trustee;

(iii) in the case of Pledged Obligations consisting of Certificated Securities in registered form to the extent that any such Certificated Securities do not constitute Financial Assets forming the basis of Security Entitlements acquired by the Trustee pursuant to clause (i) (the "Registered Securities"), by the Issuer (A) causing (1) the Trustee to obtain possession of such Registered Securities in the State of Illinois or (2) another Person, other than a Securities Intermediary, either to acquire possession of such Registered Securities on behalf of the Trustee, or having previously acquired such Registered Securities, in either case, in the State of Illinois, to acknowledge that it holds such Registered Securities for the Trustee and (B) causing (1) the endorsement of such Registered Securities to the Trustee by an effective endorsement or (2) the registration of such Registered Securities in the name of the Trustee by the issuer thereof upon its original issue or registration of transfer;

(iv) in the case of Pledged Obligations consisting of Certificated Securities in bearer form, to the extent that any such Certificated Securities do not constitute Financial Assets forming the basis of Security Entitlements acquired by the Trustee pursuant to clause (i) (the "Bearer Securities"), by the Issuer causing (A) the Trustee to obtain possession of such Bearer Securities in the State of Illinois or (B) another Person, other than a Securities Intermediary, either to acquire possession of such Bearer Securities on behalf of the Trustee or, having previously acquired possession of such Bearer Securities, in either case, in the State of Illinois, to acknowledge that it holds such Bearer Securities for the Trustee;

(v) in the case of Pledged Obligations that consist of Money or Instruments (the "Illinois Collateral"), to the extent that any such Illinois Collateral does not constitute a Financial Asset forming the basis of a Security Entitlement acquired by the Trustee pursuant to clause (i), by the Issuer causing (A) the Trustee to acquire possession of such Illinois Collateral in the State of Illinois or (B) another Person (other than the Issuer or a Person controlling, controlled by, or under common control with, the Issuer) (1) to (x) take possession of such Illinois Collateral in the State of Illinois and (y) authenticate a record acknowledging that it holds such possession for the benefit of the Trustee or (2) to (x) authenticate a record acknowledging that it will hold possession of such Illinois Collateral for the benefit of the Trustee and (y) take possession of such Illinois Collateral in the State of Illinois;

(vi) in the case of Pledged Obligations that consist of UCC Accounts or General Intangibles ("Accounts Receivable"), by the Issuer (A) notifying, or causing the notification of, the account debtors (as such term is defined in Section 9-102(a) of the UCC) for such Accounts Receivable of the security interest of the Trustee in such Accounts Receivable and causing the Securities Intermediary to credit such Accounts Receivable to the Custodial Account and to treat such Accounts Receivable as Financial Assets within the meaning of Article 8 of the UCC and (B) to the extent that doing so would be effective to perfect a security interest in such Accounts Receivable under the UCC as in effect at the time of transfer of such Accounts Receivable to the Trustee hereunder, filing or causing the filing of a UCC financing statement that encompasses such Accounts Receivable with the Recorder of Deeds of the District of Columbia and such other offices as applicable; and

(vii) to the maximum extent reasonably possible, in the case of any Loans, Preferred Equity Securities or Participations that are not evidenced by Instruments, Certificated Securities or Uncertificated Securities, by the Issuer (A) taking all steps necessary (including obtaining any necessary consents to the transfer of such Loan, Participation or Preferred Equity Security, as applicable) to make the Custodial Securities Intermediary the registered owner thereof, (B) causing the Custodial Securities Intermediary to credit such Loans, Participations or Preferred Equity Securities, as applicable, to the Custodial Account and to treat such Loans, Participations or Preferred Equity Securities, as applicable, as Financial Assets within the meaning of Article 8 of the UCC and (C) to the extent that doing so would be effective to perfect a security interest in such Loans, Participations or Preferred Equity Securities, as applicable, under the UCC as in effect at the time of transfer of such Loans, Participations or Preferred Equity Securities to the Trustee hereunder, filing or causing the filing of a UCC financing statement that encompasses such Loans, Participations or Preferred Equity Securities, as applicable, with the Recorder of Deeds of the District of Columbia and such other offices as applicable.

(b) The Issuer hereby authorizes the filing of UCC financing statements describing as the collateral covered thereby "all of the debtor's personal property and assets," or words to that effect, notwithstanding that such wording may be broader in scope than the Assets described in this Indenture.

(c) Without limiting the foregoing, the Issuer and the Trustee on behalf of the Bank agree, and the Bank shall cause the Custodial Securities Intermediary, to take such different or additional action as the Trustee may reasonably request in order to maintain the perfection and priority of the security interest of the Trustee in the event of any change in applicable law or regulation, including Articles 8 and 9 of the UCC and Treasury Regulations governing transfers of interests in Government Items (it being understood that the Trustee shall be entitled to rely upon an Opinion of Counsel, including an Opinion of Counsel delivered in accordance with Section 3.1(d), as to the need to file any financing statements or continuation statements, the dates by which such filings are required to be made and the jurisdictions in which such filings are required to be made).

(d) Without limiting any of the foregoing,

(i) in connection with each Grant of a Collateral Debt Security

hereunder, the Issuer shall deliver (or cause to be delivered by the applicable Seller) to the Custodial Securities Intermediary (A) the original of any note (or a copy of such note together with a lost note affidavit and indemnity), certificate or other instrument constituting or evidencing such Collateral Debt Security and any other Underlying Instrument related to such Collateral Debt Security, the delivery of which is necessary in order to perfect the security interest of the Trustee in such Collateral Debt Security granted pursuant to this Indenture, (B) copies of the other Underlying Instruments then in possession of the Issuer and (C) any other agreements, documents, certificates or instruments not specifically covered in the foregoing subclauses (A) and (B) of this clause (i) to the extent such other agreements, documents, certificates or instruments are required to be delivered to the Issuer pursuant to the related Collateral Debt Securities Purchase Agreement;

(ii) from time to time upon the request of the Trustee, Collateral Manager or Servicer, the Issuer shall deliver (or cause to be delivered) to the Custodial Securities Intermediary any Underlying Instrument in the possession of the Issuer and not previously delivered hereunder (including originals of Underlying Instruments not previously required to be delivered as originals) and as to which the Trustee, Collateral Manager or Servicer, as applicable, shall have reasonably determined to be necessary or appropriate for the administration of such Collateral Debt Security hereunder or under the Collateral Management Agreement or under the Servicing Agreement or for the protection of the security interest of the Trustee under this Indenture;

(iii) in connection with any delivery of documents to the Custodial Securities Intermediary pursuant to clauses (i) and (ii) above, the Trustee shall deliver to the Collateral Manager and the Servicer, on behalf of the Issuer, a Trust Receipt in the form of Exhibit S acknowledging the receipt of such documents by the Custodial Securities Intermediary and that it is holding such documents subject to the terms of this Indenture;

(iv) from time to time upon request of the Collateral Manager or the Servicer, the Custodial Securities Intermediary shall, upon delivery by the Collateral Manager or the Servicer of a duly completed Request for Release in the form of Exhibit S hereto, release to the Collateral Manager or the Servicer such of the Underlying Instruments then in its custody as the Collateral Manager or the Servicer reasonably so requests. By submission of any such Request for Release, the Collateral Manager or the Servicer, as applicable, shall be deemed to have represented and warranted that it has determined in accordance with the Collateral Manager Servicing Standard or the Servicing Standard set forth in the Servicing Agreement, as the case may be, that the requested release is necessary for the administration of such Collateral Debt Security hereunder or under the Collateral Management Agreement or under the Servicing Agreement or for the protection of the security interest of the Trustee under this Indenture. The Collateral Manager or the Servicer shall return to the Custodial Securities Intermediary each Underlying Instrument released from custody pursuant to this clause (iv) within 20 Business Days of receipt thereof (except such Underlying Instruments as are released in connection with a sale, exchange or other disposition, in each case only as permitted under this Indenture, of the related Collateral Debt Security that is consummated within such 20-day period). Notwithstanding the foregoing provisions of this clause (iv), (A)

any note, certificate or other instrument evidencing a Pledged Collateral Debt Security shall be released only for the purpose of (1) a sale, exchange or other disposition of such Pledged Collateral Debt Security that is permitted in accordance with the terms of this Indenture, (2) presentation, collection, renewal or registration of transfer of such Collateral Debt Security or (3) in the case of any note, in connection with

a payment in full of all amounts owing under such note, and (B) the Custodial Securities Intermediary may refuse to honor any Request for Release following the occurrence of an Event of Default under this Indenture; and

(v) to the extent the Collateral Manager deems necessary or advisable in accordance with the Collateral Manager Servicing Standard, the Issuer may, at the direction of the Collateral Manager (but only upon disclosure to, and with the prior consent of, the Advisory Committee), assign its right to purchase under a "buy/sell" arrangement in respect of a Collateral Debt Security to the Holder of the Preferred Shares or any Affiliate thereof.

(e) As of the Closing Date (with respect to the Assets owned or existing as of the Closing Date) and each date on which an Asset is acquired (only with respect to each Asset so acquired or arising after the Closing Date), the Issuer represents and warrants as follows:

(i) this Indenture creates a valid and continuing security interest (as defined in the UCC) in the Assets in favor of the Trustee for the benefit of the Noteholders and each Hedge Counterparty, which security interest is prior to all other liens, and is enforceable as such against creditors of and purchasers from the Issuer;

(ii) the Issuer owns and has good and marketable title to such Assets free and clear of any lien, claim or encumbrance of any Person;

(iii) in the case of each Asset, the Issuer has acquired its ownership in such Asset in good faith without notice of any adverse claim as defined in Section 8-102(a)(1) of the UCC as in effect on the date hereof;

(iv) other than the security interest granted to the Trustee for the benefit of the Noteholders and each Hedge Counterparty pursuant to this Indenture, the Issuer has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Assets;

(v) the Issuer has not authorized the filing of, and is not aware of, any financing statements against the Issuer that include a description of collateral covering the Assets other than any financing statement (x) relating to the security interest granted to the Trustee for the benefit of the Noteholders and each Hedge Counterparty hereunder or (y) that has been terminated; the Issuer is not aware of any judgment lien, Pension Benefit Guarantee Corporation lien or tax lien filings against the Issuer;

(vi) the Issuer has received all consents and approvals required by the terms of each Asset and the Underlying Instruments to grant to the Trustee its interest and rights in such Asset hereunder;

-115-

(vii) the Issuer has caused or will have caused, within 10 days, the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under applicable law in order to perfect the security interest in the Assets granted to the Trustee for the benefit of the Noteholders and each Hedge Counterparty hereunder;

(viii) each Asset is an Instrument, a General Intangible, a Certificated Security or an Uncertificated Security, or has been or will have been credited to a Securities Account;

(ix) the Custodial Securities Intermediary has agreed to treat all assets credited to the Securities Account as Financial Assets;

(x) the Issuer has delivered a fully executed Securities Account Control Agreement pursuant to which the Custodial Securities Intermediary

has agreed to comply with all instructions originated by the Trustee relating to the Custodial Account without further consent of the Issuer; the Custodial Account is not in the name of any person other than the Issuer or the Trustee; the Issuer has not consented to the Securities Intermediary of the Custodial Account to comply with Entitlement Orders of any person other than the Trustee;

(xi) (A) all original executed copies of each promissory note or other writings that constitute or evidence any pledged obligation that constitutes an Instrument have been delivered to the Custodial Securities Intermediary for the benefit of the Trustee, (B) the Issuer has received a written acknowledgement from the Custodial Securities Intermediary that the Custodial Securities Intermediary is acting solely as agent of the Trustee and (C) none of the promissory notes or other writings that constitute or evidence such collateral has any marks or notations indicating that they have been pledged, assigned or otherwise conveyed by the Issuer to any Person other than the Trustee;

(xii) (A) the Collection Accounts, the Unused Proceeds Account, the Delayed Funding Obligations Account, each Defeased Collateral Account, each Hedge Termination Account, each Hedge Collateral Account, the Expense Account and the Payment Account (collectively, the "Deposit Accounts") constitute "deposit accounts" within the meaning of the UCC, (B) the Issuer has taken all steps necessary to cause the Trustee to become the customer and account holder of the Deposit Accounts, (C) other than the security interest granted to the Trustee pursuant to this Indenture, the Issuer has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Deposit Accounts, and (D) the Deposit Accounts are not in the name of any person other than the Issuer or the Trustee. The Issuer has not consented to the bank maintaining the Deposit Accounts to comply with the instructions of any person other than the Trustee; and

(xiii) the Issuer has established procedures such that any Eligible Investments purchased with funds withdrawn from the Deposit Accounts will be (i) credited to a Securities Account over which the Trustee will have a first priority perfected security interest, (ii) purchased in the name of the Trustee, or (iii) held in another manner

-116-

sufficient to establish the Trustee's first priority perfected security interest over such Eligible Investments.

(f) The Trustee shall only invest in Eligible Investments which the applicable Custodial Securities Intermediary agrees to credit to the applicable account. To the extent any Eligible Investment shall not be delivered to the Trustee by causing the Custodial Securities Intermediary to create a Security Entitlement in the Securities Account in favor of the Trustee, the Issuer shall deliver an Opinion of Counsel to the Trustee to the effect that any other delivery will effect a first priority security interest in favor of the Trustee in such Eligible Instrument.

ARTICLE 4 SATISFACTION AND DISCHARGE

Section 4.1 Satisfaction and Discharge of Indenture.

This Indenture shall be discharged and shall cease to be of further effect with respect to the Assets securing the Notes and the Issuer's obligations under each Hedge Agreement except as to (i) the rights of registration of transfer and exchange, (ii) the substitution of mutilated, defaced, destroyed, lost or stolen Notes, (iii) the rights of Noteholders to receive payments of principal thereof and interest thereon as provided herein, (iv) the rights, obligations and immunities of the Trustee on behalf of the Noteholders hereunder and (v) the rights of Noteholders as beneficiaries hereof

with respect to the property deposited with the Trustee on their behalf and payable to all or any of them, and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when:

(a) either:

(i) all Notes theretofore authenticated and delivered (other than (A) Notes which have been mutilated, defaced, destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.6 and (B) Notes for which payment Money has theretofore irrevocably been deposited in trust and thereafter repaid to the Issuer or discharged from such trust, as provided in Section 7.3) have been delivered to the Trustee for cancellation; or

(ii) all Notes not theretofore delivered to the Trustee for cancellation (A) have become due and payable, or (B) will become due and payable at their Stated Maturity within one year, or (C) are to be called for redemption pursuant to Section 9.1 or Section 9.2 under an arrangement satisfactory to the Trustee for the giving of notice of redemption by the Issuer and the Co-Issuer pursuant to Section 9.4 and the Issuer or the Co-Issuer, in the case of clauses (A), (B) or (C) of this subsection (ii), has irrevocably deposited or caused to be deposited with the Trustee, in trust for such purpose, Cash or non-callable direct obligations of the United States of America; provided that the obligations are entitled to the full faith and credit of the United States of America or are debt obligations which are rated "Aaa" by Moody's, "AAA" by Fitch and "AAA" by

-117-

S&P in an amount sufficient, as verified by a firm of certified public accountants which are nationally recognized, to pay and discharge the entire indebtedness (including, in the case of a redemption pursuant to Section 9.1 or Section 9.2, the Redemption Price) on such Notes not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of such deposit (in the case of Notes which have become due and payable), or to the Stated Maturity or the Redemption Date, as the case may be (and in each case in respect of the Notes, subject to the Priority of Payments); provided, further, that any such deposit of funds with the Trustee in satisfaction of this Indenture shall be subject to the Rating Agency Condition; provided, however, this subsection (ii) shall not apply if an election to act in accordance with the provisions of Section 5.5(a) shall have been made and is not rescinded;

(b) (i) the Issuer has paid or caused to be paid or provided for (to the satisfaction of the Person entitled thereto) all other sums payable hereunder and under the Collateral Management Agreement, the Servicing Agreement, the Preferred Shares Paying Agency Agreement and the Company Administration Agreement, and (ii) all Hedge Agreements then in effect have been terminated and Issuer has paid all amounts, including payments due and payable in connection with such termination and has paid all other outstanding amounts, including any outstanding payments due and payable for any previously terminated Hedge Agreement.

(c) Each of the Issuer and the Co-Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the rights and obligations of the Issuer, the Co-Issuer, the Trustee, and, if applicable, the Noteholders, as the case may be, under Sections 2.7, 4.2, 5.4(d), 5.9, 5.18, 6.7 and 7.3 hereof shall survive.

Section 4.2 Application of Trust Money.

All Monies deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by it in accordance with the provisions of the Notes and this Indenture to the payment of the principal and interest, either directly or through the Paying Agent, as the Trustee may determine, to the Person entitled thereto of the principal and interest for whose payment such Money has been deposited with the Trustee; but such Money need not be segregated from other funds except to the extent required herein or when commingling of funds is prohibited by law.

Section 4.3 Repayment of Monies Held by Paying Agent.

In connection with the satisfaction and discharge of this Indenture with respect to the Notes, all Monies then held by the Paying Agent other than the Trustee under the provisions of this Indenture shall, upon demand of the Issuer and the Co-Issuer, be paid to the Trustee to be held and applied pursuant to Section 7.3 hereof and, in the case of Monies payable on the Notes,

-118-

in accordance with the Priority of Payments and thereupon such Paying Agent shall be released from all further liability with respect to such Monies.

ARTICLE 5

REMEDIES

Section 5.1 Events of Default.

"Event of Default," wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) a default in the payment of any interest on any Note when the same becomes due and payable (provided that (a) if any Class A Notes or Class B Notes are Outstanding, solely for the purposes of this Section 5.1(a), no interest shall be "due and payable" on any Class C Notes, Class D Notes, Class E Notes, Class F Notes, Class G Notes or Class H Notes, (b) if any Class C Notes are Outstanding, solely for the purposes of this Section 5.1(a), no interest shall be "due and payable" on any Class D Notes, Class E Notes, Class F Notes, Class G Notes or Class H Notes, (c) if any Class D Notes are Outstanding, solely for the purposes of this Section 5.1(a), no interest shall be "due and payable" on any Class E Notes, Class F Notes, Class G Notes or Class H Notes, (d) if any Class E Notes are Outstanding, solely for the purposes of this Section 5.1(a), no interest shall be "due and payable" on any Class F Notes, Class G Notes or Class H Notes, (e) if any Class F Notes are Outstanding, solely for the purposes of this Section 5.1(a), no interest shall be "due and payable" on any Class G Notes or Class H Notes and (f) if any Class G Notes are Outstanding, solely for the purposes of this Section 5.1(a), no interest shall be "due and payable" on any Class H Notes), which default continues for a period of three Business Days or, in the case of a default in payment due to an administrative error or omission by the Trustee or Paying Agent, which default continues for five Business Days;

(b) a default in the payment of principal (or the related Redemption Price, if applicable) of any Class A-1 Note when the same becomes due and payable, at its Stated Maturity or any Redemption Date, or if there are no Class A-1 Notes Outstanding, a default in the payment of principal (or the related Redemption Price, if applicable) of any Class A-2 Note when the same becomes due and payable, at its Stated Maturity or any Redemption Date, or if there are no Class A-2 Notes Outstanding, a default in the payment of principal (or the related Redemption Price, if applicable) of any Class B Note when the same becomes due and payable at its Stated Maturity or any Redemption Date, or if there are no Class B Notes Outstanding, a default in the payment of principal

(or the related Redemption Price, if applicable) of any Class C Note (plus any Class C Capitalized Interest) when the same becomes due and payable at its Stated Maturity or any Redemption Date, or if there are no Class C Notes Outstanding, a default in the payment of principal (or the related Redemption Price, if applicable) of any Class D Note (plus any Class D Capitalized Interest) when the same becomes due and payable at its Stated Maturity or any Redemption Date, or if there are no Class D Notes Outstanding, a default in the payment of principal (or the related

-119-

Redemption Price, if applicable) of any Class E Note (plus any Class E Capitalized Interest) when the same becomes due and payable at its Stated Maturity or any Redemption Date, or if there are no Class E Notes Outstanding, a default in the payment of principal (or the related Redemption Price, if applicable) of any Class F Note (plus any Class F Capitalized Interest) when the same becomes due and payable at its Stated Maturity or any Redemption Date, or if there are no Class F Notes Outstanding, a default in the payment of principal (or the related Redemption Price, if applicable) of any Class G Note (plus any Class G Capitalized Interest) when the same becomes due and payable at its Stated Maturity or any Redemption Date, or if there are no Class G Notes Outstanding, a default in the payment of principal (or the related Redemption Price, if applicable) of any Class H Note (plus any Class H Capitalized Interest) when the same becomes due and payable at its Stated Maturity or any Redemption Date (or in the case of a default in payment due to any administrative error or omission by the Trustee or the Paying Agent, such default continues for a period of five Business Days);

(c) the failure on any Payment Date to disburse amounts available in the Payment Account in accordance with the Priority of Payments set forth under Section 11.1(a) (other than a default in payment described in clause (a) or (b) above), which failure continues for a period of three Business Days or, in the case of a failure to disburse such amounts due to an administrative error or omission by the Trustee or Paying Agent, which failure continues for five Business Days;

(d) either the Issuer, the Co-Issuer or the pool of Assets becomes an investment company required to be registered under the Investment Company Act;

(e) a default in the performance, or breach, of any other covenant or other agreement (other than the covenant to meet or improve the Collateral Quality Tests or the Coverage Tests) of the Issuer or the Co-Issuer hereunder or any representation or warranty of the Issuer or the Co-Issuer hereunder or in any certificate or other writing delivered pursuant hereto or in connection therewith proves to be incorrect in any material respect when made, and the continuation of such default or breach for a period of 30 days (or, if such default, breach or failure has an adverse effect on the validity, perfection or priority of the security interest granted hereunder, 15 days) after either the Issuer, the Co-Issuer or the Collateral Manager has actual knowledge thereof or after notice thereof to the Issuer, the Co-Issuer and the Collateral Manager by the Trustee or to the Issuer, the Co-Issuer, the Collateral Manager and the Trustee by Holders of at least 25% of the Aggregate Outstanding Amount of the Controlling Class; provided that a default in the performance by the Issuer of the obligations imposed on it by this Indenture in connection with the entry into a replacement Hedge Agreement upon the early termination of a Hedge Agreement shall not be an Event of Default if the Rating Agency Condition has been satisfied;

(f) the entry of a decree or order by a court having competent jurisdiction adjudging the Issuer or the Co-Issuer as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Issuer or the Co-Issuer under the Bankruptcy Code or any other applicable law, or appointing a receiver, liquidator, assignee, or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, respectively, or

ordering the winding up or

-120-

liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days;

(g) the institution by the Issuer or the Co-Issuer of proceedings to be adjudicated as bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Code or any other similar applicable law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Issuer or the Co-Issuer or of any substantial part of its property, respectively, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of any action by the Issuer in furtherance of any such action;

(h) one or more final judgments being rendered against the Issuer or the Co-Issuer which exceed, in the aggregate, U.S. \$1,000,000 (or such lesser amount as any Rating Agency may specify) and which remain unstayed, undischarged and unsatisfied for 30 days after such judgment(s) becomes nonappealable, unless adequate funds have been reserved or set aside for the payment thereof, and unless (except as otherwise specified in writing by each Rating Agency) the Rating Agency Condition shall have been satisfied; or

(i) the Issuer loses its status as a qualified REIT subsidiary (within the meaning of Section 856(i)(2) of the Code), unless (A) within 90 days, the Issuer either (1) delivers an opinion of tax counsel of nationally recognized standing in the United States experienced in such matters to the effect that, notwithstanding the Issuer's loss of qualified REIT subsidiary status, the Issuer is not, and has not been, an association (or publicly traded partnership) taxable as a corporation, or is not, and has not been, otherwise subject to U.S. federal income tax on a net basis and the Noteholders are not otherwise materially adversely affected by the loss of qualified REIT subsidiary status or (2) receives an amount from the Preferred Shareholders sufficient to discharge in full the amounts then due and unpaid on the Notes and amounts and expenses described in clauses (1) through (5), (26), (27) and (28) under Section 11.1(a)(i) in accordance with the Priority of Payments or (B) all Classes of the Notes are subject to a Tax Redemption announced by the Issuer in compliance with this Indenture, and such redemption has not been rescinded.

Upon becoming aware of the occurrence of an Event of Default, the Issuer, shall promptly notify the Trustee, the Collateral Manager, the Noteholders, the Preferred Shares Paying Agent, the Preferred Shareholders, each Rating Agency, each Hedge Counterparty and, for so long as any Notes are listed on the Irish Stock Exchange, the Irish Paying Agent in writing. If the Collateral Manager has actual knowledge of the occurrence of an Event of Default, the Collateral Manager shall promptly notify, in writing, the Trustee, the Noteholders, each Rating Agency and each Hedge Counterparty of the occurrence of such Event of Default.

Section 5.2 Acceleration of Maturity; Rescission and Annulment.

(a) If an Event of Default shall occur and be continuing (other than the Events of Default specified in Section 5.1(f) or 5.1(g)), the Trustee may (and shall at the direction of each Class of Notes voting as a separate Class) declare the principal of and accrued and unpaid

-121-

interest on all the Notes to be immediately due and payable (and any such acceleration shall automatically terminate the Reinvestment Period). If an Event of Default described in Section 5.1(f) or 5.1(g) above occurs, such an acceleration shall occur automatically and without any further action and any such acceleration shall automatically terminate the Reinvestment Period. If the Notes are accelerated, payments shall be made in the order and priority set forth in Section 11.1(a) hereof.

(b) At any time after such a declaration of acceleration of Maturity of the Notes has been made, and before a judgment or decree for payment of the Money due has been obtained by the Trustee as hereinafter provided in this Article 5, a Majority of each Class of Notes (voting as a separate Class), by written notice to the Issuer, the Co-Issuer, the Trustee and each Hedge Counterparty, may rescind and annul such declaration and its consequences if:

(i) the Issuer or the Co-Issuer has paid or deposited with the Trustee a sum sufficient to pay:

(A) all unpaid installments of interest on and principal of the Notes that would be due and payable hereunder if the Event of Default giving rise to such acceleration had not occurred;

(B) to the extent that payment of such interest is lawful, interest on the Class C Capitalized Interest at the Class C Rate, interest on the Class D Capitalized Interest at the Class D Rate, interest on the Class E Capitalized Interest at the Class E Rate, interest on the Class F Capitalized Interest at the Class F Rate, interest on the Class G Capitalized Interest at the Class G Rate and interest on the Class H Capitalized Interest at the Class H Rate;

(C) all unpaid taxes of the Issuer and the Co-Issuer, Company Administrative Expenses and other sums paid or advanced by or otherwise due and payable to the Trustee hereunder;

(D) with respect to each Hedge Agreement, any amount then due and payable thereunder; and

(E) with respect to the Collateral Management Agreement, any Senior Collateral Management Fee then due and any Company Administrative Expense due and payable to the Collateral Manager thereunder;

(ii) the Hedge Agreements in effect immediately prior to the declaration of such acceleration shall remain in effect or, if such Hedge Agreements shall have become subject to early termination after the declaration of such acceleration, the Issuer shall have entered into a replacement Hedge Agreement for the terminated Hedge Agreement in accordance with Section 16.1; and

(iii) the Trustee has determined that all Events of Default of which it has actual knowledge, other than the non-payment of the interest and principal on the Notes that

-122-

have become due solely by such acceleration, have been cured and a Majority of the Controlling Class, by written notice to the Trustee and each Hedge Counterparty has agreed with such determination (which agreement shall not be unreasonably withheld or delayed) or waived as provided in Section 5.14.

At any such time that the Trustee shall rescind and annul such declaration and its consequences as permitted hereinabove, the Trustee shall preserve the Assets in accordance with the provisions of Section 5.5 with respect to the Event of Default that gave rise to such declaration; provided,

however, that if such preservation of the Assets is rescinded pursuant to Section 5.5, the Notes may be accelerated pursuant to the first paragraph of this Section 5.2, notwithstanding any previous rescission and annulment of a declaration of acceleration pursuant to this paragraph.

No such rescission shall affect any subsequent Default or impair any right consequent thereon. In addition, no such rescission shall affect any Hedge Agreement if it has been terminated in accordance with its terms.

(c) Subject to Sections 5.4 and 5.5, a Majority of the Controlling Class shall have the right to direct the Trustee in the conduct of any Proceedings for any remedy available to the Trustee or in the sale of any or all of the Assets; provided that (i) such direction will not conflict with any rule of law or this Indenture; (ii) the Trustee may take any other action not inconsistent with such direction; (iii) the Trustee determines that such action will not involve it in liability (unless the Trustee has received satisfactory indemnity or reasonable security against any such liability); and (iv) any direction to undertake a sale of the Assets may be made only as described in Section 5.17. The Trustee shall provide written notice of the receipt of such direction to each Hedge Counterparty promptly after receipt thereof.

(d) As security for the payment by the Issuer of the compensation and expenses of the Trustee and any sums the Trustee may be entitled to receive as indemnification by the Issuer, the Issuer hereby grants the Trustee a lien on the Assets, which lien is senior to the lien of the Noteholders. The Trustee's lien shall be subject to the Priority of Payments and exercisable by the Trustee only if the Notes have been declared due and payable following an Event of Default and such acceleration has not been rescinded or annulled.

(e) A Majority of the Controlling Class, may, prior to the time a judgment or decree for the payment of money due has been obtained by the Trustee, waive any past Default on behalf of the holders of all the Notes and its consequences in accordance with Section 5.14.

(f) In determining whether the holders of the requisite percentage of Notes have given any direction, notice or consent hereunder, (i) Notes owned by the Issuer, the Co-Issuer or any Affiliate thereof shall be disregarded and deemed not to be Outstanding and (ii) in relation to (x) any amendment or other modification of, or assignment or termination of, any of the express rights or obligations of the Collateral Manager under the Collateral Management Agreement or this Indenture (including the exercise of any rights to remove the Collateral Manager or terminate the Collateral Management Agreement or approve or object

-123-

to a replacement for the Collateral Manager except as specifically provided in the Collateral Management Agreement with respect to the termination of the Collateral Manager without cause and with respect to the replacement of the Collateral Manager in instances where the Collateral Manager has not been terminated for cause or where such replacement is not an Affiliate of the Collateral Manager) and (y) the exercise by the Noteholders of their right, in connection with certain Events of Default, to accelerate amounts due under the Notes, Notes owned by the Collateral Manager or any of its Affiliates, or by any accounts managed by them, shall be disregarded and deemed not to be Outstanding. The Collateral Manager and its Affiliates shall be entitled to vote Notes held by them, and by accounts managed by them, with respect to all other matters other than those described in clause (ii).

Section 5.3 Collection of Indebtedness and Suits for Enforcement by Trustee.

The Issuer covenants that if a Default shall occur in respect of the payment of any interest on any Class A-1 Note, the payment of principal on any Class A-1 Note (but only after interest with respect to the Class A-1 Notes and any amounts payable pursuant to Section 11.1(a) having a higher priority have

with respect to the Class H Notes and any amounts payable pursuant to Section 11.1(a) having a higher priority have been paid in full), the Issuer and Co-Issuer shall, upon demand of the Trustee or any affected Noteholder, pay to the Trustee, for the benefit of the Holder of such Note, the whole amount, if any, then due and payable on such Note for principal and interest or other payment with interest on the overdue principal and, to the extent that payments of such interest shall be legally enforceable, upon overdue installments of interest, at the applicable interest rate and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee and such Noteholder and their respective agents and counsel.

If the Issuer or the Co-Issuer fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as Trustee of an express trust, may institute a Proceeding for the collection of the sums so due and unpaid, and may prosecute such Proceeding to judgment or final decree, and may enforce the same against the Issuer and the Co-Issuer or any other obligor upon the Notes and collect the Monies adjudged or decreed to be payable in the manner provided by law out of the Assets.

If an Event of Default occurs and is continuing, the Trustee shall proceed to protect and enforce its rights and the rights of the Noteholders by such Proceedings (x) as directed by a Majority of the Controlling Class or (y) in the absence of direction by a Majority of the Controlling Class, as deemed most effectual by the Trustee. Such Proceedings shall be used for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by this Indenture or by law.

In the case where (x) there shall be pending Proceedings relative to the Issuer or the Co-Issuer under the Bankruptcy Code or any other applicable bankruptcy, insolvency or

-125-

similar law, (y) a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Issuer or the Co-Issuer, or their respective property, or (z) there shall be any other comparable Proceedings relative to the Issuer or the Co-Issuer, or the creditors or property of the Issuer or the Co-Issuer, regardless of whether the principal of any Notes shall then be due and payable as therein expressed or by declaration, or otherwise and regardless of whether the Trustee shall have made any demand pursuant to the provisions of this Section 5.3, the Trustee shall be entitled and empowered, by intervention in such Proceedings or otherwise:

(a) to file and prove a claim or claims for the whole amount of principal and interest owing and unpaid in respect of the Notes and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence or bad faith) and of the Noteholders allowed in any Proceedings relative to the Issuer, the Co-Issuer or other obligor upon the Notes or to the creditors or property of the Issuer, the Co-Issuer or such other obligor;

(b) unless prohibited by applicable law and regulations, to vote on behalf of the Noteholders in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency proceedings or of a Person performing similar functions in comparable Proceedings; and

(c) to collect and receive any Monies or other property payable to or deliverable on any such claims, and to distribute all amounts received with

respect to the claims of the Noteholders and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian or other similar official is hereby authorized by each of the Noteholders to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the Noteholders, to pay to the Trustee such amounts as shall be sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee and their respective agents, attorneys and counsel, and all other reasonable expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of its own negligence or bad faith.

Nothing herein contained shall be deemed to authorize the Trustee to authorize, consent to, vote for, accept or adopt, on behalf of any Noteholder, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Noteholder in any such Proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar Person.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes or the production thereof in any trial or other Proceedings relative thereto, and any action or Proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment, shall be applied as set forth in Section 5.7.

-126-

In any Proceedings brought by the Trustee on behalf of the Noteholders, the Trustee shall be held to represent all the Holders of the Notes.

Notwithstanding anything in this Section 5.3 to the contrary, the Trustee may not sell or liquidate the Assets or institute Proceedings in furtherance thereof pursuant to this Section 5.3 unless the conditions specified in Section 5.5(a) are met.

Section 5.4 Remedies.

(a) If an Event of Default has occurred and is continuing, and the Notes have been declared due and payable and such declaration and its consequences have not been rescinded and annulled, the Issuer and the Co-Issuer agree that the Trustee may, after notice to the Noteholders and each Hedge Counterparty, and shall, upon direction by a Majority of the Controlling Class, to the extent permitted by applicable law, exercise one or more of the following rights, privileges and remedies:

(i) institute Proceedings for the collection of all amounts then payable on the Notes or otherwise payable under this Indenture (whether by declaration or otherwise), enforce any judgment obtained and collect from the Assets any Monies adjudged due;

(ii) sell all or a portion of the Assets or rights of interest therein, at one or more public or private sales called and conducted in any manner permitted by law and in accordance with Section 5.17 hereof;

(iii) institute Proceedings from time to time for the complete or partial foreclosure of this Indenture with respect to the Assets;

(iv) exercise any remedies of a secured party under the UCC and take any other appropriate action to protect and enforce the rights and remedies of the Trustee and the Holders of the Notes hereunder; and

(v) exercise any other rights and remedies that may be available at law or in equity;

provided, however, that the Trustee may not sell or liquidate the Assets or institute Proceedings in furtherance thereof pursuant to this Section 5.4 unless either of the conditions specified in Section 5.5(a) is met.

The Trustee may, but need not, obtain and rely upon an opinion of an Independent investment banking firm of national reputation with demonstrated capabilities in structuring and distributing notes or certificates similar to the Notes as to the feasibility of any action proposed to be taken in accordance with this Section 5.4 and as to the sufficiency of the proceeds and other amounts receivable with respect to the Assets to make the required payments of principal of and interest on the Notes and other amounts payable hereunder, which opinion shall be conclusive evidence as to such feasibility or sufficiency.

(b) If an Event of Default as described in Section 5.1(e) hereof shall have occurred and be continuing, the Trustee may, and at the request of the Holders of not less than

-127-

25% of the Aggregate Outstanding Amount of the Controlling Class shall, institute a Proceeding solely to compel performance of the covenant or agreement or to cure the representation or warranty, the breach of which gave rise to the Event of Default under such Section, and enforce any equitable decree or order arising from such Proceeding.

(c) Upon any Sale, whether made under the power of sale hereby given or by virtue of judicial proceedings, any Noteholder, Preferred Shareholder or the Collateral Manager or any of its Affiliates may bid for and purchase the Assets or any part thereof and, upon compliance with the terms of Sale, may hold, retain, possess or dispose of such property in its or their own absolute right without accountability; and any purchaser at any such Sale may, in paying the purchase Money, turn in any of the Notes in lieu of Cash equal to the amount which shall, upon distribution of the net proceeds of such sale, be payable on the Notes so turned in by such Holder (taking into account the Class of such Notes). Such Notes, in case the amounts so payable thereon shall be less than the amount due thereon, shall be returned to the Holders thereof after proper notation has been made thereon to show partial payment.

Upon any Sale, whether made under the power of sale hereby given or by virtue of judicial proceedings, the receipt of the Trustee or of the Officer making a sale under judicial proceedings shall be a sufficient discharge to the purchaser or purchasers at any sale for its or their purchase Money and such purchaser or purchasers shall not be obliged to see to the application thereof.

Any such Sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall (x) bind the Issuer, the Co-Issuer, the Trustee, the Noteholders and the Preferred Shareholders, shall operate to divest all right, title and interest whatsoever, either at law or in equity, of each of them in and to the property sold and (y) be a perpetual bar, both at law and in equity, against each of them and their successors and assigns, and against any and all Persons claiming through or under them.

(d) Notwithstanding any other provision of this Indenture, none of the Advancing Agent, the Trustee or any other Secured Party may, prior to the date which is one year and one day (or, if longer, the applicable preference period then in effect) after the payment in full of all Notes, institute against, or join any other Person in instituting against, the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings, or other proceedings under federal or State bankruptcy or similar laws. Nothing in this Section 5.4 shall preclude, or be deemed to stop, the Advancing Agent, the Trustee or any other Secured Party (i) from taking any action prior to the expiration of the aforementioned one year and one day (or, if longer, the applicable preference period then in effect) period in (A) any

case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer or (B) any involuntary insolvency proceeding filed or commenced by a Person other than the Trustee, or (ii) from commencing against the Issuer or the Co-Issuer or any of their respective properties any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceeding.

-128-

Section 5.5 Preservation of Assets.

(a) Notwithstanding anything to the contrary herein, if an Event of Default shall have occurred and be continuing when any of the Notes are Outstanding, the Trustee shall retain the Assets securing the Notes, collect and cause the collection of the proceeds thereof and make and apply all payments and deposits and maintain all accounts in respect of the Assets and the Notes in accordance with the Priority of Payments and the provisions of Articles 10, 12 and 13 unless either:

(i) the Trustee, pursuant to Section 5.5(c), determines that the anticipated proceeds of a sale or liquidation of the Assets (after deducting the reasonable expenses of such sale or liquidation) would be sufficient to discharge in full the amounts then due and unpaid on the Notes, Company Administrative Expenses due and payable pursuant to sub-clauses (3) and (26) of Section 11.1(a)(i) and sub-clauses (1) and (10) of Section 11.1(a)(ii), the Senior Collateral Management Fees due and payable pursuant to subclause (4) of Section 11.1(a)(i), the Subordinate Collateral Management Fees due and payable pursuant to subclause (27) of Section 11.1(a)(i), any amounts due and unpaid to each Hedge Counterparty, including without limitation, any payments (however described) due and payable by the Issuer under each Hedge Agreement upon a termination of such Hedge Agreement (including any interest that may accrue thereon) and amounts due and payable to the Advancing Agent and the Trustee, in its capacity as Backup Advancing Agent, in respect of unreimbursed Interest Advances and Reimbursement Interest, and a Majority of the Controlling Class agrees with such determination; or

(ii) the Holders of 66 2/3% of the Aggregate Outstanding Amount of each Class of Notes (each voting as a separate Class) (and each Hedge Counterparty, unless each shall be paid in full the amounts due and unpaid, including, without limitation, any payments (however described) due and payable by the Issuer under each Hedge Agreement upon a termination of such Hedge Agreement (including any interest that may accrue thereon)), direct, subject to the provisions of this Indenture, the sale and liquidation of the Assets.

The Trustee shall give written notice of the retention of the Assets to the Issuer, the Co-Issuer, the Collateral Manager, each Hedge Counterparty and the Rating Agencies. So long as such Event of Default is continuing, any such retention pursuant to this Section 5.5(a) may be rescinded at any time when the conditions specified in clause (i) or (ii) above exist.

(b) Nothing contained in Section 5.5(a) shall be construed to require the Trustee to sell the Assets securing the Notes if the conditions set forth in Section 5.5(a) are not satisfied. Nothing contained in Section 5.5(a) shall be construed to require the Trustee to preserve the Assets securing the Notes if prohibited by applicable law.

(c) To assist the Trustee in determining whether the condition specified in Section 5.5(a)(i) exists, the Collateral Manager shall obtain bid prices with respect to each Pledged Collateral Debt Security from two dealers (Independent of the Collateral Manager and any of its Affiliates) at the time making a market in such Pledged Collateral Debt Securities

(or, if there is only one market maker, then the Collateral Manager shall obtain a bid price from that market maker or, if no market maker, from a pricing service). The Collateral Manager shall compute the anticipated proceeds of sale or liquidation on the basis of the lowest of such bid prices for each such Pledged Collateral Debt Security and provide the Trustee with the results thereof. For the purposes of determining issues relating to the Market Value of any Pledged Collateral Debt Security and the execution of a sale or other liquidation thereof, the Trustee may, but need not, retain at the expense of the Issuer and rely on an opinion of an Independent investment banking firm of national reputation in connection with a determination (notwithstanding that such opinion will not be the basis for such determination) as to whether the condition specified in Section 5.5(a)(i) exists.

The Trustee shall promptly deliver to the Noteholders and each Hedge Counterparty a report stating the results of any determination required to be made pursuant to Section 5.5(a)(i). If requested by a Majority of the Controlling Class, the Trustee shall make the determinations required by Section 5.5(a)(i) within 30 days of such request.

Section 5.6 Trustee May Enforce Claims Without Possession of Notes.

All rights of action and claims under this Indenture or under any of the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any trial or other Proceeding relating thereto, and any such action or Proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust. Any recovery of judgment in respect of the Notes shall be applied as set forth in Section 5.7 hereof.

In any Proceedings brought by the Trustee (and in any Proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) in respect of the Notes, the Trustee shall be held to represent all the Holders of the Notes.

Section 5.7 Application of Money Collected.

Any Money collected by the Trustee with respect to the Notes pursuant to this Article 5 and any Money that may then be held or thereafter received by the Trustee with respect to the Notes hereunder shall be applied subject to Section 13.1 hereof and in accordance with the Priority of Payments set forth in Section 11.1 hereof, at the date or dates fixed by the Trustee.

Section 5.8 Limitation on Suits.

No Holder of any Notes shall have any right to institute any Proceedings, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(a) such Holder has previously given to the Trustee written notice of an Event of Default;

(b) except as otherwise provided in Section 5.9 hereof, the Holders of at least 25% of the then Aggregate Outstanding Amount of the Controlling Class shall have made written request to the Trustee to institute Proceedings in respect of such Event of Default in its

own name as Trustee hereunder and such Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(c) the Trustee for 30 days after its receipt of such notice, request and offer of indemnity has failed to institute any such Proceeding; and

(d) no direction inconsistent with such written request has been given to the Trustee during such 30-day period by a Majority of the Controlling Class; it being understood and intended that no one or more Holders of Notes shall have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Notes of the same Class or to obtain or to seek to obtain priority or preference over any other Holders of the Notes of the same Class or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders of Notes of the same Class subject to and in accordance with Section 13.1 hereof and the Priority of Payments.

In the event the Trustee shall receive conflicting or inconsistent requests and indemnity from two or more groups of Holders of the Controlling Class, each representing less than a Majority of the Controlling Class, the Trustee in its sole discretion may determine what action, if any, shall be taken, notwithstanding any other provisions of this Indenture.

Section 5.9 Unconditional Rights of Noteholders to Receive Principal and Interest.

Notwithstanding any other provision in this Indenture (except for Section 2.7(k) and 2.7(t)), the Holder of any Class of Note shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest on such Class of Note as such principal, interest and other amounts become due and payable in accordance with the Priority of Payments and Section 13.1, and, subject to the provisions of Sections 5.4 and 5.8 to institute Proceedings for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder; provided, however, that the right of such Holder to institute proceedings for the enforcement of any such payment shall not be subject to the 25% threshold requirement set forth in Section 5.8(b).

Section 5.10 Restoration of Rights and Remedies.

If the Trustee or any Noteholder has instituted any Proceeding to enforce any right or remedy under this Indenture and such Proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Noteholder, then (and in every such case) the Issuer, the Co-Issuer, the Trustee, and the Noteholder shall, subject to any determination in such Proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the Noteholders shall continue as though no such Proceeding had been instituted.

-131-

Section 5.11 Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the Trustee or to the Noteholders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.12 Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Noteholder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an

acquiescence therein or a waiver of a subsequent Event of Default. Every right and remedy given by this Article 5 or by law to the Trustee, or to the Noteholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee, or by the Noteholders, as the case may be.

Section 5.13 Control by the Controlling Class.

Notwithstanding any other provision of this Indenture, if an Event of Default shall have occurred and be continuing when any of the Notes are Outstanding, a Majority of the Controlling Class shall have the right to cause the institution of and direct the time, method and place of conducting any Proceeding for any remedy available to the Trustee for exercising any trust, right, remedy or power conferred on the Trustee in respect of the Notes; provided that:

(a) such direction shall not conflict with any rule of law or with this Indenture;

(b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction; provided, however, that, subject to Section 6.1, the Trustee need not take any action that it determines might involve it in liability (unless the Trustee has received satisfactory indemnity against such liability as set forth below);

(c) the Trustee shall have been provided with indemnity satisfactory to it; and

(d) any direction to the Trustee to undertake a Sale of the Assets shall be by the Holders of Notes secured thereby representing 66 2/3% of the Aggregate Outstanding Amount of each Class of Notes.

Section 5.14 Waiver of Past Defaults.

Prior to the time a judgment or decree for payment of the Money due has been obtained by the Trustee, as provided in this Article 5, a Majority of each and every Class of Notes (voting as a separate Class) may, on behalf of the Holders of all the Notes, waive any past Default in respect of the Notes and its consequences, except a Default:

(a) in the payment of principal of any Note;

-132-

(b) in the payment of interest in respect of the Controlling Class;

(c) in respect of a covenant or provision hereof that, under Section 8.2, cannot be modified or amended without the waiver or consent of the Holder of each Outstanding Note and each Hedge Counterparty adversely affected thereby;

(d) in respect of any covenant or provision hereof for the individual protection or benefit of the Trustee (without the Trustee's express written consent thereto); or

(e) a default that also materially adversely affects a Hedge Counterparty unless such Hedge Counterparty also agrees to such default.

In the case of any such waiver, the Issuer, the Co-Issuer, the Trustee, and the Holders of the Notes shall be restored to their respective former positions and rights hereunder, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto. The Trustee shall promptly give written notice of any such waiver to the Collateral Manager, each Noteholder and each Hedge Counterparty.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every

purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereto.

Section 5.15 Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.15 shall not apply to any suit instituted by (x) the Trustee, (y) any Noteholder, or group of Noteholders, holding in the aggregate more than 10% of the Aggregate Outstanding Amount of the Controlling Class or (z) any Noteholder for the enforcement of the payment of the principal of or interest on any Note or any other amount payable hereunder on or after the Stated Maturity (or, in the case of redemption, on or after the applicable Redemption Date).

Section 5.16 Waiver of Stay or Extension Laws.

Each of the Issuer and the Co-Issuer covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants, the performance of or any remedies under this Indenture; and each of the Issuer and the Co-Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not

-133-

hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 5.17 Sale of Assets.

(a) The power to effect any sale (a "Sale") of any portion of the Assets pursuant to Sections 5.4 and 5.5 hereof shall not be exhausted by any one or more Sales as to any portion of such Assets remaining unsold, but shall continue unimpaired until all amounts secured by the Assets shall have been paid or if there are insufficient proceeds to pay such amount until the entire Assets shall have been sold. The Trustee may, upon notice to the Securityholders and each Hedge Counterparty, and shall, upon direction of a Majority of the Controlling Class, from time to time postpone any Sale by public announcement made at the time and place of such Sale; provided, however, that if the Sale is rescheduled for a date more than three Business Days after the date of the determination by the Trustee pursuant to Section 5.5(a)(i) hereof, such Sale shall not occur unless and until the Trustee has again made the determination required by Section 5.5(a)(i) hereof. The Trustee hereby expressly waives its rights to any amount fixed by law as compensation for any Sale; provided that the Trustee shall be authorized to deduct the reasonable costs, charges and expenses incurred by it in connection with such Sale from the proceeds thereof notwithstanding the provisions of Section 6.7 hereof.

(b) The Trustee may bid for and acquire any portion of the Assets in connection with a public Sale thereof, and may pay all or part of the purchase price by crediting against amounts owing on the Notes or other amounts secured by the Assets, all or part of the net proceeds of such Sale after deducting the reasonable costs, charges and expenses incurred by the Trustee in connection with such Sale notwithstanding the provisions of Section 6.7 hereof. The Notes

need not be produced in order to complete any such Sale, or in order for the net proceeds of such Sale to be credited against amounts owing on the Notes. The Trustee may hold, lease, operate, manage or otherwise deal with any property so acquired in any manner permitted by law in accordance with this Indenture.

(c) If any portion of the Assets consists of securities issued without registration under the Securities Act ("Unregistered Securities"), the Trustee may seek an Opinion of Counsel, or, if no such Opinion of Counsel can be obtained and with the consent of a Majority of the Controlling Class, seek a no action position from the Securities and Exchange Commission or any other relevant federal or State regulatory authorities, regarding the legality of a public or private Sale of such Unregistered Securities. In no event shall the Trustee be required to register Unregistered Securities under the Securities Act.

(d) The Trustee shall execute and deliver an appropriate instrument of conveyance transferring its interest in any portion of the Assets in connection with a Sale thereof. In addition, the Trustee is hereby irrevocably appointed the agent and attorney in fact of the Issuer to transfer and convey its interest in any portion of the Assets in connection with a Sale thereof, and to take all action necessary to effect such Sale. No purchaser or transferee at such a Sale shall be bound to ascertain the Trustee's authority, to inquire into the satisfaction of any conditions precedent or to see to the application of any Monies.

-134-

(e) In the event of any Sale of the Assets pursuant to Section 5.4 or Section 5.5, payments on the Notes shall be made in the order and priority set forth in Section 11.1(a) in the same manner as if the Notes had been accelerated.

Section 5.18 Action on the Notes.

The Trustee's right to seek and recover judgment on the Notes or under this Indenture shall not be affected by the application for or obtaining of any other relief under or with respect to this Indenture. Neither the lien of this Indenture nor any rights or remedies of the Trustee or the Noteholders shall be impaired by the recovery of any judgment by the Trustee against the Issuer or the Co-Issuer or by the levy of any execution under such judgment upon any portion of the Assets or upon any of the assets of the Issuer or the Co-Issuer.

ARTICLE 6

THE TRUSTEE

Section 6.1 Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of manifest error, or bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; provided, however, that in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they substantially conform to the requirements of this Indenture and shall promptly, but in any event within three Business Days in the case of an Officer's Certificate furnished by the Collateral Manager, notify the party delivering the same

if such certificate or opinion does not conform. If a corrected form shall not have been delivered to the Trustee within 15 days after such notice from the Trustee, the Trustee shall so notify the Noteholders.

(b) In case an Event of Default known to the Trustee has occurred and is continuing, the Trustee shall, prior to the receipt of directions, if any, from a Majority of the Controlling Class (or other Noteholders to the extent provided in Article 5 hereof), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) If, in performing its duties under this Agreement, the Trustee is required to decide between alternative courses of action, the Trustee may request written instructions from

-135-

the Collateral Manager as to courses of action desired by it. If the Trustee does not receive such instructions within two Business Days after it has requested them, it may, but shall be under no duty to, take or refrain from taking such action. The Trustee shall act in accordance with instructions received after such two-Business Day period except to the extent it has already taken, or committed itself to take, action inconsistent with such instructions. The Trustee shall be entitled to rely on the advice of legal counsel and Independent accountants in performing its duties hereunder and be deemed to have acted in good faith if it acts in accordance with such advice.

(d) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.1;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer, unless it shall be proven that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Issuer in accordance with this Indenture and/or the Controlling Class relating to the time, method and place of conducting any Proceeding for any remedy available to the Trustee in respect of any Note or exercising any trust or power conferred upon the Trustee under this Indenture;

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers contemplated hereunder, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it (if the amount of such funds or risk or liability does not exceed the amount payable to the Trustee pursuant to Section 11.1(a)(i)(3) and Section 11.1(a)(ii)(1) net of the amounts specified in Section 6.7(a)(i), the Trustee shall be deemed to be reasonably assured of such repayment) unless such risk or liability relates to its ordinary services under this Indenture, except where this Indenture provides otherwise; and

(v) the Trustee shall not be liable to the Noteholders for any action taken or omitted by it at the direction of the Issuer, the Co-Issuer, the Collateral Manager, the Controlling Class and/or a Noteholder under circumstances in which such direction is required or permitted by the terms of this Indenture.

(e) For all purposes under this Indenture, the Trustee shall not be deemed to have notice or knowledge of any Event of Default described in Section 5.1(d), 5.1(f), 5.1(g), 5.1(h) or 5.1(i) or any Default described in Section 5.1(e) unless a Trust Officer assigned to and working in the Corporate Trust Office has actual knowledge thereof or unless written notice of any event which is in fact such an Event of Default or Default is received by the

-136-

Trustee at the Corporate Trust Office, and such notice references, as applicable, the Notes generally, the Issuer, the Assets or this Indenture. For purposes of determining the Trustee's responsibility and liability hereunder, whenever reference is made in this Indenture to such an Event of Default or a Default, such reference shall be construed to refer only to such an Event of Default or Default of which the Trustee is deemed to have notice as described in this Section 6.1.

(f) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of Section 6.1(a), (b), (c), (d) and (e).

(g) The Trustee shall, upon reasonable prior written notice to the Trustee, permit the Issuer, the Co-Issuer, the Collateral Manager or the Rating Agencies, during the Trustee's normal business hours, to examine all books of account, records, reports and other papers of the Trustee relating to the Notes, to make copies and extracts therefrom (the reasonable out-of-pocket expenses incurred in making any such copies or extracts to be reimbursed to the Trustee by such Person) and to discuss the Trustee's actions, as such actions relate to the Trustee's duties with respect to the Notes, with the Trustee's officers and employees responsible for carrying out the Trustee's duties with respect to the Notes.

Section 6.2 Notice of Default.

Promptly (and in no event later than three Business Days) after the occurrence of any Default known to the Trustee or after any declaration of acceleration has been made or delivered to the Trustee pursuant to Section 5.2, the Trustee shall transmit by mail to the Collateral Manager, the Irish Paying Agent (for so long as any Notes are listed on the Irish Stock Exchange), each Hedge Counterparty, each Rating Agency (for so long as any Class of Notes is Outstanding and rated by such Rating Agency) and to all Holders of Notes as their names and addresses appear on the Notes Register, notice of all Defaults hereunder known to the Trustee, unless such Default shall have been cured or waived.

Section 6.3 Certain Rights of Trustee.

Except as otherwise provided in Section 6.1:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Issuer or the Co-Issuer mentioned herein shall be sufficiently evidenced by an Issuer Request or Issuer Order, as the case may be;

(c) whenever in the administration of this Indenture the Trustee shall (i) deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part,

rely upon an Officer's Certificate or (ii) be required to determine the value of any Assets or funds hereunder or the cash flows projected to be

-137-

received therefrom, the Trustee may, in the absence of bad faith on its part, rely on reports of nationally recognized accountants, investment bankers or other persons qualified to provide the information required to make such determination, including nationally recognized dealers in securities of the type being valued and securities quotation services;

(d) as a condition to the taking or omitting of any action by it hereunder, the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise or to honor any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture, unless such Noteholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might reasonably be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, note or other paper documents, but the Trustee, in its discretion, may and, upon the written direction of a Majority of the Controlling Class or of a Rating Agency, shall make such further inquiry or investigation into such facts or matters as it may see fit or as it shall be directed and shall have received indemnification reasonably acceptable to the Trustee, and, the Trustee shall be entitled, on reasonable prior notice to the Issuer, the Co-Issuer, the Collateral Manager and the Servicer, to examine the books and records relating to the Notes and the Assets, as applicable, at the premises of the Issuer, the Co-Issuer and the Collateral Manager, personally or by agent or attorney during the Issuer's, the Co-Issuer's or the Collateral Manager's normal business hours upon not less than three Business Days' prior written notice; provided that the Trustee shall, and shall cause its agents to, hold in confidence all such information, except (i) to the extent disclosure may be required by law by any regulatory authority and (ii) to the extent that the Trustee, in its sole judgment, may determine that such disclosure is consistent with its obligations hereunder;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder (except with respect to its duty to make any Interest Advance under the circumstances specified in Section 10.8) either directly or by or through agents or attorneys; provided that the Trustee shall not be responsible for any willful misconduct or negligence on the part of any agent appointed and supervised, or attorney appointed, with due care by it hereunder;

(h) the Trustee shall not be liable for any action it takes or omits to take in good faith that it reasonably and prudently believes to be authorized or within its rights or powers hereunder;

(i) the Trustee shall not be responsible for the accuracy of the books or records of, or for any acts or omissions of, the Depository, any Transfer Agent (other than the Trustee itself acting in that capacity), Clearstream, Luxembourg, Euroclear, any Calculation

-138-

Agent (other than the Trustee itself acting in that capacity) or any Paying Agent (other than the Trustee itself acting in that capacity); and

(j) the Trustee shall not be liable for the actions or omissions of the Collateral Manager; and without limiting the foregoing, the Trustee shall not (except to the extent, if at all, otherwise expressly stated in this Indenture) be under any obligation to monitor, evaluate or verify compliance by the Collateral Manager with the terms hereof or the Collateral Management Agreement, or to verify or independently determine the accuracy of information received by it from the Collateral Manager (or from any selling institution, agent bank, trustee or similar source) with respect to the Collateral Debt Securities.

Section 6.4 Not Responsible for Recitals or Issuance of Notes.

The recitals contained herein and in the Notes, other than the Certificate of Authentication thereon, shall be taken as the statements of the Issuer and the Co-Issuer, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture (except as may be made with respect to the validity of the Trustee's obligations hereunder), the Assets or the Notes. The Trustee shall not be accountable for the use or application by the Issuer or the Co-Issuer of the Notes or the proceeds thereof or any Money paid to the Issuer or the Co-Issuer pursuant to the provisions hereof.

Section 6.5 May Hold Notes.

The Trustee, the Paying Agent, the Notes Registrar or any other agent of the Issuer or the Co-Issuer, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Issuer and the Co-Issuer with the same rights it would have if it were not Trustee, Paying Agent, Notes Registrar or such other agent.

Section 6.6 Money Held in Trust.

Money held by the Trustee hereunder shall be held in trust to the extent required herein. The Trustee shall be under no liability for interest on any Money received by it hereunder except as otherwise agreed upon with the Issuer and except to the extent of income or other gain on investments which are deposits in or certificates of deposit of the Trustee in its commercial capacity and income or other gain actually received by the Trustee on Eligible Investments.

Section 6.7 Compensation and Reimbursement.

(a) The Issuer agrees:

(i) to pay the Trustee on each Payment Date, in accordance with the Priority of Payments, the fee specified in the Trustee Fee Proposal as compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided herein, to reimburse the Trustee (subject to any written agreement between the Issuer and the Trustee) in a timely manner

upon its request for all reasonable expenses, disbursements and advances (except as otherwise provided herein with respect to Interest Advances) incurred or made by the Trustee in accordance with any provision of this Indenture (including securities transaction charges to the extent not waived due to the Trustee's receipt of payments from a financial institution with respect to certain Eligible Investments, as specified by the Collateral Manager and the reasonable compensation and expenses and

disbursements of its agents and legal counsel and of any accounting firm or investment banking firm employed by the Trustee pursuant to Section 5.4, 5.5, 10.10 or 10.12 hereof, except any such expense, disbursement or advance as may be attributable to its negligence, willful misconduct or bad faith);

(iii) to indemnify the Trustee and its Officers, directors, employees and agents for, and to hold them harmless against, any loss, liability or expense incurred without negligence, willful misconduct or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties hereunder; and

(iv) to pay the Trustee reasonable additional compensation together with its expenses (including reasonable counsel fees) for any collection action taken pursuant to Section 6.13 hereof.

(b) The Issuer may remit payment for such fees and expenses to the Trustee or, in the absence thereof, the Trustee may from time to time deduct payment of its fees and expenses hereunder from Monies on deposit in the Payment Account in accordance with the Priority of Payments.

(c) The Trustee, in its capacity as Trustee, Paying Agent, Calculation Agent, Transfer Agent, Custodial Securities Intermediary, Backup Advancing Agent and Notes Registrar, hereby agrees not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer until at least one year and one day (or, if longer, the applicable preference period then in effect) after the payment in full of all Notes issued under this Indenture. This provision shall survive termination of this Agreement.

(d) The Trustee agrees that the payment of all amounts to which it is entitled pursuant to sub-sections 6.7(a)(i), (a)(ii), (a)(iii) and (a)(iv) shall be subject to the Priority of Payments, shall be payable only to the extent funds are available in accordance with such Priority of Payments, shall be payable solely from the Assets and following realization of the Assets, any such claims of the Trustee against the Issuer shall be extinguished. The Trustee will have a lien upon the Assets to secure the payment of such payments to it in accordance with the Priority of Payments; provided that the Trustee shall not institute any proceeding for enforcement of such lien except in connection with an action taken pursuant to Section 5.3 hereof for enforcement of the lien of this Indenture for the benefit of the Noteholders.

Fees shall be accrued on the actual number of days in the related Interest Accrual Period. The Trustee shall receive amounts pursuant to this Section 6.7 and Section 11.1(a) only to the extent that such payment is made in accordance with the Priority of Payments and the

-140-

failure to pay such amounts to the Trustee will not, by itself, constitute an Event of Default. Subject to Section 6.9, the Trustee shall continue to serve as Trustee under this Indenture notwithstanding the fact that the Trustee shall not have received amounts due to it hereunder. No direction by a Majority of the Controlling Class shall affect the right of the Trustee to collect amounts owed to it under this Indenture.

If on any Payment Date when any amount shall be payable to the Trustee pursuant to this Indenture is not paid because there are insufficient funds available for the payment thereof, all or any portion of such amount not so paid shall be deferred and payable on any later Payment Date on which a fee shall be payable and sufficient funds are available therefor in accordance with the Priority of Payments.

Section 6.8 Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States of America or of any State thereof, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$200,000,000, subject to supervision or examination by federal or State authority, having a rating of at least "A2" by Moody's, a rating of at least "BBB" by Fitch and a long-term senior unsecured debt rating of at least "A+" and a short-term debt rating of at least "A-1" by S&P and having an office within the United States. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 6.8, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.8, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 6.

Section 6.9 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 6 shall become effective until the acceptance of appointment by the successor Trustee under Section 6.10.

(b) The Trustee may resign at any time by giving written notice thereof to the Issuer, the Co-Issuer, the Collateral Manager, each Hedge Counterparty, the Noteholders and each Rating Agency. Upon receiving such notice of resignation, the Issuer and the Co-Issuer shall promptly appoint a successor trustee or trustees by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the Trustee so resigning and one copy to the successor Trustee or Trustees, together with a copy to each Noteholder, each Hedge Counterparty and the Collateral Manager; provided that such successor Trustee shall be appointed only upon the written consent of a Majority of the Notes (or if there are no Notes Outstanding, a Majority of the Preferred Shares) or, at any time when an Event of Default shall have occurred and be continuing or when a successor Trustee has been appointed pursuant to Section 6.10, by Act of a Majority of the Controlling Class. If no successor Trustee shall have been appointed and an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee

-141-

within 30 days after the giving of such notice of resignation, the resigning Trustee, the Controlling Class of Notes or any Holder of a Note, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of 66-2/3% of the Notes (or if there are no Notes Outstanding, a Majority of the Preferred Shares) or, at any time when an Event of Default shall have occurred and be continuing or when a successor Trustee has been appointed pursuant to Section 6.10, by Act of the Controlling Class, upon written notice delivered to the Trustee and to the Issuer and the Co-Issuer.

(d) If at any time:

(i) the Trustee shall cease to be eligible under Section 6.8 and shall fail to resign after written request therefor by the Issuer, the Co-Issuer, or by any Holder; or

(ii) the Trustee shall become incapable of acting or there shall be instituted any proceeding pursuant to which it could be adjudged as bankrupt or insolvent or a receiver or liquidator of the Trustee or of its property shall be appointed or any public officer shall take

charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case (subject to Section 6.9(a)), (a) the Issuer or the Co-Issuer, by Issuer Order, subject to the written consent of each Hedge Counterparty, may remove the Trustee or (b) subject to Section 5.15, a Majority of the Controlling Class or any Holder may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Trustee for any reason, the Issuer and the Co-Issuer, by Issuer Order, subject to the written consent of each Hedge Counterparty and the Collateral Manager, shall promptly appoint a successor Trustee. If the Issuer and the Co-Issuer shall fail to appoint a successor Trustee within 60 days after such resignation, removal or incapability or the occurrence of such vacancy, a successor Trustee may be appointed by Act of a Majority of the Controlling Class delivered to the Issuer, the Co-Issuer, the Collateral Manager and the retiring Trustee. The successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede any successor Trustee proposed by the Issuer and the Co-Issuer. If no successor Trustee shall have been so appointed by the Issuer and the Co-Issuer or a Majority of the Controlling Class and shall have accepted appointment in the manner hereinafter provided, subject to Section 5.15, each Hedge Counterparty, the Controlling Class or any Holder may, on behalf of itself or himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Issuer and the Co-Issuer shall give prompt notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of such event by first class mail, postage prepaid, to each Rating Agency, each

-142-

Hedge Counterparty, the Preferred Shares Paying Agent, the Collateral Manager and to the Holders of the Notes as their names and addresses appear in the Notes Register. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Issuer or the Co-Issuer fail to mail such notice within 10 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be given at the expense of the Issuer or the Co-Issuer, as the case may be.

Section 6.10 Acceptance of Appointment by Successor.

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer, the Co-Issuer, each Hedge Counterparty, the Collateral Manager, the Servicer and the retiring Trustee an instrument accepting such appointment. Upon delivery of the required instruments, the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of the retiring Trustee; but, on request of the Issuer and the Co-Issuer or a Majority of the Controlling Class or the Collateral Manager or the successor Trustee, such retiring Trustee shall, upon payment of its charges then unpaid, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and Money held by such retiring Trustee hereunder, subject nevertheless to its lien, if any, provided for in Section 6.7(d). Upon request of any such successor Trustee, the Issuer and the Co-Issuer shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time

of such acceptance such successor shall be qualified and eligible under this Article 6 and (a) such successor shall have long term debt rated within the four highest rating categories by each Rating Agency, and (b) each Rating Agency has confirmed in writing that the employment of such successor would not adversely affect the rating on the Notes.

Section 6.11 Merger, Conversion, Consolidation or Succession to Business of Trustee.

Any corporation or banking association into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or banking association resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder; provided such corporation shall be otherwise qualified and eligible under this Article 6, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any of the Notes have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Notes.

-143-

Section 6.12 Co-Trustees and Separate Trustee.

At any time or times, including for the purpose of meeting the legal requirements of any jurisdiction in which any part of the Assets may at the time be located, the Issuer, the Co-Issuer and the Trustee shall have power to appoint, one or more Persons to act as co-trustee jointly with the Trustee of all or any part of the Assets, with the power to file such proofs of claim and take such other actions pursuant to Section 5.6 herein and to make such claims and enforce such rights of action on behalf of the Holders of the Notes as such Holders themselves may have the right to do, subject to the other provisions of this Section 6.12.

Each of the Issuer and the Co-Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint a co-trustee. If the Issuer and the Co-Issuer do not both join in such appointment within 15 days after the receipt by them of a request to do so, the Trustee shall have power to make such appointment.

Should any written instrument from the Issuer or the Co-Issuer be required by any co-trustee, so appointed, more fully confirming to such co-trustee such property, title, right or power, any and all such instruments shall, on request, be executed, acknowledged and delivered by the Issuer or the Co-Issuer, as the case may be. The Issuer agrees to pay (but only from and to the extent of the Assets) to the extent funds are available therefor under subclauses (3) and (26) of Section 11.1(a)(i), for any reasonable fees and expenses in connection with such appointment.

Every co-trustee, shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms:

(a) the Notes shall be authenticated and delivered and all rights, powers, duties and obligations hereunder in respect of the custody of securities, Cash and other personal property held by, or required to be deposited or pledged with, the Trustee hereunder, shall be exercised solely by the Trustee;

(b) the rights, powers, duties and obligations hereby conferred or imposed upon the Trustee in respect of any property covered by the appointment of a co-trustee shall be conferred or imposed upon and exercised or performed by the Trustee or by the Trustee and such co-trustee jointly in the case of the

appointment of a co-trustee as shall be provided in the instrument appointing such co-trustee, except to the extent that under any law of any jurisdiction in which any particular act is to be performed, the Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by a co-trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Issuer and the Co-Issuer evidenced by an Issuer Order, may accept the resignation of, or remove, any co-trustee appointed under this Section 6.12, and in case an Event of Default has occurred and is continuing, the Trustee shall have the power to accept the resignation of, or remove, any such co-trustee without the concurrence of the Issuer or the Co-

-144-

Issuer. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.12;

(d) no co-trustee hereunder shall be personally liable by reason of any act or omission of the Trustee hereunder;

(e) the Trustee shall not be liable by reason of any act or omission of a co-trustee; and

(f) any Act of Securityholders delivered to the Trustee shall be deemed to have been delivered to each co-trustee.

Section 6.13 Certain Duties of Trustee Related to Delayed Payment of Proceeds.

In the event that in any month the Trustee shall not have received a Scheduled Distribution, (a) the Trustee shall promptly notify the Issuer and the Collateral Manager in writing and (b) unless within three Business Days (or the end of the applicable grace period for such payment, if longer) after such notice such payment shall have been received by the Trustee, or the Issuer, in its absolute discretion (but only to the extent permitted by Section 10.2(a)), shall have made provision for such payment satisfactory to the Trustee in accordance with Section 10.2(a), the Trustee shall request the obligor of such Pledged Obligation, the trustee under the related Underlying Instrument or paying agent designated by either of them, as the case may be, to make such payment as soon as practicable after such request but in no event later than three Business Days after the date of such request. In the event that such payment is not made within such time period, the Trustee, subject to the provisions of clause (iv) of Section 6.1(d), shall take such action as the Collateral Manager reasonably shall direct in writing. Any such action shall be without prejudice to any right to claim a Default or Event of Default under this Indenture. In the event that the Issuer or the Collateral Manager requests a release of a Pledged Obligation in connection with any such action under the Collateral Management Agreement, such release shall be subject to Section 10.11 and Article 12 of this Indenture, as the case may be. Notwithstanding any other provision hereof, the Trustee shall deliver to the Issuer or its designee any payment with respect to any Pledged Obligation received after the Due Date thereof to the extent the Issuer previously made provisions for such payment satisfactory to the Trustee in accordance with this Section 6.13 and such payment shall not be deemed part of the Assets.

Section 6.14 Representations and Warranties of the Trustee.

The Trustee represents and warrants that:

(a) the Trustee is a national banking association with trust powers, duly and validly existing under the laws of the United States of America, with corporate power and authority to execute, deliver and perform its obligations under this Indenture, and is duly eligible and qualified to act as trustee under

this Indenture;

(b) this Indenture has been duly authorized, executed and delivered by the Trustee and constitutes the valid and binding obligation of the Trustee, enforceable against it in accordance with its terms except (i) as limited by bankruptcy, fraudulent conveyance, fraudulent transfer, insolvency, reorganization, liquidation, receivership, moratorium or other

-145-

similar laws now or hereafter in effect relating to creditors' rights generally and by general equitable principles, regardless of whether considered in a proceeding in equity or at law, and (ii) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought;

(c) neither the execution or delivery by the Trustee of this Indenture nor the performance by the Trustee of its obligations under this Indenture requires the consent or approval of, the giving of notice to or the registration or filing with, any governmental authority or agency under any existing law of the United States of America governing the banking or trust powers of the Trustee;

(d) neither the execution, delivery and performance of this Indenture, nor the consummation of the transactions contemplated by this Indenture, (i) is prohibited by, or requires the Trustee to obtain any consent, authorization, approval or registration under, any law, statute, rule, regulation, or any judgment, order, writ, injunction or decree that is binding upon the Trustee or any of its properties or assets, (ii) will violate the provisions of the Governing Documents of the Trustee or (iii) will violate any provision of, result in any default or acceleration of any obligations under, result in the creation or imposition of any lien pursuant to, or require any consent under, any material agreement to which the Trustee is a party or by which it or any of its property is bound, the violation of which would have a material adverse effect on the Trustee or its property; and

(e) there are no proceedings pending or, to the best knowledge of the Trustee, threatened against the Trustee before any Federal, state or other governmental agency, authority, administrator or regulatory body, arbitrator, court or other tribunal, foreign or domestic, which could have a material adverse effect on the Pledged Obligations or the performance by the Trustee of its obligations under this Indenture.

Section 6.15 Requests for Consents.

In the event that the Trustee receives written notice of any proposed amendment, consent or waiver under the Underlying Instruments of any Collateral Debt Security (before or after any default) or in the event any action is required to be taken in respect to an Underlying Instrument, the Trustee shall promptly contact the Issuer and the Collateral Manager. The Collateral Manager may, on behalf of the Issuer, instruct the Trustee pursuant to an Issuer Order to, and the Trustee shall, with respect to which a Collateral Debt Security as to which a consent or waiver under the Underlying Instruments of such Collateral Debt Security (before or after any default) has been proposed or with respect to action required to be taken in respect of an Underlying Instrument, give consent, grant a waiver, vote or exercise any or all other rights or remedies with respect to any such Collateral Debt Security in accordance with such Issuer Order. In the absence of any instruction from the Collateral Manager, the Trustee shall not engage in any vote or take any action with respect to such a Collateral Debt Security.

ARTICLE 7

COVENANTS

Section 7.1 Payment of Principal and Interest.

The Issuer and the Co-Issuer shall duly and punctually pay the principal of and interest on each Class of Notes in accordance with the terms of such Notes and this Indenture. Amounts properly withheld under the Code or other applicable law by any Person from a payment to any Noteholder of interest and/or principal shall be considered as having been paid by the Issuer and the Co-Issuer, and, with respect to the Preferred Shares, by the Issuer, to such Preferred Shareholder for all purposes of this Indenture.

The Trustee shall, unless prevented from doing so for reasons beyond its reasonable control, give notice to each Securityholder of any such withholding requirement no later than 10 days prior to the related Payment Date from which amounts are required (as directed by the Issuer (or the Collateral Manager on behalf of the Issuer)) to be withheld, provided that, despite the failure of the Trustee to give such notice, amounts withheld pursuant to applicable tax laws shall be considered as having been paid by the Issuer and the Co-Issuer, as provided above.

Section 7.2 Maintenance of Office or Agency.

The Issuer and the Co-Issuer hereby appoint the Trustee as a Paying Agent for the payment of principal of and interest on the Notes and where Notes may be surrendered for registration of transfer or exchange and the Issuer and the Co-Issuer hereby appoint CT Corporation System, 111 Eighth Avenue, 13th Floor, New York, New York 10011, as their agent where notices and demands to or upon the Co-Issuer in respect of the Notes or this Indenture, or the Issuer in respect of the Notes or this Indenture, may be served.

The Issuer and the Co-Issuer hereby appoint the Irish Paying Agent as a Paying Agent for the payment of principal of and interest on the Notes and to act as their agent where notices and demands to or upon the Issuer or the Co-Issuer in respect of the Notes or this Indenture may be served and where Notes may be surrendered for registration of transfer or exchange.

The Issuer or the Co-Issuer may at any time and from time to time vary or terminate the appointment of any such agent or appoint any additional agents for any or all of such purposes; provided, however, that the Issuer and the Co-Issuer, if applicable, will maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands to or upon the Issuer and the Co-Issuer in respect of the Notes and this Indenture may be served, and, subject to any laws or regulations applicable thereto, an office or agency outside of the United States where Notes may be presented and surrendered for payment; provided, further, that no paying agent shall be appointed in a jurisdiction which subjects payments on the Notes to withholding tax. The Issuer or the Co-Issuer, as the case may be, shall give prompt written notice to the Trustee, each Rating Agency and the Noteholders of the appointment or termination of any such agent and of the location and any change in the location of any such office or agency.

If at any time the Issuer and the Co-Issuer, if applicable, shall fail to maintain any such required office or agency in the Borough of Manhattan, The City of New York, or outside

the United States, or shall fail to furnish the Trustee with the address thereof, presentations and surrenders may be made (subject to the limitations described in the preceding paragraph) at and notices and demands may be served

on the Issuer and the Co-Issuer, and Notes may be presented and surrendered for payment to the appropriate Paying Agent at its main office and the Issuer and the Co-Issuer hereby appoint the same as their agent to receive such respective presentations, surrenders, notices and demands.

Section 7.3 Money for Note Payments to be Held in Trust.

All payments of amounts due and payable with respect to any Notes that are to be made from amounts withdrawn from the Payment Account shall be made on behalf of the Issuer and the Co-Issuer by the Trustee or a Paying Agent (in each case, from and to the extent of available funds in the Payment Account and subject to the Priority of Payments) with respect to payments on the Notes.

When the Paying Agent is not also the Notes Registrar, the Issuer and the Co-Issuer shall furnish, or cause the Notes Registrar to furnish, no later than the fifth calendar day after each Record Date a list, if necessary, in such form as such Paying Agent may reasonably request, of the names and addresses of the Holders of Notes and of the certificate numbers of individual Notes held by each such Holder.

Whenever the Paying Agent is not also the Trustee, the Issuer, the Co-Issuer, and such Paying Agent shall, on or before the Business Day next preceding each Payment Date or Redemption Date, as the case may be, direct the Trustee to deposit on such Payment Date with such Paying Agent, if necessary, an aggregate sum sufficient to pay the amounts then becoming due pursuant to the terms of this Indenture (to the extent funds are then available for such purpose in the Payment Account, and subject to the Priority of Payments), such sum to be held for the benefit of the Persons entitled thereto and (unless such Paying Agent is the Trustee) the Issuer and the Co-Issuer shall promptly notify the Trustee of its action or failure so to act. Any Monies deposited with a Paying Agent (other than the Trustee) in excess of an amount sufficient to pay the amounts then becoming due on the Notes with respect to which such deposit was made shall be paid over by such Paying Agent to the Trustee for application in accordance with Article 11. Any such Paying Agent shall be deemed to agree by assuming such role not to cause the filing of a petition in bankruptcy against the Issuer or the Co-Issuer for the non-payment to the Paying Agent of any amounts payable thereto until at least one year and one day (or, if longer, the applicable preference period then in effect) after the payment in full of all Notes issued under this Indenture.

The initial Paying Agent shall be as set forth in Section 7.2. Any additional or successor Paying Agents shall be appointed by Issuer Order of the Issuer and Issuer Order of the Co-Issuer with written notice thereof to the Trustee; provided, however, that so long as any Class of the Notes are rated by a Rating Agency and with respect to any additional or successor Paying Agent for the Notes, either (i) such Paying Agent has a long-term debt rating of "Aa3" or higher by Moody's, "AA-" or higher by Fitch and "AA-" or higher by S&P or a short-term debt rating of "P-1" by Moody's, "F1+" by Fitch and "A1+" by S&P or (ii) each Rating Agency confirms that employing such Paying Agent shall not adversely affect the then-current ratings of the Notes. In the event that such successor Paying Agent ceases to have a long-term debt rating of "Aa3" or

-148-

higher by Moody's, "AA-" or higher by Fitch or "AA-" or higher by S&P or a short-term debt rating of at least "P-1" by Moody's, "F1+" by Fitch and "A-1+" by S&P, the Issuer and the Co-Issuer shall promptly remove such Paying Agent and appoint a successor Paying Agent. The Issuer and the Co-Issuer shall not appoint any Paying Agent that is not, at the time of such appointment, a depository institution or trust company subject to supervision and examination by federal and/or state and/or national banking authorities. The Issuer and the Co-Issuer shall cause the Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee (and if the Trustee acts as Paying Agent, it hereby so agrees), subject to the provisions of this Section 7.3, that such Paying Agent will:

(a) allocate all sums received for payment to the Holders of Notes for which it acts as Paying Agent on each Payment Date and Redemption Date among such Holders in the proportion specified in the applicable report or Redemption Date Statement, as the case may be, in each case to the extent permitted by applicable law;

(b) hold all sums held by it for the payment of amounts due with respect to the Notes for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided and pay such sums to such Persons as herein provided;

(c) if such Paying Agent is not the Trustee, immediately resign as a Paying Agent and forthwith pay to the Trustee all sums held by it for the payment of Notes if at any time it ceases to meet the standards set forth above required to be met by a Paying Agent at the time of its appointment;

(d) if such Paying Agent is not the Trustee, immediately give the Trustee notice of any Default by the Issuer or the Co-Issuer (or any other obligor upon the Notes) in the making of any payment required to be made; and

(e) if such Paying Agent is not the Trustee at any time during the continuance of any such Default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held by such Paying Agent.

The Issuer or the Co-Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Issuer Order direct the Paying Agent to pay, to the Trustee all sums held by the Issuer or the Co-Issuer or held by the Paying Agent for payment of the Notes, such sums to be held by the Trustee in trust for the same Noteholders as those upon which such sums were held by the Issuer, the Co-Issuer or the Paying Agent; and, upon such payment by the Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to such Money.

Except as otherwise required by applicable law, any Money deposited with the Trustee in trust or deposited with the Paying Agent for the payment of the principal of or interest on any Note and remaining unclaimed for two years after such principal or interest has become due and payable shall be paid to the Issuer; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Issuer for payment of such amounts and all liability of the Trustee or the Paying Agent with respect to such Money (but only to the extent of the

-149-

amounts so paid to the Issuer or the Co-Issuer, as applicable) shall thereupon cease; provided, however, that the Irish Paying Agent, before being required to make any such payment, shall at the expense of the Issuer cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in Dublin, Ireland, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining shall be repaid to the Issuer. The Trustee or the Paying Agent, before being required to make any such release of payment, may, but shall not be required to, adopt and employ, at the expense of the Issuer or the Co-Issuer, as the case may be, any reasonable means of notification of such release of payment, including, but not limited to, mailing notice of such release to Holders whose Notes have been called but have not been surrendered for redemption or whose right to or interest in Monies due and payable but not claimed is determinable from the records of the Paying Agent, at the last address of record of each such Holder.

Section 7.4 Existence of the Issuer and Co-Issuer.

(a) So long as any Note is Outstanding, the Issuer shall, to the maximum extent permitted by applicable law, maintain in full force and effect its existence and rights as an exempted company incorporated with limited liability under the laws of the Cayman Islands and shall obtain and preserve its qualification to do business as a foreign limited liability company in each jurisdiction in which such qualifications are or shall be necessary to protect the validity and enforceability of this Indenture, the Notes or any of the Assets; provided that the Issuer shall be entitled to change its jurisdiction of registration from the Cayman Islands to any other jurisdiction reasonably selected by the Issuer so long as (i) such change is not disadvantageous in any material respect to the Holders of the Notes or the Preferred Shares or any Hedge Counterparty, (ii) written notice of such change shall have been given by the Trustee to the Holders of the Notes or Preferred Shares, the Preferred Shares Paying Agent, each Hedge Counterparty and each Rating Agency 15 Business Days prior to such change and (iii) on or prior to the 15th Business Day following such notice the Trustee shall not have received written notice from a Majority of the Controlling Class or a Majority of the Preferred Shares or any Hedge Counterparty objecting to such change. So long as any Note is Outstanding, the Issuer will maintain at all times at least one director who is Independent of the Collateral Manager and its Affiliates.

(b) So long as any Note is Outstanding, the Co-Issuer shall maintain in full force and effect its existence and rights as a limited liability company organized under the laws of Delaware and shall obtain and preserve its qualification to do business as a foreign limited liability company in each jurisdiction in which such qualifications are or shall be necessary to protect the validity and enforceability of this Indenture or the Notes; provided, however, that the Co-Issuer shall be entitled to change its jurisdiction of formation from Delaware to any other jurisdiction reasonably selected by the Co-Issuer so long as (i) such change is not disadvantageous in any material respect to the Holders of the Notes or any Hedge Counterparty, (ii) written notice of such change shall have been given by the Trustee to the Holders of the Notes, each Hedge Counterparty and each Rating Agency 15 Business Days prior to such change and (iii) on or prior to the 15th Business Day following such notice the Trustee shall not have received written notice from a Majority of the Controlling Class or any Hedge Counterparty objecting to such change. So long as any Note is Outstanding, the Co-

-150-

Issuer shall maintain at all times at least one manager who is Independent of the Collateral Manager and its Affiliates.

(c) So long as any Note is Outstanding, the Issuer shall ensure that all corporate or other formalities regarding its existence are followed (including correcting any known misunderstanding regarding its separate existence). So long as any Note is Outstanding, the Issuer shall not take any action or conduct its affairs in a manner that is likely to result in its separate existence being ignored or its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding. So long as any Note is Outstanding, the Issuer shall maintain and implement administrative and operating procedures reasonably necessary in the performance of the Issuer's obligations hereunder, and the Issuer shall at all times keep and maintain, or cause to be kept and maintained, separate books, records, accounts and other information customarily maintained for the performance of the Issuer's obligations hereunder. Without limiting the foregoing, so long as any Note is Outstanding, (i) the Issuer shall (A) pay its own liabilities only out of its own funds and (B) use separate stationery, invoices and checks and (ii) the Issuer shall not (A) have any subsidiaries, (B) have any employees, (C) engage in any transaction with any shareholder that is not permitted under the terms of the Collateral Management Agreement, (D) pay dividends other than in accordance with the terms of this Indenture and the Preferred Shares Paying Agency Agreement or (E) conduct business under an assumed name (i.e., no "DBAs"); provided that the foregoing shall not prohibit the Issuer from entering into the transactions contemplated by the

Administration Agreement with the Company Administrator and the Preferred Shares Paying Agency Agreement with the Shares Registrar.

(d) So long as any Note is Outstanding, the Co-Issuer shall ensure that all limited liability company or other formalities regarding its existence) are followed, as well as correcting any known misunderstanding regarding its separate existence. The Co-Issuer shall not take any action or conduct its affairs in a manner, that is likely to result in its separate existence being ignored or its assets and liabilities being substantively consolidated with any other Person in a bankruptcy, reorganization or other insolvency proceeding. The Co-Issuer shall maintain and implement administrative and operating procedures reasonably necessary in the performance of the Co-Issuer's obligations hereunder, and the Co-Issuer shall at all times keep and maintain, or cause to be kept and maintained, books, records, accounts and other information customarily maintained for the performance of the Co-Issuer's obligations hereunder. Without limiting the foregoing, the Co-Issuer shall not (A) have any subsidiaries, (B) have any employees (other than its managers), (C) join in any transaction with any member that is not permitted under the terms of the Collateral Management Agreement or (D) pay dividends other than in accordance with the terms of this Indenture.

Section 7.5 Protection of Assets.

(a) The Trustee, on behalf of the Issuer, pursuant to any Opinion of Counsel received pursuant to Section 7.5(d) shall execute and deliver all such Financing Statements, continuation statements, instruments of further assurance and other instruments, and shall take such other action as may be necessary or advisable or desirable to secure the rights and remedies of the Holders and each Hedge Counterparty hereunder and to:

-151-

(i) Grant more effectively all or any portion of the Assets;

(ii) maintain or preserve the lien (and the priority thereof) of this Indenture or to carry out more effectively the purposes hereof;

(iii) perfect, publish notice of or protect the validity of any Grant made or to be made by this Indenture (including, without limitation, any and all actions necessary or desirable as a result of changes in law or regulations);

(iv) enforce any of the Pledged Obligations or other instruments or property included in the Assets;

(v) preserve and defend title to the Assets and the rights of the Trustee, the Holders of the Notes and each Hedge Counterparty in the Assets against the claims of all persons and parties; and

(vi) pursuant to Sections 11.1(a)(i)(1) and 11.1(a)(ii)(1), pay or cause to be paid any and all taxes levied or assessed upon all or any part of the Assets.

The Issuer hereby designates the Trustee, its agent and attorney-in-fact to execute any Financing Statement, continuation statement or other instrument required pursuant to this Section 7.5. The Trustee agrees that it will from time to time execute and cause to be filed Financing Statements and continuation statements (it being understood that the Trustee shall be entitled to rely upon an Opinion of Counsel described in Section 7.5(d), at the expense of the Issuer, as to the need to file such Financing Statements and continuation statements, the dates by which such filings are required to be made and the jurisdictions in which such filings are required to be made).

(b) The Trustee shall not (except in accordance with Section 10.11(a), (b) or (c) and except for payments, deliveries and distributions otherwise

expressly permitted under this Indenture) (i) remove any portion of the Assets that consists of Cash or is evidenced by an instrument, certificate or other writing (A) from the jurisdiction in which it was held at the date as described in the Opinion of Counsel delivered at the Closing Date pursuant to Section 3.1(d) or (B) from the possession of the Person who held it on such date or (ii) cause or permit the Custodial Account or the Custodial Securities Intermediary to be located in a different jurisdiction from the jurisdiction in which such securities accounts and Custodial Securities Intermediary were located on the Closing Date, unless the Trustee shall have first received an Opinion of Counsel to the effect that the lien and security interest created by this Indenture with respect to such property will continue to be maintained after giving effect to such action or actions.

(c) The Issuer shall pay or cause to be paid taxes, if any, levied on account of the beneficial ownership by the Issuer of any Pledged Obligations that secure the Notes.

(d) For so long as the Notes are Outstanding, (i) on December 31, 2010 and (ii) every 60 months after such date, the Issuer (or the Collateral Manager on behalf of the Issuer) shall deliver to the Trustee for the benefit of the Trustee, the Collateral Manager, each Hedge Counterparty and each Rating Agency, at the expense of the Issuer, an Opinion of

-152-

Counsel stating what is required, in the opinion of such counsel, as of the date of such opinion, to maintain the lien and security interest created by this Indenture with respect to the Assets, and confirming the matters set forth in the Opinion of Counsel, furnished pursuant to Section 3.1(d), with regard to the perfection and priority of such security interest (and such Opinion may likewise be subject to qualifications and assumptions similar to those set forth in the Opinion delivered pursuant to Section 3.1(d)).

Section 7.6 Notice of Any Amendments.

Each of the Issuer and the Co-Issuer shall give notice to the Rating Agencies of, and satisfy the Rating Agency Condition with respect to, any amendments to its Governing Documents.

Section 7.7 Performance of Obligations.

(a) Each of the Issuer and the Co-Issuer shall not take any action, and will use its best effort not to permit any action to be taken by others, that would release any Person from any of such Person's covenants or obligations under any instrument included in the Assets, except in the case of enforcement action taken with respect to any Defaulted Security in accordance with the provisions hereof and as otherwise required hereby.

(b) The Issuer or the Co-Issuer may, with the prior written consent of the Majority of the Notes (or if there are no Notes Outstanding, a Majority of the Preferred Shares), contract with other Persons, including the Collateral Manager or the Trustee, for the performance of actions and obligations to be performed by the Issuer or the Co-Issuer, as the case may be, hereunder by such Persons and the performance of the actions and other obligations with respect to the Assets of the nature set forth in the Collateral Management Agreement by the Collateral Manager. Notwithstanding any such arrangement, the Issuer or the Co-Issuer, as the case may be, shall remain primarily liable with respect thereto. In the event of such contract, the performance of such actions and obligations by such Persons shall be deemed to be performance of such actions and obligations by the Issuer or the Co-Issuer; and the Issuer or the Co-Issuer shall punctually perform, and use its best efforts to cause the Collateral Manager or such other Person to perform, all of their obligations and agreements contained in the Collateral Management Agreement or such other agreement.

Section 7.8 Negative Covenants.

(a) The Issuer and the Co-Issuer shall not:

(i) sell, assign, participate, transfer, exchange or otherwise dispose of, or pledge, mortgage, hypothecate or otherwise encumber (or permit such to occur or suffer such to exist), any part of the Assets, except as otherwise expressly permitted by this Indenture or the Collateral Management Agreement;

(ii) claim any credit on, make any deduction from, or dispute the enforceability of, the payment of the principal or interest payable in respect of the Notes (other than amounts required to be paid, deducted or withheld in accordance with any applicable law or regulation of any governmental authority) or assert any claim against

-153-

any present or future Noteholder by reason of the payment of any taxes levied or assessed upon any part of the Assets;

(iii) (A) incur or assume or guarantee any indebtedness, other than the Notes and this Indenture and the transactions contemplated hereby; (B) issue any additional class of securities, other than the Notes, the Preferred Shares, the ordinary shares of the Issuer and the limited liability company membership interests of the Co-Issuer; or (C) issue any additional shares of stock, other than the ordinary shares of the Issuer and the Preferred Shares;

(iv) (A) permit the validity or effectiveness of this Indenture or any Grant hereunder to be impaired, or permit the lien of this Indenture to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations with respect to this Indenture or the Notes, except as may be expressly permitted hereby, (B) permit any lien, charge, adverse claim, security interest, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise upon or burden the Assets or any part thereof, any interest therein or the proceeds thereof, except as may be expressly permitted hereby or (C) take any action that would permit the lien of this Indenture not to constitute a valid first priority security interest in the Assets, except as may be expressly permitted hereby;

(v) amend the Collateral Management Agreement, except pursuant to the terms thereof;

(vi) amend the Preferred Shares Paying Agency Agreement, except pursuant to the terms thereof;

(vii) dissolve or liquidate in whole or in part, except as permitted hereunder;

(viii) make or incur any capital expenditures, except as reasonably required to perform its functions in accordance with the terms of this Indenture;

(ix) become liable in any way, whether directly or by assignment or as a guarantor or other surety, for the obligations of the lessee under any lease, hire any employees or pay any dividends to its shareholders, except with respect to the Preferred Shares in accordance with the Priority of Payments;

(x) maintain any bank accounts other than the Accounts and the bank account in the Cayman Islands in which (inter alia) the proceeds of the Issuer's issued share capital and the transaction fees paid to the Issuer for agreeing to issue the Securities will be kept;

(xi) conduct business under an assumed name, or change its name without first delivering at least 30 days' prior written notice to the Trustee, the Noteholders and the Rating Agencies, each Hedge Counterparty and an Opinion of Counsel to the effect that such name change will not adversely affect the security interest hereunder of the Trustee or the Secured Parties;

-154-

(xii) engage in any activity that would cause the Issuer to be subject to U.S. Federal, state or local income or franchise tax; or

(xiii) except for any agreements involving the purchase and sale of Collateral Debt Securities having customary purchase or sale terms and documented with customary loan trading documentation, enter into any agreements unless such agreements contain "non-petition" and "limited recourse" provisions.

(b) Neither the Issuer nor the Trustee shall sell, transfer, exchange or otherwise dispose of Assets, or enter into or engage in any business with respect to any part of the Assets, except as expressly permitted or required by this Indenture or the Collateral Management Agreement.

(c) The Co-Issuer shall not invest any of its assets in "securities" (as such term is defined in the Investment Company Act) and shall keep all of the Co-Issuer's assets in Cash.

(d) For so long as any of the Notes are Outstanding, the Co-Issuer shall not issue any limited liability company membership interests of the Co-Issuer to any Person other than the Arbor Parent or a wholly-owned subsidiary of the Arbor Parent.

(e) The Issuer shall not enter into any material new agreements (other than any Hedge Agreement, Hedge Counterparty Credit Support, Collateral Debt Security, Collateral Debt Security Purchase Agreement or other agreement (including, without limitation, in connection with the sale of Assets by the Issuer) contemplated by this Indenture) without the prior written consent of the Holders of a Majority of the Notes (or if there are no Notes Outstanding, a Majority of the Preferred Shares) and shall provide notice of all new agreements (other than any Hedge Agreement, Collateral Debt Security or other agreement specifically contemplated by this Indenture) to the Holders of the Notes and each Hedge Counterparty. The foregoing notwithstanding, the Issuer may agree to any material new agreements; provided that (i) the Issuer (or the Collateral Manager on behalf of the Issuer) determines that such new agreements would not, upon or after becoming effective, adversely affect the rights or interests of any Class or Classes of Noteholders and (ii) subject to satisfaction of the Rating Agency Condition.

(f) As long as any Note is Outstanding, ARMS Equity may not transfer the Preferred Shares to any other Person.

Section 7.9 Statement as to Compliance.

(a) On or before January 31, in each calendar year, commencing in 2007 or immediately if there has been a Default in the fulfillment of an obligation under this Indenture, the Issuer shall deliver to the Trustee (which will deliver a copy to each Hedge Counterparty and each Rating Agency) an Officer's Certificate given on behalf of the Issuer and without personal liability stating, as to each signer thereof, that, since the date of the last certificate or, in the case of the first certificate, the Closing Date, to the best of the knowledge, information and belief of such Officer, the Issuer has fulfilled all of its obligations under this Indenture or,

-155-

if there has been a Default in the fulfillment of any such obligation, specifying each such Default known to them and the nature and status thereof.

Section 7.10 Issuer and Co-Issuer May Consolidate or Merge Only on Certain Terms.

(a) The Issuer shall not consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any Person, unless permitted by the Governing Documents and Cayman Islands law and unless:

(i) the Issuer shall be the surviving entity, or the Person (if other than the Issuer) formed by such consolidation or into which the Issuer is merged or to which all or substantially all of the assets of the Issuer are transferred shall be an entity organized and existing under the laws of the Cayman Islands or such other jurisdiction approved by a Majority of each and every Class of the Notes (each voting as a separate Class), a Majority of the Preferred Shares and each Hedge Counterparty; provided that no such approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of registration pursuant to Section 7.4 hereof; and provided, further, that the surviving entity shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, each Noteholder and each Hedge Counterparty, the due and punctual payment of the principal of and interest on all Notes and other amounts payable hereunder and under each Hedge Agreement and the Collateral Management Agreement and the performance and observance of every covenant of this Indenture and under each Hedge Agreement and the Collateral Management Agreement on the part of the Issuer to be performed or observed, all as provided herein;

(ii) each Rating Agency shall have been notified in writing of each proposed consolidation or merger of the Issuer and the Trustee shall have received written confirmation from each Rating Agency that the ratings issued with respect to each Class of Notes shall not be reduced or withdrawn as a result of the consummation of such transaction;

(iii) if the Issuer is not the surviving entity, the Person formed by such consolidation or into which the Issuer is merged or to which all or substantially all of the assets of the Issuer are transferred shall have agreed with the Trustee (A) to observe the same legal requirements for the recognition of such formed or surviving entity as a legal entity separate and apart from any of its Affiliates as are applicable to the Issuer with respect to its Affiliates and (B) not to consolidate or merge with or into any other Person or transfer or convey all or substantially all of the Assets or all or substantially all of its assets to any other Person except in accordance with the provisions of this Section 7.10, unless in connection with a sale of the Assets pursuant to Article 5, Article 9 or Article 12;

(iv) if the Issuer is not the surviving entity, the Person formed by such consolidation or into which the Issuer is merged or to which all or substantially all of the assets of the Issuer are transferred shall have delivered to the Trustee, each Hedge

Person is duly organized, validly existing and in good standing in the jurisdiction in which such Person is organized; that such Person has sufficient power and authority to assume the obligations set forth in subsection (i) above and to execute and deliver an indenture supplemental hereto for the purpose of assuming such obligations; that such Person has duly authorized the execution, delivery and performance of an indenture supplemental hereto for the purpose of assuming such obligations and that such supplemental indenture is a valid, legal and binding obligation of such Person, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium and other laws affecting the enforcement of creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); that, immediately following the event which causes such Person to become the successor to the Issuer, (A) such Person has good and marketable title, free and clear of any lien, security interest or charge, other than the lien and security interest of this Indenture, to the Assets securing, in the case of a consolidation or merger of the Issuer, all of the Notes or, in the case of any transfer or conveyance of the Assets securing any of the Notes, such Notes, (B) the Trustee continues to have a valid perfected first priority security interest in the Assets securing, in the case of a consolidation or merger of the Issuer, all of the Notes, or, in the case of any transfer or conveyance of the Assets securing any of the Notes, such Notes and (C) such other matters as the Trustee, each Hedge Counterparty, the Collateral Manager or any Noteholder may reasonably require;

(v) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;

(vi) the Issuer shall have delivered to the Trustee, the Preferred Shares Paying Agent, each Hedge Counterparty, the Collateral Manager and each Noteholder, an Officer's Certificate and an Opinion of Counsel each stating that such consolidation, merger, transfer or conveyance and such supplemental indenture comply with this Article 7 and that all conditions precedent in this Article 7 provided for relating to such transaction have been complied with and that no adverse tax consequences will result therefrom to the Holders of the Notes, the Preferred Shareholders and any Hedge Counterparty; and

(vii) after giving effect to such transaction, the Issuer shall not be required to register as an investment company under the Investment Company Act.

(b) The Co-Issuer shall not consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any Person, unless no Notes remain Outstanding or:

(i) the Co-Issuer shall be the surviving entity, or the Person (if other than the Co-Issuer) formed by such consolidation or into which the Co-Issuer is merged or to which all or substantially all of the assets of the Co-Issuer are transferred shall be a company organized and existing under the laws of Delaware or such other jurisdiction approved by a Majority of the Controlling Class and each Hedge Counterparty; provided

that no such approval shall be required in connection with any such transaction undertaken solely to effect a change in the jurisdiction of formation pursuant to Section 7.4; and provided, further, that the surviving entity shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee and each Noteholder, the due and punctual payment of the principal of and interest on all Notes

and the performance and observance of every covenant of this Indenture on the part of the Co-Issuer to be performed or observed, all as provided herein;

(ii) each Rating Agency shall have been notified in writing of each proposed consolidation or merger of the Co-Issuer and the Trustee shall have received written confirmation from each Rating Agency that the ratings issued with respect to each Class of Notes shall not be reduced or withdrawn as a result of the consummation of such transaction;

(iii) if the Co-Issuer is not the surviving entity, the Person formed by such consolidation or into which the Co-Issuer is merged or to which all or substantially all of the assets of the Co-Issuer are transferred shall have agreed with the Trustee (A) to observe the same legal requirements for the recognition of such formed or surviving entity as a legal entity separate and apart from any of its Affiliates as are applicable to the Co-Issuer with respect to its Affiliates and (B) not to consolidate or merge with or into any other Person or transfer or convey all or substantially all of its assets to any other Person except in accordance with the provisions of this Section 7.10;

(iv) if the Co-Issuer is not the surviving entity, the Person formed by such consolidation or into which the Co-Issuer is merged or to which all or substantially all of the assets of the Co-Issuer are transferred shall have delivered to the Trustee and each Rating Agency an Officer's Certificate and an Opinion of Counsel each stating that such Person is duly organized, validly existing and in good standing in the jurisdiction in which such Person is organized; that such Person has sufficient power and authority to assume the obligations set forth in subsection (i) above and to execute and deliver an indenture supplemental hereto for the purpose of assuming such obligations; that such Person has duly authorized the execution, delivery and performance of an indenture supplemental hereto for the purpose of assuming such obligations and that such supplemental indenture is a valid, legal and binding obligation of such Person, enforceable in accordance with its terms, subject only to bankruptcy, reorganization, insolvency, moratorium and other laws affecting the enforcement of creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); such other matters as the Trustee or any Noteholder may reasonably require;

(v) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;

(vi) the Co-Issuer shall have delivered to the Trustee, the Preferred Shares Paying Agent, each Hedge Counterparty and each Noteholder an Officer's Certificate and an Opinion of Counsel each stating that such consolidation, merger, transfer or conveyance and such supplemental indenture comply with this Article 7 and that all

-158-

conditions precedent in this Article 7 provided for relating to such transaction have been complied with and that no adverse tax consequences will result therefrom to the Holders of the Notes, each Hedge Counterparty or the Preferred Shareholders; and

(vii) after giving effect to such transaction, the Co-Issuer shall not be required to register as an investment company under the Investment Company Act.

Section 7.11 Successor Substituted.

Upon any consolidation or merger, or transfer or conveyance of all or substantially all of the assets of the Issuer or the Co-Issuer, in accordance with Section 7.10 hereof, the Person formed by or surviving such consolidation or merger (if other than the Issuer or the Co-Issuer), or the Person to which such consolidation, merger, transfer or conveyance is made, shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer or the Co-Issuer, as the case may be, under this Indenture with the same effect as if such Person had been named as the Issuer or the Co-Issuer, as the case may be, herein. In the event of any such consolidation, merger, transfer or conveyance, the Person named as the "Issuer" or the "Co-Issuer" in the first paragraph of this Indenture or any successor which shall theretofore have become such in the manner prescribed in this Article 7 may be dissolved, wound-up and liquidated at any time thereafter, and such Person thereafter shall be released from its liabilities as obligor and maker on all the Notes and from its obligations under this Indenture.

Section 7.12 No Other Business.

The Issuer shall not engage in any business or activity other than issuing and selling the Notes pursuant to this Indenture and any supplements thereto, issuing and selling the Preferred Shares in accordance with its Governing Documents, entering into any Hedge Agreement, the Collateral Management Agreement, and acquiring, owning, holding and pledging the Assets in connection with the Notes and such other activities which are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith. The Co-Issuer shall not engage in any business or activity other than issuing and selling the Notes pursuant to this Indenture and any supplements thereto and such other activities which are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith.

Section 7.13 Reporting.

At any time when the Issuer and/or the Co-Issuer is not subject to Section 13 or 15(d) of the Exchange Act and is not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, upon the request of a Holder or beneficial owner of a Note, the Issuer and/or the Co-Issuer shall promptly furnish or cause to be furnished "Rule 144A Information" (as defined below) to such holder or beneficial owner, to a prospective purchaser of such Note designated by such holder or beneficial owner or to the Trustee for delivery to such holder or beneficial owner or a prospective purchaser designated by such holder or beneficial owner, as the case may be, in order to permit compliance by such holder or beneficial owner with Rule 144A under the Securities Act in connection with the resale of such Note by such holder or beneficial owner. "Rule 144A Information" shall be such information as is specified pursuant to Rule

-159-

144A(d)(4) under the Securities Act (or any successor provision thereto). The Trustee shall reasonably cooperate with the Issuer and/or the Co-Issuer in mailing or otherwise distributing (at the Issuer's expense) to such Noteholders or prospective purchasers, at and pursuant to the Issuer's and/or the Co-Issuer's written direction the foregoing materials prepared by or on behalf of the Issuer and/or the Co-Issuer; provided, however, that the Trustee shall be entitled to prepare and affix thereto or enclose therewith reasonable disclaimers to the effect that such Rule 144A Information was not assembled by the Trustee, that the Trustee has not reviewed or verified the accuracy thereof, and that it makes no representation as to such accuracy or as to the sufficiency of such information under the requirements of Rule 144A or for any other purpose.

Section 7.14 Calculation Agent.

(a) The Issuer and the Co-Issuer hereby agree that for so long as any

Notes remain Outstanding there shall at all times be an agent appointed to calculate LIBOR in respect of each Interest Accrual Period in accordance with the terms of Schedule J hereto (the "Calculation Agent"). The Issuer and the Co-Issuer have initially appointed the Trustee as Calculation Agent for purposes of determining LIBOR for each Interest Accrual Period. The Calculation Agent may be removed by the Issuer and the Co-Issuer at any time. The Calculation Agent may resign at any time by giving written notice thereof to the Issuer, the Co-Issuer, the Collateral Manager, each Hedge Counterparty, the Noteholders and each Rating Agency. If the Calculation Agent is unable or unwilling to act as such or is removed by the Issuer and the Co-Issuer in respect of any Interest Accrual Period, the Issuer and the Co-Issuer shall, with the prior written consent of each Hedge Counterparty, promptly appoint as a replacement Calculation Agent a leading bank which is engaged in transactions in Eurodollar deposits in the international Eurodollar market and which does not control or is not controlled by or under common control with the Issuer or the Co-Issuer. The Calculation Agent may not resign its duties without a successor having been duly appointed, and shall promptly inform the Hedge Counterparty of any such appointment. If no successor Calculation Agent shall have been appointed within 30 days after giving of a notice of resignation, the resigning Calculation Agent, each Hedge Counterparty, a Majority of the Notes or any Holder of a Note, on behalf of himself and all others similarly situated, may petition a court of competent jurisdiction for the appointment of a successor Calculation Agent.

(b) The Calculation Agent shall be required to agree that, as soon as practicable after 11:00 a.m. (London time) on each LIBOR Determination Date (as defined in Schedule J hereto), but in no event later than 11:00 a.m. (New York time) on the London Banking Day immediately following each LIBOR Determination Date, the Calculation Agent shall calculate (x) LIBOR for the next Interest Accrual Period and (y) the amount of interest for such Interest Accrual Period payable in respect of each U.S. \$1,000 principal amount of each Class of Notes (rounded to the nearest cent, with half a cent being rounded upward) on the related Payment Date, and will communicate such rates and amounts to the Issuer, the Co-Issuer, the Trustee, the Collateral Manager, the Paying Agent, each Hedge Counterparty and, if any Floating Rate Note is in the form of a Regulation S Global Security, to Euroclear and Clearstream, Luxembourg. The Calculation Agent shall also specify to the Issuer and the Co-Issuer the quotations upon which LIBOR is based, and in any event the Calculation Agent shall notify the Issuer and the Co-Issuer before 5:00 p.m. (New York time) on each LIBOR Determination Date if it has not determined and is not in the process of determining LIBOR

-160-

and the Interest Distribution Amounts for each Class of Notes, together with the reasons therefor. The determination of the Class A-1 Rate, Class A-2 Rate, Class B Rate, Class C Rate, Class D Rate, Class E Rate, Class F Rate, Class G Rate and Class H Rate and the related Class A-1 Interest Distribution Amount, Class A-2 Interest Distribution Amount, Class B Interest Distribution Amount, Class C Interest Distribution Amount, Class D Interest Distribution Amount, Class E Interest Distribution Amount, Class F Interest Distribution Amount, Class G Interest Distribution Amount and Class H Interest Distribution Amount, respectively, by the Calculation Agent shall, absent manifest error, be final and binding on all parties.

Section 7.15 Certain Tax Forms and Treatment.

(a) If required to prevent the withholding or imposition of United States income tax, the Issuer shall deliver or cause to be delivered an Internal Revenue Service Form W-9 or successor applicable form, to each issuer, counterparty or paying agent with respect to any Collateral Debt Security at the time such Collateral Debt Security is purchased or entered into and thereafter prior to the expiration of obsolescence of such form.

(b) The Issuer shall not be obligated to pay any additional amounts to any Holder or beneficial owner of a Note as a result of any withholding or deduction for, or on account of, any present or future taxes, duties,

assessments or governmental charges.

Section 7.16 Maintenance of Listing.

(a) For so long as any of the Notes remain Outstanding, the Issuer and Co-Issuer shall use all reasonable efforts to arrange and maintain the listing of the Notes on the Irish Stock Exchange.

(b) If the Notes are listed on the Irish Stock Exchange, the Issuer shall:

(i) in each calendar year commencing in 2006, request from the Irish Stock Exchange a waiver of the Irish Stock Exchange's requirement to publish annual reports and accounts;

(ii) submit to the Irish Stock Exchange draft copies of any proposed amendments to the Governing Documents which would affect the rights of the Holders of the Notes listed on the Irish Stock Exchange;

(iii) pay the annual fee for listing the Notes on the Irish Stock Exchange, if any; and

(iv) inform the Irish Stock Exchange if the rating assigned to any of the Notes is reduced or withdrawn.

(c) All notices, documents, reports and other announcements delivered to such Company Announcements Office shall be in the English language.

-161-

(d) Notwithstanding the foregoing, if the Collateral Manager on behalf of the Co-Issuers determines that the maintenance of the listing of any Class of Notes on the Irish Stock Exchange (or any alternative listing on another securities exchange) is unduly onerous or burdensome, the Co-Issuers will have the right to cause such Class of Notes to be delisted from the Irish Stock Exchange (or such other securities exchange). Without limiting the Collateral Manager's discretion with respect to any determination that maintaining or obtaining a listing is unduly onerous or burdensome, the Collateral Manager may take into account various factors, including any requirement, resulting from a listing, that either Co-Issuer prepare financial statements of any particular kind or provide additional disclosure of any particular kind, in each case including any such requirement arising out of disclosure or transparency directives of the European Union or any other law or governmental rule.

Section 7.17 Purchase of Assets.

The Issuer (or the Collateral Manager on behalf of the Issuer) shall use reasonable commercial efforts to invest Principal Proceeds and any remaining Deposit and any Reinvestment Income during the Ramp-Up Period in Collateral Debt Securities in accordance with the provisions hereof. Subject to the provisions of this Section 7.17, Principal Proceeds and all or any portion of any remaining Deposit and any Reinvestment Income thereon may be applied prior to the Effective Date to purchase Collateral Debt Securities (which shall be, and hereby are, Granted to the Trustee pursuant to the Granting Clause of this Agreement) for inclusion in the Assets upon receipt by the Trustee of an Issuer Order executed by the Issuer (or the Collateral Manager on behalf of the Issuer) with respect thereto directing the Trustee to pay out the amount specified therein against delivery of the Collateral Debt Security specified therein and a certificate of an Authorized Officer of the Issuer (or the Collateral Manager), dated as of the trade date, and delivered to the Trustee on or prior to the date of such purchase and Grant, to the effect that the criteria set forth below in this Section 7.17 will be satisfied (such criteria to be applied as of the trade date) after giving effect to such purchase and Grant of the Collateral Debt Securities:

(a) the Eligibility Criteria are met with respect to the Collateral Debt Securities purchased;

(b) the Reinvestment Criteria are satisfied after giving effect to such investment; and

(c) the procedures relating to the perfection of the Trustee's security interest in the Collateral Debt Securities described in this Agreement have been satisfied.

Section 7.18 Effective Date Actions.

(a) The Issuer (or the Collateral Manager on behalf of the Issuer) shall cause to be delivered to the Trustee and each Rating Agency on the Effective Date an amended Schedule of Closing Date Collateral Debt Securities listing all Collateral Debt Securities Granted to the Trustee pursuant to Section 7.17 on or before the Effective Date and included in the Assets on the Effective Date, which schedule shall supersede any prior Schedule of Closing Date Collateral Debt Securities delivered to the Trustee.

-162-

(b) Within 10 Business Days after the Effective Date, the Issuer (or the Collateral Manager on behalf of the Issuer) shall request each Rating Agency rating a Class of Notes to confirm within 20 Business Days after the Effective Date, and to so notify in writing the Trustee and any Hedge Counterparty, that it has not reduced or withdrawn the ratings assigned by it on the Closing Date to such Class of Notes. In the event that the Issuer fails to obtain a rating confirmation from each Rating Agency in accordance with this Section 7.18 within 20 Business Days following the Effective Date (a "Rating Confirmation Failure"), on the first Payment Date thereafter, (i) as provided in Section 10.4, all amounts remaining on deposit in the Unused Proceeds Account, (ii) as provided in Section 11.1(a)(i), all Interest Proceeds remaining after payment of the amounts referred to in subclauses (1) through (23) of Section 11.1(a)(i) and (iii) as provided in Section 11.1(a)(ii), all Principal Proceeds remaining after payment of the amounts referred to in subclauses (1) through (6) of Section 11.1(a)(ii), in each case will be used to pay principal of each such Class of Notes, in each case sequentially in accordance with the Priority of Payments, until each such rating is confirmed or reinstated or such Class of Notes has been paid in full.

(c) The Collateral Manager on behalf of the Issuer shall cause to be delivered to the Trustee, each Hedge Counterparty and each Rating Agency, within six Business Days after the Effective Date, an Accountants' Report, dated as of the Effective Date, confirming that the Collateral Quality Tests and the Coverage Tests have been satisfied and that the Collateral Debt Securities have an aggregate par amount equal to at least the Minimum Ramp-Up Amount and certifying the procedures applied and such accountants' associated findings with respect to the Eligibility Criteria and specifying the procedures undertaken by them to review data and computations relating to such information. The Collateral Manager may on any date, prior to the 180th day following the Closing Date or the purchase of Collateral Debt Securities having an aggregate par amount equal to the Minimum Ramp-Up Amount, upon written notice to the Trustee, the Issuer and the Co-Issuer and each Rating Agency (with a copy to each Hedge Counterparty), declare that the Effective Date shall occur on the date specified in such notice; provided that each of the Collateral Quality Tests and the Coverage Tests will be satisfied as of such Effective Date and the Rating Agency Condition has been satisfied. The Issuer (or the Collateral Manager on behalf of the Issuer) shall cause to be delivered to S&P on the Effective Date a Microsoft Excel file that provides all of the inputs required to determine whether the S&P CDO Monitor Test has been satisfied.

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 8.1 Supplemental Indentures Without Consent of Securityholders.

Without the consent of the Holders of any Notes or any Preferred Shareholders, the Issuer, the Co-Issuer, when authorized by Board Resolutions, and the Trustee, with the written consent of each Hedge Counterparty delivered to the Issuer, the Co-Issuer and the Trustee, and, at any time and from time to time subject to the requirement provided below in this Section 8.1, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

-163-

(a) to evidence the succession of another Person to the Issuer or the Co-Issuer and the assumption by any such successor Person of the covenants of the Issuer or the Co-Issuer herein and in the Notes;

(b) to add to the covenants of the Issuer, the Co-Issuer or the Trustee for the benefit of the Holders of the Notes, Preferred Shareholders, each Hedge Counterparty or to surrender any right or power herein conferred upon the Issuer or the Co-Issuer;

(c) to convey, transfer, assign, mortgage or pledge any property to or with the Trustee, or add to the conditions, limitations or restrictions on the authorized amount, terms and purposes of the issue, authentication and delivery of the Notes;

(d) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee and to add to or change any of the provisions of this Indenture as shall be necessary to facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Sections 6.9, 6.10 and 6.12 hereof;

(e) to correct or amplify the description of any property at any time subject to the lien of this Indenture, or to better assure, convey and confirm unto the Trustee any property subject or required to be subjected to the lien of this Indenture (including, without limitation, any and all actions necessary or desirable as a result of changes in law or regulations) or to subject to the lien of this Indenture any additional property;

(f) to modify the restrictions on and procedures for resales and other transfers of Notes to reflect any changes in applicable law or regulation (or the interpretation thereof) or to enable the Issuer and the Co-Issuer to rely upon any exemption from registration under the Securities Act or the Investment Company Act or to remove restrictions on resale and transfer to the extent not required thereunder;

(g) to accommodate the issuance, if any, of Notes in global or book-entry form through the facilities of the Depository Trust Company or otherwise;

(h) to enable the Issuer and the Trustee to rely upon any exemption from registration under the Exchange Act or the Investment Company Act or to remove certain existing restrictions to the extent not required under such exemption;

(i) otherwise to correct any inconsistency or cure any ambiguity or mistake;

(j) to take any action commercially reasonably necessary or advisable to prevent the Issuer from failing to qualify as a qualified REIT subsidiary (within the meaning of Section 856(i)(2) of the Code) or to prevent the Issuer from being subject to U.S. federal, state or local income or franchise tax on a net income tax basis or to prevent the Issuer, the Holders of the Notes, the Holders of the Preferred Shares or the Trustee from being subject to withholding

or other taxes, fees or assessments; and

(k) to conform this Indenture to the provisions described in the Offering Memorandum dated January 6, 2006 (or any supplement thereto).

-164-

The Trustee is hereby authorized to join in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations which may be therein contained, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, except to the extent required by law.

If any Class of Notes is Outstanding and rated by a Rating Agency, the Trustee shall not enter into any such supplemental indenture if, as a result of such supplemental indenture, such Rating Agency would cause the rating of any such Notes to be reduced or withdrawn. At the cost of the Issuer, for so long as any Class of Notes shall remain Outstanding and is rated by a Rating Agency, the Trustee shall provide to such Rating Agency a copy of any proposed supplemental indenture at least 15 days prior to the execution thereof by the Trustee, and, for so long as such Notes are Outstanding and so rated, request written confirmation that such Rating Agency will not, as a result of such supplemental indenture, cause the rating of any such Class of Notes to be reduced or withdrawn, and, as soon as practicable after the execution by the Trustee, the Issuer and the Co-Issuer of any such supplemental indenture, provide to such Rating Agency a copy of the executed supplemental indenture.

The Trustee shall not enter into any such supplemental indenture if (i) as a result of such supplemental indenture, the interests of any Holder of Securities would be materially and adversely affected thereby, unless the Majority of each and every Class of Notes or the Preferred Shares so affected have approved such supplemental indenture or (ii) such action would cause the Noteholders to experience any material change to the timing, character or source of the income from the Notes. The Trustee shall be entitled to rely upon an Opinion of Counsel provided by and at the expense of the party requesting such supplemental indenture in determining whether or not the Holders of Securities would be adversely affected by such change (after giving notice of such change to the Holders of Securities). Such determination shall be conclusive and binding on all present and future Holders of Securities. The Trustee shall not be liable for any such determination made in good faith and in reliance upon an Opinion of Counsel delivered to the Trustee as described in Section 8.3 hereof.

Furthermore, the Trustee shall not enter into any such supplemental indenture unless the Trustee has received an Opinion of Counsel from Cadwalader, Wickersham & Taft LLP or other nationally recognized U.S. tax counsel experienced in such matters that the proposed supplemental indenture will not cause the Issuer to fail to be treated as a qualified REIT subsidiary (within the meaning of Section 856(i)(2) of the Code) or otherwise cause the Issuer to be subject to U.S. federal income tax on a net income tax basis.

Section 8.2 Supplemental Indentures with Consent of Securityholders.

Except as set forth below, with the written consent of (a) the Holders of not less than a Majority in Aggregate Outstanding Amount (excluding any Notes owned by the Collateral Manager or any of its Affiliates, or by any accounts managed by them) of the Notes of each Class materially and adversely affected thereby and all of the Holders of Preferred Shares if materially and adversely affected thereby by Act of said Securityholders delivered to the Trustee and the Co-Issuers, and (b) the consent of each Hedge Counterparty (to the extent required by the related Hedge Agreement), and subject to satisfaction of the Rating Agency Condition, the

-165-

Trustee and the Co-Issuers may enter into one or more indentures supplemental hereto to add any provisions to, or change in any manner or eliminate any of the provisions of, this Indenture or modify in any manner the rights of the Holders of the Notes of such Class or the Preferred Shares, as the case may be, under this Indenture. Unless notified by Holders of a Majority of the Notes of any Class (excluding any Notes owned by the Collateral Manager or any of its Affiliates, or by any accounts managed by them) that such Class of Notes will be materially and adversely affected, the Trustee may, based on the satisfaction of the Rating Agency Condition, determine whether or not such Class of Notes would be materially and adversely affected by such change (after giving 15 Business Days' notice of such change to the Holders of such Class of Notes, the Holders of the Preferred Shares and each Hedge Counterparty). The Trustee may, in reliance on the consent of the Holders of the Preferred Shares or on a written Opinion of Counsel provided by and at the expense of the party requesting such supplemental indenture, determine whether or not the Holders of the Preferred Shares would be adversely affected by such change (after giving notice of such change to the Holders of the Preferred Shares). Such determinations shall be conclusive and binding on all present and future Noteholders and Holders of the Preferred Shares. The consent of the Holders of the Preferred Shares shall be binding on all present and future Holders of the Preferred Shares.

Without the consent of (x) each Hedge Counterparty (except to the extent required by the related Hedge Agreement) and (y) all of the Holders of each Outstanding Class of Notes adversely affected, and in each such case subject to satisfaction of the Rating Agency Condition, no supplemental indenture may:

(a) change the Stated Maturity of the principal of or the due date of any installment of interest on any Note, reduce the principal amount thereof or the Note Interest Rate thereon or the Redemption Price with respect to any Note, change the date of any scheduled distribution on the Preferred Shares, or the Redemption Price with respect thereto, or change the earliest date on which any Note may be redeemed at the option of the Issuer, change the provisions of this Indenture that apply the proceeds of any Assets to the payment of principal of or interest on Notes or of distributions to the Preferred Shares Paying Agent for the payment of distributions in respect of the Preferred Shares or change any place where, or the coin or currency in which, any Note or the principal thereof or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the applicable Redemption Date);

(b) reduce the percentage of the Aggregate Outstanding Amount of Holders of Notes of each Class or the Notional Amount of Preferred Shares of Preferred Shareholders whose consent is required for the authorization of any such supplemental indenture or for any waiver of compliance with certain provisions of this Indenture or certain Defaults hereunder or their consequences provided for in this Indenture;

(c) impair or adversely affect the Assets except as otherwise permitted in this Indenture;

(d) permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture with respect to any part of the Assets or terminate such lien on any property

-166-

at any time subject hereto or deprive the Holder of any Note, or the Holder of any Preferred Share as an indirect beneficiary, of the security afforded to such Holder by the lien of this Indenture;

(e) reduce the percentage of the Aggregate Outstanding Amount of

Holders of Notes of each Class whose consent is required to request the Trustee to preserve the Assets or rescind the Trustee's election to preserve the Assets pursuant to Section 5.5 or to sell or liquidate the Assets pursuant to Section 5.4 or 5.5 hereof;

(f) modify any of the provisions of this Section 8.2, except to increase any percentage of Outstanding Notes whose holders' consent is required for any such action or to provide that other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note affected thereby;

(g) modify the definition of the term "Outstanding" or the provisions of Section 11.1 or Section 13.1 hereof; or

(h) modify any of the provisions of this Indenture in such a manner as to affect the calculation of the amount of any payment of interest or principal on any Note on any Payment Date or of distributions to the Preferred Shares Paying Agent for the payment of distributions in respect of the Preferred Shares on any Payment Date (or any other date) or to affect the rights of the Holders of Securities to the benefit of any provisions for the redemption of such Securities contained herein;

provided, however, that no supplemental indenture may reduce the permitted minimum denominations of the Notes or modify any provisions regarding limited recourse or non-petition covenants with respect to the Issuer and the Co-Issuer.

If any Class of Notes are Outstanding and rated by a Rating Agency, the Trustee shall not enter into any such supplemental indenture if, as a result of such supplemental indenture, such Rating Agency would cause the rating of any such Notes to be immediately reduced or withdrawn. At the cost of the Issuer, for so long as any Class of Notes shall remain Outstanding and is rated by a Rating Agency, the Trustee shall provide to such Rating Agency a copy of any proposed supplemental indenture at least 15 days prior to the execution thereof by the Trustee, and, for so long as such Notes are Outstanding and so rated, request written confirmation that such Rating Agency will not, as a result of such supplemental indenture, cause the rating of any such Class of Notes to be reduced or withdrawn.

The Trustee shall be entitled to rely upon an Opinion of Counsel provided by and at the expense of the party requesting such supplemental indenture in determining whether or not the Holders of Securities would be adversely affected by such change (after giving notice of such change to the Holders of Securities). Such determination shall be conclusive and binding on all present and future Holders of Securities. The Trustee shall not be liable for any such determination made in good faith and in reliance upon an Opinion of Counsel delivered to the Trustee as described in Section 8.3 hereof.

-167-

It shall not be necessary for any Act of Securityholders under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Promptly after the execution by the Issuer, the Co-Issuer and the Trustee of any supplemental indenture pursuant to this Section 8.2, the Trustee, at the expense of the Issuer, shall mail to the Securityholders, each Hedge Counterparty, the Preferred Shares Paying Agent, the Collateral Manager, and, so long as the Notes are Outstanding and so rated, each Rating Agency a copy thereof based on an outstanding rating. Any failure of the Trustee to publish or mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

Section 8.3 Execution of Supplemental Indentures.

In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article 8 or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture and that all conditions precedent thereto have been satisfied. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Collateral Manager will be bound to follow any amendment or supplement to this Indenture of which it has received written notice at least 10 Business Days prior to the execution and delivery of such amendment or supplement; provided, however, that with respect to any amendment or supplement to this Indenture which may, in the judgment of the Collateral Manager adversely affect the Collateral Manager, the Collateral Manager shall not be bound (and the Issuer agrees that it will not permit any such amendment to become effective) unless the Collateral Manager gives written consent to the Trustee and the Issuer to such amendment. The Issuer and the Trustee shall give written notice to the Collateral Manager of any amendment made to this Indenture pursuant to its terms. In addition, the Collateral Manager's written consent shall be required prior to any amendment to this Indenture by which it is adversely affected.

Section 8.4 Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article 8, this Indenture shall be modified in accordance therewith, such supplemental indenture shall form a part of this Indenture for all purposes and every Holder of Notes theretofore and thereafter authenticated and delivered hereunder, and every Holder of Preferred Shares, shall be bound thereby.

Section 8.5 Reference in Notes to Supplemental Indentures.

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 8 may, and if required by the Trustee shall, bear a notice in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Issuer and the Co-Issuer shall so determine, new Notes, so modified as to conform in the opinion of the Trustee and the Issuer and the Co-Issuer to any such supplemental indenture, may

-168-

be prepared and executed by the Issuer and the Co-Issuer and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

ARTICLE 9

REDEMPTION OF SECURITIES; REDEMPTION PROCEDURES

Section 9.1 Clean-up Call; Tax Redemption and Optional Redemption.

(a) The Notes may be redeemed at the option of and at the direction of the Collateral Manager (such redemption, a "Clean-up Call"), in whole but not in part, at a price equal to the applicable Redemption Price on any Payment Date (the "Clean-up Call Date") on or after the Payment Date on which the Aggregate Outstanding Amount of the Notes has been reduced to 10% of the Aggregate Outstanding Amount of the Notes on the Closing Date; provided that any payments due and payable upon a termination of each Hedge Agreement will be made on the Clean-up Call Date in accordance with the terms thereof and this Indenture; provided, further, that the funds available to be used for such Clean-up Call will be sufficient to pay the Total Redemption Price.

(b) The Notes and the Preferred Shares shall be redeemable, in whole but not in part, by Act of a Majority of the Preferred Shares delivered to the Trustee, on the Payment Date (the "Tax Redemption Date") following the occurrence of a Tax Event and satisfaction of the Tax Materiality Condition at a

price equal to the applicable Redemption Price (such redemption, a "Tax Redemption"); provided that any payments due and payable upon a termination of each Hedge Agreement will be made in accordance with the terms thereof and this Indenture; provided, further, that the funds available to be used for such Tax Redemption will be sufficient to pay the Total Redemption Price. Upon the occurrence of a Tax Event, the Issuer and the Co-Issuer, at the direction of the Collateral Manager shall provide written notice thereof to the Trustee, the Irish Paying Agent (for so long as any Notes are listed on the Irish Stock Exchange), each Hedge Counterparty and each Rating Agency.

(c) The Notes and the Preferred Shares shall be redeemable, in whole but not in part, at a price equal to the applicable Redemption Price, on any Payment Date on or after the Payment Date occurring in April 2009 at the direction of the Issuer (such redemption, an "Optional Redemption") (i) by Act of a Majority of the Preferred Shares delivered to the Trustee, or (ii) at the direction of the Collateral Manager unless a Majority of the Preferred Shares object; provided, however, that any payments due and payable upon a termination of each Hedge Agreement will be made in accordance with the terms thereof and this Indenture; provided, further, that the funds available to be used for such Optional Redemption will be sufficient to pay the Total Redemption Price.

(d) The election by the Collateral Manager to redeem the Notes pursuant to a Clean-up Call shall be evidenced by an Officer's Certificate from the Collateral Manager directing the Trustee to make the payment to the Paying Agent of the applicable Redemption Price of all of the Notes to be redeemed from funds in the Payment Account in accordance with the Priority of Payments. In connection with a Tax Redemption, the occurrence of a Tax Event and satisfaction of the Tax Materiality Condition shall be evidenced by an Issuer Order

-169-

from the Issuer or from the Collateral Manager on behalf of the Issuer certifying that such conditions for a Tax Redemption have occurred. The election by the Collateral Manager to redeem the Notes pursuant to an Optional Redemption shall be evidenced by an Officer's Certificate from the Collateral Manager on behalf of the Issuer certifying that the conditions for an Optional Redemption have occurred.

(e) A redemption pursuant to Sections 9.1(a), 9.1(b) or 9.1(c) shall not occur unless (i) at least six Business Days before the scheduled Redemption Date, (A) the Collateral Manager shall have certified to the Trustee that the Collateral Manager, on behalf of the Issuer, has entered into a binding agreement or agreements with (1) one or more financial institutions whose long-term unsecured debt obligations (other than such obligations whose rating is based on the credit of a person other than such institution) have a credit rating from each Rating Agency at least equal to the highest rating of any Notes then Outstanding or whose short-term unsecured debt obligations have a credit rating of "P-1" by Moody's (as long as the term of such agreement is 90 days or less) and "A-1" by S&P or (2) one or more Affiliates of the Collateral Manager, to sell all or part of the Pledged Obligations not later than the Business Day immediately preceding the scheduled Redemption Date or (B) the Trustee shall have received written confirmation that the method of redemption satisfies the Rating Agency Condition and (ii) the related Sale Proceeds (in immediately available funds), together with all other available funds (including proceeds from the sale of the Assets, Eligible Investments maturing on or prior to the scheduled Redemption Date, all amounts in the Collection Accounts and available Cash), shall be an aggregate amount sufficient to pay all amounts, payments, fees and expenses in accordance with the Priority of Payments due and owing on such Redemption Date.

Section 9.2 Auction Call Redemption.

(a) During the period from and including the Payment Date occurring in April 2016 and to but not including the first Payment Date on which the Clean-up Call may be exercised (the "Auction Call Period"), the Securities shall be

redeemed by the Issuer, in whole but not in part, at their applicable Redemption Prices if a Successful Auction is completed (such redemption, an "Auction Call Redemption"); provided that any payments due and payable upon a termination of each Hedge Agreement will be made on the Auction Call Redemption Date in accordance with the terms thereof and this Indenture; and provided, further, that the funds available to be used for such Auction Call Redemption will be sufficient to pay the Total Redemption Price. An Auction Call Redemption may occur only on a Payment Date occurring in April or October during the Auction Call Period (such Payment Date, the "Auction Call Redemption Date").

(b) The Trustee shall sell and transfer the Collateral Debt Securities to the highest bidder for all of the Collateral Debt Securities (or to each highest bidder for one or more (but not all) of the Collateral Debt Securities), at the Auction, as long as:

(i) the Auction has been conducted in accordance with the Auction Procedures, as evidenced by a certification of the Collateral Manager;

-170-

(ii) at least one bidder delivers to the Collateral Manager a bid (which bid may be based upon a fixed spread above or below a generally recognized price index) for (x) the purchase of all of the Collateral Debt Securities or (y) the purchase of each Collateral Debt Security (which bid may be for one or more (but not all) of the Collateral Debt Securities);

(iii) based on the Collateral Manager's certification to the Trustee of the amount of the Cash purchase price of each bid, the Trustee, in consultation with the Collateral Manager, determines that the Highest Auction Price would result in a Cash purchase price for the Collateral Debt Securities which, together with the balance of all Eligible Investments and Cash in the Collection Accounts, the Payment Account and the Expense Account, will be at least equal to the Total Redemption Price; and

(iv) each bidder who offered the Highest Auction Price for all of the Collateral Debt Securities or for one or more of the Collateral Debt Securities enters into a written agreement with the Issuer (which the Issuer shall execute if the conditions set forth in clauses (i) through (iii) above are satisfied) obligating the highest bidder for all of the Collateral Debt Securities (or the highest bidder for one or more (but not all) of the Collateral Debt Securities) to purchase all (either individually or together with other bidders, as applicable) of the Collateral Debt Securities with the closing of such purchase (and full payment in Cash to the Trustee) to occur on or before the 10th Business Day prior to the scheduled Redemption Date.

(c) If any of the foregoing conditions is not met with respect to any Auction, or if the highest bidder or the Collateral Manager, as the case may be, fails to pay the purchase price on or before the sixth Business Day following the relevant Auction Date, (i) the Auction Call Redemption shall not occur on the Payment Date following the relevant Auction Date, (ii) the Trustee shall give notice of the withdrawal pursuant to Section 9.3, (iii) subject to subclause (iv) below, the Trustee shall decline to consummate such sale and shall not solicit any further bids or otherwise negotiate any further sale of Collateral Debt Securities in relation to such Auction and (iv) unless the Notes and the Preferred Shares are redeemed in full prior to the next succeeding Auction Date, or the Collateral Manager notifies the Trustee that market conditions are such that such Auction is not likely to be successful, the Trustee shall conduct another Auction on the next succeeding Auction Date.

Section 9.3 Notice of Redemption.

(a) In connection with an Optional Redemption, a Clean-up Call or a

Tax Redemption pursuant to Section 9.1 or an Auction Call Redemption pursuant to Section 9.2, the Trustee on behalf of the Issuer and the Co-Issuer shall (i) set the applicable Record Date and (ii) at least 45 days prior to the proposed Redemption Date, notify the Collateral Manager, each Hedge Counterparty, the Rating Agencies and each Preferred Shareholder at such Preferred Shareholder's address in the register maintained by the Share Registrar, of such proposed Redemption Date, the applicable Record Date, the principal amount of Notes to be redeemed on such Redemption Date and the Redemption Price of such Notes in accordance with Section 9.1 or Section 9.2. The Redemption Price shall be determined no earlier than 60 days prior to the proposed Redemption Date.

-171-

(b) Any such notice of an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption may be withdrawn by the Issuer and the Co-Issuer at the direction of the Collateral Manager up to the fourth Business Day prior to the scheduled Redemption Date by written notice to the Trustee, the Irish Paying Agent (for so long as any Notes are listed on the Irish Stock Exchange), each Hedge Counterparty, to each Holder of Notes to be redeemed, and the Collateral Manager only if (i) in the case of an Optional Redemption, a Clean-up Call or a Tax Redemption the Collateral Manager is unable to deliver the sale agreement or agreements or certifications referred to in Section 9.1(e), as the case may be or (ii) in the case of an Auction Call Redemption, the Auction is unable to be consummated pursuant to the Auction Procedures.

Section 9.4 Notice of Redemption or Maturity by the Issuer.

Notice of redemption pursuant to Section 9.1, Section 9.2 or the Maturity of any Notes shall be given by first class mail, postage prepaid, mailed not less than 10 Business Days (or four Business Days where the notice of an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption is withdrawn pursuant to Section 9.3(b)) prior to the applicable Redemption Date or Maturity, to each Holder of Notes to be redeemed, at its address in the Notes Register.

All notices of redemption shall state:

(a) the applicable Redemption Date;

(b) the applicable Redemption Price;

(c) that all the Notes are being paid in full, and that interest on the Notes shall cease to accrue on the Redemption Date specified in the notice; and

(d) the place or places where such Notes to be redeemed in whole are to be surrendered for payment of the Redemption Price which shall be the office or agency of the Paying Agent as provided in Section 7.2.

Notice of redemption shall be given by the Issuer and Co-Issuer, or at their request, by the Trustee in their names, and at the expense of the Issuer. Failure to give notice of redemption, or any defect therein, to any Holder of any Note shall not impair or affect the validity of the redemption of any other Notes. In addition, so long as any Notes are listed on the Irish Stock Exchange, notice of redemption or Maturity shall be published in the Irish Stock Exchange's Daily Official List or as otherwise required by the rules of the Irish Stock Exchange not less than 10 Business Days prior to the applicable Redemption Date or Maturity.

Section 9.5 Notes Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Notes to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after the Redemption Date (unless the

Issuer shall Default in the payment of the Redemption Price and accrued interest thereon) the Notes shall cease to bear interest on the Redemption Date. Upon final payment on a Note to be redeemed, the Holder

-172-

shall present and surrender such Note at the place specified in the notice of redemption on or prior to such Redemption Date; provided, however, that if there is delivered to the Issuer, the Co-Issuer and the Trustee such security or indemnity as may be required by them to hold each of them harmless (an unsecured indemnity agreement delivered to the Issuer, the Co-Issuer and the Trustee by an institutional investor with a net worth of at least \$200,000,000 being deemed to satisfy such security or indemnity requirement) and an undertaking thereafter to surrender such Note, then, in the absence of notice to the Issuer, the Co-Issuer and the Trustee that the applicable Note has been acquired by a bona fide purchaser, such final payment shall be made without presentation or surrender. Payments of interest on Notes of a Class so to be redeemed whose Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Notes, or one or more predecessor Notes, registered as such at the close of business on the relevant Record Date according to the terms and provisions of Section 2.7(n).

If any Note called for redemption shall not be paid upon surrender thereof for redemption, the principal thereof shall, until paid, bear interest from the Redemption Date at the applicable Note Interest Rate for each successive Interest Accrual Period the Note remains Outstanding.

Section 9.6 Mandatory Redemption.

On any Payment Date on which any of the Coverage Tests applicable to any Class of Notes is not satisfied as of the most recent Measurement Date, the Notes shall be redeemed (a "Mandatory Redemption"), first from Interest Proceeds, net of amounts set forth in Section 11.1(a)(i)(1) through (5), and then from Principal Proceeds, net of amounts set forth in clause (1) of Section 11.1(a)(ii), in an amount necessary, and only to the extent necessary, to cause each of the Coverage Tests to be satisfied, but only in accordance with the Priority of Payments. Further, each Hedge Agreement will be terminated in part in accordance with the terms thereof and any payments due and payable on the Hedge Agreement in connection with the termination of the Hedge Agreement will be made on such Payment Date in accordance with the terms thereof and this Indenture, including satisfaction of the Rating Agency Condition. Such Principal Proceeds and Interest Proceeds shall be applied to each of the Outstanding Classes of Notes in accordance with its relative seniority in accordance with the Priority of Payments. On or promptly after such Mandatory Redemption, the Issuer and the Co-Issuer shall certify or cause to be certified to each of the Rating Agencies and the Trustee whether the Coverage Tests have been met.

Section 9.7 Special Amortization.

The Notes may be amortized in part by the Issuer (at the election and direction of the Collateral Manager) if, at any time during the Reinvestment Period, the Collateral Manager has been unable, for a period of at least 30 consecutive days, to identify Collateral Debt Securities that it determines would be appropriate and would meet the Eligibility Criteria in sufficient amounts to permit the reinvestment of all or a portion of the Principal Proceeds then on deposit in the Principal Collection Account and the amounts on deposit in the Unused Proceeds Account in Substitute Collateral Debt Securities. The Collateral Manager shall notify the Trustee, the Issuer, the Co-Issuer and each Hedge Counterparty (if any) of such election (a "Special Amortization") and the amount to be amortized (such amount, the "Special

-173-

Amortization Amount"). On the first Payment Date following the date on which such notice is given, the Special Amortization Amount will be applied to amortize the Notes in accordance with the Priority of Payments (x) on a pro rata basis among all Classes of Notes, if each of the S&P Special Amortization Pro Rata Condition and the Moody's Special Amortization Pro Rata Condition is satisfied with respect to the related Payment Date; provided that in no event shall the cumulative principal amount of Notes that is amortized pursuant to this clause (x) of this Section 9.7 exceed \$142,500,000, or (y) sequentially among all Classes of Notes if either the S&P Special Amortization Pro Rata Condition or the Moody's Special Amortization Pro Rata Condition is not satisfied with respect to the related Payment Date. Notwithstanding the foregoing, all amounts representing recoveries in respect of Defaulted Securities will be distributed sequentially in any event, in accordance with Section 11.1(a) (ii) (8).

ARTICLE 10

ACCOUNTS, ACCOUNTINGS AND RELEASES

Section 10.1 Collection of Money; Custodial Account.

(a) Except as otherwise expressly provided herein, the Trustee may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all Money and other property payable to or receivable by the Trustee pursuant to this Indenture, including all payments due on the Pledged Obligations in accordance with the terms and conditions of such Pledged Obligations. The Trustee shall segregate and hold all such Money and property received by it in trust for the Noteholders and each Hedge Counterparty, and shall apply it as provided in this Indenture.

(b) The Trustee shall credit all Collateral Debt Securities and Eligible Investments to an account designated as the "Custodial Account."

Section 10.2 Collection Accounts.

(a) The Trustee shall, prior to the Closing Date, establish a segregated trust account which shall be designated as the "Collection Account" (which may be a subaccount of the Custodial Account) and will consist of two subaccounts, the "Interest Collection Account" and the "Principal Collection Account" (collectively, the "Collection Accounts"), which shall be held in trust in the name of the Trustee for the benefit of the Noteholders and each Hedge Counterparty, into which Collection Accounts, as applicable, the Trustee shall from time to time deposit (i) all amounts, if any, received by the Issuer pursuant to the Hedge Agreements (other than amounts received by the Issuer by reason of an event of default or termination event (each as defined in the related Hedge Agreement) or other comparable event that are required, pursuant to Section 16.1(g) to be used for the purchase by the Issuer of a replacement Hedge Agreement) and amounts held in each Hedge Collateral Account pursuant to Section 16.1(e), (ii) all Sale Proceeds (unless simultaneously reinvested in Substitute Collateral Debt Securities, subject to the Reinvestment Criteria and (iii) all Interest Proceeds and all Principal Proceeds. In addition, the Issuer may, but under no circumstances shall be required to, deposit from time to time such Monies in the Collection Accounts as it deems, in its sole discretion, to be advisable. All Monies deposited from time to time in the Collection Accounts pursuant to

this Indenture shall be held by the Trustee as part of the Assets and shall be applied to the purposes herein provided. The Collection Accounts shall remain at all times with the Corporate Trust Office or a financial institution having a long-term debt rating at least equal to "A-" or "A2," as applicable, or a short-term debt rating at least equal to "A-1," "P-1" or "F1," as applicable.

(b) All distributions of principal or interest received in respect of the Assets, and any Sale Proceeds from the sale or disposition of a Collateral Debt Security or other Assets received by the Trustee in Dollars shall be immediately deposited into the Interest Collection Account or the Principal Collection Account, as Interest Proceeds or Principal Proceeds, respectively (unless, in the case of proceeds received from the sale or disposition of any Assets, such proceeds are simultaneously reinvested pursuant to Section 10.2(d) in Substitute Collateral Debt Securities, subject to the Reinvestment Criteria, or in Eligible Investments). Subject to Sections 10.2(d), 10.2(e) and 11.2, all such property, together with any securities in which funds included in such property are or will be invested or reinvested during the term of this Indenture, and any income or other gain realized from such investments, shall be held by the Trustee in the Collection Accounts as part of the Assets subject to disbursement and withdrawal as provided in this Section 10.2. Subject to Section 10.2(e) by Issuer Order (which may be in the form of standing instructions), the Issuer (or the Collateral Manager on behalf of the Issuer) shall at all times direct the Trustee to, and, upon receipt of such Issuer Order, the Trustee shall, invest all funds received into the Collection Accounts during a Due Period, and amounts received in prior Due Periods and retained in the Collection Accounts, as so directed in Eligible Investments having stated maturities no later than the Business Day immediately preceding the next Payment Date. The Trustee, within one Business Day after receipt of any Scheduled Distribution or other proceeds in respect of the Assets which is not Cash, shall so notify the Issuer and the Collateral Manager and the Issuer (or the Collateral Manager on behalf of the Issuer) shall, within five Business Days of receipt of such notice from the Trustee, sell such Scheduled Distribution or other non-Cash proceeds for Cash in an arm's length transaction to a Person which is not an Affiliate of the Issuer or the Collateral Manager and deposit the proceeds thereof in the applicable Collection Account for investment pursuant to this Section 10.2; provided, however, that the Issuer (or the Collateral Manager on behalf of the Issuer) need not sell such Scheduled Distributions or other non-Cash proceeds if it delivers an Officer's Certificate to the Trustee certifying that such Scheduled Distributions or other proceeds constitute Collateral Debt Securities or Eligible Investments.

(c) If prior to the occurrence of an Event of Default, the Issuer (or the Collateral Manager on behalf of the Issuer) shall not have given any investment directions pursuant to Section 10.2(b), the Trustee shall seek instructions from the Issuer (or the Collateral Manager on behalf of the Issuer) within three Business Days after transfer of such funds to the applicable Collection Account. If the Trustee does not thereupon receive written instructions from the Issuer (or the Collateral Manager on behalf of the Issuer) within five Business Days after transfer of such funds to the applicable Collection Account, it shall invest and reinvest the funds held in the applicable Collection Account in one or more Eligible Investments described in clause (ii) of the definition of Eligible Investments maturing no later than the Business Day immediately preceding the next Payment Date. If after the occurrence of an Event of Default, the Issuer (or the Collateral Manager on behalf of the Issuer) shall not have given investment directions to the Trustee pursuant to Section 10.2(b) for three

-175-

consecutive days, the Trustee shall invest and reinvest such Monies as fully as practicable in Eligible Investments described in clause (ii) of the definition of Eligible Investments maturing not later than the earlier of (i) 30 days after the date of such investment or (ii) the Business Day immediately preceding the next Payment Date. All interest and other income from such investments shall be deposited in the applicable Collection Account, any gain realized from such investments shall be credited to the applicable Collection Account, and any loss resulting from such investments shall be charged to the applicable Collection Account. The Trustee shall not in any way be held liable (except as a result of negligence, willful misconduct or bad faith) by reason of any insufficiency of such applicable Collection Account resulting from any loss relating to any such

investment, except with respect to investments in obligations of the Trustee or any Affiliate thereof.

(d) During the Reinvestment Period (and thereafter to the extent necessary to acquire Collateral Debt Securities pursuant to contracts entered into during the Reinvestment Period), the Collateral Manager on behalf of the Issuer may by Issuer Order direct the Trustee to, and upon receipt of such Issuer Order the Trustee shall, reinvest Principal Proceeds in Collateral Debt Securities selected by the Collateral Manager as permitted under and in accordance with the requirements of Article 12 and such Issuer Order.

(e) The Trustee shall transfer to the Payment Account for application pursuant to Section 11.1(a) and in accordance with the calculations and the instructions contained in the Notes Valuation Report prepared by the Trustee on behalf of the Issuer pursuant to Section 10.10(e), on or prior to the Business Day prior to each Payment Date, any amounts then held in the Collection Accounts other than (i) Interest Proceeds or Principal Proceeds received after the end of the Due Period with respect to such Payment Date and (ii) amounts that the Issuer is entitled to reinvest in accordance with Section 12.2 and which the Issuer so elects to reinvest in accordance with the terms of this Indenture, except that, to the extent that Principal Proceeds in the Principal Collection Account as of such date are in excess of the amounts required to be applied pursuant to the Priority of Payments up to and including the next Payment Date as shown in the Notes Valuation Report with respect to such Payment Date, the Issuer may direct the Trustee to retain such excess amounts in the Principal Collection Account and not to transfer such excess amounts to the Payment Account and the Trustee shall do so.

Section 10.3 Payment Account.

The Trustee shall, prior to the Closing Date, establish a single, segregated trust account which shall be designated as the "Payment Account," which shall be held in trust for the benefit of the Noteholders and each Hedge Counterparty and over which the Trustee shall have exclusive control and the sole right of withdrawal. Any and all funds at any time on deposit in, or otherwise to the credit of, the Payment Account shall be held in trust by the Trustee for the benefit of the Noteholders and each Hedge Counterparty. Except as provided in Sections 11.1 and 11.2, the only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, the Payment Account shall be (i) to pay the interest on and the principal of the Notes and make other payments in respect of the Notes in accordance with their terms and the provisions of this Indenture, (ii) to pay the Preferred Share Paying Agent for deposit into the Preferred Share Distribution Account for distributions to the Preferred Shareholders in

-176-

accordance with the terms and the provisions of the Preferred Shares Paying Agency Agreement, (iii) upon Issuer Order, to pay other amounts specified therein, and (iv) otherwise to pay amounts payable pursuant to and in accordance with the terms of this Indenture, each in accordance with the Priority of Payments. The Trustee agrees to give the Issuer and the Co-Issuer immediate notice if it becomes aware that the Payment Account or any funds on deposit therein, or otherwise to the credit of the Payment Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. Neither the Issuer nor the Co-Issuer shall have any legal, equitable or beneficial interest in the Payment Account other than in accordance with the Priority of Payments. The Payment Account shall remain at all times with the Corporate Trust Office or a financial institution having a long-term debt rating by each Rating Agency at least equal to "A-" or "A2," as applicable, or a short-term debt rating by each Rating Agency at least equal to "A-1," "P-1" or "F1," as applicable. Amounts in the Payment Account shall not be invested.

Section 10.4 Unused Proceeds Account.

(a) The Trustee shall prior to the Closing Date establish a single, segregated trust account which shall be designated as the "Unused Proceeds Account" which shall be held in trust in the name of the Trustee for the benefit of the Noteholders and each Hedge Counterparty, into which the amount specified in Section 3.2(g) shall be deposited. All Monies deposited from time to time in the Unused Proceeds Account pursuant to this Indenture shall be held by the Trustee as part of the Assets and shall be applied to the purposes herein provided.

(b) The Trustee agrees to give the Issuer immediate notice if it becomes aware that the Unused Proceeds Account or any funds on deposit therein, or otherwise to the credit of the Unused Proceeds Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. The Unused Proceeds Account shall remain at all times with the Corporate Trust Office of a financial institution having a long-term debt rating by each Rating Agency at least equal to "A-" or "A2," as applicable, or a short-term debt rating at least equal to "A-1," "P-1" or "F1," as applicable.

(c) During the Reinvestment Period, amounts on deposit in the Unused Proceeds Account may or shall be designated by the Collateral Manager as Special Amortization Amounts to be included as Principal Proceeds pursuant to Section 9.7. If the Aggregate Principal Balance of the Collateral Debt Securities exceeds the Minimum Ramp-Up Amount on the Effective Date, amounts remaining on deposit in the Unused Proceeds Account at the end of the Ramp-Up Period not to exceed an amount equal to 15% of the Deposit may, at the option of the Collateral Manager, be designated as Interest Proceeds. Any such election will be made on a one-time basis and must be made by written notice to the Trustee no later than the 20th Business Day after the Effective Date, which notice shall set forth any such amounts in the Unused Proceeds Account so designated (and any interest or earnings thereon). Upon receipt of such notice, the Trustee shall transfer such amount to the Interest Collection Account (for subsequent transfer to the Payment Account), which will be treated as Interest Proceeds and applied in accordance with the Priority of Payments. Any amounts remaining in the Unused Proceeds Account on the 20th Business Day after the Effective Date, to the extent not designated as Interest Proceeds and provided that a Rating Confirmation Failure has not

-177-

occurred, shall be transferred by the Trustee to the Principal Collection Account (for subsequent transfer to the Payment Account) and treated as Principal Proceeds and applied in accordance with the Priority of Payments.

(d) If a Rating Confirmation Failure occurs, upon receipt of notice from the Collateral Manager pursuant to Section 7.18, the Trustee shall transfer amounts in the Unused Proceeds Account to the Payment Account for application on the immediately following Payment Date to pay principal of the Notes, first, to the payment of principal of the Class A-1 Notes, second, to the payment of principal of the Class A-2 Notes, third, to the payment of principal of the Class B Notes, fourth, to the payment of principal of the Class C Notes, fifth, to the payment of principal of the Class D Notes, sixth, to the payment of principal of the Class E Notes, seventh, to the payment of principal of the Class F Notes, eighth, to the payment of principal of the Class G Notes and ninth, to the payment of principal of the Class H Notes, in each case until the ratings assigned on the Closing Date to each Class of Notes have been reinstated or such Class has been paid in full. Any excess amount shall be treated as Principal Proceeds and applied in accordance with the Priority of Payments. If no Rating Confirmation Failure occurs, to the extent the Collateral Manager has not identified such amounts as Interest Proceeds pursuant to Section 10.4(c), the Trustee shall transfer the amounts on deposit in the Unused Proceeds Account to the Principal Collection Account, and such amounts will be treated as Principal Proceeds and applied in accordance with the Priority of Payments.

(e) During the Ramp-Up Period, the Issuer (or the Collateral Manager on behalf of the Issuer) may by Issuer Order direct the Trustee to, and upon

receipt of such Issuer Order the Trustee shall, apply amounts on deposit in the Unused Proceeds Account to acquire Collateral Debt Securities selected by the Collateral Manager as permitted under and in accordance with the requirements of Section 7.17 and such Issuer Order.

(f) To the extent not applied pursuant to Section 7.17, the Collateral Manager, on behalf of the Issuer, may direct the Trustee to, and upon such direction the Trustee shall, invest all funds in the Unused Proceeds Account in Eligible Investments designated by the Collateral Manager. All interest and other income from such investments shall be deposited in the Unused Proceeds Account, any gain realized from such investments shall be credited to the Unused Proceeds Account, and any loss resulting from such investments shall be charged to the Unused Proceeds Account. The Trustee shall not in any way be held liable (except as a result of negligence, willful misconduct or bad faith) by reason of any insufficiency of the Unused Proceeds Account resulting from any loss relating to any such investment, except with respect to investments in obligations of the Trustee or any Affiliate thereof. If the Trustee does not receive investment instructions from an Authorized Officer of the Collateral Manager, the Trustee shall invest funds received in the Unused Proceeds Account in Eligible Investments of the type described in clause (ii) of the definition thereto.

Section 10.5 Delayed Funding Obligations Account.

(a) The Trustee shall prior to the Closing Date establish a single, segregated trust account (the "Delayed Funding Obligations Account") which shall be held in trust for the benefit of the Noteholders and each Hedge Counterparty, into which Delayed Draw Funding

-178-

Obligations Account the Trustee shall deposit funds for any additional funding commitments of the Issuer under any Delayed Draw Term Loans included in the Collateral Debt Securities. All amounts in the Delayed Funding Obligations Account shall be deposited in overnight funds in Eligible Investments and released to fulfill such commitments. If a Delayed Draw Term Loan is sold or otherwise disposed before the full commitment thereunder has been drawn, or if excess funds remain following the termination of the funding obligation giving rise to the deposit of such funds in the Delayed Funding Obligations Account, such Eligible Investments on deposit in the Delayed Funding Obligations Account for the purpose of fulfilling such commitment shall be transferred to the Principal Collection Account as Principal Proceeds. The Delayed Funding Obligations Account shall remain at all times with the Corporate Trust Office or a financial institution having a long-term debt rating from each Rating Agency at least equal to "A-" or "A2," as applicable, or a short-term debt rating at least equal to "A-1," "P-1" or "F1," as applicable.

(b) Funds in the Delayed Funding Obligations Account shall be available solely to fulfill any additional funding commitments of the Issuer under any Delayed Draw Term Loans included in the Collateral Debt Securities, and only funds in the Delayed Funding Obligations Account shall be used for such purpose. Upon the purchase of any Collateral Debt Security that is a Delayed Draw Term Loan, the Collateral Manager shall direct the Trustee to deposit Principal Proceeds into the Delayed Funding Obligations Account in an amount equal to the Issuer's maximum future funding obligation under the terms of such Delayed Draw Term Loan, and the Principal Proceeds so deposited shall be considered part of the purchase price of such Delayed Draw Term Loan for purposes of Article 12. The Collateral Manager shall not permit all amounts then on deposit in the Delayed Funding Obligations Account to be less than the aggregate amount of all future funding obligations outstanding under the terms of all Delayed Draw Term Loans that constitute Collateral Debt Securities.

(c) The Collateral Manager shall direct the Trustee to withdraw funds from the Delayed Funding Obligations Account to fund amounts drawn under any Delayed Draw Term Loan. Pursuant to an Issuer Order, all or a portion of the

funds, as specified in such Issuer Order, on deposit in the Delayed Funding Obligations Account at any time in excess of the aggregate principal amount of commitments which may be drawn upon under the Delayed Draw Term Loan shall be transferred by the Trustee to the Collection Account as Principal Proceeds.

Section 10.6 Expense Account.

(a) The Trustee shall prior to the Closing Date establish a single, segregated trust account which shall be designated as the "Expense Account" which shall be held in trust in the name of the Trustee for the benefit of the Noteholders and each Hedge Counterparty. The only permitted withdrawal from or application of funds on deposit in, or otherwise standing to the credit of, the Expense Account shall be to pay (on any day other than a Payment Date) (i) accrued and unpaid Company Administrative Expenses of the Issuer and the Co-Issuer (other than accrued and unpaid expenses and indemnities payable to the Collateral Manager under the Collateral Management Agreement) and (ii) amounts representing accrued interest in connection with the purchase by the Issuer during the Ramp-Up Period of Collateral

-179-

Debt Securities. On the Closing Date, the Trustee shall deposit into the Expense Account an amount equal to approximately U.S.\$500,000 from the net proceeds received by the Issuer on such date from the initial issuance of the Notes. On or after the Effective Date, any amount remaining in the Expense Account may, at the election of the Collateral Manager be designated as Interest Proceeds. On the date on which substantially all of the Issuer's assets have been sold or otherwise disposed of, the Issuer by Issuer Order executed by an Authorized Officer of the Collateral Manager shall direct the Trustee to, and, upon receipt of such Issuer Order, the Trustee shall, transfer all amounts on deposit in the Expense Account to the Interest Collection Account for application pursuant to Section 11.1(a)(i) as Interest Proceeds. Amounts credited to the Expense Account may be applied on or prior to the Determination Date preceding the first Payment Date to pay amounts due in connection with the offering of the Notes.

(b) The Trustee agrees to give the Issuer immediate notice if it becomes aware that the Expense Account or any funds on deposit therein, or otherwise to the credit of the Expense Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. The Issuer shall not have any legal, equitable or beneficial interest in the Expense Account. The Expense Account shall remain at all times with the Corporate Trust Office of a financial institution having a long-term debt rating by each Rating Agency at least equal to "A-" or "Baa1," as applicable.

(c) The Collateral Manager, on behalf of the Issuer, may direct the Trustee to, and upon such direction the Trustee shall, invest all funds in the Expense Account in Eligible Investments designated by the Collateral Manager. All interest and other income from such investments shall be deposited in the Expense Account, any gain realized from such investments shall be credited to the Expense Account, and any loss resulting from such investments shall be charged to the Expense Account. The Trustee shall not in any way be held liable (except as a result of negligence, willful misconduct or bad faith) by reason of any insufficiency of such Expense Account resulting from any loss relating to any such investment, except with respect to investments in obligations of the Trustee or any Affiliate thereof. If the Trustee does not receive investment instructions from an Authorized Officer of the Collateral Manager, the Trustee shall invest funds received in the Expense Account in Eligible Investments of the type described in clause (ii) of the definition thereto.

Section 10.7 Defeased Collateral Accounts.

(a) The Trustee shall, on or after the Closing Date, at the direction of the Issuer (or the Collateral Manager on the Issuer's behalf) establish and maintain one or more segregated trust accounts which will be designated the "Defeased Collateral Accounts." On each date on which the Issuer receives from

the related borrower in respect of a Loan included in the Assets substitute or additional collateral in the form of Cash or Eligible Investments in connection with a defeasance of such Loan, such substitute or additional collateral shall be transferred by the Issuer (or by the Collateral Manager on behalf of the Issuer) to the Trustee and the Trustee thereafter shall deposit such substitute or additional collateral into a Defeased Collateral Account; provided that this Section 10.7(a) shall not apply to any such substitute or additional collateral received by the Issuer in connection with the release of any lien on condominium units to the extent that such additional or substitute collateral is held by the

-180-

Servicer in an Eligible Account pending application of such collateral to pay principal of and/or interest on the related Collateral Debt Security in accordance with the terms of the applicable Underlying Instruments. Amounts on deposit in each Defeased Collateral Account shall be transferred by the Trustee for deposit into the Interest Collection Account, the Principal Collection Account and/or the Payment Account, in each case as directed by the Issuer (or by the Collateral Manager on behalf of the Issuer) pursuant to an Issuer Order. All Monies deposited from time to time in the Defeased Collateral Account pursuant to this Indenture shall be held by the Trustee as part of the Assets and shall be applied to the purposes herein provided.

(b) The Trustee agrees to give the Issuer immediate notice if it becomes aware that a Defeased Collateral Account or any funds on deposit therein, or otherwise to the credit of a Defeased Collateral Account, shall become subject to any writ, order, judgment, warrant of attachment, execution or similar process. The Issuer shall not have any legal, equitable or beneficial interest in any Defeased Collateral Account. Each Defeased Collateral Account shall remain at all times with the Corporate Trust Office or a financial institution having a long-term debt rating from each Rating Agency at least equal to "A-" or "A2," as applicable, or a short-term debt rating at least equal to "A-1," "P-1" or "F1," as applicable.

(c) The Collateral Manager, on behalf of the Issuer, may direct the Trustee to, and upon such direction the Trustee shall, invest all funds in the Defeased Collateral Account in Eligible Investments designated by the Collateral Manager. All interest and other income from such investments shall be deposited in the Defeased Collateral Account, any gain realized from such investments shall be credited to the Defeased Collateral Account, and any loss resulting from such investments shall be charged to the Defeased Collateral Account. The Trustee shall not in any way be held liable (except as a result of negligence, willful misconduct or bad faith) by reason of any insufficiency of the Defeased Collateral Account resulting from any loss relating to any such investment, except with respect to investments in obligations of the Trustee or any Affiliate thereof. If the Trustee does not receive investment instructions from an Authorized Officer of the Collateral Manager, the Trustee shall invest funds received in the Defeased Collateral Account in Eligible Investments of the type described in clause (ii) of the definition thereto.

Section 10.8 Interest Advances.

(a) With respect to each Determination Date for which the sum of Interest Proceeds and, if applicable, Principal Proceeds, collected during the related Due Period that are available to pay interest on the Class A-1 Notes, the Class A-2 Notes and the Class B Notes in accordance with the Priority of Payments, are insufficient to remit the interest due and payable with respect to the Class A-1 Notes, the Class A-2 Notes and the Class B Notes on the following Payment Date (the amount of such insufficiency, an "Interest Shortfall"), the Trustee shall provide the Advancing Agent with written notice of such Interest Shortfall no later than the close of business on the Business Day following such Determination Date. The Trustee shall provide the Advancing Agent with notice, prior to any funding of an Interest Advance by the Advancing Agent, of any additional interest remittances received by the Trustee after delivery of such initial notice that reduce such Interest Shortfall. No later than 5:00 p.m. (New

York time) on the Business Day immediately preceding the related Payment

-181-

Date (but in any event no earlier than one Business Day following the Advancing Agent's receipt of notice of such Interest Shortfall), the Advancing Agent shall advance the difference between such amounts (each such advance, an "Interest Advance") by deposit of an amount equal to such Interest Advance in the Payment Account, subject to a determination of recoverability by the Advancing Agent as described in Section 10.8(b), and subject to a maximum limit in respect of any Payment Date equal to the lesser of (i) the aggregate of such Interest Shortfalls that would otherwise occur on the Class A-1 Notes, the Class A-2 Notes and Class B Notes and (ii) the aggregate of the interest payments not received in respect of Non-Advancing Collateral Debt Securities. Notwithstanding the foregoing, in no circumstance will the Advancing Agent be required to make an Interest Advance in respect of a Non-Advancing Collateral Debt Security (x) to the extent that the aggregate outstanding amount of all unreimbursed Interest Advances would exceed the aggregate outstanding principal amount of the Class A Notes and the Class B Notes or (y) if the Class A/B Par Value Ratio on the relevant Measurement Date is less than 100%. Any Interest Advance made by the Advancing Agent with respect to a Payment Date that is in excess of the actual Interest Shortfall for such Payment Date shall be refunded to the Advancing Agent by the Trustee on the same Business Day that such Interest Advance was made (or, if such Interest Advance is made prior to final determination by the Trustee of such Interest Shortfall, on the Business Day of such final determination). The Advancing Agent shall provide the Trustee written notice of a determination by the Advancing Agent that a proposed Interest Advance would constitute a Nonrecoverable Interest Advance no later than the close of business on the Business Day immediately preceding the related Payment Date (or, in the event that the Advancing Agent did not receive notice of the related Interest Shortfall on the related Determination Date, no later than the close of business on the Business Day immediately following the Advancing Agent's receipt of notice of such Interest Shortfall). If the Advancing Agent shall fail to make any required Interest Advance at or prior to the time at which distributions are to be made pursuant to Section 11.1(a), the Trustee, in its capacity as Backup Advancing Agent, shall be required to make such Interest Advance, subject to a determination of recoverability by the Trustee as described in Section 10.8(b). The Trustee, in its capacity as Backup Advancing Agent, shall be entitled to conclusively rely on any affirmative determination by the Advancing Agent that an Interest Advance would constitute a Nonrecoverable Interest Advance. Based upon available information at the time, the Trustee, in its capacity as Backup Advancing Agent, the Collateral Manager or the Advancing Agent will provide 15 days prior notice to each Rating Agency if recovery of a Nonrecoverable Interest Advance would result in an Interest Shortfall on the next succeeding Payment Date. No later than the close of business on the Determination Date related to a Payment Date on which the recovery of a Nonrecoverable Interest Advance would result in an Interest Shortfall, the Collateral Manager will provide each Rating Agency notice of such recovery.

(b) Notwithstanding anything herein to the contrary, neither the Advancing Agent nor the Trustee, in its capacity as Backup Advancing Agent, as applicable, shall be required to make any Interest Advance unless such Person determines, in its sole discretion, exercised in good faith that such Interest Advance, or such proposed Interest Advance, plus interest expected to accrue thereon at the Reimbursement Rate, will be recoverable from subsequent payments or collections with respect to all Collateral Debt Securities and has determined in its reasonable judgment that the recovery would not result in an Interest Shortfall. In determining whether any proposed Interest Advance will be, or whether any

-182-

Interest Advance previously made is, a Nonrecoverable Interest Advance, the Advancing Agent or the Trustee, in its capacity as Backup Advancing Agent, as applicable, will take into account:

(i) amounts that may be realized on each Underlying Mortgage Property in its "as is" or then current condition and occupancy;

(ii) that the related Senior Tranches of any Collateral Debt Security may be required to be fully paid and any advances (and interest thereon) made in respect of such Senior Tranches may be required to be fully reimbursed, prior to any amounts recovered in respect of the Underlying Mortgage Properties are allocated or otherwise made available to the Collateral Debt Securities;

(iii) the possibility and effects of future adverse change with respect to the Underlying Mortgage Properties, the potential length of time before such Interest Advance may be reimbursed and the resulting degree of uncertainty with respect to such reimbursement; and

(iv) the fact that Interest Advances are intended to provide liquidity only and not credit support to the Class A-1 Noteholders, the Class A-2 Noteholders and the Class B Noteholders.

For purposes of any such determination of whether an Interest Advance constitutes or would constitute a Nonrecoverable Interest Advance, an Interest Advance will be deemed to be nonrecoverable if the Advancing Agent or the Trustee, in its capacity as Backup Advancing Agent, as applicable, determines that future Interest Proceeds and Principal Proceeds may be ultimately insufficient to fully reimburse such Interest Advance, plus interest thereon at the Reimbursement Rate within a reasonable period of time. Absent bad faith, the determination by the Advancing Agent or the Trustee, in its capacity as Backup Advancing Agent, as applicable, as to the nonrecoverability of any Interest Advance shall be conclusive and binding on the Holders of the Notes.

(c) The Advancing Agent and the Trustee, in its capacity as Backup Advancing Agent, will each be entitled to recover any previously unreimbursed Interest Advance made by it (including any Nonrecoverable Interest Advance), together with interest thereon, first, from Interest Proceeds and second (to the extent that there are insufficient Interest Proceeds for such reimbursement), from Principal Proceeds to the extent that such reimbursement would not trigger an additional Interest Shortfall; provided that if at any time an Interest Advance is determined to be a Nonrecoverable Interest Advance, the Advancing Agent or the Trustee, in its capacity as Backup Advancing Agent, shall be entitled to recover all outstanding Interest Advances from the Collection Accounts on any Business Day during any Interest Accrual Period prior to the related Determination Date (or on a Payment Date prior to any payment of interest on or principal of the Notes in accordance with the Priority of Payments). The Advancing Agent shall be permitted (but not obligated) to defer or otherwise structure the timing of recoveries of Nonrecoverable Interest Advances in such manner as the Advancing Agent determines is in the best interest of the Class A Notes and the Class B

-183-

Notes, as a collective whole, which may include being reimbursed for Nonrecoverable Interest Advances in installments.

(d) The Advancing Agent and the Trustee, in its capacity as Backup Advancing Agent, will each be entitled with respect to any Interest Advance made by it (including Nonrecoverable Interest Advances) to interest accrued on the amount of such Interest Advance for so long as it is outstanding at the Reimbursement Rate.

(e) The Advancing Agent's and the Trustee's obligations to make Interest Advances in respect of the Collateral Debt Securities will continue

through the Stated Maturity, unless the Class A Notes and the Class B Notes are previously redeemed or repaid in full.

(f) In no event will the Advancing Agent or the Trustee, in its capacity as Backup Advancing Agent, be required to advance any payments in respect of principal or with respect to any Class of Notes other than the Class A-1 Notes, the Class A-2 Notes and the Class B Notes or with respect to any Collateral Debt Security other than a Non-Advancing Collateral Debt Security.

(g) In consideration of the performance of its obligations hereunder, the Advancing Agent shall be entitled to receive, at the times set forth herein and subject to the Priority of Payments, to the extent funds are available therefor, the Advancing Agent Fee. In consideration of the Trustee's backup advancing obligations hereunder, the Trustee shall be entitled to receive, at the times set forth herein and subject to the Priority of Payments, to the extent funds are available therefor, the Backup Advancing Agent Fee.

(h) The determination by the Advancing Agent or the Trustee, in its capacity as Backup Advancing Agent, as applicable, (i) that it has made a Nonrecoverable Interest Advance or (ii) that any proposed Interest Advance, if made, would constitute a Nonrecoverable Interest Advance, shall be evidenced by an Officer's Certificate delivered promptly to the Trustee (or, if applicable, retained thereby), the Issuer, S&P, Fitch and Moody's, setting forth the basis for such determination; provided that failure to give such notice, or any defect therein, shall not impair or affect the validity of, or the Advancing Agent or the Trustee's, in its capacity as Backup Advancing Agent, entitlement to reimbursement with respect to, any Interest Advance.

(i) If a Scheduled Distribution on any Collateral Debt Security is not paid to the Trustee on the Due Date therefor, the Trustee shall provide the Advancing Agent with notice of such default on the Business Day immediately following such default. In addition, upon request, the Trustee shall provide the Advancing Agent (either electronically or in hard-copy format), with copies of all reports received from any trustee, trust administrator, master servicer or similar administrative entity with respect to the Collateral Debt Securities and the Trustee shall promptly make available to the Advancing Agent any other information reasonably available to the Trustee by reason of its acting as Trustee hereunder to permit the Advancing Agent to make a determination of recoverability with respect to any Interest Advance and to otherwise perform its advancing functions under this Indenture.

-184-

Section 10.9 Reports by Parties.

(a) The Trustee shall supply, in a timely fashion, to the Issuer, the Co-Issuer, the Preferred Shares Paying Agent and the Collateral Manager any information regularly maintained by the Trustee that the Issuer, the Co-Issuer, the Preferred Shares Paying Agent or the Collateral Manager may from time to time request with respect to the Pledged Obligations or the Accounts and provide any other information reasonably available to the Trustee by reason of its acting as Trustee hereunder and required to be provided by Section 10.10 or to permit the Collateral Manager to perform its obligations under the Collateral Management Agreement. The Trustee shall forward to the Collateral Manager and each Hedge Counterparty copies of notices and other writings received by it from the issuer of any Collateral Debt Security or from any Clearing Agency with respect to any Collateral Debt Security advising the holders of such security of any rights that the holders might have with respect thereto (including, without limitation, notices of calls and redemptions of securities) as well as all periodic financial reports received from such issuer and Clearing Agencies with respect to such issuer. Each of the Issuer and Collateral Manager shall promptly forward to the Trustee any information in their possession or reasonably available to them concerning any of the Pledged Obligations that the Trustee reasonably may request or that reasonably may be necessary to enable the Trustee to prepare any report or perform any duty or function on its part to be

performed under the terms of this Indenture.

Section 10.10 Reports; Accountings.

(a) The Trustee shall monitor the Assets on an ongoing basis and provide access to the information maintained by the Trustee to, and upon reasonable request of the Collateral Manager, shall assist the Collateral Manager in performing its duties under the Collateral Management Agreement, each in accordance with this Indenture.

(b) The Trustee shall perform the following functions during the term of this Agreement:

(i) Create and maintain a database with respect to the Collateral Debt Securities (the "Database");

(ii) Permit access to the information contained in the Database by the Collateral Manager and the Issuer;

(iii) On a monthly basis monitor and update the Database for ratings changes;

(iv) Update the Database for Collateral Debt Securities or Eligible Investments acquired or sold or otherwise disposed of;

(v) Prepare and arrange for the delivery to each Rating Agency, the Collateral Manager, each Hedge Counterparty, the Initial Purchaser, and upon request therefor, any Holder of a Note shown on the Note Registrar, any Preferred Shareholder shown on the register maintained by the Share Registrar, and, for so long as any Notes are listed on the Irish Stock Exchange, the Irish Paying Agent of the Monthly Reports;

-185-

(vi) Prepare and arrange for the delivery to the Collateral Manager, each Hedge Counterparty, and upon request therefor, any Holder of a Note shown on the Notes Register, any Preferred Shareholder shown on the register maintained by the Share Registrar, the firm of Independent certified public accountants appointed pursuant to Section 10.12(a) hereof, each Rating Agency, the Depository (with instructions to forward it to each of its participants who are holders of any Notes) and, for so long as any Notes are listed on the Irish Stock Exchange, the Irish Paying Agent, of the Notes Valuation Report;

(vii) Assist in preparing and arrange for the delivery to the Collateral Manager and each Hedge Counterparty of the Redemption Date Statement;

(viii) Arrange for the delivery to each Rating Agency of all information or reports required under this Indenture, including, but not limited to, providing S&P, Moody's and Fitch with (A) written notice of (1) any breaches under any of the Transaction Documents and (2) the termination or change of any parties to the Transaction Documents, in each case, for which the Trustee has received prior written notice pursuant to the terms of the Transaction Document and (B) each Monthly Report in Microsoft Excel spreadsheet format; and

(ix) Assist the Independent certified public accountants in the preparation of those reports required under Section 10.12 hereof by providing access to the information contained in the Database.

(c) The Trustee, on behalf of the Issuer, shall compile and provide or make available on its website initially located at www.cdotruster.net to each

Rating Agency, the Collateral Manager, each Hedge Counterparty, the Initial Purchaser, for so long as any Notes are listed on the Irish Stock Exchange, and upon request therefor, any Holder of a Note shown on the Notes Register, any Preferred Shareholder shown on the register maintained by the Share Registrar, not later than the fifth Business Day after the first day of each month commencing in March 2006 (or solely in the case of the first Monthly Report, the fifteenth Business Day), determined as of the last Business Day of the preceding month, a monthly report (the "Monthly Report"). The Monthly Report shall contain the following information and instructions with respect to the Pledged Obligations included in the Assets based in part on information provided by the Collateral Manager:

(i) The Aggregate Principal Balance of all Collateral Debt Securities, together with a calculation, in reasonable detail, of the sum of (A) the Aggregate Principal Balance of all Collateral Debt Securities (other than Defaulted Securities and Written Down Securities) plus (B) the Principal Balance of each Pledged Obligation which is Written Down Security and (C) the Principal Balance of each Pledged Obligation which is a Defaulted Security;

(ii) The balance of all Eligible Investments and Cash in each of the Interest Collection Account, the Principal Collection Account, the Delayed Funding Obligations Account and the Expense Account;

-186-

(iii) The nature, source and amount of any proceeds in the Collection Accounts, including Interest Proceeds, Principal Proceeds, Unscheduled Principal Payments and Sale Proceeds, received since the date of determination of the last Monthly Report;

(iv) With respect to each Collateral Debt Security and each Eligible Investment that is part of the Assets, its Principal Balance, annual interest rate, average life, issuer, Moody's Rating, S&P Rating and Fitch Rating;

(v) The identity of each Collateral Debt Security that was sold or disposed of pursuant to Section 12.1 (indicating whether such Collateral Debt Security is a Defaulted Security, Credit Risk Security or otherwise (in each case, as reported in writing to the Issuer by the Collateral Manager) and whether such Collateral Debt Security was sold pursuant to Section 12.1(a)(i) or (ii)) or Granted to the Trustee since the date of determination of the most recent Monthly Report;

(vi) The identity of each Collateral Debt Security which became a Defaulted Security, Credit Risk Security or a Written Down Security since the date of determination of the last Monthly Report;

(vii) The identity of each Collateral Debt Security that has been upgraded or downgraded by one or more Rating Agencies;

(viii) The Aggregate Principal Balance of all Fixed Rate Securities;

(ix) The Aggregate Principal Balance of all Floating Rate Securities;

(x) Based on information provided by the Collateral Manager, the Aggregate Principal Balance of all Floating Rate Securities that constitute Covered Fixed Rate Securities;

(xi) The Aggregate Principal Balance of all Collateral Debt Securities that are guaranteed as to ultimate or timely payment of principal or interest;

(xii) With respect to each Specified Type of Collateral Debt Security, the Aggregate Principal Balance of all Collateral Debt Securities consisting of such Specified Type of Collateral Debt Securities;

(xiii) Based on information provided by the Collateral Manager, the identity of, and the Aggregate Principal Balance of all Collateral Debt Securities whose Moody's Rating is determined as provided in each clause of the definition of "Moody's Rating" and the identity of, and the Aggregate Principal Balance of all Collateral Debt Securities whose S&P Rating is determined as provided in each of the clauses of the definition of "S&P Rating," identifying in reasonable detail the basis for such calculation with respect to Collateral Debt Securities with an S&P Rating assigned pursuant to Annex 1, 2 or 3 of Schedule F, based on information provided by the Collateral Manager;

-187-

(xiv) With respect to each Collateral Debt Security, the Aggregate Principal Balance of all Collateral Debt Securities that are part of the same issuance;

(xv) The Aggregate Principal Balance of all Collateral Debt Securities that are securities that provide for periodic payments of interest less frequently than quarterly;

(xvi) Based upon the information supplied by the Collateral Manager, the Aggregate Principal Balance of all Collateral Debt Securities issued by any single issuer (provided that, for avoidance of doubt, with respect to any Loan, the issuer of such Loan shall be deemed to be the borrower of such Loan);

(xvii) Based upon the information supplied by the Collateral Manager, the Aggregate Collateral Balance of the Collateral Debt Securities consisting of CMBS Securities issued in any single calendar year;

(xviii) The Aggregate Principal Balance of all Collateral Debt Securities (other than CMBS Securities, CRE CDO Securities and REIT Debt Securities) backed by each single Property Type based on information provided by the Collateral Manager;

(xix) The Aggregate Principal Balance of all Collateral Debt Securities (other than CMBS Securities, CRE CDO Securities and REIT Debt Securities) that are backed or otherwise invested in properties located in any single U.S. state (for each such state) based on information provided by the Collateral Manager;

(xx) The Class A/B Par Value Ratio, the Class A/B Interest Coverage Ratio, the Class C/D/E Par Value Ratio, the Class C/D/E Interest Coverage Ratio, the Class F/G/H Par Value Ratio and the Class F/G/H Interest Coverage Ratio, and a statement as to whether the Interest Coverage Tests and the Par Value Tests are satisfied;

(xxi) The Weighted Average Moody's Rating Factor and a statement as to whether the Moody's Maximum Tranching Rating Factor Test is satisfied;

(xxii) The Herfindahl Score, the amount of Cash that has been received in respect of Principal Proceeds of the Collateral Debt Securities since the immediately preceding Measurement Date but has not been reinvested in additional Collateral Debt Securities (and what the Herfindahl Score would have been had such Cash in respect of such Principal Proceeds not existed), a statement as to whether the Herfindahl Diversity Test was satisfied or deemed satisfied on the

immediately preceding Measurement Date and a statement as to whether the Herfindahl Diversity Test is satisfied;

(xxiii) The Weighted Average Coupon and a statement as to whether the Minimum Weighted Average Coupon Test is satisfied;

(xxiv) The Weighted Average Spread and a statement as to whether the Minimum Weighted Average Spread Test is satisfied;

(xxv) The Extended Weighted Average Maturity and a statement as to whether the Moody's Weighted Average Extended Maturity Test is satisfied;

-188-

(xxvi) Based upon information supplied by the Collateral Manager, the Average Life of each Collateral Debt Security, the Weighted Average Life and a statement as to whether the Weighted Average Life Test is satisfied;

(xxvii) The Class A-1 Loss Differential, the Class A-2 Loss Differential, the Class B Loss Differential, the Class C Loss Differential, the Class D Loss Differential, the Class E Loss Differential, the Class F Loss Differential, the Class G Loss Differential and the Class H Loss Differential of the Current Portfolio and a statement as to whether the S&P CDO Monitor Test is satisfied;

(xxviii) The S&P Weighted Average Recovery Rate and a statement as to whether the S&P Recovery Test is satisfied;

(xxix) A calculation in reasonable detail necessary to determine compliance with each of the other Collateral Quality Tests;

(xxx) The Principal Balance of each Collateral Debt Security that is on credit watch with negative implications;

(xxxi) The Principal Balance of each Collateral Debt Security that is on credit watch with positive implications;

(xxxii) The amount of the current portion and the unpaid portion, if any, of the Senior Collateral Management Fee and the Subordinated Collateral Management Fee with respect to the related Payment Date;

(xxxiii) Based upon information supplied by the Collateral Manager, the current ratings of any Hedge Counterparty and any Hedge Counterparty Credit Support Provider;

(xxxiv) The nature and amount of any ARMS Equity Contributions received since the date of determination of the last Monthly Report;

(xxxv) Such other information as the Collateral Manager, the Trustee or any Hedge Counterparty may reasonably request.

(d) The Trustee, on behalf of the Issuer, shall perform the following functions and report to the Issuer, the Co-Issuer and the Collateral Manager on each Measurement Date:

(i) Calculate the Class A/B Par Value Ratio and the Class A/B Interest Coverage Ratio and indicate whether the Class A/B Par Value Test and the Class A/B Interest Coverage Test are met;

(ii) Calculate the Class C/D/E Par Value Ratio and the Class C/D/E Interest Coverage Ratio and indicate whether the Class C/D/E Par Value Test and the Class C/D/E Interest Coverage Test are met; and

(iii) Calculate the Class F/G/H Par Value Ratio and the Class F/G/H Interest Coverage Ratio and indicate whether the Class F/G/H Par Value Test and the Class F/G/H Interest Coverage Test are met.

(e) The Trustee, on behalf of the Issuer, shall perform the following functions and prepare a report thereof relating to the most recently ended Due Period determined as of each Determination Date not later than the Business Day preceding the Payment Date (the "Notes Valuation Report"), which shall contain the following information, based in part on information provided by the Collateral Manager:

(i) Calculate the percentage (based on the outstanding Aggregate Principal Balances of the Pledged Collateral Debt Securities) of the Pledged Collateral Debt Securities which have a maturity date occurring on or prior to each Payment Date;

(ii) Identify the Principal Proceeds and Interest Proceeds;

(iii) Determine the Net Outstanding Portfolio Balance as of the close of business on the last Business Day of each Due Period after giving effect to the Principal Proceeds as of the last Business Day of such Due Period, principal collections received from Collateral Debt Securities in the related Due Period, the reinvestment of such proceeds in Eligible Investments during such Due Period and the Collateral Debt Securities that were released during such Due Period;

(iv) Determine the Aggregate Outstanding Amount of the Notes of each Class at the beginning of the Due Period and such Aggregate Outstanding Amount as a percentage of the original Aggregate Outstanding Amount of the Notes of such Class, the amount of principal payments to be made on the Notes of each Class on the next Payment Date, the amount of any Class C Capitalized Interest on the Class C Notes, the amount of any Class D Capitalized Interest on the Class D Notes, the amount of any Class E Capitalized Interest on the Class E Notes, the amount of any Class F Capitalized Interest on the Class F Notes, the amount of any Class G Capitalized Interest on the Class G Notes, the amount of any Class H Capitalized Interest on the Class H Notes, the Aggregate Outstanding Amount of the Notes of each Class after giving effect to the payment of principal (and with respect to the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes, Class C Capitalized Interest, Class D Capitalized Interest, Class E Capitalized Interest, Class F Capitalized Interest, Class G Capitalized Interest or Class H Capitalized Interest, as applicable), on the related Payment Date and such Aggregate Outstanding Amount as a percentage of the original Aggregate Outstanding Amount of the Notes of such Class;

(v) Calculate the Class A-1 Interest Distribution Amount, the Class A-2 Interest Distribution Amount, the Class B Interest Distribution Amount, the Class C Interest Distribution Amount, the Class D Interest Distribution Amount, the Class E Interest Distribution Amount, the Class F Interest Distribution Amount, the Class G Interest Distribution Amount and the Class H Interest Distribution Amount, for the related Payment Date and the aggregate amount paid for all prior Payment Dates in respect of such amounts;

(vi) With the assistance of the Collateral Manager, determine the

Company Administrative Expenses on an itemized basis, the Senior Collateral Management Fee and the Subordinate Collateral Management Fee payable by the Issuer on the related Payment Date;

(vii) With the assistance of the Collateral Manager as set forth in Section 10.10(f), determine (A) the balance on deposit in the Interest Collection Account and the Principal Collection Account at the end of the related Due Period, (B) the amounts payable from the Collection Accounts to the Payment Account in order to make payments pursuant to Section 11.1(a) on the related Payment Date (the amounts payable pursuant to each such clause to be set forth and identified separately) and (C) the balance of Principal Proceeds and the balance of Interest Proceeds remaining in the Collection Accounts immediately after all payments and deposits to be made on the related Payment Date;

(viii) Calculate the amount to be paid to each Hedge Counterparty and the amount to be paid by each Hedge Counterparty in each case, specifying (a) the amount to be paid under each Hedge Agreement (other than any payments due and payable upon a termination of the related Hedge Agreement) and (b) the amount owing as a result of a termination with respect to each Hedge Agreement;

(ix) Calculate the amount to be paid to the Advancing Agent or the Trustee, in its capacity as Backup Advancing Agent, as applicable, as reimbursement of Interest Advances and Reimbursement Interest and calculate the amount of the Nonrecoverable Interest Advances to be paid to the Advancing Agent or the Trustee, in its capacity as Backup Advancing Agent, as applicable;

(x) Calculate the amount on deposit in the Expense Account, the Unused Proceeds Account, the Delayed Funding Obligations Account, each Hedge Collateral Account and each Hedge Termination Account;

(xi) The nature, source and amount of any proceeds in the Collection Accounts, including Interest Proceeds, Principal Proceeds, Unscheduled Principal Payments and Sale Proceeds, received since the date of determination of the last Monthly Report;

(xii) With respect to each Collateral Debt Security and each Eligible Investment that is part of the Assets, its Principal Balance, annual interest rate, average life, issuer, Moody's Rating, S&P Rating and Fitch Rating;

(xiii) The identity of each Collateral Debt Security that was sold or disposed of pursuant to Section 12.1 (indicating whether such Collateral Debt Security is a Defaulted Security, Credit Risk Security or otherwise (in each case, as reported in writing to the Issuer by the Collateral Manager) and whether such Collateral Debt Security was sold pursuant to Section 12.1(a)(i) or (ii) or Granted to the Trustee since the date of determination of the most recent Monthly Report;

-191-

(xiv) Subject to the availability of such information to the Collateral Manager and the delivery of such information by the Collateral Manager to the Trustee, with respect to each Collateral Debt Security on a semi-annual basis, the net cash flow on each real property underlying or related to such Collateral Debt Security;

(xv) The identity of each Collateral Debt Security which became a Defaulted Security, Credit Risk Security or a Written Down Security since the date of determination of the last Monthly Report; and

(xvi) The nature and amount of any ARMS Equity Contributions

received since the date of determination of the last Monthly Report;

(f) Upon receipt of each Monthly Report, each Notes Valuation Report and each Redemption Date Statement, the Collateral Manager shall compare the information contained in its records with respect to the Pledged Obligations and shall, within five Business Days after receipt of each such Monthly Report, such Notes Valuation Report or such Redemption Date Statement, notify the Issuer and the Trustee whether such information contained in the Monthly Report, the Notes Valuation Report or the Redemption Date Statement, as the case may be, conforms to the information maintained by the Collateral Manager with respect to the Pledged Obligations, or detail any discrepancies. If any discrepancy exists, the Trustee, the Issuer and the Collateral Manager shall attempt to resolve the discrepancy. If such discrepancy cannot be promptly resolved, the Trustee shall cause the firm of Independent certified public accountants appointed by the Issuer pursuant to Section 10.12 hereof to review such Monthly Report, Notes Valuation Report or Redemption Date Statement, as the case may be, and the Collateral Manager's records and the Trustee's records to determine the cause of such discrepancy. If such review reveals an error in the Monthly Report, Notes Valuation Report or Redemption Date Statement, as the case may be, or the Trustee's or the Collateral Manager's records, the Monthly Report, Notes Valuation Report or Redemption Date Statement, as the case may be, or the Trustee's or the Collateral Manager's records, shall be revised accordingly and, as so revised, shall be utilized in making all calculations pursuant to this Indenture. Each Rating Agency (in each case only so long as any Class of Notes is rated), the Initial Purchaser and the Collateral Manager shall be notified in writing of any such revisions by the Trustee, on behalf of the Issuer.

(g) The Trustee shall prepare the Notes Valuation Report and shall deliver or make available on its website initially located at www.cdtrustee.net such Notes Valuation Report to the Collateral Manager, each Hedge Counterparty, and upon request therefor, any Holder of a Note shown on the Notes Register, any Holder of a Preferred Share shown on the register maintained by the Share Registrar, the firm of Independent certified public accountants appointed pursuant to Section 10.12(a) hereof, each Rating Agency, the Depository (with instructions to forward it to each of its participants who are holders of any Notes) and, for so long as any Notes are listed on the Irish Stock Exchange, the Irish Paying Agent not later than the related Payment Date. The Notes Valuation Report shall have attached to it (with the exception of the first Notes Valuation Report) the most recent Monthly Report.

The Notes Valuation Report shall also contain the following statements:

-192-

"Instruction to Participant: Please send
this to the beneficial owners of the Notes"

REMINDER TO OWNERS OF EACH CLASS OF NOTES:

Each owner or beneficial owner of Notes must be either a U.S. Person who is a qualified institutional buyer as defined in Rule 144A under the Securities Act of 1933 and a Qualified Purchaser as defined by the Investment Company Act of 1940 or not a U.S. Person, and if a U.S. Person, can represent as follows:

(i) it is not a broker-dealer which owns and invests on a discretionary basis less than \$25 million in securities of unaffiliated issuers;

(ii) it is not a participant-directed employee plan such as a 401(k) plan;

(iii) it is acting for its own account or for the account of another who is a qualified institutional buyer and a qualified

purchaser that is not included in (i) or (ii) above;

(iv) it is not formed for the purpose of investing in the Notes;

(v) it, and each account for which it holds the Notes, shall hold at least the minimum denomination therefor; and

(vi) it will provide notice of these transfer restrictions to any transferee from it.

(h) Each Notes Valuation Report (after approval by the Collateral Manager after giving effect to any revisions thereto in accordance with Section 10.10(f)) shall constitute instructions from the Collateral Manager, on behalf of the Issuer, to the Trustee to transfer funds from the Collection Accounts to the Payment Account pursuant to Section 10.2(d) and to withdraw on the related Payment Date from the Payment Account and pay or transfer the amounts set forth in the Notes Valuation Report, as applicable, in the manner specified, and in accordance with the priorities established, in Section 11.1 hereof.

(i) Not more than five Business Days after receiving an Issuer Request requesting information regarding a redemption of the Notes of a Class as of a proposed Redemption Date set forth in such Issuer Request, the Trustee shall compute the following information and provide such information in a statement (the "Redemption Date Statement") delivered to the Collateral Manager (which shall review such statement in the manner provided for in Section 10.10(f)), the Preferred Shares Paying Agent and each Hedge Counterparty:

(i) The Aggregate Outstanding Amount of the Notes of the Class or Classes to be redeemed as of such Redemption Date;

(ii) The amount of accrued interest due on such Notes as of the last day of the Interest Accrual Period immediately preceding such Redemption Date;

-193-

(iii) The Redemption Price;

(iv) The sum of all amounts due and unpaid under Section 11.1(a) (other than amounts payable on the Notes being redeemed or to the Noteholders thereof);

(v) The amount due and payable to each Hedge Counterparty pursuant to the applicable Hedge Agreement; and

(vi) The amount in the Accounts available for application to the redemption of such Notes.

(j) The Trustee shall make available on its website, initially located at www.cdotruster.net, to S&P, together with each Monthly Report, any reports received by the Trustee with respect to the Loans no later than five Business Days prior to the delivery of such Monthly Report and not previously delivered to S&P.

(k) In the event of a sale by the Issuer of any Collateral Debt Security that is subject to an Asset Specific Hedge, the Issuer (at the direction Collateral Manager) shall provide written notice to each Hedge Counterparty under such Asset Specific Hedge at least five Business Days prior to such sale.

Section 10.11 Release of Pledged Collateral Debt Securities; Release of Assets.

(a) If no Event of Default has occurred and is continuing and subject to Article 12 hereof, the Issuer (or the Collateral Manager on behalf of the

Issuer) may, by Issuer Order delivered to the Trustee at least two Business Days prior to the settlement date for any sale of a Pledged Collateral Debt Security certifying that (i) it has sold such Pledged Collateral Debt Security pursuant to and in compliance with Article 12 or (ii) in the case of a redemption pursuant to Section 9.1 or Section 9.2 the proceeds from any such sale of Pledged Collateral Debt Securities are sufficient to redeem the Notes pursuant to Section 9.1 or Section 9.2, direct the Trustee to release such Pledged Collateral Debt Security and, upon receipt of such Issuer Order, the Trustee shall deliver any such Pledged Collateral Debt Security, if in physical form, duly endorsed to the broker or purchaser designated in such Issuer Order or, if such Pledged Collateral Debt Security is represented by a Security Entitlement, cause an appropriate transfer thereof to be made, in each case against receipt of the sales price therefor as set forth in such Issuer Order; provided, however, that the Trustee may deliver any such Pledged Collateral Debt Security in physical form for examination (prior to receipt of the sales proceeds) in accordance with street delivery custom. The Trustee shall (i) deliver any agreements and other documents in its possession relating to such Pledged Collateral Debt Security and (ii) if applicable, duly assign each such agreement and other document, in each case, to the broker or purchaser designated in such Issuer Order.

(b) The Issuer (or the Collateral Manager on behalf of the Issuer) may, by Issuer Order, delivered to the Trustee at least three Business Days prior to the date set for redemption or payment in full of a Pledged Collateral Debt Security, certifying that such Pledged Collateral Debt Security is being redeemed or paid in full, direct the Trustee, or at the Trustee's instructions, the Custodial Securities Intermediary, to deliver such Pledged Collateral Debt Security, if in physical form, duly endorsed, or, if such Pledged Collateral

-194-

Debt Security is a Clearing Corporation Security, to cause it to be presented, to the appropriate paying agent therefor on or before the date set for redemption or payment, in each case against receipt of the applicable redemption price or payment in full thereof.

(c) If no Event of Default has occurred and is continuing and subject to Article 12, the Issuer (or the Collateral Manager on behalf of the Issuer) may, by Issuer Order delivered to the Trustee at least two Business Days prior to the date set for an exchange, tender or sale, certifying that a Collateral Debt Security is subject to an Offer and setting forth in reasonable detail the procedure for response to such Offer, direct the Trustee or at the Trustee's instructions, the Custodial Securities Intermediary, to deliver such security, if in physical form, duly endorsed, or, if such security is a Clearing Corporation Security, to cause it to be delivered, in accordance with such Issuer Order, in each case against receipt of payment therefor.

(d) The Trustee shall deposit any proceeds received by it from the disposition of a Pledged Collateral Debt Security in the Principal Collection Account unless simultaneously applied to the purchase of Substitute Collateral Debt Securities, subject to the Reinvestment Criteria, or Eligible Investments under and in accordance with the requirements of Article 12 and this Article 10. Neither the Trustee nor the Custodial Securities Intermediary shall be responsible for any loss resulting from delivery or transfer of any security prior to receipt of payment in accordance herewith.

(e) The Trustee shall, upon receipt of an Issuer Order at such time as there are no Notes Outstanding and all obligations of the Issuer hereunder have been satisfied, release the Assets from the lien of this Indenture.

Section 10.12 Reports by Independent Accountants.

(a) On or about the Closing Date, the Issuer shall appoint a firm of Independent certified public accountants of recognized national reputation for purposes of preparing and delivering the reports or certificates of such

accountants required by this Indenture. The Collateral Manager, on behalf of the Issuer, shall have the right to remove such firm or any successor firm. Upon any resignation by or removal of such firm, the Collateral Manager, on behalf of the Issuer, shall promptly appoint, by Issuer Order delivered to the Trustee, each Hedge Counterparty and each Rating Agency, a successor thereto that shall also be a firm of Independent certified public accountants of recognized national reputation. If the Collateral Manager, on behalf of the Issuer, shall fail to appoint a successor to a firm of Independent certified public accountants which has resigned or been removed, within 30 days after such resignation or removal, the Issuer shall promptly notify the Trustee of such failure in writing. If the Collateral Manager, on behalf of the Issuer, shall not have appointed a successor within 10 days thereafter, the Trustee shall promptly appoint a successor firm of Independent certified public accountants of recognized national reputation. The fees of such Independent certified public accountants and its successor shall be payable by the Issuer or by the Trustee as provided in the Priority of Payments.

(b) Within 60 days after December 31 of each year (commencing with December 31, 2006), the Issuer shall cause to be delivered to the Trustee, the Collateral

-195-

Manager, each Hedge Counterparty and each Rating Agency an Accountants' Report specifying the procedures applied and the associated findings with respect to the Monthly Reports, the Notes Valuation Reports and any Redemption Date Statements prepared in the year ending on such date. At least 60 days prior to the Payment Date in April 2006 (and, if at any time a successor firm of Independent certified public accountants is appointed, to the Payment Date following the date of such appointment), the Issuer shall deliver to the Trustee an Accountant's Report specifying in advance the procedures that such firm will apply in making the aforementioned findings throughout the term of its service as accountants to the Issuer. The Trustee shall promptly forward a copy of such Accountant's Report to the Collateral Manager and each Holder of Notes of the Controlling Class, at the address shown on the Note Register. The Issuer shall not approve the institution of such procedures if a Majority of the Aggregate Outstanding Amount of Notes of the Controlling Class, by written notice to the Issuer and the Trustee within 30 days after the date of the related notice to the Trustee, object thereto.

(c) If any Hedge Counterparty is required to post collateral pursuant to the related Hedge Agreement during any Due Period, then on or prior to the Payment Date following such Due Period and on or prior to each anniversary of such Payment Date the Issuer shall cause a firm of Independent certified public accountants to review and verify that the value of collateral posted is in accordance with the applicable provisions of the related Hedge Agreement.

Section 10.13 Reports to Rating Agencies.

(a) In addition to the information and reports specifically required to be provided to each Rating Agency pursuant to the terms of this Indenture, the Trustee shall provide each Rating Agency and each Hedge Counterparty with all information or reports delivered by the Trustee hereunder, and such additional information as each Rating Agency may from time to time reasonably request and the Trustee determines in its sole discretion may be obtained and provided without unreasonable burden or expense. The Issuer shall promptly notify the Trustee and the Preferred Shares Paying Agent if a Rating Agency's rating of any Class of Notes has been, or it is known by the Issuer that such rating will be, reduced, or qualified or withdrawn.

(b) The Issuer (or the Collateral Manager on behalf of the Issuer) shall provide the Rating Agencies with all information and reports delivered to the Trustee hereunder, and shall provide to Fitch (i) the Operating Statement Analysis Report for each applicable Collateral Debt Security and (ii) on a monthly basis, the file, shown in Exhibit T attached hereto, in Microsoft Excel

format.

(c) All additional reports to be sent to the Rating Agencies pursuant to clause (a) above shall be reviewed prior to such transmission by the Collateral Manager.

The information referenced in paragraph (b) of this Section 10.13 should be sent to Fitch by e-mail to cdo.surveillance@fitchratings.com and karen.trebach@fitchratings.com or hardcopy to Fitch, Inc., One State Street Plaza, New York, New York 10004, facsimile no.: (212)

-196-

908-0500, Attention: Commercial Real Estate Loan CDOs, Performance Analytics, or such other address that Fitch shall designate in the future.

Section 10.14 Certain Procedures.

(a) For so long as the Notes may be transferred only in accordance with Rule 144A or another exemption from registration under the Securities Act, the Issuer (or the Collateral Manager on behalf of the Issuer) will ensure that any Bloomberg screen containing information about the Rule 144A Global Notes includes the following (or similar) language:

(i) the "Note Box" on the bottom of the "Security Display" page describing the Rule 144A Global Notes will state: "Iss'd Under 144A/3c7";

(ii) the "Security Display" page will have the flashing red indicator "See Other Available Information"; and

(iii) the indicator will link to the "Additional Security Information" page, which will state that the Notes "are being offered in reliance on the exemption from registration under Rule 144A of the Securities Act to persons who are both (i) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (ii) qualified purchasers (as defined under Section 3(c)(7) under the Investment Company Act of 1940).

(b) For so long as the Rule 144A Global Notes are registered in the name of DTC or its nominee, the Issuer (or the Collateral Manager on behalf of the Issuer) will instruct DTC to take these or similar steps with respect to the Rule 144A Global Notes:

(i) the DTC 20-character security descriptor and 48-character additional descriptor will indicate with marker "3c7" that sales are limited to (i) QIBs and (ii) Qualified Purchasers;

(ii) where the DTC deliver order ticket sent to purchasers by DTC after settlement is physical, it will have the 20-character security descriptor printed on it. Where the DTC deliver order ticket is electronic, it will have a "3c7" indicator and a related user manual for participants, which will contain a description of the relevant restriction; and

(iii) DTC will send an "Important Notice" outlining the 3(c)(7) restrictions applicable to the Rule 144A Global Notes to all DTC participants in connection with the initial offering of Notes by the issuers.

-197-

ARTICLE 11

APPLICATION OF MONIES

Section 11.1 Disbursements of Monies from Payment Account.

(a) Notwithstanding any other provision in this Indenture, but subject to the other subsections of this Section 11.1 and Section 13.1 hereof, on each Payment Date or Redemption Date, the Trustee shall disburse amounts transferred to the Payment Account from the Interest Collection Account and the Principal Collection Account pursuant to Section 10.2 hereof in accordance with the following priorities (the "Priority of Payments"):

(i) Interest Proceeds. On each Payment Date or Redemption Date, (except as otherwise provided in Section 11.1(d)) Interest Proceeds with respect to the related Due Period shall be distributed in the following order of priority:

(1) to the payment of taxes and filing fees (including any registered office and government fees) owed by the Issuer, if any;

(2) (a) first, to the extent not previously reimbursed, to the Advancing Agent or the Trustee, in its capacity as Backup Advancing Agent, the aggregate amount of any Nonrecoverable Interest Advances due and payable to such party, (b) second, to the extent not previously reimbursed, to the Collateral Manager, the aggregate amount of any Nonrecoverable Cure Advance due and payable to the Collateral Manager; (c) third, to the Advancing Agent, the Advancing Agent Fee and any previously due but unpaid Advancing Agent Fee (provided that the Advancing Agent has not failed to make any Interest Advance required to be made in respect of such Payment Date pursuant to the terms of this Indenture), (d) fourth, to the Advancing Agent and the Trustee, in its capacity as Backup Advancing Agent, (i) to the extent due and payable to such party, Reimbursement Interest and (ii) reimbursement of any outstanding Interest Advances not (in the case of this clause (ii)) to exceed the amount that would result in an Interest Shortfall with respect to such Payment Date and (e) fifth, to the extent due and payable to the Collateral Manager, reimbursement of any outstanding Cure Advance (but only to the extent that such payment would not result in an Interest Shortfall with respect to such Payment Date);

(3) (a) first, to the payment to the Trustee, as Backup Advancing Agent, the Backup Advancing Agent Fee (or if the Advancing Agent has failed to make any Interest Advance required to be made by the Advancing Agent in respect of such Payment Date pursuant to the terms of this Indenture, the Advancing Agent Fee otherwise payable to the Advancing Agent on such Payment Date) and any previously due but unpaid Backup Advancing Agent Fees, (b) second, to the payment to the Trustee of the accrued and unpaid fees in respect of its services equal to the greater of (i) 0.015% per annum of the Aggregate Collateral Balance and (ii) U.S. \$25,000 per annum, (c) third, to the payment of other accrued and unpaid Company Administrative Expenses of the Trustee, the

Paying Agent, the Preferred Shares Paying Agent and the Calculation Agent and (d) fourth, to the payment of any other accrued and unpaid Company Administrative Expenses, the aggregate of all such amounts in clauses (c) and (d) above (including such amounts paid since the previous Payment Date from the Expense

Account) not to exceed 0.065% per annum of the Aggregate Collateral Balance;

(4) to the payment of the Senior Collateral Management Fee and any previously due but unpaid Senior Collateral Management Fees;

(5) pro rata on the basis of amounts payable under each Hedge Agreement (if any), to the payment of any amounts (including, without limitation, any Hedge Payment Amounts) scheduled to be paid to each Hedge Counterparty, if any, pursuant to any Hedge Agreement, along with any payments (however described) due and payable by the Issuer under any Hedge Agreement in connection with a termination (in whole or in part) of any Hedge Agreement (including any interest that may accrue thereon), other than by reason of an Event of Default (as defined in the related Hedge Agreement) or Termination Event (other than Illegality or Tax Event) (each as defined in the related Hedge Agreement) in each case, with respect to which the Hedge Counterparty is the Defaulting Party or the sole Affected Party (as defined in the related Hedge Agreement);

(6) to the payment of the Class A-1 Interest Distribution Amount, plus, any Class A-1 Defaulted Interest Amount;

(7) to the payment of the Class A-2 Interest Distribution Amount, plus, any Class A-2 Defaulted Interest Amount;

(8) to the payment of the Class B Interest Distribution Amount, plus, any Class B Defaulted Interest Amount;

(9) as long as any of the Class A Notes or the Class B Notes are Outstanding, to the payment of the following amounts:

(a) in the event that the Class A-1 Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon the Stated Maturity of the Class A-1 Notes, to the payment in full of principal of the Class A-1 Notes;

(b) in the event that the Class A-2 Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class A-2 Notes, to the payment in full of

-199-

principal of, first, the Class A-1 Notes and second, the Class A-2 Notes;

(c) in the event that the Class B Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class B Notes, to the payment in full of principal of, first, the Class A-1 Notes, second, the Class A-2 Notes and third, the Class B Notes; or

(d) in the event of a Mandatory Redemption of the Class A Notes and the Class B Notes, first, to the payment of

principal of the Class A-1 Notes, second, to the payment of principal of the Class A-2 Notes and third, to the payment of principal of the Class B Notes, to the extent necessary to cause each of the Class A/B Coverage Tests to be satisfied (after giving effect to the payment of all amounts previously paid on such Payment Date pursuant to this Section 11.1(a) (i);

(10) to the payment of the Class C Interest Distribution Amount, plus, any Class C Defaulted Interest Amount;

(11) to the payment of the Class C Capitalized Interest (if any);

(12) to the payment of the Class D Interest Distribution Amount, plus, any Class D Defaulted Interest Amount;

(13) to the payment of the Class D Capitalized Interest (if any);

(14) to the payment of the Class E Interest Distribution Amount, plus, any Class E Defaulted Interest Amount;

(15) to the payment of the Class E Capitalized Interest (if any);

(16) as long as any of the Class C Notes, the Class D Notes or the Class E Notes are Outstanding, to the payment of the following amounts:

(a) in the event that the Class C Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class C Notes, to the payment in full of principal of first, the Class A-1 Notes, second, the Class A-2 Notes, third, the Class B Notes and fourth, the Class C Notes;

(b) in the event that the Class D Notes become due and payable (x) as a result of an acceleration following an Event of

-200-

Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class D Notes, to the payment in full of principal of first, the Class A-1 Notes, second, the Class A-2 Notes, third, the Class B Notes, fourth, the Class C Notes and fifth, the Class D Notes;

(c) in the event that the Class E Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class E Notes, to the payment in full of principal of first, the Class A-1 Notes, second, the Class A-2 Notes, third, the Class B Notes, fourth, the Class C Notes, fifth, the Class D Notes and sixth, the Class E Notes; or

(d) in the event of a Mandatory Redemption of the Class C Notes, the Class D Notes and the Class E Notes, first, to the payment of principal of the Class A-1 Notes, second, to

the payment of principal of the Class A-2 Notes, third, to the payment of principal of the Class B Notes, fourth, to the payment of principal of the Class C Notes, fifth, to the payment of principal of the Class D Notes and sixth, to the payment of principal of the Class E Notes, to the extent necessary to cause each of the Class C/D/E Coverage Tests to be satisfied (after giving effect to the payment of all amounts previously paid on such Payment Date pursuant to this Section 11.1(a)(i));

(17) to the payment of the Class F Interest Distribution Amount, plus, any Class F Defaulted Interest Amount;

(18) to the payment of the Class F Capitalized Interest (if any);

(19) to the payment of the Class G Interest Distribution Amount, plus, any Class G Defaulted Interest Amount;

(20) to the payment of the Class G Capitalized Interest (if any);

(21) to the payment of the Class H Interest Distribution Amount, plus, any Class H Defaulted Interest Amount;

(22) to the payment of the Class H Capitalized Interest (if any);

(23) as long as any of the Class F Notes, Class G Notes or Class H Notes are Outstanding, to the payment of the following amounts:

(a) in the event that the Class F Notes become due and payable (x) as a result of an acceleration following an Event of

-201-

Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class F Notes, to the payment in full of principal of first, the Class A-1 Notes, second, the Class A-2 Notes, third, the Class B Notes, fourth, the Class C Notes, fifth, the Class D Notes, sixth, the Class E Notes and seventh, the Class F Notes;

(b) in the event that the Class G Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class G Notes, to the payment in full of principal of first, the Class A-1 Notes, second, the Class A-2 Notes, third, the Class B Notes, fourth, the Class C Notes, fifth, the Class D Notes, sixth, the Class E Notes, seventh, the Class F Notes and eighth, the Class G Notes;

(c) in the event that the Class H Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class H Notes, to the payment in full of principal of first, the Class A-1 Notes, second, the Class A-2 Notes, third, the Class B Notes, fourth, the Class C Notes, fifth, the Class D Notes,

sixth, the Class E Notes, seventh, the Class F Notes, eighth, the Class G Notes and ninth, the Class H Notes; or

(d) in the event of a Mandatory Redemption of the Class F Notes, the Class G Notes and the Class H Notes, first, to the payment of principal of the Class A-1 Notes, second, to the payment of principal of the Class A-2 Notes, third, to the payment of principal of the Class B Notes, fourth, to the payment of principal of the Class C Notes, fifth, to the payment of principal of the Class D Notes, sixth, to the payment of principal of the Class E Notes, seventh, to the payment of principal of the Class F Notes, eighth, to the payment of principal of the Class G Notes and ninth, to the payment of principal of the Class H Notes, to the extent necessary to cause the Class F/G/H Coverage Tests to be satisfied (after giving effect to the payment of all amounts previously paid on such Payment Date pursuant to this Section 11.1(a)(i));

(24) on the first Payment Date following the occurrence of a Rating Confirmation Failure, to the extent that application of any unused proceeds remaining on deposit on the Unused Proceeds Account is insufficient to cause the ratings assigned to each Class of Notes to be reinstated or any affected Class to be paid in full, to the payment of principal of each Class of Notes, (i) first, to the

-202-

Class A-1 Notes, (ii) second, to the Class A-2 Notes, (iii) third, to the Class B Notes, (iv) fourth, to the Class C Notes, (v) fifth, to the Class D Notes, (vi) sixth, to the Class E Notes, (vii) seventh, to the Class F Notes, (viii) eighth, to the Class G Notes and (ix) ninth, to the Class H Notes, in each case until the ratings assigned on the Closing Date to each Class of Notes have been reinstated or such Class has been paid in full;

(25) during the Reinvestment Period, to the pro rata payment of principal of the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes, in an amount not to exceed the amount set forth in Schedule R;

(26) to the payment of any Company Administrative Expenses not paid pursuant to subclause (3) above in the order specified therein;

(27) to the payment of the Subordinate Collateral Management Fee and any accrued and unpaid Subordinate Collateral Management Fee;

(28) pro rata on the basis of amounts payable under each Hedge Agreement (if any), to the payment of (i) any amounts (including, without limitation, any Hedge Payment Amounts) (including any interest accrued thereon), if any, payable by the Issuer to the Hedge Counterparty under the related Hedge Agreement following an Event of Default or Termination Event (other than Illegality or Tax Event) (each as defined in the related Hedge Agreement) with respect to which the Hedge Counterparty is the Defaulting Party or the sole Affected Party (as defined in the related Hedge Agreement) and (ii) any costs attributable to entering into an additional or replacement Hedge Agreement in accordance with Section 16.1(g) to the extent such amounts are payable but exceed the balance on deposit in the related Hedge Termination Account; and

(29) any remaining Interest Proceeds to the Preferred Shares Paying Agent for deposit into the Preferred Shares Distribution Account for distribution to the Holders of the Preferred Shares in accordance with the provisions of the Preferred Shares Paying Agency Agreement.

(ii) Principal Proceeds. On each Payment Date or Redemption Date, Principal Proceeds with respect to the related Due Period shall be distributed in the following order of priority:

(1) to the payment of the amounts referred to in subclauses (1) through (8) of Section 11.1(a)(i) in the same order of priority specified therein, but only to the extent not paid in full thereunder;

(2) to the extent that the amounts paid pursuant to subclause (9) of Section 11.1(a)(i) hereof are insufficient to pay such amounts in full thereunder and any Class A Notes or Class B Notes are Outstanding, to the payment of the following amounts:

-203-

(a) in the event that the Class A-1 Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon the Stated Maturity of the Class A Notes, to the payment in full of principal of the Class A-1 Notes;

(b) in the event that the Class A-2 Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean up Call or a Tax Redemption or (z) upon Stated Maturity of the Class A-2 Notes, to the payment in full of principal of, first, the Class A-1 Notes and second, the Class A-2 Notes;

(c) in the event that the Class B Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean up Call or a Tax Redemption or (z) upon Stated Maturity of the Class B Notes, to the payment in full of principal of, first, the Class A-1 Notes, second, the Class A-2 Notes and third, the Class B Notes; or

(d) in the event of a Mandatory Redemption of the Class A Notes and the Class B Notes, first, to the payment of principal of the Class A-1 Notes, second, to the payment of principal of the Class A-2 Notes and third, to the payment of principal of the Class B Notes, to the extent necessary to cause each of the Class A/B Coverage Tests to be satisfied (after giving effect to the payment of all amounts previously paid on such Payment Date pursuant to Section 11.1(a)(i) and this Section 11.1(a)(ii));

(3) (a) if the Class A Notes and the Class B Notes are no longer Outstanding, to the payment of first, the amounts referred to in subclause (10) of Section 11.1(a)(i) and second, the amounts referred to in subclause (11) of Section 11.1(a)(i), but only to the extent not paid in full thereunder;

(b) if the Class A Notes, the Class B Notes and the Class C Notes are no longer Outstanding, to the payment of first, the amounts referred to in subclause (12) of Section 11.1(a)(i) and second, the amounts referred to in subclause (13) of Section 11.1(a)(i) but only to the extent not paid in full thereunder;

(c) if the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes are no longer Outstanding, to the payment of first, the amounts referred to in subclause (14) of

-204-

Section 11.1(a)(i) and second, the amounts referred to in subclause (15) of Section 11.1(a)(i) but only to the extent not paid in full thereunder;

(4) to the extent that the amounts paid pursuant to subclause (16) of Section 11.1(a)(i) above are insufficient to pay such amounts in full thereunder and any Class C Notes, Class D Notes or Class E Notes are Outstanding, to the payment of the following amounts:

(a) in the event that the Class C Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class C Notes, to the payment in full of principal of first, the Class A-1 Notes, second, the Class A-2 Notes, third, the Class B Notes and fourth, the Class C Notes;

(b) in the event that the Class D Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean up Call or a Tax Redemption or (z) upon Stated Maturity of the Class D Notes, to the payment in full of principal of first, the Class A-1 Notes, second, the Class A-2 Notes, third, the Class B Notes, fourth, the Class C Notes and fifth, the Class D Notes;

(c) in the event that the Class E Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption or (z) upon Stated Maturity of the Class E Notes, to the payment in full of principal of first, the Class A-1 Notes, second, the Class A-2 Notes, third, the Class B Notes, fourth, the Class C Notes, fifth, the Class D Notes and sixth, the Class E Notes; or

(d) in the event of a Mandatory Redemption of the Class C Notes, the Class D Notes and the Class E Notes, first, to the payment of principal of the Class A-1 Notes, second, to the payment of principal of the Class A-2 Notes, third, to the payment of principal of the Class B Notes, fourth, to the payment of principal of the Class C Notes, fifth, to the payment of principal of the Class D Notes and sixth, to the payment of principal of the Class E Notes, to the extent necessary to cause the Class C/D/E Coverage Tests to be satisfied (after giving effect to the payment of all amounts previously paid on such Payment Date pursuant to Section 11.1(a)(i) and this Section 11.1(a)(ii));

(5) (a) if the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes are no longer Outstanding, to the payment of first, the amounts referred to in subclause (17) of Section 11.1(a)(i) and second, the amounts referred to in subclause (18) of Section 11.1(a)(i), but only to the extent not paid in full thereunder;

(b) if the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes and the Class F Notes are no longer Outstanding, to the payment of first, the amounts referred to in subclause (19) of Section 11.1(a)(i) and second, the amounts referred to in subclause (20) of Section 11.1(a)(i) but only to the extent not paid in full thereunder;

(c) if the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes are no longer Outstanding, to the payment of first, the amounts referred to in subclause (21) of Section 11.1(a)(i) and second, the amounts referred to in subclause (22) of Section 11.1(a)(i), but only to the extent not paid in full thereunder;

(6) to the extent that the amounts paid pursuant to subclause (23) of Section 11.1(a)(i) are insufficient to pay such amounts in full thereunder and any Class F Notes, Class G Notes or Class H Notes are Outstanding, to the payment of the following amounts:

(a) in the event that the Class F Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean up Call or a Tax Redemption or (z) upon Stated Maturity of the Class F Notes, to the payment in full of principal of first, the Class A-1 Notes, second, the Class A-2 Notes, third, the Class B Notes, fourth, the Class C Notes, fifth, the Class D Notes, sixth, the Class E Notes and seventh, the Class F Notes;

(b) in the event that the Class G Notes become due and payable (x) as a result of an acceleration following an Event of Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean up Call or a Tax Redemption or (z) upon Stated Maturity of the Class G Notes, to the payment in full of principal of first, the Class A-1 Notes, second, the Class A-2 Notes, third, the Class B Notes, fourth, the Class C Notes, fifth, the Class D Notes, sixth, the Class E Notes, seventh, the Class F Notes and eighth, the Class G Notes;

(c) in the event that the Class H Notes become due and payable (x) as a result of an acceleration following an Event of

Default, (y) pursuant to an Auction Call Redemption, an Optional Redemption, a Clean up Call or a Tax Redemption or (z) upon Stated Maturity of the Class H Notes, to the

payment in full of principal of first, the Class A-1 Notes, second, the Class A-2 Notes, third, the Class B Notes, fourth, the Class C Notes, fifth, the Class D Notes, sixth, the Class E Notes, seventh, the Class F Notes, eighth, the Class G Notes and ninth, the Class H Notes; or

(d) in the event of a Mandatory Redemption of the Class F Notes, the Class G Notes and the Class H Notes, first, to the payment of principal of the Class A-1 Notes, second, to the payment of principal of the Class A-2 Notes, third, to the payment of principal of the Class B Notes, fourth, to the payment of principal of the Class C Notes, fifth, to the payment of principal of the Class D Notes, sixth, to the payment of principal of the Class E Notes, seventh, to the payment of principal of the Class F Notes, eighth, to the payment of principal of the Class G Notes and ninth, to the payment of principal of the Class H Notes, to the extent necessary to cause the Class F/G/H Coverage Tests to be satisfied (after giving effect to the payment of all amounts previously paid on such Payment Date pursuant to Section 11.1(a)(i) and Section 11.1(a)(ii));

(7) to the extent that the amounts paid pursuant to subclause (24) of Section 11.1(a)(i) above are insufficient to pay such amounts in full thereunder and any Notes are Outstanding, on the first Payment Date following the occurrence of a Rating Confirmation Failure, to the payment of principal of each Class of Notes, (i) first, to the Class A Notes, (ii) second, to the Class A-2 Notes, (iii) third, to the Class B Notes, (iv) fourth, to the Class C Notes, (v) fifth, to the Class D Notes, (vi) sixth, to the Class E Notes, (vii) seventh, to the Class F Notes, (viii) eighth, to the Class G Notes, and (ix) ninth, to the Class H Notes, in each case until the ratings assigned on the Closing Date to each Class of Notes have been reinstated or such Class has been paid in full;

(8) prior to the last day of the Reinvestment Period, to the investment in Eligible Investments and reinvestment in Substitute Collateral Debt Securities subject to the Reinvestment Criteria or, if determined by the Collateral Manager, to pay any Special Amortization Amount, to amortize the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes as follows: (x) if each of the S&P Special Amortization Pro Rata Condition and the Moody's Special Amortization Pro Rata Condition is satisfied with respect to such Payment Date, on a pro rata basis (based on the Aggregate Outstanding Amount of each Class) among all Classes of Notes, or (y) if either the S&P Special Amortization Pro Rata Condition or the Moody's Special Amortization Pro Rata Condition is not satisfied with respect to such Payment Date, sequentially among all Classes of Notes; provided, however, that amounts

-207-

representing recoveries in respect of Defaulted Securities will be distributed sequentially in any event;

(9) after the Reinvestment Period (x) on each Payment Date that is not also a Redemption Date or the Stated Maturity of the Notes and (y) in the absence of an acceleration following an Event of Default, to the payment of principal of (i) first, the Class A-1 Notes, until the Class A-1 Notes have been paid in full, (ii) second, the Class A-2 Notes, until the Class A-2 Notes have been paid in full, (iii) third, the Class B Notes, until the

Class B Notes have been paid in full, (iv) fourth, the Class C Notes, until the Class C Notes have been paid in full, (v) fifth, the Class D Notes, until the Class D Notes have been paid in full, (vi) sixth, the Class E Notes, until the Class E Notes have been paid in full, (vii) seventh, the Class F Notes, until the Class F Notes have been paid in full, (viii) eighth, the Class G Notes, until the Class G Notes have been paid in full, and (ix) ninth, the Class H Notes, until the Class H Notes have been paid in full;

(10) to the payment of amounts referred to in subclause (26) of Section 11.1(a)(i) above to the extent not paid thereunder;

(11) to the payment of amounts referred to in subclause (27) of Section 11.1(a)(i) above to the extent not paid thereunder;

(12) to the payment of amounts referred to in subclause (28) of Section 11.1(a)(i) above to the extent not paid thereunder;
and

(13) any remaining Principal Proceeds to the Preferred Shares Paying Agent for deposit into the Preferred Shares Distribution Account for distribution to the Holders of the Preferred Shares in accordance with the provisions of the Preferred Shares Paying Agency Agreement.

(b) On or before the Business Day prior to each Payment Date, the Issuer shall, pursuant to Section 10.2(e), remit or cause to be remitted to the Trustee for deposit in the Payment Account an amount of Cash sufficient to pay the amounts described in Section 11.1(a) required to be paid on such Payment Date.

(c) If on any Payment Date the amount available in the Payment Account from amounts received in the related Due Period is insufficient to make the full amount of the disbursements required by the statements furnished by the Trustee pursuant to Section 10.10(e) hereof, the Trustee shall make the disbursements called for in the order and according to the priority set forth under Section 11.1(a) above, subject to Section 13.1 hereof, to the extent funds are available therefor.

(d) Except as otherwise expressly provided in this Section 11.1, if on any Payment Date the amount available in the Payment Account from amounts received in the related Due Period are insufficient to make the full amount of the disbursements required by any lettered subclause of Section 11.1(a)(i) or Section 11.1(a)(ii), the Trustee shall make the disbursements called for by such subclause ratably in accordance with the respective amounts

-208-

of such disbursements then due and payable to the extent funds are available therefor, unless such subclause provides otherwise.

(e) On or before the Business Day preceding each Payment Date, the Issuer shall, pursuant to Section 10.2(e), remit or cause to be remitted to the Trustee for deposit in the Payment Account an amount of Cash sufficient to pay the amounts described in Section 11.1(a) required to be paid on such Payment Date.

(f) In connection with the payment to each Hedge Counterparty pursuant to each Hedge Agreement of any amount scheduled to be paid from time to time between Payment Dates from amounts received with respect to the Collateral Debt Securities or otherwise as required pursuant to the terms of the related Hedge Agreement, such amounts shall be distributed to each Hedge Counterparty pursuant to the related Hedge Agreement.

(g) In connection with any required payment by the Issuer to the Servicer pursuant to the Servicing Agreement of any amount scheduled to be paid from time to time between Payment Dates from amounts received with respect to the Collateral Debt Securities, such amounts shall be distributed to the Servicer pursuant to the terms of the Servicing Agreement.

Section 11.2 Trust Accounts.

All Monies held by, or deposited with the Trustee in the Collection Accounts, the Defeased Collateral Accounts, the Payment Account, the Expense Account, the Unused Proceeds Account or the Delayed Funding Obligations Account pursuant to the provisions of this Indenture, and not invested in Eligible Investments as herein provided, shall be deposited in one or more trust accounts, maintained at the Corporate Trust Office or at a financial institution whose long-term rating is at least equal to, "A2" by Moody's and "A-" by S&P and Fitch to be held in trust for the benefit of the Noteholders. To the extent Monies deposited in such trust account exceed amounts insured by the Bank Insurance Fund or Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation, or any agencies succeeding to the insurance functions thereof, and are not fully collateralized by direct obligations of the United States of America, such excess shall be invested in Eligible Investments as directed by Issuer Order.

ARTICLE 12

SALE OF COLLATERAL DEBT SECURITIES

Section 12.1 Sales of Collateral Debt Securities.

(a) Except as otherwise expressly permitted or required by this Indenture, the Issuer shall not sell or otherwise dispose of any Collateral Debt Security, provided that, subject to satisfaction of any applicable conditions in Section 10.11, so long as (A) no Event of Default has occurred and is continuing and (B) on or prior to the trade date for such sale the Collateral Manager has certified to the Trustee that each of the conditions applicable to such sale set forth below has been satisfied, the Collateral Manager, on behalf of the Issuer, acting

-209-

pursuant to the Collateral Management Agreement may direct the Trustee in writing to sell, and the Trustee shall sell in the manner directed by the Collateral Manager in writing (which writing shall specify whether such security is a Defaulted Security or Credit Risk Security, if applicable, or whether such security is otherwise permitted to be sold pursuant to this Section 12.1(a)):

(i) any Defaulted Security at any time;

(ii) a Credit Risk Security, (a) during the Reinvestment Period, if the Collateral Manager has certified to the Trustee that it shall use commercially reasonable efforts to purchase one or more Substitute Collateral Debt Securities having an Aggregate Principal Balance no less than the Sale Proceeds (excluding accrued interest) from such sale, and after giving effect to such sale and to the purchase of Substitute Collateral Debt Securities with the Sale Proceeds thereof, in the judgment of the Collateral Manager (which shall not be called into question solely as a result of subsequent events), the Reinvestment Criteria shall be satisfied and (b) after the Reinvestment Period, at any time;

(iii) if a Collateral Debt Security that is a Defaulted Security is not sold by the Issuer (at the direction of the Collateral Manager) within three (3) years of such Collateral Debt Security becoming a Defaulted Security, the Collateral Manager, on behalf of the Issuer,

shall use its commercially reasonable efforts to sell such Collateral Debt Security as soon as commercially practicable thereafter; and

(iv) without limiting the foregoing, any Collateral Debt Security that is a CMBS Security, a CRE CDO Security or a REIT Debt Security and, in each case, is not a Defaulted Security or a Credit Risk Security may be sold during the Reinvestment Period, if (a) the Aggregate Principal Balance of Collateral Debt Securities sold pursuant to this paragraph for a given calendar year does not exceed 15% of the Aggregate Collateral Balance at the beginning of that year, (b) the Collateral Manager believes in good faith that proceeds from the sale of such Collateral Debt Security can be reinvested, within five Business Days after the trade date on which such Collateral Debt Security is sold in one or more Substitute Collateral Debt Securities having an Aggregate Principal Balance of not less than 100% of the Principal Balance of the Collateral Debt Security being sold and (c) after giving effect to such sale and to the purchase of Substitute Collateral Debt Securities with the Sale Proceeds thereof, the Reinvestment Criteria will be satisfied.

(b) Notwithstanding the foregoing, the Collateral Manager (at its option and at any time) shall be permitted to effect a sale of a Credit Risk Security or a Defaulted Security hereunder by purchasing (or causing its Affiliate to purchase) such Defaulted Security or Credit Risk Security from the Issuer for a Cash purchase price that shall be equal to the sum of (i) the Aggregate Principal Balance thereof plus (ii) all accrued and unpaid interest (or, in the case of a Preferred Equity Security, all accrued and unpaid dividends or other distributions not attributable to the return of capital by the related Underlying Instruments) thereon. Notwithstanding anything to the contrary set forth herein, no Advisory Committee consent shall be required in connection with such Cash purchase (the "Credit Risk/Defaulted Security Cash Purchase").

-210-

In addition and notwithstanding anything to the contrary set forth herein (and provided that no Event of Default has occurred and is continuing), the Collateral Manager (at its option but only upon disclosure to, and with the prior consent of, the Advisory Committee) shall be permitted to effect a sale of a Defaulted Security or a Credit Risk Security hereunder by directing the Issuer to exchange such Defaulted Security or Credit Risk Security for (i) a Substitute Collateral Debt Security (that is not a Defaulted Security or a Credit Risk Security) owned by an Affiliate of the Collateral Manager (such Substitute Collateral Debt Security, the "Exchange Security") or (ii) a combination of an Exchange Security and Cash, provided that:

(i) (A) the sum of (1) the Principal Balance of such Exchange Security plus (2) all accrued and unpaid interest (or, in the case of a Preferred Equity Security, all accrued and unpaid dividends or other distributions not attributable to the return of capital by its governing documents) thereon plus (3) the Cash amount (if any) to be paid to the Issuer in respect of such exchange by such Affiliate of the Collateral Manager, shall be equal to or greater than (B) the sum of (1) the Principal Balance of such Defaulted Security or Credit Risk Security sought to be substituted plus (2) all accrued and unpaid interest (or, in the case of a Preferred Equity Security, all accrued and unpaid dividends or other distributions not attributable to the return of capital by its governing documents) thereon;

(ii) the Eligibility Criteria and the Reinvestment Criteria shall be satisfied immediately after such exchange; and

(iii) the Aggregate Principal Balance of all such Defaulted Securities and Credit Risk Securities so exchanged shall not exceed 10% of the Aggregate Collateral Balance as of the Closing Date (such

limitation, the "10% Limit").

(c) After the Issuer has notified the Trustee of an Optional Redemption, a Clean-Up Call or a Tax Redemption in accordance with Section 9.1 or an Auction Call Redemption in accordance with Section 9.2, the Collateral Manager, on behalf of the Issuer, and acting pursuant to the Collateral Management Agreement, may at any time direct the Trustee in writing to sell, and the Trustee shall sell in the manner directed by the Collateral Manager in writing, any Collateral Debt Security without regard to the foregoing limitations in Section 12.1(a); provided that:

(i) the Sale Proceeds therefrom must be used to pay certain expenses and redeem all of the Notes in whole but not in part pursuant to Section 9.1 and Section 9.2, and upon any such sale the Trustee shall release such Collateral Debt Security pursuant to Section 10.11;

(ii) the Issuer may not direct the Trustee to sell (and the Trustee shall not be required to release) a Collateral Debt Security pursuant to this Section 12.1(c) unless:

(1) the Collateral Manager certifies to the Trustee that (x) in the Collateral Manager's reasonable business judgment based on calculations included in the certification (which shall include the sales prices of the Collateral Debt Securities), the Sale Proceeds from the sale of one or more of the Collateral

-211-

Debt Securities and all Cash and proceeds from Eligible Investments will be at least equal to the Total Redemption Price, and (y) an Independent bond pricing service (which shall be one or more broker-dealers selected by the Collateral Manager which are rated at least "P-1" by Moody's and at least "A-1+" by Standard & Poor's and which make a market in the applicable Collateral Debt Securities) has confirmed (which confirmation may be in the form of a firm bid) the sales prices contained in the certification in clause (x) above (and attaching a copy of such confirmation); and

(2) the Independent accountants appointed by the Issuer pursuant to Section 10.12 shall confirm in writing the calculations made in clause (1)(x) above.

(iii) in connection with an Optional Redemption, an Auction Call Redemption, a Clean-up Call or a Tax Redemption, all the Collateral Debt Securities to be sold pursuant to this Section 12.1(c) must be sold in accordance with the requirements set forth in Section 9.1(e) and Section 9.2, as applicable.

(d) In the event that any Collateral Debt Security becomes the subject of a conversion, exchange, redemption or offer, whether voluntary or involuntary, the Issuer (or the Collateral Manager on behalf of the Issuer) shall take no action to acquire the asset or instrument into which such Collateral Debt Security is convertible or exchangeable unless such asset or instrument would qualify as a Substitute Collateral Debt Security. In the event of an involuntary exchange or conversion of a Collateral Debt Security, if the resulting asset or instrument would not qualify as a Substitute Collateral Debt Security, the Issuer (or the Collateral Manager on behalf of the Issuer) shall use its best efforts to sell such Collateral Debt Security prior to conversion or exchange and, in any event, shall refuse to accept, and shall not acquire or hold, the asset or instrument offered in exchange.

(e) In the event that any Notes remain Outstanding as of the Payment Date occurring six months prior to the Stated Maturity of the Notes, the Collateral Manager will be required to determine whether the proceeds expected

to be received on the Assets prior to the Stated Maturity of the Notes will be sufficient to pay in full the principal amount of (and accrued interest on) the Notes on the Stated Maturity. If the Collateral Manager determines, in its sole discretion, that such proceeds will not be sufficient to pay the outstanding principal amount of and accrued interest on the Notes (a "Note Liquidation Event") on the Stated Maturity of the Notes, the Issuer will, at the direction of the Collateral Manager, be obligated to liquidate the portion of Collateral Debt Securities sufficient to pay the remaining principal amount of and interest on the Notes on or before the Stated Maturity. The Collateral Debt Securities to be liquidated by the Issuer will be selected by the Collateral Manager.

(f) Notwithstanding anything herein to the contrary, in the event that a "buy/sell" arrangement has been initiated with respect to a Collateral Debt Security as a dispute resolution mechanism and the Collateral Manager determines in accordance with the Collateral Manager Servicing Standard that the sale of such Collateral Debt Security is in the best interest of the Noteholders, the Collateral Manager may, on behalf of the Issuer, direct the Trustee to sell such Collateral Debt Security in accordance with the related Underlying

-212-

Instruments; provided that, in the event any such sale is to be made to an Affiliate of the Issuer or the Collateral Manager, such sale may be made only upon disclosure to, and with the prior consent of, the Advisory Committee.

Section 12.2 Reinvestment Criteria and Trading Restrictions.

(a) Except as provided in Section 12.3(c), during the Reinvestment Period, Unscheduled Principal Payments, Sale Proceeds and other Principal Proceeds (including any ARMS Equity Cash Contributions and ARMS Equity EI Contributions) will be reinvested in Substitute Collateral Debt Securities (which shall be, and hereby are, Granted to the Trustee pursuant to the Granting Clause of this Agreement) only if after giving effect to such reinvestment, the following criteria (which criteria shall also apply with respect to investments in Collateral Debt Securities during the Ramp-Up Period) (the "Reinvestment Criteria") are satisfied, as evidenced by an Officer's Certificate of the Issuer or the Collateral Manager delivered to the Trustee, as of the date of the commitment to purchase such Substitute Collateral Debt Securities:

(i) such security satisfies the Eligibility Criteria;

(ii) the Collateral Quality Tests are satisfied, or, if any Collateral Quality Test was not satisfied immediately prior to such reinvestment, the extent of compliance with such Collateral Quality Test will be maintained or improved following such reinvestment, except as otherwise specified in the Reinvestment Criteria below;

(iii) the Coverage Tests are satisfied (or, if not satisfied, are maintained or improved);

(iv) if immediately prior to such investment the S&P CDO Monitor Test or the S&P Recovery Test was not satisfied, such test result is maintained or improved after giving effect to such reinvestment; provided, however, that notwithstanding the foregoing, Sale Proceeds of Collateral Debt Securities may be reinvested as long as the Collateral Manager provides written notice of each such sale and reinvestment to S&P within three Business Days after such reinvestment; and

(v) no Event of Default has occurred and is continuing.

(b) Notwithstanding the foregoing provisions, (i) Cash on deposit in the Collection Accounts may be invested in Eligible Investments, pending investment in Substitute Collateral Debt Securities and (ii) if an Event of Default shall have occurred and be continuing, no Substitute Collateral Debt

Security may be acquired unless it was the subject of a commitment entered into by the Issuer prior to the occurrence of such Event of Default.

Section 12.3 Conditions Applicable to all Transactions Involving Sale or Grant.

(a) Any transaction effected after the Closing Date under this Article 12 or Section 10.11 shall be conducted in accordance with the requirements of the Collateral Management Agreement; provided that (1) the Collateral Manager shall not direct the Trustee to acquire any Substitute Collateral Debt Security for inclusion in the Assets from the

-213-

Collateral Manager or any of its Affiliates as principal or to sell any Collateral Debt Security from the Assets to the Collateral Manager or any of its Affiliates as principal unless the transaction is effected in accordance with the Collateral Management Agreement and (2) the Collateral Manager shall not direct the Trustee to acquire any Substitute Collateral Debt Security for inclusion in the Assets from any account or portfolio for which the Collateral Manager serves as investment adviser or direct the Trustee to sell any Collateral Debt Security to any account or portfolio for which the Collateral Manager serves as investment adviser unless such transactions comply with the requirements of any applicable laws. The Trustee shall have no responsibility to oversee compliance with this clause by the other parties.

(b) Upon any Grant pursuant to this Article 12, all of the Issuer's right, title and interest to the Pledged Obligation or Securities shall be Granted to the Trustee pursuant to this Indenture, such Pledged Obligation or Securities shall be registered in the name of the Trustee, and, if applicable, the Trustee shall receive such Pledged Collateral Debt Security or Securities. The Trustee shall also receive, not later than the date of delivery of any Collateral Debt Security delivered after the Closing Date, an Officer's Certificate of the Collateral Manager certifying that, as of the date of such Grant, such Grant complies with the applicable conditions of and is permitted by this Article 12 (and setting forth, to the extent appropriate, calculations in reasonable detail necessary to determine such compliance).

(c) Notwithstanding anything contained in this Article 12 to the contrary, the Issuer shall, subject to this Section 12.3(c), have the right to effect any transaction which has been consented to (i) by the Holders of Notes evidencing 100% of the Aggregate Outstanding Amount of each and every Class of Notes (or if there are no Notes Outstanding, 100% of the Preferred Shares) and (ii) each Hedge Counterparty, and of which each Rating Agency has been notified.

Section 12.4 Sale of Collateral Debt Securities with respect to an Auction Call Redemption.

(a) Pre-Auction Process.

(i) Each Auction will occur on the Business Day that is at least 13 Business Days prior to the proposed Auction Call Redemption Date (such date, the "Auction Date").

(ii) The Collateral Manager will initiate the Auction Procedures at least 24 Business Days before the proposed Auction Call Redemption Date by: (a) preparing a list of Collateral Debt Securities (including CUSIP Number, if any, par amount and issuer name for each Collateral Debt Security); (b) deriving a list of not less than three qualified bidders (the "Listed Bidders") and requesting from each Listed Bidder bids by the applicable Auction Date; and (c) notifying the Trustee of the list of Listed Bidders (the "List").

(iii) The Collateral Manager will deliver a general solicitation package to the Listed Bidders consisting of: (a) a form of a purchase

agreement ("Auction Purchase Agreement") provided to the Trustee by the Collateral Manager (which shall provide that

-214-

(I) upon satisfaction of all conditions precedent therein, the purchaser is irrevocably obligated to purchase, and the Issuer is irrevocably obligated to sell, the Collateral Debt Securities on the date and on the terms stated therein, (II) each bidder may tender a separate bid for one or more Collateral Debt Securities in an Auction, (III) if the Collateral Debt Securities are to be sold to different bidders, that the consummation of the purchase of all Collateral Debt Securities must occur simultaneously and that the closing of each purchase is conditional on the closing of the other purchases, (IV) if for any reason whatsoever the Trustee has not received, by a specified Business Day (which shall be more than 10 Business Days before the proposed Auction Call Redemption Date), payment in full in immediately available funds of the purchase price for all Collateral Debt Securities, the obligations of the parties shall terminate and the Issuer shall have no obligation or liability whatsoever and (V) any prospective purchasers will be subject to the "limited recourse" and "non-petition" provisions set forth in this Indenture), (b) the minimum aggregate Cash purchase price (which shall be determined by the Collateral Manager as the Total Redemption Price less the balance of all Eligible Investments and Cash in the Collection Accounts, the Payment Account, the Delayed Funding Obligations Account, each Hedge Termination Account and the Expense Account); (c) the list of Collateral Debt Securities; (d) a formal bid sheet (which will permit a bidder to bid for all of the Collateral Debt Securities or separately for any one or more (but not all) Collateral Debt Securities and will include a representation from the bidder that it is eligible to purchase all of the Collateral Debt Securities or any one or more (but not all) Collateral Debt Securities) to be provided to the Trustee by the Collateral Manager; (e) a detailed timetable; and (f) copies of all transfer documents provided to the Trustee by the Collateral Manager (including transfer certificates and subscription agreements which a bidder must execute pursuant to the underlying instruments and a list of the requirements which the bidder must satisfy under the underlying instruments (i.e., QIB status, Qualified Purchaser status, etc.)).

(iv) The Collateral Manager will send solicitation packages to all Listed Bidders on the List at least 20 Business Days before the proposed Auction Call Redemption Date. The Listed Bidders will be required to submit any due diligence questions (or comments on the draft purchase agreement) in writing to the Collateral Manager by a date specified in the solicitation package. The Collateral Manager will be required to answer all reasonable and relevant questions by the date specified in the solicitation package and the Collateral Manager will distribute the questions and answers and the revised final Auction Purchase Agreement to all Listed Bidders (with a copy to the Issuer and the Trustee).

(b) Auction Process.

(i) LaSalle Bank National Association or its Affiliates may, but shall not be required to, bid at the Auction. The Collateral Manager and its Affiliates may bid in the Auction if the Collateral Manager deems such bidding to be appropriate but is not required to do so.

(ii) On the Second Business Day prior to the Auction Date (the "Auction Bid Date"), all bids will be due by facsimile at the offices of the Trustee by 11:00 a.m. New

York City time, with the winning bidder or bidders to be notified by 2:00 p.m. New York City time. All bids from Listed Bidders on the List will be due on the bid sheet contained in the solicitation package. Each bid shall be for the purchase and delivery to one purchaser (A) of all (but not less than all) of the Collateral Debt Securities or (B) of one or more (but not all) of the Collateral Debt Securities.

(iii) Unless the Trustee receives (A) at least one bid from a Listed Bidder to purchase all of the Collateral Debt Securities or (B) receives bids from one or more Listed Bidders (to purchase one or more (but not all) Collateral Debt Securities) for all Collateral Debt Securities in the aggregate, the Trustee will decline to consummate the sale.

(iv) Subject to clause (iii) above, with the advice of the Collateral Manager, the Trustee shall select the bid or bids which result in the Highest Auction Price from one or more Listed Bidders (in excess of the specified minimum purchase price). "Highest Auction Price" means the higher of (A) the highest price bid by any Listed Bidder for all of the Collateral Debt Securities or (B) the sum of the highest prices bid by one or more Listed Bidders (for one or more (but not all) Collateral Debt Securities) for all Collateral Debt Securities in the aggregate. In each case, the price bid by a Listed Bidder will be the dollar amount which the Collateral Manager certifies to the Trustee based on the Collateral Manager's review of the bids, which certification shall be binding and conclusive.

(v) Upon notification to the winning bidder or bidders, the winning bidder (or, if the Highest Auction Price requires the sale of the Collateral Debt Securities to more than one bidder, each winning bidder) will be required to deliver to the Trustee a signed counterpart of the Auction Purchase Agreement no later than 4:00 p.m. New York City time on the Auction Date. The winning bidder (or, if the Highest Auction Price requires the sale of the Collateral Debt Securities to more than one bidder, each winning bidder) will make payment in full of the purchase price on the Business Day (the "Auction Purchase Closing Date") specified in the general solicitation package (which will be no later than 10 Business Days prior to the proposed Auction Call Redemption Date). If a winning bidder so requests, the Trustee and the Issuer will enter into a bailee letter in the form agreed upon by the Trustee and the Collateral Manager to this Indenture (a "Bailee Letter") with each winning bidder and its designated bank (which bank will be subject to approval by the Issuer (or the Collateral Manager on behalf of the Issuer)); provided that such bank enters into an account control agreement with the Trustee and the Issuer and has a long term debt rating of at least "BBB+" by Standard & Poor's and (if rated by Fitch) at least "BBB+" by Fitch and (if rated by Moody's) at least "A2" by Moody's. If the above requirements are satisfied, the Trustee will deliver the Collateral Debt Securities (to be sold to such bidder) pursuant thereto to the bailee bank at least one Business Day prior to the closing on the sale of the Collateral Debt Securities and accept payment of the purchase price pursuant thereto. If payment in full of the purchase price is not made by the Auction Purchase Closing Date for any reason whatsoever (or, if the Collateral Debt Securities are to be sold to more than one bidder, if any bidder fails to make payment in full of the purchase price by the Auction Purchase Closing Date for any reason whatsoever), the Issuer will decline to consummate the sale of all Collateral Debt

Securities, the Trustee and the Issuer will direct the bailee bank to return the Collateral Debt Securities to the Trustee, and (if notice of redemption has been given by the Trustee) the Trustee will give notice (in accordance with the terms of this Indenture) that the Auction Call Redemption will not occur.

(vi) Notwithstanding the foregoing, but subject to the satisfaction of the conditions set forth in Section 9.2(b), the Holder of the Preferred Shares or any of its Affiliates, although it may not have been the highest bidder, will have the option to purchase any one or more Collateral Debt Securities for a purchase price equal to the highest bid therefor.

(c) Notwithstanding anything to the contrary set forth in this Section 12.4, at the election of the Holder of the Preferred Shares, in lieu of initiating or conducting any Auction, the Holder of the Preferred Shares or any of its Affiliates will have the option to purchase all of the Collateral Debt Securities that would otherwise be subject to such Auction for a price equal to the Total Redemption Price. Such purchase of Collateral Debt Securities by the Holder of the Preferred Shares or its Affiliates pursuant to this Section 12.4(c) will be deemed to be a Successful Auction pursuant to this Indenture and the Notes and the Preferred Shares shall be redeemed, in whole and not in part, at their applicable Redemption Prices in accordance with the applicable provisions of Article 9.

Section 12.5 Modifications to Collateral Quality Tests or Coverage Tests.

In the event any of the Rating Agencies modifies the definitions or calculations relating to (i) the method of calculating any of its respective Collateral Quality Tests (a "Collateral Quality Test Modification") or (ii) any of the Coverage Tests (a "Coverage Test Modification"), in either case in order to correspond with published changes in the guidelines, methodology or standards established by such Rating Agency, the Issuer may, but is under no obligation solely as a result of this Section 12.5 to, incorporate corresponding changes into this Indenture by an amendment hereto without the consent of the Holders of the Notes (but with written notice to the Noteholders) or the Preferred Shares if (x) (1) in the case of a Collateral Quality Test Modification, the Rating Agency Condition is satisfied with respect to the Rating Agency that made such modification or (2) in the case of a Coverage Test Modification, the Rating Agency Condition is satisfied with respect to each Rating Agency then rating the Notes and (y) written notice of such modification is delivered by the Collateral Manager to the Trustee, each Hedge Counterparty and to the Holders of the Notes and Preferred Shares (which notice may be included in the next regularly scheduled report to Noteholders). Any such Collateral Quality Test Modification or Coverage Test Modification, as the case may be, shall be effected without execution of a supplemental indenture; provided, however, that such amendment shall be (i) evidenced by a written instrument executed and delivered by each of the Co-Issuers and the Collateral Manager and delivered to the Trustee and each Hedge Counterparty, (ii) accompanied by delivery by the Issuer to the Trustee of (A) an Officer's Certificate of the Issuer certifying that such amendment has been made pursuant to and in compliance with this Section 12.5 and (B) if requested by the Trustee, an Opinion of Counsel stating that such amendment is authorized or permitted by this Section 12.5 and that all applicable conditions precedent under this Section 12.5 have been satisfied, on which such Officer's Certificate or such Officer's Certificate and Opinion of Counsel, as the case may be, the Trustee shall be entitled to rely. Notwithstanding

the foregoing, any such amendment reasonably determined by the Trustee to be unduly burdensome to the Trustee, shall not take effect without the Trustee's express written consent.

Section 12.6 ARMS Equity Contributions.

(a) General. For so long as ARMS Equity continues to hold 100% of the Preferred Shares, on any Business Day prior to the end of the Reinvestment Period ARMS Equity shall be permitted to contribute to the Issuer (for further Grant to the Trustee) ARMS Equity Cash Contributions, ARMS Equity EI Contributions and/or ARMS Equity CDS Contributions, in accordance with the provisions of this Section 12.6. Any such ARMS Equity Contribution shall be deemed to have been received by the Issuer for inclusion in the Pledged Obligations on the date such ARMS Equity Contribution was received by the Issuer. ARMS Equity shall provide written notice to the Issuer, the Collateral Manager and the Trustee of its election to make an ARMS Equity Contribution not less than one Business Day prior to its making of any such contribution. Following any such contribution by ARMS Equity, all right, title and interest of ARMS Equity, in, to and under such ARMS Equity Contribution shall thereupon immediately transfer and convey to the Issuer (for further Grant to the Trustee) and ARMS Equity shall not thereafter be entitled to receive any interest, repayment or additional return thereon.

(b) ARMS Equity Cash Contributions. All ARMS Equity Cash Contributions, upon receipt thereof by the Issuer, shall be (i) deemed to constitute additional Principal Collections during the related Due Period pursuant to the definition thereof, (ii) deposited to the Principal Collection Account and (iii) subject to the provisions of this Indenture applicable to Principal Collections without distinction thereafter from any other Principal Collections.

(c) ARMS Equity EI Contributions. All ARMS Equity EI Contributions, upon receipt thereof by the Issuer, shall be (i) deemed to constitute additional Principal Collections during the related Due Period pursuant to the definition thereof, (ii) deposited to and held in the Principal Collection Account and (iii) subject to the provisions of this Indenture applicable to Principal Collections without distinction thereafter from any other Principal Collections.

(d) ARMS Equity CDS Contributions. All ARMS Equity CDS Contributions, upon receipt thereof by the Issuer, shall be deemed to constitute Collateral Debt Securities subject to the provisions of this Indenture applicable to Collateral Debt Securities without distinction thereafter from any other Collateral Debt Securities; provided that (i) each such ARMS Equity CDS Contribution shall have complied with the Eligibility Criteria at the time it was received or deemed to have been received by the Issuer pursuant to Section 12.6(a) and (ii) for the avoidance of doubt, the initial contribution pursuant to this Section 12.6 of any such ARMS Equity CDS Contribution shall not be subject to the Reinvestment Criteria or be deemed to constitute a Substitute Collateral Debt Security hereunder.

-218-

ARTICLE 13

NOTEHOLDERS' RELATIONS

Section 13.1 Subordination.

(a) Anything in this Indenture or the Notes to the contrary notwithstanding, the Issuer and the Holders of the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes agree for the benefit of the Holders of the Class A-1 Notes and each Hedge Counterparty that the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes and the Issuer's rights in and to the Assets (the "Class A-2 Subordinate Interests") shall be subordinate and junior to the Class A-1 Notes to the extent and in the manner set forth in this Indenture including as set forth in Section 11.1(a) and hereinafter provided. If any Event of Default has not been cured or waived and

acceleration occurs in accordance with Article 5, including as a result of an Event of Default specified in Section 5.1(f) or 5.1(g), the Class A-1 Notes shall be paid in full before any further payment or distribution is made on account of the Class A-2 Subordinate Interests. The Holders of the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes agree for the benefit of the Holders of the Class A-1 Notes and each Hedge Counterparty, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay to them amounts due under the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes hereunder until the payment in full of the Class A-1 Notes and not before one year and one day, or, if longer, the applicable preference period then in effect, has elapsed since such payment.

(b) Anything in this Indenture or the Notes to the contrary notwithstanding, the Issuer and the Holders of the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes agree for the benefit of the Holders of the Class A-1 Notes, the Class A-2 Notes and each Hedge Counterparty that the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes and the Issuer's rights in and to the Assets (the "Class B Subordinate Interests") shall be subordinate and junior to the Class A-1 Notes and the Class A-2 Notes to the extent and in the manner set forth in this Indenture including as set forth in Section 11.1(a) and hereinafter provided. If any Event of Default has not been cured or waived and acceleration occurs in accordance with Article 5, including as a result of an Event of Default specified in Section 5.1(f) or 5.1(g), the Class A-1 Notes and the Class A-2 Notes shall be paid in full before any further payment or distribution is made on account of the Class B Subordinate Interests. The Holders of the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes agree for the benefit of the Holders of the Class A-1 Notes, the Class A-2 Notes and each Hedge Counterparty, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay to them amounts due under the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes hereunder until the payment in full of the Class A-1 Notes and the Class A-2 Notes and not

-219-

before one year and one day, or, if longer, the applicable preference period then in effect, has elapsed since such payment.

(c) Anything in this Indenture or the Notes to the contrary notwithstanding, the Issuer and the Holders of the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes agree for the benefit of the Holders of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes and each Hedge Counterparty that the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes, the Class H Notes and the Issuer's rights in and to the Assets (the "Class C Subordinate Interests") shall be subordinate and junior to the Class A-1 Notes, the Class A-2 Notes and the Class B Notes to the extent and in the manner set forth in this Indenture including as set forth in Section 11.1(a) and hereinafter provided. If any Event of Default has not been cured or waived and acceleration occurs in accordance with Article 5, including as a result of an Event of Default specified in Section 5.1(f) or 5.1(g), the Class A-1 Notes, the Class A-2 Notes and the Class B Notes shall be paid in full before any further payment or distribution is made on account of the Class C Subordinate Interests. The Holders of the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes agree, for the benefit of the Holders of the Class A-1 Notes, the Class A-2 Notes and the Class B Notes and each Hedge Counterparty, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay to them amounts due under the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes hereunder until the payment in full of the Class A-1

Notes, the Class A-2 Notes and the Class B Notes and not before one year and one day, or, if longer, the applicable preference period then in effect, has elapsed since such payment.

(d) Anything in this Indenture or the Notes to the contrary notwithstanding, the Issuer and the Holders of the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes agree for the benefit of the Holders of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and each Hedge Counterparty that the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes, the Class H Notes and the Issuer's rights in and to the Assets (the "Class D Subordinate Interests") shall be subordinate and junior to the Class A-1 Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes to the extent and in the manner set forth in this Indenture including as set forth in Section 11.1(a) and hereinafter provided. If any Event of Default has not been cured or waived and acceleration occurs in accordance with Article 5, including as a result of an Event of Default specified in Section 5.1(f) or 5.1(g), the Class A-1 Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes shall be paid in full before any further payment or distribution is made on account of the Class D Subordinate Interests. The Holders of the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes agree, for the benefit of the Holders of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, and the Class C Notes and each Hedge Counterparty, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay to them amounts due under the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes hereunder until the payment in full of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes and the Class C Notes and not before one year and one day, or, if longer, the applicable preference period then in effect, has elapsed since such payment.

-220-

(e) Anything in this Indenture or the Notes to the contrary notwithstanding, the Issuer and the Holders of the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes agree for the benefit of the Holders of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes and each Hedge Counterparty that the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes and the Issuer's rights in and to the Assets (the "Class E Subordinate Interests") shall be subordinate and junior to the Class A-1 Notes, the Class A-2 Notes, the Class C Notes and the Class D Notes to the extent and in the manner set forth in this Indenture including as set forth in Section 11.1(a) and hereinafter provided. If any Event of Default has not been cured or waived and acceleration occurs in accordance with Article 5, including as a result of an Event of Default specified in Section 5.1(f) or 5.1(g), the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, and the Class D Notes shall be paid in full before any further payment or distribution is made on account of the Class E Subordinate Interests. The Holders of the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes agree, for the benefit of the Holders of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes and each Hedge Counterparty, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay to them amounts due under the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes hereunder until the payment in full of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes and the Class D Notes and not before one year and one day, or, if longer, the applicable preference period in effect, has elapsed since such payment.

(f) Anything in this Indenture or the Notes to the contrary notwithstanding, the Issuer and the Holders of the Class F Notes, the Class G Notes and the Class H Notes agree for the benefit of the Holders of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes and each Hedge Counterparty that the Class F Notes, the Class G Notes and the Class H Notes and the Issuer's rights in and to the Assets (the "Class F Subordinate Interests") shall be subordinate and junior to

the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes to the extent and in the manner set forth in this Indenture including as set forth in Section 11.1(a) and hereinafter provided. If any Event of Default has not been cured or waived and acceleration occurs in accordance with Article 5, including as a result of an Event of Default specified in Section 5.1(f) or 5.1(g), the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes shall be paid in full before any further payment or distribution is made on account of the Class F Subordinate Interests. The Holders of the Class F Notes, the Class G Notes and the Class H Notes agree, for the benefit of the Holders of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes and each Hedge Counterparty, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay to them amounts due under the Class F Notes, the Class G Notes and the Class H Notes hereunder until the payment in full of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes and not before one year and one day, or, if longer, the applicable preference period then in effect, has elapsed since such payment.

(g) Anything in this Indenture or the Notes to the contrary notwithstanding, the Issuer and the Holders of the Class G Notes and the Class H Notes agree for the benefit of

-221-

the Holders of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and each Hedge Counterparty that the Class G Notes, the Class H Notes and the Issuer's rights in and to the Assets (the "Class G Subordinate Interests") shall be subordinate and junior to the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes and the Class F Notes to the extent and in the manner set forth in this Indenture including as set forth in Section 11.1(a) and hereinafter provided. If any Event of Default has not been cured or waived and acceleration occurs in accordance with Article 5, including as a result of an Event of Default specified in Section 5.1(f) or 5.1(g), the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes and the Class F Notes shall be paid in full before any further payment or distribution is made on account of the Class G Subordinate Interests. The Holders of the Class G Notes and the Class H Notes agree, for the benefit of the Holders of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes and the Class F Notes and each Hedge Counterparty, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay to them amounts due under the Class G Notes and the Class H Notes hereunder until the payment in full of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes and the Class F Notes and not before one year and one day, or, if longer, the applicable preference period then in effect, has elapsed since such payment.

(h) Anything in this Indenture or the Notes to the contrary notwithstanding, the Issuer and the Holders of the Class H Notes agree for the benefit of the Holders of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and each Hedge Counterparty that the Class H Notes and the Issuer's rights in and to the Assets (the "Class H Subordinate Interests") shall be subordinate and junior to the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes to the extent and in the manner set forth in this Indenture including as set forth in Section 11.1(a) and hereinafter provided. If any Event of Default has not been cured or waived and acceleration occurs in accordance with Article 5, including as a result of an Event of Default specified in Section 5.1(f) or 5.1(g), the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes shall be paid in full before any further payment or distribution is made on account of the Class H Subordinate

Interests. The Holders of the Class H Notes agree, for the benefit of the Holders of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes and each Hedge Counterparty, not to cause the filing of a petition in bankruptcy against the Issuer for failure to pay to them amounts due under the Class H Notes hereunder until the payment in full of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes and not before one year and one day, or if longer, the applicable preference period then in effect, has elapsed since such payment.

(i) In the event that notwithstanding the provisions of this Indenture, any holder of any Subordinate Interests shall have received any payment or distribution in respect of such Subordinate Interests contrary to the provisions of this Indenture, then, unless and until

-222-

the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes, as the case may be, shall have been paid in full in accordance with this Indenture, such payment or distribution shall be received and held in trust for the benefit of, and shall forthwith be paid over and delivered to, the Trustee, which shall pay and deliver the same to the Holders of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes, as the case may be, in accordance with this Indenture.

(j) Each Holder of Subordinate Interests agrees with all Holders of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes, and the Class H Notes, as the case may be, that such Holder of Subordinate Interests shall not demand, accept, or receive any payment or distribution in respect of such Subordinate Interests in violation of the provisions of this Indenture including this Section 13.1; provided, however, that after the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes, as the case may be, have been paid in full, the Holders of Subordinate Interests shall be fully subrogated to the rights of the Holders of the Class A-1 Notes, the Class A-2 Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class E Notes, the Class F Notes, the Class G Notes and the Class H Notes, as the case may be. Nothing in this Section 13.1 shall affect the obligation of the Issuer to pay Holders of Subordinate Interests.

Section 13.2 Standard of Conduct.

In exercising any of its or their voting rights, rights to direct and consent or any other rights as a Securityholder under this Indenture, subject to the terms and conditions of this Indenture, including, without limitation, Section 5.9, a Securityholder or Securityholders shall not have any obligation or duty to any Person or to consider or take into account the interests of any Person and shall not be liable to any Person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether such action or inaction benefits or adversely affects any Securityholder, the Issuer, or any other Person, except for any liability to which such Securityholder may be subject to the extent the same results from such Securityholder's taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Indenture.

ARTICLE 14

MISCELLANEOUS

Section 14.1 Form of Documents Delivered to the Trustee.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters

-223-

and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an Authorized Officer of the Issuer or the Co-Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such Authorized Officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate of an Authorized Officer of the Issuer or the Co-Issuer or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, the Issuer, the Co-Issuer, the Collateral Manager or any other Person, stating that the information with respect to such factual matters is in the possession of the Issuer, the Co-Issuer, the Collateral Manager or such other Person, unless such Authorized Officer of the Issuer or the Co-Issuer or such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous. Any Opinion of Counsel may also be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Authorized Officer of the Issuer or the Co-Issuer, stating that the information with respect to such matters is in the possession of the Issuer or the Co-Issuer, unless such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Whenever in this Indenture it is provided that the absence of the occurrence and continuation of a Default or Event of Default is a condition precedent to the taking of any action by the Trustee at the request or direction of the Issuer or the Co-Issuer, then notwithstanding that the satisfaction of such condition is a condition precedent to the Issuer's or the Co-Issuer's rights to make such request or direction, the Trustee shall be protected in acting in accordance with such request or direction if it does not have knowledge of the occurrence and continuation of such Default or Event of Default as provided in Section 6.1(e).

Section 14.2 Acts of Securityholders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Securityholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee, and, where it is hereby expressly required, to the Issuer and/or the Co-Issuer. Such instrument or instruments (and the action or actions embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Securityholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee, the Issuer and the Co-Issuer, if made in the manner provided in this Section 14.2.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any manner which the Trustee deems sufficient.

(c) The principal amount and registered numbers of Notes held by any Person, and the date of his holding the same, shall be proved by the Notes Register. The Notional Amount and registered numbers of the Preferred Shares held by any Person, and the date of his holding the same, shall be proved by the register maintained with respect to the Preferred Shares.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Securityholder shall bind such Securityholder (and any transferee thereof) of such Security and of every Security issued upon the registration thereof or in exchange therefor or in lieu thereof, in respect of anything done, omitted or suffered to be done by the Trustee, the Preferred Shares Paying Agent, the Shares Registrar, the Issuer or the Co-Issuer in reliance thereon, whether or not notation of such action is made upon such Security.

Section 14.3 Notices, etc., to the Trustee, the Issuer, the Co-Issuer, the Advancing Agent, the Collateral Manager, the Initial Purchaser, each Hedge Counterparty and each Rating Agency.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Securityholders or other documents provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(a) the Trustee by any Securityholder or by the Issuer or the Co-Issuer shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery or by facsimile in legible form, to the Trustee addressed to it at 135 South LaSalle Street, Suite 1511, Chicago, Illinois 60603, Attention: CDO Trust Services Group - Arbor Realty Mortgage Securities Series 2005-1, Facsimile Number: (312) 904-0524, or at any other address previously furnished in writing to the Issuer, the Co-Issuer or Securityholders by the Trustee;

(b) the Issuer by the Trustee or by any Securityholder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first class postage prepaid, hand delivered, sent by overnight courier service or by facsimile in legible form, to the Issuer addressed to it c/o Arbor Realty Mortgage Securities Series 2005-1, Ltd. at Maples Finance Limited, P.O. Box 1093GT, Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands, facsimile number: 345-945-7100, Attention: The Director, or at any other address previously furnished in writing to the Trustee by the Issuer, with a copy to the Collateral Manager at its address set forth below;

(c) the Co-Issuer by the Trustee or by any Securityholder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first class postage prepaid, hand delivered, sent by overnight courier service or by facsimile in legible form, to the Co-Issuer addressed to it in c/o Puglisi & Associates, 830 Library Avenue, Suite 204, Newark, Delaware 19711, Attention: Donald J. Puglisi, or at any

other address previously furnished in writing to the Trustee by the Co-Issuer, with a copy to the Collateral Manager at its address set forth below;

(d) the Advancing Agent by the Trustee, the Issuer or the Co-Issuer shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first class postage prepaid, hand delivered, sent by overnight courier service or by facsimile in legible form, to the Advancing Agent addressed to it at Arbor Realty SR, Inc., 333 Earle Ovington Boulevard, 9th Floor, Uniondale, New York 11553, Attention: Executive Vice President - Structured Securitization, or at any other address previously furnished in writing to the Trustee and the Co-Issuers, with a copy to the Collateral Manager at its address set forth below.

(e) the Preferred Shares Paying Agent shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to and mailed, by certified mail, return receipt requested, hand delivered, sent by overnight courier service guaranteeing next day delivery or by facsimile in legible form, to the Preferred Shares Paying Agent addressed to it at its Corporate Trust Office at 135 South LaSalle Street, Suite 1511, Chicago, Illinois 60603, Attention: CDO Trust Services Group - Arbor Realty Mortgage Securities Series 2005-1, Facsimile Number: (312) 904-0524 or at any other address previously furnished in writing by the Trustee;

(f) the Collateral Manager by the Issuer, the Co-Issuer or the Trustee shall be sufficient for every purpose hereunder if in writing and mailed, first class postage prepaid, hand delivered, sent by overnight courier service or by facsimile in legible form, to the Collateral Manager addressed to it at Arbor Realty Collateral Management, LLC, 333 Earle Ovington Boulevard, 9th Floor, Uniondale, New York 11553, Attention: Executive Vice President - Structured Securitization, or at any other address previously furnished in writing to the Issuer, the Co-Issuer or the Trustee;

(g) each Rating Agency, as applicable, by the Issuer, the Co-Issuer, the Collateral Manager or the Trustee shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first class postage prepaid, hand delivered, sent by overnight courier service or by facsimile in legible form, to each Rating Agency addressed to it at Standard & Poor's Services, a division of The McGraw-Hill Companies, Inc., 55 Water Street, 41st Floor, New York, New York 10041-0003, telecopy no. (212) 438-2664, Attention: Structured Finance Ratings, Asset-Backed Securities CBO/CLO Surveillance (and by electronic mail at cdosurveillance@standardandpoors.com; provided that all reports required to be submitted to S&P pursuant to this Indenture only shall be provided in electronic form to such e-mail address); Moody's Investor Services, Inc., 99 Church Street, New York, New York 10007, facsimile no.: (212) 553-4170, Attention: CBO/CLO Monitoring (or by electronic mail at cdomonitoring@moodys.com) and Fitch, Inc., One State Street Plaza, New York, New York 10004, facsimile no.: (212) 908-0500, Attention: Commercial Real Estate Loan CDOs, Performance Analytics (or by electronic mail at cdo.surveillance@fitchratings.com and karen.trebach@fitchratings.com) or such other address that a Rating Agency shall designate in the future;

-226-

(h) each Hedge Counterparty by the Issuer, the Co-Issuer, the Collateral Manager or the Trustee shall be sufficient for every purpose hereunder if in writing and mailed, first class postage prepaid, hand delivered, sent by overnight courier service or by facsimile in legible form, to each Hedge Counterparty addressed to it at the address specified in the related Hedge Agreement or at any other address previously furnished in writing to the Issuer, the Co-Issuer, the Collateral Manager and the Trustee by each Hedge Counterparty;

(i) the Initial Purchaser by the Issuer, the Co-Issuer, the Trustee or the Collateral Manager shall be sufficient for every purpose hereunder if in writing and mailed, first class postage prepaid, hand delivered, sent by overnight courier service or by facsimile in legible form to the Initial Purchaser c/o at Wachovia Capital Markets, LLC, 12 East 49th Street, 45th Floor,

New York, NY 10017, Attention: Michelle Tan, facsimile no.: (212) 909-0047.

Section 14.4 Notices to Noteholders; Waiver.

Except as otherwise expressly provided herein, where this Indenture provides for notice to Holders of Notes of any event,

(a) such notice shall be sufficiently given to Holders of Notes if in writing and mailed, first class postage prepaid, to each Holder of a Note affected by such event, at the address of such Holder as it appears in the Notes Register, not earlier than the earliest date and not later than the latest date, prescribed for the giving of such notice;

(b) such notice shall be in the English language;

(c) such notice shall also be provided to the Irish Paying Agent (for so long as any Notes are listed on the Irish Stock Exchange); and

(d) all reports or notices to Preferred Shareholders shall be sufficiently given if provided in writing and mailed, first class postage prepaid, to the Preferred Shares Paying Agent.

Notwithstanding clause (a) above, a Holder of Notes may give the Trustee a written notice that it is requesting that notices to it be given by facsimile transmissions and stating the facsimile number for such transmission. Thereafter, the Trustee shall give notices to such Holder by facsimile transmission; provided that if such notice also requests that notices be given by mail, then such notice shall also be given by mail in accordance with clause (a) above.

The Trustee shall deliver to the Holders of the Notes any information or notice requested to be so delivered by at least 25% of the Holders of any Class of Notes.

Neither the failure to mail any notice, nor any defect in any notice so mailed, to any particular Holder of a Note shall affect the sufficiency of such notice with respect to other Holders of Notes. In case by reason of the suspension of regular mail service or by reason of any other cause, it shall be impracticable to give such notice by mail, then such notification to Holders of Notes shall be made with the approval of the Trustee and shall constitute sufficient notification to such Holders of Notes for every purpose hereunder.

-227-

Where this Indenture provides for notice in any manner, such notice may be waived in writing by any Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Noteholders shall be filed with the Trustee but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In the event that, by reason of the suspension of the regular mail service as a result of a strike, work stoppage or similar activity, it shall be impractical to mail notice of any event to Noteholders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

For so long as any Notes are listed on the Irish Stock Exchange and the rules of such exchange so require, all notices to Noteholders of such Notes will be published in the Daily Official List of the Irish Stock Exchange.

Section 14.5 Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are

for convenience only and shall not affect the construction hereof.

Section 14.6 Successors and Assigns.

All covenants and agreements in this Indenture by the Issuer and the Co-Issuer shall bind their respective successors and assigns, whether so expressed or not.

Section 14.7 Severability.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 14.8 Benefits of Indenture.

Nothing in this Indenture or in the Securities, expressed or implied, shall give to any Person, other than (i) the parties hereto and their successors hereunder and (ii) the Collateral Manager, each Hedge Counterparty, the Preferred Shareholders, the Preferred Shares Paying Agent, the Shares Registrar and the Noteholders (each of whom, in the case of this subclause (ii), shall be an express third party beneficiary hereunder), any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 14.9 Governing Law.

THIS INDENTURE AND EACH NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED THEREIN WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

-228-

Section 14.10 Submission to Jurisdiction.

Each of the Issuer and the Co-Issuer hereby irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes or this Indenture, and each of the Issuer and the Co-Issuer hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State or federal court. Each of the Issuer and the Co-Issuer hereby irrevocably waives, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. Each of the Issuer and the Co-Issuer irrevocably consents to the service of any and all process in any action or proceeding by the mailing or delivery of copies of such process to it at the office of the Issuer's and the Co-Issuer's agent set forth in Section 7.2. Each of the Issuer and the Co-Issuer agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 14.11 Counterparts.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 14.12 Liability of Co-Issuers.

Notwithstanding any other terms of this Indenture, the Notes or any other agreement entered into between, inter alios, the Issuer and the Co-Issuer or otherwise, neither the Issuer nor the Co-Issuer shall have any liability whatsoever to the Co-Issuer or the Issuer, respectively, under this Indenture, the Notes, any such agreement or otherwise and, without prejudice to the generality of the foregoing, neither the Issuer nor the Co-Issuer shall be

entitled to take any steps to enforce, or bring any action or proceeding, in respect of this Indenture, the Notes, any such agreement or otherwise against the other Co-Issuer or the Issuer, respectively. In particular, neither the Issuer nor the Co-Issuer shall be entitled to petition or take any other steps for the winding up or bankruptcy of the Co-Issuer or the Issuer, respectively or shall have any claim in respect of any assets of the Co-Issuer or the Issuer, respectively.

ARTICLE 15

ASSIGNMENT OF COLLATERAL DEBT SECURITIES PURCHASE AGREEMENTS AND COLLATERAL MANAGEMENT AGREEMENT

Section 15.1 Assignment of Collateral Debt Securities Purchase Agreement and the Collateral Management Agreements.

(a) The Issuer, in furtherance of the covenants of this Indenture and as security for the Notes and amounts payable to the Secured Parties hereunder and the performance and observance of the provisions hereof, hereby collaterally assigns, transfers, conveys and sets over to the Trustee, for the benefit of the Noteholders and each Hedge

-229-

Counterparty, all of the Issuer's estate, right, title and interest in, to and under each Collateral Debt Securities Purchase Agreement (now or hereafter entered into) and the Collateral Management Agreement (each, an "Article 15 Agreement"), including, without limitation, (i) the right to give all notices, consents and releases thereunder, (ii) the right to give all notices of termination and to take any legal action upon the breach of an obligation of a Seller or the Collateral Manager thereunder, including the commencement, conduct and consummation of proceedings at law or in equity, (iii) the right to receive all notices, accountings, consents, releases and statements thereunder and (iv) the right to do any and all other things whatsoever that the Issuer is or may be entitled to do thereunder; provided, however, that the Trustee hereby grants the Issuer a license to exercise all of the Issuer's rights pursuant to the Article 15 Agreements without notice to or the consent of the Trustee (except as otherwise expressly required by this Indenture, including, without limitation, as set forth in subsection (f) of this Section 15.1) which license shall be and is hereby deemed to be automatically revoked upon the occurrence of an Event of Default hereunder until such time, if any, that such Event of Default is cured or waived.

(b) The assignment made hereby is executed as collateral security, and the execution and delivery hereby shall not in any way impair or diminish the obligations of the Issuer under the provisions of each of the Article 15 Agreements, nor shall any of the obligations contained in each of the Article 15 Agreements be imposed on the Trustee.

(c) Upon the retirement of the Notes, the payment by the Issuer of all amounts payable under each Hedge Agreement and the release of the Assets from the lien of this Indenture, this assignment and all rights herein assigned to the Trustee for the benefit of the Noteholders and each Hedge Counterparty shall cease and terminate and all the estate, right, title and interest of the Trustee in, to and under each of the Article 15 Agreements shall revert to the Issuer and no further instrument or act shall be necessary to evidence such termination and reversion.

(d) The Issuer represents that it has not executed any assignment of any of the Article 15 Agreements other than this collateral assignment.

(e) The Issuer agrees that this assignment is irrevocable, and that it shall not take any action which is inconsistent with this assignment or make any other assignment inconsistent herewith. The Issuer shall, from time to time upon the request of the Trustee, execute all instruments of further assurance and all

such supplemental instruments with respect to this assignment as the Trustee may specify.

(f) The Issuer hereby agrees, and hereby undertakes to obtain the agreement and consent of the Sellers and the Collateral Manager, as applicable, in the Collateral Debt Securities Purchase Agreements and the Collateral Management Agreement, as applicable, to the following:

(i) each of the Sellers and the Collateral Manager consents to the provisions of this collateral assignment and agrees to perform any provisions of this Indenture made expressly applicable to each of the Sellers and the Collateral Manager pursuant to the applicable Article 15 Agreement;

-230-

(ii) each of the Sellers and the Collateral Manager, as applicable, acknowledges that the Issuer is collaterally assigning all of its right, title and interest in, to and under the Collateral Debt Securities Purchase Agreements and the Collateral Management Agreement, as applicable, to the Trustee for the benefit of the Noteholders and each Hedge Counterparty, and each of the Sellers and the Collateral Manager, as applicable, agrees that all of the representations, covenants and agreements made by each of the Sellers and the Collateral Manager, as applicable, in the applicable Article 15 Agreement are also for the benefit of, and enforceable by, the Trustee, the Noteholders and each Hedge Counterparty;

(iii) each of the Sellers and the Collateral Manager, as applicable, shall deliver to the Trustee duplicate original copies of all notices, statements, communications and instruments delivered or required to be delivered to the Issuer pursuant to the applicable Article 15 Agreement;

(iv) none of the Issuer, the Sellers or the Collateral Manager shall enter into any agreement amending, modifying or terminating the applicable Article 15 Agreement, (other than in respect of an amendment or modification to cure any inconsistency, ambiguity or manifest error) or selecting or consenting to a successor collateral manager, without notifying each Rating Agency and without the prior written consent and written confirmation of each Rating Agency that such amendment, modification or termination will not cause its then-current ratings of the Notes to be reduced;

(v) except as otherwise set forth herein and therein (including, without limitation, pursuant to Sections 12 and 13 of the Collateral Management Agreement), the Collateral Manager shall continue to serve as Collateral Manager under the Collateral Management Agreement, notwithstanding that the Collateral Manager shall not have received amounts due it under the Collateral Management Agreement because sufficient funds were not then available hereunder to pay such amounts pursuant to the Priority of Payments. The Collateral Manager agrees not to cause the filing of a petition in bankruptcy against the Issuer for the nonpayment of the fees or other amounts payable to the Collateral Manager under the Collateral Management Agreement until the payment in full of all Notes issued under this Indenture and the expiration of a period equal to the applicable preference period under the Bankruptcy Code plus 10 days following such payment; and

(vi) the Collateral Manager irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes or this Indenture, and the Collateral Manager irrevocably agrees that all claims in respect of such action or proceeding may be heard and

determined in such New York State or federal court. The Collateral Manager irrevocably waives, to the fullest extent it may legally do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. The Collateral Manager irrevocably consents to the service of any and all process in any action or Proceeding by the mailing by certified mail, return receipt requested, or delivery requiring signature and proof of delivery of copies of such initial process to it at Arbor Realty Trust, Inc., 333 Earle Ovington Boulevard, 9th Floor,

-231-

Uniondale, New York 11553, Attention: Executive Vice President--Structured Securitization. The Collateral Manager agrees that a final and non-appealable judgment by a court of competent jurisdiction in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

ARTICLE 16

HEDGE AGREEMENT; CURE RIGHTS; PURCHASE RIGHTS; SUBSEQUENT COLLATERAL DEBT SECURITIES

Section 16.1 Issuer's Obligations under Hedge Agreement.

(a) On the Closing Date and thereafter, and on and after any date on which the Issuer enters into an additional or replacement Hedge Agreement (including any related Hedge Counterparty Credit Support), the Issuer, as directed by the Collateral Manager, shall (i) require that each Hedge Counterparty thereto, or any third party (including an Affiliate of such Hedge Counterparty) that (A) has absolutely and unconditionally guaranteed the obligations of the Hedge Counterparty under the related Hedge Agreement (with such form of guaranty as shall be satisfactory to each Rating Agency then rating any Notes hereunder), (B) has entered into credit intermediation arrangements in respect of the obligations of the Hedge Counterparty under the related Hedge Agreement satisfactory to each Rating Agency then rating any Notes hereunder, (C) is the issuing bank on one or more letters of credit supporting the obligations of the Hedge Counterparty under the related Hedge Agreement and that shall be reasonably acceptable to each Rating Agency then rating any Notes hereunder or (D) has provided any other additional credit support and such inclusion of additional credit support shall have satisfied the Rating Agency Condition (any such third party, including an Affiliate of such Hedge Counterparty, a "Hedge Counterparty Credit Support Provider") has, at the time the Hedge Agreement is executed, with respect to itself as an issuer or with respect to its indebtedness, credit ratings at least equal to the Hedge Counterparty Collateral Threshold Ratings by each Rating Agency then rating any Notes hereunder, (ii) obtain a written confirmation from each Rating Agency then rating any Notes hereunder that any additional or replacement Hedge Agreement and the related Hedge Counterparty would not cause such Rating Agency's then-current rating on any Class of Notes to be adversely qualified, reduced, suspended or withdrawn (provided that the Issuer shall not be required to obtain the foregoing written confirmation if (x) such additional or replacement Hedge Agreement is an Asset Specific Hedge and (y) the Issuer is not required to make any up-front payment in connection with such Asset Specific Hedge) and (iii) assign and grant a security interest in such Hedge Agreement to the Trustee pursuant to this Indenture. Each Hedge Agreement will provide that no amendment, modification or waiver in respect of such Hedge Agreement, including any additional or replacement Hedge Agreement, will be effective unless (A) evidenced by a writing executed by each party thereto, (B) the Trustee has acknowledged its consent thereto in writing and (C) each Rating Agency confirms that such amendment, modification or waiver will not cause the reduction or withdrawal of its then current rating on any Class of Notes. For the avoidance of doubt, the Issuer may enter into any Hedge Agreement with respect to which the Rating Agency Condition is satisfied.

(b) The Trustee shall, on behalf of the Issuer, pay amounts due to each Hedge Counterparty under the related Hedge Agreements in accordance with the Priority of Payments, Section 11.1(f) hereof and Section 16.1(g) hereof.

(c) The notional amount schedule of each Hedge Agreement providing for floating rate payments to the Issuer will be calculated as a percentage of the principal amount of the Notes originally anticipated to be Outstanding on each Payment Date based on certain assumptions. In accordance with the terms of each Hedge Agreement, such notional amount schedule will be reduced by the Issuer (or the Collateral Manager on behalf of the Issuer) or each Hedge Counterparty on each Payment Date to the extent that (i) the outstanding principal amount of the Notes is less than the scheduled aggregate notional amount of the related Hedge Agreements for such Payment Date and/or (ii) the Net Outstanding Portfolio Balance is less than the scheduled aggregate notional amount of the related Hedge Agreements for such Payment Date; provided that if any Notes are then Outstanding, the Trustee shall first have received written evidence that the Rating Agency Condition with respect to Moody's and S&P has been satisfied with respect to such reduction and Fitch shall have been notified of such reduction other than a scheduled reduction. Additionally, subject to satisfaction of the Rating Agency Condition with respect to Moody's and S&P and the notification of Fitch in respect thereof, a termination in part of a Hedge Agreement and a corresponding reduction in the notional amount of the Hedge Agreement may occur, in the event of a Mandatory Redemption or Special Amortization of the Notes. The Issuer's remaining obligations in accordance with the Priority of Payments will not be affected by any such reduction. Notwithstanding any right of the Issuer to terminate each Hedge Agreement or related Hedge Counterparty Credit Support upon the occurrence of a Termination Event or an Event of Default (each as defined in each Hedge Agreement) or otherwise pursuant to a Hedge Agreement, the Issuer shall not (x) terminate any Hedge Agreement or Hedge Counterparty Credit Support or (y) cause the non-replacement of any terminated Hedge Agreement, unless in each case the Issuer notifies Fitch thereof and obtains a written confirmation from Moody's and S&P that such termination or non-replacement, as applicable, would not cause such Rating Agency's then-current rating on any Class of Notes, as applicable, to be adversely qualified, reduced, suspended or withdrawn. For the avoidance of doubt, subject to the consent of the related Hedge Counterparty if required in the Hedge Agreement, the Issuer may terminate, reduce the notional amount of or otherwise modify the terms of any Hedge Agreement if the Rating Agency Condition is satisfied in connection therewith.

(d) Each Hedge Agreement shall provide for termination, and shall be capable of being terminated (i) by or on behalf of the Issuer upon the failure of the related Hedge Counterparty to post collateral under a Hedge Counterparty Credit Support within the time period specified in the related Hedge Agreement or provide other alternate credit enhancement in accordance with the related Hedge Agreement, or upon the failure of the related Hedge Counterparty to transfer (at the Hedge Counterparty's sole cost and expense) all of its rights and obligations under the related Hedge Agreement to a Qualified Hedge Party within the time period specified in the related Hedge Agreement, after the failure of the related Hedge Counterparty (or any Hedge Counterparty Credit Support Provider) to have the Hedge Counterparty Collateral Threshold Ratings; (ii) by or on behalf of the Issuer upon the failure of the related Hedge Counterparty to transfer (at the related Hedge Counterparty's sole cost and expense) all of its rights and obligations under the related Hedge Agreement to a Qualified

Hedge Party within the time period specified in the related Hedge Agreement after the failure of the related Hedge Counterparty (or any Hedge Counterparty

Credit Support Provider) to have the Hedge Counterparty Required Ratings (provided, however, that the related Hedge Counterparty shall continue to post collateral and use its best efforts to find a replacement pursuant to the related Hedge Agreement until the earlier to occur of termination of the related Hedge Agreement by or on behalf of the Issuer or consummation of a Permitted Transfer (as defined in and in accordance with the terms of the related Hedge Agreement)) unless the Issuer has received written confirmation from each Rating Agency that such failure would not cause such Rating Agency's then-current rating on any Class of Notes to be adversely qualified, reduced, suspended or withdrawn, (iii) by the related Hedge Counterparty, upon the failure of the Issuer to make, when due, any scheduled periodic payments under the related Hedge Agreement, (iv) in whole or in part, as provided in the related Hedge Agreement, upon the final sale of the Assets, an Auction Call Redemption, an Optional Redemption, a Clean-up Call or a Tax Redemption, (v) in part, as provided in the related Hedge Agreement, subject to satisfaction of the Rating Agency Condition with respect to Moody's and S&P, upon a Mandatory Redemption or a Special Amortization, (vi) by the related Hedge Counterparty upon any declaration by the Trustee that the Notes have become due and payable or (vii) as otherwise expressly provided for in the related Hedge Agreement. The Issuer shall satisfy the Rating Agency Condition with respect to Moody's and S&P with respect to any such termination of any provision of Hedge Counterparty Credit Support and of any transfer of all of the rights and obligations of any Hedge Counterparty under any Hedge Agreement.

(e) The Trustee shall, prior to the Closing Date, establish a single, segregated trust account with respect to each Hedge Counterparty in the name of the Trustee, each designated as the "Hedge Collateral Account," which shall be held in trust for the benefit of the Noteholders and the applicable Hedge Counterparty, over which the Trustee shall have exclusive control and the sole right of withdrawal, and in which no Person other than the Trustee and the Noteholders and the applicable Hedge Counterparty shall have any legal or beneficial interest. The Trustee shall deposit all collateral received from the related Hedge Counterparty under the related Hedge Agreement in the related Hedge Collateral Account. Any and all funds at any time on deposit in, or otherwise to the credit of, each Hedge Collateral Account shall be held in trust by the Trustee for the benefit of the Noteholders and for the related Hedge Counterparty in accordance with the terms of the Hedge Agreement. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of, each Hedge Collateral Account shall be (i) for application to obligations of the applicable Hedge Counterparty to the Issuer under the related Hedge Agreement in accordance with the terms of such Hedge Agreement or (ii) to return collateral to the applicable Hedge Counterparty when and as required by the related Hedge Agreement, which the Trustee shall return to the applicable Hedge Counterparty in accordance with the related Hedge Agreement. Each Hedge Collateral Account shall remain at all times with the Corporate Trust Office or a financial institution having a long-term debt rating at least equal to "A-" or "A2," as applicable, or a short-term debt rating at least equal to "A-1," "P-1" or "F1," as applicable.

(f) Upon the default by a Hedge Counterparty in the payment when due of its obligations to the Issuer under the related Hedge Agreement (following the expiration of any applicable grace period), the Trustee or the Collateral Manager shall forthwith provide facsimile notice thereof to the Issuer, each of the Rating Agencies and, if applicable, any

Hedge Counterparty Credit Support Provider. When the Trustee becomes aware of such default, the Trustee shall make a demand on the applicable Hedge Counterparty, or any Hedge Counterparty Credit Support Provider, if applicable, demanding payment forthwith. The Trustee shall give notice to the Noteholders and further notice to the Collateral Manager upon the continuing failure by such Hedge Counterparty or any Hedge Counterparty Credit Support Provider to perform its obligations during the two Business Days following a demand made by the Trustee on such Hedge Counterparty or any such Hedge Counterparty Credit Support

Provider.

(g) Upon the termination or partial termination of each Hedge Agreement, the Issuer at the direction of the Collateral Manager and the Trustee shall take such commercially reasonable actions (following the expiration of any applicable grace period and after the expiration of the applicable time period set forth in the related Hedge Agreement) to enforce the rights of the Issuer and the Trustee thereunder as may be permitted by the terms of the related Hedge Agreement and consistent with the terms hereof, and shall apply the proceeds of any such actions (including, without limitation, the proceeds of the liquidation of any collateral pledged by or on behalf of each Hedge Counterparty) to enter into an additional or replacement Hedge Agreements within 30 days of the expiration of any such grace period and such applicable time period as set forth in the related Hedge Agreement on substantially identical terms or on such other terms as required by the related Hedge Counterparty to any such additional or replacement Hedge Agreement as each Rating Agency may confirm in writing would not cause such Rating Agency's then-current rating of any Class of Notes, as applicable, to be adversely qualified, reduced, suspended or withdrawn. The Trustee shall, promptly after the Closing Date, in respect of each Hedge Counterparty, establish a single segregated trust account in the name of the Trustee, each designated the "Hedge Termination Account," which shall be held in trust for the benefit of the Noteholders and each Hedge Counterparty and over which the Trustee will have exclusive control and the sole right of withdrawal, and in each of which no person other than the Trustee, the Noteholders and the Hedge Counterparty will have any legal or beneficial interest. Each Hedge Termination Account shall remain at all times with the Corporate Trust Office or a financial institution having a long-term debt rating at least equal to "A-" or "A2," as applicable, or a short-term debt rating at least equal to "A-1," "P-1" or "F1," as applicable. Notwithstanding anything contained in this Indenture to the contrary, any payments (other than payments relating to past-due scheduled payments on a Hedge Agreement) received by the Issuer or Trustee in connection with either (x) the termination (in whole or in part) of a related Hedge Agreement or (y) the execution of an additional or replacement Hedge Agreements shall be immediately transferred to the Trustee for deposit into the related Hedge Termination Account. Any costs attributable to entering into an additional or replacement Hedge Agreements (other than in connection with a Permitted Transfer as provided for and defined in the related Hedge Agreement) with respect to the related Hedge Counterparty shall be paid from the related Hedge Termination Account, and any such amounts which are payable but exceed the balance on deposit in the related Hedge Termination Account shall be borne solely by the Issuer and constitute amounts payable under subclause (28) of Section 11.1(a)(i) hereof. Additionally, any amounts that are due and payable to a Hedge Counterparty upon a termination of a Hedge Agreement shall be paid from any amounts on deposit in the related Hedge Termination Account, and, to the extent the amounts on deposit in such Hedge Termination Account are insufficient to pay all such amounts, then such amounts will be payable in accordance with

-235-

Section 11.1(a) hereof. Any amounts remaining on deposit in a Hedge Termination Account related to a Hedge Agreement following payment to the Hedge Counterparty shall be transferred to the Principal Collection Account and shall constitute Principal Proceeds. If determining the amount payable under the terminated Hedge Agreement, the Issuer (or the Collateral Manager on behalf of the Issuer) shall seek quotations in accordance with the terms of the related Hedge Agreement from reference market-makers who satisfy the definition of Qualified Hedge Party herein. Each Hedge Agreement may provide that the applicable Hedge Counterparty is responsible for determining the amounts payable in certain circumstances. In addition, the Issuer (or the Collateral Manager on behalf of the Issuer) shall use commercially reasonable efforts to cause the termination of the related Hedge Agreement to become effective simultaneously with the effectiveness of a replacement thereto, described as aforesaid.

Section 16.2 Collateral Debt Securities Purchase Agreements.

Following the Closing Date, unless a Collateral Debt Securities

Purchase Agreement is necessary to comply with the provisions of this Indenture, the Issuer may acquire Collateral Debt Securities in accordance with customary settlement procedures in the relevant markets. In any event, the Issuer (or the Collateral Manager on behalf of the Issuer) shall obtain from any seller of a Loan, all Underlying Instruments with respect to each Collateral Debt Security, and all Underlying Instruments related to any related Senior Tranche that govern, directly or indirectly, the rights and obligations of the owner of the Collateral Debt Security with respect to the Underlying Term Loan, the Underlying Mortgage Property and the Collateral Debt Security and any certificate evidencing the Collateral Debt Security.

Section 16.3 Cure Rights.

(a) If the Issuer, as holder of a Loan, has the right pursuant to the related Underlying Instruments to cure an event of default on the Underlying Term Loan, the Collateral Manager may, in accordance with the Collateral Manager Servicing Standard and subject to the applicable provisions of the Servicing Agreement, advance from its own funds with respect to the Loan as a reimbursable Cure Advance, all such amounts as are necessary to effect the timely cure of such event of default pursuant to the terms of the related Underlying Instruments; provided that (i) such advances may only be made to the extent that the Collateral Manager reasonably believes that such Cash advance can be repaid from future payments on the related underlying commercial mortgage loan (subject to the Collateral Manager Servicing Standard and to the applicable provisions of the Servicing Agreement) and (ii) the particular advance would not, if made, constitute a Nonrecoverable Cure Advance. The determination by the Collateral Manager that it has made a Nonrecoverable Cure Advance or that any proposed Cure Advance, if made, would constitute a Nonrecoverable Cure Advance shall be made by the Collateral Manager in its reasonable, good faith judgment (subject to the Collateral Manager Servicing Standard and to the applicable provisions of the Servicing Agreement) and shall be evidenced by an Officer's Certificate delivered promptly to the Trustee, setting forth the basis for such determination, accompanied by an appraisal, if available, or an independent broker's opinion of the value of the Underlying Mortgage Property and any information that the Collateral Manager may have obtained and that supports such determination. The Collateral Manager will be entitled to reimbursement from any

-236-

subsequent payments or recoveries on each Collateral Debt Security in respect of which it makes a Cure Advance in accordance with the Priority of Payments if such reimbursement would not cause an Interest Shortfall; provided that, if at any time the Collateral Manager shall determine (subject to the applicable provisions of the Servicing Agreement) that a Cure Advance previously made is a Nonrecoverable Cure Advance, the Collateral Manager shall be entitled to reimbursements for such Nonrecoverable Cure Advance from subsequent payments or collections with respect to the Assets on any Business Day during any Interest Accrual Period prior to the related Determination Date (or on a Payment Date prior to any payment of interest on or principal of the Notes in accordance with the Priority of Payments). Notwithstanding the foregoing, the Collateral Manager will be permitted (but not obligated) to defer or otherwise structure the timing of recovery of any Nonrecoverable Cure Advance in such manner as the Collateral Manager determines is in the best interest of the Holders of the Class A Notes and the Class B Notes, as a collective whole, which may include being reimbursed for such Nonrecoverable Cure Advance in installments.

(b) No later than 11:00 a.m. on the Business Day preceding each Determination Date, the Collateral Manager may request by Officer's Certificate delivered to the Trustee, reimbursement for any (i) Cure Advance or (ii) Nonrecoverable Cure Advance, from any amounts received with respect to the related Collateral Debt Security or the Assets, respectively. No later than the Payment Date related to the Determination Date for which the Collateral Manager has delivered an Officer's Certificate requesting reimbursement of a Cure Advance or a Nonrecoverable Cure Advance, the Trustee shall transfer to the Collateral Manager, by wire transfer to an account identified to the Trustee in

writing, the amount of such Cure Advance or Nonrecoverable Cure Advance, as applicable.

(c) Notwithstanding anything to the contrary set forth herein, the Collateral Manager shall not be required to make any Cure Advance that it determines in its reasonable, good faith judgment would constitute a Nonrecoverable Cure Advance as determined pursuant to Section 16.3(a).

Section 16.4 Purchase Right; Holder of a Majority of the Preferred Shares.

If the Issuer, as holder of a Participation or B Note, has the right pursuant to the related Underlying Instruments to purchase any related Senior Tranche(s), the Issuer may, and shall if directed by the Holder of a Majority of the Preferred Shares, exercise such right, if the Collateral Manager determines, in accordance with the Collateral Manager Servicing Standard, that the exercise of the option would be in the best interest of the Noteholders, but may not exercise such right if the Collateral Manager determines otherwise. The Collateral Manager shall deliver to the Trustee an Officer's Certificate certifying such determination, accompanied by an Act of the Holder of a Majority of the Preferred Shares directing the Issuer to exercise such right. In connection with the purchase of any such Senior Tranche(s), the Issuer shall assign to the Holder of a Majority of the Preferred Shares or its designee all of its right, title and interest in such Senior Tranche(s) in exchange for a purchase price (such price and any other associated expense of such exercise to be paid by the Holder of a Majority of the Preferred Shares) of the Senior Tranche(s) (or, if the Underlying Instruments permit, the Issuer may assign the purchase right to the Holder of a Majority of the Preferred Shares or its designee; otherwise the Holder of a Majority of the Preferred Shares or its designee shall fund the purchase by the Issuer, which

-237-

shall then assign the Senior Tranche(s) to the Holder of a Majority of the Preferred Shares or its designee) (the "Purchase Option Purchase Price"), which amount shall be delivered by such Holder or its designee from its own funds to or upon the instruction of the Collateral Manager in accordance with terms of the Underlying Instruments related to the acquisition of such Senior Tranche(s). The Trustee or the Issuer shall execute and deliver at the direction of such Holder of a Majority of the Preferred Shares such instruments of transfer or assignment prepared by such Holder, in each case without recourse, as shall be necessary to transfer title to such Holder of the Majority of Preferred Shares or its designee of the Senior Tranche(s) and the Trustee shall have no responsibility with regard to such Senior Tranche(s).

Section 16.5 Representations and Warranties Related to Subsequent Collateral Debt Securities.

(a) If the Collateral Debt Security is a Subsequent Collateral Debt Security, upon the acquisition of such Subsequent Collateral Debt Security by the Issuer, the related seller has made or assigned to the Issuer the following:

(i) (A) representations and warranties in form and substance substantially similar to the representations and warranties set forth as Schedule L with respect to the Underlying Term Loan and the Underlying Mortgage Property (except with respect to Mezzanine Loans) and (B) representations and warranties regarding good title, no liens, no modifications, no defaults and valid assignment with respect to the Loan itself; and

(ii) in the case of a B Note, the representations and warranties in form and substance substantially similar to the representations and warranties set forth as Schedule M with respect to such B Note;

(iii) in the case of a Participation, the representations and

warranties in form and substance substantially similar to the representations and warranties set forth as Schedule N with respect to such Participation;

(iv) in the case of a Mezzanine Loan, the representations and warranties in form and substance substantially similar to the representations and warranties set forth as Schedule O with respect to such Mezzanine Loan;

(v) in the case of a Preferred Equity Security, the representations and warranties in form and substance substantially similar to the representations and warranties set forth as Schedule P with respect to such Preferred Equity Security;

(vi) in the case of a CMBS Security, the representations and warranties in form and substance substantially similar to the representations and warranties set forth as Schedule Q with respect to such CMBS Security; and

(vii) in the case of a CRE CDO Security, the representations and warranties in form and substance substantially similar to the representations and warranties set forth as Schedule Q with respect to such CRE CDO Security.

-238-

(b) The representations and warranties in Section 16.5(a) with respect to the acquisition of a Subsequent Collateral Debt Security may be subject to any modification, limitation or qualification that the Collateral Manager determines to be acceptable in accordance with the Collateral Manager Servicing Standard; provided that the Collateral Manager will provide each Rating Agency with a report attached to each Monthly Report identifying each such modification, exception, limitation or qualification received with respect to the acquisition of any Subsequent Collateral Debt Security during the period covered by the Monthly Report, which report may contain explanations by the Collateral Manager as to its determinations.

(c) The Issuer (or the Collateral Manager on behalf of the Issuer) shall obtain a covenant from the Person making any representation or warranty to the Issuer pursuant to Section 16.5(a) that such Person shall repurchase the related Collateral Debt Security if any such representation or warranty is breached (but only after the expiration of any permitted cure periods and failure to cure such breach). The purchase price for any Collateral Debt Security repurchased (the "Repurchase Price") shall be a price equal to the sum of the following (in each case, without duplication) as of the date of such repurchase: (i) the outstanding principal amount thereof or, in the case of any Collateral Debt Security that the Issuer purchased (excluding, for this purpose, any payment by the Issuer for accrued and unpaid interest on such Collateral Debt Security) at a discount from the outstanding principal amount of such Collateral Debt Security at the time it was acquired by the Issuer, the lesser of (x) the outstanding principal amount thereof, and (y) the greater of (A) the price originally paid by the Issuer for such Collateral Debt Security (excluding, for this purpose, any payment by the Issuer for accrued and unpaid interest on such Collateral Debt Security) less any principal payments received by the Issuer on account of such Collateral Debt Security and (B) the Market Value of such Collateral Debt Security at the time it is repurchased, plus (ii) accrued and unpaid interest on such Collateral Debt Security, plus (iii) any unreimbursed advances, plus (iv) accrued and unpaid interest on advances on the Collateral Debt Security, plus (v) any reasonable costs and expenses (including, but not limited to, the cost of any enforcement action, incurred by the Issuer or the Trustee in connection with any such purchase by a seller).

Section 16.6 Operating Advisor; Additional Debt.

If the Issuer, as holder of a B Note, a Participation, Preferred

Equity Security or a Mezzanine Loan, has the right pursuant to the related Underlying Instruments to appoint the operating advisor, directing holder or Person serving a similar function under the Underlying Instruments, each of the Issuer, the Trustee and the Collateral Manager shall take such actions as are reasonably necessary to appoint the Collateral Manager to such position. If the Issuer, as holder of a B Note, a Participation or a Mezzanine Loan, has the right pursuant to the related Underlying Instruments to consent to the related borrower incurring any additional debt, such consent will be subject to satisfaction of the Rating Agency Condition.

-239-

ARTICLE 17

ADVANCING AGENT

Section 17.1 Liability of the Advancing Agent.

The Advancing Agent shall be liable in accordance herewith only to the extent of the obligations specifically imposed upon and undertaken by the Advancing Agent. Section 17.2 Merger or Consolidation of the Advancing Agent.

(a) The Advancing Agent will keep in full effect its existence, rights and franchises as a corporation under the laws of the jurisdiction in which it was formed, and will obtain and preserve its qualification to do business as a foreign corporation in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Indenture to perform its duties under this Indenture.

(b) Any Person into which the Advancing Agent may be merged or consolidated, or any corporation resulting from any merger or consolidation to which the Advancing Agent shall be a party, or any Person succeeding to the business of the Advancing Agent shall be the successor of the Advancing Agent, hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding (it being understood and agreed by the parties hereto that the consummation of any such transaction by the Advancing Agent shall have no effect on the Trustee's obligations under Section 10.8, which obligations shall continue pursuant to the terms of Section 10.8).

Section 17.3 Limitation on Liability of the Advancing Agent and Others.

None of the Advancing Agent or any of its affiliates, directors, officers, employees or agents shall be under any liability for any action taken or for refraining from the taking of any action in good faith pursuant to this Indenture, or for errors in judgment; provided, however, that this provision shall not protect the Advancing Agent against liability to the Issuer or Noteholders for any breach of warranties or representations made herein or any liability which would otherwise be imposed by reason of willful misfeasance, bad faith or gross negligence in the performance of duties or by reason of negligent disregard of obligations and duties hereunder. The Advancing Agent and any director, officer, employee or agent of the Advancing Agent may rely in good faith on any document of any kind prima facie properly executed and submitted by any Person respecting any matters arising hereunder. The Advancing Agent and any director, officer, employee or agent of the Advancing Agent shall be indemnified by the Issuer pursuant to the priorities set forth in Section 11.1(a) and held harmless against any loss, liability or expense incurred in connection with any legal action relating to this Indenture or the Notes, other than any loss, liability or expense (i) specifically required to be borne by the Advancing Agent pursuant to the terms hereof or otherwise incidental to the performance of obligations and duties hereunder (except as any such loss, liability or expense shall be otherwise reimbursable pursuant to this Indenture); or (ii) incurred by reason of any breach of a representation, warranty or covenant made herein, any misfeasance, bad faith or negligence by

the Advancing Agent in the performance of or negligent disregard of, obligations or duties hereunder or any violation of any state or federal securities law.

Section 17.4 Representations and Warranties of the Advancing Agent.

The Advancing Agent represents and warrants that:

(a) the Advancing Agent (i) has been duly organized, is validly existing and is in good standing under the laws of the State of Maryland, (ii) has full power and authority to own the Advancing Agent's assets and to transact the business in which it is currently engaged, and (iii) is duly qualified and in good standing under the laws of each jurisdiction where the Advancing Agent's ownership or lease of property or the conduct of the Advancing Agent's business requires, or the performance of this Indenture would require, such qualification, except for failures to be so qualified that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Advancing Agent or the ability of the Advancing Agent to perform its obligations under, or on the validity or enforceability of, the provisions of this Indenture applicable to the Advancing Agent;

(b) the Advancing Agent has full power and authority to execute, deliver and perform this Indenture; this Indenture has been duly authorized, executed and delivered by the Advancing Agent and constitutes a legal, valid and binding agreement of the Advancing Agent, enforceable against it in accordance with the terms hereof, except that the enforceability hereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law);

(c) neither the execution and delivery of this Indenture nor the performance by the Advancing Agent of its duties hereunder conflicts with or will violate or result in a breach or violation of any of the terms or provisions of, or constitutes a default under: (i) the Articles of Incorporation and bylaws of the Advancing Agent, (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement or other evidence of indebtedness or other agreement, obligation, condition, covenant or instrument to which the Advancing Agent is a party or is bound, (iii) any law, decree, order, rule or regulation applicable to the Advancing Agent of any court or regulatory, administrative or governmental agency, body or authority or arbitrator having jurisdiction over the Advancing Agent or its properties, and which would have, in the case of any of (i), (ii) or (iii) of this subsection (c), either individually or in the aggregate, a material adverse effect on the business, operations, assets or financial condition of the Advancing Agent or the ability of the Advancing Agent to perform its obligations under this Indenture;

(d) no litigation is pending or, to the best of the Advancing Agent's knowledge, threatened, against the Advancing Agent that would materially and adversely affect the execution, delivery or enforceability of this Indenture or the ability of the Advancing Agent to perform any of its obligations under this Indenture in accordance with the terms hereof; and

(e) no consent, approval, authorization or order of or declaration or filing with any government, governmental instrumentality or court or other person is required for the performance by the Advancing Agent of its duties hereunder, except such as have been duly made or obtained.

Section 17.5 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Advancing Agent and no appointment of a successor Advancing Agent pursuant to this Article 17 shall become effective until the acceptance of appointment by the successor Advancing Agent under Section 17.6.

(b) The Advancing Agent may resign at any time by giving written notice thereof to the Issuer, the Co-Issuer, the Trustee, the Collateral Manager, each Hedge Counterparty, the Noteholders and each Rating Agency.

(c) The Advancing Agent may be removed at any time by Act of 66-2/3% of the Preferred Shares upon written notice delivered to the Trustee and to the Issuer and the Co-Issuer.

(d) If the Advancing Agent fails to make an Interest Advance required by this Indenture with respect to a Distribution Date, the Trustee, in its capacity as Backup Advancing Agent, shall be required to make such Interest Advance and shall be entitled to receive, in consideration thereof, the Advancing Agent Fee (in lieu of the Backup Advancing Agent Fee) in accordance with the Priority of Payments. If the Advancing Agent fails to make a required Interest Advance and it has not determined such Interest Advance to be a Nonrecoverable Interest Advance, the Collateral Manager may, and at the direction of the Controlling Class shall, terminate such Advancing Agent and replace such Advancing Agent with a successor advancing agent the appointment of which satisfies the Rating Agency Condition. In the event that the Collateral Manager has not terminated and replaced such Advancing Agent within 30 days of such Advancing Agent's failure to make a required Interest Advance, the Trustee may terminate such Advancing Agent and appoint a successor Advancing Agent.

(e) Subject to Section 17.5(d), if the Advancing Agent shall resign or be removed, upon receiving such notice of resignation or removal, the Issuer and the Co-Issuer shall promptly appoint a successor advancing agent by written instrument, in duplicate, executed by an Authorized Officer of the Issuer and an Authorized Officer of the Co-Issuer, one copy of which shall be delivered to the Advancing Agent so resigning and one copy to the successor Advancing Agent, together with a copy to each Noteholder, the Trustee, each Hedge Counterparty and the Collateral Manager; provided that such successor Advancing Agent shall be appointed only subject to satisfaction of the Rating Agency Condition and upon the written consent of a Majority of the Preferred Shares. If no successor Advancing Agent shall have been appointed and an instrument of acceptance by a successor Advancing Agent shall not have been delivered to the Advancing Agent within 30 days after the giving of such notice of resignation, the resigning Advancing Agent, the Trustee or any Preferred Shareholder, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Advancing Agent.

-242-

(f) The Issuer and the Co-Issuer shall give prompt notice of each resignation and each removal of the Advancing Agent and each appointment of a successor Advancing Agent by mailing written notice of such event by first class mail, postage prepaid, to each Rating Agency, each Hedge Counterparty and to the Holders of the Notes as their names and addresses appear in the Notes Register.

(g) No resignation or removal of the Advancing Agent and no appointment of a Successor Advancing Agent shall become effective until the acceptance of appointment by the Successor Advancing Agent.

Section 17.6 Acceptance of Appointment by Successor Advancing Agent.

(a) Every successor Advancing Agent appointed hereunder shall execute, acknowledge and deliver to the Issuer, the Co-Issuer, each Hedge Counterparty, the Collateral Manager, the Trustee and the retiring Advancing Agent an instrument accepting such appointment. Upon delivery of the required

instruments, the resignation or removal of the retiring Advancing Agent shall become effective and such successor Advancing Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of the retiring Advancing Agent.

(b) No appointment of a successor Advancing Agent shall become effective unless each Rating Agency has confirmed in writing that the employment of such successor would not adversely affect the rating on the Notes.

-243-

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Indenture as of the day and year first above written.

Executed as a Deed

ARBOR REALTY MORTGAGE SECURITIES
SERIES 2005-1, LTD., as Issuer

By /s/ Martin Couch

Name: Martin Couch

Title: Director

Witness:

/s/ [Illegible]

ARBOR REALTY MORTGAGE SECURITIES
SERIES 2005-1 LLC, as Co-Issuer

By: /s/ Guy R. Milone, Jr.

Name: Guy R. Milone, Jr.

Title: Authorized Signatory

LASALLE BANK NATIONAL ASSOCIATION,
solely as Trustee, Paying Agent,
Calculation Agent, Transfer Agent,
Custodial Securities Intermediary,
Backup Advancing Agent and Notes
Registrar and not in its individual
capacity

By: /s/ Mat Thomason

Name: Mat Thomason

Title: Assistant Vice President

ARBOR REALTY SR, INC.,
as Advancing Agent

By:

Name:

Title: _____

PURCHASE AGREEMENT

This Purchase Agreement (this "Agreement") is made as of the 11th day of January, 2006, by and among Arbor Realty Mortgage Securities Series 2005-1, Ltd., an exempted company incorporated with limited liability under the laws of the Cayman Islands (the "Issuer"), Arbor Realty Mortgage Securities Series 2005-1 LLC, a Delaware limited liability company (the "Co-Issuer" and, together with the Issuer, the "Co-Issuers"), and Wachovia Capital Markets, LLC ("Wachovia Securities" or the "Initial Purchaser").

WITNESSETH:

WHEREAS, the Co-Issuers intend to co-issue (a) the U.S. \$161,500,000 Class A-1 Senior Secured Floating Rate Term Notes, Due 2038 (the "Class A-1 Notes"), (b) the U.S. \$40,375,000 Class A-2 Second Priority Senior Secured Floating Rate Term Notes, Due 2038 (the "Class A-2 Notes" and, together with the Class A-1 Notes, the "Class A Notes"), (c) the U.S. \$57,000,000 Class B Third Priority Floating Rate Term Notes, Due 2038 (the "Class B Notes"), (d) the U.S. \$29,687,500 Class C Fourth Priority Floating Rate Capitalized Interest Term Notes, Due 2038 (the "Class C Notes"), (e) the U.S. \$10,212,500 Class D Fifth Priority Floating Rate Capitalized Interest Term Notes, Due 2038 (the "Class D Notes"), (f) the U.S. \$9,025,000 Class E Sixth Priority Floating Rate Capitalized Interest Term Notes, Due 2038 (the "Class E Notes"), (g) the U.S. \$17,575,000 Class F Seventh Priority Floating Rate Capitalized Interest Term Notes, Due 2038 (the "Class F Notes"), (h) the U.S. \$13,062,500 Class G Eighth Priority Floating Rate Capitalized Interest Term Notes, Due 2038 (the "Class G Notes"), and (i) the U.S. \$17,812,500 Class H Ninth Priority Floating Rate Capitalized Interest Term Notes, Due 2038 (the "Class H Notes" and, together with the Class A Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes, the "Notes") pursuant to an indenture, dated as of January 11, 2006 (the "Indenture"), by and among the Issuer, the Co-Issuer, LaSalle Bank National Association, as trustee (in such capacity, the "Trustee"), paying agent, calculation agent, transfer agent, custodial securities intermediary, backup advancing agent and notes registrar, and Arbor Realty SR, Inc., as advancing agent (the "Advancing Agent");

WHEREAS, the Issuer intends to issue 118,750,000 preferred shares, with a per share notional amount of U.S. \$1.00 (the "Preferred Shares" and, together with the Notes, the "Securities") pursuant to the Governing Documents (as defined in the Indenture) of the Issuer, certain resolutions of the board of directors of the Issuer passed prior to the issuance of the Preferred Shares and the Preferred Shares Paying Agency Agreement, dated as of January 11, 2006 (the "Preferred Shares Paying Agency Agreement"), by and between the Issuer and LaSalle Bank National Association, as preferred shares paying agent (the "Preferred Shares Paying Agent");

WHEREAS, the Initial Purchaser is a securities firm engaged in the business of selling securities directly to purchasers or through other securities dealers;

WHEREAS, the Initial Purchaser intends, but is not required, to make a market in the Notes;

WHEREAS, Arbor Realty Collateral Management, LLC ("ARCM") shall act as collateral manager (the "Collateral Manager") of the Issuer's assets in accordance with the terms of a collateral management agreement, dated as of January 11, 2006 (the "Collateral Management Agreement"), between the Collateral Manager and the Issuer;

WHEREAS, on the Closing Date, the Issuer will purchase or will have committed to purchase a portion of Collateral Debt Securities from Arbor Realty SR, Inc. and Arbor Realty Funding, LLC (together the "Sellers"); and

WHEREAS, the Initial Purchaser hereby acknowledges that it has received good and valuable consideration hereunder.

NOW, THEREFORE, the parties agree as follows:

1. Defined Terms. All capitalized terms used and not otherwise defined herein shall have the same meanings ascribed to such terms in the Indenture.

2. Sale and Purchase of the Notes; Market-Making.

(a) Subject to the terms and conditions herein, on the Closing Date, each of the Issuer and the Co-Issuer hereby agrees to sell all of the Notes to the Initial Purchaser as provided hereinafter, and the Initial Purchaser agrees to purchase from the Issuer and Co-Issuer, as applicable, the Notes in the amount set forth on Schedule A hereto at the price (the "Purchase Price") set forth opposite the respective classes of Notes.

(b) The Purchase Price of the Notes shall be payable to the Issuer as it directs by wire transfer in United States Dollars in immediately available funds on the Closing Date.

(c) Prior to or at the time that the Notes are first issued or delivered, the conditions precedent in Section 7 herein shall have been satisfied.

(d) The Initial Purchaser may, but is not required to, make a market in the Notes and may cease any such activity at any time.

3. Offer of the Notes. Each of the Issuer and the Co-Issuer understands that the Initial Purchaser intends to offer the Notes as soon after this Agreement has become effective as is advisable in the judgment of the Initial Purchaser. The Issuer and Co-Issuer confirm that they have authorized the Initial Purchaser, subject to the restrictions set forth below, to distribute copies of the offering memorandum dated January 6, 2006 (the "Offering Memorandum") in connection with the offering of the Notes or making a market in the Notes, as applicable.

4. Representations, Warranties and Covenants of each of the Co-Issuers. Each of the Issuer or the Co-Issuer, as applicable, represents and warrants (with respect to itself only) to the Initial Purchaser as of the Closing Date, and agrees with the Initial Purchaser that:

-2-

(a) it has not, directly or indirectly, solicited any offer to buy or offered to sell, and shall not, directly or indirectly, solicit any offer to buy or offer to sell, in the United States or to any United States citizen or resident, any security which is or would be integrated with the sale of the Securities in a manner that would require the Securities to be registered under the Securities Act of 1933, as amended (the "Securities Act");

(b) the Notes are eligible for resale pursuant to Rule 144A under the Securities Act and shall not be, on the Closing Date, of the same class as securities listed on a national securities exchange registered under Section 6 of the United States Securities Exchange Act, as amended (the "Exchange Act"), or quoted in a United States automated interdealer quotation system;

(c) the Offering Memorandum, the marketing materials dated November, 2005 and the related asset summaries (collectively, the "Offering Materials") have been prepared by the Issuer and the Co-Issuer, as applicable, in connection with the offering of the Notes. The Offering Materials and any amendments or supplements thereto did not and shall not, as of their respective dates and, in the case of the Offering Memorandum, as of the Closing Date, contain an untrue statement of a material fact or omit to state a material fact necessary in order

to make the statements therein, in light of the circumstances under which they were made, not misleading except that the representations and warranties set forth in this Section 4(c) do not apply to statements or omissions that are made in reliance upon and in conformity with information relating to the Initial Purchaser furnished to the Issuer by the Initial Purchaser expressly for use in the Offering Materials or any amendment or supplement thereto. It is hereby acknowledged that the statements set forth in the second paragraph under the caption "Subscription and Sale" constitute the only written information furnished to the Seller by the Initial Purchasers expressly for use in the Offering Circular (or any amendment or supplement thereto).

(d) since the respective dates as of which information is given in the Offering Materials, except as contemplated or set forth in the Offering Memorandum, it has not carried on any business other than as described in the Offering Materials relating to the issue of the Securities;

(e) the Issuer does not have any subsidiaries and the Co-Issuer does not have any subsidiaries;

(f) the Issuer is an exempted company incorporated with limited liability that has been duly and validly incorporated and is existing and in good standing under the laws of the Cayman Islands; the Issuer is duly licensed and duly qualified to do business as a foreign limited liability company and is in good standing in all jurisdictions in which the ownership of its assets or in which the conduct of its business requires or shall require such qualification; the Issuer has full power and authority to own its assets and conduct its business as described in the Offering Materials and to enter into and perform its obligations under this Agreement, the Indenture, the Preferred Shares Paying Agency Agreement, the Servicing Agreement, each Collateral Debt Securities Purchase Agreement, each Hedge Agreement and the Collateral Management Agreement and to enter into and consummate all the transactions in connection therewith as contemplated by such agreements and in the Offering Materials;

-3-

(g) the Co-Issuer is a limited liability company that is in good-standing under the laws of the State of Delaware and is duly licensed and duly qualified to do business as a limited liability company and is in good standing in all jurisdictions in which the ownership of its assets or in which the conduct of its business requires or shall require such qualification; the Co-Issuer has full power and authority to own its assets and conduct its business as described in the Offering Materials and to enter into and perform its obligations under this Agreement and the Indenture and to enter into and consummate all the transactions in connection therewith as contemplated by such agreements and in the Offering Materials;

(h) the Issuer has the authorized share capital as set forth in the Offering Memorandum and all of the issued Preferred Shares of the Issuer will have been duly and validly authorized and issued and are fully paid and nonassessable, and all of the issued ordinary shares of the Issuer shall be held by ARMS 2005-1 Equity Holdings LLC ("ARMS Equity");

(i) the Co-Issuer has the authorized capitalization as set forth in the Offering Memorandum and all of the issued membership interests of the Co-Issuer have been duly and validly authorized and issued and all of the issued membership interests of the Co-Issuer shall be held by Arbor Realty SR, Inc.;

(j) the Notes have been duly authorized by the Co-Issuer, and when issued and delivered and when appropriate entries have been made in the Notes Register pursuant to this Agreement and the Indenture against payment therefor, shall have been duly executed, authenticated, issued and delivered and shall constitute valid and legally binding obligations of the Co-Issuer, enforceable against the Co-Issuer in accordance with their terms and entitled to the benefits provided by the Indenture, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to

or affecting creditors' rights and to general equity principles;

(k) the Notes have been duly authorized by the Issuer and, when issued, authenticated and delivered and when appropriate entries have been made in the Notes Register pursuant to this Agreement and the Indenture against payment therefor, shall have been duly executed, authenticated, issued and delivered and shall constitute valid and legally binding obligations of the Issuer, enforceable against the Issuer in accordance with their terms and entitled to the benefits provided by the Indenture, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(l) each of the Indenture and this Agreement has been duly authorized by the Co-Issuer and, when executed and delivered by the parties thereto and hereto, shall constitute a valid and legally binding instrument, enforceable in accordance with its respective terms, under the laws of the State of New York and all other relevant laws, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(m) each of the Indenture, the Preferred Shares Paying Agency Agreement, the Servicing Agreement, the Collateral Management Agreement, this Agreement, each Collateral Debt Securities Purchase Agreement and each Hedge Agreement has been duly authorized by the

-4-

Issuer and, when executed and delivered by the parties thereto and hereto, shall constitute a valid and legally binding instrument, enforceable in accordance with its terms under the laws of the State of New York and all other relevant laws, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(n) except as may be required under state securities laws, no filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is necessary or required for the performance by the Co-Issuer of its obligations hereunder, in connection with the offering, issuance or sale of the Notes hereunder or the consummation of the transactions contemplated by or for the due execution, delivery or performance of this Agreement, the Indenture, the Notes or any other agreement or instrument entered into or issued or to be entered into or issued by the Co-Issuer in connection with the consummation of the transactions contemplated herein and in the Offering Materials (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as described in the Offering Memorandum under the caption "Use of Proceeds");

(o) except as may be required under state securities laws, no filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is necessary or required for the performance by the Issuer of its obligations hereunder, in connection with the offering, issuance or sale of the Notes hereunder or the consummation of the transactions contemplated by or for the due execution, delivery or performance of this Agreement, the Indenture, the Preferred Shares Paying Agency Agreement, the Securities, each Collateral Debt Securities Purchase Agreement, the Servicing Agreement, the Collateral Management Agreement, each Hedge Agreement or any other agreement or instrument entered into or issued or to be entered into or issued by the Issuer in connection with the consummation of the transactions contemplated herein and in the Offering Materials (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as described in the Offering Memorandum under the caption "Use of Proceeds");

(p) the statements set forth in the Offering Memorandum under the captions "Description of the Securities," "Security for the Notes," "The Collateral Management Agreement," "Hedge Agreements," "The Issuer" and "The Co-Issuer" insofar as they purport to constitute a description of the Issuer or the Co-Issuer or a summary of the terms of the Securities, the Indenture, each Hedge Agreement, the Preferred Shares Paying Agency Agreement, the Servicing Agreement, each Collateral Debt Securities Purchase Agreement and the Collateral Management Agreement and under the captions "Certain U.S. Federal Income Tax Considerations," "Cayman Islands Tax Considerations," "Certain ERISA Considerations" and "Subscription and Sale," insofar as they purport to describe the provisions of the laws and documents referred to therein, are correct in all material respects;

(q) the issue and sale of the Securities and the compliance by the Issuer and the Co-Issuer, as applicable, with all of the provisions of the Indenture, the Preferred Shares Paying Agency Agreement, each Collateral Debt Securities Purchase Agreement, the Securities, each Hedge Agreement, the Servicing Agreement, the Collateral Management Agreement and this Agreement and the consummation of the transactions herein and therein contemplated shall not conflict with or result in a breach or violation of any of the terms or provisions of, or

-5-

constitute a default under, any other agreement or instrument to which the Issuer or the Co-Issuer is a party or by which the Issuer or the Co-Issuer is bound, nor shall such action result in any violation of the provisions of the Governing Documents of each of the Issuer or the Co-Issuer or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Issuer or the Co-Issuer or each of their assets; and, no consent, approval, authorization, order, registration or qualification of or with any court or governmental agency or body is required for the issue and sale of the Securities or the consummation of the transactions by the Issuer and the Co-Issuer contemplated by this Agreement, the Indenture, the Preferred Shares Paying Agency Agreement, each Collateral Debt Securities Purchase Agreement, each Hedge Agreement or the Collateral Management Agreement, (other than any governmental or other consents that have already been obtained by either the Issuer or the Co-Issuer and that were in full force and effect);

(r) the Trustee shall have a perfected security interest in the Pledged Obligations and the Issuer's rights under the Servicing Agreement, the Collateral Management Agreement, each Hedge Agreement and each Collateral Debt Securities Purchase Agreement for the benefit and security of the holders of the Notes subject to the priorities set forth in the Indenture;

(s) there are no legal or governmental proceedings, inquiries or investigations pending to which the Issuer or the Co-Issuer is a party or of which any property of the Issuer or Co-Issuer is the subject and no such proceedings are threatened or contemplated by governmental authorities or threatened by others;

(t) on the Closing Date, there shall not exist any default by any of the Issuer or the Co-Issuer or any condition, event or act, which, with notice or lapse of time or both, would constitute an Event of Default by the Issuer or the Co-Issuer under the Indenture;

(u) none of the Issuer, the Co-Issuer or any persons acting on their behalf (other than the Initial Purchaser as to whom the Co-Issuers make no representation) has engaged or shall engage in any directed selling efforts as defined in Rule 902 of Regulation S under the Securities Act with respect to the Securities, and none of the foregoing persons has offered or sold any of the Securities, except for the sale of the Notes to the Initial Purchaser pursuant to this Agreement and the sale of the Preferred Shares to ARMS Equity;

(v) neither the Issuer nor the Co-Issuer has entered into contractual

arrangements with any person respect to the distribution of (A) the Notes, other than the Initial Purchaser pursuant to this Agreement, and (B) the Preferred Shares, other than pursuant to the Subscription Agreement dated as of the date hereof and signed by ARMS Equity (the "Subscription Agreement");

(w) no stamp or other issuance or transfer taxes or duties and no capital gains, income, withholding or other taxes are payable by or on behalf of the Initial Purchaser to the government of the Cayman Islands or any political subdivision or taxing authority thereof or therein in connection with the issuance, sale and delivery by the Issuer and the Co-Issuer or the sale and delivery by the Initial Purchaser outside the Cayman Islands of the Notes to the

-6-

investors thereof; provided, that Cayman Islands stamp duty will be payable if any of the Notes or Transaction Documents are executed in, or after execution, brought into the Cayman Islands;

(x) neither the Issuer nor the Co-Issuer has offered or sold any Securities by means of any form of general solicitation or general advertising and none of the foregoing persons shall offer to sell, offer for sale or sell Securities by means of any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;

(y) assuming compliance by the Initial Purchaser with the offer and sale restrictions set forth herein and compliance by ARMS Equity with the restrictions set forth in the Preferred Shares Paying Agency Agreement, neither the Issuer nor the Co-Issuer is required to be registered as an "investment company" and neither the Issuer nor the Co-Issuer shall be required to register as an "investment company" under the Investment Company Act as a result of the conduct of its business in the manner contemplated by the Offering Memorandum;

(z) assuming compliance by the Initial Purchaser with the offer and sale restrictions set forth herein and ARMS Equity with the restrictions set forth in the Preferred Shares Paying Agency Agreement, no registration of the Securities under the Securities Act is required for the offer and sale of the Notes in the manner contemplated by this Agreement and the Offering Memorandum or the sale of the Preferred Shares under the Subscription Agreement and no qualification of an indenture under the Trust Indenture Act of 1939, as amended, is required for the offer and sale of the Securities in the manner contemplated by this Agreement, the Subscription Agreement and the Offering Memorandum;

(aa) each of the Issuer and the Co-Issuer shall make available to the Initial Purchaser such number of copies of the Offering Memorandum and any amendment or supplement thereto as the Initial Purchaser shall reasonably request;

(bb) neither the Issuer nor the Co-Issuer has offered and neither the Issuer nor the Co-Issuer shall offer (A) the Notes, except pursuant to this Agreement, and (B) the Preferred Shares, except pursuant to the Subscription Agreement;

(cc) the Co-Issuers shall offer and sell the Notes and the Issuer shall offer and sell the Preferred Shares, only to persons (i) who are "qualified purchasers" as defined in Section 2(a)(51) of the Investment Company Act ("Qualified Purchasers") that the Co-Issuers reasonably believe are "qualified institutional buyers" (except with respect to the sale of the Preferred Shares to ARMS Equity) as defined in Rule 144A under the Securities Act ("Rule 144A") and whom the seller has informed that the reoffer, resale, pledge or other transfer is being made in reliance on Rule 144A or (ii) the Co-Issuers reasonably believe are not "U.S. persons" or U.S. residents for purposes of the Investment Company Act and that the sale, reoffer, resale, pledge or other transfer is being made in compliance with Regulation S under the

Securities Act; terms used in this paragraph have the meanings given to them by Regulation S or Rule 144A, as applicable;

-7-

(dd) each of the Issuer and the Co-Issuer shall immediately notify the Initial Purchaser, and confirm such notice in writing, of (A) any filing made by the Co-Issuers of information relating to the offering of the Securities with any securities exchange or any other regulatory body in the United States or any other jurisdiction, and (B) prior to the completion of the purchase of the Notes by the Initial Purchaser, any material changes in or affecting the earnings, business affairs or business prospects of either the Issuer or the Co-Issuer which (i) make any statement in the Offering Materials false or misleading in any material respect or (ii) are not disclosed in the Offering Memorandum. In such event or if during such time any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of any of the Issuer, the Co-Issuer, their counsel, the Initial Purchaser or its counsel, to amend or supplement the Offering Materials in order that the final Offering Materials not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances then existing, each of the Issuer and the Co-Issuer shall forthwith amend or supplement the final Offering Materials by preparing and furnishing to the Initial Purchaser an amendment or amendments of, or a supplement or supplements to, the final Offering Materials (in form and in substance satisfactory in the opinion of counsel for the Initial Purchaser) so that, as so amended or supplemented, the final Offering Materials shall not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at the time it is delivered to an investor, not misleading;

(ee) each of the Issuer and the Co-Issuer shall advise the Initial Purchaser promptly of any proposal to amend or supplement the Offering Materials and shall not effect such amendment or supplement without the consent of the Initial Purchaser, which shall not be unreasonably withheld or delayed. Neither the consent of the Initial Purchaser to, nor the Initial Purchaser's delivery of, any such amendment or supplement, shall constitute a waiver of any of the conditions set forth in Section 7 hereof;

(ff) each of the Issuer and the Co-Issuer agrees that it shall not make any offer or sale of Securities of any class if, as a result of the doctrine of "integration" referred to in Rule 502 promulgated under the Securities Act, such offer or sale would render invalid (for the purpose of (i) the sale of the Notes to the Initial Purchaser, (ii) the resale of the Notes by the initial investors to others or (iii) the initial sale of the Preferred Shares) the exemption from the registration requirements of the Securities Act provided by Section 4(2) thereof or by Rule 144A or by Regulation S thereunder or otherwise;

(gg) each of the Issuer and the Co-Issuer agrees that, in order to render the Notes eligible for resale pursuant to Rule 144A under the Securities Act, while any of the Notes remain outstanding, they shall make available, upon request, to any holder of the Notes or prospective purchasers of the Notes designated by any Holder the information specified in Rule 144A(d)(4), unless each of the Issuer and the Co-Issuer furnishes information to the United States Securities and Exchange Commission (the "Commission") pursuant to Section 13 or 15(d) of the Exchange Act (such information, whether made available to holders or prospective purchasers or furnished to the Commission, is hereinafter referred to as "Additional Information");

-8-

(hh) until the expiration of two years after the original issuance of

the Securities, each of the Issuer and the Co-Issuer shall not resell any Securities which are "restricted securities" (as such term is defined under Rule 144(a)(3) under the Securities Act) that have been re-acquired by any of them and shall immediately upon any purchase of any such Securities submit such Securities to the Trustee or the Preferred Shares Paying Agency, as applicable, for cancellation;

(ii) each of the Issuer and the Co-Issuer shall use the net proceeds received by them from the sale of the Securities in the manner specified in the Offering Memorandum under "Use of Proceeds";

(jj) during a period of 180 days from the date of the Offering Memorandum, neither the Issuer nor the Co-Issuer shall, directly or indirectly, issue, sell, offer to sell, grant any option for the sale of, or otherwise dispose of, any debt securities or guarantees of debt securities of the Issuer or the Co-Issuer, as applicable, or any securities convertible or exchangeable into or exercisable for any debt securities or guarantees of debt securities of the Issuer or the Co-Issuer, as applicable, or any securities convertible or exchangeable into or exercisable for any debt security or guarantee of debt securities of the Issuer or Co-Issuer, except as described in the Offering Memorandum;

(kk) the Co-Issuers shall use all reasonable efforts in cooperation with the Initial Purchaser to permit the Notes to be eligible for clearance and settlement through DTC;

(ll) each certificate representing a Note shall bear the legend contained in the Indenture for the time period and upon the other terms stated in the Indenture;

(mm) each certificate representing a Preferred Share shall bear the legend contained in the Preferred Shares Paying Agency Agreement for the time period and upon the other terms stated in the Preferred Shares Paying Agency Agreement;

(nn) the Co-Issuers shall have no debt other than as indicated in or contemplated by the Offering Memorandum (including, without limitation, expenses incurred in connection with the offering of the Notes);

(oo) the application of the proceeds of the sale of the Securities shall not be in violation of Regulations T, U or X of the Board of Governors of the Federal Reserve System, as amended and in effect on the Closing Date;

(pp) The Co-Issuers have taken all necessary steps to ensure that any Bloomberg screen containing information about the Notes represented by Rule 144A Global Notes includes the following (or similar) language:

(i) the "Note Box" on the bottom of the "Security Display" page describing the Rule 144A Global Notes shall state: "Iss'd Under 144A/3c7";

(ii) the "Security Display" page shall have flashing red indicator "See Other Available Information"; and

-9-

(iii) the indicator shall link to the "Additional Security Information" page, which shall state that the securities "are being offered in reliance on the exemption from registration under Rule 144A of the Securities Act to persons who are both (i) qualified institutional buyers (as defined in Rule 144A under the Securities Act) and (ii) qualified purchasers (as defined under Section 3(c)(7) under the 1940 Act)."

(qq) The Co-Issuers shall instruct The Depository Trust Company ("DTC") to take these or similar steps with respect to the Notes represented by Rule 144A Global Notes:

(i) the DTC 20-character security descriptor and 48-character additional descriptor shall indicate with marker "3c7" that sales are limited to Qualified Institutional Buyers/Qualified Purchasers;

(ii) where the DTC deliver order ticket sent to purchasers by DTC after settlement is physical, it shall have the 20-character security descriptor printed on it. Where the DTC deliver order ticket is electronic, it shall have a "3c7" indicator and a related user manual for participants, which shall contain a description of the relevant restriction;

(iii) DTC shall send an "Important Notice" outlining the 3(c)(7) restrictions applicable to the Rule 144A Global Notes to all DTC participants in connection with the initial offering; and

(iv) DTC shall include the Co-Issuers in the Reference Directory which is distributed by DTC to its participants on the list of all issuers who have advised DTC that they are 3(c)(7) issuers; and

(rr) The Co-Issuers, have confirmed that CUSIP has established a "fixed field" attached to the CUSIP numbers for the Notes represented by Rule 144A Global Notes containing "3c7" and "144A" indicators.

5. Representations, Warranties and Covenants of the Initial Purchaser. The Initial Purchaser hereby represents and warrants to the Issuer and the Co-Issuer as of the Closing Date, and agrees with the Issuer and the Co-Issuer that:

(a) it is a QIB and a Qualified Purchaser (as defined below), with such knowledge and experience in financial and business matters as are necessary in order to evaluate the merits and risks of an investment in the Notes;

(b) it understands that (i) the Notes have not been and shall not be registered under the Securities Act, and (ii) neither the Issuer nor the Co-Issuer are, and neither shall be, registered as an "investment company" under the Investment Company Act;

(c) it shall offer and sell the Notes only to persons (i) who are "qualified purchasers" as defined in Section 2(a)(51) of the Investment Company Act ("Qualified Purchasers") that it reasonably believes are "qualified institutional buyers" as defined in Rule 144A under the Securities Act ("Rule 144A") and whom the seller has informed that the reoffer, resale, pledge or other transfer is being made in reliance on Rule 144A, or (ii) it reasonably

-10-

believes are not "U.S. persons" or U.S. residents for purposes of the Investment Company Act and that the sale, reoffer, resale, pledge or other transfer is being made in compliance with Regulation S under the Securities Act; terms used in this paragraph have the meanings given to them by Regulation S or Rule 144A, as applicable;

(d) it shall not invite the public in the Cayman Islands to subscribe for the Notes;

(e) it acknowledges that purchases and resales of the Notes are restricted as described under "Transfer Restrictions" in the Offering Memorandum;

(f) (i) it has not offered or sold and will not offer or sell any Notes to persons in the United Kingdom prior to the expiry of the period of six months from the Closing Date except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their business or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United

Kingdom within the meaning of the Public Offers of Securities Regulations 1995 (as amended); (ii) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 (the "FSMA") received by it in connection with the issue or sale of any Securities in circumstances in which section 21(1) of the FSMA does not apply to the Issuer; and (iii) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Notes in, from or otherwise involving the United Kingdom;

(g) it represents and agrees that the Notes offered and sold in reliance on Regulation S have been and will be offered and sold only in offshore transactions. In connection therewith, it agrees that it has not offered or sold and will not offer or sell the Notes in the United States or to, or for the benefit or account of, a U.S. Person (other than a distributor), in each case, as defined in Rule 902 under the Securities Act (i) as part of its distribution at any time and (ii) otherwise until 40 days after the later of the commencement of the offering of the Notes pursuant hereto and the Closing Date, other than in accordance with Regulation S of the Securities Act or another exemption from the registration requirements of the Securities Act; and

(h) no form of general solicitation or general advertising has been or will be used by it or any of its representatives in connection with the offer and sale of any of the Securities, including, but not limited to, articles, notices or other communications published in any newspaper, magazine, or similar medium or broadcast over television or radio, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

Terms used in this Section 5 that have meanings assigned to them in Regulation S are used herein as so defined.

6. Fees and Expenses. The proceeds of the offering of the Securities shall be used to pay all expenses incurred in connection with the offering of the Securities, including the preparation and printing of the preliminary and final offering memorandum, the preparation,

-11-

issuance and delivery of the Notes to the Initial Purchaser, any fees charged by the Rating Agencies in rating the Notes and the fees of counsel to the Issuer and Co-Issuer, the Initial Purchaser, the Preferred Shares Paying Agent, the fees of the Collateral Manager, the Trustee and all reasonable out-of-pocket expenses of the Initial Purchaser.

7. Conditions Precedent to the Purchase of the Notes. The obligations of the Initial Purchaser hereunder are subject to the accuracy of the representations and warranties of each of either the Issuer or the Co-Issuer contained in Section 4 hereof or in certificates of any of the respective officers of the Issuer or Co-Issuer delivered pursuant to the provisions hereof, to the performance by the Issuer and the Co-Issuer of their covenants and other obligations hereunder, and to the following further conditions precedent:

(a) On the Closing Date, the Initial Purchaser shall have received the opinions, dated as of the Closing Date of Cadwalader, Wickersham & Taft LLP, special counsel to the Co-Issuers, and of Maples and Calder, Cayman Islands counsel to the Issuer.

(b) On the Closing Date, (i) the Offering Materials, as amended or supplemented, shall not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (ii) there shall not have been, since the date hereof or since the respective dates as of which information is given in the Offering Materials, any material adverse change or prospective material adverse change with respect

to the Issuer, the Co-Issuer or the Collateral; (iii) each of the Issuer and the Co-Issuer shall have complied with all agreements and satisfied all conditions on their part to be performed or satisfied pursuant to this Agreement on or prior to Closing Date; and (iv) the representations and warranties of the Issuer and Co-Issuer in Section 4 shall be accurate and true and correct as though expressly made on and as of the Closing Date except as specifically set forth therein.

(c) On the Closing Date, the Initial Purchaser shall have received a certificate of an authorized officer of ARCM, dated as of the Closing Date, substantially in the form attached hereto as Exhibit A.

(d) On the Closing Date, the Initial Purchaser shall have received certificates of authorized officers of Arbor Realty SR, Inc. and Arbor Realty Funding, LLC, dated as of the Closing Date, substantially in the form attached hereto as Exhibit B-1 and Exhibit B-2, respectively.

(e) On the Closing Date, the Initial Purchaser shall have received from KPMG LLP a letter, dated as of the Closing Date in form and substance satisfactory to the Initial Purchaser, with respect to certain financial, statistical and other information contained in the Offering Memorandum and the composition of the Collateral Debt Securities on the Closing Date.

(f) The Co-Issuer shall have duly authorized, executed and delivered the Indenture and this Agreement.

(g) The Issuer shall have duly authorized, executed and delivered the Indenture, the Preferred Shares Paying Agency Agreement, the Servicing Agreement, the

-12-

Collateral Management Agreement, each Collateral Debt Securities Purchase Agreement and each Hedge Agreement.

(h) ARCM shall have duly authorized, executed and delivered the Collateral Management Agreement.

(i) Each Seller shall have duly authorized, executed and delivered the applicable Collateral Debt Securities Purchase Agreement.

(j) Each Hedge Counterparty shall have duly authorized, executed and delivered the related Hedge Agreement.

(k) Arbor Commercial Mortgage, LLC shall have duly authorized, executed and delivered the Servicing Agreement.

(l) The Notes shall have been executed by the Issuer and Co-Issuer, as applicable, and authenticated by the Trustee and the conditions precedent thereto, as set forth in the Indenture, shall have been satisfied.

(m) The Preferred Shares shall have been issued by the Issuer and the conditions precedent thereto, as set forth in the Preferred Shares Paying Agency Agreement and the Governing Documents, shall have been satisfied.

(n) Prior to the purchase of the Notes hereunder, the Initial Purchaser shall have received the opinions, dated as of the Closing Date, of the respective counsel to the Trustee, the Preferred Shares Paying Agent, the Collateral Manager, each Hedge Counterparty and the Advancing Agent, each in form and substance satisfactory to the Initial Purchaser.

(o) Prior to the initial purchase of the Notes hereunder, the Issuer and Co-Issuer, as applicable, shall have obtained letters from Moody's Investors Service, Inc. ("Moody's"), Fitch, Inc. ("Fitch") and Standard & Poor's Rating Services, a division of The McGraw-Hill Companies ("S&P" and, together with

Moody's and Fitch, the "Rating Agencies") that the Class A-1 Notes have been rated "Aaa" by Moody's and "AAA" by S&P and Fitch, that the Class A-2 Notes have been rated "Aaa" by Moody's and "AAA" by S&P and Fitch, that the Class B Notes have been rated at least "Aa2" by Moody's and "AA" by S&P and Fitch, that the Class C Notes have been rated at least "A1" by Moody's and "A+" by S&P and Fitch, that the Class D Notes have been rated at least "A2" by Moody's and "A" by S&P and Fitch, that the Class E Notes have been rated at least "A3" by Moody's and "A-" by S&P and Fitch, that the Class F Notes have been rated at least "Baa1" by Moody's and "BBB+" by S&P and Fitch, that the Class G Notes have been rated at least "Baa2" by Moody's and "BBB" by S&P and Fitch, that the Class H Notes have been rated at least "Baa3" by Moody's and "BBB-" by S&P and Fitch, and shall deliver copies of such letters to the Initial Purchaser.

(p) The Initial Purchaser shall have received such further information, certificates, documents and opinions as it may have reasonably requested.

-13-

(q) The Co-Issuers and DTC shall have executed and delivered one or more letters of representation with respect to the Notes each in a form reasonably satisfactory to the Initial Purchaser.

(r) All of the Preferred Shares shall have been purchased by ARMS Equity on the Closing Date.

8. Indemnification and Contribution.

(a) Subject to the Priority of Payments set forth in Section 11.1 of the Indenture, the Co-Issuers shall indemnify and hold harmless the Initial Purchaser and each of its affiliates, respective officers, directors and each person who controls such Initial Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, an "Initial Purchaser Indemnified Person") against any losses, claims, damages, liabilities or expenses, joint or several, as the same are incurred, to which such Initial Purchaser Indemnified Person may become subject insofar as such losses, claims, damages, liabilities or expenses (or actions in respect thereof) (1) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Offering Materials or any amendment or supplement thereto or arise out of or are based upon the omission or alleged omission to state in the Offering Materials a material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading, other than the Initial Purchaser Information (as defined below) or (2) are based upon a breach by either of the Co-Issuers of any of its representations, warranties or agreements contained in this Agreement, and shall periodically reimburse the Initial Purchaser for any and all legal or other expenses reasonably incurred by the Initial Purchaser and each other Initial Purchaser Indemnified Person in connection with investigating or defending, settling, compromising or paying any such losses, claims, damages, liabilities, expenses or actions as such expenses are incurred; provided, however, that the foregoing indemnity with respect to any untrue statement contained in or any statement omitted from any Offering Materials (as the same may be amended or supplemented) shall not inure to the benefit of the Initial Purchaser (or any Person controlling the Initial Purchaser), if (x) such loss, liability, claim, damage or expense resulted from the fact that the Initial Purchaser sold Notes to a Person to whom there was not sent or given, at or prior to the written confirmation of such sale, a copy of the Offering Memorandum, as then amended or supplemented, (y) the Issuer shall have previously and timely furnished sufficient copies of the Offering Memorandum, as so amended or supplemented, to the Initial Purchaser in accordance with this Agreement and (z) the Offering Memorandum, as so amended or supplemented, would have corrected such untrue statement or omission.

(b) The Initial Purchaser shall indemnify and hold harmless the Issuer and the Co-Issuer, each of their respective affiliates, their respective

officers, directors, managers and each person controlling the Issuer and Co-Issuer within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, claims, damages, liabilities or expenses, joint or several, as the same are incurred, to which the Issuer or the Co-Issuer may become subject insofar as such losses, claims, damages, liabilities or expenses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the statements set forth in the Initial Purchaser Information with respect to such Initial Purchaser or acts or omissions thereof or arise out of or are based upon the

-14-

omission or alleged omission to state in such paragraphs a material fact necessary with respect to such Initial Purchaser or acts or omissions thereof to make the statements in such paragraphs, in the light of the circumstances under which they are made, not misleading. The parties acknowledge that the only information provided by the Initial Purchaser is in the Offering Memorandum on the cover page in the first sentence of the fourth paragraph and in the Section entitled "Subscription and Sale" in the first sentence of the first paragraph, third and fifth paragraphs, second sentence of the sixth paragraph, seventh and eighth paragraphs and twelfth paragraphs (collectively, the "Initial Purchaser Information");

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise under such subsection except to the extent it has been materially prejudiced by such failure. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it may elect, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party; provided, however, that if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of its election so to assume the defense of such action and approval of counsel by the indemnified party, the indemnifying party shall not be liable to such indemnified party under this Section 8 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in connection with the assertion of legal defenses in accordance with the proviso to the immediately preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (in addition to local counsel) for the indemnified party), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party at the expense of the indemnifying party to represent the indemnified party within a reasonable time after notice of commencement of the action or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party; and except that, if clause (i) or (iii) is applicable, such liability shall be only in respect of the counsel referred to in such clause (i) or (iii).

(d) If the indemnification provided for in this Section 8 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages,

liabilities or expenses (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as incurred as a result of such losses, claims, damages, liabilities or expenses (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits

-15-

received by the Co-Issuers on the one hand and the Initial Purchaser on the other from the offering of the Notes. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Co-Issuers on the one hand and the Initial Purchaser on the other in connection with the statements or omissions or breaches of representations, warranties or agreements which resulted in such losses, claims, damages, liabilities or expenses (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Co-Issuers on one hand and Wachovia Securities on the other shall be in the same proportion as the total proceeds to the Co-Issuers from the sale of Securities and the discounts and commissions received by Wachovia Securities bear to each other. The relative fault shall be determined by reference to, among other things, whether the indemnified party failed to give the notice required under subsection (c) above, including the consequences of such failure, and whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Co-Issuers on the one hand or by the Initial Purchaser on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement, omission or breach. The Co-Issuers and the Initial Purchaser agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities or expenses (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim (which shall be limited as provided in subsection (c) above if the indemnifying party has assumed the defense of any such action in accordance with the provisions thereof). Notwithstanding the provisions of this subsection (d), the Initial Purchaser shall not be required to contribute any amount in excess of the amount by which the amount of the discounts and commissions received by the Initial Purchaser exceeds the amount of any damages which the Initial Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation shall be entitled to a contribution from any person who was not guilty of such fraudulent misrepresentation.

9. Duration, Termination and Assignment of this Agreement.

(a) This Agreement shall become effective as of the date first written above and shall remain in force until terminated as provided in this Section 9.

(b) This Agreement may be terminated by the Initial Purchaser at any time without the payment of any penalty by the Initial Purchaser, if there is a breach of any of the representations, warranties, covenants or agreements of the Issuer or the Co-Issuer hereunder or if any of the conditions set forth in Section 7 hereof have not been satisfied.

(c) This Agreement shall terminate in the event that on or after the date hereof, there shall have occurred any of the following: (i) a suspension or material limitation in trading in securities generally on the New York Stock Exchange or in trading of the securities of

the Collateral Manager or any affiliate of the Collateral Manager on any exchange or over-the-counter market; (ii) a general moratorium on commercial banking activities declared by either federal or New York State authorities; or (iii) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war, or other calamity or crisis, if the effect of any such event specified in this clause (iii) in the judgment of the Initial Purchaser makes it impracticable or inadvisable to proceed with the offering or delivery of the Notes on the terms and in the manner contemplated by this Agreement and in the Offering Memorandum.

(d) The Issuer shall pay all fees and expenses in connection with the offering and sale of the Notes from amounts standing to the credit of the Expense Account immediately following the termination of this Agreement pursuant to Section 9(c) hereof.

(e) This Agreement is not assignable by any party hereto; provided, however, that the Initial Purchaser may assign this Agreement, or any of its rights or obligations hereunder, in writing to any of its affiliates, provided that the rights of the Issuer or Co-Issuer shall not be affected by such assignment. Upon an assignment by the Initial Purchaser pursuant to this Section 9(e), such Initial Purchaser shall cause the assignee to assume in writing all of the obligations and liabilities of the Initial Purchaser hereunder and shall notify the Issuer and the Co-Issuer of such assignment.

10. Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered or faxed and confirmed to the parties as follows:

If to Wachovia Capital Markets, LLC:

Wachovia Capital Markets, LLC
12 East 49th Street, 45th Floor
New York, New York 10017
Telephone: (212) 909-0035
Fax: (212) 909-0047
Attention: Michelle Tan

If to the Issuer:

Arbor Realty Mortgage Securities Series 2005-1, Ltd.
c/o Maples Finance Limited
Queensgate House
P.O. Box 1093 GT
Queensgate House, South Church Street
George Town, Grand Cayman, Cayman Islands
Attention: The Directors
Telephone: (345) 945-7099
Fax: (345) 945-7100

with a copy to the Collateral Manager:

Arbor Realty Collateral Management, LLC
333 Earle Ovington Boulevard, 9th Floor
Uniondale, New York 11553
Telephone: (212) 389-6546
Fax: (212) 389-6573
Attention: Executive Vice President, Structured Securitization

If to the Co-Issuer:

Arbor Realty Mortgage Securities Series 2005-1 LLC
c/o Puglisi & Associates
830 Library Avenue, Suite 204,
Newark, Delaware 19711
Attention: Donald J. Puglisi
Telephone: (302) 738-6680
Fax: (302) 738-7210

with a copy to the Collateral Manager (as addressed above).

Any party hereto may change the address for receipt of communications by giving written notice to the others.

11. Consent to Jurisdiction. Each of the Issuer and the Co-Issuer (i) agrees that any legal suit, action or proceeding brought by any party to enforce any rights under or with respect to this Agreement or any other document or the transactions contemplated hereby or thereby may be instituted in any federal court in The City of New York, State of New York, U.S.A.; provided, however, that if a federal court in the City of New York declines jurisdiction for any reason, any legal suit, action or proceeding brought by any party to enforce any rights under or with respect to this Agreement or any other document or the transactions contemplated hereby or thereby may be instituted in any state court in the City of New York, State of New York, U.S.A., (ii) irrevocably waives to the fullest extent permitted by law any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding instituted in the City of New York, State of New York, U.S.A., (iii) irrevocably waives to the fullest extent permitted by law any claim that and agrees not to claim or plead in any court that any such action, suit or proceeding brought in a court in the City of New York, State of New York, U.S.A. has been brought in an inconvenient forum and (iv) irrevocably submits to the non-exclusive jurisdiction of any such court in any such suit, action or proceeding or for recognition and enforcement of any judgment in respect thereof.

Each of the Issuer and the Co-Issuer hereby irrevocably and unconditionally designates and appoints CT Corporation System, 111 8th Avenue, 13th Floor, New York, New York 10011, U.S.A. (and any successor entity), as its authorized agent to receive and forward on its behalf service of any and all process which may be served in any such suit, action or proceeding in any such court and agrees that service of process upon CT Corporation shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and shall be taken and held to be valid personal service upon it. Said designation and appointment shall be irrevocable. Nothing in this Section 11 shall affect the rights of the Initial

-18-

Purchaser, its affiliates or any indemnified party to serve process in any manner permitted by law. Each of the Issuer and the Co-Issuer further agrees to take any and all action, including the execution and filing of any and all such documents and instruments, as may be necessary to continue such designation and appointment of CT Corporation in full force and effect so long as the Notes are outstanding but in no event for a period longer than five years from the date of this Agreement. Each of the Issuer and the Co-Issuer hereby irrevocably and unconditionally authorizes and directs CT Corporation to accept such service on their behalf. If for any reason CT Corporation ceases to be available to act as such, each of the Issuer and the Co-Issuer agrees to designate a new agent in New York City on the terms and for the purposes of this provision reasonably satisfactory to the Initial Purchaser.

To the extent that either the Issuer or the Co-Issuer has or hereafter may acquire any immunity from jurisdiction of any court (including, without limitation, any court in the United States, the State of New York, Cayman Islands or any political subdivision thereof) or from any legal process (whether

through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property or assets, this Agreement, or any other documents or actions to enforce judgments in respect of any thereof, it hereby irrevocably waives such immunity, and any defense based on such immunity, in respect of its obligations under the above-referenced documents and the transactions contemplated thereby, to the extent permitted by law.

12. Arms-Length Transaction. Each of the Co-Issuers acknowledges and agrees that (i) the Initial Purchaser is acting solely in the capacity of an arm's length contractual counterparty to the Issuer and the Co-Issuer with respect to the purchase and sale of the Notes pursuant to this Agreement and not as a financial advisor or a fiduciary to, or agent of, the Issuer or the Co-Issuer or any other person, (ii) the Initial Purchaser is not advising the Issuer, the Co-Issuer or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction, (iii) the Issuer and the Co-Issuer shall consult with their own advisors concerning any such matter and shall be responsible for making their own independent investigation and appraisal of any transactions contemplated by this Agreement, and the Initial Purchaser shall have no responsibility or liability to the Issuer or the Co-Issuer with respect thereto, and (iv) any review by the Initial Purchaser of the Issuer, the Co-Issuer or any transactions contemplated by this Agreement or any other matters relating thereto will be performed solely for the benefit of the Initial Purchaser and shall not be on behalf of the Issuer, the Co-Issuer or any other person.

13. Judgment Currency. If, pursuant to a judgment or order being made or registered against the either the Issuer or the Co-Issuer, any payment under or in connection with this Agreement to the Initial Purchaser is made or satisfied in a currency (the "Judgment Currency") other than in United States Dollars then, to the extent that the payment (when converted into United States Dollars at the rate of exchange on the date of payment or, if it is not practicable for such Initial Purchaser to purchase United States Dollars with the Judgment Currency on the date of payment, at the rate of exchange as soon thereafter as it is practicable to do so) actually received by such Initial Purchaser falls short of the amount due under the terms of this Agreement, the Issuer or the Co-Issuer, as applicable, shall, to the extent permitted by law, as a separate and independent obligation, indemnify and hold harmless the Initial Purchaser against the amount of such short fall and such indemnity shall continue in full force and effect

-19-

notwithstanding any such judgment or order as aforesaid. For the purpose of this Section, "rate of exchange" means the rate at which such Initial Purchaser is able on the relevant date to purchase United States Dollars with the Judgment Currency and shall take into account any premium and other costs of exchange.

14. Amendments to this Agreement. This Agreement may be amended by the parties hereto only if such amendment is specifically approved in writing by the Issuer, the Co-Issuer and the Initial Purchaser. The Co-Issuers must provide notice of any amendment or modification of this Agreement to each Rating Agency rating the Notes at the time of any such amendment or modification.

15. Parties. This Agreement shall inure to the benefit of and be binding upon the Initial Purchaser, the Co-Issuers and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Initial Purchaser, the Co-Issuers and their respective successors and the controlling persons and officers and directors referred to in Section 8, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provisions herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Initial Purchaser, the Co-Issuers, each of their respective affiliates and their respective successors, and said controlling persons and officers, directors and

managers and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities shall be deemed to be a successor by reason merely of such purchase.

16. Governing Law. This Agreement shall be construed in accordance with the internal laws of the State of New York, without giving effect to the choice of law principles thereof.

17. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same agreement.

18. Representations, Warranties and Indemnities to Survive Delivery. The respective representations, warranties and indemnities of the Issuer, the Co-Issuer, of their respective officers and of the Initial Purchaser set forth in or made pursuant to, this Agreement, including any warranty relating to the payment of expenses owed to the Initial Purchaser hereunder shall remain in full force and effect and shall survive delivery of and payment for the Securities and any termination of this Agreement.

19. No Petition Agreement. The Initial Purchaser agrees that, so long as any Note is outstanding and for a period of one year plus one day or, if longer, the applicable preference period then in effect after payment in full of all amounts payable under or in respect of the Transaction Documents, it shall not institute against or join or assist any other Person in instituting against, any of the Issuer or the Co-Issuer any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings under any federal or state bankruptcy or similar law. This Section shall survive any termination of this Agreement.

-20-

20. Non Recourse Agreement. Notwithstanding any other provision of this Agreement, all obligations of the Issuer or the Co-Issuer arising hereunder or in connection herewith are limited in recourse to the Pledged Obligations and to the extent the proceeds of the Pledged Obligations, when applied in accordance with the Priority of Payments, are insufficient to meet the obligations of the Issuer or the Co-Issuer hereunder in full, the Issuer or the Co-Issuer, as applicable, shall have no further liability in respect of any such outstanding obligations and any claims against the Issuer or the Co-Issuer, as applicable, shall be extinguished and shall not thereafter revive. The Initial Purchaser hereby agrees and acknowledges that the obligations of the Co-Issuers hereunder are solely the corporate obligations of the Co-Issuer and that no recourse shall be had against any officer, director, employee, shareholder, limited partner or incorporator of the Co-Issuers for any amounts payable hereunder. This Section shall survive any termination of this Agreement.

-21-

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Purchase Agreement as of the day and year first above written.

ARBOR REALTY MORTGAGE SECURITIES
SERIES 2005-1, LTD., as Issuer

By: /s/ Martin Couch

Name: Martin Couch
Title: Director

ARBOR REALTY MORTGAGE SECURITIES
SERIES 2005-1 LLC, as Co-Issuer

By: /s/ Guy R. Milone, Jr.

Name: Guy R. Milone, Jr.

Title: Authorized Signatory

WACHOVIA CAPITAL MARKETS, LLC

By: /s/ Michelle Tan

Name: Michelle Tan

Title: Director

EXHIBIT A

ARBOR REALTY COLLATERAL MANAGEMENT, LLC

Officer's Certificate

The undersigned, _____, pursuant to Section 7(c) of that certain Purchase Agreement dated as of January 11, 2006, by and among Arbor Realty Mortgage Securities Series 2005-1, Ltd., Arbor Realty Mortgage Securities Series 2005-1 LLC and Wachovia Capital Markets, LLC (the "Purchase Agreement") does HEREBY CERTIFY that:

(a) The Collateral Manager (i) is a limited liability company, duly organized, is validly existing and is in good standing under the laws of the State of Delaware, (ii) has full power and authority to own its assets and to transact the business in which it is currently engaged, and (iii) is duly qualified and is in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires, or the performance of the Collateral Management Agreement and the Indenture would require, such qualification, except for failures to be so qualified that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Collateral Manager or on the ability of the Collateral Manager to perform its obligations thereunder, or on the validity or enforceability of, the Collateral Management Agreement and the provisions of the Indenture applicable to the Collateral Manager; the Collateral Manager has full power and authority to execute, deliver and perform the Collateral Management Agreement and its obligations thereunder and the provisions of the Indenture applicable to it; the Collateral Management Agreement has been duly authorized, executed and delivered by it and constitutes a legal, valid and binding agreement of the Collateral Manager, enforceable against it in accordance with the terms thereof, except that the enforceability thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law);

(b) Neither the Collateral Manager nor any of its Affiliates is in violation of any Federal or state securities law or regulation promulgated thereunder that would have a material adverse effect upon the ability of the Collateral Manager to perform its duties under the Collateral Management Agreement or the Indenture, and there is no charge, investigation, action, suit or proceeding before or by any court or regulatory agency pending or, to the best knowledge of the Collateral Manager, threatened which could reasonably be expected to have a material adverse effect upon the ability of the Collateral Manager to perform its duties under the Collateral Management Agreement or the Indenture;

(c) Neither the execution and delivery of the Collateral Management

Agreement nor the performance by the Collateral Manager of its duties thereunder or under the Indenture conflicts with or will violate or result in a breach or violation of any of the terms or provisions of, or constitutes a default under: (i) the limited liability company agreement of the Collateral Manager, (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement or other evidence of indebtedness or other agreement, obligation, condition, covenant

-22-

or instrument to which the Collateral Manager is a party or is bound, (iii) any law, decree, order, rule or regulation applicable to the Collateral Manager of any court or regulatory, administrative or governmental agency, body or authority or arbitrator having jurisdiction over the Collateral Manager or its properties, and which would have, in the case of any of (i), (ii) or (iii) of this subsection (c), either individually or in the aggregate, a material adverse effect on the business, operations, assets or financial condition of the Collateral Manager or the ability of the Collateral Manager to perform its obligations under the Collateral Management Agreement or the Indenture;

(d) No consent, approval, authorization or order of or declaration or filing with any government, governmental instrumentality or court or other person is required for the performance by the Collateral Manager of its duties under the Collateral Management Agreement and under the Indenture, except such as have been duly made or obtained;

(e) The Offering Memorandum, as of the date thereof (including as of the date of any supplement thereto) and as of the Closing Date does not contain any untrue statement of a material fact and does not omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;

(f) On the Closing Date, there shall not have been, since the respective dates as of which information is given in the Offering Materials, any material adverse change or prospective material adverse change with respect to the Issuer, the Co-Issuer or the Collateral; and

(g) The Collateral Manager is subject to a valid exemption from registration as a registered investment adviser under the United States Investment Advisers Act of 1940, as amended.

Capitalized terms not set forth herein shall have the meaning ascribed thereto in the Indenture.

-2-

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 11th day of January, 2006.

ARBOR REALTY COLLATERAL MANAGEMENT, LLC

By: _____
Name: _____
Title: _____

[-]

Officer's Certificate

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this
11th day of January, 2006.

[-]

By:

Name:

Title:

EXHIBIT B-2

[-]

Officer's Certificate

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this
11th day of January, 2006.

[-]

By:

Name:

Title:

SCHEDULE A

| CLASS | WACHOVIA SECURITIES | PURCHASE PRICE |
|------------------|---------------------|----------------|
| ----- | ----- | ----- |
| Class A-1 Notes: | \$161,500,000 | 100% |
| Class A-2 Notes: | \$ 40,375,000 | 100% |
| Class B Notes: | \$ 57,000,000 | 100% |
| Class C Notes: | \$ 29,687,500 | 100% |
| Class D Notes: | \$ 10,212,500 | 100% |
| Class E Notes: | \$ 9,025,000 | 100% |
| Class F Notes: | \$ 17,575,000 | 100% |
| Class G Notes: | \$ 13,062,500 | 100% |

| | | |
|----------------|---------------|------|
| Class H Notes: | \$ 17,812,500 | 100% |
|----------------|---------------|------|

Subsidiaries of Arbor Realty Trust, Inc.

Arbor Realty GPOP, Inc., a Delaware corporation
 Arbor Realty LPOP, Inc., a Delaware corporation
 Arbor Realty Limited Partnership, a Delaware limited partnership
 Arbor Realty SR, Inc., a Maryland corporation
 ANMB Holdings LLC, a New York limited liability company
 ACM Gateway LLC, a Delaware limited liability company
 Arbor Texas CDS, LLC, a New York limited liability company
 ANMB Holdings II, LLC, a New York limited liability company
 ACM Dutch Village, LLC, a Delaware limited liability company
 ACM Evergreen, LLC, a New York limited liability company
 Arbor Realty Funding, LLC, a Delaware limited liability company
 Arbor Realty Member LLC, a Delaware limited liability company
 ART 450 LLC, a Delaware limited liability company
 ARMS 2004-1 Equity Holdings LLC, a Delaware limited liability company
 Arbor Realty Mortgage Securities Series 2004-1 LLC, a Delaware limited liability company
 Arbor Realty Mortgage Securities Series 2004-1, Ltd., a Cayman Islands exempted company with limited liability
 Arbor Realty Collateral Management, LLC, a Delaware limited liability company
 Arbor Realty Funding LLC, a Delaware limited liability company
 263 Ninth Avenue Realty LLC, a New York limited liability company
 823 Park Avenue LLC, a New York limited liability company
 AC Flushing, LLC, a New York limited liability company
 ACM Lakeview, LLC, a New York limited liability company
 AR Prime Holdings LLC, a Delaware limited liability company
 Arbor Realty Fairfax, LLC, a Delaware limited liability company
 Arbor Realty Mortgage Securities Series 2005-1 Ltd., a Cayman Islands exempted company with limited liability
 Arbor Realty OTA LLC, a Delaware limited liability company
 Arbor Realty RMBS LLC, a Delaware limited liability company
 ARMS 2005-1 Equity Holdings LLC, a Delaware limited liability company
 Arbor SR West 35th LLC, a Delaware limited liability company
 Arbor TRS Holding Co., Inc., a Delaware corporation
 Arbor Toy LLC, a Delaware limited liability company
 ARLP 263 Ninth Avenue, a New York limited liability company
 ARSR Heritage Marina LLC, a Delaware limited liability company

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement on Form S-3 (No. 333-116223) and the related prospectus and on Form S-8 (No. 333-121461) pertaining to the registration of shares of common stock of Arbor Realty Trust, Inc. issued pursuant to the Arbor Realty Trust, Inc. 2003 Omnibus Stock Incentive Plan, as amended and restated, of our reports dated March 15, 2006 with respect to the consolidated financial statements and schedule of Arbor Realty Trust, Inc and Subsidiaries, Arbor Realty Trust, Inc. and Subsidiaries management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of Arbor Realty Trust, Inc and Subsidiaries included in this Annual Report (Form 10-K) for the year ended December 31, 2005.

/s/ Ernst & Young LLP

New York, New York
March 15, 2006

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Ivan Kaufman, certify that:

1. I have reviewed this quarterly report on Form 10-K of Arbor Realty Trust, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ Ivan Kaufman

Name: Ivan Kaufman
Title: Chief Executive Officer

Date: March 15, 2006

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Paul Elenio, certify that:

1. I have reviewed this quarterly report on Form 10-K of Arbor Realty Trust, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ Paul Elenio

Name: Paul Elenio
Title: Chief Financial Officer

Date: March 15, 2006

**CERTIFICATION OF CEO PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-K of Arbor Realty Trust, Inc.. (the "Company") for the annual period ended December 31, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Ivan Kaufman, as Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ Ivan Kaufman

Name: Ivan Kaufman
Title: Chief Executive Officer

Date: March 15, 2006

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION OF CFO PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-K of Arbor Realty Trust, Inc. (the "Company") for the annual period ended December 31, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Paul Elenio, as Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ Paul Elenio

Name: Paul Elenio

Title: Chief Financial Officer

Date: March 15, 2006

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.